



You Say Potato . . .

Editor's note: This column by Rod Burkert is a new regular feature. We hope you enjoy it as much as we do!

This column was inspired by a recent blog post from Jay Shepherd, Esq.: "20 Ways To Write Like A Tool."² Mr. Shepherd's belief? To write like an attorney is to write like "a tool." From his list of "lawyerisms," I selected ones that I find most painful in the valuation reports I review.

Because attorneys are sometimes our clients, we sometimes write our reports like attorneys craft their agreements—using their gussied-up language and thinking that our work product will be better received. I know I have been guilty of this practice. It's time for a legalese cleanse.

1. Pursuant to. Report transmittal letters typically start off like this: "Pursuant to the terms of our arrangement letter . . ." While this may not seem particularly egregious, it's annoying because no one talks like that. The same with words like "above-mentioned," "above-referenced," and "aforementioned." Before submitting your report, read it out loud. In my opinion, the more your report reads like you would say it, the better it will be understood.

2. Numerals in parentheses. Shortly following the "Pursuant to," I see this: "We were engaged to value an eight (8) percent member interest . . ." Do we think our reader won't know what we mean by the word "eight"? As Jay states in his blog post: "It serves zero (0) purpose. Cut it out." And while we're at it, couldn't we just write "8%"?

² <http://abovethelaw.com/2011/06/small-firms-big-lawyers-20-ways-to-write-like-a-tool/>

3. Clearly. As Jay says: "Either something is clear or it's not. Telling me it's clear doesn't make it so." In other words, "clearly" is really your opinion. So, eliminate modifying adverbs (and puffy adjectives) that may get you in trouble: "The industry analysis *clearly* indicates that ABC Company will have difficulty in adopting the new technology." Clearly? Are you that sure?

4. However (at the start of a sentence). This is usually a signal for the word "but." However, I think we were taught in 7th grade that we couldn't start a sentence with a conjunction. But we were taught wrong. And I can prove it. Read Strunk's timeless *The Elements of Style* (I was given a copy when I started my career at Price Waterhouse in 1978), and you will find no such grammar rule.

5. And/or. Where did this come from? And, again, is it something that you would say in a conversation? The "or" contains the "and." Jay explains it this way: "No one reading a sign that says 'no talking or running in the halls' is going to think that talking is prohibited, running is prohibited, but if you talk *while* running, that's cool." No need for an "and/or."

6. Hereinafters and parentheticals. This is appropriate: "The sole purpose of our independent business valuation was to estimate the fair market value of an 8% member interest in Service Company, LLC (the 'Subject Interest')." This is not: "Service Company, LLC (hereinafter referred to as 'Service') is a social media marketing firm." How many Service Companies are in your report? Give your reader some credit for being able to tell the players without a scorecard.

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7. Overcapitalization. In our reports, this offense relates primarily to capitalizing only business valuation “terms of art” and using less intimidating lower case for the rest of our cool sounding phrases. Total Beta—yes; the Asset Based Approach—no. CAPM—yes; Net Equity Cash Flow—no.

Clearly, there are more examples. As suggested by the title of Mr. Shepherd’s above-noted blog post (the “Post”), he came up with twenty (20) of them. So if you want to sound less ponderous and/or pompous, make some well-intended changes to your writing style.

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