

Let's Bring Legalese Lovers Out of the Closet

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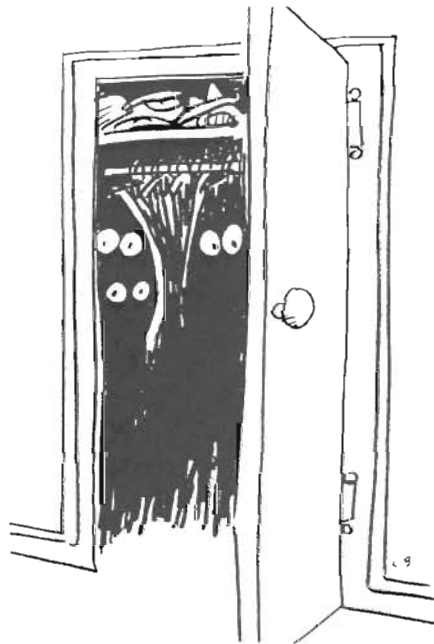
Now that homosexuals and condom manufacturers have come out of the closet, the only people left there are legalese lovers — lawyers and legal secretaries who claim that they favor good, clear writing (plain English), but privately practice that deviant writing style known as legalese: Obsolete formalisms ("Now Comes"), Olde English words ("hereby"), and redundancies ("each and every").

Good, clear writing gets near-unanimous lip-service. As with motherhood and apple pie, to be against it is un-American. Most lawyers and legal secretaries really do favor good, clear writing — plain English in the law. But there remains a powerful, stubborn minority of legalese lovers, careful not to risk public disdain by outright confession of their love for legalese, who lead double lives. In public they profess support for good clear writing ("Don't get me wrong, I'm all for plain English, it's just that...") Legal transvestites that they are, they say one thing and do quite another.

Or they profess their love for clear writing but rationalize their deviant writing style by plausible-sounding but always unsupported rationalizations — some types of legal writing are so complicated that they can't be expressed in plain English, or certain legal words must be used because of case precedent.

But they never back up their position with a specific example of legal writing to prove their point. The reason is that none exists. Any example they might offer could always be written in plain English, with no loss of meaning or legality. Were they to offer a specific example they would be done for, and they know it. The best they can do is to criticize any real effort to achieve plain English in the law.

To fight these borderline criminally fraudulent stonewalling attempts I have devised a ten-point test to bring



the legalese lovers out of the closet. Think of the test as a stool with ten legs. Someone who opposes most or all of the following ten items (legs) is using what I refer to as a legalese lover's stool.

1. Letter-size requirement for lawsuit papers

Letter-size paper has been required for all lawsuit papers filed in federal courts since January 1, 1983. Letter-size paper is accepted (but is not yet required) for all lawsuit papers filed in Michigan courts. Show me a lawyer or legal secretary who uses legal-size paper in Michigan courts, or an organization that refuses to endorse the letter-size standard for Michigan courts, and I'll show you a legalese lover.

2. Letter-size requirement for all public documents

Three states now have laws that required all public documents to be on letter-size paper. A similar bill will be introduced into the Michigan Legisla-

ture in the near future. Q: Who will be against the bill?

3. Plain English Bill

Eight states have statutes that require consumer contracts to be written in a clear manner, with common words. A similar bill has passed the Michigan House and is now in a Senate committee. Closet legalese lovers explain that they believe plain English should be voluntarily achieved, not mandated by legislation.

4. Videotape on legal writing for lawyers

The Plain English Committee has produced a 30-minute CLE videotape titled "Everything You Always Wanted To Know About Legalese . . . But Were Afraid to Ask." This tape has been recommended by the Michigan Judges Association and 15 other legal organizations. The script follows a humorous "Saturday Nite Live" format which mocks legalese. Q: Who will claim to favor plain English but say that they cannot recommend the videotape because it makes fun of lawyers? Hint: Their initials, spelled backwards, are LL.

5. Plain and accurate style in lawsuit papers

Irwin Alterman, a former chairperson of the Plain English Committee, has written an excellent book entitled "Plain and Accurate Style in Lawsuit Papers." This book was distributed to every member of the State Bar, and is being printed in hardcover by the American Law Institute. One of the book's many recommendations is to abandon the ancient introduction to every pleading ("Now comes the plaintiff"). One suggested alternative is, "Plaintiff states:". Q: Who continues to use the phrase "Now comes the Plaintiff . . ." Hint: Vana White could call them L. _____ L. _____

6. Proof of Mailing

Motions and discovery papers include a proof of mailing filled out by a legal secretary to prove that she mailed a copy of the papers to the opposing attorneys. The State Court Administrative Office has developed a plain English Proof of Mailing form that simply states "On the date below I mailed a copy of _____ to _____." The secretary who uses this form then signs a certification. Q: Who continues to type long involved Proofs of Service which contain a venue, SS, the phrase "deposited in a U.S. mail receptacle with postage prepaid," etc., and which require notarization by a second person?

7. Affidavits

Affidavits contain more unnecessary legalese per square inch than any other legal document. The State Court Administrative Office has developed a plain English affidavit that simply states "Subscribed and sworn to before me on _____, _____ County, Michigan. My commission expires _____ Notary Public. Q: Who continues to type long involved affidavits with SS and "being first duly sworn," and "further deponent saith not," etc. Hint: If they would ever bring their heads out of the sand they would be in a perfect position to read the following — SREVOI SESAIV.

8. Orders

The State Court Administrative Office has developed a plain English court order that begins IT IS ORDERED. Q: Who prefaces their orders with the useless phrase, "At a session of said court held in the courthouse. . . ." etc., and then state "IT IS HEREBY ADJUDGED, ORDERED AND DECREED?" Hint: In a highly sophisticated super secret code developed with money skimmed off the top, middle and bottom of Iran-Contra arms deals, they are referred to as eagaleslay overslay.

9. Motion Package

The State Court Administrative Office has developed a plain English package of motion forms. It consists of a Request for Hearing, a combined

Notice of Hearing and Motion and a Proof of Mailing. Q: Who continues to use Praecipes, a two-page Notice of Hearings, multi-page motions and unnecessarily complicated proofs of service. Hint: See answers to questions 1-8.

10. Divorce Package

The Family Law Section and the State Court Administrative Office have developed a complete package of divorce forms, consisting of a complaint, motions, orders and judgment. They are all written in plain English on 8½ x 11 inch paper. Q: Who continues to use unnecessarily long and complex divorce pleadings and motions — all written on 8½ x 14 inch paper. Hint:

If by now you need a hint to answer the question, then you're even slower to catch on than a legalese lover.

So there it is. Ten questions to expose the lovers of legalese, the gods and goddesses of gobbledygook, the stuffed shirts and blouses of the bar, the caretakers of cant and the you-know-what of jargon. ■

"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.



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