



## Words run Amok

Words should be put together to create sentences that people can easily understand. This month, I collected a random assortment of goofy phrasing and bad legalese.

### A Strange Article

The following article appeared in our local daily pamphlet on December 23. I have reproduced the first four paragraphs. I had to read it many times.

#### **Overtured convictions upheld in 1992 killing**

*Associated Press*

An appeals court has upheld the overturned convictions of two men once sentenced to death for killing a 10-year-old boy in Cincinnati.

The 6th U.S. Circuit Court of Appeals' rulings focused on whether Darryl Gumm and Michael Bies received fair trials, not whether they were innocent.

At issue in the court's Monday decisions was the 1992 beating death of Aaron Raines in an abandoned building after the boy refused to perform a sexual act.

The court upheld a lower court's finding of evidence withholding and prosecutorial misconduct in Gumm's case and evidence withholding in Bies' case.

The 6<sup>th</sup> District (An appeals court) *affirmed* the *reversal* of the convictions. But that's difficult—at least for me—to decipher.

### **Worst Words and Phrases of 2014**

Each year, The Plain English Foundation (PLF) of Australia selects a few egregious examples of amok words. A few of the “winners” follow.

This year, Gwyneth Paltrow and her husband, Chris Martin, announced their *conscious uncoupling*. Apparently they are divorcing.

Takata, having to recall thousands of airbags, wrote that the bags were subject to *rapid disassembly*. Meaning they exploded.

Microsoft used a 1,100-word jargon-laden memo to lay off 12,500 employees, because their pay apparently didn't fit into Microsoft's *appropriate financial envelope*.

The memo began with a chatty *Hello there*. And the bad news (you are fired) was not until 800+ words later. An excerpt:

Whereas the hardware business of phones within Nokia was an end unto itself, within Microsoft all our devices are intended to embody the finest of Microsoft's digital work and digital life experiences, while accruing value to Microsoft's overall strategy. Our device strategy must reflect Microsoft's strategy and must be accomplished within an appropriate financial envelope.

Qantas Airlines got PLF prizes in both 2103 and 2014. In 2013, Qantas described a near-collision as a *loss of separation*. For 2104,

Qantas explained the cause of a flight delay as a *pavement failure*. There was a pothole in the runway that had to be filled in before the plane could take off.

## Courts of Course

Though it is almost too easy, surely we must include courts in any roundup of bad phrasing or construction.

Upon consideration thereof and pursuant to Gov.Bar R. V(5)(A)(4), it is ordered and decreed that . . .

Most Ohio Supreme Court disciplinary cases that impose an interim suspension for a felony conviction have that mangled legalese, and are so replete with bad wording, bad construction, and legalisms as to be almost comical.

Other courts continue to write stilted opinions with too many citations for stuff that everybody knows. Just another reason to banish citations to footnotes.

When determining parental rights, the domestic relations court must follow statutory guidelines. *Miller v. Miller*, 37 Ohio St.3d 71, 74, 523 N.E.2d 846 (1988); *King v. King*, 3d Dist. Union No. 14-11-23, 2012-Ohio-1586, ¶ 8. The determination of which statutory standard applies is a question of the law that this court reviews de novo. *Picciano v. Lowers*, 4th Dist. Washington No. 08CA38, 2009-Ohio-3780, ¶ 19. We review the court's decision allocating parental rights for an abuse of discretion. *Miller* at 74; *Cwik v. Cwik*, 1st Dist. Hamilton No. C-090843, 2011-Ohio-463, ¶ 41.

Who wants—or needs—to read that paragraph?

And how about this gem:

Allegations of prosecutorial misconduct implicate due-process concerns, and the

touchstone of the analysis is the “ ‘fairness of the trial, not the culpability of the prosecutor.’ ” *State v. Newton*, 108 Ohio St.3d 13, 2006-Ohio-81, 840 N.E.2d 593, at ¶ 92, quoting *Smith v. Phillips*, 455 U.S. 209, 219, 102 S.Ct. 940, 71 L.Ed.2d 78 (1982). The test for prejudice in closing arguments, including penalty-phase closing arguments, is “ ‘whether the remarks were improper, and, if so, whether they prejudicially affected substantial rights of the defendant.’ ” *State v. Braden*, 98 Ohio St.3d 354, 2003-Ohio-1325, 785 N.E.2d 439, ¶ 83, quoting *State v. Hessler*, 90 Ohio St.3d 108, 125, 734 N.E.2d 1237 (2000), quoting *State v. Smith*, 14 Ohio St.3d 13, 14, 470 N.E.2d 883 (1984)

In one paragraph—a quote within a quote, then a quote within a quote within a quote. Wow. Much better to paraphrase, then cite the cases in footnotes. Otherwise, the double and triple quote citations take up more than half of the paragraph. And of course the double and triple quotes look silly.

## Readability

I usually show readability scores for these articles. For this one (my writing only), 12 words per sentence, grade level 8.8, passive sentences 3%. The Microsoft memo is grade level 18.

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