

# LEGIBLE

A blog from Legalwriting.net by Wayne Schiess

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## Leave Behind These Words and Phrases

Here are nine legal words and phrases we can do without.

**My books:** [Legal Writing Nerd: Be One](#), [Plain Legal Writing: Do It](#)

This post is part of my effort to pull legal vocabulary into 2020. We certainly don't need to sound as though we're writing in 1908, let alone 1708. So here are a few legal words and phrases we can leave behind.

### ***comes now***

A lawyer once asked me to settle a debate at the office: "If there's one plaintiff, it's 'COMES NOW Rodney Jackson, ...' But if there are two plaintiffs, shouldn't it be 'COME NOW Rodney and Melinda Jackson, ...?'" Of course, I replied that the correct answer was to stop beginning pleadings with this archaic phrase. And drop the ALL-CAPS.

Yet more than a dozen lawyers have told me over the years that they choose to retain *comes now* in court filings. Why? The convention is so deeply entrenched, they say, that omitting *comes now* could make them look like novices—like lawyers who don't know how things are done. I grant the concern but it saddens me a bit.

### ***hereinabove, hereinafter***

Almost all the *here-* words should go (*herein, hereto, hereby*, etc.) but these two are the most annoying. They're old, they're often vague, and they're multi-syllabic. The legal-word expert Adam Freedman says that they arose from "experimentation. Lawyers and other literate folk enjoyed nothing better ... than inventing new words by putting together two or more old ones."<sup>[1]</sup> Sometimes you can just omit them, sometimes you can use *above* and *below*, and sometimes you can specify what you're referring to and where to find it.

### ***inter alia***

Latin phrases that aren't terms of art, as this one isn't, ought to be dropped: *vel non, sub judice, sua sponte*, and others. Use an everyday-English equivalent: *and others, among others, or among other things*.

### ***instant case***

I still remember the sad look on a third-year student's face when I suggested that he use *this case, the current case, the Jackson case*, or even *here* in place of *the instant case*. "But *the instant case* sounds so ... legal," he said. All right. It's often important for a novice to "sound legal." But an experienced lawyer can abandon archaic language.

### ***-trix* suffix words: *administratrix, executrix, prosecutrix, testatrix***

In 1992, a legal-language expert named David Mellinkoff said these forms were "dying."<sup>[2]</sup> We can no longer wait around. Kill them off now. They're sexist, archaic, and hard to pronounce.

### ***in witness whereof***

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Harmless—but go ahead and delete this phrase from your form document.

### ***wherefore, premises considered***

Standard—but what does it mean? If it means “In light of everything just stated ...” why not use “Therefore ...”?

### ***know all men by these presents***

I’ll let someone else handle this one: Anyone who uses this phrase is an “unregenerate dinosaur” according to legal-drafting expert Ken Adams.<sup>[3]</sup>

### ***witnesseth***

This word has no place in modern legal drafting. If you prepare transactional documents, and you’re afraid to take it out, be brave. And look it up: you don’t have to take my word for it. Bryan Garner calls it an “antiquated relic.”<sup>[4]</sup>

For further guidance on outdated and useless legal words, see

- Kenneth A. Adams, *A Manual of Style for Contract Drafting*
- Adam Freedman, *The Party of the First Part: The Curious World of Legalese*
- Bryan A. Garner, *Garner’s Dictionary of Legal Usage*
- David Mellinkoff, *Mellinkoff’s Dictionary of American Legal Usage*

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<sup>[1]</sup> Adam Freedman, *The Party of the First Part: The Curious World of Legalese* 25 (2007).

<sup>[2]</sup> David Mellinkoff, *Mellinkoff’s Dictionary of American Legal Usage* 600 (1992).

<sup>[3]</sup> Kenneth A. Adams, *Know All Men By These Presents*, Adams on Contract Drafting, <https://www.adamsdrafting.com/know-all-men-by-these-presents/>

<sup>[4]</sup> *Witnesseth*, *Black’s Law Dictionary* 1839 (10th ed. 2014)

This entry was posted in [Plain English](#), [Usage](#) on [August 3, 2020](#).

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