

# The Scrivener: Modern Legal Writing



## Common Words with Uncommon Meanings



by K.K. DuVivier

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*It depends on what the meaning of the word "is" is.*<sup>1</sup>  
Bill Clinton

When President Clinton parsed words in his testimony, the response was contempt and disdain. The impeachment trial hinged on the assumption that Clinton's intent in interpreting common words with a narrow or special meaning was deceitful. We lawyers cannot speak to Clinton's intent, and we wince at the bad publicity he is giving to the profession. However, most of us would have to admit that Clinton's use of common words with special meanings is not only acceptable, but commonplace in the law.

"Frequent use of common words with uncommon meanings" is one of the nine "characteristics of the language of the law."<sup>2</sup> For example, to most non-lawyers a "person" is "a human being. . . ."<sup>3</sup> Few non-lawyers would pause when asked if the definition of "person" included such things as corporations or governments—the dictionary definition specifically excludes "animals" or "things."<sup>4</sup> But to us lawyers, it is well recognized that the definition of "person" in the Uniform Commercial Code does include organizations such as corporations and governments.<sup>5</sup>

Similarly, lawyers use the same word with different and special definitions in different contexts. We know to check the definition section of a contract or a statute to determine the scope or meaning of each term. For example, the term "child" is defined by age limitation—"a person under eighteen years of age"—for purposes of the Children's Code.<sup>6</sup> But for purposes of the Probate Code, the definition of "child" does not have any age limitation. Instead, the definition is limited by blood relationship—a stepchild or foster child is excluded.<sup>7</sup> Although excluding stepchildren and foster children might bother lawyers

on a philosophical level, the differing definitions would bother few of us on a semantic level.

So, how does this characteristic of using uncommon meanings impact legal writing? First, when writing to a legally sophisticated audience, consider your audience's response. For example, look at the common words below and determine whether you more readily think of the common definition or the legal definition:

Word(s)	Common Meaning	Legal Meaning
action	deed	lawsuit
assign	to give out as a task	party to whom something is transferred
of course	yes	as a matter of right
party	a social gathering	person litigating
serve	to place food before	deliver legal papers

Because lawyers often have a different connotation for these and other common words, avoid situations in which the common meaning could create ambiguity. Eliminate the common word altogether in this context and, instead, choose a different word that eliminates the ambiguity. In the example below, the word "complaint" is used in its common form, meaning an expression of dissatisfaction. However, most legally sophisticated readers will be distracted and first envision the expression as meaning the plaintiff's opening pleading.

*Example: Plaintiff's complaint is that the defendant should have paid.*

*Revised example: Plaintiff's concern is that the defendant should have paid.*

Second, when writing to an audience that is not legally sophisticated, the use of common words with uncommon meanings may be more misleading than the use of Latin or some unfamiliar term of art. The need to translate is not as obvious. Your readers may think they know what an expression means because they recognize the common words. For example, I know of a lawyer who had to explain to his client that, no, he

### 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](mailto:duvivier@spot.colorado.edu).

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was not asking to be excused to use the restroom when he made a "prayer for relief" to the judge.

Third, avoid switching back and forth between the common and uncommon meanings. As with any words you choose, recognize that readers have a tendency to recognize one specific meaning. Whenever you use the same word in different contexts, you impose on your readers. Avoid forcing them to expend effort to interpret different meanings for the same word. This effort may distract them from your substantive points.

*Example: We said our complaint was with said complaint.*

*Revised example: We said our concern was with that complaint.*

Communication is the art of understanding how your audience will respond to your message. As lawyers, we must consider whether our audience is programmed to interpret com-

mon words with uncommon meanings. Once we recognize our audience's response, we can adjust our wording. In the law, definitions are not only appropriate, but often necessary. It truly is a matter of knowing what the meaning of "is" is.

#### NOTES

1. *The New York Times* (Sept. 22, 1998), Sec. B, p.3, col. 5.
2. Mellinkoff, *The Language of the Law* 13-14 (Boston, MA: Little, Brown and Co., 1963).
3. *The American Heritage Dictionary* 925 (Boston, MA: Houghton Mifflin Co., 2d College ed., 1985).
4. *Id.*
5. CRS § 4-1-201(30), 201(28).
6. CRS § 19-1-103(18).
7. CRS § 15-10-201(7).

### Colorado Asian American Bar to Hold Annual Scholarship Banquet April 16

The Colorado Asian American Bar Association of Colorado, an affiliate of the National Asian Pacific American Bar Association, will hold its fourth annual Minoru Yasui Scholarship Banquet on April 16 at the Empress Seafood Restaurant in Denver. The event will begin with a cash bar at 6 P.M.; dinner will follow at 7 P.M. Adele Arakawa, anchorwoman at 9News in Denver, will act as the Mistress of Ceremonies.

Individual registration is \$50. Corporate tables, which seat ten, can be purchased for \$800, while sponsor tables, also seating ten, are \$1,000. To register or for more information, call Art Lee at (303) 467-9860 or Fay Matsukage at (303) 777-3737, both in Denver.

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Ward points out that although most lawyers get the bulk of their business through referrals, not one in 100 has a referral system, which, he maintains, can increase referrals by as much as 1000%. Without a

system, he notes, referrals are unpredictable. "You may get new business this month, you may not." A referral system, by contrast, can bring in a steady stream of new clients, month after month, year after year.

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