FROM HOOSIER TO HABEAS: THE HAZARDS OF LEGALESE

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Tags: Legal Jargon, Legalese, Mysterious Acronyms

This all began a week or so ago when I was strolling past a popular coffee-and-pastry spot in Evanston, Illinois. Having been born and raised in St. Louis, I smiled and shook my head as I glanced up at the establishment's name, Hoosier Mama Pie Company. As my protagonist Rachel Gold explains in my novel *The Dead Hand*, one of three things that make St. Louis unique is "hoosier," a word that the rest of the nation understands as a proud nickname for an Indiana resident but in St. Louis is a derogatory term for a white-trash loser. (The other two unique St. Louis things, as Rachel explains, are toasted ravioli and asking someone where they went to high school.)

Hoosier Mama Pie Company

And while I realized that the Hoosier Mama sign might not lure many visitors from St. Louis, thoughts of "hoosier" inspired a blog post on other city-specific slang terms, such as the admiring adjectives "wicked" and "wicked pissah" in Boston to the standard way to order a Chicago-style hot dog with all the toppings, namely, to ask that it be "dragged through the garden."

But as I continued to mull it over, I realized that my profession puts all those city-specific slangs to shame. It starts for us in law school, where we learn that we are "1Ls" and that the term "gunner" has nothing to do with firearms. Instead a gunner is one of those obnoxiously competitive and overzealous law students who are constantly raising their hands and dominating classroom discussions. Indeed, during my first year at Harvard Law School several of us put together a game of Gunner Bingo, with each of us given a card of Bingo-grid names of the gunners. When the professor called on a gunner on your card, you checked it off. The winner had to announce victory by loudly clearing his or her throat three times.

During that first year of law school, we also discovered that "Bluebooking" referred to the meticulous process of formatting legal citations according to the specific rules outlined in *The Bluebook: A Uniform System of Citation*. So, too, we started learning strange Latin terms for various legal matters, ranging from *habeas corpus* to *ex parte* to my favorite, the derogatory term *ipse dixit* (translated to "he himself said it" and is used to refer to an assertion made without any supporting evidence or proof, such as, "that's nothing more than pure *ipse dixit*!").

Ah, but that was just law school. Entry into the legal profession introduced a whole new array of jargon, from "Chinese Wall" (a screening mechanism to protect client confidences from improper disclosure to certain lawyers at the law firm) to a "wobbler" (a crime that can be charged as either a felony or a misdemeanor).

And, of course, acronyms. Lawyers *love* acronyms. For example, when I was a young associate, a partner at the law firm "explained" to the client and me that "so long as we can clear any SOL issues, we'll reject ADR and seek an MSJ for violation of the NDA." Translated into English for the baffled client: so long as we could clear any statute-of-limitations issues, we were going to reject the request for alternative dispute resolution and instead file a motion for summary judgment for the defendant's violation of his non-disclosure agreement.

We trademark lawyers casually refer to the TTAB and the USPTO, but our clients have no idea that

the former is the Trademark Trial and Appeal Board and the latter is the United States Patent and Trademark Office. Same for RICO (Racketeer Influenced and Corrupt Organizations Act"), Fannie Mae (Federal National Mortgage Association), and MIL (motion in *limine*—yes *limine*). But the danger of acronyms—along with the rest of legalese—is that we become so acclimated to the jargon that we use it around our clients, which can lead to bafflement and even anger. I once had a frustrated client ask me, "What the hell is a TRO?"

Another example of bad legalese: opaque defined terms in contracts. As I explain to my law school class, you should draft your contracts with the realization that someday in the future a jury may have to try to make sense of it. For example, I once saw a contract in which one of the parties, the St. Louis Zoological Society, became the defined term "SLZC," which then appeared throughout the contract. Really? Why not "the Zoo"? So, too, with those mind-numbing contract reference terms, such as "heretofore," "hereinabove," and "hereafter. Why not just "above" and "below"?

Or take that risky habit of distinguishing the parties to a contract by attaching "or" and "ee" to end of "assign," "less," "grant," and other such terms. Not only is a contract between a "licensor" and a "licensee" eye-numbing, but it runs the risk of accidentally attaching an "or" to what should have been an "ee," which can (and occasionally does) result in a malpractice lawsuit. So rather than Licensor and Licensee, why not "Owner" and "Licensee"? Or even "Owner" and "User"?

So, my fellow colleagues, while legalese comes naturally to us, we need to remember that to our clients our jargon is just mumbo-jumbo. Otherwise, we may find ourselves SOL. And that particular acronym has nothing to do with the statute of limitations