The Scrivener: Modern Legal Writing

The Lady Doth Protest Too Much, Methinks!

(William Shakespeare, Hamlet, Act III, Scene ii).

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If it is interesting to note, make it interesting. Being told that something is interesting is the surest way of tempting the reader to find it dull. . . .1

When we speak face-to-face with someone, we communicate on several different levels. Our face and body can communicate a different message from that of our voice. Thus the body language of a tight jaw and stiffly crossed arms belies a statement that one is relaxed. Similarly, voice inflection can conflict with spoken words. The impact of such incongruity may be intended irony or jest, or the impact may be confusion.

With the written word, we cannot use body language or voice inflection to convey meaning, yet our writing often projects a distinct tone or personality. When this tone is incongruous with our intended message, the impact is confusion.

In writing, tone is created primarily through our choice of words, also called diction. This column focuses on words lawyers frequently choose that unintentionally make legal writing sound strident, rather than persuasive.

Words such as “very,” “clearly,” “really” and “absolutely” are intensifiers; they are added to emphasize a concept. Although these words have their place, in most instances, your writing will be more powerful and effective if you avoid them. There are several reasons to omit intensifiers.

First, adding an intensifier may be superfluous. The sentence can be just as informative without the addition of an adverb. “Very” may add intensity if the word it embellishes is fairly neutral. For example, “Mr. Stark’s testimony was very tiring.” However, “very” is especially unnecessary if the word it embellishes is already intense. For example, “Mr. Stark’s testimony was very exhausting.”

Next, while the intent may be to make a point stronger, adding an intensifier may have the opposite effect. For example, adding the word “clearly” cannot substitute for a full explanation. Rather than crystallizing the point, adding “clearly” may muddy the waters. “If what is said is clear, then clearly is not needed, and if it is not clear, then clearly will not make it so.”2

The word “very” derives from the Latin word verus, meaning true. An assertion of truthfulness—e.g., “This is how it happened, really it is.”—does not instill confidence in the speaker’s credibility. It can create suspicion rather than dispelling it. Similarly, the addition of “very” or “really” cannot add credibility if none was there initially.

Finally, intensifiers create a tone of insistence. Instead of attempting to tell the readers that a point is important by adding an intensifier, make the point important by supporting it with specific facts or arguments.

**Intensifier assertion:** Plaintiffs’ physical injuries were very extensive.

**Supported assertion:** Plaintiffs’ physical injuries were extensive. Mr. Cassa lost his eyesight, and Ms. Cassa was hospitalized for two months.

Similarly, dramatic or conclusive adjectives can create a hysterical tone if they are not supported. “Understatement is often more persuasive than overstatement because of its stark concentration on the essential.”3 Lead the court to your

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**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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conclusion without usurping the court's role of making the final determination.

Conclusive assertion: Defendants' actions were egregious and unlawful.

Supported assertion: When defendants entered the Smiths' bedroom in the middle of the night thinking the Smiths were not home, they violated § 5 of the statute, which prohibits uninvited entries into dwellings.

Frequent use of intensifiers and conclusive adjectives will give your writing a shrill and insistent tone. Yet, "insistence without substance is irritating rather than persuasive." If, instead, your goal is to project a compelling and rational argument, work on making your tone and diction consistent with that objective.

NOTES

4. Id.