

In Disgust of Legalese

(A reply to Edmund Z. Righter's article "In Defense of Legalese")

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Dear Mr. Righter:

In the beginning was the word and the word was with God and the word was God. But (ever since Adam bit the apple) the bed, the barstool and the campaign contribution have all become more powerful than the word. This is true regardless of whether the word is the written word, the spoken word, the word of God or the word of the law. It is especially true when the word is that part of the traditional language of the law known as legalese. For legalese has no power at all except to confuse, to irritate and to disgust.

I congratulate you for standing out from the ranks of the silent minority and speaking your mind. However, your article reminds me of a walking eagle — bold and arrogant, but so full of it that it can't fly. Your reasons for using legal-size paper, obsolete formalisms, Old English words and redundant phrases speak for themselves. As the saying goes, *Res Ipsa Loquitur*. If you can't see that your reasons are false and illogical, then no one, probably, will ever be able to convince you.

Finally, you seem very disturbed by what you call my indecisive definition of legalese. I remind you that the great German bacteriologist, Paul Ehrlich, experimented with 606 different formulas before he finally found a cure for syphilis. Surely you do not begrudge me a mere two attempts to find a cure for a similarly pervasive and pernicious disease.

The Two Sides

I realize that there are two sides to the question of plain English versus legalese. I also realize that some of the lawyers who hold your viewpoint, Mr. Righter, are members in good standing of the bar. And since I do not want to offend anyone, I will simply refer to the two sides as the forces of good versus the forces of evil.

The forces of evil, otherwise known as lovers of legalese, are led by no one. They are a dwindling but still



powerful minority of lawyers who stubbornly cling to the past. They have no valid reason for using legalese. The only reason they use it is that they equate legalese with prestige.

They cannot be satisfied with simply writing a document in plain English that is both precise in meaning and clearly expressed. Instead they must satisfy some inner desire for perceived prestige by using 8½ x 13-inch paper, expressions such as "Know All Men by These Presents," words such as "hearby," and redundant phrases such as "each and every."

The Test

The forces of evil are difficult to identify. All 24,000 members of the State Bar of Michigan will say that they favor clear writing. And if pressed, each will say that it is very important for students to take a legal writing course in law school. But now comes the catch: Even though legal writing courses in law school teach plain English, some of the 24,000 members of the State Bar will not lift a finger to use or promote plain Eng-

lish in their legal practice. That's the test: Not what they say, but what they do. Forget the dicta; it's the holding that's important.

And the test for lovers of legalese is what are they doing to use or promote plain English in their practice of law. For some, the answer is always nothing. The line is always the same: "Don't get me wrong, I'm in favor of plain English but. . ." And after the "but . . ." come all kinds of excuses and rationales for stonewalling. — "I'm going on vacation next week," or "This is my busiest time of the year," etc.

Actually you don't even have to go that far to recognize a lover of legalese. All you need do is observe what size of paper they use. Whether or not they're going on vacation next week, regardless of whether or not they're willing to do anything positive to help the plain English movement, it would take no effort to tell the secretary to use 8½ x 11 paper for their pleadings and other legal papers. The size of paper they use gives them away. Show me a lawyer who uses 8½ x 13-inch paper

and I'll show you a lover of legalese, a lover of prestige, a silent member of the forces of evil, for behind the prestigious 8½ x 13-inch paper comes all the rest of legalese — the obsolete formalisms, the old English words, the redundant phrases.

The Alternatives

If these lovers of legalese would only stop and think, they would realize that they will have to change voluntarily or they will be forced to change. Let's look at the situation.

The general public has always wanted legal documents written in plain English. When lawyers didn't provide them, state legislators began passing plain English bills to require that legal documents be written in plain English. Eight states have now adopted such laws, and more will undoubtedly follow.

The best examples of the effectiveness of these plain English bills are insurance policies. Most if not all insurance policies are now written in plain English. This proves that legal documents can be written in plain English. Some insurance companies did this voluntarily, but most did it because they were made to do it by state plain English laws.

Three key factors are important in the insurance examples:

- 1) Most insurance companies didn't change until they were forced to by plain English laws.
- 2) Plain English laws were the only reason that these insurance companies would have changed.
- 3) The laws accomplished what they were supposed to do.

If lawyers don't write legal documents in plain English voluntarily, then legislation will eventually make them do it. Far better to be ahead of the game and voluntarily adopt the plain English the public increasingly demands before you are made to do it by legislation.

This is known as good PR. Public opinion polls usually rank lawyers

next to used car dealers and undertakers as the three professions in which the public has the least trust.

Why are lawyer jokes so popular? (Example: What's the difference between a lawyer and a rat? Answer: You can learn to love a rat.)

It's not enough for lawyers simply to want respect. They must realize that they can't have both legalese and public respect at the same time. The public will not respect lawyers until lawyers eliminate legalese. Voluntary use of plain English will help to increase public respect for lawyers.

The Present Status

To illustrate the situation let's look at the present status in Michigan of the basic requirement of plain English: Standard 8½ x 11 paper.

A. All lawsuit papers filed in federal court are now written on 8½ x 11-inch paper. However, this was accomplished only because the federal courts adopted a rule requiring its use.

B. In state courts the size of paper is optional. You can file 8½ x 11, 13 or 14. About half the lawyers use 8½ x 11, but half are still using one or the other "legal" size. You would think that these lawyers would get the idea and start using 8½ x 11. But no, they're either too dumb or too stubborn, or a combination of both. Even though the State Court Administrative Office offers many easy-to-use lawsuit forms, all on 8½ x 11 paper, some lawyers refuse to use either the forms or 8½ x 11 paper. Apparently the only way to get them to use 8½ x 11 is by mandatory state court rule, patterned after the federal rule.

C. The State Court Administrative Office has done an excellent job in developing a large number of plain English lawsuit forms — all on 8½ x 11-inch paper. A typical example is the Proof of Mailing. But some lawyers are not aware of this form, or stubbornly refuse to use it. Instead they still use their 8½ x 14-inch Proof of Service form, filled with legal gobbledegook such as, "placed in a U.S. mail receptacle with postage prepaid," etc. Furthermore, they end the Proof with the Notary jurat which is now unnecessary on a proof of mailing.

D. The Family Law Committee has developed a complete set of divorce lawsuit forms, all on 8½ x 11 paper

and approved by the State Court Administrative Office for use in Michigan courts. These forms include complaint, motions, orders and judgment. The forms are optional, not mandatory. Since a third of all lawsuits filed in Michigan circuit courts are divorce actions, lawyers are urged to use these forms, to increase the document handling efficiency of the courts. But their use is optimal. Will lawyers do it? Who knows? We'll just have to wait and see.

Conclusion

Well, as you can see, Mr. Righter we are about as far apart on the subject as two lawyers can be. However, if we keep writing to each other long enough, we may be able to reach some common understanding about legal writing. It's almost as if I invented you to argue with. (Which I did.)

I realize that you simply love legalese. I hate it. It disgusts me. It gives me the same feeling that I get from Jane Fonda's aerobic exercise known as Rover's Revenge. But at least Rover's Revenge is good for me. ■



T. Sheldon Edgerton demonstrates the Jane Fonda aerobic exercise known as Rover's Revenge.

"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.