



## Tricky Diction II (The Sequel!)

Shortly after I submitted last month's column, I ran into another attorney at an event in Tucson. She requested that I write a column very similar to the one I had just completed, but she identified a handful of frequently confused words that I had omitted for space last time. Because I'm always happy for column ideas—particularly when I'm guaranteed that at least one other person<sup>1</sup> is interested in the topic—I bring you Tricky Diction II: Trickier Diction.

### Affect / effect

*His impassioned closing affected the jury; it had the desired effect.*

Many people struggle to use these homophones appropriately. It helps to remember that, most often, *affect* is a verb meaning to influence, and *effect* is a noun meaning result.

- The new mayor's policies dramatically affected the crime rate.
- Then again, the mayor's policies had some unanticipated effects, too.

Were the rule this simple, though, fewer writers would err, and I could prescribe a simple rule for you. Unfortunately, however, we also occasionally use *affect* as a noun meaning demeanor and *effect* as a verb meaning to cause.

- Her flat affect made her less sympathetic to the jury.
- The mayor hoped to effect change.

Some people remember how to use *affect* by associating it with *affection*. My affection for her affected my judgment. His affect increased my affection for him. Others keep in mind that we usually—though not always—use *affect* as an *action*. Neither trick particularly works for me, though; I find it easiest just to memorize the different meanings.

### Further / farther

*Marti and I discussed it further before we decided to run farther.*

In traditional American usage, people use the adverb *farther* to describe actual physical distance. This is easy to remember because *farther* contains the root *far*.

- Tucson is farther from Los Angeles than Phoenix is.
- Parcel A is farther from the access road.

*Further*, on the other hand, indicates figurative or metaphorical distance.

- Apple stock rose further today after the release of the iBrain 5.
- Susie finally progressed further on her to-do list.

Most style guides, however, advise that you may use *further* for either physical or metaphorical distance. It is not incorrect to say, for example, "The defendant ran further," or "Parcel A is further from the access road." That said, unlike *farther*, *further* also serves as a verb meaning to advance and as an adjective meaning additional.

- Plaintiff's poorly researched screed did not further her credibility with the court.
  - The defendant then repeatedly backed her car into plaintiff's shed, causing further damage to the lawnmower.
- In short: When in doubt, use *further*. It's always acceptable.

### Pled / pleaded

- Which is correct?
- My client pleaded guilty; or
  - My client pled guilty.


Technically, the correct answer is the first one: *My client pleaded guilty*. Both the *Chicago Manual of Style* and the *AP Stylebook* agree. In his *Dictionary of Modern Legal Usage*, Bryan Garner advises using *pleaded* because it is technically the correct past tense and past participle of the verb *to plead*, but he also observes that *pled* has long been a common and acceptable variant in legal usage. Although the *pleaded* / *pled* debate does not provoke the passion of, say, the Oxford-comma controversy or the war between the one-spacers and the two-spacers, people tend to feel strongly that either *pled* or *pleaded* is correct (and that, conversely, one or the other is AN ABOMINATION).

My advice? Proceed with caution. If you know which your audience prefers, use that option. If you don't know, use *pleaded* (unless you find it to be an abomination. If you do, use *pled*.) I'll confess that I prefer the look and sound of *pled*.<sup>2</sup>

### Flaunt / flout

Vivid verbs invigorate prose. Choose an inapt verb, however, and you undermine your impact. For example, do you want to accuse an opposing party of flagrantly defying the law? Don't flagrantly defy correct usage by accusing your opponent of *flaunting* the Rules of Civil Procedure. Instead, *flaunt* your writing chops by accusing her of *flouting* those rules.

*Flaunt* and *flout* sound similar, and both have negative connotations, so it is hardly surprising that even nimble legal writers misstep when selecting between the two. *Flaunt* connotes a showy display and conveys disapproval of that display. *Flout* connotes a showy defiance of rules, laws, or conventions, and also conveys disapproval. Some dictionaries even list *flout* as a secondary—although disfavored—meaning for *flaunt*. The difference in meaning is subtle but significant. Keep the distinction in mind and deploy these vivid verbs with confidence.

Any other commonly confused words you'd like to clarify? I welcome suggestions for Tricky Diction III: The Trickiest. 

### endnotes

1. Other than my mom.
2. And I don't think I've ever heard the lawyers on *Law & Order* say *pleaded*.



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