

**GOSIT
CANFELD
HEREBY
RITE
LONGE &
MUELLER**



Writer's Cramp

"Did you hear about Fred?" asked Jenkins.

When I heard that, I stopped dead in my tracks. Ever since I turned forty, those innocent little words usually meant only one thing: Another one of my friends had kicked the bucket. Although I feared the worst, I tried to play it casual. I figured it was too risky to say something flippant, like "Did Simon catch him kicking the ball out of the sandtrap again?" so I played it straight and non-committal. "No, what about Fred?"

"He's got writer's cramp," replied Jenkins.

I was relieved but puzzled. What can you say, after all, about a 54-year-old lawyer with writer's cramp? That he's tight fisted? That he'll never wear French cuffs again? That he'll have to go through life with dirty fingernails? Then I remembered: It was probably the herebys.

Flashback

"It was the herebys," Jenkins confirmed. "They finally got to him."

Through my mind flashed memories of long ago, when Fred, Jenkins and I were all new associates at the firm. Fred had won the Brief-Writing Award at law school the previous year, and was pretty proud of it. But he had made the mistake of carrying his clear writing techniques over to the actual practice of law.

His pet peeve was the old English word "hereby." He couldn't bring himself to actually write the word. He used to say that such old English words were meaningless, useless, irrelevant garbage that cluttered up good legal writing.

He was right, of course, and everyone knew it. But he couldn't accept the fact that being right was one thing and practicing law was another. And practicing law meant using "hereby"

"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.

Plain English

Means never Having to Say Hereby

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as a psychological weapon, an offensive weapon. When a lawyer uses "hereby" it means "I'm the lawyer and you, you schmuck, are nothing." When two lawyers write to each other, both must use the word "hereby;" otherwise the one that doesn't, loses face.

For example, take a situation where a lawyer is explaining something to a client. The word "hereby" is crucial. In fact, if it didn't exist we would have to invent it. Sometimes the lawyer doesn't have the least idea what he or she is saying, and if the lawyer said it in plain language, the client would realize that. So the lawyer uses a cute little trick — elegant in its simplicity, as the mathematicians would say. The lawyer simply inserts the word "hereby" at least once in every third sentence.

This accomplishes two things. First, "hereby" breaks up the non-lawyer's thought pattern just enough so that the nonlawyer loses the train of thought, or at least has trouble following it. Second, "hereby" introduces the element of uncertainty. Does it mean something that only lawyers know? Does it change the meaning of the sentence? Does it have to be there? Would its absence mean something?

Every lawyer knows that the answers are no, no, no and no, respectively. But the non-lawyer doesn't know, and that gives the lawyer the edge. Client control is what it's called in the trade.

Fred also knew that lawyers have an acquired ability to skim over any legal writing they read. Even though legally trained eyes see "hereby," the legally trained brain does not. There's a legal block between the eye and the brain. That's why "hereby" doesn't drive lawyers up a wall, as it does nonlawyers.

And that's where Fred made his tragic mistake. He was always a practical joker, and one evening, long after everyone else in the firm had gone

home, Fred went out to the front desk and very carefully inserted "Hereby" in the sign proclaiming the firm's name. Next morning it was there for everyone to see: Gosit, Canfeld, Hereby, Rite, Longe and Mueller.

The funny part was that absolutely nobody noticed. Everyone in the firm saw the sign but "Hereby" got blocked out somewhere between the eye and the brain. The sign stayed that way for three months. One fateful day the building maintenance man came up to turn on the air conditioning in each senior partner's office. Innocently, he asked the location of Mr. Hereby's office, in order to do the same for that worthy person. Talk about something hitting the fan! You've never seen such commotion.

When old man Mueller finally saw "Hereby" on the firm's shingle, he knew it was Fred's work. In fact he threatened to fire Fred unless he became practical. Old Man Mueller said "You know son, sometimes you've got to use a little 'hereby' to get by."

"Sounds pretty pithy to me," said Fred, "but what the heck does it mean?"

"It means," said Mueller, "that legalese such as 'hereby' is an anesthetic. When someone reads legalese their senses are dulled and they skip over it as quickly as possible. When you don't put in a little 'hereby' someone will sense that something is different and will start to nitpick what you wrote. When they do there's a very good chance that they will find something wrong. Therefore you want to put in a little 'hereby' in

there to get what you want."

Old man Mueller was vindictive. He promised that Fred would eventually be made a partner if, in addition to his normal work, Fred would also review and edit all briefs that went out of the office, to make sure that they sounded legal enough.

From then on, all legal writing passed through Fred. Fred counted the number of "herebys" in each document. If there weren't enough "herebys," Fred quickly penciled in a "hereby" here and "hereby" there. He got so good and so fast at it that he was soon penciling in two to three thousand "herebys" a day.

The Plain English Movement

As always, the more you do something the more it affects your mind. I remembered the time when I decided to test Fred on his use of "herebys."

I said "Why do you use 'hereby'?" Plain English advocates have written some good books explaining why you shouldn't."

"Ah, they don't know what they are talking about," said Fred.

"What about David Mellinkoff?" I protested. "He wrote *The Language of the Law*, the best book ever written

about legal language."

"He's from California," said Fred. "He probably wrote that book while snorting an illicit controlled substance in his hot tub with twenty sun-bronzed groupies."

"You're just sore because the PAC 10 has won 15 out of the last 17 Rose Bowl games," I said. "But you're ►



T. Selden Edgerton holding a computer-generated brief containing (at last count) one million, four hundred thirty-six thousand, nine hundred and twenty-seven "herebys."

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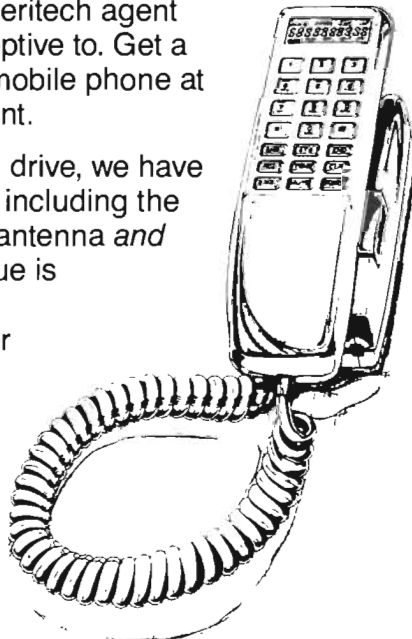
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Plain Language

right; California is a bit far out. But what about Reed Dickerson's *The Fundamentals of Legal Drafting*, the most famous of all books on legal drafting?"

"Indiana," said Fred. "The only guy there that counts is Bobby Knight. And even he is famous for only two things — punching out a Puerto Rican policeman and throwing chairs onto the basketball court."

"OK," I said, "what about the Document Design Center in Washington? Janet Redish and Veda Charrow have written a lot of important material on Plain English, and contribute to their monthly newsletter *Simply Stated*, the best periodical in the entire Plain English movement."

"Look, how many times do I have to tell you?" Fred shot back. "Every institution within a 150-mile radius of Washington D.C. is a CIA front."

I played my trump card. "What about Carl Felsenfeld and Alan Siegel in New York City? They have co-authored several pioneering books on Plain English."

"For sheer excitement, drama intensity and entertainment, the only plain language co-authors in the Big Apple are Steinbrenner and Martin," Fred declared.

After that conversation, I realized that Fred was not going to change.

Back to the Present

My thoughts drifted back to the present.

"What is Fred going to do now that he has writer's cramp?" I asked Jenkins.

"The guy is ingenious," said Jenkins. "He can't pencil in the 'herebys' by hand anymore, because of his writer's cramp, but he's working on a computer program that will automatically insert a 'hereby' every 35 words in a brief."

"Thank God for computers," I said. "Only a lawyer could figure out how to turn a simplifying improvement into a device to increase legalese in legal writing. The computer is going to be the savior of law office practicality."

"That's right," said Jenkins, "lawyers are going to take the computer to new heights. Accountants may use the computer for inventory methods such as FIFO (First In, First Out) and LIFO (Last In, First Out) but lawyers like Fred will use the computer for the most hallowed of all computer acronyms — GIGO (Garbage In, Garbage Out)." ■