The case for contractions

IN A VERY SHORT BROWSE ON WESTLAW, I found some sentences that, in my view, would be improved by contractions:

- "Plaintiff testified that she is [she's] presently able to sit except that it feels like she is [she's] sitting on bricks."
- "On this issue, it is [it's] Plaintiff's characterization of the magistrate judge's report and recommendation that is [that's] incorrect, not the other way around."
- "In this case, however, Carpenter does not [doesn't] cite Cook's reliance on Jones."
- "We will [We'll] explain how we considered the supportability and consistency factors for a medical source's opinions."
- "What is [What's] more, these findings are consistent with the totality of the evidence received at the hearing level."
- "Assuming for the sake of argument that there is [there's] a legitimate conflict between the VE testimony and the DOT here . . . ."
- "Plaintiff has not [hasn't] shown—and she cannot [can't] show—compensable harm from any of the removal restrictions she cites."

I realize that opinions will differ on these examples and on this matter generally.

But is there any doubt that legal writing has moved in recent decades toward a more relaxed, conversational, readable, idiomatic style? Writers who aspire to that style should embrace contractions—unless, of course, they sense or are concerned that their reader stands opposed.

- "Your style will be warmer and truer to your personality if you use contractions . . . when they fit comfortably into what you're writing. . . . [T]rust your ear and your instincts." William Zinsser, *On Writing Well* 74 (7th ed. 2006).
- "In English, the handiest and most conspicuous device [for conversational prose] is the use of contractions." Rudolf Flesch, *The Art of Readable Writing* 82 (1949).
- "The point about contractions isn't to use them whenever possible, but rather whenever natural. Like pronouns, they make a document more readable . . . . A 1989 study confirmed this: it found that frequent contractions enhance readability." Bryan A. Garner, *Legal Writing in Plain English* 63 (2d ed. 2013) (citation omitted).

Judicial writers have the luxury of not needing to worry so much about whether their readers stand opposed to contractions. And here the clincher should be that a majority of Supreme Court justices use them, at least to some extent. Examples (without full citations):

- Chief Justice Roberts: "He claims it's his home and tells the officer to stay away." 141 S. Ct. 2011, 2028 (concurring in the judgment).
- Justice Alito: "If Congress wanted to require that process under § 1608(a)(3) be sent to a foreign minister's office in the minister's home country, respondents ask, why didn't Congress use a formulation similar to that in § 1608(a)(4)?" 139 S. Ct. 1048, 1061.
- Justice Gorsuch: "It's a reading that would defy our usual rule of statutory interpretation that a law's terms are best understood by 'the company [they] kee[p].'" 142 S. Ct. 2015, 2023.
- Justice Barrett: "Respondents here—whom we'll call Plaintiffs—are Goldman shareholders." 141 S. Ct. 1951, 1959.
- Justice Kagan: "To say, as the majority does, that the resulting injuries did not '"exist" in the real world' is to inhabit a world I don't know." 141 S. Ct. 2190, 2225 (dissenting).
- Justice Sotomayor: "And, putting that aside, why wouldn't Wheaton's claim be exactly the same under the Court's newly-fashioned system?" 134 S. Ct. 2806, 2815 (dissenting).

Now, two qualifications: (1) none of the justices can be described as frequent or regular users (except Justice Gorsuch), and (2) some are apparently more inclined to use contractions—or use them more often—in dissents or concurrences, when they are not speaking for the Court. But when they have a freer hand, most are not averse. That's the message for judicial writers who are similarly positioned.

Resistance to contractions will diminish over time, however slowly—as legal-writing style continues to slough off its traditional stuffiness.

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