

# Revisiting the Writing Contests (on Structure)

By Joseph Kimble

We continue with our retrospective of some of the contests that have appeared with columns over the years. The three contests below all appeared in late 2009, right after the rewritten (or “restyled”) Federal Rules of Evidence were published for comment. I was the drafting consultant on that project. The new rules took effect on December 1, 2011.

## September 2009 Contest

I'll send a copy of *Lifting the Fog of Legalese: Essays on Plain Language* to the first person who sends me (kimblej@cooley.edu) an “A” revision of the single sentence below. I'm deliberately picking short examples to encourage participation.

The sentence is from current Rule 608(b):

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters that relate only to character for truthfulness.

A little hazy, right? The main subject and verb—*giving* and *operate*—are abstract, and *when examined* does not connect well with what it modifies. So here's a hint: start with a strong verb—*waive*—and then find a concrete subject. Besides clearing the haze, you should be able to cut almost half the words. No fair peeking online at the restyled version.

## The Results

Last month, I invited you to revise the sentence below from current Federal Rule of Evidence 608(b). I suggested that you start with a strong verb—*waive*—and then find a concrete subject.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters that relate only to character for truthfulness.

The winner is Kenneth Treece, with Miller, Canfield, Paddock & Stone, who submitted this:

A witness does not waive the privilege against self-incrimination by testifying to matters limited to character for truthfulness.

Compare that version with the restyled version [which was later modified]:

A witness does not waive the privilege against self-incrimination by testifying about a matter that relates only to a character for truthfulness.

## November 2009 Contest

I'll send a copy of *Lifting the Fog of Legalese: Essays on Plain Language* to the first person who sends me (kimblej@cooley.edu) an "A" revision of current Rule 609(d) on juvenile adjudications.

**(d) Juvenile adjudications.** Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

Try using a vertical list.

## The Results

Last month, I invited you to revise current Federal Rule of Evidence 609(d) on juvenile adjudications. I suggested that you try using a vertical list. Here's the current rule:

**(d) Juvenile adjudications.** Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

The winner is Nathan Miller, now with Miller Embury PLLC in Traverse City. His revision (with one edit):

Evidence of a juvenile adjudication is admissible only if:

- (1) it is offered in a criminal case;
- (2) it is offered to impeach a witness other than the accused;
- (3) conviction of the offense would be admissible to impeach an adult's credibility; and
- (4) it is necessary to fairly determine the accused's guilt or innocence.

Compare that version with the restyled version:

**(d) Juvenile Adjudications.** Evidence of a juvenile adjudication is admissible under this rule only if:

- (1) it is offered in a criminal case;
- (2) the adjudication was of a witness other than the defendant;
- (3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and
- (4) admitting the evidence is necessary to fairly determine guilt or innocence.

The mighty vertical list. Few devices are so useful to the drafter—or helpful to the reader.

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Programming note: the contest will return in a few months, after we finish this retrospective.

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## December 2009 Contest

Let's stay with the evidence rules for our contest. I'll send a copy of *Lifting the Fog of Legalese: Essays on Plain Language* to the first person who sends me (kimblej@cooley.edu) an "A" revision of current Rule 613(a). In the past, I've responded briefly to most entries, but as they increase, I probably can't continue to do that. I do read them all and thank everyone for participating. So here's 613(a):

**(a) Examining witness concerning prior statement.** In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

Some hints. Try for a more informative heading. Change *concerning*. Change *by the witness* to a possessive. Convert to the active voice by naming a new subject. Convert to two sentences, starting the new one with *But*. Replace *the same* (ugh). And replace *shall*.

## The Results

Last month, I invited you to revise current Federal Rule of Evidence 613(a):

**(a) Examining witness concerning prior statement.** In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

I offered some hints. Try for a more informative heading. Change *concerning*. Change *by the witness* to a possessive. Convert to the active voice by naming a new subject. Convert to two sentences, starting the new one with *But*. And replace *the same* and *shall*.

The winner is Aaron Mead, an assistant prosecuting attorney in Berrien County, who submitted this version:

**(a) Disclosure of prior statement used to examine witness.** A party examining a witness about the witness's prior statement need not show the statement or disclose its contents to the witness. But the party must show the statement or disclose its contents to opposing counsel upon request.

Compare that version with the restyled version below [later modified slightly]. Incidentally, the title to Rule 613 is "Witness's Prior Statement," so the heading to (a) can refer to *the Statement*.

**(a) Showing or Disclosing the Statement During Questioning.** When questioning a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an opposing party's attorney.



*Joseph Kimble taught legal writing for 30 years at WMU–Cooley Law School. His third and latest book is Seeing Through Legalese: More Essays on Plain Language. He is senior editor of The Scribes Journal of Legal Writing, editor of the "Redlines" column in Judicature, a past president of the international organization Clarity, and a drafting consultant on all federal court rules. He led the work of redrafting the Federal Rules of Civil Procedure and Federal Rules of Evidence. Follow him on Twitter @ProfJoeKimble.*