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The Semicolon Is Not Your Small Intestine

Grammar as a measure of competence

Marc Garfinkle, New Jersey Law Journal

June 14, 2016

I have a bone to pick with the bar for admitting lawyers who just don't know English grammar. As a practitioner and adjunct professor at a law school, I see fewer and fewer attorneys capable of writing English sentences of any complexity, and the prospect of improvement is dim. I suspect that very few of our lawyers and law students today would pass an old junior high school grammar exam. This is frightening and unacceptable. It can also be easily remedied.

There are many reasons for this decline in literacy in our profession. One is the increased diversity of our professionals. There is no such creature as a typical lawyer, anymore. Once dominated by white males who had studied the social disciplines, the field is now populated by attorneys from every demographic category. Where lawyers were once almost all born or educated in America, today we come from everywhere. Many are from homes where foreign languages or local dialects were spoken.

Oddly, lawyers who came up through the American school system have no great advantage, however. Our primary and secondary education curricula have modernized, teaching technical skills and preparing students for standardized tests (such as the Multistate Bar Exam), and leaving grammar to fend for itself, along with cursive writing, whose necessity is less obvious. Once upon a time, every American schoolchild received a healthful (not healthy, please) dose of English grammar. That would still be useful. In my "Persuasion and Advocacy" class, where we study oral advocacy, I once asked a third-year student to think of a verb so descriptive that she would not need an adverb to modify it. She said, "I'm sorry, Professor. I never learned what an adverb is; I went to school in East Hanover." She could have gone to school almost anywhere. Students are graduated by the millions without knowing what an adverb is or does or looks like.

In the 1960s Winston cigarettes launched a new slogan, "Winston tastes good like a cigarette should." English teachers from coast to coast protested in outrage. The sentence should be "Winston tastes good as a cigarette should." In response to the criticism, Winston did not correct the error. Instead, they aired a new slogan, one of the more offensive ad campaigns of all time: "What Do You Want, Good Grammar or Good Taste?" as if the options were mutually exclusive. Even then, grammarians were aware of the power of the media to inculcate and perpetuate bad grammar.

It is fair to say that modernization has sealed the gloomy fate of good grammar for nonlawyers. We are bombarded with ungrammatical press and nonsensical grammar in our daily lives. We have de-emphasized spelling, punctuation and sentence structure in the schools, and we have "preloaded(?)" spell-check and word-check programs on our devices. These factors have all conspired with texting, emoticons and Twitter to dull our knowledge of grammar and to eliminate any sense of its importance. There is little hope now that the average American will ever again correctly use the plural possessive, the singular pronoun, the hyphen or the semicolon. The same must never be said of our lawyers.

Why is this an issue? Why such a fuss about sentence structure and punctuation? What difference do they make? Some say that expecting grammatical competence from all of us is archaic or quaint. They argue that not every lawyer needs to be a grammarian as not every doctor must be trained in surgery.

I disagree. I, for one, think that even allergists and psychiatrists should be able to tie sutures and diagnose appendicitis, and that every lawyer should know how to use the dash, apostrophe and colon. Even more than teachers, lawyers are the guardians of the language. We are the ones entrusted to put words on important documents and to translate complex ideas into text. It is lawyers who draft contracts, wills and declarations of every sort with an eye to precision and clarity.

Lawyers abhor ambiguity. We must assure that all parties to a transaction understand what a document says, and that what it says is exactly what was meant. Attorneys cannot allow written words to betray the ideas which they represent, and so we must all be masters of English. Language is more than our currency for communication; it is our professional birthright. It is also our principal tool, and we all should be able to use it competently.

Of course, while fundamental, language is not our only tool. It is increasingly important that lawyers also use the tools of modern business. In this vein, it seems inevitable that the Supreme Court will eventually require every lawyer to have a certain quantum of technological competence. After all, is it unreasonable to expect a lawyer to have an email address and to be able to send and receive messages electronically? Shouldn't a client be able to assume that her attorney can scan and send a file, reduce it to a Zip folder, save it on a thumb drive or retrieve it from the cloud? Shouldn't an attorney at least know what clouds and thumb drives are? Attorneys on both sides of the technology divide are watching these developments with interest.

We will not have to revamp the system to achieve grammatically competent lawyers. Modern lawyering, to its credit, can adapt. We are already changing to meet the challenges posed by the furious pace of business, the mountains of data, the capacity of technology and the interconnectivity of everything. Many lawyers do work that didn't even exist a few years ago, and huge legal arenas, such as social media and e-discovery opened up only last week, it seems. Perhaps the most far-reaching change in a century has been advertising by attorneys. Other significant changes to our world are the requirements that attorneys perform pro bono service, take continuing legal education classes, and be certified by the Committee on Character for moral fitness before we can be admitted. Somehow, we change the way we do things so that we may better serve our clients, our profession and our purses. We can change how we speak and write English; the errors we make are common; most stem from poor fundamental language education. The remedy is obvious. Education. CLE.

Sometimes, knowing proper English yields immediate dividends. I remember a deposition where a lawyer asked the witness whether (not "if") a car had been moving at 25 mph. She responded, "No more than that." The attorney, visualizing the transcript, interrupted the proceeding to ask the reporter: "Is there a period after 'No'?" There was, which is what the witness had intended.

Lawyers, as everyone else, also have issues with misplaced modifiers. In this example, our misplaced modifier is also a clear violation of good parallel structure: "Walking into the kitchen, the huge freezer blocked her path." Pretty agile for a freezer, I'd say. Lawyers trip on that one all the time.

There are other little things we do wrong, either because we never learned otherwise or because our knowledge has been diluted or perverted by modern society and current usage. For example, many lawyers say "less" when they really mean "fewer." (The rule is simple: "If you can count 'em, say fewer.") We say there is less traffic because there are fewer cars.

We can also master the nuances of possession. Lawyers, above all, should know that Mr. Schwartz and his wife are the Schwartzes, and that if Mr. Schwartz owned a home by himself, it would

Schwartz's home. If he and his spouse then took title together, it would now become the Schwartzes' home.

Consider the singular pronouns "each" and "any" and "none." Each is misused by attorneys all the time. None is ever the subject of a CLE course. Today, with the male no longer serving as a neutral gender ("Each went his own way...") someone decided that we can avoid saying "his or her" simply by substituting a *plural* pronoun "their." I would rather hear a lawyer's fingernails screeching on a chalkboard than hear a colleague say, "None of them are here." I am embarrassed for all of us.

This column is not about the good old days, nor is it a cover for ethnic bias. This is not an effort to castigate our teachers or exclude from the bar all lawyers with foreign accents or a public school education. This is simply a call for all lawyers to educate themselves and to sharpen their most important tool. Any person who can earn a college degree, complete law school and pass the bar exam can learn or relearn the fundamentals of English. If lawyers are able to rehabilitate from an addiction or to learn good bookkeeping habits in order to practice law, learning a little more about English seems like a walk in the park.

The Supreme Court should consider standards and testing for grammatical competence. The entire profession would reap the benefits. •

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