

The Legaldegook Awards: 1991-1992

Plain-Language Committee, State Bar of Texas

When the Plain-Language Committee set out to persuade lawyers, judges, and lawmakers to use ordinary English whenever possible instead of that gummy language called "legaldegook," it decided to bestow awards for particularly atrocious examples.

The Legaldegook Awards draw attention to some of the horrific writing that modern lawyers perpetrate. It's all in fun, of course. The Committee doesn't want to hold anyone up to ridicule, but it does want to ridicule certain types of writing: whatever is needlessly obscure, absurdly verbose, or downright nonsensical.

Although complaints about legaldegook date back to Thomas Jefferson,¹ the attacks on poor legal writing have increased over the years. In 1989, a study by the California Bar Association revealed that the public frets more over impenetrable legal documents than over escalating legal costs.

That's worth pondering. When lawyers get bad press, they often respond by saying something like, "Notwithstanding the averments to the contrary, there is absolutely no prima facie evidence of any kind that in any way supports the allegation that" Unfortunately, too few say simply, "I'll tell you why you're wrong."

The State Bar of Texas does what it can in the worldwide effort to reform legal language. The Plain-Language Committee seeks to obliterate legalistic phrasing that is merely pompous, while preserving the truly important legal expressions known as terms of art. If we can narrow the communicative gulf between lawyer and nonlawyer, all of society will benefit.

In 1991 and 1992, the first two years of the Committee's Legaldegook Awards, we received nominations from throughout the United States and the world. The Committee decided not to

1. 1 THOMAS JEFFERSON, THE WRITINGS OF THOMAS JEFFERSON 65 (Andrew A. Lipscomb ed., 1903).

limit its awards to time or to the State of Texas, but did limit the awards to the United States.

Because the Committee wanted to focus on the writing itself and not on the perpetrators, it provided citations only where they would not subject individual lawyers to scorn. The Committee's purpose is a noble, not a mean-spirited one.

In 1992, as a new feature of the awards, the Committee decided to establish a Plain-Language Hall of Fame. The first inductees are six great lawyers who have battled against legaldegoon during the past two centuries: Charles Beardsley, Jeremy Bentham, Thomas Jefferson, Abraham Lincoln, Fred Rodell, and Timothy Walker. The law's literary heritage is not, after all, entirely shabby — so it seems fitting to honor our forerunners who championed simplicity.

—Bryan A. Garner, Chair
Plain-Language Committee

The 1991 Awards

The "What-Language-Is-This?" Award

For Legal Drafting That Least Approximates English

No savings and loan holding company, directly or indirectly, or through one or more transactions, shall . . . [a]cquire control of an uninsured institution or retain, for more than one year after other than an insured institution or holding company thereof, the date any insured institution subsidiary becomes uninsured, control of such institution.

12 C.F.R. § 584.4(b) (1989)

The Unreviewable Award

For the Worst Passage in a Law Review

Do the frequent instances today of the lawyer and director bespeak brazenness? Toward clarification and exactitude, a precise review is in order. Or rather a lack of understanding of the legal implications?

The POLI Award

For a Politician's Obfuscation of a Legal Issue

When asked to explain his position on abortion, a Dallas politician running for Congress gave this classic response (April 1991):

I believe that privacy in making reproductive choices has certainly been a pillar of civilized humanity since earliest history. In this end of the 20th Century, with the knowledge we now have of the infinitude of creation in the heaven above — and with our certain ability to proceed therein as a peaceably, so employed humanity, we would become so productively involved, driven by related questions deep within our very souls, more temporary questions as these would surely diminish to less concern.

Reported in the *Dallas Times Herald*, 4 May 1991

The Typo Graphic Award

For the Funniest Typographical Error in an Appellate Brief

In the index to this brief, the Court will find an extensive copulation of authorities on the subject.

The Not Unnegative Disaward

For the Most Negatives Confusingly Placed

A plan shall not be treated as not satisfying the requirements of this section solely because the spouse of the participant is not entitled to receive a survivor annuity (whether or not an election has been made . . .), unless the participant and his spouse have been married throughout the 1-year period ending on the date of such participant's death.

Employee Retirement Income Security Act of 1974,
Pub. L. No. 93-406, § 205(d), 88 Stat. 829, 863 (1974)

The Serpentine Sentence Award

(From a Brief to the Supreme Court of Texas)

[S]o the general rule may be safely stated to be that where there is a general plan or scheme adopted by an owner of a tract, for the development and improvement of the property by which it is divided into streets and lots, and which contemplated restriction as to the uses to which lots may be put, or the character and location of improvements thereon, to be secured by a covenant embodying the restriction to be inserted in the deeds to purchasers, and it appears from the language of the deed itself, construed in the light of the surrounding circumstances, that such covenants are intended for the benefit of all the lands, and that each benefit thereof, and such covenants are inserted in all the deeds for lots sold in pursuance of the plan, a purchaser or his assigns may enforce the covenant against any other purchaser and his assigns if he has bought with actual or constructive knowledge of the scheme and the covenant was part of the subject matter of his purchase.

The Rise-of-the-Roman-Language Award

Parens patriae cannot be *ad fundandam jurisdictionem*. The zoning question is *res inter alios acta*.

Mississippi Bluff Motel Inc. v. County of Rock Island,
420 N.E.2d 748, 751 (Ill. App. Ct. 1981)

The Woolliness Award

For purposes of paragraph (3), an organization described in paragraph (2) shall be deemed to include an organization described in section 501(c)(4), (5), or (6) which would be described in paragraph (2) if it were an organization described in section 501(c)(3).

I.R.C. § 509(a) (1988)

1991 Legaldegook Subcommittee:

Bryan A. Garner, Chair

Kevin Dubose

R.J. Grogan, Jr.

Hon. Lynn N. Hughes

The 1992 Awards

The She-Sells-Seashells Award

For Liltingly Luscious Alliteration

Shucking of Shellfish — Shellfish shall not be subjected to contamination while being held or processed. Shellstock to be shucked shall be stored . . . in such locations that contamination from standing water or splash from foot traffic does not occur Only safe and wholesome shellfish shall be shucked.

TEX. ADMIN. CODE, tit. 25,
§ 241.70 (a)(1), (a)(3) (1992–1993 Supp.)

In bestowing this award, the Legaldegook Subcommittee notes that a predecessor regulation, now repealed, showered even more esses in defining classes of reshippers:

Reshippers — Persons who transship shucked shellfish in original containers, or shellstock, from certified shellfish shippers

TEX. ADMIN. CODE, tit. 25, § 241.21 (repealed)

The Uninviting Invitation Award

For the Invitation Least Likely to Be Accepted Gleefully

Pursuant to the aforesaid, I would now sincerely request that you consider the within correspondence as a formal invitation to make an appearance so as to advise of your expertise and the various day to day procedures involving same. In addition to the aforesaid, we might have numerous other attendees. Accordingly, I would now respectfully request your consideration with respect to an appearance and ask that your assistant establish contact with my office so that arrangements can be made at a time convenient with your schedule. I now thank you for your sincere attention to the above and shall await your response as relevant to the same.

The Foggy Footnote Award

For the Footnote That Must Have Shed the Least Light in a Brief

Non-contingent, conceptual, semantic connectedness is an absolutely necessary condition for sameness of meaning. If two terms mean the same thing, then normal language users find themselves inclined to perceive a necessary, conceptual, unbreakable connection between the two things. *Frequent correlations* are insufficient to prove connections of *meaning*. (It might be worth noting, that conceptual connectedness is not a sufficient condition for sameness of meaning. Abstruse connections and mathematics may be necessary and conceptual, but they need not involve connections in *meaning*.)

The Cascading-Sentence Award

For the Sentence That Most Resembles Niagara Falls

The Defendant specially excepts to said allegations for the reason that there is no allegation as to what deceptions and false representations in Defendant's report that Plaintiff is complaining about and for the reason that allegations seem to be saying that the Defendant "induced" the Bank to deny Plaintiff's request for a loan of \$100,000.00 and in that connection it is difficult to understand how this Defendant could in fact "induce" the Bank to deny the Plaintiff's loan for the reason that the Defendant obviously had nothing to do with the Bank's denial of the loan of \$100,000.00 as such decision would have been based upon whatever information the bank had in its file in denying such loan or renewal of such loan and that this Defendant as a matter of law could not be liable for the Bank's denial of Plaintiff's request for a loan of \$100,000.00 or for the damages actually sustained in the sum of \$100,000.00 which the Plaintiff claims he sustained of which special exception the Defendant prays judgment of this Court.

*The Save-the-Period Award**For a Page of Legal Drafting in Which Only One Period Appears*

NOW, IN CONSIDERATION OF THE PREMISES, and the mutual covenants heretofore recited to be kept and performed by the respective parties hereto, and for value received, and for other good and valuable consideration, the undersigned, as Assignor, assigns and transfers unto CH, and CH, P.C., with its principal offices located in the City of Waco, as Assignee, its legal representatives, his use and benefit, any and all cause or causes of action of whatsoever kind or nature, claims, right, title or interest, rights to pursue any claims against and to recover any and all sums of money, products in kind, or other properties, now due and owing to me, together with any and all claims, demands, including the seeking of judicial declaratory judgment rulings that existing leases are of no force and effect and clearing any clouds on my mineral title and title to my executive rights that I now have, or may have against AB and/or PQ, and any other person or persons, whether jointly or severally, arising out of, or for, any loss, injury or damage sustained by me in connection with those wells that are presently located on that certain 160 acre tract which is described in Exhibit "A", said Exhibit "A" being attached hereto and incorporated herein by reference for all purposes herein, on which there is presently located, the Apple Unit Number One and the Orange Unit Number Two, said lease being made the subject of an assignment from AB to PQ on January 15, 1990, which was effective according to the assignment and Bill of Sale, on January 15, 1990, now believed to be operated by PQ because of the breach of the duties by the said PQ, and AB and others due to fraud, misrepresentation, cloud on my title and any and all other wrongful acts in any fashion which serve to interfere with any mineral ownership or executive rights or limit my right to enter into new oil, gas, and mineral leases with respect to the property made the subject and described on Exhibit "A", and in consideration of the premises, FC, as Assignor, assigns and sets over unto CH, and CH, P.C., as Assignees as follows:

An undivided FOUR-FIFTHS (4/5) out of FIVE-FIFTHS (5/5) of TWENTY-FIVE (25%) percent interest in and to the minerals, royalty, bonuses, or other cash consideration paid in settlement or collected through Judgment of all monies, bonuses, cash considerations, or royalties recovered from, or incident to the ownership by Assignor of the minerals attributable to the executive rights which he owns with respect to that certain 160 acres of land, more or less, as described on Exhibit "A", said Exhibit "A" being attached hereto and incorporated by reference for all purposes herein.

*The Herculean Headnote Award**For the Headnote That Takes on 12 Labors (at Least)*

Even if attorney's initial representation of both vendors and purchaser was not a conflict of interest, attorney had absolute duty at meeting with vendors when extension of subdivision contingency was discussed to advise vendors of existence of agreement under which purchaser was assigning the purchase agreement, in that purchaser needed more time to obtain subdivision approval in order to keep assignment agreement alive and obtain approximate \$1.6 million profit if that agreement was consummated, thus it was in purchaser's best interest that attorney not disclose agreement to vendors since the disclosure would have induced vendors not to grant extension, but it was in vendors' best interest that attorney disclose existence of the agreement, since disclosure would have confirmed their belief that value of property had escalated and they were better off refusing extension and seeking another buyer in open market.

Baldasarre v. Butler,
604 A.2d 112 syl. 2 (N.J. Super. Ct. App. Div. 1992)

*The Typographic Award**For the Accidental Pun Gone Most Awry*

The winner is a pleading filed in federal district court by a Texas lawyer. It begins, "To the Horable U.S. District Judge." Upon seeing the error, counsel quickly amended to say "Honorable."

The Groaning Tree Award

For a Whopping Waste of Paper

<p>A sentence from the preamble to Title 31, Natural Resources and Conservation regulations, Tex. Water Comm'n, published 1 Nov. 1991:</p>	<p>A possible revision:</p>
<p>This new section provides that the following elements shall be discussed or provided in the reports: historic and current water quality monitoring data, measures taken by river authorities, cities, and others to promote public awareness of water quality issues and the opportunity for public involvement in water quality issues, existing population figures for political subdivisions, basin-wide surface water baseline map, basin-wide groundwater baseline map, identification and evaluation of wells which could lead to pollution of water in the state, an inventory of permitted municipal and industrial wastewater disposal activities, an inventory of stormwater permits, an inventory of solid waste management facilities and superfund sites, an inventory by segment of above-ground storage tanks and petroleum underground storage tanks, identification and evaluation of on-site disposal facilities which could lead to pollution of water in the state, identification of existing or potential water quality problems caused by toxic materials that could adversely impact human health, aquatic life, wildlife, or livestock, an evaluation of the sources of toxic substances which contribute to each water quality problem identified, depiction on a county baseline map the waters impacted by toxic materials and identification of the possible sources of pollution and source if known, an evaluation of the health and integrity of aquatic life, sources of significant nonpoint source pollution, identification and documentation of existing or potential water quality problems or impediments to uses caused by excessive growth of aquatic vegetation, identification and documentation of existing or potential water quality problems, existing and proposed methods for collection and disposal of household waste, pesticides and toxic agricultural products, issues or instances where enforcement of water quality regulations by federal, state or local governments is inadequate or has failed to correct water quality problems, identification of water quality issues not adequately addressed as a result of the lack of authority on the part of state or local government, or which may be adequately addressed if the Texas Water Commission authority could be delegated, federal, state and local programs and/or actions that are attempting to respond to identified water quality problems, any other water quality problems not previously identified, a brief narrative discussing those waterbodies that are of water quality concern, a description of possible solutions and estimated costs to implement such solutions, a prioritization of waters with existing or potential water quality problems, a bibliography of previous water quality studies performed in the watershed, a description of goals and objectives that encourage, assist and promote water conservation measures and water conservation management plans, and a discussion of existing water conservation programs and any measures taken by river authorities and local governments to implement water conservation programs.</p> <p>[441 words]</p>	<p>The new section specifies what the local governments must assess in their reports and how the reports must be organized.</p> <p>[20 words]</p>

The preamble at left "paraphrases" a regulation that appears two pages later.

The Plain-Language Hall of Fame

In 1992, the Plain-Language Committee added a Hall of Fame to its annual awards, balancing the lightheartedly negative Legaldegook Awards with some positive awards. The Committee began its Hall-of-Fame roster with six inductees — some of whom are deservedly well known and some of whom are undeservedly obscure. They have all advanced the cause.

1992 Inductees

Charles Beardsley (1882–1963). President of the American Bar Association in 1940–1941, Beardsley was a strong advocate for improving lawyers' communication skills. In 1940, 50 years before the State Bar of Texas founded its Plain-Language Committee, Beardsley addressed the bar leaders in San Antonio, saying:

In conclusion, therefore, know all men — and women — by these presents, that these my remarks on legal draftsmanship, *witnesseth*:

That in articulating and promulgating your esoteric cogitations, your epistolary communications, your superficial sentimentalities, and your philosophical, physiological, and legalistic observations, you should beware of, eschew, and sedulously avoid, all conglomerations of asinine affectation, flatulent garrulity, pompous prolixity, polysyllabic profundity, and platitudinous ponderosity.

In other words, write and speak plainly, sensibly, and simply. Say what you mean. Don't put on airs. And don't use big words.

Jeremy Bentham (1748–1832). Known as a philosopher, economist, and legal theorist whose work greatly influenced 19th-century legislation (apart from the style), Bentham embarked on reforming many things, including legal language. A utilitarian, Bentham detested legal jargon, which he called the "perversion of language

to the purpose of securing ignorance and misconception of the law on the part of the people." Legal jargon, he wrote, "converts the whole field of the legislator's eye: when he does work, he works blindfold: he works at random, at the hazard of creating more mischief than he cures."

Thomas Jefferson (1743–1826). Author of the Declaration of Independence — and, of course, the third President of the United States — Jefferson was a lucid stylist whose writings have continued to influence accomplished legal writers. He described legalese when complaining about statutes that,

from their verbosity, their endless tautologies, their involutions of case within case, and parenthesis within parenthesis, and their multiplied efforts at certainty, by *said*s and *aforesaid*s, by *ors* and *ands*, to make them more plain, are really rendered more perplexed and incomprehensible, not only to common readers, but to the lawyers themselves.

Abraham Lincoln (1809–1865). The legend of Lincoln — rail-splitter, homespun philosopher, savior of the Union, Great Emancipator — can obscure another side of our 16th President: Lincoln the prose stylist. Professor Jacques Barzun of New York famously described "the plain, undecorated language in which Lincoln addresses posterity" as "a style that is unique in English prose and doubly astonishing in the history of American literature, for nothing led up to it." His law partner and partly critical biographer, William Herndon, painted this portrait of Lincoln as lawyer:

In practice of law he was simple, honest, fair, and broadminded; he was courteous; he was open, candid, and square Mr. Lincoln met all questions fairly, squarely, and openly, making no concealments of his ideas, nor intentions, in any case; he . . . used [no] tricks Every man knew exactly where Mr. Lincoln stood, and how he would act in a law case What he told you was the exact truth.

Fred Rodell (1907–1980). A Yale law professor from 1933 until his death in 1980, Rodell wrote about the law simply and directly in books such as *Nine Men: A Political History of the Supreme Court of the United States* (1955). He scorned legaldegoon and, indeed, invented the word. In one of his most frequently quoted writings, *Goodbye to Law Reviews*, he wrote:

There are two things wrong with almost all legal writing. One is its style. The other is its content. That, I think, about covers the ground. And though it is in the law reviews that the most highly regarded legal literature . . . is regularly embalmed, it is in the law reviews that a pennyworth of content is most frequently concealed beneath a pound of so-called style. The average law review writer is peculiarly able to say nothing with an air of great importance. When I used to read law reviews, I used constantly to be reminded of an elephant trying to swat a fly.

In his history of the United States Supreme Court, he described Chief Justice Earl Warren in this way:

Unblinded by the tweedledum-tweedledee twaddle of much that passes for learned legal argument, . . . he seems essentially a direct, plain-spoken politician who knows that his is primarily a political job.

Timothy Walker (1802–1856). An Ohio lawyer and the author of *Introduction to American Law* (1837), Walker was one of the founders of the University of Cincinnati Law School. He frequently campaigned against legaldegoon and, in 1848, invented this famous example of how a lawyer might say, “Have an orange”:

I give you all and singular my estate and interest, right, title, and claim, and advantage of and in that orange, with all its rind, skin, juice, pulp, and pips, and all right and advantage therein, with full power to bite, cut, suck, and otherwise eat the same, or give the same away, as fully and effectually as I, said A B, am now entitled to bite, cut, suck, or otherwise eat the same orange, or give the same away with or without its rind, juice, pulp, and pips, any thing heretofore, or hereafter, or in any other deed or deeds,

instrument or instruments, of what nature or kind so ever, to the contrary in anywise notwithstanding.

1992 Legaldebook Subcommittee:

Bryan A. Garner, Chair

Hon. Joe L. Draughn

Stephen F. Fink

R.J. Grogan, Jr.

Hon. Lynn N. Hughes

Stanley M. Jobanson

