

The Scrivener: Modern Legal Writing



Proper Words in Proper Places

(Jonathan Swift, *Definition of a Good Style*)

by K.K. DuVivier

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Most experts agree that written communication is achieved through a combination of word choice and word placement.¹ Although, word placement within a sentence has long been recognized as significant,² word choice often is considered the predominant vehicle for communication. Some recent commentators, however, contend that reader expectations about word placement play a dominant role in communication.³ This column addresses how to enhance communication by placing words that you want to emphasize at the end of your sentences.

"When it comes to emphasis, all parts of the sentence are not created equal."⁴ Although there are some exceptions, the general rules about word placement are as follows: (1) the beginning of the sentence is for secondary information that is used to connect with previous sentences; (2) the middle of the sentence is the place of least emphasis—use this spot to downplay unfavorable information; and (3) the place of most emphasis in the sentence—the stress point—is at end.⁵

To enhance communication, therefore, you should strive to have your sentences build toward the climax at the end. Ferret out the main words you want to emphasize and place them in the final stress point. This exercise serves two purposes. First, it compels you to analyze the problem thoroughly to determine for yourself what is most significant; it helps crystallize which words deserve emphasis. Second, by placing the key information in the stress point, you ensure that readers will not miss that information.

Notice the change in emphasis between the following two sentences. Based on the words in the stress points, the first sentence focuses on the attorneys' competence, the second focuses on their mistake.

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.

1. *Although our attorneys were mistaken, they are competent.*

2. *Although our attorneys are competent, they were mistaken.*

Because readers expect to find key information at the end of the sentence, improper use of the stress point may direct readers away from, instead of toward, the point you intend to emphasize. Saving the stress point for key information explains the origin of two grammar rules: (1) "Do not use a preposition to end a sentence with";⁶ and (2) "If any word is improper at the end of a sentence, a linking verb is."⁷ Although sometimes these constructions cannot be avoided, as a general rule do not be tempted to end a sentence with a preposition or linking verb. Not only will many readers be distracted by what they consider a grammatical sin, but also you will be squandering the stress point on a lifeless word that has no independent content.

Western civilization is a society of closure. We are not satiated until a mystery is solved. Broadway shows bring all of the characters back on stage for a roaring finale. Even in a television documentary, a return of the theme music signals to us that the conclusion is near. In your writing, therefore, never forget the significance of the end.

NOTES

1. See, e.g., Shapo, Walter and Fajans, *Writing and Analysis in the Law* 267 (Westbury, N.Y.: Foundation Press, 1989): "Lacking tone of voice in the written medium, we must convey tone by skillful use of diction [word choice], juxtaposition (or context), and syntax (sentence structure)."

2. "In a Latin sentence the subject normally stands first and the verb last. . . . But the order of words usually varies from this regularity to emphasize some word or phrase, or to connect the sentence

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more closely with what precedes or follows. *Tibi hunc librum do*, I give you this book. . . . *Ego tibi hunc librum do*, it is I who am giving you this book." Baker and Inglis, *High School Course in Latin Composition* 86 (N.Y., N.Y.: The Macmillan Company, 1909)(emphasis and punctuation as in the original).

3. Several authors address word placement in their works. See, e.g., Oates, Enquist, Kunsch, *The Legal Writing Handbook* 613-14 (Boston, MA: Little, Brown & Co, 1993) and Armstrong & Terrell, *Thinking Like a Writer* 5-15 (N.Y., N.Y.: Clark Boardman Callaghan, 1992). However, George Gopen, in collaboration with Joseph Williams from the University of Chicago and Greg Colonel from the University of Illinois, has developed a "reader expectation theory" that suggests 85 percent of meaning comes from structure and only 15 percent comes from word choice. The reader expectation theory is summarized as follows: "readers have a relatively fixed expectation about where in the structure of a unit of discourse to look for the arrival of certain kinds of substance." "Writing From the Reader's Perspective," oral presentations at Holland & Hart on June 6, 1994, and July 1-2, 1992, and at Davis, Graham and Stubbs on June 8, 1993, by George D. Gopen of Duke University. Gopen has established a new program for the law school at Duke which relies extensively upon the reader expectation theory. "Duke's New Writing/Research Course," *Syllabus* 3 (Fall 1994).

4. Oates, *supra* note 3 at 613.

5. Strunk & White, *The Elements of Style*, 3rd ed., 32 (N.Y., N.Y.: Macmillan, 1979): "Place the emphatic words of a sentence at the

end. The proper place in the sentence for the word or group of words that the writer desires to make most prominent is usually at the end."

6. Gowers, *The Complete Plain Words* 188-89 (Baltimore, MD: Penguin Books, 1963). Gowers also quotes Winston Churchill's response to this rule: "This is the sort of English up with which I will not put." *Id.*

7. Safire, *On Language* 100 (N.Y., N.Y.: Times Books, 1980).

NOTICE

Thanks go to Hon. E. Lee Hamby, Magistrate of the Denver Juvenile Court, and Ken Kirkpatrick, Esq., of the Colorado Public Utilities Commission. These astute readers helped track down the source of the rules of grammar published in the last *Scrivener* [DuVivier, "Gratifying Rules of Grammar," 23 *The Colorado Lawyer* 2516 (November 1994)]. Those "fumblerules of grammar" and others were compiled by William Safire from submissions by readers of his column in the *New York Times*. Safire, *On Language* 99-100 (N.Y., N.Y.: Times Books, 1980) (Kirkpatrick told me he had a 1990 Doubleday edition, but I could not track that one down in the CU libraries).

Legal Secretaries' January Meeting: Abuse by Those in Positions of Power and Trust

The Denver Legal Secretaries Association, d/b/a Denver Association of Legal Support Staff, will hold its monthly program at 5:45 P.M. on January 10. The meeting, which will be held at the Executive Tower Inn, will feature Joyce Seelen, a partner with Holland & Hart, speaking on "Abuse by Those in Positions of Power and Trust." Additional information is available by calling Amy Tischhauser at (303) 294-0822.

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