

## Review of Mellinkoff's Dictionary of American Legal Usage

By George Hathaway

This is it—a legal dictionary for the next century. Mellinkoff's Dictionary will be to the twenty-first century what Black's Dictionary was to the twentieth century. This dictionary will clarify legal writing, eliminate legalese, and significantly improve lawyers' writing and lawyers' image.

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- **Precise.** It ends the myth of precision in the language of the law by telling you if a word is precise, somewhat precise, or not precise, and explains why, without obscure case citations that give you a false sense of precision. See Example B, *extraordinary*.

- **Prescriptive rather than descriptive.** It goes beyond merely defining words currently in use and tells you whether you should continue to use them (because they are meaningful and therefore useful) or whether you

should eliminate them (because they have become or always were meaningless and therefore useless). It tells it like it is—takes names and kicks legalese—by specifically identifying the obsolete formalisms, old-English words, coupled synonyms, and Latin phrases that you should eliminate from your legal writing or replace with English equivalents. See Example C, *saith*; Example D, *hereby*; Example E, *each and all*; and Example F, *ab initio*.

This is a dictionary that Jefferson, Holmes, Cardozo and Brandeis could be proud of. Everyone in the legal profession should have a copy. The upfront index, clear and concise entries, and Mellinkoff wit (see Example G, *a fortiori*) make it very easy to read. If every judge, lawyer, legal assistant, legal secretary, court clerk, and law student follows Mellinkoff's Dictionary for the next eight years, then clarity will conquer legalese by the end of the twentieth century.

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"Plain Language" is a regular feature of the *Michigan Bar Journal*, edited by Joseph Kimble for the State Bar Plain English Committee. Assistant editor is George H. Hathaway. Through this column the Committee hopes to promote the use of plain English in the law. Want to contribute a plain English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901.

George Hathaway is a senior attorney in the legal department of Detroit Edison Company, and is the chair of the Plain English Committee of the State Bar of Michigan.

**Example A escrow**

1. a mechanism for the transfer of ownership or possession from A to B by deposit of the necessary writings, property, or money with a disinterested third party for delivery to A and B in accordance with their instructions. <Buyer and Seller of the stock opened escrow at the First National Bank./Under the *escrow instructions*, escrow for the sale of Blackacre was to close when the bank recorded the deed and delivered the purchase money to the seller.>

**Example B extraordinary** is a very ordinary word. It is here because, like actual (□ see) and special (□ see), *extraordinary* is part of the law's effort to express distinctions. An inherently flabby word, *extraordinary* has a small measure of precision as a warning, prompting the question: Compared to what? When the object of comparison is itself flabby, e.g., *ordinary care*, *extraordinary care* remains flab, and sets the lawyers to collecting myriads of circumstantial detail. When the object of comparison has more or less defined limits, e.g., *statutory services* described by statute and decision, then *extraordinary services* (of a lawyer or executor) firms up; the services may be quite commonplace, but they are still *extraordinary* because not *statutory*. As long as one recognizes that *extraordinary* in the law lives only for the sake of comparison, it serves a useful purpose, changing its content by the season.

**Example C saith:** a worthless archaism, preserved in a needless and confusing appendage to affidavits. <Further deponent saith not.> □ see *affiant*.

**Example D hereby:** by means of this (as in a writing). The whole or only part of the writing? Right now, or only after other things have been done? If detail is needed, supply it. *Hereby* is superfluous. <I hereby agree./I agree.> For a companion in excess, □ see *herewith*.

**Example E each and all:** a worthless remnant, along with its companion *each and every*, of the old habit of doubling in ordinary English. *Each* and *every* focus on the individuals of a group; *all* on the whole group. For lawyers, one word is enough, and more precise to boot. A gift to *each and all* may be construed as a joint gift with individuals taking a share or a gift to individuals only, with a redundant *all*. □ see *coupled synonyms*.

**Example F ab initio** (L., ab INISH-ee-o, as in *initial*: from the beginning): the start of a status, good or bad. <This dictionary is readable *ab initio*.> Most common in the redundancy *void ab initio*; □ see *null* and *void*. Well aged in *trespass ab initio*: later events change an innocent entry into a trespass from the beginning <He came in as a guest, stole from his host, and is now considered a trespasser *ab initio*.> The Latin has no magic. Prefer the translation *from the beginning* or English adapted to the facts. <A trespasser from the time he came in....>

**Example G a fortiori** (L., a FOR-she-or-I: from stronger): all the more so. <If there is no breach, *a fortiori* there is no right to damages.> A term of logic, long ago drafted into legal service to bolster the obvious. It was at its best when professors thundered at first-year law students, but that fervor and awe have waned. All the more so in writing. Let it die.

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