I can think of several possible reasons why attorneys continue to use legalese in drafting documents, letters, and briefs despite endless entreaties to the contrary: (1) they worked hard at mastering legalese when they were in law school, and they’re not going to give it up without a fight; (2) they use legalese to impress clients and therefore justify the fees they charge; (3) they use legalese to impress adversaries and judges; or (4) they’ve been using legalese for so many years that they don’t even realize that they are using it.

My legalese sins fall within category (4), as I learned years ago when I agreed to co-author with a colleague an academic article for publication on the topic of graymarketing. I gave my colleague, who has a Ph. D. in international business, my part of the article. I had taken great pains, or so I thought, to cleanse my writing of legal barbarisms and expected some words of praise, or at least appreciation, when I checked in with my colleague the next day. What I found instead were looks of confusion and profound disappointment as she prepared to discuss my part of the article with me.

“Michael, I don’t mean to insult you, but I have no idea what you are trying to say in these pages.”

She is a very bright woman, so I assumed that her problem was in attempting to grapple with legal aphorisms or terms of art that had crept into my writing over the years. Sadly, that was not the case. I had carefully avoided using legalese, and yet she still could not understand my writing. I took it back for a second effort. She regarded my second effort, which I thought of as a translation, as a nice try but still short of the mark.

Her confusion forced me to take a frank look at my legal writing. Only after three or four more drafts did she pronounce my effort readable. Ultimately, our article was accepted by a respected business journal. I will always be grateful that she rejected my early efforts, which I am certain would have made my part of the article, and therefore the entire article, unpublishable.

The Search for Solutions

To illustrate how widespread the problem of legalese is, I have to report that I got 999 hits in my Lexis-Nexis search for the term in law review articles. Reading some of the titles of the articles...
involving legalese does not inspire much confidence of a solution. Consider the following, from which I have withheld the names of the authors and the publications “to protect the innocent,” as they used to say in the crime drama Dragnet:

- **Legal Development: Captain James T. Kirk and the Enterprise of Constitutional Interpretation: Some Modest Proposals from the Twenty-Third Century** (1995);
- **Normative Ambiguity of Rhetorical Power** (1995);
- **Access to Family Law: the Scrivener’s Dilemma in Divorce Mediation: Promulgating Progressive Professional Parameters** (2016);
- **Litigating from the Prison of the Mind: a Cognitive Right to Post-Conviction Counsel** (2016);
- **Contract Meta-Interpretation** (2016);
- **You Had Me at Hello: Examining the Impact of Powerful Introductory Emotional Hooks Set Forth in Appellate Briefs Filed in Recent Hotly Contested U.S. Supreme Court Decisions** (2016);
- **The Legal Writer: How to Handle Hubris Hardly Hyperbole** (2015);
- **Homeward Bound Through the Wild, Wild South: the Application of Florida’s Wild Card Exemption on Homestead Property in Bankruptcy** (2015);
- **The Taxation of Crowdfunding: Income Tax Uncertainties and a Safe Harbor Test to Claim Gift Tax Exclusion** (2015);
- **Plain Language: What Bilbo Baggins’s Contract Teaches about Plain Language** (2015);
- **Unspringing the Witness Memory and Demeanor Trap: What Every Judge and Juror Needs to Know about Cognitive Psychology and Witness Credibility** (2015);
- **Treating Consumer Data Like Oil: How Re-Framing Digital Interactions Might Bolster the Federal Trade Commission’s New Privacy Framework** (2015);
- **A Pasture Theory of Creative Controls: a New Approach to Copyright and Patent Subject Matter Overgrowth** (2015); and

These articles probably reflect the desires of the authors to come up with alliterative or “sexy” titles to attract readers, but this doesn’t excuse the use of such opaque language, especially when the articles are devoted at least in part to the problem of legalese. Oddly worded titles do not inspire confidence in potential readers in search of guidance on legalese.

**An Orwellian View of Plain Language**

George Orwell, known primarily today as the author of the futuristic novel *1984*, was once highly regarded as a critic of the English language. His 1946 essay *Politics and the English Language* was at one time nearly as renowned as *1984*. The essay is still relevant today, seventy years later.

“The English language is in a bad way,” wrote Orwell in his famous essay. He accused his contemporaries of having an “inflated style” and pronounced them guilty of “swindles and perversions.” “Inflated style,” he explained, was “a kind of euphemism” that hid genuine meaning. “Perversions of language,” he said, were damaging because they obscured the truth. These views are regarded as particularly relevant for lawyers.

Orwell stressed that writers should express themselves in plain English. He condemned “euphemism, question-begging and sheer, cloudy vagueness” as precluding or concealing clear thought. “The fight against bad English is not frivolous,” he insisted, because clear thought is required for cogent analysis. Writers who avoid bad habits in their use of language are able to think more clearly.

In *Politics and the English Language*, Orwell proposed six rules of style for English writers:

1. Never use a metaphor, simile or other figure of speech which you are used to seeing in print;
2. Never use a long word where a short one will do;
3. If it is possible to cut a word out, always cut it out;
4. Never use the passive where you can use the active;
5. Never use a foreign phrase, a scientific word or a jargon word if you can think of an everyday English equivalent;
6. Break any of these rules sooner than say anything outright barbarous.

Conclusion
In my next column I’ll show how these rules can be applied to legal writing so as to avoid using legalese.

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