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The Semi-Colon Still Is Not Your Small Intestine: Why the Bar Exam Should Test Grammar

The court can assure that every bar candidate will be able to competently draft a will, interpret a contract, spot a potential ambiguity, prevent a misunderstanding, and otherwise be adept with the language.

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By Marc Garfinkle | February 04, 2022 at 10:00 AM



In 2016, under a similar title, this column urged the Supreme Court of New Jersey to require all bar candidates to demonstrate some mastery of English. The subtitle was “Grammar as a Measure of Competence.” At the time, this writer was accused by some of racism and elitism for advancing an agenda to frustrate the efforts of disadvantaged bar applicants and those whose cultural background had not exposed them sufficiently to the King’s English. I

declined to respond to the criticism, remembering the words of my fraternity brother Rich Walker, who once mused, “How do you tell a circle there is such thing as a sphere?”

For many reasons, written and oral language skills—including the ability to speak formal English—have been in general decline since at least World War II. Apparently, no one cares. Grammar was rarely anyone’s favorite subject in school, and in life outside of school its mastery is rarely required. Few modern people are distressed by the downward spiral of grammatical English.

As a result, modern students don’t bother to learn the rules of parallelism or how to use an apostrophe or exploit the passive voice. They can just speak in the direction of a microphone, and their words appear almost simultaneously in printed format, along with an electronic prompt alerting them to errors or offering suggestions. Machines correct our gaffs and can even enhance our style, much like calculators have eliminated the need to learn the math tables.

The universal disappearance of formal language and the degradation of common language have washed out to sea any hope of good grammar returning to general respect. To boot, the aggressive adoption of STEM (Science, Technology, Engineering and Math) core curricula by schools from coast to coast has sunk the lifeboat. Perhaps this de-emphasis on grammar is the right way for our children and our civilization—time will tell—but lawyers must nevertheless retain grammatical competence that other professionals have lost or disdained.

English speakers, and those who would speak English, can no longer rely on educators to teach, or journalists to reinforce, the fundamentals of proper English. The professions that were paragons of good grammar in a bygone

time have abdicated their posts. By rejecting accepted usages and adopting popular ones, even our teachers and the press no longer toe the grammar line.

The same must never happen to lawyers. When agreements are drafted or reviewed, everyone should understand them the same way. When legislation is offered for a vote, the drafters and the constituents must both have the same thing in mind. When people declare their last will and testament distributing their estates, their intentions should never be foiled or obscured by poor draftsmanship.

Lawyers are the last bastion of good grammar. The burden falls on us, and our hold is tentative. Lawyers must be able to understand sentence structure, parallelism, and possessives. We should know about the active voice and passive voice, and we should have enhanced vocabularies to facilitate clarity when we speak and write.

The correct use of language is fundamental to competent legal services. Language is a lawyer's primary professional tool, and every lawyer should be able to wield it with ability and confidence. Lawyers should be expected to speak and write directly and appealingly, with precision and clarity and without ambiguity. As the client's "mouthpiece," a lawyer should sound better than the client would and write a more perfect argument than anyone but another lawyer.

An understanding of the fundamentals is all that is required.

The way we *speak* English varies widely from place to place. It is also affected by our education, economic status, linguistic background, employment, and more. Any attempt to establish uniformity would be silly. On the other hand, the way we *write* English should be consistent. Important

documents should only be created, and important ideas should only be expressed, in ways that will mean the same thing to all who read them. They should be clear, unambiguous and, hopefully, erudite.

For lawyers, mastering the fundamentals of the English language should be an important goal. Those whose writing is suspect are usually well-educated, highly intelligent, and fully able to learn the few basic rules in little time. Most of them had no interest when grammar was being taught, and then they completed their education with multiple-choice and true-false tests. Their weakness was never revealed. If they were required to learn the basics of good grammar today, almost all of them would have far less trouble than they had in their easiest class in law school.

Our license is a plenary one; once we are admitted we can do almost anything that any other lawyer can do, even if we are unqualified. Because of this, lawyers should not be given a bye on a grammar test on grounds that good English will never be in their job description. It should be in every lawyer's job description. It should be taken for granted.

The Supreme Court polices the legal profession to ensure universal competence among its practitioners. It also sets the standards and the conditions for admission to the bar. The standards are high. There is a difficult written examination and another one that focuses on the Rules of Professional Conduct. There is review by a Committee on Character to evaluate the fitness of every would-be lawyer in New Jersey.

The Supreme Court should require a grammar test, appropriately devised, to be included as a rite of passage into the bar in New Jersey. This proposal is simple and conservative. This way, the court can assure that every bar candidate will be able to competently draft a will, interpret a contract, follow

the “notwithstandings” in a divorce agreement, spot a potential ambiguity, prevent a misunderstanding, and otherwise be adept with the language.

I ask you, dear reader: Is that asking too much?

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