

Attorneys: Cause or Cure?

By Susan Benjamin

When I was a girl, I suffered a mysterious illness. The symptoms were flu-like: fever, sore throat, runny nose. The doctors put me on antibiotics and the symptoms disappeared—only to recur soon after. This went on for almost two years until, at last, they discovered I had a strep infection, probably resulting from scarlet fever. The antibiotics had killed some of the infection, but a few renegade germs hid in warm, dark places, slowly but surely reinfecting me. Eventually, I was cured with mass doses of penicillin that cleansed my whole body.

So what does childhood illness have to do with legal writing? Look at it this way: organizations are much like bodies. They can be fat and sluggish or thin and fast—easygoing or rigid. And like any body, they're constantly fighting such maladies as low morale, cash-flow glitches, and customer-service problems. The antibodies can work like crazy, but even a few germs lingering in dark, unsuspecting places can feed into the bloodstream, causing problems to flare up again.

One germ, as insidious as the flu and even less appealing, is poor writing. When the poor-writing bug comes creeping along, as it inevitably does, in-house counsel can feed the organization plain language—an antidote as fast-working and unassuming as cough syrup—or provide a prime hideaway where

the germs of passive voice, wordiness, and jargon muster strength to reinfect the body.

To understand why, look at the anatomy of most corporations. The legal department is usually situated “over there,” meaning two floors up or three hallways over. This is not exile we're talking about but separation, often with a corner view and new carpeting.

The attorneys are the gatekeepers, there to protect the company from damage or even death. They stand aside, alert, literally watching *p*'s and *q*'s. In a

sense, they're like a suit of armor—protecting the body without being part of it.

As relative outsiders, they have unique visibility and latitude. When a plain-language initiative rolled around, the lawyers could filter plain language into the bloodstream through their own writing by making style corrections as they reviewed for content. In the process, they would press the delete button on legalese, weed out stilted expressions, and cut paragraphs or even pages of unnecessary information. All too often, however, in-house attorneys decide that plain language, like so many initiatives, falls to those who

produce the materials, provide the services, or research the projects—usually, that is, to those outside the legal department.

The sense is exacerbated by attorneys' distinct relationship to language. Words are their bread and butter; attorneys have loved, hated, and studied them—battled, argued, won, and lost with them. Others within the organ-

ization write to convey an abstract idea that can go through visions and revisions. Still others borrow the language, toss it around in e-mails, throw it into

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basic form letters. But attorneys own it.

This ownership can develop into an expertise envied by many, requested by all; or it can become a sort of linguistic rigor mortis. Case in point: in my plain-language training sessions, the term *cease and desist* invariably crops up in discussions about wordiness. Why not use *cease* or *desist*? Or how about *stop*? Because, comes the response, *cease* means stop for a short time, and *desist* means stop for good. Or *cease* means slow down and *desist* means stop. Or this prizewinner: *cease* means stop and *desist* means leave the room. This subjectivity, by the way, is not usually rooted in stubbornness or arrogance so much as in a belief that goes something like this: language is; therefore, it must be.

Two other factors distinguish attorneys from others within the organization:

1. The loneliness factor. Many attorneys feel that no one else understands why they write the way they do: not writers, who understand grammar and style, but not

Editor's Note: In the last four months, this column has told personal stories about the kinds of challenges that lawyers sometimes face when they try to write legal documents in plain language. Last month's column told of an example eight years ago in one division of the Attorney General's Department, as viewed by a newly hired assistant attorney general. Toward the end of the article, the author acknowledged that “things have changed for the better” in the intervening years.

Indeed they have—as evidenced by five Clarity Awards and the efforts described in the article “Plain English in the Department of Attorney General” (79 Mich BJ 48). The Attorney General has demonstrated her commitment to quality legal writing. But last month's column may have created a different impression. My apologies to all the legal writers and support staff at the Attorney General's office who are fighting the good fight for plain language. —Joe Kimble

the law; not managers, who understand the product or services, but not the language; and not even other attorneys, who understand the law, but not the writing attorney's particular legal concern.

- The audience factor. While employees write to coworkers, customers, shareholders, or consumer groups, lawyers often write to other lawyers. Even when they're reviewing a response letter about a pension plan, rather than seeing the old guy on his front porch in Far Away, Mississippi, who will receive it, they picture the lawyer in a glassy office downtown who will see it later.

This can lead to innumerable justifications about why plain language is unnecessary, if not damaging, for attorneys to use. One goes like this: "If I don't use legalese, I won't sound professional." Another raises precedent: "If I change specific phrases, the judge will rule against me." Here's another: "We have to use the same type of language as

the law does." Recently, one attorney even said: "Why should I waste my time changing the way I write, when other attorneys have to read my documents? That's what they get paid for."

These views would be well and good, or at least harmless, if attorneys really were writing from a small, remote office (say, on Mars). Unfortunately, when they harbor the poor-writing germ, it infects the rest of the organization. Letters they review suddenly have *hereinbefore*-type wording, and talk about all that happened *pursuant to the said meeting*. Terms from regulations appear as is, undefined, in their raw, naked, and complex glory. And, of course, the passive voice, wordiness, and other fundamental problems reappear everywhere from personnel departments to customer-service notices, as real and pervasive as a sore throat.

Attorneys have a psychological effect as well. In almost 15 years of plain-language training, I've heard employees claim—prob-

bly hundreds of times—that "the lawyers won't let us do it." Tell them you're training the lawyers and they roll their eyes and say: "Good luck." Interestingly, attorneys often claim that other attorneys—their supervisors, for example—won't let *them* use plain language.

So what does all this mean? That attorneys are powerful. If they agree with plain language, they must take a seat at the editorial table, partaking in fruits such as training, revising templates, or simply spreading the word. If not, they must be lured, cajoled, enticed, and encouraged as soon as possible. In the end, attorneys could prove the perfect antidote to whatever writing problem ails you—and your organization.

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