

# The Scrivener: Modern Legal Writing



## Details, Details: Questions from Readers

by K.K. DuVivier

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*How come "abbreviation" is such a long word? Why are there five syllables in "monosyllabic"? Why is it, when a door is open it's "ajar," but when a jar is open, it's not "adoor"?*

Readers frequently send me questions about word usage. The *Bluebook*<sup>1</sup> states that one should consult the *U.S. Government Printing Office Style Manual* (1984) or *The Chicago Manual of Style* (13th rev. ed. 1982) for questions on usage, but these sources do not always address the confusion writers encounter. One of my favorite sources for quick answers on these questions is a dictionary-style reference called *Legal Writing: Getting It Right and Getting It Written*.<sup>2</sup> Another good source is *Expert Legal Writing*.<sup>3</sup> Although I do not know the answers to the questions in italics above, below are answers to some of the more-frequently asked reader questions.

**Q:** When do I use *affect* and when do I use *effect*?

**A:** The answer depends on whether you mean the noun or verb. The verb *affect* means "to influence." This is the form of *affect* most often used in legal writing. The noun *affect* means "a feeling or emotion," so it is not frequently seen in legal writing. The verb *effect* means "to cause or to come into being," so this is occasionally used in legal writing. However, the most common form in legal writing is the noun *effect*, which means "something that is the result of another action."

*Here are some examples of the uses most common in legal writing.*

*Effect as noun: This law had a sweeping effect.*

*Affect as verb: This law affected police procedures.*<sup>4</sup>

**Q:** What is the difference between *assure*, *insure*, and *ensure*?

**A:** All three words mean "to make certain or safe." The difference is that *assure* means to remove doubt; thus, you *assure* people. In contrast, you *insure* with money or guarantees. Finally, when you make an outcome sure, you *ensure* it.<sup>5</sup>

**Q:** Is this a correct use of *continual*, or should it be *continuous*?—"Opposing counsel made *continual* interruptions."

**A:** The example is correct because *continual* means "intermittent or repeated at intervals." *Continuous* means uninterrupted or unbroken, such as "a *continuous* preoccupation with the law."<sup>6</sup>

**Q:** Is it correct to say *different than*?

**A:** No, although a few sources indicate that *different than* may be allowed,<sup>7</sup> *different from* is the universally correct form.

*Example:* Smith's case is *different from* the precedents.

**Q:** When do I use *farther* and when do I use *further*?

**A:** *Farther* refers to actual distance. *Further* means "a greater extent" and refers to figurative distance with respect to degree, time, or quantity.

*Examples:* She lives *farther* away than you do.

The argument was stretched *further* than warranted.

**Q:** Are *fewer* and *less* interchangeable?

**A:** No. *Fewer* takes a plural verb and refers to things viewed as discrete units. *Less* refers to things that cannot be counted or to discrete units that are being referred to as a group such as periods of time, sums of money, or measures of distance or weight.

*Example:* It would help if *fewer* interruptions are made.

So if we have *less* talk, I can get this finished in *less* than a day.

**Q:** Is there any problem with the following sentence?—"Our contract was based on a *verbal* agreement?"

**A:** Yes, there is a problem because use of the word *verbal* in this context creates ambiguity. The agreement may have been either written or spoken because *verbal* means "in, by, or of words" and can refer to spoken or written communication. If the agreement was spoken only, the writer here should have

### 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, Reporter of Decisions, Colorado Court of Appeals, 2 E. 14th Ave., Denver, CO 80203.

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said it was "an *oral* agreement." *Oral* means "of the mouth," and refers to any communication that is spoken, rather than written.

**Q:** Is there a distinction between *possible* and *practicable*?

**A:** Generally *possible* means "within the limit of ability," something that may or may not occur. *Practicable* applies to things that are feasible, but that may not have been tested.<sup>8</sup>

**Q:** Is it okay to alternate the terms *because* and *since*?

**A:** Many people use these terms interchangeably nowadays, but traditionally, they were very different: *because* is the more appropriate term to signal causality; *since* shows a relationship in time. The use of *since* in both contexts may cause ambiguity.

*Example:* *Since* the restraining order was issued, the defendant has approached the plaintiff four times.<sup>9</sup>

Although *since* looks like a reference to time in the example, it also could mean that the restraining order was the

cause for defendant's approaching the plaintiff. Therefore, in most legal contexts, it is best to adhere to the traditional rule and to use *since* exclusively for time and *because* for causation.

## NOTES

1. The Harvard Law Review Association, *The Bluebook, A Uniform System of Citation*, 16th ed. (Cambridge: Gannet House, 1996).
2. Ray and Ramsfiled, *Legal Writing: Getting It Right and Getting It Written* (St. Paul, MN: West Publishing Co., 2d ed., 1993).
3. LeClercq, *Expert Legal Writing* (Austin: University of Texas Press, 1995).
4. Example from Ray, *supra*, note 2 at 7.
5. LeClercq, *supra*, note 3 at 137.
6. Example from Ray, *supra*, note 2 at 76.
7. LeClercq, *supra*, note 3 at 138.
8. *Id.* at 142.
9. Example from Ray, *supra*, note 2 at 33. ■

### FIRST JUDICIAL DISTRICT LUNCHEON: THE ETHICS OF LEGAL WRITING

Speaker: K.K. DuVivier • January 11, 2000 • 12:00 Noon • Jefferson County Courthouse

K.K. DuVivier has been the senior instructor of Legal Writing and Appellate Court Advocacy at the University of Colorado School of Law, and is now Reporter of Decisions for the state of Colorado. She is the author of "The Scrivener," the legal writing column featured bimonthly in *The Colorado Lawyer*. Her presentation will include ethical considerations in making good faith arguments for the extension, modification or reversal of existing law; persuasive techniques; and procrastination. The luncheon will be held at the Jefferson County Courthouse, 100 Jefferson County Pkwy., Golden, in the Lookout Mountain Room. Cost is \$12 for 1st JD members, and \$22 for nonmembers. Please call (303) 279-5568 by noon on January 7, 2000, to make reservations. Space is limited, and walk-ins may not be accommodated.

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