

Sticks and Stones May Break Bones, But Words May Upset the Court

Bad Words: A Legal Writer's Guide to What Not to Say
David L. Horan (Carolina Academic Press 2024), 236 pages

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Bad Words: A Legal Writer's Guide to What Not to Say by David L. Horan¹ is a witty and informative reference manual. The book starts by giving some background on the author, who is a United States Magistrate Judge for the Northern District of Texas. The book then explains to the reader what it is not: "This is not a book on how to write a first draft of a legal brief or motion."² The introduction goes on to explain that the book, "offers a guide to words, phrases, rhetorical devices, and at least one punctuation mark³ that you should not use or should at least think twice, or even three times (not 'thrice'), before using . . . in formal legal writing."⁴ As Judge Horan mentions, the advice in the book is familiar, but I found his presentation of the information unique because it takes a closer look at specific words that are commonly misused in legal writing. Because the author is also a federal judge, the book will likely influence the practice community differently than advice from legal writing scholars.

The book is split into three main sections. The first section is titled "Top 50 to Avoid" where he lists the top 50 adverbs or adjectives that legal writers should avoid. In this section Judge Horan briefly explains his reasoning for avoiding each word, but there is also a list at the back of the

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¹ DAVID L. HORAN, *BAD WORDS: A LEGAL WRITER'S GUIDE TO WHAT NOT TO SAY* (2023).

² *Id.* at ix.

³ *Id.* at 64. The punctuation mark that Judge Horan has a specific disdain for is the exclamation mark. He notes that using them is the same as raising your voice to a judge, which an attorney should not do.

⁴ *Id.*

book of just the words without the explanations. For example, “[g]eneral, generally” is on the list and Judge Horan explains that these words are unclear and unhelpful by pointing out that these terms tell your reader that “something occurs or is true more often than occasionally or even more regularly than sometimes and certainly more frequently than rarely, but less often than always or mostly. . . . In other words, they don’t tell the court much.”⁵ This same term can be found in the list without explanation⁶ but the reader would miss out on Judge Horan’s thoughtful illustration contained in the list with explanation. The option for both lists is useful so the reader can decide the level of detail needed. As an academic, I find myself engrossed in the explanations, but I imagine the simple list is more useful for practitioners who are completing a late-stage round of final edits. Most of the words on this list come as no surprise as many relate to avoiding absolutes such as “always” and “never.” This list also includes common modifiers often used improperly or unnecessarily such as “almost” and “very.”

The second section is titled, “More Words and Phrases to Use Less or Not at All” and it includes words, phrases, and rhetorical devices for legal writers to avoid in addition to the top 50 list. Much like in the first section, Judge Horan explains why he is including each item on this list. This list includes some words that I imagine are less obvious “no-nos” than the top 50 words to avoid. For example, “[a]bnegating, abnegated,” “[a]bstemious, abstemiously,” and “[p]rolix, prolixly” all were words I was not familiar with, which caused me to stop and read the explanations carefully. I was, however, surprised to see “likely” on this list. According to Judge Horan, “You’re probably overusing this word. A good rule of thumb: If you couldn’t say that there is a high probability, give this term a pass.”⁷ In predictive writing courses, students are taught that the word “likely” is used to give the writer wiggle room, particularly if the written work product will be read by the client. This example indicates that the book may be most useful for written work product that is meant for a court’s consideration.

The final section is titled, “Bonus Materials,” and this section includes lists of words without explanations but that are grouped topically in Judge Horan’s comedic tone. For example, “Adverbs whose company even adjectives prefer not to keep” and “Lawyerly words to use only under legal obligation or duress.” My personal favorite list in this section is, “Fancy words you’re not sure you know (or want to know) the meanings of”

5 *Id.* at 24.

6 *Id.* at 149.

7 *Id.* at 86.

because it led me to take a deep dive into the dictionary. For example, I learned that “bowdlerize” means to edit literature in a way that removes anything vulgar. Although I cannot imagine using this in legal writing, it gave me perspective about the writing styles that judges may face.

Overall, this book was both entertaining and useful. The information will be most useful for writing documents that will end up being filed with a court, though most of the advice is sound for all legal documents. On occasion I wished that there was a brief definition within Judge Horan’s explanations, though most explanations included enough context for the reader to understand the proper definition or use of each word or rhetorical device. Judge Horan mentions that the book could be used as a reference for legal writers, which is exactly how I plan to recommend the text to others.