

Fluent legalese

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The art or science of practicing law often comes down to two things: substantive knowledge and the ability to communicate. Put another way, it comes down to whether you know what you're talking about and whether you can explain it to someone else, be it a judge, a jury, a client, or a four-year old.

But I continue to find it amazing that so much of the written product of lawyers seems almost intentionally designed to obfuscate rather than illuminate. An ordinary human being would have just written "legal writing confuses more than it explains." But give that to a lawyer, and some wicked translation occurs. I can't just say "intentionally" so I add "almost" for a little wiggle room. "Obfuscate" and "illuminate" have a nice cadence, and I like the way it sounds, so I'm going to stick with it even if my intended audience may not follow it. "Seems" give me a little room to blame someone else for causing my perceptions. Voila! Translation completed from English to fluent legalese!

Sometimes I wonder whether lawyers themselves would even read the briefs that they write. I read the following introduction to a brief filed in federal late last week (slightly edited to protect the guilty): "To the Honorable Judge of Said Court: Now comes the ABC Company, by and through the undersigned counsel, and files this, its motion to seek some kind of relief. In support of its motion, the movant states as follows."

Talk about an unconscionable abuse of language. There oughtta be a law.

- "To the Honorable Judge . . ." Awesome beginning. Very strong. Directs the pleading to the right person, because otherwise – absent the case caption, electronic filing location, title of the pleading, first paragraph, and signature block – there's no way that this particular judge will know that the filing is meant for him or her to read. For the love of all that is holy, omit this!
- "... of Said Court." And a darn good thing you used the word "said" before court, too. Otherwise the court in Outer Mongolia might miss it, and the court system in Outer Mongolia maybe curious about jurisdiction and venue. It's theoretically possible, I guess, that the ECF system functions like the airlines' luggage handling system: i.e., even with 24 tags, the bag still ends up in Tokyo off a direct flight from Dallas to Houston. People, please. Omit this, too.
- "The party, by and through its counsel. . ." Total waste of words. The court doesn't care if it's filed over, under, or just to the left of its counsel. The filing comes from a party, end

of story. (Side note from a frustrated football fan: If it were filed by Tony Romo on Sunday, this might read “in the vicinity of, but several feet over, its counsel.”) Drop this as well.

- “. . . files this motion, its motion to do whatever.” Are we assuming that the court didn’t read the title of the document? Or maybe it’s just that good of a title. Yeah, well, no. Omit, omit, omit! (It’s almost as if you can imagine Charles Dickens submitting manuscripts to his editor and to his lawyer. Editor: “‘It was the best of times, it was the worst of times,’ simply lovely, Let’s run with that.” Lawyer: “Good Lord, no. Write it like this, ‘Charles Dickens, by and through his publisher, presents this novel, his novel entitled A Tale of Two Cities.’”)
- “In support thereof, the parties state the following.” Sigh of relief there. If that statement hadn’t been included, then the court may have just stopped and disregarded the remaining 30 pages of the (inaccurately-named) “brief.” I mean, of course you have to state the following. All you’ve done so far is identify the court (twice!), pay homage to the judge, tell the court who you are (several times), and name the thing you’re filing (twice). (Note a typical variation, “... would show unto the Court as follows.” Mega points for the use of the word “unto.” May I come to your office to view the stone tablets upon which you carve the law?) Delete, I implore you!

Here’s a fun fact: just ask for whatever it is that you want in the introduction with a nice, tidy summary of the argument. This isn’t a Choose Your Own Adventure book (remember that from the ’80s, eh?! And legwarmers. Yikes.). Okay, moving on to a few other writing quirks.

- Using the word “hereinafter.” Nice to know that your are thinking about the afterlife, but I’m pretty sure that this pleading isn’t going to get you there. Stop it.
- Using the word “disingenuous.” I suspect that more often than not, lawyers who use this word regularly have no idea what it means – or are people that you just don’t want to be litigating against. Look it up. [Google](#) defines it as “not candid or sincere, typically by pretending that one knows less about something than one really does.” Or examine the listed synonyms, which are “insincere, dishonest, untruthful, false, deceitful, duplicitous, lying, mendacious; hypocritical.” Note that nothing in this definition conveys the ideas that the opposing party may just have a different interpretation of the law or be emphasizing different facts. It may just be me, but specious accusations about opposing counsel’s ethics don’t really open the door to trust and candid conversation. Knock it off.

And it’s not just written work product, either. Lawyers also confound common sense in oral argument as well. For example:

- “I submit that.” Outstanding. I wish you had submitted before so we could have avoided the time and expense of this particular argument.
- “I respectfully submit that.” No, you don’t. Because it’s more likely than not that you’re going to follow that by saying something disrespectful to the other side.
- “My understanding is.” Loosely translated as “I’m going to tell the court something that my client told me but that I don’t really believe.” Just say it, man! Own it!

There are a boatload of examples of legal writing gone wrong out there (and leave fun examples in the comments, please!). When you embark on drafting, keep it simple. Get rid of words that you don't need and be as straightforward as you can.

Because if you don't, and there is a hereinafter, I hope you spend it reviewing contracts.