

MR JOHN BUDGE (1): ADVICE ON LEGAL WRITING

What makes good legal writing in English?

I'm very keen on short, succinct, plain English. And too often, I have seen over the years far too flowery stuff full of Dickensian phrases, of 'hereinbefore' and 'hereinafter' and 'captioned' and 'perusing' and etc. These dreadful words that no native speaker ever uses. I also feel quite strongly that people are, law students are, writing stuff to people whose native tongue is not English and English would be a second or third language to some of them. It just doesn't go down well and long, verbose opinions are not in my view what the clients are looking for.

As a legal professional, what are you looking for in the legal writing that you read?

I believe that you've got to ask, 'Who's going to read this?' And if it's going to be a large in-house legal team, for example, who understand the law, understand the legal concepts, then you can use technical legal English. However, you've got to also remember that even if it's going to the in-house counsellor of a large legal empire, he could well be passing it to his business colleagues who are not legal people.

I like short sentences myself. I'm a great exponent of the Lord Denning style of writing, whereby you write in short, succinct statements and you get to the point quickly, so the client doesn't fall asleep on page ten of your letter. You get to the legal analysis quickly. So, really, set out the problem, set out the analysis, set out the conclusion. It's my view, that's what I like seeing.

How did you learn to write legal arguments in English?

It never came naturally to me and so I've just always had to work hard at it. And I did think quite a bit before I wrote and then not being of this amazing techno generation that can type as fast as they can speak, I dictated things and I still dictate things to this day. There are not many of us left that can dictate and I've got a secretary of over thirty years, so she can actually understand my Scottish accent. And so when I've worked it out, I then dictate the first draft and I've always found that to be helpful.

I always think the first draft's the tricky one that you get something down after you've given it some thought and then you can play around with it thereafter.

What do you think are the main challenges in legal writing?

I think that we fiddle now more than ever because it's so much easier than we did thirty years ago. Because you would have to face the wrath of the secretary if you were changing it for the umpteenth time and I think that it is... We fiddle a lot more, and we don't think as much as we do. We work in this instantaneous market and this is a concern. And I suppose, we're talking of legal English, I'm thinking of the opinion letter. The opinion letter is something that doesn't happen as often as it used to do. An awful lot of stuff is dealt with by way of email and I think that's a trend that we feel the pressure. We feel the pressure on our inbox, so we're all looking at our inbox, trying desperately to get through to the end of our inbox. Clients wanting an answer: the clients want an answer, not in two days, not in two weeks, but in two hours. And I think that we are being pressured into giving answers sometimes that we regret. It's too easy to press the Send button.

What advice do you have for novice lawyers about overcoming time pressures in a legal professional setting?

Well, I think they're in a difficult position because they're at the bottom of the food chain and they're being told by usually it works on the basis that partner to senior associate to junior associate to the trainee, and the trainee's getting a lot of pressure down the line to come up with the answer. How do they cope? Well, I think that's a real challenge because I think the more senior you get, the more you forget that you were young once and that you can't just instantly find the answer. And that's the fascinating thing about law. Sometimes the very frustrating thing is that you can't actually find the answer straight away.

But that particular trainee must just do their utmost to at least keep the junior associate, usually that's the way it works in a law firm, apprised of what they've found so far and don't keep it all back until the very last moment.

Again, people expect me... If they're reasonable and it's a tricky matter, they have to be, accept that it's not going to be an answer that you can give straight away, but if you give them at least an instalment, it's not such a bad thing by saying, 'Well, look, this is what I've found so far. I'm doing a bit more research in this particular area'. The clients are quite happy with that.