

The Scrivener: Modern Legal Writing



Plain English Part III: Choosing the Right Words

by K.K. DuVivier

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*Obtuse and mystic thoughts you must express
With painful care, but seeming easiness;
For truth shines brightest thro' the plainest dress.*

Wentworth Dillon, *Essay on Translated Verse*, l. 216

In an effort to provide investors with full and fair disclosures in language they can understand, the SEC has proposed rules to require that disclosures be written in Plain English.¹ These rules outline six "clear writing techniques": (1) active voice; (2) short sentences; (3) definite, concrete, everyday language; (4) tabular presentations; (5) no jargon; and (6) no multiple negatives.² The January and March 1998 *Scrivener* articles³ addressed the first two techniques; this article addresses the third.

Definite Words

You can make your writing more definite by substituting specific information for general characterizations. Using specifics has two advantages. First, legal readers are skeptics. Any unsupported assertion is deemed untrue. By providing specifics, readers' doubts can be eased.⁴ Second, legal readers have a limited amount of time to decipher your writing. Specifics quickly provide readers with a sharp image so they will spend less time trying to figure out what you are saying and have more time left to consider agreeing with it.⁵

Example: One of the parties was driving several miles over the speed limit.

Revised to be more definite: Defendant Crowley was driving thirty miles per hour in a twenty-mile zone.

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.

Concrete Words

A cognitive psychologist and an English professor from Carnegie-Mellon University⁶ studied how readers approached complex written information. These readers attempted to visualize the information by taking abstractions and converting them into concrete situations in which people performed actions.⁷

One way to sharpen the focus of these visualizations is to use vivid wording. Substitute neutral words, such as "look" or "touch," with alternatives that provide a concrete image, such as "glance," "stare," "tap," or "shove."

Another way is to scour your writing for abstractions, such as "situation," "factor," or "circumstance," and to replace these terms with the concrete. The SEC handbook illustrates one such progression from abstract to concrete.

[Abstract] asset-investment-security-equity-stock-common stock-one share of IBM common stock [Concrete].⁸

To experience the power of concrete images, compare these two descriptions of Moses inflicting a plague on Egypt (*Exodus* 8:7) from *Plain English for Lawyers*.⁹ The traditional version:

He lifted up the rod and smote the waters of the river . . . and all the waters that were in the river were turned to blood. And the fish that were in the river died; and the river stank, and the Egyptians could not drink the water of the river; and there was blood throughout all the land of Egypt.

The "modern environmental impact report" version:

The water was impacted by his rod, whereupon a polluting effect was achieved. The consequent toxification reduced the conditions necessary for the sustenance of the indigenous population of aquatic vertebrates below the level of viability. Olfactory discomfort standards were substantially exceeded, and potability declined. Social, economic, and political disorientation were experienced to an unprecedented degree.

Everyday Words

When confronted with a new word that is unusual or unfamiliar, readers lose their train of thought and instead ponder

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the meaning of that word. Do not squander your readers' precious attention by sending them to the dictionary to look up words.

The English language is a rich source of words because it "inherited two storehouses of vocabulary"¹⁰—one from Anglo-Saxon and Scandinavian languages and the other from Latin and French. Choosing the right word can provide a precise nuance. Unfortunately, many writers choose the "wrong" word because the storehouses are assumed to have different statuses.¹¹

The Norman French were the ruling class in medieval England, and Latin was the language of medieval churches and universities, so use of English words derived from Latin or French traditionally has been considered to have higher status. For example, "construction workers sweat (from Anglo-Saxon), while people who ride to the hounds perspire (from Latin)."¹² However, the perception that using Latin-French words will impress readers is false. In an experiment comparing elaborate material with plain English versions, appellate judges and their clerks found the elaborate versions "substantively weaker and less persuasive."¹³ They also assumed that the lawyers who wrote the elaborate versions worked in low prestige jobs.¹⁴

Long before medieval times, Aristotle recognized the value of everyday words in saying, "Clearness is secured by using the words . . . that are current and ordinary."¹⁵ Search your writing and strive for simplicity. Even if a word is familiar, a simpler term may be less stuffy.

Examples:	<i>Stuffy</i>	<i>Simple</i>
	termination	end
	elucidate	explain
	utilize	use ¹⁶

Conclusion

"Language that is vague or abstract begs for further explanation."¹⁷ Promote precision and clarity by choosing the right words—definite, concrete, and everyday terms.

NOTES

1. 62 Fed.Reg. 3152 (Jan. 21, 1997).
2. *Id.* at 3156.
3. DuVivier, "Plain English Part I: Secrets from the SEC," *27 The Colorado Lawyer* 35 (Jan. 1998); DuVivier, "Plain English Part II: Shorter Sentences and Lighter Luggage," *27 The Colorado Lawyer* 27 (March 1998).
4. Neumann, *Legal Reasoning and Legal Writing* 185, 2d ed. (Boston, MA: Little, Brown and Co., 1994).
5. *Id.*
6. Office of Investor Education and Assistance, U.S. Securities and Exchange Commission, *A Plain English Handbook* 27 (draft Jan. 13, 1997).
7. *Id.*
8. *Id.* at 28.
9. Wydick, *Plain English for Lawyers* 58-59, 3d ed. (Durham, NC: Carolina Academic Press, 1994).
10. *Supra*, note 4 at 184.
11. *Id.*
12. *Id.*
13. *Id.* at 185.
14. *Id.*
15. Aristotle, "Rhetoric 1404b," in 11 *The Works of Aristotle* (W. Ross ed., 1946), cited in Wydick, *supra*, note 9 at 69.
16. *Supra*, note 9 at 60-61.
17. *Supra*, note 1 at 3157.

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