



By Kevin M. Busch



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## THE LANGUAGE OF THE LAW

If one were to ask a group of non-lawyers their impressions of lawyers, a common theme likely would be that lawyers use too many words and that many of those words are strange. This stereotype is not true for all lawyers all of the time, but it has an element of truth. This leaves us with the question: *Why do lawyers talk so funny?*

The answer in some cases is, unfortunately, that some lawyers use “legalese” (lots of words and strange words) in a misguided attempt to impress the audience. The fact is, the length of a communication and uncommon words seldom impress. If the audience consists of other lawyers and judges, the audience will be familiar with the language and will not be impressed by wordiness. This is especially true if, as often happens, the legalese is misused, misspelled, or mispronounced. If the audience consists of non-lawyers, it is more likely that the audience will be frustrated as it struggles to understand what is being presented than that it will be impressed with big words and long-winded sentences that are difficult to understand. Lawyers sometimes forget that language that is short, precise, and easy to read will impress **any** audience.

Lawyers sometimes resort to legalese because it seems easier, and perhaps less expensive, to rely on some standard legalese than to take the time to determine precisely what needs to be said and then present only what is necessary. The challenge of communicating concisely is captured in a quote that has been attributed to any number of good writers: *“I am sorry that this letter is so long, I did not have time to write a short one.”* The lawyer who communicates well will take the time to write “short letters” when possible.

Many lawyers have ingrained habits that lead to longer documents even in the absence of true complexity. For instance, many lawyers will insist on presenting a number with both words and figures (for example, One Thousand Two Hundred Fifty-Five and Ninety-Five Hundredths (1,255.95)), when either the words or the figures standing alone would present the number just fine.

Lawyers may try to convey more precision than is possible or necessary by using multiple words that have identical or nearly identical meanings. It is unlikely that the phrase “true and correct copy” used by many lawyers out of habit conveys any more useful meaning than “true copy” or “correct copy” or simply “copy” standing by itself. There is a special category of these duplicated phrases that has an interesting history that makes the phrases particularly resistant to change. When our legal language was developing in England a thousand years ago, lawyers were communicating to a mixed population that included native French speakers and native English speakers. In an early example of culturally-inclusive language, lawyers used phrases such as “legal and valid,” “null and void,” and “cease and desist,” containing the same word in both French and English. Now, even though the two words have identical meanings in modern English, we seldom see one without the other.

It is tempting to think that translating a Latin or French phrase to English before using it will make the phrase easier to understand, but that is not always the case. Sometimes, the foreign phrase does not translate well and conveys its meaning better in the source language than it can if translated roughly into English. Others, such as “*ex post facto*” (which refers to laws that unfairly make an act a crime after the act has already occurred), are included in the U.S. and state Constitutions in their original Latin or French format and cannot be changed. And, some foreign legal phrases are so elegant that it would be a shame not to use them at least once in a while. A good example is “*nunc pro tunc*,” which we could translate into the more mundane “retroactively,” but the English version of the phrase would rank a distant second to its Latin cousin in a poetry contest.

### **A Short Defense of Legalese**

Even the most effective lawyers will use legalese. There must be good reasons for its use. Let’s explore two of those good reasons.

### **The Law is Complex**

Lawyers often deal with complex issues that cannot easily be addressed in a few words. In Minnesota

alone, the statutes and rules that might apply to an issue fill nearly 30,000 pages. Federal and local law increase the volume exponentially. There might be dozens of prior court cases that have to be considered and worked into a document or a court pleading. The lawyer must try to anticipate all of the arguments that a judge or another lawyer might apply to a document or pleading, even years later. Complex issues sometimes require complex and lengthy documents.

Courts have addressed the complexity of court pleadings by limiting the length of certain documents submitted in court cases. As originally developed, these length limits specified a maximum number of pages. One local judge famously stated: *"I will read the first 35 pages, or the last 35 pages, or every other page until I reach 35, but I will not read any more."* Lawyers frustrated with the page limits became very clever with font size and spacing to sneak more words into the same number of pages. Now, many of the length limits imposed by courts are based on a strict word count to make sure that pleadings do not exceed the established maximum.

Good reason also exists for the complex language found in many contracts. Contracts must convey difficult concepts in a manner that leaves little room for misinterpretation. While most lawyers have dropped "the party of the first part" that plagued earlier legal writing, it remains important to avoid shortcuts that create uncertainty. Lengthy sentences often are appropriate in contract drafting so that an entire concept can be expressed without additional sentences for exceptions, conditions, or other important concepts.

### **Legalese Can Be Efficient**

When a lawyer uses a standard legal phrase, which often will have a Latin or French source, the lawyer may do so to convey a complex

concept with only a few words. The short phrase may bring with it whole paragraphs, or even whole pages, of meaning stretching back hundreds of years. For instance, the phrase *"pro hac vice"* would translate from Latin approximately as "for this turn." The translation does not tell us much, but we can effectively use the phrase to describe the circumstances in which a lawyer licensed in one state may be allowed to appear in a court in another state in which the lawyer is not licensed. The phrase can tell us not only that the lawyer may appear in a court in the other state, but can also tell us a bit about the limitations on that appearance and the procedures to be used during that appearance. A lot of information has been conveyed with only a few words.

Unfortunately, the efficiency that we like to find in legal phrases sometime is illusory. Some of the most common legal phrases are so riddled with exceptions and exclusions that the phrases convey nearly no useful meaning. For instance, a lawyer might attempt to prove a point quickly by invoking the Latin phrase *"res ipsa loquitur,"* which can be translated as "the thing speaks for itself." There is nearly nothing important in a legal dispute that truly speaks for itself. Notwithstanding a lawyer's understandable desire to prove a point with a quick bit of legalese, the truth is not so easy. The proof of any important legal issue will require more than a simple phrase.

### **Conclusion**

Yes, lawyers do talk funny, but in the hands of the skilled practitioner, the language of the law informs and convinces without undue length or complexity.