

The Scrivener: Modern Legal Writing



Nothing So Destructive as Habit

by *K.K. DuVivier*

© 1997 K.K. DuVivier

To fall into a habit is to begin to cease to be.
Miguel de Unamuno, *Tragic Sense of Life*

January is a time to look ahead, a time to resolve to make the new year better than the last. In January, health clubs overflow with optimistic patrons hoping that trainers will help them undo months, or years, of bad habits. Similarly, with some guidance you can overcome bad habits: this year, resolve to make the effort to improve your writing.

As with physical exercise, inertia may prevent you from beginning. You complete your briefs, your clients pay the bills, and you win some of your cases. Doesn't this mean your writing is adequate? You already spend a lot of your time writing—why dedicate additional time to improve?

Don't be fooled; simply writing more will not make your writing better. More exercise will make you stronger, but more exercise using poor technique can injure your body instead of strengthening it. In writing, the more you become accustomed to using poor technique, the more your meaning will be obscured. To become an effective communicator, resolve to do more than simply writing more: resolve to concentrate on and to change the writing itself.

In addition to the desire to change, you must also have the belief that you will succeed. Too many lawyers have the impression that they are "bad writers" incapable of changing. They believe others were born with a gift that they do not have. Such a negative attitude may defeat you before you even start. Avoid unproductive tension and stress by remembering that you are not competing with anyone except yourself.

Explore your full potential and discover your personal best. Take inspiration from Demosthenes, the greatest orator in ancient Athens. Demosthenes was born with a speech impediment. To overcome it, he stood for hours on the shores of the Aegean Sea. With a mouthful of rocks, he practiced the art of

speaking over the sound of the pounding surf. More than 2,000 years later, remember your style is not a natural gift with which you were born. It is something that has developed over the years and something that you now can shape and reshape.

Once you have made a decision to work actively on your writing and you believe in your ability, the next steps are to isolate your problem areas and to pick manageable objectives. As with physical exercise, it can be useful to have a coach or personal trainer provide perspective. A coach can help dissect your work and concentrate on accomplishing change one step at a time. If you evaluate your own work, shift your focus from content to an objective assessment of your prose. Do not frustrate yourself by trying to do too much too soon.

Remember to be patient. Like working out, writing can be frustrating. At first, it will seem awkward and time-consuming. It is hard, painful work to move in unfamiliar ways. Progress may be slow and sporadic, with frequent slumps or plateaus. Changing one's writing requires breaking bad habits before adopting new ones. Breaking and resetting a bone is more painful than simply growing new tissue. But give it time to work. It will pay off because you will become more flexible, and you can make good writing a habit that comes more easily.

Finally, remember that improving is a lifelong task. We cannot improve simply by watching a workout video or attending one CLE class on writing. When we reach a goal, we cannot stop the effort. If we stop working out, the extra pounds return and our muscles atrophy. In the same way, if we stop working on writing, our prose becomes flabby.

Exercise your writing muscles: reread drafts not just for mechanical errors, but also to add transitions, to move paragraphs, and to eliminate unnecessary or confusing phrases. To remain competitive, you must continue to grow and learn.

Although a coach or trainer can inspire and direct you, no one can do the work for you. If you start this year with a new exercise schedule, your skills will improve and you will both look and feel better. Similarly, if you start the new year with a resolution to improve your writing, both you and your readers will appreciate the results.

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.

K.K. DuVivier is a senior instructor of Legal Writing and Appellate Court Advocacy at the University of Colorado School of Law, Boulder.