

## Slide Rules, Telegrams and Legal Writing

by K.K. DuVivier



The Scrivener is a new column which will run in The Colorado Lawyer bimonthly. The column will deal with practical legal writing tips.

"The average verbal skills of college-bound high school seniors declined to their lowest level in a decade. . . .

*N.Y. Times* (Aug. 28, 1990), § B at 5

"Dole said the nation is facing a 'workforce crisis' with 700,000 people dropping out of school each year and a 25 percent rate of functional illiteracy in the workforce."

*UPI* (March 30, 1990)

"The biggest problem [for newspapers] is the steady decline in reader interest. In 1946, for every 100 U.S. households, there were 133 newspapers sold. Today that figure is halved.

*Time* (Oct. 29, 1990) at 89

If you are one of the few remaining readers of newspapers and periodicals, you probably recall seeing such statistics. What do they portend? One hypothesis is that the role of the written word is declining in modern society.

Through the centuries, the educated have used writing for both communication and pleasure. However, the written word did not gain preeminence as the primary mode of communication until public education made literacy the norm. Now that preeminence is eroding.

People have little tolerance for inefficient tools. Slide rules faded into obsolescence when computers and pocket calculators performed the same functions more simply and quickly.

### 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.

Western Union now sends most of its "telegrams" via the telephone and delivers written confirmations by mail.

From a utilitarian standpoint, the written word is simply a tool. Its purpose is to communicate information. For all but the most skilled, it is painful to write and, if poorly written, the result may be painful to read.

Visual and vocal clues are natural forms of human communication. In most instances, the electronic media, which provide instant visual and vocal information, are more efficient and compelling tools for communication than the written word. It is little wonder that we have become a "video" society. With additional technological advancements in electronic communication media, the ability to write may be of little use to the average citizen of the twenty-first century.

Lawyers, on the other hand, face an increased need to communicate effectively through writing. Modern courts are deluged with pleadings and briefs. In 1990, the Colorado Supreme Court decided more than 1,300 cases.<sup>1</sup> Although most cases are set for oral argument, the argument time is limited—usually fifteen minutes for each side. Consequently, the court must rely on the briefs to unravel the intricacies of the law and the facts in a case.

With the Colorado Supreme Court's caseload, each justice on the court reads more than seventy-five briefs each week. Because there are many other demands on a justice's time during the day, most of this reading must be done after hours. It is no surprise, then, that judicial readers have little patience for legal writing that is ponderous, repetitious or incomprehensible.

With modern society moving away from everyday use of the written word, lawyers face a dilemma. They may have little practice or skill in reading, and less in writing, yet they are expected to communicate well in legal documents. Many may be poorly prepared for this task, which is integral to their profession.

Fortunately, the legal writer can improve significantly by implementing some simple suggestions. Although writing

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may never come as easily as the spoken word, with attention and practice, most lawyers can achieve the goal of communicating their ideas well.

In medieval times, societies were primarily oral—the average person did not read or write and managed daily affairs without benefit of such skills. Scriveners and scribes, masters of the written word, were paid a fee to become the written mouthpieces of those who needed their services. Similarly, modern lawyers must become the masters of written communication.

Command of the art of legal analysis is fundamental in the practice of law, but analysis alone is not sufficient. To herald the interests of their clients effectively, modern law-

yers also must master the alchemy of translating that analysis into compelling written words. *The Scrivener* is intended to help apprentices and journeymen become masters of legal writing.

#### NOTE

1. Statistics from speech delivered by Justice Joseph Quinn to the first year class of the University of Colorado School of Law, Jan. 22, 1991.

#### Bar News

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The Committee heard testimony against the bill by **Ty Holt**, chair of the **CBA Litigation Section**, which thanks those who wrote letters and made phone calls.

**Senate Bill 67**, the Mandatory Arbitration Bill, sponsored by Sen. Claire Traylor (R-Wheat Ridge) and Rep. Pat Grant (R-Denver), has passed the Senate and is headed for the House. The bill introduces a bifurcated system in Colorado under which judicial districts with less than 135,000 persons will be able to opt out of the system at the discretion of the chief judge. In addition, the bill introduces qualifications for arbitrators, who now must be attorneys licensed in Colorado or persons with at least five years of specialized experience. The CBA continues to oppose the mandatory nature of the program. **Tom Cross**, CBA president-elect, testified against the bill.

**House Bill 1187**, the Judges' Pay Raise Bill, sponsored by Rep. Pat Grant (R-Denver), has run into some trouble. The bill passed the House Judiciary Committee unanimously. However, the bill was amended in the House Finance Committee to reduce the \$17,500 pay raise to \$7,000 in 1991 and \$4,000 in 1992. **Tom Roberts** of the **CBA Judiciary Section** and **Jane Michaels**, **Denver Bar Association** president, testified in favor of the bill prior to its being amended.

For more information on what's happening at the Capitol, call **Tom McMillen** at the bar offices, 860-1115.

#### BAR SERVICES

During March and April, **LEXIS**, an on-line legal research service complete with court cases and Colorado statutes, is offering its 1991 Spring Promotional. If you sign up for **LEXIS** during this time, you'll receive free training worth \$75 and three CLE credits, one month free use and a \$100 credit on use with the purchase of a modem. Look for more details in the mail or call **Cindy Acree** at the bar offices, 860-1115.

While you're thinking about automating your records search, you might not want to be without the **CBA's Lawyers Kit**. The three-ring bound manual contains everything

you need to know about starting a law practice or improving your skills as a law office manager. A sampling of informative chapters includes banking, fee agreements, office-share agreements, how to set up a form file, personnel management and time management and billing. Two new sections, one on marketing and the other on CBA Sections, are being added in the next few months and will be sold separately so they can be easily added to the book. For more information or to order, call **Rose Venzor** at the bar offices, 860-1115.

#### CONFERENCES

The **National Association of Bar Executives** ("NABE") and the **National Conference of Bar Presidents** ("NCBP") held a joint conference from February 6 through 9 in Seattle. **Chuck Turner**, CBA executive director, and **David Brand**, assistant director, represented the CBA during the first two days of the NABE program. **Midge Korczak** represented the Boulder Bar Association.

Hundreds of NABE members from around the country attended workshops and general sessions on the problems facing bar associations in the 1990s. The executives examined management, financial, personnel and legislative issues, and attended workshops on long-range planning, membership services and pro bono services. Turner moderated one of the workshops on personnel management issues.

The programs for the two-day NCBP conference emphasized policy-oriented issues. Professionalism, bar buildings and membership recruitment efforts were among the many topics. This conference also highlighted bar programs which had received regional and national acclaim. CBA President **Jerry Conover** gave a presentation on **The Colorado Pledge** and DBA President **Jane Michaels** gave a report on the success and popularity of the **Teen Court** project. CBA President-Elect **Tom Cross** and DBA President-Elect **Ben Aisenberg** also attended.

### Denver Legal Secretaries Association Accepting Scholarship Applications

The Denver Legal Secretaries Association ("DLSA") is accepting applications for the Byron Rogers, Jr. Memorial Scholarship Trust, which provides scholarships to high school seniors, business and vocational school students, and college students interested in pursuing a career in the legal field. Application forms may be requested from the DLSA, c/o 1117 S. Clayton St., Denver, CO 80210. Deadline is April 15, 1991. Scholarship awards will be made in May.