

LATIN WORDS IN AMERICAN LAW

I read recently that a Supreme Court justice wants to outlaw Latin words in American Law.

“An average citizen ought to be able to understand legal documents and court opinions,” announced the judge.

Well said, I thought, until I solicited opinions from a sample of practicing lawyers at my Bar Association luncheon.

“That’s easy for the judge to say,” said a prosperous looking sole practitioner, “but he doesn’t have to send out billings. Clients won’t pay fees for legal papers they can understand; but if I fill them up with Latin phrases, wherefores and hereinafter’s, they feel they’re getting their moneys worth and they pay.”

An appellate lawyer told me essentially the same thing. “I recently filed a request for a Rule Nisi,” he explained. “Now how could I ask my client for a \$5,000 fee if the Latin word for “nisi” were changed to the English ‘unless?’” the whole proceeding seemed far more impressive to him with a Latin title.

Lawyers aren’t the only ones who need to lean on the Latin crutch. “That judge should think twice about wanting the average citizen to understand judicial opinions,” bantered another pro-Latin attorney. “I’ve seen judges throw cases out of court on the basis of Latin legal principles like *de minimis non curat lex*. If the average citizen knew that this means: Your case is too trifling for the law to care about, there’d be a lot of judges voted out of office.”

Lawyers want to keep Latin because it makes the law appear to be mysterious science, and its practitioners learned scientists entitled to high fees.

In fact, the elimination of Latin terms in our common law system is virtually impossible. For it is a system of precedent, or *stare decisis* as we like to call it. The civil law lawyers say we look backward rather than forward. In any event, old Latin terms are retained and repeated because they have worked in the past. And in a rapidly expanding and changing society like ours, old usages are valuable as proof of the stability of law in the midst of change.

A brief look at some more common legal terms tells us that not all Latin is shrouded in mystery or lacking in clarity. *Affidavit*, *alibi*, *alias*, and *bona fide* are standard, if not everyday English words. Latin terms like *prima facie*, *versus*, and *habeas corpus* are accepted parts of the English language. I am not sure we would want a non-Latin substitute for *habeas corpus*. Charles Dickens once translated it as “you have the carcass”.

The Supreme Court judge who advocated eliminating Latin probably had no idea that he would arouse so much opposition. He represents a dying strain of frontier spirit in American law which has always detested Latin, as well as law French from which many common legal terms are also derived (*voir dire*, *laches*, *chose in action*). As early as 1736, a colonist named Andrew Jacob wrote a book

called Every Man His Own Lawyer, in which he stressed simplicity of terminology and form. In 1833, the best selling Pocket Lawyer promised that “every merchant, farmer, mechanic, or school boy can draw any instrument of writing without the assistance of an attorney”. Obviously the lawyers did not recommend these books.

Lawyers have historically opposed movements for simplification of law on the basis that it will lead to do-it-yourself law and eliminate their livelihood. Jeremy Bentham’s codification movement in England was the most successful. It spread to the United States in the 1850’s, calling for a rewriting of law in separate codes with such clarity that “the ordinary citizen could understand them without the aid of a lawyer”. The movement died. Its single fruit was the concept of code pleading, adopted first in California in 1852 and culminating with the Federal Rules of Civil Procedure in 1931. These rules called pleadings that were “short, plain, simple, concise, and direct,” a result dreaded by lawyers for the same reason they oppose outlawing Latin. The Uniform Commercial Code is a 20th century American code that simplifies sales, business, and banking law, but fortunately not enough to eliminate the need for lawyers.

Latin will never be eliminated from American law because legal language has specialized needs for consistency and certainty that daily speech does not have. It is a false criticism to charge that legal language is losing touch with common speech, for everyday language changes too rapidly to give it the certainty and precision necessary to law. Time-proven Latin terms fill the need far better and, therefore, shall continue to be used.