



FIVE WAYS TO SOUND MORE HUMAN

By Ian Pike

Most lawyers disavow legalese yet can't stop using phrases like "notwithstanding the foregoing" because, well, that's how lawyers sound. But clients don't pay extra for Latin, and nobody ever lost a trial by failing to dazzle the jury with legal jargon. Much as we cherish the following bits of legalese because they make us sound like Oliver Wendell Holmes, ditching the following lawyerisms in favor of plain-English alternatives will go a long way towards making the practice of law sound like something done by actual humans.

The Above-Entitled Case

This construction is both cumbersome and vague. There is absolutely nothing wrong with simply using a concrete reference to the matter at hand. If you're working on the Hydroxycut MDL in the Southern District of California, even if you have the case name written on the first page of a letter, then "Counsel, this concerns the Hydroxycut MDL" beats "Counsel, I am writing you in regards to the above-entitled case" both in terms of clarity and style.

Herein and Hereinafter

Normal people don't use these little gems. Lawyers use them all the time. They're usually pointless, and often part of a phrase that is itself wholly unnecessary. Case in point: "As explained herein..." is almost always redundant because the primary purpose of a brief, letter, or other document where "as explained herein" gets used is to explain something substantive. Similarly, you can write "The Teenage Mutant Ninja Turtles ('The Turtles') without a "hereinafter" in the parenthetical, and exactly zero people will be confused by what you mean.

Wherefore and Whereas

These pop up in stipulations, contracts, and other documents where parties want to recite or show they agree on one or more basic facts. But imagine reading the average stipulation out loud in court. It's bad enough to scream "WHEREFORE" at the top of your lungs one time, but parties tend to repeat it in ALL CAPS as a kind of incantation at the beginning of every fact to which the parties are prepared to stipulate. Instead, try, "The parties stipulate

to the following facts: [bulleted list of facts]." Not a single, blood-curdling WHEREFORE is needed or wanted.

The Below

Lawyers love writing "see the below," often without any more context, when we forward an email, but naked references to "the below" sound like you're talking about some kind of netherworld. In fairness, reading too many forwarded emails can feel like being banished to the netherworld. But, as lawyers, the importance of speaking and writing with particularity is paramount, and if language can be more precise, then it probably *should* be more precise. Thus, rather than "see the below," consider "see Bob's email from last Tuesday" or something that identifies with particularity exactly what information is being called to the reader's attention.

O-S-V Sentences, aka "The Yoda"

This one comes in all shapes and sizes, but generally follows the same basic format of a rule and then a statement in Object-Subject-Verb word order of some party's inability to satisfy the rule, e.g., "Plaintiff must prove the harassment was severe or persuasive. This she cannot do." No human being would ever construct a sentence like that. Unless you're a cute green alien with legendary wisdom and great strength in the Force, don't use O-S-V word order in legal writing or anywhere. "Plaintiff cannot show the harassment was severe or persuasive" is perfectly adequate, and it doesn't make your brief look like it was filed a long time ago in a galaxy far, far away.

Bonus: "That"

Trust me here. After you finish your next brief, memo, or letter, go through it and remove every "that" from phrases like "the court ruled **that** the plaintiff" or "the client reports **that** he." You can usually free up room for another important sentence, and after a week of purging superfluous "thats" from your writing, you'll wonder how you ever lived your life differently.



Ian Pike is an attorney and an employee of the federal judiciary. He reads a large number of briefs, many of which could be improved.