Cease and Desist

by K.K. DuVivier

Know all men by these presents, that Joe's Market . . . does hereby grant, sell, assign, transfer and deliver unto Purchaser, its successors and assigns, to have and to hold unto Purchaser, its successors and assigns forever, one orange, together with all its rinds, skin, juice, pulp and pits and with all right and advantages therein, with full power to bite, cut, suck and otherwise to eat the same. . . .[1]

One characteristic of legal writing, parodied in the caricature above, is the use of multiple words when one word might suffice. This column first explores how the practice of pairing synonyms or stringing together alternatives originated. Next, it tells when to cut back on such repetition.

The custom of pairing synonyms comes from our legal ancestors in England. As the isle of Britain was physically and intellectually dominated by different groups, lawyers had more than one language from which to choose. Some of the first word pairs combine a word from the language of the Celts with a word from their Anglo-Saxon conquerors. After the Norman Conquest, Latin words began to be added to legal parlance.[2] When French became the language of the educated, classic word pairs juxtaposed an English word and a French word.[3]

Originally, these pairs were created for a specific purpose. Some pairs were used for clarity, providing a meaning to readers who may have had a limited vocabulary in English. Other pairs were used for emphasis, to force the readers to pause twice and savor a concept. Eventually, however, many pairs were included simply to avoid diverging from legal formbook style.[4]

Word strings can be another manifestation of redundant legal language. In the opening quote, "grant, sell, assign, transfer and deliver" might fit into the category of matched synonyms, a word pair that multiplied into a quintuplet. In contrast, one could argue that "rinds, skin, juice, pulp and pits" describe different parts of the orange and must be included for accuracy. While providing a list of alternatives may seem precise, it raises questions about whether an unlisted item should be considered part of the same category[5] or whether that item was intentionally omitted.[6] Worse, this cautious effort to consider alternatives often spills over into all of our writing.

Redundancy makes legal writing thick and obscure. We bombard our readers with multiple words until they are numb. Instead of being comprehensive, the addition of an alternative can create unwanted ambiguity. In addition, the burden of choosing between alternatives is shifted to the reader. Instead of focusing on our ideas, the readers are expending much of their effort on sorting out pairs.

How do you determine whether redundant words can be eliminated? First, search for symptoms of the problem. Does your writing contain frequent lists or words tied together with a diagonal/slash mark or the conjunctions "and" or "or"?

Next, scrutinize any word combinations. Sometimes this process will require legal research. For example, while the combination of "good faith and fair dealing" may seem synonymous, "good faith" may indicate a subjective standard and "fair dealing" may add an objective component.[7] In this instance, the use of "good faith" alone would not convey the full meaning of the paired expression. Pairs that have become such terms of art should not be trimmed down to one word.

Occasionally, a statute can help us eliminate extra words. For example, CRS § 38-30-113 (1982) defines the words "warrant(s) the title" to include covenants (a) that the owner lawfully seized the estate, (b) that it was free and clear, and (c) that the owner warrants quiet title and peaceable possession. Thus, a warranty deed in Colorado need not contain historic word pairs in order to protect those historic property rights.

The solution is especially simple when you have created your own word pair or string. You can review your writing to

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

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determine if instead of multiples, a single word can adequately express your meaning. If you opt for a simpler construction, your readers will have some energy in reserve to focus on the meat of your analysis.

Please help fight accusations that lawyers intentionally obscure their points by being redundant. If you send me authorities for eliminating word combinations, I will share the compiled information in a future column. Maybe then we can all make our writing more accessible by safely retiring some of these ancient repetitive expressions.

NOTES

1. Felsenfeld and Siegel, *Writing Contracts in Plain English* 1 (St. Paul, MN: West Pub., 1981).

2. Mellinkoff, *The Language of the Law* 38-39 (Boston, MA: Little, Brown and Co., 1963).

3. *Id.* at 121-122. In the quote, "sell" comes from Old English, while "grant, assign, transfer and deliver" come from Latin and Old French roots.

4. Wydick, *Plain English for Lawyers*, 3d ed., 18-20, 60-61 (Durham, N.C.: Carolina Academic Press, 1994).

5. The listing of items in the same class or kind is called "*ejusdem generis.*"

6. There is a formal maxim for this phenomenon. "*Expressio unius est exclusio alterius*" means expression of one thing intends the exclusion of the other.

7. *See, e.g.,* Phillips, Comment, "Good Faith and Fair Dealing Under the Revised Uniform Partnership Act," 64 *U. Colo. L.Rev.* 1179, 1190 (1993), *but c.f.* Burton, "Breach of Contract and the Common Law Duty to Perform in Good Faith," 94 *Harvard L.Rev.* 369, 380, n. 43 (1980).

The Scrivener—CORRECTIONS

Because of time constraints in editing the galley proofs of the article, a few errors found their way into the January 1994 *Scrivener* column, "Are You Practicing an Uninformed System of Citation?" at pp. 27-28.

The last sentence of the first paragraph should read as follows: "Although *The Bluebook* forms for these sources are recognizable, they are rarely used *by* the Colorado courts." As indicated in the article, *The Bluebook* form is frequently used *in* the Colorado courts. The Colorado Supreme Court encourages practitioners to submit pleadings in *Bluebook* form. However, the forms used *by* the courts frequently vary from *The Bluebook*.

At the top of page 28, the Court of Appeals form should read as follows:

Court of Appeals: §16-11-301, C.R.S. (1986 Repl. Vol. 8A) or §16-11-301(2)(1993 Cum. Supp.).

Under the heading "Session Laws," also on page 28, *The Bluebook* form is as follows:

Bluebook: 1975 Colo. Sess. Laws 291, 306-07, ch. 71, § 43 (amending Colo. Rev. Stat. § 8-53-102 (Supp.1976)).