Plain English Part III:
Choosing the Right Words

by K.K. DuVivier
© 1998 K.K. DuVivier

Obtuse and mystic thoughts you must express
With painful care, but seeming easiness;
For truth shines brightest thro' the plainest dress.

Wentworth Dillon, Essay on Translated Verse, I. 216

In an effort to provide investors with full and fair disclosures in language they can understand, the SEC has proposed rules to require that disclosures be written in Plain English.¹ These rules outline six “clear writing techniques”: (1) active voice; (2) short sentences; (3) definite, concrete, everyday language; (4) tabular presentations; (5) no jargon; and (6) no multiple negatives.² The January and March 1998 Scribner articles³ addressed the first two techniques; this article addresses the third.

Definite Words

You can make your writing more definite by substituting specific information for general characterizations. Using specifics has two advantages. First, legal readers are skeptics. Any unsupported assertion is deemed untrue. By providing specifics, readers’ doubts can be eased.⁴ Second, legal readers have a limited amount of time to decipher your writing. Specifics quickly provide readers with a sharp image so they will spend less time trying to figure out what you are saying and have more time left to consider agreeing with it.⁵

Example: One of the parties was driving several miles over the speed limit.
Revised to be more definite: Defendant Crowley was driving thirty miles per hour in a twenty-mile zone.

Concrete Words

A cognitive psychologist and an English professor from Carnegie-Mellon University⁶ studied how readers approached complex written information. These readers attempted to visualize the information by taking abstractions and converting them into concrete situations in which people performed actions.⁷

One way to sharpen the focus of these visualizations is to use vivid wording. Substitute neutral words, such as “look” or “touch,” with alternatives that provide a concrete image, such as “glance,” “stare,” “tap,” or “shove.”

Another way is to scour your writing for abstractions, such as “situation,” “factor,” or “circumstance,” and to replace these terms with the concrete. The SEC handbook illustrates one such progression from abstract to concrete.

[Abstract] asset-investment-security-equity-stock-common stock-one share of IBM common stock [Concrete].⁸

To experience the power of concrete images, compare these two descriptions of Moses inflicting a plague on Egypt (Exodus 8:7) from Plain English for Lawyers.⁹ The traditional version:
He lifted up the rod and smote the waters of the river . . . and all the waters that were in the river were turned to blood.
And the fish that were in the river died; and the river stank, and the Egyptians could not drink the water of the river; and there was blood throughout all the land of Egypt.
The “modern environmental impact report” version:
The water was impacted by his rod, whereupon a polluting effect was achieved. The consequent toxification reduced the conditions necessary for the sustenance of the indigenous population of aquatic vertebrates below the level of viability. Olfactory discomfort standards were substantially exceeded, and potability declined. Social, economic, and political disorientation were experienced to an unprecedented degree.

Everyday Words

When confronted with a new word that is unusual or unfamiliar, readers lose their train of thought and instead ponder

---

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through The Scribner column. Send your questions to: K.K. DuVivier, University of Colorado School of Law, Campus Box 401, Boulder, CO 80309-0401 or through e-mail to: duvivier@spot.colorado.edu.

K.K. DuVivier is a senior instructor of Legal Writing and Appellate Court Advocacy at the University of Colorado School of Law, Boulder.
the meaning of that word. Do not squander your readers' precious attention by sending them to the dictionary to look up words.

The English language is a rich source of words because it "inherited two storehouses of vocabulary," one from Anglo-Saxon and Scandinavian languages and the other from Latin and French. Choosing the right word can provide a precise nuance. Unfortunately, many writers choose the "wrong" word because the storehouses are assumed to have different statuses.11

The Norman French were the ruling class in medieval England, and Latin was the language of medieval churches and universities, so use of English words derived from Latin or French traditionally has been considered to have higher status. For example, "construction workers sweat (from Anglo-Saxon), while people who ride to the hounds perspire (from Latin)."12 However, the perception that using Latin-French words will impress readers is false. In an experiment comparing elaborate material with plain English versions, appellate judges and their clerks found the elaborate versions "substantively weaker and less persuasive."13 They also assumed that the lawyers who wrote the elaborate versions worked in low prestige jobs.14

Long before medieval times, Aristotle recognized the value of everyday words in saying, "Clearness is secured by using the words... that are current and ordinary."15 Search your writing and strive for simplicity. Even if a word is familiar, a simpler term may be less stuffy.

Examples: Stuff Simple
termination end
elucidate explain
utilize use

Conclusion

"Language that is vague or abstract begs for further explanation."17 Promote precision and clarity by choosing the right words—definite, concrete, and everyday terms.

NOTES

2. Id. at 3156.
5. Id.
7. Id.
8. Id. at 28.
10. Supra, note 4 at 184.
11. Id.
12. Id.
13. Id. at 185.
14. Id.
16. Supra, note 9 at 60-61.
17. Supra, note 1 at 3157.

TRADEMARK & COPYRIGHT SEARCHES

TRADEMARK - Supply word and/or design plus goods or services.

SEARCH FEES:

COMBINED SEARCH - $260 (U.S., State, and Expanded Common Law)
U.S. TRADEMARK OFFICE - $120
STATE TRADEMARK - $125
EXPANDED COMMON LAW - $165
DESIGNS - $145 per U.S.class (minimum)
COPYRIGHT - $15
PATENT SEARCH - $390 (minimum)

INTERNATIONAL SEARCHING

DOCUMENT PREPARATION
(for attorneys only - applications, Section 8 
& 15, Assignments, renewals.)

RESEARCH - (SEC - 10K's, ICC, FCC, 
COURT RECORDS, CONGRESS.)

APPROVED - Our services meet standards set for us by a D.C. Court 
of Appeals Committee. 
Over 100 years total staff experience - not 
connected with the Federal Government.

GOVERNMENT LIAISON SERVICES, INC. 
3030 Clarendon Blvd., Suite 209
Arlington, VA 22201
Phone: (703) 524-8200
FAX: (703) 525-8451
Major credit cards accepted.
TOLL FREE: 800-642-6564
Since 1957

Hands-On Computer Training at the CBA Offices

The Colorado Bar Association and 
The PLUS Group, Inc. Present 
CLE Accredited Training:

(303) 825-0234

May

5. WordPerfect for Windows, Beginner
6. Intro to Windows 95 (A.M.)
8. MS Word, Beginner
12. WordPerfect for Windows, Advanced
13. MS Access
15. MS Word Legal Features
19. WordPerfect for Windows, Beginner
20. Intro to Windows 95 (A.M.)
22. MS Word, Beginner
26. Intro to Corel Office Suite '97
27. Timeslips Deluxe (A.M.); Hot Docs (P.M.)
29. MS Word Legal Features

Most classes are from 9 A.M. to 4 P.M. Registration for full-day classes is 
$165 (CBA members) and $185 (nonmembers). Half-day classes are $89 
(CBA members) and $99 (nonmembers). Group discounts are available. 
Call (303) 825-0234 for registration information.