

COURTLY LANGUAGE

Lord Justice Staughton of the Queen's Bench Division in England continues what appears to be the thankless and unrewarding task of persuading the English Bar to move into the twentieth century - "language-wise".

Fifteen months ago I suggested a New Year's resolution for those who draft affidavits - not to write anything "verily". Some adopted it, but like most New Year's resolutions it has not proved to be of lasting effect. Prospective immigrants to this country must find the use of the term in affidavits not the least puzzling aspect of our immigration procedure.

This year's first target is "learned". Why do barristers refer to an opponent as their *learned friend*, thus exposing themselves to an accusation of untruthfulness on two grounds? Would not "my friend" do? Again it may not be true; but it serves as a reminder that advocates should be polite towards each other if they can. It is distracting for a judge to have to quell angry abuse at the bar, instead of getting on with other more important aspects of a trial.

When counsel for the prosecution opens a case in the Crown Court he first introduces his "learned friend" for the defence. What do the jury make of that? I suspect that it merely confirms an impression already formed, that those who work in the law live in a remote enclave where ordinary human behaviour and common sense have little place.

And what of "learned" judges, Lords Justices at al? Apart from the occasional use by way of irony ("the 'learned' judge in the court below completely overlooked an elementary rule of law"), this usage adds nothing of any value to legal proceedings. The judgments of Lord Denning, conspicuous for their economy of language, rarely referred to counsel or a judge as *learned*; and they were none the worse for that.

Use of the word is not encouraged by the capricious basis on which, technically, it is earned. Henry Cecil in *Brief to Counsel* summed it up well "...Some practitioners think that they ought to call everyone 'learned'. It has been said that counsel once referred to the 'learned usher', but this may be apocryphal."

In the occasional dull moment during an appeal from arbitrators, I have reminded myself (and others) which members of the London Maritime Arbitrators Association are "learned" and which are not. These reflections are not entirely frivolous.

They bring out the point that the word draws no useful distinction and serves no useful purpose.

Our legislators must share some of the responsibility. In the House of Commons QCs are honourable and learned members; but in the House of Lords it is only the Lord Chancellor and present or past Law Officers, judges of the Superior Courts of the United Kingdom and Lords of Appeal in Ordinary who are noble and "learned". Thus Mr. Peter Rees QC was *learned*, but Lord Rees QC is not.

"As he then was" is another irritating phrase, referring to a barrister or judge who has since risen to a higher sphere. Readers who already know that will not find the information useful; those who do not already know it will not find it of much interest. But

I would not discourage the habit of referring to judges by the name which they subsequently acquired on promotion to the peerage (eg Bigham J as Lord Mersey, or Brett LJ as Lord Esher). The reader has to work out for himself who is meant - unless the law reporter is kind enough to add a footnote providing the answer.

My next proposal is that those who do not understand Latin should use it with considerable care. The plural of "forum" is "fora", although "forums" could be thought acceptable; but you cannot convert "quorum" into "quora", as an eminent silk (now a Lord Justice of Appeal) tried to do some years ago. Nor is there much to be said for the advertisement that once appeared for "one of the finest vade meca on the market". The word "addendae" does have a meaning in Latin - women who ought to be added; it does not mean lists of additional items. Readers had better work out the meaning of

"agendae" for themselves.

Some people seem to have an extraordinary addiction to the word "said" in pleadings and affidavits. Its only purpose is to distinguish the noun that follows from others of like kind, by referring back to what has been said already. The worst abuse is to use the word when there is nothing to refer back to, because nothing has already been *said*. Such idiocy is mercifully rare.

Mannerisms in speech or gesture afflict us all, and can be distracting. Like the scorer at a cricket match, I sometimes feel tempted to note how many times an hour one barrister says "in my respectful submission". If we repeated ourselves like that at home, our spouse or children would lose no time in saying so. But a court of law is no place for mentioning such trivia.



BUT THEY CAN'T DO THIS! IT'LL CUT EACH EPISODE TO ONLY TEN MINUTES!

I understand that students at the Council of Legal Education are shown a video recording of their early efforts at advocacy in the practical exercises. Could not the same service be provided for established barristers and silks? As Burns put it "O wad some pow'r the giftie gie us. To see oursels as others see us! It wad frae mony a blunder free us, And foolish notion."

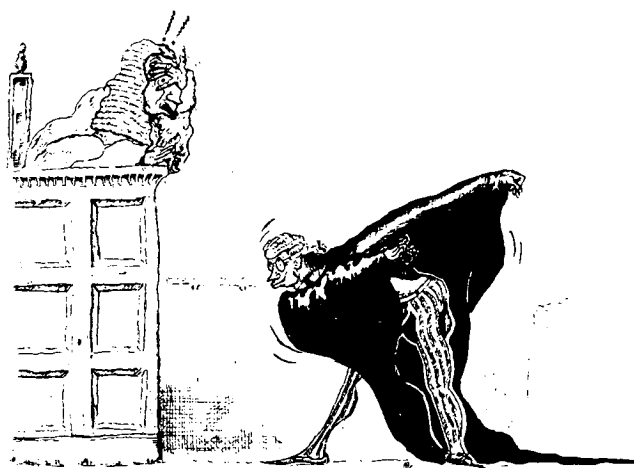
Like a medical check-up every few years, it would be valuable to have an opportunity to see and listen to oneself in court. The recording would be entrusted to the subject only, to make such use of as he pleased. In-service education is now a popular topic. This might be a start. Perhaps a similar service should be provided for judges, by the Judicial Studies Board. Of course, as Plato wrote, when one is already perfect any change is for the worse. But it is to be hoped that not many would turn the offer down on that ground. □

Intrepid Scot

One of the Attorney-Generals of Scotland, known as the Lord Advocate appeared in the House of Lords with four propositions in support of his appeal. The court was presided over by Lord Diplock who, some think, thought Counsel were superfluous and probably also the fellow court judges who sat with him and that one could find out the real point by reading the papers beforehand. From doing the latter he had concluded that the fourth point was the best. He said to the Lord Advocate who was developing his first point: "Lord Advocate, we are very interested in your fourth point". "We are very grateful to your Lordship" said the Scotsman in return and continued with his first point. A little while later Lord Diplock said: "Lord Advocate, we think your fourth point is a particularly good one". "I am very heartened to hear what your Lordship has to say" he said, and continued with his first point.

Eventually Lord Diplock could stand it no longer and he said: "Lord Advocate, we are inclined to think, of course, we keep an open mind on these matters, but we are inclined to think that if you win this case, and again we have an open mind, we think you will win it on the fourth point."

The Lord Advocate said: "Are your Lordships inviting me to depart from my pre-stated order". "Well" said Lord Diplock: "Yes, yes, we are Lord Advocate." "Then the invitation is declined." □



Unpersuaded *

Counsel, in the course of a plea for a drug offender, stated that his client was repentant, that a crushing sentence would be inappropriate and that the Judge should be confident that he would not sin again.

His Honour: There is no way of really assessing it.

Counsel: You can only judge that after the sentence is served, Your Honour.

His Honour: And you never know.

Counsel: Well, you know if they come back, Your Honour.

His Honour: The judge never knows or rarely knows.

Counsel: Sometimes they do, Your Honour. Sometimes they are unfortunate enough to come back before the same judge.

His Honour: In ten years they have not come back before me.

Counsel: I was just wondering, Your Honour, whether they were all still in.

His Honour: Thank you. Well, that must a very encouraging note to sit down on so far as the accused is concerned.

His Honour sentenced the accused to 12 years with a minimum of nine years.

November, 1981

* See Motions and Mentions □