

# The Scrivener: Modern Legal Writing



## Plain English Part V: Go Aggro<sup>1</sup> over Argot<sup>2</sup>

by K.K. DuVivier

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*Now one rather annoying thing about scholars  
is that they are always using  
Big Words that some of us can't understand . . .*

*"Well," said Owl, "the customary procedure  
in such cases is as follows."*

*"What does Crustimoney Proseedcake mean?" said Pooh.*

*"For I am a Bear of Very Little Brain,  
and long words Bother me."*

*"It means the Thing to Do."*

*"As long as it means that, I don't mind," said Pooh humbly.*

*. . . and one sometimes gets the impression that those intimi-  
dating words are there to keep us from understanding.<sup>3</sup>*

The SEC has set out six "clear writing techniques" to require that disclosures be written in Plain English.<sup>4</sup> Previous columns have addressed the first four techniques.<sup>5</sup> This column addresses the fifth: replacing jargon and legalese with short common words.<sup>6</sup>

Everyone enjoys being a part of the in-crowd. Jargon is one way to signal that you are in. "Groovey," "hip," "bad," "rad," "tight," "fresh"—part of the cachet<sup>7</sup> is knowing which terms are in and which are dated. In these situations, the impression is that the intent is the same as with Pooh's scholars—to keep us from understanding.

The objective for most legal writing is the opposite of this type of verbal exclusion: to communicate an argument, you must be sure the readers understand it. Thus, it is important to know your audience and to err on the side of inclusion rather than exclusion.

### 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 or through e-mail to: [duvivier@spot.colorado.edu](mailto:duvivier@spot.colorado.edu).

### Make Your Readers Part of the In-Crowd

In its rules, the SEC is addressing terms for disclosure statements written for non-lawyers. If you are writing a brief to the court or a memo to another lawyer, can't you assume that they are part of the in-crowd? Maybe yes, maybe no. First, you might assume that the client, who in most cases is not a lawyer, is also part of the potential audience. But second, if a legal term is not a common one, you may be taxing even a legal audience too much.

Remember that legal readers have a limited amount of time and energy to expend on your brief or memorandum. Therefore, don't be tempted to use complex wording to impress your audience. Because most legal writing wrestles with complex concepts, readers have little energy left to wrestle with complex wording as well. Few legal readers will have the time to look up complex words, so few will be impressed by what they do not understand.

First, try to use a plain English substitute for any complex terms. If there is no substitute, at least give readers a Rosetta stone<sup>8</sup> to translate. Explain what the term means when you first use it. When it comes up again in subsequent sections, help your readers avoid cross-references by giving them an abbreviated explanation.

*Example:* The Peter Principle, discussed in section II, is not applicable here.

*Revised Example:* The Peter Principle—that an employee will advance and remain at the highest level of incompetence—is not applicable here.

### Don't Create a New Vocabulary

Worse than using complex words is creating your own vocabulary: jargon or acronyms unique to your document. You may be saving yourself words, but if you are requiring your readers to learn a new language to understand your document, you are asking too much. Even if you prepare a definition section, you place too heavy a burden on your busy read-

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ers to ask them to flip back and forth. Readers who do not have the time could miss your point, and your effort to communicate has failed.

Fiction writers can get away with creating a new vocabulary because their readers come with a different objective: those readers often are seeking a fresh experience or a sense of melody in the words. James Joyce's *Ulysses* was voted the best novel of the century,<sup>9</sup> even though many readers approach it with annotations in hand. In contrast, legal readers come with the objective of quickly understanding your ideas. Using jargon can distort your emphasis. Keep those readers focused on your ideas, not your vocabulary.

To avoid the new vocabulary problem, try to choose a plain English alternative for a term. Instead of an acronym, choose a word that has an intuitive logical relationship to the one it is replacing.

**Example:** National Research Laboratories, Co. ("NRLC") is a member of the Federal Labor Relations Trade Association ("FLRTA"). NRLC must follow FLRTA's by-laws.

**Revised Example:** National Research Laboratories, Co. (the "company") is a member of the Federal Labor Relations Trade Association (the "trade association"). The company must follow the trade association's by-laws.

Even when your objective is to include, rather than exclude, you may be inadvertently giving readers a cold shoulder. Sometimes you just lose perspective. Because I work with first-year law students—intelligent people who are not yet legally trained—I am constantly reminded that terms we lawyers take for granted may be obscure to non-lawyers: *e.g.*, fungible, dispositive,<sup>10</sup> or penumbra.<sup>11</sup> Because it is hard to maintain this perspective, you might ask a non-lawyer to read your work to ferret out any less comprehensible words.

## Conclusion

Effective communication only comes with full understanding. Avoid any temptation to impress your readers with vocab-

ulary that could confuse or anger them. Instead, make their job easier by bringing them along with you. Make sure that everyone is "in" and that you and your readers are speaking the same plain language.

## NOTES

1. "Aggro" is a Gen-X term for being aggressive or showing bad attitude. *See, e.g.*, Holland, "Wave Lengths," 8 *The Washington Post* (July 24, 1998); Scotti and Young, *Buzzwords: LA Freshspeak* (St. Martin's Press, 1977).

2. A specialized vocabulary or slang used by a particular group.

3. Hoff, *The Tao of Pooh* 28 (New York, N.Y.: Penguin Books, 1984).

4. 62 Fed. Reg. 3152 (Jan. 21, 1997).

5. DuVivier, "Plain English Part I: Secrets from the SEC," 27 *The Colorado Lawyer* 35 (Jan. 1998); DuVivier, "Plain English Part II: Shorter Sentences and Lighter Luggage," 27 *The Colorado Lawyer* 27 (March, 1998); DuVivier, "Plain English Part III: Choosing the Right Words," 27 *The Colorado Lawyer* 31 (May, 1998); DuVivier, "Plain English Part IV: Keep It Straight, Tabulate," 27 *The Colorado Lawyer* 67 (July, 1998).

6. *Supra*, note 4 at 3158.

7. The word "cachet" comes from French "cacher" meaning "to hide."

8. A tablet discovered in 1799 near the town of Rosetta, Egypt, that provided the key to deciphering hieroglyphics.

9. From the list of the top 100 novels drawn up by the editorial board of the Modern Library and reported in, *e.g.*, "Top English Language Novels of Century," *Chicago Sun Times* (July 20, 1998).

10. The word "dispositive," used to mean the disposal or the deciding of a matter, does not appear at all in my desk dictionaries. *E.g.*, *The American Heritage Dictionary* 407 (Boston, MA.: Houghton Mifflin Co., 2d ed. 1985).

11. A "penumbra" is a partial shadow, between regions of complete shadow and complete illumination, as in an eclipse. The word has been used in legal contexts to describe a penumbra to the Bill of Rights, such as the right of privacy. *E.g.*, *Griswold v. Connecticut*, 381 U.S. 479, 483 (1965).



# LEGAL SUPPORT BRIEFS . . .

## MHALSS Meeting Features "Arresting" Grammar Errors

The Mile High Association of Legal Support Staff ("MHALSS") will hold its monthly dinner meeting at 6 P.M. on September 21 at ParkPlace Auditorium in Denver. Darlene Emery, assistant editor of *The Colorado Lawyer*, will discuss "Ten Top Grammar Errors That Will 'Arrest' Your Career Development."

You need not be a member of MHALSS to attend, and guests are welcome. For more information, call Cathy Hansen, PLS, at (303) 844-4662.

## Pikes Peak Group to Host CALSS Annual Meeting: September 25-26

The Pikes Peak Association of Legal Support Staff, which covers El Paso, Teller, and Pueblo counties, will host this year's Annual Meeting of the Colorado Association of Legal Support Staff ("CALSS") in Colorado Springs on September 25-26. Both legal support staff and attorneys are invited to attend.

The Annual Meeting will feature CLE sessions, legal exhibitions, and networking opportunities. More information is available by calling Sherry Neese in Colorado Springs, (719) 475-6441.