

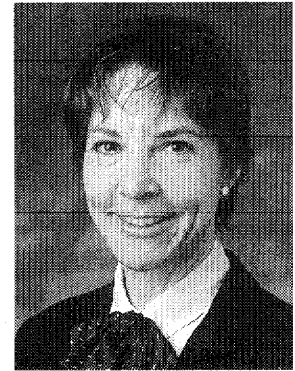
The Scrivener: Modern Legal Writing



Play It Again, Sam: Repetition—Part I

by K.K. DuVivier

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Repetition is part of learning. Advertising specialists do not expect their message to stick with consumers until the ad has aired at least three times. Yet, too much repetition can be both distracting and irritating. This column, and Part II, which will appear in the November 2001 issue, will address the role of repetition in legal writing.

Using the Same Word for the Same Meaning

Many of our English teachers taught us to avoid repetition. "Vary your words," they told us, "so that the audience will not get bored." Thus, in creative writing, different words may have the same meaning: the "moon" in one line might be called the "luminous orb" in the next. Likewise, because of the use of metaphors in creative writing, the same word may have different meanings: the word "lamb" in one line may refer to a woolly animal frolicking on a hill and in the next line may mean peace.

Generally, legal writing uses repetition in a very different way from creative writing. One established canon of legal construction holds that the same words will have the same meaning.¹ Furthermore, legal writing includes a corollary to the first canon: if the same words have the same meaning, then different words have different meanings. Thus, the elegant variation of words is dangerous in many legal contexts, especially in contracts and statutes where readers expect the same word and presume that variation indicates a specific intent to distinguish items or ideas.

Example of misplaced elegant variation: The first case was settled for \$20,000, and the second piece of litigation was disposed of out of court for \$30,000, while the price of the amicable accord reached in the third suit was \$50,000.²

Revision: The first case was settled for \$ 20,000; the second case for \$30,000; and the third case for \$50,000.

In the example, what is the difference between a "case," a "piece of litigation," and a "suit"? Also, is there any significant distinction between "settled," "disposed of out of court," and "amicable accord"? The revision is clearer because it repeats the key terms and is structured to avoid unnecessary repetition. Thus, introducing elegant variation frequently creates ambiguity in legal writing, and exact repetition may be the only way to ensure accuracy.

Repetition for Emphasis

Sometimes repetition is useful in legal writing for dramatic emphasis.³ This technique has long been used by public figures in their speeches.

Example: We shall go on to the end. We shall fight in France, we shall fight on the seas and oceans, we shall fight with growing confidence and growing strength in the air, we shall defend our island, whatever the cost may be, we shall fight on the beaches, we shall fight on the landing grounds, we shall fight in the fields and in the streets, we shall fight in the hills; we shall never surrender.⁴

Thus, repeating a term can be a useful way to draw the readers' attention to a point and to build to a conclusion that seems inevitable. Use this technique sparingly, however, because too much of repetition for emphasis can make writing seem overly dramatic.

Repeating Words to Connect Sentences

Sentences within a paragraph need to be linked to show the relationship between ideas. One way to do this is by inserting words. For example, there are words to signal the addition of an idea ("and," "also," or "furthermore"); words to signal an alternative ("in contrast," "but," "although," or "alternatively"); words to signal a causal connection ("because," "thus," or "consequently"), or words to signal a conclusion ("therefore," "in short," or "finally").⁵

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through the *Scrivener* column. Send your questions to: kkduvivier@law.du.edu or call her at (303) 871-6281.

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Another effective way of linking sentences is to repeat some of the words from the previous sentence to make a transition to new information. In this way, one sentence overlaps the next. While repetition can be helpful to connect sentences, watch out for three problems. First, difficulty finding a word that connects the two sentences may indicate that there is a gap in the logic or something out of sequence.

Example: Ms. Moultry has been addicted to crack for the past two years. During those years, she gave birth to a son, a baby born with a positive toxicology. Visitation went smoothly. Ms. Moultry repeatedly said that her resolve to come clean would weaken if she were denied visitation with her infant.

Revision: Ms. Moultry has been addicted to crack for the past two years. During those years, she gave birth to a son, a baby born with a positive toxicology. After his birth, Ms. Moultry placed her child into temporary foster care so that she could enter an in-patient drug rehabilitation program. While in rehabilitation, Ms. Moultry repeatedly said that her resolve to come clean would weaken if she were denied visitation with her infant. To prevent weakening Ms. Moultry's resolve, the foster care worker sanctioned visitation. These visits went smoothly.

Second, while repetition may be good for linking sentences, the structure may need to be reworked if the same word is used twice in the same sentence. One alternative may be to cut out unnecessary words. Another solution may be to break a longer sentence into two shorter sentences so that each sentence addresses only one main idea.

Example: After his birth, Ms. Moultry placed her child into temporary foster care so that she could enter an in-patient drug rehabilitation program, and while in rehabilitation, Ms. Moultry repeatedly said that her resolve to come clean would weaken if she were denied visitation with her infant.

Revision: After his birth, Ms. Moultry placed her child into temporary foster care so that she could enter an in-patient drug rehabilitation program. While in rehabilitation, Ms. Moultry repeatedly said that her resolve to come clean would weaken if she were denied visitation with her infant.

Third, use judgment with word-overlapping. Although a certain amount of repetition is helpful, repetition can be distracting if there is too much.

Example: Ms. Moultry has been addicted to crack for the past two years. During those two years, she gave birth to a son, a baby born with a positive toxicology. After her son's

birth, Ms. Moultry placed her child into temporary foster care so that she could enter an in-patient drug rehabilitation program. While in the drug rehabilitation program, Ms. Moultry repeatedly said that her resolve to come clean would weaken if she were denied visitation with her infant. To prevent weakening Ms. Moultry's resolve, the foster care worker sanctioned visitation. These visits went smoothly.

Revision: Ms. Moultry has been addicted to crack for the past two years. During this time, she gave birth to a son, a baby born with a positive toxicology. After his birth, Ms. Moultry placed her child into temporary foster care so that she could enter an in-patient drug rehabilitation program. While there, Ms. Moultry repeatedly said that her resolve to come clean would weaken if she were denied visitation with her infant. To prevent such a relapse, the foster care worker sanctioned visitation. These visits went smoothly.⁶

The italicized words in the last revision show how repetition of words can be used to connect ideas and, yet, how some variation from strict repetition can be a relief to readers.

Conclusion

As with most arts, there are no simple answers to the question of how much is too much. However, with the repetition of words, remember that the needs of legal writing are significantly different from the needs of poetry or storytelling. While some word variation is appropriate, repetition may be essential to connect ideas, to emphasize key points, and to ensure accuracy.

NOTES

1. *E.g.*, when the courts have construed language in a statute, they presume that the general assembly knows of the construction of those words and adopts it in subsequent legislation. *Thompson v. People*, 510 P.2d 311 (1973).

2. Wydick, *Plain English for Lawyers* 74 (Carolina Academic Press, Durham, NC: 1998).

3. Ray and Ramsfield, *Legal Writing: Getting It Right and Getting It Written*, 307 (West Group, St. Paul, MN: 2000).

4. Winston S. Churchill, Speech on Dunkirk at the House of Commons (June 4, 1940), cited in LeClerq, *Expert Legal Writing* 69 (University of Texas Press, Austin, TX: 1995).

5. Shapo, *et al.*, *Writing and Analysis in the Law*, 155-56 (Foundation Press, NY: 1999).

6. Final sample from Shapo, *id.* at 160. ■

U.S. Commission for Scholastic Assistance Supplies Private College Scholarship Sources to Public

Most parents and students think that college scholarships are only for low-income families, for the athletically inclined, or for the student with excellent grades. Although majority of scholarships are from the federal government and are merit and/or need-based, billions of dollars are available to students from private sector scholarships. Much of this private sector financial aid goes unused because the parents and students do not know how or where to apply. The U.S. Commission for Scholastic Assistance-College Bound has information about more than 900 different private scholarship sources. The scholarship list includes scholarship names, addresses, application deadlines, summaries about the scholarships, and the amount the scholarship will pay. For information about obtaining the lists of scholarships, send a self-addressed, stamped, business-size envelope to: U.S. Commission for Scholastic Assistance, P.O. Box 668, O'Fallon, IL 62269.