PLAIN LANGUAGE

Colloquiality in law

BY BRYAN A. GARNER

Within the bounds of modesty and naturalness, colloquiality ought to be encouraged — if only as a counterbalance to the frequently rigid and pompous formalities that generally pervade legal writing.

Many people, however, misunderstand the meaning of *colloquiality*. The term is not a label for substandard usages; rather, it means "a conversational style." The best legal minds, such as Learned Hand, tend to look kindly on colloquiality: "[A]lthough there are no certain guides [in the interpretation of a statute], the *colloquial* meaning of the words [of the statute] is itself one of the best tests of purpose . . . ."[1] Nearly 30 years earlier in his career, Hand wrote, as a trial judge: "The courts will not be astute to discover fine distinctions in words, nor scholastic differentiations in phrases, so long as they are sufficiently in touch with affairs to understand the meaning which the man on the street attributes to ordinary everyday English."[2]

In formal legal writing, occasional colloquialisms may give the prose variety and texture; in moderation, they are entirely appropriate even in judicial opinions. Still, the colloquial touches should not overshadow the generally serious tone of legal writing and should never descend into slang.

Good writers do not always agree on where to draw that line. Some judges feel perfectly comfortable using a picturesque verb such as *squirrel away*: "This sufficed, in the absence of any record-backed hint that the prosecution . . . squirreled the new transcript away . . . ."[3] Others would disapprove. Some, like Justice Douglas, would use *pellmell*: "The Circuits are in conflict; and the Court goes pellmell for an escape of this conglomerate from a real test under existing antitrust law."[4] Others would invariably choose a word like *indiscriminately* instead. Some, like Chief Justice Rehnquist, would use the phrase *Monday morning quarterbacking*.[5] And some would use *double-whammy*.[6]

For my part, I side with the colloquialists. In a profession whose writing suffers from verbal arteriosclerosis, some thinning of the blood is in order. But progress comes slowly. The battle that Oliver Wendell Holmes fought in 1924 is repeated every day in law offices and judicial chambers throughout this country. Holmes wanted to say, in an opinion, that amplifications in a statute would "stop rat holes" in it. Chief Justice Taft criticized, predictably, and Holmes answered that law reports are dull because we believe "that judicial dignity require[s] solemn fluffy speech, as, when I grew up, everybody wore black frock coats and black cravats . . . ."[7] Too many lawyers still write as if they habitually wore black frock coats and black cravats.

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ENDNOTES

1. *Brooklyn Nat'l Corp v CLR*, 157 F2d 450, 451 (CA 2, 1946) (Hand, J.) (emphasis added).
2. *Vitagraph Co of America v Ford*, 241 F 681, 686 (SD NY, 1917).
3. *United States v Chaudhry*, 850 F2d 851, 859 (CA 1, 1988).
4. *Missouri Portland Cement Co v Cargill, Inc*, 418 US 919, 923; 94 S Ct 3210 (1974) (Douglas, J., dissenting).
5. See *Vermont Yankee Nuclear Power Corp v Natural Resources Defense Council, Inc*, 435 US 519, 547; 98 S Ct 1197 (1978).
6. See *American Bankers Ass'n v SEC*, 265 US App DC; 804 F2d 739, 749 (1986).
7. Howe, ed, *Holmes–Pollock Letters* (Cambridge: Harvard University Press, 1941), vol 2, p 132.

"Plain Language," edited by Joseph Kimble, has been a regular feature of the *Michigan Bar Journal* for 40 years. To contribute an article, contact Prof. Kimble at Cooley Law School, 300 S. Capitol Ave., Lansing, MI 48933, or at kimblej@cooley.edu. For an index of past columns, visit www.michbar.org/plainlanguage.