

Disability Terminology: The Supreme Court Sets the Tone

By Thomas F. Coleman
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The California Style Manual has been around for nearly 80 years. The cover of the manual refers to it as “a handbook of legal style for California courts and lawyers.” When it comes to terminology that is acceptable in legal briefs and judicial opinions, the California Style Manual is the bible of legal lexicon.

The first edition of the manual was written by the esteemed legal scholar Bernard E. Witkin in 1942. At the time, Witkin was the official reporter of decisions. The manual was revised by subsequent reporters in 1961, 1977, 1986 and 2000.

The fourth and most recent edition was written by Edward W. Jessen and approved by the California Supreme Court in 1999 pursuant to its authority under Government Code Section 68902. It was first distributed by the West Group publishing company in 2000 and is now available free of charge online. The manual has not been revised since.

As explained by then-Chief Justice Ronald M. George in the preface to the fourth edition, “the manual provides a guide to standard legal style in the appellate courts, and benefits litigants and jurists alike by establishing a common stylistic base that permits readers to focus readily on substance rather than form.”

Lawrence W. Striley will be the author of the fifth edition. Striley was appointed by the Supreme Court to be the court’s reporter of decisions in 2014. In a press release issued by the court announcing his appointment, the court described Striley’s role as the steward of producing “legal opinions that belong to the people, contribute to the rule of law, and provide guidance to courts in other jurisdictions.” In this capacity, Striley supervises the preparation of more than 12,000 appellate court opinions each year.

A fifth edition of the California Style Manual has been in the works for a few years.

Striley, and the court that employs him, should keep in mind that words are powerful. Their effects can make an indelible mark on an individual and have profound effects on society. Words can be used to convey a message in an objective manner. They can also be used to demean not only a specific individual but an entire class of people.

Judges should be mindful, indeed sensitive, regarding the language they use to describe individuals who are members of vulnerable or disadvantaged populations. That includes racial, ethnic, religious, and sexual minorities. It also includes people with physical, mental, or other disabilities.

Several linguistic messages are subliminally conveyed to judges and attorneys by the style manual. Be objective. Be fair. Be concise. Be respectful. But respectfulness is not automatic. It depends on the mores and values of the era in which a document is published. What was once acceptable terminology may now be distracting or outright offensive.

When the first edition was published in 1942, some judges were referring to African Americans as “Negroes.” That terminology continued right up until the late 1970s.

When the second edition was published in 1961, some judges referred to gay men as “sexual perverts,” while most jurists used the term “homosexuals.” Referring to someone as a “homosexual” continued as a common linguistic practice for the next 20 years.

When the third edition was published in 1986, some judges referred to the offspring of unmarried parents as “illegitimate children.” That practice continued for two more decades.

As the legal profession entered the new millennium, the fourth edition incorporated new considerations,



with a special section on “racial, ethnic, and gender designations.” It makes no mention, however, of terminology associated with marital status, sexual orientation, gender identity, or disability. The fifth edition should venture into this semantic territory.

Using its separate authority as rule-maker and educator of the judiciary, the Judicial Council has taken a few steps to discourage offensive disability language and to encourage greater linguistic sensitivity by judges. For example, the phrase “an incompetent person” was removed from the rules of court in 2006. A brochure on “Disability Etiquette” was published by the Judicial Council in 2009.

Materials from an educational seminar were published by the Judicial Council in 2015 listing 20 inappropriate words and phrases pertaining to people with disabilities or their physical or mental conditions, with suggestions for appropriate terms to use instead. The document advises judges that “when referring to people with disabilities, choose words that reflect dignity and respect.” It suggests that language should be used “that describes the person’s disability without defining the individual as his or her disability.”

Despite these educational efforts, unacceptable disability language continues to appear in judicial opinions. Regardless of the intentions of the authors, too many opinions contain terms that are inappropriate, even offensive, with respect to people with disabilities.

For example, a slew of opinions issued by various appellate panels throughout the state over the past few years describe someone as “suffering from” or “being afflicted with” a disability. “A prospective conservatee who suffers from Autism Spectrum Disorder” should be “who has Autism Spectrum Disorder.” Some would prefer “an autistic person.” “A developmentally disabled adult who suffers from cerebral palsy” should be “adult with cerebral palsy.” “She suffers from partial blindness” should be “She is partially blind.”

People with mobility disabilities really get the brunt of improperly worded judicial opinions. The Judicial Council’s do-and-don’t glossary of terms advises judges not to use “wheelchair bound” or “confined or restricted to a wheelchair” but instead to say

“person who uses a wheelchair or a wheelchair user.” A review of opinions issued over the past few years reveals that panels in nearly every appellate district in the state have not received this message. Opinions continue to describe people as “wheelchair bound” or “confined to a wheelchair.”

Judges have been advised not to refer to a congenital disability as a “birth defect.” And yet this linguistic practice persists.

Defining someone by their disability is disfavored. But judicial opinions sometimes say that someone “is epileptic” or “is quadriplegic” or “is handicapped.” A person isn’t their disability. They have a disability. Although considered a subtle distinction to some, the use of respectful terminology means a lot to others.

Appellate court justices are open to change. The use of inappropriate disability terminology seems to be more a matter of habit or oversight than intention.

For example, Division 2 of the 4th District Court of Appeal recently issued an opinion referring to a litigant in the caption as “an Incompetent Person.” When Spectrum Institute wrote to the court and asked it to remove that antiquated terminology, the court issued an order few days later striking that language from the caption.

I suspect that outdated and inappropriate disability language will disappear from future appellate opinions if the fifth edition of the California Style Manual adds a new section on disability terminology. It is up to the reporter of decisions, and ultimately, the California Supreme Court for whom he works, to make that happen.

Suggestions should be solicited from disability organizations such as the national Disability Rights Bar Association, Disability Rights California, and the Different Abilities Group of the San Diego County Bar Association. ◇◇◇

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