

Plain Language

Once Each Time is Not Enough

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This month we present a new feature of the Plain Language column — Dear Seldy. T. Selden Edgerton answers intimate questions from the legaleselorn...

The Letter

Dear Seldy,

My boyfriend is a lawyer and insists on doing it twice each time — first the English way and then the French way. He says that once each time is not enough. I disagree with him but he won't listen to me. Please help. I'm so confused I don't know which way to turn.

Signed,

Terrified by Redundant Tautologies

The Answer

Dear Terri,

Since this is a *Michigan Bar Journal* column on clear writing you must be referring to letters, possibly love letters, from your lawyer boyfriend. Furthermore, it's obvious that you are referring to your boyfriend's use of two words when only one word is required. This is referred to by many names — unnecessary word pairing, redundant phrases, coupled synonyms, tautologies, pleonasms and double dipping. Lawyers are famous for these phrases. There are about one hundred of them. Table 1 is a complete list of the "Horrible Hundred" redundant phrases of legalese. (The list actually contains 127 phrases, but lawyers are so terrible at arithmetic that they'll never notice the difference.)

The Historical Reason

The generally accepted explanation for these redundant phrases is

that they originated in the twelfth century in England. At that time the good guys (the Anglo-Saxons) had been invaded and conquered by the bad guys (the Normans, who spoke French). Therefore, for quite some time the country had to use two languages — Anglo-Saxon and Norman French. To make sure that everyone understood the law, most phrases were stated in both languages. Thus originated phrases such as fit (an Anglo-Saxon word) and proper (a French word). Since some combinations are both Anglo-Saxon (force and effect) or both French (covenant and agree), there must be other sources for redundancies.

Nevertheless, every legal writing textbook in every law school in the country has recommended that redundant phrases be abolished.

The Real Reason

Many practicing lawyers simply thumb their noses at the legal writing textbooks and continue to use redundant phrases. The reasons they give for using the redundant phrase is, "WHAT IF there is a difference between the two words? It's better to be safe than sorry." So they use both words just for safety's sake. Besides, the combination has been used for so long that it now has a reassuring sound.

These lawyers really don't care what the words mean. All they want to do is sling around a little legalese to make their writing look impressive. And looking impressive is all they're concerned about. It covers up their insecurity.

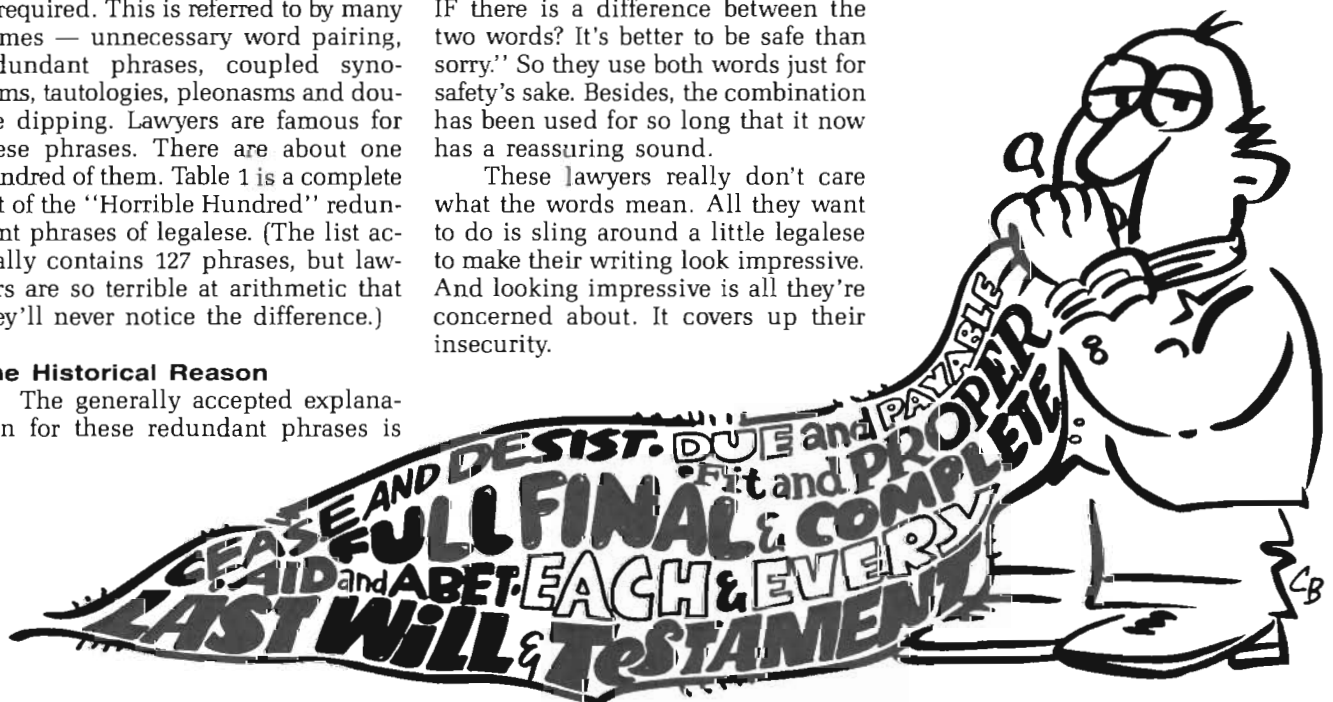
A Possible Solution

But Terri, although this might help explain why your lawyer boyfriend uses redundant phrases, I realize it does not explain how to get him to stop. The problem is many centuries old.

Here is what the experts have discovered. Simply confronting your boyfriend with authority from legal textbooks won't work. He doesn't give a darn what the legal writing textbooks say. It's going to take quite a jolt to separate him from his beloved redundant phrases.

One possibility: Give him a word processing computer. But be careful here, because many computers would simply present him with 150 new ways to abuse the language. There are however, computers and computer programs today that can help to remedy the problem.

First your boyfriend types his brief or writing into a computer. Next he summons up a program that automatically underlines all the redundant



phrases in your boyfriend's brief and indicates immediately below each underlined phrase the recommended single word that is sufficient. He can then study each phrase one by one and decide what to do, or he can simply push a button and replace all the redundant phrases with the recommended single words.

A Few Final Words

This use of the computer to reform legal writing is so desperately needed, is so simple, and is so sure of working, that it obviously will not be accepted without a long, hard battle, which will probably go on for a great many years or even generations. (Except in Kansas. There they have the ability to stop the clock long enough to accomplish whatever they want.)

The first criticism will be that the computer cannot transform garbage into great literature. The cognoscentic call this principle the output of GIGO (Garbage In, Garbage Out). The answer is that today's editing programs doesn't smell nearly as bad as the input.

The second criticism is that these computer programs will take a recognized classic such as "Hamlet" or the Gettysburg Address, and print an output that lists all kinds of changes. Well, Terri, let me tell you that people who voice this criticism have their heads in a very unusual place. What we are talking about is effective communication in 1986, not 1600 or 1863. Anyone who uses Shakespeare's style or Lincoln's style of writing today will not enjoy nearly as much success as Bill or Abe had with it.

So there you have it Terri: Four feet on the floor and a computer terminal in your boyfriend's hands may solve your problem. But you should also know that some lawyers become so infatuated with the computer that they say it's even better for their insecurity than sex. They are usually the ones who don't like sex, or at least haven't tried it for a while.

Yours truly,
Seldy

The "Horrible Hundred" Redundant Phrases of Legalese

acknowledge and confess

act and deed

aid and abet

aid and comfort

all and every

alter or change

annul and set aside

any and all

approve and accept

assume and agree

authorize and direct

authorize and empower

authorize and require

bind and obligate

by and between

by and under

by and with

cease and come to an end

cease and desist

chargeable or accountable

conjecture and surmise

convey, embrace and include

convey, transfer and set over

covenant and agree

deem and consider

desire and require

due and owing

due and payable

each and all

each and every

entirely and completely

final and conclusive

finish and complete

fit and proper

fit and suitable

for and during

for and in behalf of

for and in consideration of

force and effect

fraud and deceit

free and clear

free and unfettered

from and after

full and complete

full faith and credit

furnish and supply

give and grant

give, devise and bequeath

good and sufficient

goods and chattles

had and received

have and hold

have and obtain

heed and care

hold and keep

hold, perform, observe, fulfill and keep

if and when

in lieu, in place, instead and in

substitution of

in my stead and place

intents and purposes

in truth and in fact

just and reasonable

keep and maintain

kept and performed

kind and character

kind and nature

known and described as

last will and testament

let or hindrance

lot, tract or parcel of land

made and entered into

made and provided

made, ordained, constituted

and appointed



T. Selden Edgerton demonstrates the security blanket style of brief writing.

**1986-1987 Meetings:
Board of
Commissioners**

July 25, 1986 Lansing
 September 19, 1986 . . . Detroit
 October 31, 1986 Lansing
 December 5, 1986 . . . Lansing
 January 16, 1987 Lansing
 February 27, 1987 . . . Lansing
 April 3, 1987 Lansing
 May 8, 1987 Lansing
 June 12, 1987 Mackinac
 Island
 July 24, 1987 Lansing
 Sept. 18, 1987 . Grand Rapids

**1986-1987 Meetings:
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Assembly**

September 18, 1986 . . . Detroit
 April 4, 1987 Lansing
 Sept. 17, 1987 . Grand Rapids

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 means and includes
 mentioned and referred to
 meet and just
 mind and memory
 modified and changed
 null and void
 null and void and of no force or effect
 of and concerning
 order and direct
 ordered, adjudged and decreed
 over, above and in addition to
 pardon and forgive
 part and parcel
 peace and quiet
 perform and discharge
 perform or observe
 power and authority
 quiet and peaceable
 ratifying and consenting
 relieve and discharge
 remise, release and quitclaim
 request and demand
 rest, residue and remainder
 revoked, annulled and held for nought
 save and except
 seized and possessed
 shall and will
 shun and avoid
 shall have and exercise
 situate lying and being in
 sort or kind
 sole and exclusive
 stand, remain and be in full force
 suffer or permit
 supersede and displace
 then and in that event
 true and correct
 truth and veracity
 type and kind
 under and subject to
 understood and agreed
 undertake and agree
 unless and until
 void and of no effect
 void and of no force
 void and of no value
 void and of non effect
 various and sundry
 ways and means
 when and as
 will and testament
 within and under the terms of

This list was compiled from the following legal writing textbooks:

1. Dickerson, *Fundamentals of Legal Drafting*, p. 125.
2. Mellinkoff, *Legal Writing: Sense and Nonsense App C*.
3. Mellinkoff, *Language of the Law*, pp. 346-49.
4. Weihofen, *Legal Writing Style*, p. 45.
5. Wydick, *Plain English for Lawyers*, p. 18.
6. Squires and Rombauer, *Legal Writing in a Nutshell*, p. 110.

We get letters from readers:

Mr. Edgerton:

SS

Sincerely,
 Paul J. Greenwald

And we respond:

Dear Mr. Greenwald:

Thank you for your letter. You have brilliantly captured the essence of my first two articles. Though we may not agree in substance, we agree in spirit. And if you did not like the first two articles, you'll hate the next four.

T. Selden Edgerton

"Plain Language" is a regular feature of the *Michigan Bar Journal*, edited by George H. Hathaway, Chairperson of the State Bar Plain English Committee. Through this column the Committee hopes to promote the use of plain English in the law. Want to contribute a Plain English article? Contact Mr. Hathaway at The Detroit Edison Co., Room 688 WCB, 2000 Second Ave., Detroit, MI 48226.