Welcome to the Real World — From Law School to Bureaucracy

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Entering law school at age 37, I naively assumed that I was no longer naive. That assumption proved quite inaccurate. The first two terms consisted solely of struggling with casebook opinions written in a style reminiscent of Chaucer but without any literary merit. It was then a relief to learn that plain English was acceptable, even required, in my writing class. Surely, I believed, everyone would see the wisdom of writing clearly, simply, plainly. Silly me.

After graduation, my position as a clerk for a Michigan Supreme Court justice furthered my belief that plain English was the acceptable form of communication in law. My employer encouraged a straightforward writing style, and the clerk of the court even put out a manual encouraging the use of plain English. So far, so good. But my next career move was not as smooth.

Working for the state attorney general was a big step backward in terms of simplified legal writing. Gone was the laptop computer with Lexis at my desk, gone was the leisurely research time, and gone was the support of colleagues who had recently graduated from law school. Far from what I had experienced at the supreme court, the atmosphere there was unfriendly to plain English, and the volume of work was heavy. Hundreds of prisoner lawsuits were filed every year: 2,184 new cases in 1993 and 2,218 in 1994. Most of them were frivolous and hence dismissed on summary disposition. The attorneys in my section filed the dismissal motions.

Prisoner litigation is confined to a few areas such as cruel and unusual punishment, medical malpractice, and denial of religious freedom or equal protection. Within these broad categories are a few subtopics such as dental care, diet, mail, showers, and exercise. So most of the litigation is repetitive, and the same arguments and cases are put forth in each dismissal motion. (This may be different

today because 28 U.S.C. § 1915(b)(1) and (g) imposes costs on litigation and requires prisoners to exhaust administrative remedies.) My first impression, therefore, was that the job would be a piece of cake: there was a database of arguments stating the relevant caselaw and postulating sample arguments. Each attorney would just call up the relevant generic arguments and insert the facts of the current case.

The problem, for me at least, was that these generic arguments were infested with legalese. I could barely read through them without becoming nauseated. Unfortunately, many government workers are great believers in the old axiom that prevents repair of unbroken procedures. (As Emerson once said, "A foolish consistency is the hobgoblin of bureaucratic minds," or something like that.) Even the naif in me realized that getting these arguments changed from within the bureaucracy would require some finesse.

When I first suggested redrafting the arguments in plain English, my supervisor was not impressed with the need. My caseload consisted of 180 active cases, and my supervisor was not inclined to devote any resources to improving legal language that she considered quite sufficient. At the same time, my secretary (who had worked for many attorneys before me and continues on long after me) was not inclined to make the same corrections over and over again on every brief we filed. For example, every motion form began with the superfluous *Now comes the defendant* . . . . I asked my secretary to call up the form and delete this odious phrase before filling in the rest of the data. This step was necessary every time because the form came from a common file, and the other attorneys liked it the way it was. Each secretary had only a terminal, not a PC, and each had only limited disk space. Needless to say, my secretary did not appreciate this extra step.

Another form I railed against was something the office had dubbed "Motion to File Brief Instanter." As we know, sometimes attorneys avoid plain English in a deliberate attempt to obfuscate. *Instanter* is Latin for "now" or "immediately." With the volume of cases we each handled, we often needed to ask court permission to file a brief now (i.e., instanter, meaning "late"). This particular

motion offended me, and I refused to file it. My secretary made up a "Motion to File a Late Brief" just for me and kept it on a floppy disk. With this one exception, I signed dozens of briefs written in a style completely repugnant to me just to keep peace with my secretary and my supervisor.

My salvation came from an unexpected source — a federal judge wielding his sanction authority. It seems that many of our arguments were not only convoluted and legalistic, but also outdated and, in rare cases, inaccurate. When one of my colleagues filed a brief citing overturned caselaw, the judge fined him and berated the attorney general's office for its briefs, which were "obviously culled from the office brief bank." Once again I approached my supervisor, but now I had a more palatable proposal: I actually volunteered to update the caselaw in all the arguments if she would permit me to rewrite the arguments in plain English. Naivete strikes again.

For the next four months, my secretary and I were nearly smothered by our task. The database contained 211 arguments, each with an average length of three to four pages. Even the first step of producing a hard copy of each argument was a headache; the piles of paper in my office were unbelievable. And with an office library done in minimalist style, I made several trips to the law-school library to update the caselaw. What's more, because office protocol limited the amount of time I could be away from my office, much of my research was performed at night and on weekends. Clutching my belief that future legal professionals should be spared legalese, I naively but boldly began my odyssey.

My goal was to update the caselaw, correct the citation form, and rewrite each argument in plain English. But because my supervisor was concerned only with the caselaw, the other changes were met with skepticism and complaint. Some of my colleagues were even disappointed that the arguments no longer contained the language they had spent years learning; one even told me that he wanted to write "like a lawyer." Fortunately, none of them felt strongly enough to actually go into the computer files and undo my changes. The good news was, with a computer-based system, I

didn't need to change individual writing styles; a change to the database changed the basic writing style of the entire section.

The lessons from my experience are fairly obvious. Change — and linguistic change especially — is hard. It's even harder in a profession as conservative as law. At the same time, though, you can move a small mountain if you're persistent, dedicated, and willing to endure resistance.

Things have changed for the better in the five years since I retired from the attorney general's office. There's a new attorney general, the division has a more flexible computer system, and plain English has made many inroads. As for me, I currently teach research, writing, and plain English at the junior-college level. (The class was just research and writing, but I added plain English.) I like to believe that I made a difference, and my former secretary likes to believe that she has worked for her last fanatic. Both beliefs are probably naive.