



## ARTICLE

# Using the Underground Scholars Language Guide to Help Eliminate Bias in Legal Writing

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In the Spring of 2020, one of my first-year legal writing students introduced me to the Underground Scholars Language Guide for Communicating About People Involved in the Carceral System (“Language Guide”).<sup>1</sup> I was not familiar with the Language Guide, or the terms included in it, but I immediately understood its value as a tool for eliminating bias and vowed to use it in my classroom the following year.

I have done just that. Last year and the year before, I assigned this Language Guide to students in my objective legal writing class as required reading for a larger discussion about how to refer to clients and parties in written documents. The Language Guide helped me provide students with concrete examples of ways to revise language to humanize the people involved in legal disputes, something I believe is critical to inclusion and equity in our profession and not

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<sup>1</sup> Michael Cerda-Jara et al., *Language Guide: A Guide for Communicating About Those Involved in the Carceral System*, BERKELEY UNDERGROUND SCHOLARS (Mar. 6, 2019), <https://undergroundscholars.berkeley.edu/blog/2019/3/6/language-guide-for-communicating-about-those-involved-in-the-carceral-system/>.

typically addressed in law school.<sup>2</sup> My students are hungry for this content, and, in the past, my most engaging classroom discussions were the ones where I presented ways in which students can reduce bias and recognize humanity in legal writing.

In this short paper, I explain why it is important to introduce humanizing language in a legal writing class, introduce the Language Guide, and show how I use it in my classroom.

## 1. Why Teach Humanizing Language in Legal Writing?

Words matter. And there is value in learning to write in a way that recognizes others as human beings and not the product of their worst choices or uncontrollable circumstances. Law school does not naturally account for the humanity of players in the system, but as legal writing instructors, we can counteract that. Using a tool like the Language Guide provides a jumping off point for us to remind students that the things we read about in cases and will write about in memos happened to real people, and that they have choices to make about how to describe those people.

Introducing humanizing language to students can also inspire them. Many students expect social justice content in first-year classes, and teaching students to use humanizing language is an easy way to address bias in legal writing. As a bonus, such language can be referenced multiple times throughout the year, reducing the chances that the discussion of bias will be siloed within the curriculum. Additionally, it can help students see clients and parties as people, generating passion and commitment for the work they will one day do as attorneys and giving renewed inspiration to their research and analysis.

But, most importantly, I hope that by introducing students to tools like the Language Guide, these more humanizing terms might one day be the “norm” in memos, briefs, and judicial opinions, resulting in greater civility within our profession and reducing bias against marginalized individuals. Our students take new ideas with them into the workplace once they graduate and can educate their future colleagues about how to use humanizing language when describing people involved in legal disputes. We just have to provide them with the resources to do so, and this Language Guide is an easy one to give to them.

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<sup>2</sup> For a good overview of why these issues escape the curriculum, see Lorraine Bannai & Anne Enquist, *(Un)examined Assumptions and (Un)intended Messages: Teaching Students to Recognize Bias in Legal Analysis and Language*, 27 SEATTLE UNIV. L. REV. 1, 32-39 (2003).

## 2. What is the Language Guide?

The Underground Scholars Initiative is a group of “formerly incarcerated and system-impacted academics” at the University of California, Berkeley.<sup>3</sup> It produced the Language Guide for use by “the media, students, and public to utilize” when talking about individuals impacted by the criminal law system.<sup>4</sup> It is not a guide for lawyers, but given that many lawyers work with and write about individuals impacted by this system, it is an ideal tool for us. Also, because the Language Guide is written for the public, it is not burdened with legalese. It is short, simply written, and understandable—ideal for first-year legal writing students.

The Language Guide is easily accessible online and includes (1) a description of why humanizing language is important, (2) a terminology guide of fifteen terms, and (3) a topical guide for four related topics. Although I encourage students to read the entire guide, my focus in class is usually on the terminology guide.

The terminology guide introduces people-first<sup>5</sup> terms for individuals impacted by the legal system and explains how each term recognizes the humanity of the person being described over other, de-humanizing terms. For example, the first term is “Incarcerated Person,” which the guide states should be used to refer “to anyone currently incarcerated.”<sup>6</sup> It further explains *why* the term is humanizing: it “makes no claim about guilt or innocence (contrary to words like ‘convict’), nor does it attach a permanent identity to an often temporary status (like ‘prisoner’ etc.).[.]”<sup>7</sup> Another term that I like to point my students to is “Carceral System,” which the guide describes as “far more accurate than the ubiquitous term ‘Criminal Justice System’” because “[n]ot all who violate the law (commit a crime) are exposed to this system and justice is a relative term that most people in this country do not positively associate with our current model.” Other terms related to the “Carceral System” include “Formerly Incarcerated Person,” “System Impacted,” “People Convicted of (Drug Violations / Violent Offenses / etc.),” and “Person on Parole / Probation.”<sup>8</sup>

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<sup>3</sup> Cerda-Jara et al., *supra* note 1.

<sup>4</sup> *Id.*

<sup>5</sup> For an overview of the “person-first” principle, see Bannai & Enquist, *supra* note 2, at 20–21.

<sup>6</sup> Cerda-Jara et al., *supra* note 1.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

But the Language Guide is not limited to criminal law terms. There are also terms that relate to immigration law, sexual assault and trafficking, and substance use,<sup>9</sup> which could be relevant in a variety of different legal claims and contexts.

### 3. How to Use the Language Guide in an Objective Legal Writing Class

There are many ways that this Language Guide could be used in an objective legal writing class. For the last two years, I have introduced it when students are in the process of revising their memos. I want students to write descriptions of individuals in a way that feels natural to them in their first drafts and then, after reading the Language Guide, be able to confront any bias within their own language. But you could also assign it as part of a drafting class if you want students to practice mindfully choosing how to describe individuals within a memo problem. Additionally, although this Language Guide works very well for criminal law problems, given the diversity of terms included, it could also be useful for immigration problems or even tort problems that involve sexual misconduct or drug or alcohol use.

This year, when I introduced the Language Guide, I assigned the students two readings: the Language Guide and a Washington Post opinion piece titled *How the Language of Criminal Justice Inflicts Lasting Harm*.<sup>10</sup> The article provides a link between the use of people-first language and reader sympathies. Specifically, it describes the results of two studies of nearly 3,000 people that looked at the impact of using people-first language in media content on the reader's appetite for criminal law reform.<sup>11</sup> The studies demonstrated that readers were more likely to "describe people in negative terms and make de-humanizing associations—considering a person 'dangerous,' for instance—when they were defined by labels such as 'felon' and 'habitual offender.'"<sup>12</sup> But, when media articles used people-first terms, such as "a person with a felony conviction" or "a person with prior convictions," readers were more likely to make a positive association with that person. In the end, seventy-five percent of readers who read stories with de-

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<sup>9</sup> Examples include "Sexual Assault Survivor," "Sex Trafficking Survivors," "Sex Workers," and "Drug / Substance Use." *Id.*

<sup>10</sup> Deanna Hoskins & Zoë Towns, *Felon, Convict, Juvenile Delinquent: How the Language of Criminal Justice Inflicts Lasting Harm*, WASH. POST, Aug. 25, 2021, <https://www.washingtonpost.com/opinions/2021/08/25/criminal-justice-language-bias-lasting-harm/>. This article is also available for free with a school subscription through ProQuest at <https://www.proquest.com/docview/2564342348>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

humanizing terms were less likely “to support reform or to empathize with the people discussed[.]”<sup>13</sup>

After students read the Language Guide and article, I ask them to come to class prepared to discuss (1) how the cases used in our current memo problem refer to the parties and whether they include any de-humanizing terms, and (2) how, in their own memos, they referred to the parties in both our memo problem and in the analogous cases.

Because I present the Language Guide as part of a revising class, I like to start our classroom discussion with a broader set of “rules” about how students should refer to individuals within their memos. For example, I remind students that the parties’ names should be spelled correctly, and I suggest that they should generally use honorifics and last names (rather than only first names or only last names) to convey respect for the parties. I also suggest that students refer to individuals by name rather than party status (i.e., “appellant,” “plaintiff,” “respondent,” or “defendant”) to make their writing clearer and more readable.<sup>14</sup>

Then, I ask students whether there are terms from the Language Guide that they have used, or could use, in their memos. For example, have they described someone as a “violent offender” when they could use the term “person convicted of a violent offense”?

I also ask my students to think about why they might choose *not* to use a term from the Language Guide. For example, the term “person with a felony conviction” is obviously less concise than the term “felon.” Or, for persuasive reasons, they might be tempted to use a de-humanizing term to describe an opposing party. But, in response to the former concern, I stress that they will likely need to use such a description only once within the memo, minimizing the effect of the less concise, but more humanizing, description. As for the latter concern, I push students to consider whether de-humanizing a legal opponent is consistent with the professional values they want to aspire to as an attorney. In my opinion, the biggest concern with using one of the terms—like, for example, “Carceral System”—is that the reader may not know what it means. But I explain to students that such an issue is easily remedied with a parenthetical or footnote explanation and citation to the Language Guide.

In the end, my goal is not to mandate that students use a particular term in the Language Guide, but to challenge their perceptions about how people

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<sup>13</sup> *Id.*

<sup>14</sup> This is not a new idea. See BRYAN A. GARNER, *LEGAL WRITING IN PLAIN ENGLISH* 44-45 (2001).

should be described in legal documents, show them that there are more humanizing ways to refer to people (as modeled in the language guide), and help them think through whether and when to use such terms.