The Scrivener: Modern Legal Writing

The Apostrophe: Reports of Its Death are Greatly Exaggerated*

by K.K. DuVivier
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You find not the apostrophe and so miss the accent.
William Shakespeare
Love's Labor's Lost
Act IV, scene ii, line 123

Unfortunately, this simple contraction rule little benefits lawyers because contractions and other “casual language” are frowned upon in formal legal writing.

Possessives
Most writers also know ‘s is used to create the possessive form of a singular noun and that the apostrophe alone is used to create the possessive of a plural noun ending in s. If you have a group of words, place the ‘s after the last word in the group.

Example (singular): plaintiff’s complaint (one plaintiff)
Example (plural): plaintiffs’ complaint (several plaintiffs)
Example (group): the Governor of Florida’s recommendation, attorney general’s office,
John Doe Jr.’s speech

Be careful when punctuating the possessive of a group of two or more nouns; a misplaced apostrophe can alter your meaning. Indicate joint possession by using ‘s after the last noun in a group. Indicate separate possession by placing an ‘s after each noun in the group.

Contractions
Apostrophes in contractions are a simple concept. My first-grade son recently came home explaining the contraction rule: we use the apostrophe to replace a missing letter. Now the full wording “I am” no longer graces his papers; instead, he uses “I’m” whenever he can—no less than four times in his latest one-paragraph assignment.

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?
K.K. DuVivier will be happy to address them through The Scrivener column. Send your questions to: K.K. DuVivier, University of Colorado School of Law, Campus Box 401, Boulder, CO 80309-0401.

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*Paraphrasing of Mark Twain’s statement in the New York Journal (June 2, 1897): “Reports of my death have been greatly exaggerated.”

Regular readers of this column might like to consider joining an international organization called “Clarity.” Its aim is to promote better, clearer writing by the legal profession. The cost to join is nominal ($25). For more information and a sample copy of the journal, Clarity, write to Joseph Kimble, Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901.
Example (files belong jointly to both): Dimitri and Inga's files are being reviewed.
Example (each have separate files): Dimitri's and Inga's files are being reviewed.\footnote{7}

**Exception 1—Using the Apostrophe Without the “S”**

Now the confusion sets in. Does one use an 's or just the apostrophe after a singular noun ending with s such as “Congress” or “witness”? Some authorities say use 's, others recommend avoiding “an excess of s’s” by use of the apostrophe only; and still others say use an apostrophe alone if “the resulting word is difficult to pronounce.”\footnote{10}

Only a few sources attempt to clarify the difficult-to-pronounce rule. If the word following the possessive starts with an s, then the combination is difficult to pronounce, and the apostrophe should be used alone. If a proper name contains internal and ending s sounds (formed by z or x, in addition to s), the result is difficult to pronounce, so again the apostrophe should be used alone.

Examples (pronounceable, so use 's): Congress's authority, witness's testimony
Examples (unpronounceable, so no s): Congress's sake, witness's signature, Moses's laws, Alexis's conviction\footnote{11}

**Exception 2—No Apostrophes for Possessive Pronouns**

Just when we’ve nailed down the rule that an apostrophe is used to show the possessive, we encounter this pronoun exception.\footnote{12} Possessive pronouns, such as hers, theirs, yours and ours, rarely are punctuated incorrectly because they cannot be mistaken for common contractions. In contrast, pronouns that resemble contractions are frequent targets for confusion. For example, its (possessive) is confused for it's (contraction: it is) and whose (possessive) is confused for who's (contraction: who's). These forms generate much of the resentment for the apostrophe’s apparent inconsistency.\footnote{13}

**Exception 3—Apostrophes for Plurals**

We writers are fooled again if we believe that 's is used for singulars and s' for plurals. Although the authorities disagree, frequently the plural of numbers, letters, or symbols can be formed by using 's. The more recent The Chicago Manual of Style\footnote{14} eliminates the apostrophe (7's, Cs, 1950s), while the U.S. Government's A Manual of Style\footnote{15} requires both the apostrophe and the s for these plurals (7's, C's, or 1950’s). The apostrophe always should be used if eliminating it would create confusion. Compare “Dot all the i's.” with “Dot all the is.”

The use of 's for plurals may seem inconsistent because it doesn’t fit into the context of the basic apostrophe rules: there is no omitted letter and no possession.

**Conclusion**

No doubt, writers will continue their attempts to force the apostrophe into conformity. Although the apostrophe may be headed for extinction, it’s not dead yet. Maybe someday you’ll want to pitch out this column, but I’d hold onto it for at least a few more years.

**NOTES**

3. Note: the apostrophe goes into the space created by the omitted letters, not in the space between two words that have been combined. Correct: wouldn't; incorrect: wouldn't. Tarshis, Grammar for Smart People 109 (N.Y.: Pocket Books/Simon & Schuster, Inc. 1992).
4. The use of apostrophes to signal the possessive has the same origin as the contraction rule. The apostrophe marked the omission of an “e” in the English genitive or possessive case. Use of “s” for all possessives, even those without an omitted “e,” was not established until after 1725. Vol. I, The Oxford English Dictionary 2nd ed. (Oxford: Clarendon Press, 1989) at 558-59.
7. Example from Tarshis, supra note 3 at 110. See also Oates, supra note 5 at 816.
8. Strunk & White, supra note 2 at 1.
10. Oates, supra, note 5 at 813.
11. Examples from id. at 814.
12. Remember that indefinite pronouns do use the apostrophe to show possession. Examples from Strunk & White, supra note 2 at 1: one’s rights, somebody else’s umbrella.
13. "We're taught that apostrophes should be used in possessive words, yet this word, perhaps the most common of possessive words, doesn't have one! ... It's not hard to understand why so many people ... figure it's totally arbitrary." "Letters," Newsweek (Nov. 27, 1995) at 16.

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