

Unlearning Bad Habits ¹

by Raymond P. Ward ²

Richard Harris (the author, not the actor), in *Hints on Advocacy* (17th ed. 1937), said that advocacy can never be mastered; the most we can do is learn a little and unlearn a great deal. Legal writing is similar; becoming good at it is often more a matter of unlearning than learning.

Lawyers, like everyone else, learn their language mainly by imitation. The problem is that lawyers as a group are bad writers. Young lawyers imitate the language of more experienced lawyers, thinking that they are learning how to write professionally, when they are really just picking up bad habits.

The following are five such bad habits. As young lawyers, we all learned — by rote rather than by thought — to use phrases like these. And many of us probably still use them, purely out of habit. We can improve our writing by unlearning phrases like the five that follow:

I am in receipt of

No one would write Grandma to tell her, “I am in receipt of the fruitcake you sent for Christmas. Yet lawyers often write nonsense like, “I am in receipt of your letter.”

Instead of using this silly phrase, try expressing the thought the way a person using normal American English would express it: “I have received your letter.” If the date the letter arrived is important, say, “Your letter arrived in today’s mail.” Or, if you were glad to get the letter, acknowledge receipt with a polite expression of gratitude. “Thank you for your letter” work just as well as “Thank you for the fruitcake.”

Please be advised that

This has to be the most useless phrase that lawyers commonly use. Unless you are striving for comic effect, there is not a single sentence containing this phrase that you can’t improve by deleting it. If you want someone to be aware of something, just say it. Any message you are trying to get across will have more impact without the excess verbiage. Consider these examples:

- “Your hair is on fire.”

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- “Please be advised that your hair is on fire.”

There are other phrases of the same ilk that lawyers commonly use. Legal-writing authority Richard Wydick calls them “throat-clearing.” Examples include: “It is important to note that . . .,” “It may be recalled that . . .,” and “It is interesting to point out that . . .” All of these phrases are just as useless as “Please be advised that.”

The cure for all these throat-clearing phrases is simple: Just delete them.

Enclosed please find

Does anyone know what the verb *find* is supposed to mean in this context? It certainly doesn’t connote anything that ordinary people mean when they say *find* — unless the writer has a very low opinion of the reader’s intelligence. “Hey, Jerry, have you found that enclosure yet?” “Yeah, I finally found it. It was stapled to the cover letter.”

There are many simple and sensible ways to describe an enclosure accompanying a letter. One example: “Enclosed is the executed settlement agreement.” For an even more normal construction, try putting the subject first: “The executed settlement agreement is enclosed.” If you’re fond of colloquial writing, try “Here is the executed settlement agreement.” If you’re a stickler for the active voice (and you don’t mind lying about doing something that your secretary actually did), try “I have enclosed the executed settlement agreement.” All these examples are better than “Enclosed please find”

The “said” and “same” twins

“Have you tried the roast beef? Said roast beef is excellent. Please pass same.” If you heard conversation like that at the dinner table, you would conclude that you were dining with a pompous nitwit. What impression, then, do you think we lawyers make when we write things like, “In contravention of the rights of said plaintiff, said defendant took plaintiff’s chattel and converted same to his own use”?

In contemporary American English, *said* is a verb, the past tense of *say*. Don’t use it as an adjective. Instead, use *this*, *that*, *these*, *those*, or *the*, whichever works best. And don’t use *same* as a pronoun substitute; use *it* or another real pronoun instead, or use the antecedent noun itself. “The defendant violated the plaintiff’s rights by taking the plaintiff’s chattel and converting it to his own use.”

The instant

Lawyer’s often misuse *the instant* as a pompous substitute for *this* or *the*. We’ve all seen drivel like “the instant motion” and “the instant case.” I’ve even seen “the instant accident,” and the writer did not mean an accident that happened instantaneously. I’ve had instant coffee and instant oatmeal for breakfast, but I’ve never been able to whip up an instant motion. And what is the opposite of an instant accident — an accident that take half an hour to occur?

Instead of misusing *instant* like this, replace it with *this* or *the*, and improve your writing instantly: “this motion,” “this case,” “the accident.”

Wydick says (and authorities unanimously agree) that good legal writing is nothing more than plain English. So unlearn the five phrases discussed above and anything else in your vocabulary that isn't plain English. Then you will be a more effective communicator and thus a better lawyer.