Be Plain

by K.K. DuVivier

“Be plain, good son, and homely in thy drift.”
William Shakespeare,
Romeo and Juliet, Act I, Scene 2

You are pondering which word to use in a brief. Which
should you use—“supra,” “aforementioned” or “above”? Be
cautious of Latin and archaic English words. If you use
them, your argument, as well as your reputation, may be
placed at risk.

Historically, lawyers strived to intimidate and impress
clients with multisyllabic words. If the writing was esoteric
even, clients would feel that the lawyers had earned their
fees. In some instances, the lawyers’ prestige rose in direct
proportion to the number of Latin words per inch of prose.

Today, however, studies show just the opposite is true. Al-
though some lawyers believe that judges prefer and expect
to see traditional legalese, recent empirical evidence dem-
strates that judges prefer to read writing that is simple and
clear.

One of the first studies polled California appellate judges
and research attorneys in 1985. Four subsequent studies—
in Michigan, Florida, Louisiana and Texas—surveyed judges
by sending them excerpts from legal documents. Each pas-
sage was presented in two forms: one from actual documents
filed in court that contained archaic words, obscure formal-
isms, wordy phrases, the passive voice and long sentences;
and the other in simplified, plain English.

Over 80 percent of the judges who responded favored the
simpler versions, while a minority favored the legalese. Some
judges even scoffed at the need for the survey. One stated, “I really can’t believe any judge or lawyer would
admit to suggesting they prefer these [legalese] alternatives.”

Nevertheless, judges and lawyers who say they prefer
plain English may write or even talk in legalese. From the
days of law school, legalese becomes part of a lawyer’s every-
day vocabulary. Until challenged by a non-lawyer, many
lawyers will not even notice that the term used is not com-
monly recognized.

Lawyers who continue to write in traditional legalese
place their cases at risk. Not only have studies shown that a
statistically significant majority of judges prefer plain Eng-
lish, but they also show that the legalese versions are consid-
ered substantively weaker and less persuasive.

Finally, lawyers who use legalese also may find their per-
sonal credentials questioned. Responses to the studies showed
that judges considered writers who wrote in legalese to be less
qualified, less credible and from less prestigious firms
than those who wrote in plain English.

Thus, the moral is this: “When your pen is poised to write
a lawyerism, stop to see if your meaning can be expressed as
well or better in a word or two of ordinary English.”

NOTES

Study of Persuasion and Credibility in Appellate Brief Writing,” 20

ces to Lawyers and Judges: A Florida Survey,” 64 Fla. B.J. 32
B.J. 418 (1990); Dubose, The Court Has Ruled, The Second Draft,

3. Dubose, supra, note 2 at 3.


5. Id.

6. Wydick, Plain English for Lawyers (Durham, N.C.: Carolina
Academy Press, 1985) at 55.

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