NOW COMES THE UNBENDING BOSS

By Richard Bingler

The first warning I ever received about the evils of legalese came from my professor of legal research and writing. It was almost a decade ago, but I can still hear in my mind's ear how he began that warning. He held up one of the most conspicuous examples: the phrase Now comes the plaintiff; by and through his attorneys.... Then he screwed up his nose as though the words were a loathsome creature long overdue for extinction. He called the now comes the plaintiff a perfect example of lawyers' using nine words to convey the same meaning that three could.

The professor immediately asked us for plain-English alternatives. But since none of us knew what Now comes the plaintiff, by and through his attorneys meant or that it historically began complaints, the room was silent. He smiled and said he was counting on us to set the example, counting on us to be the new breed of lawyers who speak plain English and start complaints with three simple, understandable words: The plaintiff says.

"The plaintiff says," he repeated slowly, letting it roll off his tongue like a melody, "is what Now comes means—and what normal folks say when not overdressing their language." He urged us to write like literate normal folks as often as we could, though he acknowledged with a small frown that most of us would be mere associates at law firms where the dragons of legalese still walked the earth.

Imbued with the noble mission of slaying that dragon at every encounter, I headed out into the legal world after graduation. I accepted a job in a small-town firm where the supervising attorney was about my age—a good sign, I thought. Surely he has heard of plain English movement? Before he could answer, though, I launched into a full-scale attack, using the famous shotgun approach of law school exams: pump in every legal fact, the theory, and holding that pops into your head—relevant or irrelevant—in the hope that something you've written will come close to answering the question. In my best oratorical style, I made the standard arguments against plain English and then my counterarguments for plain English. My presentation went uninterrupted.

When I'd finished, he smiled and said, "This is a small town, and now things come slowly to it. Our clients pay us a lot of money to do their work, and The plaintiff says doesn't sound like we did much work for their money. Go to the formbook and put in the Now comes the plaintiff beginning. Make the clients happy. Make me happy." I started to open my mouth to make a closing argument beginning with a "but, but." I didn't get past the sound of the first "but" before he added, "Remember who signs your paychecks."

Later, after I had cheerfully put in a Now comes and the supervising attorney had approved the revised complaint, the client came in to sign the verification. I met with her alone. Even though I had encouraged her to carefully read every word of the complaint for accuracy before she signed, I was not surprised that she barely glanced at it. Instead, she remarked, "Oh, why should I? I never understood the gobbledygook you lawyers write anyway." I didn't respond.

Plain Language is a regular feature of the Michigan Bar Journal, edited by Joseph Kimble for the State Bar's Plain English Committee. The assistant editor is George Hathaway, chair of the committee. The committee seeks to improve the clarity of legal writing and the public opinion of lawyers by eliminating legalese. Want to contribute a plain English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901. For information about the Plain English Committee, see our website—www.michbar.org/committees/plenglish/ pengcom.html

This article is reprinted from Volume 7 of The Scribes Journal of Legal Writing.

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