

SOUNDING LIKE A LAWYER

BY MARTHA FAULK

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“But Martha, if I use these words you suggest, will I sound like a lawyer?” This question, asked recently by a first-year student attending one of my Legal Writing seminars for practitioners, is not as naïve as it may appear. Every law school graduate takes pride in acquiring skill in legal analysis—*thinking* like a lawyer—as well as skill in legal writing—*sounding* like a lawyer. Lawyers themselves, wary of abandoning entrenched writing habits, sometimes question the advice to avoid legal jargon, and to use short words, plain English, and common terminology.

A Profession of Words

Students of the law come to respect the power of legal language and their obligation to write coherently. As David Mellinkoff, an astute observer of legal language, notes, “The law is truly a profession of words.”¹ In addition to acquiring legal concepts, every student of the law also acquires a legal vocabulary. Much of this vocabulary has functional justification. Terms of art, for example, identify in a shorthand way a more complex idea (*proximate cause*, *hearsay*, *res ipsa loquitur*). Words of identification (*plaintiff*, *conformed copy*, *appellee*) also have conventional meaning within the profession. Indeed, all lawyers must have at their disposal a comprehensive lexicon of functional and descriptive words such as these examples. Why, then, is this legal lexicon often the subject of criticism and even derision?

Legal Jargon

One answer may be that legal language is readily identifiable. Although terms of art may not be accessible to the lay person, legal jargon is certainly recognizable. When playwrights and

parodists choose to amuse us, they use language that taints the character or the passage with words that only lawyers use. Consider this example:

The party of the first part hereinafter known as Jack, and the party of the second part hereinafter known as Jill, ascended or caused to be ascended an elevation of undetermined height and degree of slope, hereinafter referred to as “hill.”²

It’s the silly, overstuffed sound of the archaic and repetitious “hereinafter” that makes us smile. The cautiously defined “hill” is also recognizable as a typical (and sometimes essential) lawyerly technique for specificity.

Jefferson’s Lament

Thomas Jefferson, considered to be one of our best writers, recognized the problems of legal language early in our history. When English common law came to this country with the English colonists, the ponderous writing style of English lawyers came with it. In 1817, Jefferson complained about the “taste of my brother lawyers,” who, he said, had an affinity for “making every other word a ‘said’ or ‘aforesaid’ and saying everything over two or three times so as that nobody but we of the craft can untwist the diction.”³

Modern Complaints

Recognizing that problems with legal language persist, modern commentators, including law professors, judges, and English teachers, have condemned the way contemporary lawyers write and offered ways to correct bad writing. Richard Wydick, a professor of law, says

We lawyers cannot write plain English. We use eight words to say what could be said in two. We use arcane phrases to express commonplace ideas. Seeking to be precise, we become redundant. Seeking to be cautious, we become verbose.⁴

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¹ Quoted in David Crystal, *The Cambridge Encyclopedia of the English Language* 375 (1995).

² From D. Sandburg’s *The Legal Guide to Mother Goose* (1978), quoted in Crystal, *supra* at 375.

³ Quoted in Tom Goldstein and Jethro K. Lieberman, *The Lawyer’s Guide to Writing Well* 7 (1989).

⁴ Richard Wydick, *Plain English for Lawyers* 3 (1985).

“Because of the large volume of legal documents requiring scrutiny, understanding, and decision, judges desire readability most of all.”

Wydick's *Plain English for Lawyers* contains excellent advice for overcoming arcane language, redundancies, and verbosity. This book should be required reading for law students and a companion piece to any handbook for citation form.

Judges, those intended readers for much of our writing product, also plead for clear, concise, and appropriate diction. The American Bar Association's excellent publication *Judicial Opinion Writing Manual* offers this advice in its “Writing Style” section:

Use the simplest, shortest, most precise words possible. . . . Unduly formal or abstract words and expressions make your writing difficult to follow. Eschew words such as ‘eschew.’ Avoid Latinisms and other foreign terms that are not necessary terms of art.⁵

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English teachers bring a unique approach to their criticism of legal writing. Dr. Terri LeClercq, who has taught writing skills at the University of Texas School of Law for many years, believes that “[i]t is a compliment to be told that you think like a lawyer, but an insult to be told that you write like one.”⁶

Professional Language

Despite this good advice from many sources, law students and practicing lawyers alike are concerned about using language that sounds lawyer-like, or, from their perspective, professional. Two prominent journalists explain that being a professional requires effort and skill. Tom Goldstein and Jethro Lieberman suggest that for lawyers, “professionalism means writing the best possible document within the deadline, just as it means doing sufficient research.”⁷

Court Documents

For those legal writers still not persuaded by the advice of law professors, judges, English teachers, and journalists, a good source for professional advice is Irwin Alterman's *Plain and Accurate Style in Court Papers*. This American Law Institute–American Bar Association publication provides examples of language suitable for the most formal of legal writing situations: complaints, answers, motions, discovery matters, and briefs. For example, Alterman suggests that “it is unnecessary to add the phrase ‘defendant in the above entitled cause’ to any court paper. Simply name the party or say ‘defendant(s)’ or ‘defendants(s)_____.’”⁸

Archaic Language

As an example of inappropriate legal language, law students and even some practicing lawyers may be surprised to find the following suggested list of “Words to Avoid” in *Plain and Accurate Style in Court Papers*. The book lists several categories of unacceptable legalisms; the following words are archaic forms of modern and shorter prepositions. Many legal writers routinely use these words and others like them without giving much thought to their usefulness:⁹

Hereafter
Herein
Hereinafter
Hereinbefore
Hereby
Hereof
Heretofore
Hereunto
Herewith

This “here” list is merely representative. Most legal writing books, including those cited here, contain copious lists of words to weed from legal documents.

⁵ *Judicial Opinion Writing Manual* 39 (1991).

⁶ Terri LeClercq, *Guide to Legal Writing Style* xv (1995).

⁷ *The Lawyer's Guide to Writing Well*, 114.

⁸ Irwin Alterman, *Plain and Accurate Style in Court Papers* 77 (1987).

⁹ *Id.* at 168.

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Wydick and others, including Jefferson, have selected words such as “aforesaid” and “said” as examples of legal jargon, words that have no larger frame of reference and serve merely to give a legal aroma to lawyers’ writings. These words may unduly influence law students into thinking their documents have a professional sound. But good writing, legal or otherwise, will always deliver the meaning to the reader in a clear and concise manner. To do otherwise is to confirm the worst suspicions about the profession and to further burden the courts and shortchange our clients.

Best Advice

The best advice I can give students who ask “Will I sound like a lawyer?” is this: Sounding like a lawyer means using appropriate and precise language. You will then feel confident about your knowledge, and your readers will be appreciative.

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