

# The Scrivener: Modern Legal Writing



## Misguided Metaphors



by *K.K. DuVivier*

This ceremony is held in the depth of winter. But, by the words we speak and the faces we show the world, we force the spring. . . .

So today, we pledge an end to the era of deadlock and drift—and a new season of American renewal has begun. . . .

Yes, you, my fellow Americans, have forced the spring. Now, we must do the work the season demands.

*President Clinton's Inaugural Address,  
January 20, 1993*

Dry. Ponderous. Dusty. These are common characterizations for legal writing. But this need not be the case. While legal writing is formal, it need not be lifeless.

Figures of speech, such as the metaphor of the season of spring that President Clinton used in his Inaugural Address, are commonplace in rhetoric. Similarly, such figures have their place in legal writing. Through judicious use of a metaphor, you can provide your readers with a pleasant interlude to the more mundane aspects of your argument and transform an abstract concept into a powerful visual image.

But use metaphors cautiously in your writing. Although they may be fun to use and entertaining for your reader, never forget your two major objectives in legal writing—to communicate your argument and to persuade. Never insert artistic touches if they detract or distract from the argument in any way.

A metaphor will be effective only if the readers understand the image. A metaphor may seem powerful because it reminds you of something close to you. However, the same metaphor may not produce any image to readers who do not share your knowledge base, as formed by education and life experiences.

To be understood by most readers, a metaphor must be universal or obvious from its context. In an increasingly di-

verse society, it has become difficult to find such universal experiences. At one time, most readers were presumed to have a classical education that included study of the scriptures and Greek and Roman mythology. Thus, metaphors such as “splitting the baby” and “Pyrrhic victory” were widely recognized. In fact, many Greek myths, such as the “rock of Sisyphus,” are vivid metaphors for life itself.

Although life often may seem like a rock that rolls downhill just as you were about to push it to the top, a reference to Sisyphus will no longer evoke that image for many readers. Readers with a more varied educational background may not recognize the biblical or mythological reference. So you risk confusing your reader rather than enlivening your argument.

If you are trying to communicate to a heterogeneous audience, it also is best to avoid sports metaphors. Many readers will not understand such expressions as “pinch hitting” or “the whole nine yards” and may not even know the game to which you are referring.

Furthermore, failure to communicate may be one of your lesser worries. A mischosen metaphor has the potential to alienate your readers by conveying an impression you do not intend. If you choose a sports metaphor, non-sports fans may feel intentionally excluded. An expression like “quick and dirty” may seem flippant and disrespectful. Use of the image of “stapling a hem” for the same idea may give the impression, correct or not, that you are intentionally focusing on a female perspective. If you choose a classic metaphor, something that may once have been universal, some readers now may feel you are flaunting your superior education.

The most effective metaphors are those that achieve the objective of communicating an image without offending the reader. Inclusive themes, such as President Clinton's image of nature, are best to transcend any particular culture.

Even when the metaphor image is clear, it must not distract. If your metaphor, no matter how powerful or vivid, doesn't clarify your point, you should edit it out. Remember that your legal message, not your artistic ability, is the focus in legal writing.

### **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.

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