

If the Revised Rent payable on and from any Review Date has not been paid, the relevant Review Date rent shall be payable at the rate previously agreed on the Revised Rent. Rent shall be paid all forthwith pay the difference between the Rent in respect of the relevant Review Date and the Rent due preceding the Rent Date. The tenant in respect of such period together with interest at the Stipulated Rate on each instalment of such difference from the

CLARITY



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ABA's London conference

Members within reach of London during the American Bar Association conference in July are invited to contact Mark Adler (at the address on p.51) with a view to a Clarity social.

Annual meeting & awards 2000

Clarity's annual meeting and lunch will be held in London on Saturday, 4 November 2000.

The Clarity awards will be made at the same time. Details will follow.

A movement to simplify legal language

Patrons: *The Rt Hon Sir Christopher Staughton and Justice Michael Kirby*

No 44: December 1999

Subscriptions

A number of subscriptions for the year beginning 1 September 1999 have not yet been paid, and some members still owe previous years. To save our already over-worked volunteers the trouble of chasing you, would anyone in default please send a cheque in favour of CLARITY? Details of the amount and of the person to whom it should be sent appear on p.51. If you do not want to continue membership., please let us know. If you're not sure if you've paid, please email the treasurer on <john.pare@btinternet.com>.

CLARITY's membership

As we go to press we have 1,093 members in 30 countries. A breakdown by country appears at:

<www.adler.demon.co.uk/clanum.htm>.

CLARITY's website

<www.adler.demon.co.uk/clarity.htm>

CLARITY's website is slowly building up and we would welcome suggestions for its improvement. Plain language practitioners are invited to exchange links with us.

David Mellinkoff

Dick Wydick writes (5 January):

This morning's *San Francisco Chronicle* reported the death of David Mellinkoff on New Year's Eve. He was 85. All of us are indebted to him for blazing the plain English trail. His books include *The Language of the Law*, *Legal Writing: Sense and Nonsense*, and *Mellinkoff's Dictionary of American Legal Usage*. He was an emeritus professor at the UCLA law school. He continued his writing, and he kept office hours at the law school until October 14, when he suffered a heart attack. He was raised in Beverly Hills, California, did his undergraduate work at Harvard, and earned his law degree from Stanford.

We hope to print a fuller appreciation in the next issue.

Editorial

*There is a tide in the affairs of men,
which, taken at the flood, leads on to fortune;
Omitted, all the voyage of their life
Is bound in shallows and in miseries.
On such a full sea are we now afloat,
And we must take the current when it serves,
Or lose our ventures.*

William Shakespeare: *Julius Caesar*

No-one should underestimate the difficulty of achieving plain language. For lawyers it is perhaps harder still. We strive for exactitude. We must not be ambiguous. Plain language is generally simple language. How to be plain and simple yet cover every angle? We are tempted to abandon the enterprise. None of us can get three darts in the triple twenty every time. But we still aspire to that standard as we enjoy a game of darts. And our game is lifted when we watch the pub expert. We see what can be done. Clarity's membership includes its experts and its aspirants. We benefit from one another. I hope all will find something in these pages to inspire and to educate, to raise your game.

As I was putting together this edition of *Clarity*, Lord Denning reached the age of 100. He it was who enrolled me as a solicitor of the Supreme Court in 1967. As a judge, his ability to communicate in plain

English was unmatched in this century. I have sprinkled some of his *bons mots* about this issue. It is good to have the example of one who hit the plain language triple twenty so often, and in such style.

This is also the year in which Lord Woolf, his successor as Master of the Rolls, has introduced new Civil Procedure Rules in England and Wales. They came into force on 26th April. As Lord Woolf has written: "... the civil justice system will be transformed". In Clarity, we are especially interested in one aspect of the Woolf reforms - their concern with plain English. Not only do the rules themselves attempt plain language; they encourage lawyers to use plain English in court pleadings. Oh, sorry. The very word "pleadings" has been banned.

Lord Woolf aptly demonstrates the difficulty to which I referred earlier: "Unlike the two sets of rules which they replace, the new rules are in readily understandable English... However, judges will need to learn how to interpret the new rules...!"

There is a tide in the affairs of men. The tide is flowing in the direction of plain words. Plain words for court documents, commercial contracts, legislation, official documents of every kind. It is a universal tide. We can resist it, and be tumbled over and over at risk of drowning. Or we can ride on it. We may still suffer the occasional tumble, but most of the time we will enjoy the exhilaration of the surfer.

Choose to surf the tide.

Nick Lear

The layman's understanding of legal writing

by Richard Oerton

For years after I joined Clarity I thought myself a supporter, only to realise later that I had never really grasped its true aim: *that all kinds of legal writing should be comprehensible to all kinds of layman*. I remember asking that a book to which I had contributed will precedents should be reviewed in the Clarity journal, and being mildly offended when it was not. I should have been grateful for the editor's

tact because my forms would, by this standard, have been roundly condemned. And ever since the penny dropped, I have asked myself: how close can you get to realising this aim (and how guilty should I feel for having failed to get within miles of it)?

Two questions arise. First, what can we really hope to achieve? Under the first three sub-headings below, I look at some factors which limit laymen's ability to understand legal writing. And second, how can we best achieve it? Under the final heading I consider again how best to give the layman such understanding as we can realistically hope to give.

The jewel in the crown

There is a crucial difference between understanding what a legal document says and understanding its full implications. There may even be

instances in which the more clearly people understand the document itself, the more likely they are to misunderstand their true position. Take the case of a simple lease. A tenant ought to be able to understand the document and, in doing so, to know exactly where he or she stands; but surely this is quite impossible.

Somewhere in every lease you find a forfeiture clause saying that if the tenant fails to perform his or her obligations the landlord can terminate the lease. And every lawyer knows that the landlord cannot do any such thing. The law about relief against forfeiture stretches before us, replete with complexity, involving different regimes for failure to pay rent and for other breaches, rules about breaches which can be remedied and those which can't, and all the rest of it.

My example of forfeiture is only one of many which could be given in relation to leases; and leases are only one of many kinds of legal document which may give a false — or, just as bad, an incomplete — impression if taken at face value. Any such document takes effect within a complex of legal rules deriving from different sources, and an understanding of these rules is just as essential to an understanding of the overall effect of the document as is an understanding of its terms. This effect is like that of a crown consisting of a jewel in an elaborate setting. The jewel is the document; the setting is the rules; you won't gain any appreciation of the thing as a whole unless you look at both.

I can suggest no solution to this problem. The idea of trying to incorporate a statement of the surrounding law in the document itself is almost too ludicrous to mention, and the idea of flagging up little warnings every so often is perhaps still more absurd. But even if clarity of drafting may often produce, for the layman, only the illusion of understanding, the illusion is still of some value - and, even if it were not, clarity would be desirable so as to avoid mistakes, save expense and sweep away the cobwebs which still cling to our image.

One man's meat

The next point is that, in drafting, there may be a conflict between making yourself clear to laymen and making yourself clear to fellow lawyers. Perhaps it is here, if anywhere, that I might seek excuses for some of my own past shortcomings. I drafted a lot of trust documents (and in that description I would include wills which establish continuing trusts). The land of trusts, like other bits of the legal landscape, is a foreign and almost self-contained territory. So what I

did is to produce drafting which was meant to be concise, modern and clear, but which was aimed at lawyers (including, in the last resort, judges) rather than at laymen.

Take, for example, the overriding power of appointment which no self-respecting trust can afford to be without. These creatures are governed by decided cases and no one who is not a trust lawyer should try to draft one from scratch; but care, concentration and some expertise will produce a result which is comprehensive and judge-proof. Can you produce a result which is at the same time readily comprehensible to the layman? I doubt it. I did try once, and my wording became so odd, lengthy, and likely to generate actions for negligence, that I gave up. The first problem is that every power of appointment uses the word "appoint". This word has a meaning for the layman, but that meaning is not the right meaning. Can you find another word, or form of words, which convey the right message to the layman while still making it clear to the lawyers who will administer the trust that you are creating the animal known to the law as a power of appointment and so attracting all the existing law which applies to such animals?

One thing must be obvious: if there really is a conflict between producing clarity for lawyers (including judges) and producing it for laymen, you have to do the former or you go out of business.

Dr. Johnson was right

Samuel Johnson famously remarked,

I have found you an argument; but I am not obliged to find you an understanding.

He had a point. No matter how simple is the language in which you try to communicate something to someone, your attempt will fail if the something is inherently too difficult for the someone to grasp.

Lawyers get a lot of undeserved stick here. Why, people say, do they "make it all so complicated"? And the answer supplied, expressly or impliedly, is: so they can foster a mystique and bump up their fees. Sometimes it is so; more often it is not. The law is complicated because civilised societies provide scope for infinitely varied activities and the law seeks to govern them all fairly.

This has implications for drafting. Many legal documents regulate the mutual rights and obligations of a number of different people; do so over a long period of time during which they may do many

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different things and many different events may befall them; and do so, moreover, against a backdrop of intricate legal rules. Documents of this kind, however clearly worded, are always going to be conceptually difficult. And the more intelligent and conscientious the drafter, the more difficult they will be. Understanding such documents is a task for which very many clients are simply not equipped. It is this which curbs my own enthusiasm for such exercises as the rewriting of the tax legislation. The idea that laymen could go to the revised legislation and understand their tax position seems to me pie in the sky. The language may be beautifully simple, but the complexity of the subject matter will remain to exhaust and ensnare them.

Characteristics of clear writing

The earlier parts of this article are intended, not to question the aims of Clarity, but only to mention a few factors which impede their full realisation. It must be emphasised, too, that there is a vast amount of legal writing to which these factors do not apply. In this last section, therefore, I want to reaffirm my loyalty to the flag and put forward a few thoughts about the achievement of clear writing.

Clarity tends to espouse several rules of thumb. Three seem often to recur:

- use ordinary, everyday language;
- use short sentences;
- use the active, not the passive, voice.

Let's take a quick look at these.

I can't fault the first. **Everyday language** must be desirable when you can use it. I have suggested that you can't always use it, but I won't get started on that again.

What about **short sentences**? Well, as Lord Denning would say, take this very article. It does contain some short sentences, but also some pretty long ones. This is true of most examples of modern English prose. In the work of a good writer, the longer sentences are long for a purpose, and the shorter sentences are short for a purpose — which, incidentally, they would not

achieve if they were not surrounded by the longer ones. The alternation of sentences of different lengths is meant to make writing lively and varied and so to hold the attention of the reader. Unless a piece of writing is itself very short, a constant diet of short sentences is boring. Are the long sentences in this article actually any harder to understand than the short ones?

Nor does the **passive voice** seem necessarily to militate against clarity. The first two sentences of this part of the article are in the passive voice: are they difficult, and is the third sentence easier because it is in the active voice? (I realise, of course, that the

passive voice may irritate because it fails to identify the person who does the doing. But sometimes this really is desirable. When I drafted a deed putting right a series of botched appointments of trustees, one of my recitals said something like: "It is thought that the appointments may have been defective ...". Whom should I have identified as the thinker of this thought? Not the parties to the deed: they hadn't a thought in their heads. Not me, surely? Not the partner in the firm who had botched the job in the first place? No, the thought existed, but there was no need to locate it.)

I know I am being disingenuous in asking questions based on this article. We have to consider, not sophisticated and intelligent members of Clarity, but people some of whom live their lives just this side of illiteracy. And if they have problems with long sentences and the passive voice,

let us by all means eschew these things in any legal writing which is directed at them (noting, however, that they don't include many of the average clients of the average legal practitioner).

But put all this on one side now, because what I really want to suggest is that, in the quest for true clarity, rules of thumb are not as helpful as they seem and may even distract attention from what really matters. You can obey all the rules of thumb and yet

When we come to the meaning of words, lawyers are here the most offending souls alive. They will so often stick to the letter and miss the substance. The reason is plain enough. Most of them spend their working lives drafting some kind of document or another - trying to see whether it covers this contingency or that. They dwell upon words until they become mere precisians in the use of them. They would rather be accurate than clear. They would sooner be long than short. They seek to avoid two meanings, and end - on occasion - by having no meaning.... The meaning of words, they say, is a matter of law for them and not a matter for the ordinary man. Like Humpty Dumpty, they seem to say, in rather a scornful tone: "When I use a word, it means what I choose it to mean, neither more nor less", and like Humpty Dumpty they sometimes have a great fall.

Lord Denning

produce writing which is very hard to understand. And you can disobey them and still produce writing which is admirably clear.

The Times of 16 November 1998 reproduced a letter by A.P. Herbert to the paper in 1929, which ended like this:

At dusk the river becomes an enchanted place, the prosy factories are mysterious and beautiful; the dull trams like fairy coaches float along the Embankment; the lights on the shore, the shadow and sparkle on the water, the fresh bite in the air - here is suddenly a different world, a new London, which the Londoner never sees.

At 57 words, this is a pretty long sentence, but it is easy and enjoyable to follow. It isn't convoluted, the syntax is not tortuous and it makes no great demands on the reader. Turn now to this extract from a news report on the same day:

Charles Maude, a graphic and stage designer, discovered in 1986 that he was HIV positive, and became a passionate supporter of the London Lighthouse, the charity helping Aids sufferers find advice and treatment. In his last two years, Charles Maude moved in with his brother and his wife, Christina.

The last sentence is bad, not because it is short, but despite its shortness. There are two separate pitfalls for the reader. It can seem, first, that Charles Maude moved into the London Lighthouse and did so with the other two people mentioned and, second, that Christina was the wife of Charles Maude, not of his brother. A few moments' thought shows that neither of these things is likely, and you then read the sentence in the right sense - but it is unforgivable for anyone who aims at clarity to force their readers to read a sentence twice over.

The crime illustrated by the last extract is dealt with in *Fowler's Modern English Usage* under the heading of "false scent":

The laying of false scent, i.e. causing the reader to suppose that a sentence or part of one is taking a certain course, which he afterwards finds to his confusion that it does not take, is an obvious folly ... But writers are apt to forget that,

if the false scent is there, it is no excuse to say they did not intend to lay it; it is their business to see that it is not there, and this requires more care than might be supposed. The reader comes to a sentence not knowing what it is going to contain. The writer knows. Consequently what seems to the writer, owing to his private information, to bear unquestionably only one sense may present to the reader, with his open mind, a different one.

As you might expect, each of the last two issues of the Clarity journal contains an example of false scent - but they appear, not as writings in need of clarification but as examples of clarity itself. The first one (*Clarity* 42 (September 1998, p. 5) is given by Vice-President Al Gore in his commendation of "Plain Language in Government Writing". The Veterans Benefit Administration is writing to an ex-soldier whose insurance payment has not arrived and who has presumably sent them a form about it. I have given the English spelling of "cheque":

We received the missing-cheque form you sent us. We asked the Treasury Department to find out what happened to it.

Picture the ex-soldier's puzzlement. Grammatically, "it" must refer to the missing-cheque form, but why is the Treasury Department

being asked about that? Eventually he may realise that "it" refers instead, and ungrammatically, to the cheque that went missing.

The other example (*Clarity* 41 (April 1998, p. 40) is provided by the revered Martin Cutts, translating a standard letter from the City of Edinburgh Council about ... well, see what you think it's about:

Despite essential cuts in spending, we remain committed to reducing waste and recycling it. We have therefore made new plans which should result in more household waste being recycled at lower cost.

In the phrase "reducing waste", the word "waste" would naturally be taken to mean waste of money or resources (so that the reader thinks the letter is about economising) but how do you recycle that? Not until you come to the phrase "household waste" in the next

This time I had a good common lawyer sitting with me, Winn LJ; and a chancery lawyer who was endowed with unusual common-sense, Danckwerts LJ.

Lord Denning. *The Discipline of Law* published by Butterworths. Chapter 3. *The Interpretation of wills and other unilateral documents.*

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sentence do you realise that the letter is really talking about waste in the sense of rubbish.

I quoted at length the extract from Fowler because it tells us, not merely about the nature of "false scent", but about the nature of clear writing and the reasons why it is so seldom produced. All writers, it is safe to say, think that they write with perfect clarity because what they write is perfectly clear to them. Only when - only if - they put themselves in the reader's place do they see that this may not be so. If the ability to write

with real clarity is a skill which can be acquired, the way to its acquisition lies not so much through obeying rules of thumb as through a painful and prolonged attempt to stand in the shoes of the reader.

Richard Oerton retired in 1997 from practice as a solicitor with London firm Bircham & Co. He had previously worked at the Law Commission and is the author of *A lament for the Law Commission* and many articles. He is a member of the Clarity committee.

My thanks to Richard for some of the Denning quotations.

A novel approach to legal writing?

by District Judge Gordon Ashton

Perhaps I have discovered *Clarity* rather late in the day, but having written several legal books and countless articles during the past decade I am finding my introduction to Plain English reassuring. It is a daunting task to write a first article, let alone a complete book, and not knowing how others undertook these tasks I developed my own approach. My publishers appeared to find this novel, but it works so is outlined here for the encouragement of others.

Background

I never intended to become an author, but bringing up a mentally disabled child and helping other such parents whilst practising as a solicitor made me realise the inadequacy of existing legal writing. The problem is that the law is presented as traditional legal subjects rather than according to the needs of client groups, so even if you manage to find what you are looking for after consulting an extensive legal library there is little guidance as to how to apply this for the benefit of the particular type of client. The interaction of different fields of law is never considered and it is assumed that everyone can cope with the usual procedures. The result is that individual practitioners are constantly having to re-invent the wheel for members of minority groups such as "the disabled". So fuelled by frustration at the unmet need, and with little sense of my own inadequacies, I wrote *Mental Handicap and the Law* which was published in 1992.

This was expected to be a "one-off" in a narrow

field, but my approach to legal writing must have had some merit because I was asked by several publishers to do the same for "the elderly". Hence *The Elderly Client Handbook* which I wrote for the Law Society and *Elderly People and the Law* for another publisher. It seemed to me that how the material was presented was as important as what it said, so in each case I produced CRC (camera ready copy). The publishers were not accustomed to this but had little choice — from me they got the book, the whole book, and nothing but the book!

Subsequently when invited to develop my textbook into the loose-leaf *Butterworths Older Client Law Service* I adopted an equally hands-on approach. A team of experts was assembled to write the topics that I did not feel up to, but they sent their contributions to me on disk and I re-wrote them so as to ensure that they were interlinked and consistent in style, and also achieved the right emphasis. This was a salutary experience because it brought home to me the difference between writing about a particular field of law and addressing the needs of an older person in language that could be understood. I approached the task as consumer, asking myself what I needed to know, rather than as author setting down what was important in the legal framework.

A novel technique

Clearly I had to adopt a writing procedure if I was to deliver at this level and an enthusiasm to use computers proved invaluable. The technique that I initially developed has served me well over the years and continues to do so. In fact little has changed in my approach to writing, although the technology has improved beyond what anyone could have contemplated. I started by buying a powerful Apple Macintosh computer with an A3 size screen and a laser printer, then learning to use a good word-processing programme. This all cost a small

fortune but the advantage was that I saw on the screen exactly what would be printed and could display two A4 sheets side by side and transfer text between them. These facilities are now taken for granted because Windows on a PC has caught up with the Mac, the ability to overlap two documents and change the image size means that any screen will do, and fast printers are available at low prices. But it was revolutionary in 1989.

With the technology in place I was ready to be productive. Learning how to create a *style sheet* and then discovering the *outliner* was the key to structuring any new document. I start by opening a "master" file with a suitable page layout and styles, then I type the title and think through the headings in descending levels so as to be sure that the subject is fully covered in a logical manner. To cope with the ever growing volume of raw material which threatens to swamp me I open a separate "dump" file in which everything is typed or copied thereby clearing my mind. When I am ready I open both files side by side on the screen, transfer the material to the master file using "cut and paste" and place it under the appropriate heading. Once there is nothing worthwhile left in the "dump" I know that it has all been made use of, so I tidy up the master and lo and behold, the article or chapter is finished. Join several chapters together and I have a book.

The role of publishers

It came as a surprise to me that publishers were not interested in my proposal that when a book is first commissioned there should be a meeting involving the author, the editor and an IT expert, to plan how it is to be written, define the style sheet and page layout, and offer the author ideas and support. They still assumed that authors would deliver handwritten or typed text and that it was their job to convert this into a publication. They did not want formatted text and invariably I found myself dealing with editors who lacked my level of computer skills. Even now, 10 years later, I am facing a publisher who thinks that he can introduce a new imaginative layout after the book has been written; if the author has been doing his job properly it is then too late!

If the use of information technology is addressed at an early stage publication can follow within weeks of the author finishing work rather than up to a year later, and this is so important with legal material. When writing the *Service* I would finish a chapter at home late at night or early in the morning and send

the file to my publishers as an email attachment before leaving for work. During the day this would be edited and returned so that I could indicate my final approval by the same means that evening. As the files that I produced were formatted in accordance with the final page layout printing could follow almost immediately. What a change from my early experience when parcels of proof pages were sent back and forth and the whole process took months with every potential for errors to be introduced.

A six point plan

I commend the following strategy for writing anything from a short article to a complete book.

1. Choose the topic

The first step is to ask what you want to write about and why. Is it to expand general knowledge of the subject or to promote a new concept? What are the parameters of the subject and how long will the publication be?

2. Target the readers

The next step is to consider who you are writing for and how you may best reach them. What writing style will they appreciate and what knowledge will they have already? What aspects of the general subject will be of particular interest or concern to them?

3. Create a structure

This involves both the presentation and arrangement of the material. Start by creating a suitable style sheet and write to that. This is the time to consider how many heading levels there will be and the use of indented paragraphs, bullet points and footnotes. It is difficult to transfer your material to a different style sheet after it has been written, although the appearance (as distinct from number) of heading and paragraph styles may be varied at any time. Then determine the actual headings, by which I mean how many there will be and what they will say, starting with the title and working downwards. If the title is well chosen this will tend to dictate everything that follows.

4. Assemble the material

Once the structure of the article has been established the text can be introduced from the "dump" file. If there proves to be something of significance which does not fit then the headings should be reconsidered; this is very easy if looked at in outline (that is, the headings only are shown on the screen and can be added to or individually up or down-graded).

5. Write clearly

There is nothing that I can tell readers of *Clarity* about this. The test that I always apply is "Will my intended readers understand this on first reading, or will they have to read it again and again and even then fail to grasp what I am trying to say?". I do not use phrases that only a lawyer would recognise, and ensure that any quotes from statutes or cases are clearly marked as such. I avoid tortuous sentences but try to be imaginative with my vocabulary whilst never forgetting the threshold of my intended readers. Written material does not need to be dull just because it is legal.

6. Review — and review again

When all is complete, read the entire text through again and again on the screen, deleting any unnecessary words, changing repeated words and generally improving it wherever possible. Then finally do the armchair test: sit down in a comfortable chair away from the computer with a print in one hand and a red pen in the other, pretend that you have picked up the article for the first time and read through it making corrections and amendments. You always see things on paper that you fail to see on the screen (but this stage may be omitted if an editor is doing it for you).

Conclusion

The task of writing legal material now involves less chores if approached in a structured way because it is possible to copy and paste from other files, scan text into a word-processor, download from the Internet and dictate direct to the computer. But the author can influence the final presentation and even view this whilst writing the raw material, so more emphasis can be placed upon ensuring that what is produced is readily digestible by the ultimate reader. That is becoming the real skill in legal writing, and the judges of its success are the intended readers.

I do not know whether mine is a novel approach but it has become second nature to the extent that I even use it in my daily work preparing judgments. There is of course the danger that too much energy is expended on the presentation and not enough on the quality of the material. But writing this article is certainly a novel experience, because as an amateur author I have never before tried to tell a group of professionals how to do their job.

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CLARITY SEMINARS on writing plain legal English

England

Mark Adler has now given over 50 seminars for CLARITY to a selection of firms of solicitors, to law societies, legal interpreters, and to the legal departments of government departments, local authorities, and other statutory bodies. Participants have ranged from students to senior partners.

The seminar has slowly evolved since we began early in 1991, with a major relaunch in 1995. But it remains a blend of lecture, drafting practice, and discussion. The handouts outline the lecture, with exercises and model answers.

The seminars are held on your premises, and you may include as many delegates as you wish, including guests from outside your organisation. The normal size ranges between 12 and 25 delegates.

Arrangements are flexible, but the half-day version usually lasts 3hrs 10mins (excluding a 20-minute break) and costs £450 net, and the full-day version usually lasts 5hrs 10mins (excluding breaks) and costs £650 net.

Expenses and VAT are added to each fee and an extra charge is negotiated for long-distance travelling.

Contact Mark Adler (details on inside back page)

Canada

Plain Language Partners Ltd delivers the Clarity workshop in Canada.

The workshops are offered in-house. A half-day (3¹/₂ hours) seminar is \$1000 and a full day (6 hours) \$1,500, both with up to 15 participants. Larger groups can be accommodated through team-teaching by arrangement. The longer session allows for more hands-on practice in clear drafting.

Primary instructor is Cheryl Stephens; for larger groups she is joined by Janet Dean. Cheryl is a lawyer who has been a legal communications consultant and instructor for 8 years. Janet is an adult educator and trainer who specializes in business and technical communications.

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Plain English in a motor insurance policy

by Nick Lear

based on a note by Richard Oerton

The King in *Alice in Wonderland*, quoted by Lord Denning:

If there is no meaning in it, that saves a world of trouble, you know, as we needn't try to find any. And yet I don't know, I seem to see some meaning in it after all.

Richard Oerton came across this clause in a motor policy issued by a respected subsidiary of Norwich Union:

If the law of any country in which this policy operates requires us to settle a claim which, if this law had not existed we would not be obliged to pay, we reserve the right to recover such payments from you or from the person who incurred the liability.

Eh? Richard smelled a rat. Wouldn't that mean the insurers need not pay out at all, since the UK law of contract provides that the insurers should honour their policy? And if that law did not exist ... So he asked what it really meant.

The brokers said:

This wording really exists to protect the insurer whilst the vehicle is being used outside of the UK where some of the EC member countries (not full members) have not applied as yet the fully recommended motor insurance directives

from the European Council.

and ...

The possible exclusion would only apply if the law of another country introduced an unexpected cost outside of the normal motor policy terms.

In a Guardian insurance policy, written in a plain English style (and mostly in plain English), the clause appears like this:

If the law requires Guardian Insurance to pay a claim which would otherwise not be covered, we reserve the right to recover the amount from you or the person claiming over under this section.

Richard suggests the first version might mean, and could be re-phrased:

If a claim arises in a country outside the United Kingdom, and the claim is not covered under the terms of this policy but we have to pay it because the law of that country requires us to do so, we may recover the payment from the person whose act or omission gave rise to the claim.

Or perhaps the insurers were trying to protect themselves from a case where the mere existence of the policy gives rise to some expense which is not covered by the policy, whether in or out of the UK. The Guardian Insurance plain English clause leaves one wondering what "otherwise" means. Richard's version makes no connection between the claim (which arises but is not covered by the policy) and the policy. Some connection must be inferred, surely. As for the original clause that started this - well, words fail.

It is (AJP) Taylor's touch with often the simplest of words which gives so many of his judgements their penetrative strength.

Robert Kee in *The Oldie* (Feb 2000)

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How to write an impeachment order

by Professor Joseph Kimble

Obtuse, archaic, and verbose legal language ... is surely even today a major reason for antipathy toward the legal profession. — Peter M. Tiersma²

If lawyers everywhere adopted this goal [of writing in plain language], the world would probably change in dramatic ways. — Bryan A. Garner²

Let's hope that the next presidential impeachment does not happen for at least another 130 years, if at all. By then, you and I will hardly care, unless the genetic research into prolonging life has paid off for us in miraculous ways. So I don't expect to ever see my suggestions find their way into an order on articles of impeachment. I offer them to posterity — and to current judges who might find them generally useful in writing orders of any type.

You may have noticed that during the recent proceedings the administrators sometimes rooted around in the Andrew Johnson impeachment for procedural and linguistic precedent. Of course, lawyers tend to do that — follow the old forms — which is one reason why legal writing has been so bad for centuries.³ Chalk it up to habit and inertia, proclivities that are all too human. But please don't believe that just because a form has been around a long time, it must be tried and true. We greatly exaggerate the extent to which legal terms have been settled or fixed by precedent.⁴ And no amount of precedent can justify the syntax, sentence length,

¹ *Legal Language* 42 (1999).

² *A Dictionary of Modern Legal Usage* (2d ed. 1995, p.661).

³ See Bryan A. Garner, *The Elements of Legal Style* (1991, p.4): ("We have a history of wretched writing, a history that reinforces itself every time we open the lawbooks."); John M. Lindsey, *The Legal Writing Malady: Causes and Cures* (N.Y. L.J., Dec 12 1990, p.2) (describing lawbooks as "the largest body of poorly written literature ever created by the human race").

verbosity, organization, and design of traditional forms and "models".

Judicial orders are a perfect example. They don't have to be written the way they usually are; they don't have to be stilted, but they usually are because that's the traditional style. Few writers will break free.

At any rate, it will probably happen that the administrators of the next impeachment trial will look to this last one. Regardless of the outcome, they'll find the orders below. (Think of looking for food and finding a very old sandwich.) Perhaps — not likely, but perhaps — some future scholar will also find this article and my suggested rewording. Then the administrators, including the presiding Chief Justice, will at least have a choice between legalese and plain language. No doubt they will be grateful for this good fortune and will enter my name into the Congressional Record. Ah, posthumous fame.

But I'd happily settle for less. I hope some judges will read this article — and some lawyers who prepare orders for judges to sign — and our profession will dump a little legalese as it sails into the new millennium. I hope some judges will make it known that they want orders to be written in the new, the modern, the plain style. If judges will only lead the way, lawyers will follow. And I can't think of an easier starting point than orders.

The Orders on the Articles of Impeachment

Here's the main order that ended the impeachment

⁴ See David Mellinkoff, *The Language of the Law* (1963, pp.278-79, 375): ("[T]he formbooks . . . were decorated with decisions that had never passed on the language or arrangement of the form. . . . [Moreover,] that vast storehouse of judicial definitions known as Words and Phrases . . . is an impressive demonstration of lack of precision in the language of the law. And this lack of precision is demonstrated by the very device supposed to give law language its precision — precedent.");

Mark Adler, *Tried and Tested: The Myth Behind the Cliché*, *Clarity* 34 (Jan 1996, p.45) (showing how a typically verbose repair clause in a lease is not required by precedent);

Benson Barr et al., *Legalese and the Myth of Case Precedent* (64 Mich. B.J., 1985, p.1136) (finding that less than 3 percent of the words in a real-estate sales contract had significant legal meaning based on precedent).

trial earlier this year:

*The Senate, having tried William Jefferson Clinton, President of the United States, upon two articles of impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present not having found him guilty of the charges contained therein: it is, therefore, ordered and adjudged that the said William Jefferson Clinton be, and he is hereby, acquitted of the charges in this said article [these said articles?].*⁵

Notice some of the familiar characteristics of legalese — even in just this one sentence:

- The sentence is too long. You might argue that the colon provides a break, but the colon is incorrect because the first half of the sentence won't stand as an independent clause. The colon should be a comma. (And the comma after *The Senate* should go.)
- The sentence is contorted. It begins with two long clauses (so-called absolute clauses): *The Senate having tried . . . , and two-thirds of the Senators present not having found . . .* And each of those two clauses has a reduced internal, or embedded, clause: *[that are] exhibited against him and [that are] contained therein*. Then, finally, we get the independent clause: *it is, therefore, ordered . . .* Linguists call this kind of sentence "left-branching" because readers have to fight through incidental branches of meaning before getting to the main point in the independent clause, the linguistic trunk.⁶ This structure is all too common in legal writing: *If . . . and if . . . and if . . . , then Pierce may . . .* No good. Readers would rather see the main subject and verb early on. Sometimes the remedy is to put multiple items, such as conditions or rules, in a list at the end of the sentence — so that it branches right. Sometimes the remedy is to convert to more than one sentence.
- We get an odd negative: *two-thirds of the Senators present not having found him guilty*.
- We get inflated words: *upon* instead of *on*, and *exhibited* instead of *brought*.
- We get one of our beloved doublets: *ordered and adjudged*.
- We get two of the worst antique words: *hereby* and *said* (in place of *the, this, or those*). Look at

⁵ 145 Cong. Rec. S1459 (daily ed. Feb 12, 1999).

⁶ See Bryan A. Garner, *Securities Disclosure in Plain English* (1999 pp.53-56).

the two uses of *said*: *the said William Jefferson Clinton* and *this said article*. The said *said*s are as useless as lipstick on a carp. What in the world impels us to talk like this? Why not go all the way and make it *the said Senators*?

- We get other unnecessary words: *contained therein* and *in this said article*. There are no other charges in sight except the charges in the articles of impeachment. This is the kind of overprecision, or false precision, that is so often put forward to rationalize legal writing.

Here's an alternative. Which one do you vote for?

The Senate has tried William Jefferson Clinton, President of the United States, on two articles of impeachment brought by the House of Representatives. Fewer than two-thirds of the Senators present have found him guilty of those charges. Therefore, it is ordered that President Clinton be acquitted.

Or you could whittle down that version even further:

After a trial on two articles of impeachment against the President, William Jefferson Clinton, fewer than two-thirds of the Senators present have found him guilty. Therefore, it is ordered that he be acquitted.

Now, the proceedings were not yet formally completed. One last order had to be entered:

*Ordered, that the Secretary be directed to communicate to the Secretary of State, as provided in Rule XXIII of the Rules of Procedure and Practice in the Senate when sitting on impeachment trials, and also to the House of Representatives, the judgment of the Senate in the case of William Jefferson Clinton, and transmit a certified copy of the judgment to each.*⁷

Thus were listeners and readers treated to a few more characteristics of legalese:

- The sentence is again long and contorted. The main trouble here is the big gap between the infinitive verb form (*to communicate*) and the object (*the judgment*). Good writers try to keep the subject, verb, and object fairly close together.⁸
- We get needless complexity, or so it seems. The Secretary is directed to communicate the

⁷ Cong. Rec., above, note 5.

⁸ See Bryan A. Garner, *The Winning Brief* (1999 pp.167-70); Richard C. Wydick, *Plain English for Lawyers* (4th ed. 1998, pp. 43-45).

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judgment and to transmit a certified copy of the judgment. But isn't that all one operation? Presumably the Secretary does not phone in the judgment and follow with a certified copy.

- We get unnecessary information: *as provided in Rule XXIII of the Rules of Procedure and Practice in the Senate when sitting on impeachment trials*. Would a federal judge write, *It is ordered that the motion for summary judgment is granted and the complaint is dismissed, as provided in Federal Rule of Civil Procedure 56(b)*? If the reference to the Senate's rules has to stay, it could be relegated to parentheses.
- We get unnecessary prepositional phrases: *the judgment of the Senate* instead of *the Senate's judgment*; and *in the case of William Jefferson Clinton* instead of *in this case*. Besides, we know what case it is by now.
- For good measure, we get Roman numerals: *Rule XXIII*.

Here's an alternative:

It is ordered that the Secretary send a certified copy of the Senate's judgment to the Secretary of State (as provided in Rule 23 of the Senate's rules in impeachment trials) and also to the House of Representatives.

Or if it's really necessary to communicate the judgment and also transmit a certified copy, then a list would work nicely:

It is ordered that the Secretary:

- (1) *communicate the Senate's judgment to the Secretary of State (as provided in Rule 23 of the Senate's rules in impeachment trials);*
- (2) *communicate the judgment to the House of Representatives; and*
- (3) *send a certified copy of the judgment to both.*

But Where's the Dignity?

I can hear the response. Some will argue that formal acts deserve formal language — and that plain English is not suitable for the solemn and weighty matter of a judicial order, let alone an order on articles of impeachment. The answer to that is twofold.

First, formality is a dangerous thing; it often degenerates into pomposity. A writer can get away with saying *transmit* instead of *send*, or with the occasional extra word or longish sentence. But when you are persistently formal and long, you wind up with the kind of writing in the two orders we just

looked at. Certainly, no one will claim — will they? — that those orders are eloquent, elegant, or poetic.

Second, I submit to you that the suggested alternatives are not undignified or even informal. They are simple and straightforward, the way an order should be. The notion that plain language is drab and undignified is one of the great myths — along with the myth that it's usually at odds with settled precedent, the myth that it's not precise, the myth that it's child's play, and the myth that it's only about short sentences and short words. Plain language is, if anything, more precise than traditional legal writing; it takes hard work and embraces a wide range of principles; it can be forceful and literary; and it's fitting for any occasion.⁹ Plain English is the American idiom.

So Who Cares?

After all this, you may be thinking, *What's the big deal?* Nobody (except fussbudgety writing teachers) complains about court orders. They don't cause any trouble. They are just a short instruction that embodies a previous decision or result. They have minimal content. Their style is not important.

Well, I say that habits of mind are important. The intractability and incremental growth of forms (they never get shorter) is important. The compelling evidence that lawyers overrate traditional style — and that plain language is decidedly more clear and effective — is important.¹⁰ The myths about plain language are important. A dismissive attitude toward plain language is important.¹¹ The public's attitude toward our profession is important. The constant criticism, the ridicule, the parodies of legal style — centuries of it — is important.¹² And a willingness to learn and change is important.

⁹ See Joseph Kimble, *Answering the Critics of Plain Language*, (5 *Scribes Journal of Legal Writing* 1994-95, p. 51).

¹⁰ See Mellinkoff, above, note 4; Tiersma, above, note 1; Joseph Kimble, *Writing for Dollars, Writing to Please*, (6 *Scribes Journal of Legal Writing* 1996-97, p.1).

¹³ See, e.g., George Hathaway, *A Plain English Lawyer's Oath* (Part 2) (78 Mich. B.J. 1999, p. 66) (noting the Michigan Supreme Court's rejection of a plain-English lawyer's oath even as an optional alternative to the current oath).

¹² See Robert Eagleson, *Plain English: Changing the Lawyer's Image and Goals*, *Clarity* 42 (Sept 1998, p. 34).

So I say that the style of *every* piece of legal writing is important because, as Blake wrote, it lets us "see a World in a Grain of Sand".¹³ Every piece of legalese reflects on the state of our professional currency, our language.

How do you write an impeachment order? The same way you should write any legal sentence, paragraph, page, or document. In plain language.

This is a shortened version of an article that appeared in the Summer 1999 issue of *Court Review*.

¹³ From the poem *Auguries of Innocence*.

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In the English Law Society's Gazette (16th July 1999) there was a report of a negligence action against solicitors who acted for boxing promoter, Frank Warren. Some joint venture agreements were criticised by Mr Justice Lightman as "badly drafted and replete with obscurities and inconsistencies". Too many lawyers still like to make their documents obscure. The whole profession, through our negligence premiums, has to pay the price.

Putting jury instructions in plain English: *The Minnesota Civil Jury Instruction Guides*

by Professor Rosemary J. Park
and Ruth M. Harvey

Introduction

Extensive research sometimes reveals the obvious. In June of 1995, the Civil Litigation Section of the Minnesota Bar Association, made up of trial lawyers — both plaintiff and defendant, issued a report on civil juries based on focus group research done over a two-year period. Not surprisingly, interviews with jurors revealed they wanted to be able to understand what they were supposed to do and what the law of the case actually was. The language used to instruct juries was one problem. It was "legalese" in the most serious sense of the word. A second concern was that often a twenty-minute (or longer) oral reading by the judge was the only way that the instructions were given. Jurors in the study expressed concern that they could not remember everything when all the instructions were oral.

Alas, I was too bold. Not only too bold, but altogether wrong. The House of Lords have so declared.

Lord Denning, about the *Gouriet* case.

The report consequently recommended that jury instructions should be rewritten in plain English, restating in common, understandable terms the deathless (and deadly) prose of sacred precedent. In addition, the report recommended that each juror be given a written copy of the instructions to refer to during the deliberations in the jury room. The American Bar Association in 1998 also recommended giving a written copy of the jury instructions to jurors.¹

Common practice at the time of the report was for the judge to give the instructions orally and either to provide jurors with no written copy at all or to provide only one copy for all the jurors to refer to. In the case of having only a single copy, there were horror stories of one jury member "hoarding" the instructions and using possession of the written copy as evidence of divinely granted authority over the deliberations.

Implementing the recommendations

The implementation of the suggestions to use plain English required sponsoring changes to the *Rules of Civil Procedure in the Courts* through petitions to the Minnesota Supreme Court. The petitions were brought by members of the section and were successful.

¹ American Bar Association Section of Litigation Recommendation *Civil Trial Practice Standards*, February 1998. See also, Munsterman, G.T. Hannaford, P. Whitehead M. Eds. *Jury Trial Innovations, National Center for State Courts* (1997).

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But more than just instigating rule changes to allow these recommendations to be implemented, the Civil Litigation Section sought to make understandable jury instructions a reality in practice.

The section somewhat audaciously hired a plain English consultant Rosemarie Park (co-author of this article) and offered her services (unsolicited) to the Minnesota District Judges' committee in charge of periodically updating the *Minnesota Jury Instruction Guide*.

Her job was to advise the judges, their reporter (a respected law professor), and the purely advisory committee of attorneys who also assisted in redrafting the instructions, on how to write and talk plain English. No easy task — to tell judges, lawyers and law professors that the language they have spent years perfecting is incomprehensible to bricklayers and housewives and, therefore, useless to jurors.

The District Judges' committee was, for the most part, gracious regarding the unsolicited "gift" provided by the section. They welcomed the theory of plain English. The lawyers and law professor also adopted plain English theory and the consultant that went with it. All that remained was the task of rewriting more than 600 instructions in a way that was consistent with the law and understandable to a jury.

The process was a long and difficult one. But despite the odds, the next edition of the *Minnesota Jury Instruction Guide* is due to be published by West Publishing Company before this article appears, and will be the first in the United States to be issued in plain English.

Changing the way juries are instructed

The *Minnesota Jury Instruction Guides* contain pattern language for the judges to use to instruct the jury. They also contain "use notes" and the legal

authorities for each instruction. The guide is widely used by both bench and bar.

In the following section we will outline the procedural changes in the way juries are instructed. This is followed by the plain English elements that were introduced in the new jury instructions and the difficulties the committees working on the instruction encountered and overcame, sometimes more successfully than not. The article finishes with lessons we picked up along the way.

It is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised.

From Lord Denning's judgment in *Seaford Court Estates Ltd v Asher* [1949] 2KB 481.

I had to practise continually In chambers if asked to advise, I took infinite pains in the writing of an opinion. I crossed out sentence after sentence. I wrote them again and again. Seek to make your opinions clear at all costs.

Lord Denning. *The Discipline of Law*, Butterworths. Part 1: *The construction of documents*. Chapter 1: *Command of language* paragraph 2.

Giving both oral and written instructions

Giving jurors a chance to both hear and read the instructions gives members a better chance of understanding the general instructions on their duties and the specific instructions about a case. As the focus group of jurors stated, oral instructions by themselves

are frequently ineffective. Research done for the military indicates that poor readers reading at a proficiency of a child with only six years of schooling understand more if they have access to both oral and written text². Adult education research shows that learners remember just 5% of lecture material³.

Reading and hearing information together is a more effective way of receiving information.

Designing instructions that are intended to be both heard and read has its pitfalls. Plain English in a written form is logical and easy to understand. The same plain English materials read aloud however, can sound short and disjointed. For example, plain language

² Sticht T., Auding and Reading, HumRRO (1974).

³ National Training Laboratories, Bethel, Maine, USA

makes extensive use of lists. Immediately, one judge on our committee asked about the proper way to read a list. Short sentences may appear "unfriendly" in tone and style.

Oral language does not easily convert to text either. Speakers who take part in discussions or give informal talks are often horrified at seeing a written transcript of their presentations. What sounded logical, appropriate and perhaps impressive when said aloud looks less impressive when it is written verbatim. Many judges on the committee were reluctant to give up rhetorical style and eloquent expression they used in oral language to the more blunt plain English usage. The differences in style and format were explained in an introduction to the plain language version.

Introducing subheadings

One immediate change in having both oral and written instructions was in the introduction of subheadings. As proponents of plain English understand, the use of subheads is critical in organizing written information. The reader can scan a set of instructions and find information immediately. The subhead informs the reader what the paragraph is about and allows the reader to grasp the gist of the information. The use of subheads also forces the writer to organize his or her material so that only one basic idea or concept is included in each paragraph. After considerable discussion the committee recognized the importance of subheads in organizing jury instructions. However most committee members opted for short subheads rather than entire sentences. Where it might have been more logical to use subheads that pose a question as in *Can jury members take notes?* many judges preferred *Taking notes* in the written form while adopting a more conversational *Now I will tell you about taking notes* while instructing the jury orally.

Personalizing the parties involved

The American Bar Association recommends using case-specific terms such as *Ms. Smith* or *Speedy Transportation* rather than *plaintiff* and *defendant*. We used (*plaintiff*) and (*defendant*) with the intention that

the name of the parties would be substituted in the appropriate places. Where lawyers and judges would never confuse the meanings of *plaintiff* and *defendant*, or even *lessor* and *lessee*, we decided that the uninitiated jurors are more than likely to do so.

We also used the first person singular. *I* means the judge and *you* means the jurors when addressing the jury. We deleted references to the vague amorphous entity *the court*, changing *The court has decided Mr. Smith was not at fault* to *I have decided Mr. Smith was not at fault*.

The time is not yet here, but I hope it is coming when Judges will realise that the people who draft statutes, wills or contracts cannot envisage all the things that the future may bring; that words are a most imperfect instrument to express the mind of man, and that the better role of a Judge is to be a master of words, and to mould them to fit the purpose in hand - by way of implication, presumed intention or what you will - so as to do therein "what to justice shall appertain".

Lord Denning. *The Discipline of Law*, Chapter 5.

To make the instructions more immediate and personal we set out to expunge the passive voice. We found it difficult. For example, *Determination of whether (he) (she) initially consented to the use of (his) (her) vehicle*, is passive. To take another example, the sentence *The law requires that fault be apportioned among those parties found to be at fault....* was rewritten as

You must decide the degree to which each person is at fault. Despite our efforts the familiar cadences sometimes reassert themselves.

Deconstructing text

The previous instructions had a knack of adding modifying clauses to sentences until they became impossibly long and almost incomprehensible. Take the following sentence from the old version of a passenger's duty:

A passenger has a duty to take active measures to protect (himself) (herself) from danger only when it is apparent that (he) (she) can no longer rely upon the driver for protection, [as when the driver by his conduct shows that (he) (she) is incompetent to drive or where the driver is unmindful of or does not know of a danger known to the passenger] and then only if the passenger becomes aware of the danger at a time and under circumstances where (he) (she) could have prevented the harm.

This 91-word sentence violates every known rule of plain English and can easily be broken down into shorter version that now reads:

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A passenger must act to protect himself or herself when:

- *it is apparent that the driver cannot do so, and*
- *the passenger's action could have prevented the harm.*

Definition of legal terms

It will come as no surprise to plain English proponents that one of the most difficult issues involved explaining specific legal terms to a jury. If it is legally necessary to include a specific legal term then that term has to be defined. This requirement was a contentious issue⁴. Where a word of art in law may have a very specific meaning, the explanation may alter that meaning in ways that are not immediately apparent. What is a good definition of *proximate cause* or a *warrant of merchantability*? On the other hand, the word *chattel* was replaced by *property*; no one on the committee could find a chattel that was not property i.e. something owned. However, even in this case one judge insisted that one could have "abandoned" chattels that were not property and no longer owned. Similarly *speech or other conduct* was more adequately described as what a person *did or said*. Throughout we tried to find accurate and unambiguous explanations while keeping the word of art when necessary. As can be seen above, the natural tendency of judges is to look for that one in a million conceivable circumstance where a plausible case could be made, despite the fact the chance of that happening is infinitesimal.

What to leave in and what to leave out

Sometimes the art of plain English is knowing what to leave out. For example, does the jury need to know

⁴ See Martineau, R J. *Drafting Legislation and Rules in Plain English* (West Publishing Co, 1991) and Wydick R.C. *Plain English for Lawyers* (4th Ed. California Academic Press, 1998).

the names of all the legal elements in a contract? Is a plain English description of what a contract contains sufficient? The definition of consideration in the old version was:

Consideration is the bargained-for exchange of money, services, goods or promises which is the reason for making the contract. When one party makes an offer to another party, requesting that the party do something in return for an act or return promise, there is consideration if the party

acts or performs or promises something in return. The act, performance or promise must be a detriment to the party who acts or performs or promises and a benefit to the party who makes the offer requesting the other party to act, perform or promise something in return. Detriment means any act or

promise that caused the party to refrain from doing something the party could otherwise have done, or to incur some loss of responsibility that the party did not otherwise have to undertake. A benefit is anything that is of value to the party who makes the offer.

The new version reads:

"Consideration" is benefit received, or something given up or exchanged, as agreed between the parties.

Use of statutory or appellate language

A second difficult issue concerned the use of statutory language. Some judges and lawyers felt that we must use the exact words and terms used in a law or in an appeals court opinion, because that is literally the law regardless of what the legislators or judges might have actually meant, or thought they meant. Indeed there is safety to using the exact words of a law or higher court opinion. Palyga has convincingly argued judges' views on the dangers and advantages of redrafting in plain English⁵. Many judges opt for clarity and hate gobbledygook. Many judges and lawyers however, continue to insist on the use of existing language despite the fact that much of it is incomprehensible to the general public, to many

The client will turn to you and say: "What does it mean?" The trouble lies with our method of drafting. The principal object of the draftsman is to achieve certainty - a laudable object in itself. But in pursuit of it, he loses sight of the equally important object - clarity. The draftsman - or draftswoman - has conceived certainty: but has brought forth obscurity; sometimes even absurdity.

Lord Denning. *The Discipline of Law*, Butterworths, Chapter 2. *The interpretation of statutes.*

lawyers, and even to some judges.

We found dealing with this issue particularly difficult in the area of products liability where a jury is being asked to decide if a manufacturer is responsible for selling a dangerous product. The established Minnesota language reads:

a product is in a defective condition unreasonably dangerous to the (user) if the (manufacturer) knew or reasonably could have discovered the danger involved in the use of the product.

That sounds quite reasonable to the expert ear. But a lay person might ask "Is the product dangerous because it is defective?" "Is it defective because it is dangerous?" "What is reasonably dangerous?" It was a problem we did not solve and the original statute based language remains intact.

We also debated the degree to which a specific definition in the law could be rewritten. For example, *reckless conduct* was defined in the previous edition of the jury instructions in this way:

Conduct is reckless if the person who engages in that conduct knows or has reason to know of facts that create a high degree of risk of harm to another, and proceeds to act, or fails to act, in deliberate disregard of, or indifference to, that risk (or, if the person does not actually realize or appreciate the degree of risk, acts or fails to act under circumstances where a reasonable person in the defendant's position would have realized or appreciated the degree of risk.)

Faced with this tangle of prose, the reasonable person falls back on his or her common sense understanding of recklessness. Our compromise with the statutory definition reads:

A person is "reckless" when he or she knows or has reason to know that:

- 1. If he or she does act, there is a high risk of*

harm to another, or

- 2. If he or she does not act, there is high risk of harm to another, and*

proceeds with deliberate disregard or indifference to the risk.

Violating the rules of narrative prose

Many on the committee were unaware that different rules apply to procedural and narrative text. Most judges are used to a style of prose writing that makes extensive use of paragraphs. Plain English style mandates short paragraphs each containing only one major topic. The most common way rule makers have tried to deal with over-long paragraphs is to limit the average number of words per paragraph. The

To every subject in this land, no matter how powerful, I would use Thomas Fuller's words over 300 years ago: "Be you never so high, the law is above you." ...Let no-one say that in this we are prejudiced. We have but one prejudice. That is to uphold the law. And that we will do, whatever befall. Nothing shall deter us from doing our duty.

Lord Denning, in the *Gouriet* case (1978 AC 435), later overruled by the House of Lords:

Connecticut Plain Language Act limits paragraphs to an average of 75 words. Minnesota's Plain Language Contracts Act is more stringent with a 60-word average⁶. However, we were not concerned with arbitrary word limits. Our main concern was clarity and the separation of ideas into understandable elements.

Jury instructions are essentially procedural and not narrative, so we followed accepted rules for procedural text. We put each instruction on a new line. Frequently, to the grief of many, this meant abandoning paragraphs altogether. The thought of single line instructions and bullets to give visual emphasis was too much. In a compromise with the hard line narrative prose judges on the committee, we agreed not to use bullets. However, each element in the instructions starts on a new line. To judges and lawyers used to elegant linkages between sentences that draw concepts together in paragraphs, this separation is disconcerting. For the lay person, separating out elements is crucial to understanding unfamiliar ideas.

⁵ Steve Palyga, *Clarity* 43 (May 1999, p.46).

⁶ Park R.J. and Harvey R.M. *The plain language contract act, The Bench and Bar of Minnesota*, January 15-19 1985.

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A second element of procedural prose is the use of lists. Lists are not used in narrative text to any extent but are a common feature of plain language. Lists organize and simplify. We found lists especially useful in the case where there is an extensive set of factors to take into consideration, as when awarding damages. Lists can also clearly identify a set of factors needed to establish a legal concept such as fraud. Our instructions also use lists within sentences. For example:

The only question for you to decide is the amount of money Henry Smith is entitled to receive for:

Harm to his reputation

Mental distress

Humiliation

Embarrassment

Physical disability.

Violating the rules of grammar

The committee included some strict grammarians of the old school. They were difficult to convince that some rules are outdated. For example, it is now perfectly acceptable to start a sentence with *and*, *but*, *or*, and *so*. Infinitives may be split and sentences may be ended with a preposition. As the authors of the guidebook of the Plain English Campaign state, the English Language is constantly evolving and changing⁷. We attempted in our instructions to emphasize meaning over rules, and clarity over elegance.

Format

We found that format was not an easy issue to agree on. Law-book publishers are used to specific types of format that may or may not use sufficient white space, large enough type size, and variety of font. The increased need for white space and the additions to the law mean that the new jury instructions will be in two volumes and not one. The issue of whether to allow ragged right margins is still being discussed with the printers. In terms of typeface, previous editions of the instructions made frequent use of subheads that were centered and capitalized throughout. We changed the subheads to sentence

case and justified them to the left.

Judicial discretion and lessons learned

In Minnesota, as elsewhere in the US, judges have always customized their instructions to fit their own style and the case they are dealing with. Judges tend to become inordinately attached to their own personal style of doing things. The ease with which judges adopt the new instructions has yet to be seen. We are sure that some traditionalists will have difficulty with the new order. However, the new instructions have

been widely publicized at judicial meetings and bar meetings throughout the state and the reaction has been acceptance and an eagerness to get the new version.

The most difficult part of this long two-year process of rewriting was getting the 22 judges on the committee to agree on wording and then not

have that decision revisited time and again as the members present at each committee meeting varied. The committee also felt a heavy responsibility of getting the instructions right. There was a natural reluctance on the part of district judges to tread new ground for fear of making a "reversible error". Plain English does involve a degree of risk, as Steve Palyga points out⁸.

Finally we have become convinced that most lawyers and judges both think and dream in legalese and the pious exclamation *It's perfectly simple to me!* when referring to a warrant of merchantability says it all.

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Some manufacturers of ginger beer had been careless and left a snail in the bottle. A lady drank it and was made ill. According to the previous law she had no claim against the manufacturers. They had made their contract with the wholesalers, not with her. So they were under no duty to her. Lord Aitkin persuaded two Scotsmen to agree with him. They held the manufacturers liable. But two Englishmen dissented. They had been brought up in Chancery.

Lord Denning. *The Discipline of Law*, Butterworths, part 7, *The doctrine of precedent*, chapter 2

⁷ *Language on trial*, Plain English Campaign, Robson Books 1996.

⁸ Steve Palyga, *Clarity* 43 (May 1999, p.46).

Plain language in the U.S. federal government

by Dr Annetta Cheek

On June 8 1998 Vice President Gore announced a new federal initiative requiring federal agencies to write to their customers in plain language. (See *Clarity* 42, pages 2-8.) On behalf of the President, he called on agencies to:

- * Write in plain language all new notices, letters, and other documents that went directly to the public after October 1, 1998;
- * Write in plain language all proposed regulations after January 1, 1999; and
- * Rewrite into plain language all existing letters, notices, and similar documents by January 1, 2002.

Not everyone in the Federal government met this new Presidential directive with enthusiasm. Many believed it couldn't be done; the government was too hidebound and rigid, too set in its ways. A few even thought it shouldn't be done, since it threatened established procedures and policies. Many in the federal legal community were concerned that plain-language writing would be too imprecise, discarding terms of art supported by years of case law.

At the same time, the pockets of plain writing within the administration celebrated. We'd been hoping for this for a long time. We believed that it was important for the government to start making more sense to the American people.

What has happened since June 1998? The Federal government has been inching toward a plain-language standard. Not racing, but making perceptible progress that the American public can already notice. Here are some examples:

The **Veterans Benefits Administration** had already started its own program, called "reader-focused writing" before the Vice President's plain-language initiative started. They had trained 800 staff members in reader-focused writing, for the customer rather than for other bureaucrats or for agency lawyers. When the initiative began, Veterans updated its training and expanded its goals. In June of this year, it started an ambitious program to train 8,000 employees to write for the reader. That's 8,000 out of 13,000 employees. With the letters they've

already rewritten, they've found that they get fewer calls from veterans asking for clarification, and more correct responses to their requests for information from veterans. Overall, they expect the program will save them time and money.

The **Food and Drug Administration** is tackling the problem on different fronts. FDA produces masses of literature related to health issues. It's a tremendous job to get it all into plain language, but FDA employees have made a good start. They now require manufacturers of over-the-counter drugs to label their products in easy-to-understand language. They've prepared a plain-language packet of materials intended for retailers of tobacco products, telling those vendors about restrictions on selling tobacco to minors. They've produced a terrific plain-language pamphlet on the need for women to get regular pap smears and checkups for breast cancer. They ran an in-house contest and selected their own plain-language slogan to promote the initiative: *Plain Language — It's the Write Thing*.

Under Chairman Arthur Levitt, the **Securities and Exchange Commission** has moved strongly toward plain language. SEC started a pilot program, offering to review required financial documents — such as proxy statements and prospectuses — that were in plain language more quickly than if the documents were in standard legalese. The program was so successful, and so well received by the securities industry, that SEC issued a final regulation early in 1999 requiring that certain parts of financial-disclosure documents, including the executive summary and risk factors, be in plain language. Now everyone, not just experts, can more easily read these documents and use them to make informed decisions about investments.

In July 1999, **Social Security Administration** Commissioner Kenneth Apfel sent a *Commissioner's Bulletin* to all employees to introduce the plain-language initiative and describe its importance to SSA's mission. This endorsement gave a boost to a whole series of other SSA initiatives.

- All deputy commissioners will soon release *Plain Language Action Plans* to their employees. The *SSA Plain Language in Government Writing Action Plan* and a desk reference, entitled *SSA's Standards for Writing in Plain Language*, will go with the deputy commissioners' plans.
- SSA developed a half-hour plain-language videotape to show to all employees. It opens with a brief statement from the commissioner, again endorsing plain language, explaining its importance, and restating his commitment to the

initiative. The tape continues with a private plain-language contractor providing tips on how employees can achieve plain language in their writing.

- Over 250 employees who write high-volume correspondence to the public are attending 2-day plain-language workshops. Nearly 5,000 employees who write low-volume correspondence to the public will attend a 1-day workshop. This summer, SSA convened a workgroup, facilitated by a private-sector contractor specializing in regulations, to reorganize SSA's part of the Code of Federal Regulations using plain-language principles.
- SSA recently submitted its newly revised form 7005, *Your Social Security Statement* to the National Partnership for Reinventing Government for a nomination for the *No Gobbledygook Award*. Beginning October 1, SSA will launch the largest customized mailing ever undertaken by a Federal agency when it sends this annual statement to 125 million workers.

The **Department of the Interior** has made plain language an essential part of everyday operations. The department has published many final rules in plain language. The foundation of the department's program is training. It offers introductory plain language training every month through the department learning center. The department is sponsoring in-depth training for employees working on selected regulations. In this training, it pairs a program official with one of the reviewing attorneys. Some good examples of published plain-language regulations are Bureau of Indian Affairs Housing Improvement Program (25 CFR part 256) and Mineral Management Services rules on relief or reduction of royalty rates (30 CFR part 203).

On the non-regulatory front, the department's bureaus have developed inventories of their existing non-regulatory documents that they intend to convert into plain language. Each bureau has converted its top five existing documents into plain language.

The department has also taken a leading role in reaching out to other departments across the federal government. It offers a free half-day introduction to plain language to any office that can get together at least 20 staff members wanting training. Interior has presented over 60 of these programs.

The **Department of Commerce** was a leader in responding to the Vice President's requirement that all agencies develop plans to carry out the initiative. The Deputy Secretary circulated to all agency heads the Presidential directive and the Vice President's guidance, stressing the Secretary's commitment to the initiative. Agencies formed a department-wide

committee to spread the word and help develop necessary skills. The DOC committee is called the Plain Language Action Service Technical Information Committee — PLASTIC. As committee head James Dorskind says, "This is a serious initiative, but we have a sense of humor about it." The Department presented a professionally led training program to select staff. It taped another training program and distributed it to all agencies, including some field installations. Commerce now sells this tape at a nominal cost to other agencies that need training tools. Commerce recently submitted a nomination to the Vice President's no gobbledygook award, a new aid for fishers to explain requirements of the rule requiring "pingers" on fishing nets.

The **Office of Management and Budget** provides guidance on many topics to all federal agencies. Much of the material that came out of OMB in the past was bureaucratic and difficult to read. OMB is making a significant start solving this problem. Currently, a task force is working to revise the "information collection" regulations in plain language. These regulations specify procedures that every agency must follow when asking for permission to collect information from the public. OMB's Office of Federal Procurement Policy is embarking on a project to eliminate many old policy memos, and rewrite the remaining ones in plain language. These initiatives are important far beyond the tiny portion of OMB's documents that they affect. Many agencies look at OMB as a trend setter, and this significant movement toward plain language by this agency will have a major impact government-wide.

Another major office in OMB, the Office of Information and Regulatory Affairs, is playing a leadership role in promoting plain language use throughout the federal government. The office's staff work with new regulations that are about to be proposed to help the authors write in plain language. The office has been rewriting its own documents in plain language. Currently, the office is writing guidelines in plain language to help agencies conduct cost-benefit analyses of proposed regulations. It expects that the guidelines will prove to be useful to a very broad audience, not just agency economists, and will encourage all users to write in plain language. The office has recently issued a plain-language guidance to agencies on implementing the new Executive Order on federalism. And the office is helping the other offices within OMB adopt plain language as well. It will be helping to write OMB Circular A-11 in plain language over the coming year;

last spring, it worked to put part of the publication into plain language as an interim measure.

The **Pension Benefits Guaranty Corporation**, the agency that pays your benefits when your former employer can't, wants to make sure you don't have any unanswered questions when you read their letters. The agency understands that when their letters aren't clear and readers have questions, the readers have to call or write the agency, wasting everyone's time. The agency uses "template letters" that employees personalize for individual recipients. So the agency has revised hundreds of those letter templates, with hundreds more to come.

The agency also embarked on a corporate-wide training program that helps employees weave plain language into their everyday work life. The result should be employees who use plain language in everything they do for both internal and external customers.

Research and Special Programs

Administration is a small research agency within the Department of Transportation. The plain-language advocates at this agency, working with the **Office of the Federal Register**, are trying to make a major contribution to the readability of those most important federal documents, regulations. On December 11, 1998, the Federal Register published the agency's *Notice of proposed rulemaking* in a "test" format, using new format techniques. The agency believes that these new format techniques would make regulations much easier to read, thus making them easier to comply with. The format changes RSPA tried include the following:

- Staggered indentation for different paragraph levels.
- Blank half-lines between paragraphs.
- Centered headings.
- Identified defined terms.
- Clarified tables.
- Using bulleted lists in preamble summaries.

These may not seem like major changes, but to anyone who reads the *Federal Register* regularly they are revolutionary. Even though the time for comment on the rule is long past, the *Federal Register* is still seeking comments on the format, and you can help by taking a look at this new format and letting the *Federal Register* know how you like it.

* * * * *

What's next? Many other agencies are working on

plain-language projects, large and small.

- Watch for drastic improvements in many of the forms and notices you get from **IRS**.
- The folks at the **Health Care Finance Administration**, the agency that brings us Medicare, are working hard to move their agency toward plain language. Check out next year's *Medicare and You* pamphlet, and watch the *Nursing Home Compare* web site for improvements.
- **Student Financial Aid Administration** is determined to be a plain-language agency. Watch for next year's on-line application for student aid.
- The **Immigration and Naturalization Service** is revising 11 major forms into plain language.
- The **Office of Personnel Management** has already redone into plain language its portion of the pamphlet that Federal employees get yearly about available health benefits. OPM is requiring health-care vendors to rewrite their portions in plain language by next year.

And U.S. readers can help. If you get something from the government that isn't in plain language, let the agency know about it. Let them know the President and Vice President expect them to write in plain language. You can show them the Presidential memo with the requirement, and all the supporting guidance, by going to the plain language web site, <<http://www.plainlanguage.gov>>. If you want to write more plainly to your own customers, you'll find lots of help there.

This article also appears in the January 2000 issue of the Michigan Bar Journal.

Dr. Cheek holds a Ph.D. in anthropology from the University of Arizona. She has worked on regulatory issues for three different Federal agencies over the past 18 years. In the spring (local time) of 1997 she joined the National Partnership for Reinventing Government to work on the initiative to get the government to communicate more clearly. Since then, she has led a number of plain-language projects on behalf of NPR.

Dr Cheek's *Plain language manual* can be downloaded from <www.plainlanguage.gov/handbook/index.htm>.

It is advisable for many reasons that the legal use of language should not be very widely removed from the popular use.

Sir Frederick Pollock

Let your words be few.

Ecclesiastes 5.1

Some pros and cons of readability formulas

by Mark Hochhauser, Ph.D.

What does "grade level" really mean?

One aspect of writing in plain language is making the document readable. Most readability software programs report their findings in terms of a "grade level." However, readability formulas were originally developed to help schools decide whether textbooks were appropriate for students at a particular grade level. For students in 6th grade, a textbook written at 12th grade level would probably be inappropriate. Researchers have taken this concept of grade level and sometimes used it inappropriately for adults, who have presumably already learned how to read. It's common for researchers to conclude that people must have 16 years of education (a college degree) to read a document that's been estimated to be at grade-16 reading level. That's wrong.

Grade-level estimates provide a level of precision that may not be justified. Based on a readability estimate, researchers may conclude that readers "need four years of college to understand the document". But what does "four years of college" mean? Does it mean that someone with four years of college will completely understand the document, but that someone with only three years of college will have no understanding of the document? Such estimates may be relevant for elementary-school books, where there may be big differences between students in different grades. But such precise estimates have less relevance for adults. And spare us from the readability researchers who conclude that the reader needs 16.25 years of education to understand a document. Despite the statistical calculation, readability programs are not that accurate, and such precision has no basis in reality.

"Grade-16 reading level" is just another way of stating that the material is complex and average readers may find it to be very hard to read and understand. Flesch's seven reading-ease categories (very easy, easy, fairly easy, standard, fairly difficult, difficult, and very difficult) would be a better way of expressing the complexity of the material.

The Cloze Test

Of course reading ease must ultimately be determined by the reader, not just by a readability

formula. One way to measure reading comprehension is through the Cloze procedure which involves deleting every 5th word from a document, replacing it with an underlined blank space of the same length, and asking the reader to fill in the missing word based on the reader's understanding of the rest of the sentence.¹ A Cloze score of 60%-100% correct means that the reader could understand the materials; 0%-60% correct means that the materials can be partly understood, but may require supplemental information; less than 40% correct means that the materials are not comprehensible to the reader.

Cloze testing offers a good way to document whether readers can better understand materials written in original language or in plain language. Software programs (such as Cloze Wizard) make it easy to produce a document with every 5th or 10th word removed and replaced by a fill-in-the-blank space, and the entire Cloze procedure is faster and easier than using focus groups or multiple-choice tests to measure reading comprehension.

Pitfalls in calculating readability

Although original readability formulas were done by hand, the advent of computers meant that such formulas could be converted to very fast software calculations — but it was up to a programmer to make that conversion. Unfortunately, while a person may have little trouble breaking a word into syllables, it may be quite a bit more difficult to write a program that will break words down into syllables. When these software programs were written, computer memory was fairly small, making it impossible to include a syllable count for every word in the English language. Thus, syllables weren't counted, but only estimated.

It's not surprising, then, that different programs may use different ways to count words, syllables, and sentences. Even the same formula may give different

¹ Taylor, WL: "Cloze Procedure": A New Tool for Measuring Readability (*Journalism Quarterly* 1953: 30, 415-433);

Schaffer, RJ, & others: *Assessing the Readability of Government Accounting Standards: The Cloze Procedure* (*Journal of Technical Writing and Communication* 1993: 23(3), 259—267);

Stevens, KT, & others: *Measuring the Readability of Business Writing: The Cloze Procedure Versus Readability Formulas* (*Journal of Business Communication* 1995: 29 (4), 367-382).

results when used by different programs. For example, researchers compared four software programs (*Corporate Voice*, *Grammtik IV*, *MS Word*, and *RightWriter*) and found that each gave a somewhat different estimate — the Flesch-Kincaid scores ranged from 5.6 to 7.2². What the authors don't explain is that even if the formulas were identical, the programmers still had to give the program a way to identify and count words, syllables, and sentences. As Klare notes, syllables can be estimated by several different methods, including the number of vowels per word (a better method), the number of consonants per word, or the number of letters per word (poorer methods)³. Three different ways of estimating syllables will lead to three different grade-level estimates for formulas that rely on a syllable count.

If a sentence is separated by a colon or semicolon, some software programs will count it as one sentence, some as two sentences. Users must be careful to set the options for each software program and should experiment with different kinds of sentences before relying uncritically on the software's grade-level estimate.

However, some of the original readability formulas recommend sampling only a few hundred words. Legal documents often have sentences full of semicolons, so that a sentence with 100 words and three semicolons could be counted either as one sentence or as four sentences, a difference that will have an enormous impact on grade-level estimates if the readability program only evaluates 300 words.

Finally, readability estimates can be thrown off by extra periods in the document. Some programs count a sentence every time a period is encountered, so materials that are full of abbreviations (such as e.g., i.e., etc.) may cause inaccurate sentence counts. A single sentence may be counted as two or three or even more sentences, depending on how many periods are actually embedded in abbreviations in the

² Mailloux, SL; Johnson, ME; Fisher, DO; & others: *How reliable is computerized assessment of readability?* (*Computers in Nursing* 1995:13 (5), 221-225)

³ Klare, OR. *Assessing readability* (*Reading Research Quarterly* 1974—1975:1, 62—102)

⁴ Chall, JS & Dale, E: *Readability Revisited. The New Dale-Chall Readability Formula* (Cambridge, MA: Brookline Books 1995)

sentence. So files should be "cleaned" before they are run through readability software.

Readability formulas

Researchers often use readability formulas as if they are interchangeable, not always realizing that different formulas calculate readability in different ways, and may be more appropriate more for one kind of writing than for another. Although there are dozens of readability formulas, a few account for most of the research. A good summary of the different formulas can be found in Klare³ and in some of the readability-software reference manuals.

The original **Dale-Chall formula** was published in 1948. It was based on a list of about 3,000 words that were known by 80% of 4th grade students — in the mid 1940s. Each word in the document had to be compared to the words in that list. The formula used two variables: the percentage of unfamiliar words and average sentence length. Although it was a good general-purpose readability formula (especially for school books), it scores "high" (difficult) on technical materials which include many words not on the 1948 list, but which may be familiar to the audience.

The Dale-Chall formula was updated in 1995.⁴ The authors revised the formula, and made available a software program (*ReadabilityMaster 2000*) from the publisher. But, it must be noted that the 1995 revision is based on data collected on 4th graders in the late 1970s. Some of the words in the word list are no longer used much: *hi-fi*, *Negro*, *phonograph*, *scooter*, etc. And the list simply does not reflect changes in language over the past 15-20 years. The list includes *typewriter* but not *printer*, *postman* but not *letter carrier*, *spaceship* but not *shuttle*, *cripple* but not *handicap*, *chilli* but not *taco*, *basketball* but not *dunk*, *television* but not *cable*, *cash register* but not *credit card*, *home run* but not *touchdown*, *sweepstakes* but not *lottery*, *oven* but not *microwave*. I cannot recommend either version for use in the 21st century.

The **Flesch-Kincaid Formula** determines readability based on average sentence length and the average number of syllables per word, where grade level = (0.39 x average sentence length in words) + (11.8 x average number of syllables per word) - 15.59. It's best used with technical manuals, and some federal government agencies require materials to meet a specific grade level based on this formula. But "writing to the formula" does not always make for better comprehension.

The **Flesch Reading Ease Score** was based on Navy

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enlisted personnel's understanding of training manuals. The score is based on the number of syllables per 100 words and the average sentence length for a passage of 100 words. The reading-ease scores range from 0 (very difficult) to 100 (very easy). Some software programs require samples of 100 words; some will assess the entire document. The Flesch Reading Ease Score seems to be a good general-purpose formula, but may be most accurate for secondary-school materials. This formula is required by some states for insurance policies, with the stipulation that the insurance policy score not lower than 40. However, a score of 40 is still in the "difficult" range, corresponding to a first- or second-year college reading level, which exceeds the educational attainment of half the population.

The **Fog Index** is based on average sentence length and number of polysyllabic words, while the related **SMOG Index** (Statistical Measure of Gobbledygook) looks only at the number of polysyllabic words per 30 sentences. Both formulas will score "high" on technical material that includes big words. But that might not be a problem if the audience is familiar with the material. On the other hand, a high Fog or SMOG score might point out real problems if technical materials or legal documents are being targeted to the "general" public.

The **Fry Graph** plots the average number of syllables per 100 words on the x-axis and the average number of sentences per 100 words on the y-axis. Some software programs convert this from a graph to a grade-level estimate.

Some readability software programs do not score above grade 17 (first-year graduate school), assuming that a graduate-school reading level is about as complicated as writing can be. After all, does it matter if something is written at grade 17 or grade 27? I've occasionally seen documents at grade 25 reading level — a virtually meaningless statistic. How many people have 25 years of education? That document is probably so complicated that almost no one could understand it.

Weaknesses of readability formulas

Despite the widespread use of readability formulas to assess readability, most researchers are unfamiliar with the strengths and weaknesses of readability formulas.⁵

Weakness #1: Readability formulas are not equivalent, since estimated grade levels vary depending on the formula. **Response:** Why should all

formulas agree? Since they measure different text elements, it's the user's responsibility to choose the right formula. One way to deal with such discrepancies is to use several formulas to evaluate a document and then take an average of the results. Some readability researchers recommend this strategy; some do not.

Weakness #2: Readability formulas do not consider text organization, since sentences can be rewritten with words in random order and the readability score will be the same; sentences can be typed in backwards and the software will give the same readability score, even though the sentence is incomprehensible.

Response: Software programs (style checkers, grammar checkers, text analyzers) can provide a more detailed analysis of the text than just a grade-level estimate, and can sometimes identify grammatical problems that the writer might miss. Too often, researchers seem unfamiliar with the intricacies of their grammar checking software.⁶ For example, most articles using grammar checkers do not mention if the file was cleaned before it was analyzed.

Although many reading researchers have been critical of a reliance upon readability formulas alone, some of their criticisms were made before software programs were available, and do not take into account all of the features available to the writer. A grade-level estimate is not the only information that grammar checking software can provide; syllables per word, words per sentence, average sentence length, number of words with more than two syllables, etc., can be useful information when added to the grade-level estimate.

Content analysis goes beyond readability statistics. For example, *Diction 4.0* (Scolari Software) is a text-analysis program that uses a series of dictionaries to search a document for five semantic features

⁵ Zakaluk, BL & Samuels, SJ, eds: *Readability. Its Past; Present and Future*. (Newark, DE: International Reading Association 1988);

Davison, A. & Green, GM, eds: *Linguistic Complexity and Text Comprehension: Readability Issues Reconsidered* (Hillsdale, NJ: Lawrence Erlbaum Associates 1988)

⁶ Dobrin, D: *A New Grammar Checker* (*Computers and the Humanities* 1990: 24,67-80;

Neuman, M: *RightWriter 3.1*. *Computers and the Humanities* 1991: 25,55-58;

Johnson, E: *PowerEdit* (*Computers and the Humanities* 1992: 26, 309-311)

(Activity, Optimism, Certainty, Realism, and Commonality) as well as 35 subfeatures. The program compares the words in the document with the words in the program's dictionaries to analyze text at a far deeper level than readability formulas.

For example, the *Diction* 4.0 text analysis of Bill Clinton's 1993 inaugural speech found that Clinton was within the average range on 25 of the 35 content analysis scales. He tended to avoid precise statements, overstating and speaking with a universal emphasis. His speech was higher than average in confidence and generalities, and above average in its praise of people and groups, emphasis on geopolitical terms, and human interest concerns for people and their activities.

Bob Dole's 1996 nomination acceptance speech was within the average range on 22 of the 35 content analysis scales. His speech was concrete with fairly clear implications. He often referred to himself, and showed a sense of positive emotions and triumph. His speech was below average on competition, forceful action, task-completion and leadership, showed less concern for the present and a low emphasis on core values.

Weakness #3: "Writing to the formula" may have no effect on the reader's ability to understand the material. A writer can take one long sentence and cut it into two shorter sentences, substitute short words for long words, and so rather mechanically reduce the grade level. **Response:** No writer should rely on one readability formula exclusively, writing to the formula may or may not affect understanding. Some studies have found that lower reading levels alone improve comprehension. Other studies have found that illustrations and explanatory text can aid comprehension, especially among poor readers. Other factors (layout and design, use of headings and subheadings, bullet points, organization, and syntax) will affect readability as well.

Plain language means more than just getting a low grade-level estimate. It means understanding language: both the words and concepts. For example, Masson and Waldron investigated the effectiveness of three simplification strategies for standard legal contracts.⁷ They modified several legal documents by:

1. replacing or removing all archaic terms (like *indenture*);
2. using plain English (replacing hard words with simple words, dividing long sentences in short sentences, changing the passive voice to the active voice); and
3. replacing all legal terms with simpler terms or explaining the legal terms in the text.

Removing archaic terms didn't have much of an effect on readers' ability to answer questions about the text, but using plain English (as the authors defined it) and explaining legal terms produced significant improvement. Nevertheless, readers still had problems understanding the simpler documents, and the researchers concluded that such difficulties might be due to the complexity of legal concepts, or that the legal concepts conflict with "folk theories" of the law.

Weakness #4: Readability formulas don't consider background knowledge of the reader, motivation, cultural experiences, and so on. **Response:** If readability formulas were thrown out, what would replace them? Ideally, testing on readers. Major public documents (those that are used by the hundreds and thousands) would be tested on typical readers, perhaps using the Cloze procedure. Many documents could be improved from the very beginning if members of the target population were included in the writing and rewriting process. But when testing is not possible, readability formulas at least give some indication of how understandable the document is.

Weakness #5: Plain language dumbs down written materials. **Response:** This is often a straw man argument, made by critics who are not familiar with what plain language is and is not. In 1997 I reviewed federal grant proposals dealing with research on homeless people with mental disorders and substance-abuse problems. While the consent forms that these people were expected to read and understand were written at a college reading level, most of the subjects were high school dropouts with impaired cognitive skills due to schizophrenia and drug abuse. And yet some reviewers argued that re-writing the college level consent forms would result in dumbing down the language! Perhaps professionals who routinely write at college or graduate school reading level are frightened by the recommendation that they write at 8th grade reading level, so they attack plain language efforts that they cannot personally achieve.

It's easy to criticize plain language through misrepresentation. Kimble's careful analysis shows that many criticisms are based either on misinterpretations of plain language efforts or

⁷. Masson, MEJ, & Waldron, MA: *Comprehension of Legal Contracts by Non-experts: Effectiveness of Plain Language Redrafting*. (*Applied Cognitive Psychology* 1994: 8, 67-85)

inadequate familiarity with research findings documenting the benefits of plain language writing.⁸

Plain language is ethical language

What are the ethical implications of asking people to read and sign documents that they don't understand? The Food and Drug Administration requires that research consent forms be written in language that is understandable to the subject; why shouldn't business and legal documents be written in plain language that is understandable to the reader? One's signature on a document can have serious consequences, yet critics of plain language seem to support the practice of having people sign documents they really don't understand. (Simply asking "Do you understand?" does not measure comprehension.) Isn't it better for people to understand what they're reading and signing? Isn't plain language more respectful? Isn't plain language more ethical?

Strengths of readability formulas

Strength #1: Again, readability formulas are better than nothing. While they should not be used as an end in themselves, they can provide useful information. Many criticisms are based on the exclusive reliance on a single grade-level estimate, not a more detailed text analysis. And many criticisms are based on readability analyses that had to be done by hand, before better software was available.

Strength #2: If used properly, they can provide valuable information. As computer programs become more sophisticated, more detailed text analysis may be possible. For example, the Educational Testing Service is developing a computerized method for scoring student essays.⁹ In the next decade, text analysis will probably go well beyond just grade-level estimates.

Strength #3: Software programs are reliable, which allows different pieces of writing to be compared

using the same criteria. Imagine the results if ten readers each reviewed a plain-English mutual-fund prospectus; would there be 10 different readability assessments? A readability program offers some consistency that cannot be achieved any other way. Besides, for some criteria, a software-based evaluation is faster and cheaper than an evaluation by researchers or readers.

The plain-English prospectus

The Securities and Exchange Commission (SEC) is trying to get mutual-fund companies to write their prospectuses in plain English instead of complicated legalese. Although there are several thousand mutual-fund companies, only a few dozen have actually produced a plain-English prospectus. Are these new plain-English prospectuses more readable than the original versions?

Using text analysis software, I combined features from several different programs to get an overall picture that goes well beyond just a grade-level estimate. Table 1 shows a comparative text analysis — of five original vs plain English mutual fund prospectuses — that I contributed to an article by Toddi Gutner in *Business Week* magazine.

Table 1
Text Analysis of Original vs. Plain-English Mutual-Fund Prospectuses (n = 5)

	Original version	PE version
Reading Ease	Difficult	Difficult
Human Interest	Mildly Interesting	Interesting
Text Statistics	3,618	3,306

<1,450 = common words
1450 = normal words
>1450= uncommon words

These statistics are based on the word frequency in the English language. Common words such as *a, and, are, as, for, in, is, of, or, the, that, to, with, and you* occur frequently and have a low score (<1450). Uncommon words such as *allocation, contingent, default, deferred, diversified, fluctuation, issuer, liquidity, reinvested, and undervalued* occur rarely and have a high score (>1450). *Reader* (a grammar, spelling, and style checker software from Prospero

⁸ Kimble, J: *Answering the Critics of Plain Language (The Scribes Journal of Legal Writing 1994-1995: 5, 51-85);*

Kimble, J: *Writing for Dollars, Writing to Please (The Scribes Journal of Legal Writing 1996-1997: 6, 1-38)*

⁹ Page, EB & Petersen, NS: *The Computer Moves Into Essay Grading. (Phi Delta Kappan, March 1995: 561-565)*

Software in Great Britain) calculates the average frequency of words in a document. The text statistics in table 2 show that the plain English mutual-fund prospectuses have far too many uncommon words for the average reader.

	Original version	PE version
Big Words More than 2 syllables (less than 10% is best)	21%	19%
Sentences written at grade 16-20 (5% is best)	46%	24%
Words per sentence (15-20 is best)	25	21
Active voice sentences (60% is best)	33%	49%
% simple & normal sentences (80% is best)	50%	66%
% wordy, pompous, & complicated sentences (20% is best)	50%	33%
Overall Style Score	38% (poor)	54% (satisfactory)
Reading Level		
Grade level	16 (4th-yr college)	14 (2nd-yr college)
% adults at that level	20%	45%

Although the magazine editor titled the article *At Last, the Readable Prospectus*¹⁰, I am less confident in that conclusion. While the plain-English prospectuses showed some improvement over the originals, I am not ready to conclude that plain-English prospectuses written at 2nd-year college level (instead of 4th-year level) are, in fact, "readable." Having 14 years of education does not guarantee that a person can read and understand a grade-14 plain-English prospectus. Prospectuses tend

¹⁰ Gutner, T: *At Last, The Readable Prospectus* (*Business Week*, April 13 1998, 1 IOEIO). The article does not appear in all versions of that issue of *Business Week* but I think you can find it by searching "Mark Hochhauser" on the web.

to be written from a legal perspective; would someone with a college degree in art history have the same comprehension skills as someone with a college degree in business? Depending on grammar, syntax, and layout, a prospectus may be comprehensible or incomprehensible, regardless of its estimated grade level. Without testing the prospectus on readers, prospectus writers cannot rely on a grade-level estimate to be certain that the form is understandable.

Confusing effort with outcome

Writing in plain English can be hard for someone who has never done it, so fairly cosmetic changes may be thought to be substantial changes. Or perhaps the writers don't really know what "plain English" means, or the strategies that can be used to write in "plain English." Or more cynically, perhaps they don't know and don't care, and just hope that readers will blame themselves if they can't read something in "plain English".

While there are many books and articles on how to write in plain English, there is less information on how to evaluate plain English writing without testing. So writers may confuse the effort with the outcome. If they worked hard to write in plain English, then the document must be written in plain English. Such contradictions between claims and results suggest that readability software, grammar-checking software, and text-analysis software (as in Table 1) can be helpful as a way of rewarding those writers who write in plain English and alerting those who only claim to write in plain English.

Readability Software

But in the end, the plainest language depends on more than vocabulary and sentence structure. It depends on organization and design as well, as plain-language experts recognize. And those are features that software programs cannot measure. Nor can they measure the combined effect of all the elements of plain language. For that we will need the human mind for some time to come, if not for ever.

Many software programs will assess readability. Grammar-checker programs (either as part of a word processing program or a stand-alone program) may also give readability estimates. There are some *Windows*-based programs, but most were written for DOS in the mid-to-late 1980s. I am not sure if DOS programs will run in the year 2000, and software upgrades (such as *Windows 98*) may make it impossible to use these legacy programs. While some

word processing programs (such as Microsoft *Word* and *WordPerfect*) come with readability measures built into the grammar checking feature, some researchers may find those measures too limiting, and future upgrades may (or may not) include a readability feature.

Windows 3.x programs include *Correct Grammar 2.0* (1992), *Grammatik 6.0* (1994) (which became part of Corel's *WordPerfect*, *Key Grammar Checker* (1990) and seems to be an early version of *RightWriter*), *RightWriter 6.0* (1992), and *Readability Calculations* (1996).

StyleWriter, from Editor Software in Great Britain, claims to be a Plain English Editor that can help writers with style, word usage, and spelling. However, the program was designed to work best with *WordPerfect 5.x*, *Ami Pro for Windows* and Microsoft *Word 7*, as well as other word processing programs by using Windows' clipboard. The program offers a nice statistical summary, but there is no way to print out the summary unless you have a print screen utility; this limits its usefulness. A newer version of *StyleWriter* to work with Microsoft *Office 97 (Word 8)*, *WordPro* and *Wordperfect 7* is under development.

There are even more DOS-based programs. However, since some are available as "shareware" through on-line services, you may need an "un-archiving/unzipping" program to install the program. DOS programs include *Breeze* (1995), *Chall* (1990), *Critic 2.3* (1995), *FS Text*, Version 2.1(1991), *Pro-Scribe* (Professional Scribe) Version 4.8 (1992), *PROSE: The readability analyst* (1988), *Readability Analysis: Teacher Resource*, *Readability Calculations* (1984), *Readability Estimator* (1985), *Readability Plus 2.0* (1989), *Corporate Voice* (1990), *Readutil 1.1*(1990), *WC Text Analysis 1.4* (1994) and *WStyle: Writing Style Analyzer* (1992). Many of these programs appear to be no longer available, or can be found only with great difficulty.

I am reluctant to recommend the "best" readability programs for two reasons. First, I use about a dozen programs for my 10-12 page readability analyses. Over the years I've found that each program can contribute a unique piece of information that allows me to go well beyond just a grade-level estimate. I intentionally include some redundancy in my analyses, such as having four estimates of the Flesch reading ease score, because each of the four readability programs gives a slightly different estimate, and I want readers to be aware that grade-level calculations are estimates, not precise values.

Second, writers should use the software that best meets their needs. Software that I find useful may not be useful to you, so rather than recommending a specific software program, I recommend that you experiment with the software that's still available to see if it meets your needs.

Mark Hochhauser PhD is a consultant in Golden Valley, MN. He has written extensively about readability issues and informed consent, HMO report cards, occupational health and safety information, mutual fund prospectuses, and employee benefit plans.

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The comprehension of legal Hebrew

by Dennis Kurzon

1. Introduction

I would like to present two short legal texts from Israel, originally written in Hebrew. The translations are as close as possible to the original texts, but are not word-for-word translations. Furthermore, because of the nature of the texts (which are, after all, from legal documents) the translation necessarily has a legal flavour, which may seem to be begging the question.

It should be pointed out that ever since plain legal language became an issue on the Anglo-American legal scene, about two decades ago, there has not been one scholarly paper on the subject in any of the five major Israeli legal journals I have examined — one in English (*Israel Law Review*) and four in Hebrew (three university law faculty journals and one from the Israel Bar Association). There has not been one leading case on the subject in the courts. There has of course been considerable litigation concerning the meaning of a word, phrase or sentence in legal documents, but the topic does not seem to have created any controversy. For example, in 1996 a case was reported in the press concerning a worker's failure to understand his pension rights as they appeared on his payslip, and as were explained to him by a member of the local workers' committee. The court did not show any sympathy for the plaintiff, whose knowledge of Hebrew was apparently not good enough to understand the documents. If he had turned to people to help him take his employers to court, said the judge, he should have asked for the same help in reading and understanding the relevant documents beforehand.

Perhaps there is no real problem in legal Hebrew. It may be close enough to standard Hebrew writing not to warrant any special treatment. As support, we can examine how the Hebrew of legal documents is assessed by readability tests. If we take average sentence length, one of the components of many of the tests of text difficulty (e.g. the Flesch formula), we get the following results as they pertain to Israeli statutes over the last 25 years. As a matter of interest,

the average sentence length of Israeli statutes is compared to that in English statutes.

Table 1

Average sentence length of English and Israeli Finance Acts

	England	Israel
1970	92.5	-
1974	-	36.0
1980	45.06	26.1
1990	37.06	-
1992	-	30.7

From these results, it may be seen that sentence length was never a significant factor in Israel; it may be higher than average sentence length in many other text-types, but as far as formal language is concerned, the length is in the bounds of normalcy.

2. The Texts

Here are two texts, the first one from a mortgage contract and the second from a travel insurance policy. Let us take them one by one.

There are several linguistic areas that have to be examined: vocabulary, syntax (that is, sentence

Mortgage contract

If the borrower and/or guarantors do not pay the bank the monthly payments on the date that they are due under the conditions of this contract and whenever the bank is empowered to enforce the securities under this contract, the bank shall be entitled without the need for prior notice to the borrower to debit the account of the borrower and/or guarantors in respect of the period of the arrears with the interest at the maximum legal rate that will be prescribed from time to time, and if a law on this matter is not in force at the time, the interest at a maximum rate that will be customary in the bank at that time and at the bank's discretion, without prejudice to other remedies available to the bank in case of violation of the conditions of this contract by the borrower and/or guarantors. If the arrears in payment continue for three months or more, the interest shall be added to the principal debt and shall be calculated as part of the principal when computing future interest.

structure), and of course, sentence length, although this is a function of complex sentence structure. Legal vocabulary is quite obvious. This includes technical terms that are concerned with the particular field, in this case mortgage banks, e.g. *borrower*, *guarantors*, *securities*, *arrears*. But we also find general legal terms or words commonly found in legal documents, e.g. *entitle*, *prior*. Not to forget compound prepositions and compound conjunctions, e.g., *without prejudice to* and the inevitable bane of legal interpretation, *and/or*. All this is very familiar, even though the various words and expressions are translations from Hebrew.

Sentence structure tells the same story. Let us take the first sentence by way of example. The first sentence! It is 145 words long, if *and/or* is considered one word. In the original Hebrew, it is only 96 words long, but that is far longer than the length of legislative sentences given in table 1, and obviously much longer than the average Hebrew sentence¹. It begins with a conditional clause, as with English legal sentences, but here there are two introductory conditional clauses which are coordinated, i.e. "If the borrower and/or guarantors ... this contract" and "whenever the ... this contract", followed by the main clause beginning "the bank shall be entitled". Then comes the next feature, also common in legal English: after the verb entitled, one would expect the infinitive, in this case "entitled to debit", but where is it? After a long prepositional phrase "without the need for prior notice to the borrower", we finally get to "to debit". This looks very familiar to readers of *Clarity*, but there is more to come. The verb *to debit* controls (that is a technical word in linguistics, but it simply means "has to be followed by") an object, that is some noun phrase whose reference is debited, and a prepositional phrase beginning with *with*, to indicate the amount that is to be debited. Here are the two structures, (a) is the object and (b) refers to the amount debited:

- (a) the account of the borrower and/or guarantors in respect of the period of the arrears
- (b) with the interest at the maximum legal rate that will be prescribed from time to time, and if a law on this matter is not in force at the time, the interest at a maximum rate that will be customary in the bank at that time and at the bank's discretion

¹ Because of the nature of Hebrew grammar (full of grammatical prefixes and suffixes, where English has separate words), Hebrew texts are considerably shorter than their equivalent English translations.

The payer is the account of the borrower "and/or" guarantors — that is straightforward² — but what is to be debited is a prepositional phrase 51 words long (31 in the Hebrew), starting from "with the interest at the maximum legal rate" and finishing at the end of the extract "at the bank's discretion". It is made up of two noun phrases, both beginning with "the interest", coordinated by and, which in turn is followed not by the noun phrase beginning with "the interest at a maximum rate", but by a conditional clause ("if a law on this matter is not in force at the time") restricting, as it were, the application of the second noun phrase to all possible circumstances except if the law changes. All this is familiar to lawyers trying to reform English legal language. Well, this legalistic style seems to be universal. The second, and other, sentence of the above extract is only 33 words long (15 words in the original), and does not provide other features not found in the first sentence.

There are also two typographical features worth pointing out: the dense printing, and the small size of letters -- the font is 8pts.

How general is this style? Well, the second extract, from a travel insurance policy, is also legalistic, while equivalent Anglo-American policies tend to be less so. It is made up of one sentence, which is a mere 63 words long (45 in the Hebrew):

Travel Insurance Policy

If the insured person claims payment from the insurer for costs or damage caused by a third party who has to cover them following a court judgment or under an agreement, including an insurance agreement, and the above payment is paid by the insurer, the insurer will be entitled to reimbursement by the insured person for any sum paid by the insurer.

This is also made up of an initial coordinated conditional clause, followed by the final main clause. The conditional clauses are "If the insured person ... an insurance agreement", and "(if) the above payment is paid by the insurer", and the main clause, "the insurer ... paid by the insurer". Note the addition of

² Not so straightforward! Can't that wretched *and/or* be interpreted as giving the bank power to deduct the money twice, once from each account? Otherwise what does the *and* add to *or*? — M.A.

the modal verb *will*. In Hebrew, the future form of the verb *to be* is used, hence the literal translation "will". This short text also has its range of technical vocabulary, e.g. *third party*, *reimbursement*. The use of *insurer* is a little awkward for the lay-reader. Since it refers to the insurance company, why not write *insurance company*?

3. Conclusion

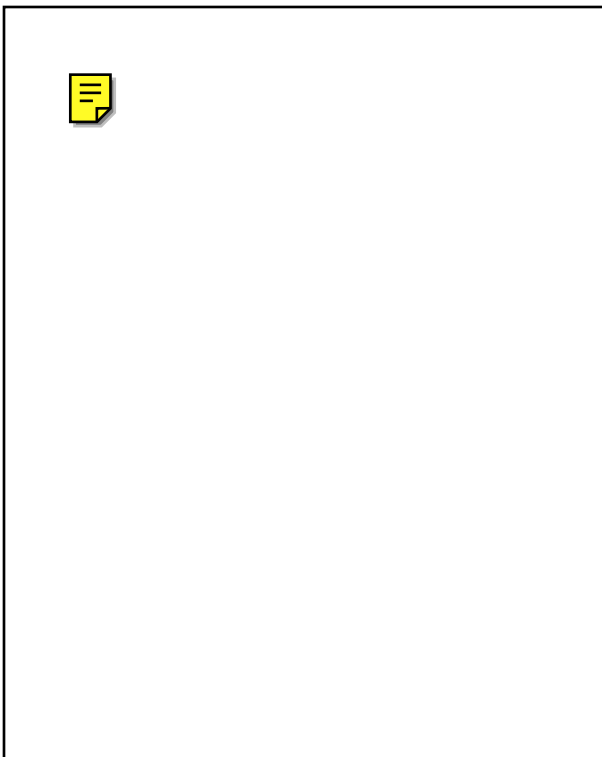
In a short test, Hebrew speakers were asked to read a brief extract from a legal text, and then to answer comprehension questions on it. The testees were

complexity of legal language and inherent difficulties of comprehension may well be universal.

Dennis Kurzon joined CLARITY after participating in the joint conference of linguists and plain-language lawyers held in Aarhus, Denmark, in 1994 and reported in *Clarity* 31 (Oct 1994, p.33). He teaches English linguistics at Haifa University, Israel, and has published articles on legal discourse, as well as several books.

Brevity, clarity and simplicity are the hallmarks of the skilled pleader.
Practice Note, (1981 1 WLR 1560, at 1562, by Megarry VC)

Table 2	
Grade for comprehension of legal passage (in %)	
<i>Native Hebrew speakers</i>	
Females	67.2
Males	75.0
Both	68.0
<i>Others</i>	
Females	28.0
Males	45.0
Both	31.3
<i>Total</i>	
Females	51.6
Males	57.5
Both	52.4



students, 58% of whom native speakers of Hebrew, while the others were non-native speakers, who nevertheless have a good knowledge of the language (hence the two separate tables). The results clearly show that there are problems for both native and non-native speakers in understanding these texts.

There may also be problems among young women's understanding legal texts, but the total number of young men among the testees was so low (12 out of 90, (13%)), that no conclusion in the gender issue may be drawn.

But a general conclusion may be: legal Hebrew is as complex as legal English, and the level of understanding is fairly low among laypersons. The

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Book reviews

Justice Michael Kirby¹ reviews

Decisions, Decisions

by **Madame Justice Louise Mailhot and
Justice James D. Carnwarth**

published by Les Éditions Yvon Blais Inc,
Quebec, Canada

ISBN: 2-89451-237-6

This book derives from a series of workshops for Canadian judges. For nearly twenty years the Canadian Institute for the Administration of Justice has been holding courses in judgment writing. Madame Justice Mailhot of the Quebec Court of Appeal originally wrote a book *Écrire la décision*, collecting her thoughts as a Francophone judge for the benefit of her colleagues. Subsequently, that book was rewritten with the collaboration of Justice James Carnwarth of the Ontario Court of Justice. It was translated into English. The result is a useful primer in the basic rules which judges are supposed to know from experience or to refine rapidly from observation on the job.

The authors begin with that predictable debate concerning the audience for whom judicial reasons are written. If it was just the parties and their counsel, they ask, why bother to recite at length the facts and to repeat the submissions with which the parties will be well familiar? The format adopted by the typical decision of a judicial officer of the common law reflects the reality that the audience goes far beyond the parties. Decisions - now globally shared via the Internet - appeal to a much larger readership having a wide variety of interests.

The authors proceed to illustrate a number of basic rules. They urge:

- The use of simple language.
- The avoidance of old-fashioned expressions, legalese and Latin.

¹ The Hon Justice Michael Kirby, of the Australian High Court, is Clarity's new patron.

This review was first published in the Australian Law Journal (1998 68 ALJ 611), and is reprinted with the very kind permission of the author and LBC Information Services.

- The deletion of over-use of the passive voice.
- The deployment of a variety of short and long sentences.

The preliminary organisation of judicial reasons is described as the "difficult part of the task of decision writing". The authors describe the blank page as the ever present enemy of judicial, as of other, writers. They urge that people's names be used to give life to the problem described. They illustrate why this is preferable by reference to some really bad examples of old style writing. This shows the confusion that can be caused. Take this horrible example:

The defendants, plaintiffs by counter-claim appellants, claim against the third parties, defendants by counter-claim respondents, in their capacity as executors of the late Geraint Patrice, a detailed report of the state of their administration of the estate, the defendants, plaintiffs by counter-claim, alleging against the latter negligence and delay.

Should surnames only be used or titles such as "Mrs" or "Mr" or "Ms"? The authors suggest that those who prefer the latter are "perhaps more conservative". But in Australia, even the description of prisoners by their surnames is dying out. Rightly so, in this reviewer's opinion. This is not "conservatism". It is the indication by one citizen with authority over another of respect for the latter's dignity and equality. We can leave unadorned surnames to the English schoolyard. [Ouch. Ed]

The book refers to the squandered chances of the opening paragraphs of most judicial decisions. The authors state that, in terms of drafting, the beginning of a judgment is of enormous importance. It should state the main issues in two or three sentences. It should attempt to capture the interest of the reader. Several examples from good openings in Canadian judicial opinions are offered. Whilst none of these may rise to Lord Denning's "It was bluebell time in Kent ..." (*Hinz v Berry* [1970 2QB 40 at 42]) they are all succinct and interesting.

There is some debate in the book about whether the outcome of a case should be reserved for the end of the opinion or stated up front. Prudently, the authors acknowledge that a judge can choose which strategy to adopt, according to the circumstances. Most judges have used both techniques. Heaven forbid that a single writing style should be stamped on judges of all people. Guardians of the individual must jealously guard their own individualism.

Nuances in the statement of the facts may have an emotional pull on the mind of the decision-maker, requiring that the things which affect the decision-maker be placed before the audience evaluating the decision. However, the authors give wise advice to the judicial writer:

- Have the courage to select only the essential facts and to discuss solely the real issues.
- Reduce citations and shorten the quotations.
- Avoid repetition.
- Revise constantly before release.

At the head of the chapter on revision, the book sets out Justice Louis D Brandeis's advice: "There is no such thing as good writing. There is only good re-writing". The objects of rewriting, the authors suggest, should be:

- To expunge superfluous details and repetition.
- To remove unnecessary emphasis.
- To eliminate pleonasm, clichés, verbiage, redundancies and grammatical errors.
- To tighten the text.
- To delete sexist and otherwise prejudiced expressions.
- To verify punctuation and spelling.

Word processors make some of these steps easier today than they were when I began practice. The prospect of the complete re-typing of lengthy documents was a major inhibition in those days. Nowadays, most drafts of judicial opinions would go through at least three revisions. In my own case, there are usually at least eight revisions. And I always have to see the pamphlet just prior to publication. Somehow things look different in the final format. This can be irritating to printers and others; but they mostly suffer in silence.

The book proceeds to a chapter on style. Now, this is, in many cases, learned in the early years of life (if it is not partly genetic). The authors cite Sir Robert Megarry's judgment in *The will of Errol Flynn* [1968 1 WLR 103]. It begins, at 105:

Errol Flynn was a film actor whose performances gave pleasure to many millions. ... In bed with

the many women he took there, he lived with zest and irregularity.

There are three quotations from Lord Denning. One of them, in *Rank Film Distributors Ltd v Video Information Centre* [1982 AC 380 at 403] is typical:

"It is, it is a glorious thing, to be a Pirate King", said W S Gilbert. But he was speaking of ship pirates. Today we speak of film pirates. It is not a glorious thing to be; but it is a good thing to be in for making money.

Most judges would probably consign such an opening to the cutting floor. But Denning often carried his boldness through the text to the last full stop. And it went beyond matters of style. We all know that he was often just as bold in matters of substance.

Calling on Justice Mailhot's knowledge of judicial writing styles in France, the book describes how, in that country since the Revolution, the judges have confined themselves strictly to deductive reasoning. Untouched by the overthrow of the declaratory theory in the Anglophone world and unembarrassed by dissenting opinions, the French judges favour "syllogism, short and simple". One suspects that they must find the discursive opinions of our tradition

puzzling, irritating, unsettling and even sometimes absurd. This is where the insights of a judge from Quebec, like Justice Mailhot, are specially useful. She can appreciate the value of the honest revelation of the ambiguities of statutory language and past precedents evident in our judicial reasoning. She can understand perceived obligations to expose the dilemmas of legal principle and legal policy. Indeed, she comprehends our habits very well. But she looks at them with the critical eye of a person well versed in the European tradition which is still comfortably locked in the fictions of judicial declaration.

The chapter before the conclusions examines the risks of including humour in judicial opinions. It contains some clever but rather absurd United States reasoning where judges have reduced their opinions to verse. A little humour, occasionally introduced, may

In stating the principle, and its extensions, the lawyers use the archaic word "estoppel". I would prefer to put it in language which the ordinary man understands:

It is a principle of justice and of equity. It comes to this: When a man, by his words or conduct, has led another to believe that he may safely act on the faith of them - and the other does act on them - he will not be allowed to go back on what he has said or done when it would be unjust or inequitable for him to do so.

Lord Denning

be tolerable. But no judge should forget that for most litigants the process in which they are engaged is no laughing matter!

The conclusions recapitulate the main lessons of the book. To these are attached an appendix of "low fat substitutes" to replace long words with shorter, more colloquial words. Ironically, this involves throwing overboard many words of Latin origin brought to England by the Norman King William the Conqueror and replacing them with the shorter, more homely language of the Anglo-Saxons. Here is both the glory and the ambiguity of the language in which judges of our tradition perform their tasks. The English language is the marriage of two linguistic traditions. Great for literature but disputable and seemingly obscure in the law. The book contains pretty basic material. It is written by two experienced judges for others who are just starting out.

It is impossible to appreciate *Decisions, decisions* without understanding the larger context in which it is to be read. That is the world-wide movement to simplify official, and particularly legal, language.

[The original review included a brief description of Clarity at this point.]

One of the stated objectives of the Clinton Administration in the United States has been the introduction of plain language in all new federal official documents. The objective was to introduce plain language in the Federal Register - the equivalent of the Government Gazette - by January 1999. Vice-President Gore has taken the lead in this effort. In the latest issue of Clarity mention is even made of reforms in Australian legislative drafting designed to embrace plain English expression. The Local Government Act 1993 (NSW) is cited as a good illustration. Indeed, its inclusion of a diagram to show the operation of the Act, its statement of purposes in clear terms and other reforms in it are lauded as steps to be emulated around the world. We did not know that we had such a paragon in our midst!

Judges are not exempt from the demands for plain speech. The book by Justices Mailhot and Carnwath might perhaps have placed more emphasis upon the

likely impact of technological change on judicial writing, the use of sub-headings and the very layout and presentation of judicial texts. It would have been helpful to have had the authors' insights into the future of opinion writing. In this electronic age, can we look to the day when judicial opinions will be illustrated

with real evidence? Or with cuts to testimony in court (rather than turgid repetition of transcript)? It seems hardly likely that the way we present judicial opinions will be untouched by the revolution in communication caused by information technology. Judges cannot go on writing their reasons in slavish imitation of the past. But what is the vision of the new millennium? How will judges be providing reasons for their decisions in a thousand years? The answer to that question is inextricably bound up in the changing technology.

Although written for a Canadian audience, the

Handbook for Judicial Writing would be useful for those engaged in the courses now provided to fledgling Australasian judges. [Indeed, judges the world over. Ed]

To succeed in the profession of the law, you must seek to cultivate command of language. Words are the lawyer's tools of trade. When you are called upon to address a judge, it is your words which count most. It is by them that you will hope to persuade the judge of the rightness of your cause.... On the words you use, your client's future may depend.

Lord Denning. *The Discipline of Law* published by Butterworths. Part One - The construction of documents. Chapter 1 - Command of language - paragraph 1.

Diane Penneys Edelman¹ reviews

Introduction to Legal English: An Introduction to Legal Terminology, Reasoning, and Writing in Plain English

by Mark E. Wojcik²

published by International Law Institute, 1998
Tel: +1 202 483 3036 Fax: +1 202 483 3029
Email: training@ili.org \$35
Teacher's manual available

¹ **Diane** Penneys Edelman is a legal writing instructor at Villanova University School of Law and a lecturer in the Introduction to legal English intensive summer program. She has used the book in draft and final form to teach foreign lawyers and law students at the International Law Institute.

² Mark Wojcik is assistant professor of law at the John Marshall Law School and director of the Legal English intensive summer program, International Law Institute.

Given that “clarity” has been defined as, among other things, “coherence”, “definition”, “simplicity” and “accuracy”, John Marshall professor Mark Wojcik has done much to bring clarity to American law for an ever-growing group of students — foreign lawyers who seek to learn about the American legal system. In his unique *Introduction to Legal English: An Introduction to Legal Terminology, Reasoning, and Writing in Plain English*, Professor Wojcik offers students a user-friendly, versatile text that is designed to teach foreign lawyers about American terminology in context.

In this increasingly internationalized profession, foreign lawyers are finding it essential to learn about American law to practice law or teach in their home countries, or to practice in the United States. Many enter American graduate law programs, seeking LL.M. degrees in general or specialized subjects. Still others come to the U.S. for intensive summer courses that fit in with their work schedules at home.

Keeping in mind the varying needs of foreign lawyers and because many foreign lawyers are new to studying both American “legal language” and the American legal system, *Introduction to Legal English* starts by introducing its readers to topics that we take for granted but which present challenges to foreign students — “small talk”, introductions of colleagues and speakers, an overview of the state and federal court systems and the typical American law school. The early lessons are filled with examples of spoken introductions, court structures, and course catalogue selections designed to make the foreign lawyer feel more comfortable with the American legal system and ready to learn more about legal English and American legal concepts in general.

After providing its readers with this basic orientation, *Introduction to Legal English* offers several lessons that deal with traditional law school subjects — contracts, torts, evidence and civil procedure, constitutional law, and criminal law and procedure. In each of these lessons, students read about the subject matter in a brief, plain English introduction, and then complete exercises in the “Build Your Legal Vocabulary” section of the lesson. These exercises are presented in a multiple-choice format, and challenge the student to differentiate often close shades of meaning. As a helpful reference, Professor Wojcik includes detailed answers to each set of exercises in each lesson. How does one handle the exercises in the classroom setting? Just by reviewing whether the answer is a, b, c, or d? No. Rather, the exercises are designed to provide an excellent

springboard for discussion of the chapter topic. Foreign lawyers are curious about and eager to discuss American law, and are interested in comparing our seemingly unusual concepts with their own.³ Thus, the inventive professor can use the exercise in which students define “consideration” to launch a class-wide discussion of contract formation in other cultures and how other systems' rules contrast with ours. Each of these lessons also contains writing exercises that ask students to complete or edit sentences, change affirmative sentences to negatives, use definite and indefinite articles, and the like. Students also closely read a sampling of cases and statutes, and review the allegations and form of a civil complaint.

In addition to lessons on substantive law topics, *Introduction to Legal English* smartly incorporates instruction designed to build essential lawyering skills in addition to a command of legal terminology. For example, the goal of lesson 7, “Using News Sources to Learn About the Law”, is to make foreign lawyers comfortable with an indispensable source of information about the workings of the American legal system — the daily newspaper. In this chapter, students review a number of excerpts from the *New York Times* that deal with legal subjects as varied as international trade, mergers, the death penalty, and discovery. The students then find and summarize news articles on legal issues. Perhaps the most useful instruction to students is to list any new vocabulary — legal or non-legal — that appears in the article. Again, this task can lead to an excellent and provocative class discussion.

Still other lessons (in the “Beyond Basics” section) teach the student about public speaking, briefing cases, preparing an essay on a legal topic, understanding our citation system, and using plain English. This group of lessons also includes instruction on writing about facts, preparing faxes, client letters, office memoranda and performing legal research. A comprehensive set of appendices offers additional exercises, the text of important American legal documents such as the U.S. Constitution, and an extensive bibliography for both students and teachers.

Professors will find that they can easily adapt *Introduction to Legal English* to teach students with

³ Given that most countries use a civil law system and not common law, there is ample opportunity (and need) for foreign lawyers to be aware of differences between their legal systems and ours.

different levels of English skill, and to teach American students as well. Students with a strong command of English may cover more chapters or delve into a limited number of chapters in greater depth; in fact, professors may use a lesson or case to introduce a memorandum or brief writing project. Professors can have students with more limited skills complete additional writing and speaking exercises or otherwise focus instruction on their students' particular needs. The text is easily adaptable for use in a semester or year-long course or an intensive course. It can be used for teaching in a free-standing Legal English course, or used in connection with a course on American law or legal writing and research. *Intro* can also be used to instruct non-lawyers (including government officials

and undergraduates). Professor Wojcik's *Teacher's Manual* offers suggestions for using the text and provides additional exercises and teaching tips as well.

After using *Introduction to Legal English*, one can only ask "What about the next edition?" There is an infinite number of topics that *Intro* might include in the future — lessons on property, specialty areas of law (corporations, immigration, insurance, international law, for example), persuasive writing, more statutory analysis, to name a few. In the meantime, Professor Wojcik's book, the first of its kind, fills a long-existing need for the ever-growing number of foreign lawyers and law graduates who want to learn more about American law.

Nick Lear looks at a case report

A case reported in *The Times*¹ drew attention to an address for use by justices. *Stone's Justices Manual* suggests the words for use in cases where justices have decided that an offence, triable either way (i.e. in the Magistrates Court or in the Crown Court) is suitable for summary trial. Several lawyers at a Clarity committee meeting found the address hard or impossible to follow. What chance the average defendant? Here is Nick Lear's possible plain English version of the address.

Original version

If the court believes that you deserve greater punishment than this court can give (or if you have to be sent to the Crown Court to be tried on a related charge) it will send you to the Crown Court to be sentenced. Otherwise you will be sentenced here. If you do not indicate a guilty plea the Court will decide whether to send you to the Crown Court for trial.

Proposed plain English version

Unless you are going to plead guilty², we³ have to decide whether to try you here or send you to the Crown Court for trial^{4,5}.

If you plead guilty or we find you guilty, and if⁶ we think you deserve greater punishment than this court can give, we will send you to the Crown Court to be sentenced⁷. We will do the same if you are going to the Crown Court anyway on a related charge⁸.

Notes

¹ *R. v. Eastleigh Magistrates Court, ex parte Sansome*; 14 May 1998

² Or, If you are not going to plead guilty. I prefer to avoid the negative.

³ I prefer we to the Court, which is vague [which court?] and impersonal.

⁴ It seems logical to deal with the trial first, then the sentence, not the other way round.

⁵ I am puzzled. According to *The Times* report headnote, these words are for use where justices *have decided* that an offence is suitable for summary trial. Yet the words suggested by *Stone's* seem to indicate that the decision has yet to be made. Or is it that they've decided it's *suitable* but not whether they *should*?

⁶ These italicised words are not in the original. They have been added for clarity, but perhaps in the context of the court they may not be needed.

⁷ ... *to be sentenced* is passive, but seems perfectly clear.

⁸ This last sentence represents the words in brackets in the original version. Lawyers have a habit of squeezing too many ideas into sentences, though it is not confined to the legal profession!

Our thanks to James Kessler for this and other quotations:

He offered to read the draft to the plaintiff; but she refused, as she did not understand law terms; and at the time the deed was executed he repeated the offer with a similar result. It appeared that the plaintiff became acquainted with the effect of the settlement very soon after her marriage, and expressed her dissatisfaction therewith...

Wollaston v. Tribe (1869)

Letters

From Margaret McLaren

I don't think your reference to the "summer" issue of *Clarity* is plain enough. Summer to many of us is November to March inclusive.

mmclaren@waikato.ac.nz

Dr McLaren is associate professor in management communications at the University of Waikato, New Zealand

Quite right, Margaret; and the worse because this is not the first time. My every apology. Ed

From Simon Cockshutt

1. A hotel sale agreement I was reading recently included the phrase "The Parties agree that this Memorandum records the agreements of the Parties on all the matters traversed herein". When I queried the use of "traversed" with a US colleague he informed me it also means, in US English, "covered", or "referred to". A reminder that we do not all write and read the same English. [In British English, *traverse* usually means *travel across*. It can also mean *cross (out)*, or *oppose, frustrate*. For some reason, in British legal English it means *deny, contradict*. Isn't language fun. Ed]

2. The Civil Procedure Rules have been subjected to some criticism, some justified. Although the CPR are to be read with the overriding objective in mind (so avoiding nit-picking arguments over the precise meaning of words), there are parts which are not as clear as they could be. For example, in Part 36 the following is stated:

(2) If **[either]** -

(a) a defendant's Part 36 offer or Part 36 payment is made less than 21 days before the start of the trial; or

(b) the claimant does not accept it within the period specified in paragraph (1)

[then] -

(i) if the parties agree the liability for costs, the claimant may accept the offer or payment without needing the permission of the court;

(ii) if the parties do not agree the liability for costs the claimant may

only accept the offer or payment with the permission of the court.

Recently, my opponent argued that (i) and (ii) only qualified (b). Eventually he gave way. However, I am sure he would not have raised the argument had the spacing been a little different, or the words in bold [my addition] had been included.

And it would have helped if consequences (i) and (ii) had not been indented. Ed.

3. Can anything be done to persuade people from writing things like "with reference to the above captioned matter"?

simon.cockshutt@tintinternet.com

Mr Cockshutt is a partner at Coudert Bros, London

From Betsy Frick

Clarity 43 has several wonderful articles in it. I'm teaching a class on technical writing for engineers at Washington University this fall, and want to have the students read selected articles to report on in class.

bfrick@inlink.com

From Richard Thomas

I saw your request for Lord Denning anecdotes.

I am currently Director of Public Policy at Clifford Chance. I was the Legal Officer and Head of Public Affairs at the National Consumer Council from 1979 to 1986, when I moved to head the Office of Fair Trading's Consumer Affairs Division.

As you may be aware, the National Consumer Council has consistently championed Plain English and supported the Plain English Campaign in its early years. (When I was there we produced *Small Print*, *Plain Words for Consumers*, and *Plain English for Lawyers*).

Each year we organised the Plain English Awards with the Plain English Campaign. This was always a high profile media event with the Awards for the best examples of Plain English and Golden Bulls for the worst of Gobbledegook. We always had a high profile "celebrity" to present the awards, e.g. Julie Walters, and Paul Eddington of *Yes Minister* fame.

In 1982, Lord Denning accepted the invitation to make the presentations. He was a delight to work with and proved to be a star turn in front of nearly 100 media representatives and guests at the Waldorf Hotel in the Aldwych. He completely entered into the spirit of the event, recognising the mixture of tribute,

admonishment and fun to get across a serious message. The main award went to Brian Rix, Chairman of Mencap. Lord Denning made a speech along the lines that the best legal documents never look as though they have been drafted by a lawyer.

Presenters were always invited to nominate their own award. Although he could no doubt have nominated one of his own judgments for a Plain English Award, he wisely decided to present his personal Golden Bull for Gobbledegook. He selected a section of the Criminal Justice Act 1981(?) which was a masterpiece of convolution (I now forget which section.) We invited the Parliamentary Counsel's Office and the Home Office (responsible for the Act) to nominate a lawyer to accept the award from Lord Denning and eat humble pie. Wisely, they declined the invitation. As the only lawyer involved in the event, it was decided that I should play the part of the "Chief Parliamentary Draftsman" and accept the Award broadly on behalf of all erring lawyers. I still have the colour photograph (looking embarrassingly young) accepting the grotesque Golden Bull from Lord Denning at my moment of shame and glory.

A few years later, in 1989, Lord Denning wrote to the Plain English Campaign on its 10th Anniversary:

I am glad to know of your 10th Anniversary. You have done well every year. I much enjoyed my visit to your third year awards, but I am sorry that at 90 years old I cannot get to London now - but keep up your good work. Parliamentary draftsmen are the plainest - meaning the ugliest - of the lot. Local Authorities are next with a squint. Conveyancers next with turgidity. But in time they will be beautiful under your instruction.

Richard Thomas was the legal officer and head of public affairs at the National Consumer Council from 1979 to 1986, when he moved to head the Office of Fair Trading's Consumer Affairs Division. He is now director of public policy at Clifford Chance in London.

Success with plain Swedish

by Eirlys Roberts

Plain language started in Sweden over 200 years ago.

A King of Sweden, leading his army somewhere near the Russian-Chinese border, sent a memo to his

civil servants in Stockholm telling them to use plain Swedish in their communications, with as few foreign words as possible. No-one has told us what the army was doing, several thousand miles from home. Nor how the king found time to write memos when, one would think, he should have been fighting the enemy. But find time he did, and the Swedes tried to do what he asked. They established the use of plain language as a requirement of the constitution and set up a department inside the Ministry of Justice to see that the requirement was carried out. This department — the Plain Language Group — appointed a few linguists and lawyers to arrange seminars and conferences, to publish books and pamphlets, to organise training courses for civil servants, to do everything in their power to get officials to use a language which laymen could understand without too much difficulty.

"How" someone asked them "could a staff of three lawyers and a linguist persuade three thousand civil servants to do what they told them?" "Tact," they said "diplomacy, sense of humour, hard work. And the support of our masters (senior civil servants) and politicians".

The Swedes are satisfied that official communications from government departments have become simpler and easier to understand, as a result of all this work, than they used to be. They were shocked when they joined the European Union a few years ago and found that the Swedish versions of directives and regulations were so obscure that, as they said, "it set us back twenty years" in the communication between officials and the public.

So they have appointed a Dr Kenneth Larsson, to advise the Commission on how to simplify at least the Swedish versions of European laws. We await the result with respect.

This is certainly a success story. A small country, speaking a little-known language, has put into effect a system for simplifying that language so that the governors and the governed can understand each other. The rest of us, while honestly believing in plain official language, have not been very successful in achieving it.

There's work to be done.

Eirlys Roberts CBE was the founding editor of *Which?* magazine and director of its research. She is now Director of European Research into Consumer Affairs (ERICA).

Confidentially speaking

by Nick Lear

It is the stuff of nightmares for lawyers. An urgent letter has to go off to the client. Must get it off by noon. The other side's case is looking stronger than we thought. There is a chance to settle today. Tomorrow may be too late. Fax the client, quick. The number's on the file. Off it goes, but somehow it has gone to the other lawyers instead of the client. Disaster! Well, nearly a disaster. Luckily your firm had the foresight to add this message at the end of all its faxes and e-mails:

This document should only be read by those persons to whom it is addressed and is not intended to be relied upon by any person without subsequent written confirmation of its contents. Accordingly, Sue Grabbit & Run disclaim all responsibility and accept no liability (including in negligence) for the consequences of any person acting, or refraining from acting, on such information prior to the receipt by those persons of subsequent written confirmation. If you have received this [fax] [e-mail message] in error, please notify us immediately by telephone (0123 454 3210). Please also destroy and delete the message from your computer. Any form of reproduction, dissemination, copying, disclosure, modification, distribution and/or publication of this [fax] [e-mail message] is strictly prohibited.

Well that's good then. You can sleep soundly tonight. Not!

This example is from my accountants, though I've

changed the name to protect the guilty. And yes, I have told them. But we have all seen similar notices. You can put them into plain English if you like. For example (taken from an e-mail from one of our erudite contributors):

Confidentiality Notice

This is a confidential legal communication. If you receive it in error, please call above number, or email the sender to inform of erroneous transmission. If received in error, please destroy your copy.

Pick either or none. The golden rule about communicating (in plain English) is to be aware of your audience. In this case, whoever gets the fax or e-mail by mistake. They are innocent. You have wasted their time and fax paper. Suppose you found out about the mistake and rang them. You would surely begin with an apology verging on grovel. Having begged forgiveness, you would beseech them to put the thing out of their mind, behave as though they had never seen it. And if you wanted it sent back you would surely offer to repay any expense, plus something for their trouble. And somewhere into all that you would insert a suggestion that they mustn't use or reproduce the material (giving no hint, of course, of your qualms about the lack of legal grounds for that proposition).

I will lean on the next editor to publish the best example of a confidentiality notice, one in actual use please, which is thought actually to achieve its intended purpose.

I can't offer you my own. I don't use one. I can't believe it would ever do any good, however honeyed the phraseology, and I fear it might have the opposite effect.

Our thanks to Dr M.J. Russell for these and other quotations:

As practitioners well know, those who draw up draft memoranda of association these days do not commonly err on the side of brevity.

Re North of England Zoo (1957 1WLR 773, at p.778, by Lord Evershed MR)

Economy of language is not invariably the badge of parliamentary draftsmanship.

Letang v Cooper (1964 3WLR 573, at p.584, by Diplock J)

This form [the Order for ship's papers then prescribed by

the Rules of the Supreme Court] is so long, so full of repetitive detail, and so obscure that it must have been drafted by a conveyancer in the days when payment was so much a folio.

Probatina Shipping v. Sun Insurance (1974 2 WLR 666, at p.653, by Lord Denning MR)

It is common experience to find that legal documents, like the Book of Common Prayer, use two words to convey the same meaning.

Selous Street Properties v. Ornel Fabrics (1984 270 EG 643, by Hutchison J)

Format of UK statutes to be improved

UK statutes are to be in a new format from November 2000. The new style is based on that adopted by the Inland Revenue's Tax Law Rewrite Project, but has been affected by some compromises.

The typeface, Book Antiqua, is a compromise between the Lords (who recommended Times New Roman) and the Commons (who preferred Palatino). The old layout is shown below and the new one (with Palatino deputising for the very similar Book Antiqua) on the facing page.

Note the considerable improvement from:

- Running heads on each page, showing the Act, part, and chapter (but not section, unless that is to be added when necessary).

6

c. 42

Human Rights Act 1998

(2) But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings.

(3) No award of damages is to be made unless, taking account of all the circumstances of the case, including—

- (a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and
- (b) the consequences of any decision (of that or any other court) in respect of that act,

the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.

(4) In determining—

- (a) whether to award damages, or
- (b) the amount of an award,

the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention.

(5) A public authority against which damages are awarded is to be treated—

1940 c. 42.

- (a) in Scotland, for the purposes of section 3 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 as if the award were made in an action of damages in which the authority

....

Judicial acts.

9.—(1) Proceedings under section 7(1)(a) in respect of a judicial act may be brought only—

- (a) by exercising a right of appeal;
- (b) on an application (in Scotland a petition) for judicial review; or
- (c) in such other forum as may be prescribed by rules.

- Bold section headings above the text, rather than margin notes in smaller type.
- Hanging, rather than wrap-around, indentation.

Let us hope that the final version will avoid:

- The inconsistent capitalisation (*Corporation Tax and Corporation tax*) and punctuation (*per cent*; and the archaic *per cent.*).
- The ambiguous and often misused *shall*, as (with

some lapses) in the Human Rights Act — incidentally drafted by Edward Caldwell — apropos of which:

Richard Castle writes:

Could I suggest please that the committee considers writing to chief parliamentary counsel congratulating him on the drafting of the Human Rights Act. So far as I can see*, not a single *shall* appears, except in

Finance Bill

Part 2 — Income Tax, Corporation Tax and Capital Gains Tax

Chapter 1 — Income Tax and Corporation Tax

(2) For that year —

- (a) the small companies' rate shall be 21 per cent.; and
- (b) the fraction mentioned in section 13(2) of the Taxes Act 1988 (marginal relief for small companies) shall be one fortieth.

12 Charge and rates for financial year 1999

(1) Corporation tax shall be charged for the financial year 1999 at the rate of 30 per cent.

(2) For that year —

- (a) the small companies' rate shall be 20 per cent.; and
- (b) the fraction mentioned in section 13(2) of the Taxes Act 1988 (marginal relief for small companies) shall be one fortieth.

Corporation tax: periodic payments etc

13 Corporation tax: due and payable date

(1) After section 59DA of the Taxes Management Act 1970 (c.9) there shall be inserted —

"59E Further provision as to when corporation tax is due and payable

- (1) The Treasury may by regulations make provision, in relation to companies of such descriptions as may be prescribed, for or in connection with treating amounts of corporation tax for an accounting period as becoming due and payable on dates which fall on or before the date on which corporation tax for that period would become due and payable apart from this section.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may make provision —

schedule 1, which is not (I think) drafted by parliamentary counsel. See, for example:

- s.1(2): Those Articles are to have effect....
 s.1(6): No amendment may be made by an order under subsection (4) so as to come into force before
 s.2(1): A court ... must take into account
 s.4(2): If the court is satisfied....
 s.8(3): No award of damages is to be made....
 s.11: A person's reliance on a Convention right does not restrict...."
 s.22(3): The other provisions of this Act come into force....

*** PS:**

Oh dear! I have spotted one in s.20(5):

Any statutory instrument ... shall be subject to annulment..."

and two more in s.20(7).

*Language Perils*TM

*Language Perils*TM is an e-letter devoted to terminology in insurance, reinsurance, healthcare, employee benefits and related sectors, including law – in all the world's languages.

Current and past issues may be viewed on the Web at:

http://insurancetranslation.com/Language_Perils/index.htm

We invite Clarity members worldwide to make submissions.

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Guidance notes on plain language drafting
 approx 50cm wide by 72cm tall
 covering layout, typography, organisation,
 sentence length, punctuation, and other topics
 at no charge except a suitably stamped
 addressed envelope (the poster alone weighs
 about 50g)

(The larger the envelope the less
 we will need to fold the poster)

Drafting tips

3: Keeping sentences short

by Mark Adler

Traditional legal writers often produce sentences running into hundreds of words, and one of 1300 words — in a bank's standard guarantee — has been documented¹. As this custom makes life so difficult for lawyers and lay people alike, why is it done? The bank's lawyers may have believed, however quaintly, that they could not have expressed themselves precisely and accurately in fewer words, but there is no rule of law to prevent the division of all those words into digestible paragraphs and sentences.

If a piece of text contains more information than the reader can hold at once, the beginning of the sentence will be forgotten before the end is reached. If the sense of the whole depends on the beginning, as it should in a sentence, it follows that people will not understand long sentences.

A useful guideline is:

- Do not allow more than 40 words in one sentence; and
 - In informal documents:
 - Vary the length of sentences*; and
 - Aim at an average length of about 15 or 20 words.
- * Routinely long sentences make a document turgid. Routinely short ones are easier, but unnaturally staccato. Aim for variety.

Sentences may be shortened by:

- Adding full stops; or
- Removing words.

(You may need to reorganise what is left.)

Words may be removed if:

- They add nothing to the sense.

¹ For instance by Professor Peter Butt, in *Plain language in property law: uses and abuses* (*The Australian Law Journal*, November 1999, p.810).

Examples

I enclose ~~herewith~~.

The ~~said~~ building ~~and all structural parts thereof~~.

~~The sum of~~ £20.

~~It is further hereby agreed and declared that~~.

- What they do add does not need saying.

Examples

I will take instructions ~~from my client~~.

The defendant was driving his ~~blue Ford motor car registration K623 NOK~~.

(when the only issue is which of the drivers is to blame for the accident).

- Their meaning can be better expressed in another way.

Examples

The Claimant was employed by the Defendant as a shop manager at the Defendant's premises.

becomes

The defendant employed the claimant to manage its shop.

It is admitted that if, contrary to the Defendant's principal contentions, it be held that the Claimant is entitled to the sum claimed or any sum, it is entitled to interest.

becomes

We concede that the claimant is entitled to interest on any sum found due.

She wrote a number of long letters to me with enclosures and I was slow in getting around to read the correspondence and act as at the time I was involved in dealing with a number of urgent ongoing matters from my case load

becomes

She kept sending me long letters and other documents, but I was too busy [at the time] to read them.

After a supergrass trial that had involved 13 defendants and taken 111 working days, an appeal judge urged counsel to "curb their verbosity".

R. v. Thorne
(1978 66 Cr App R 6, at p.14, by Lawton LJ)

A new plain language listserve

We are planning a list serve which we are prepared to make available to all Clarity members. A listserve is a bit like a bulletin board, in that any member can post notices to it, but instead of having to go somewhere to read the messages, each subscriber gets the messages automatically in their email.

The scheme is to run for a minimum of two years, without charge to Clarity members, or to Clarity directly. During the second year, we will consider whether to continue after that and if so on what terms.

We propose to start with a single list for all types of messages (relating to the clarity of documents). But over time, if there is evidence of interest in developing specialty topics, we will add sub-lists so people can choose (from time to time) what material they receive. If the project is successful, we hope to add in due course a library of downloadable papers, documents, and, ultimately precedents.

We will operate this as an "unmoderated" site, which means that no one will pre-screen material to be posted. But there will be modest rules governing content, and we may deny access to anyone who abuses the privilege.

The email addresses of members who subscribe to the list would be protected and not distributed to third parties.

The Clarity committee has agreed that it will:

- Send an email circular to those members whose email addresses we have invited them to register for free membership.
- Regularly publicise the list.
- Install a link to it from the Clarity website.

A discussion group is only as good as the participants make it. We hope you will use it to the full, and enjoy it.

Christopher Balmford and Phil Knight

CLARITY's document services

CLARITY offers two related but distinct services: the first is document drafting; the second is vetting documents for the award of the CLARITY logo.

1. Drafting

A CLARITY member will draft or redraft your documents applying the principles we advocate. Members working on this basis do so on their own account. CLARITY is not a party to the contract.

Fee: The fee is negotiated between you and the drafter.

2. Vetting

A CLARITY vetter will consider a document and

- approve it as drafted;
- approve it subject to minor changes; or
- reject it with a note of the reasons.

If the document is approved, or approved subject to changes which are made, you may use the CLARITY logo on the document provided the document remains exactly in the approved form.

Fee: The standard fee is £100, but may be higher if the document is long or complex. Our vetter will quote before starting.

Common principles

In both cases:

- all types of document are included - for example letters, affidavits, pleadings and manuals.
- confidentiality will be respected.
- the applicant is responsible for ensuring that the document does the job intended.
- CLARITY is not insured and will not accept liability.

We will try to see that the drafter is not also the vetter but we cannot guarantee this.

Please contact:

Richard Castle in New Zealand:
242b Tinakori Road, Thorndon, Wellington
Tel: 938 0711 Fax: 934 0712
mary.schollum@police.govt.nz
International code: 64 4

American Bar Association recommends plain language

In August 1999 the American Bar Association's House of Delegates resolved:

That the American Bar Association urges agencies to use plain language in writing regulations, as a means of promoting the understanding of legal obligations, using such techniques as:

- Organizing them for the convenience of their readers;
- Using direct and easily understood language;
- Writing in short sentences, in the active voice; and
- Using helpful stylistic devices, such as question-and-answer formats, vertical lists, spacing that facilitates clarity, and tables.

To avoid problems in the use of plain language techniques, agencies should:

- Take into account possible judicial interpretations as well as user understanding;
 - Clearly state the obligations and rights of persons affected, as well as those of the agency; and
 - Identify and explain all intended changes when revising regulations.
-

Free internet access to the law

The law is a massive body of data which changes daily. The only way to deal with it is to put it all in one place, link it all together, make it searchable and keep it up to date, and the only way of doing that is on the internet. The material is needed in only one place, from which anyone may collect it. The net is, in addition to its other advantages, the cheapest medium for publication ever devised.

The Australasian Legal Information Institute (AustLII) was set up in 1995. It started on a shoestring, and still receives only modest funding.

Its underlying principle is to make the law publicly available, intelligibly and free on the internet. In addition to making legal resources accessible, it is actively engaged in high-level study into advanced methods of legal research using computers. It now has

over 500,000 pages with some 13 million hypertext links. Some of the case materials go as far back as 1947. Case- and statute-citation is noted-up automatically. In addition, there is a very flexible text-retrieval search engine, known as SINO.

The address is <www.austlii.edu.au>.

There is now a strong movement to set up a similar system for the UK and Eire, provisionally named Ukeleli (United Kingdom & Eire Law E-library Institute). The initiative is co-ordinated by barrister Laurie West-Knights, and is supported by the Austlii founders (who have kindly offered their software and experience), by the Lord Chancellor's Department, and from the bench. Lord Justice Brooke, as president of the Society for Computers and the Law, is actively involved in the project.

Ukeleli's aims are similar to those of Clarity, in that we both want to make the law easily accessible without unnecessary cost, not just because it is convenient but as a democratic principle. For that reason it has been suggested that Clarity respond positively to Ukeleli's request for funding, and by the time this appears it will have been discussed in committee. Members' views are invited.

For much more detail, and regular updates of this fast-developing movement, see the Ukeleli website at <www.lawonline.cc/aust.htm>.

Incidentally, Mr West-Knights has offered a bottle of champagne for the successful suggestion of a name to replace Ukeleli. It must be available as a top level ".org" or ".net" domain name. Entries to <name@LawOnLine.cc>.

Plain language in the *Solicitors Journal*

The *Solicitors Journal* is interested in receiving letters and occasional articles on plain language drafting, either in the form of before-and-after examples or otherwise. The maximum is 1,000 words.

Write to

Sue Hart (editor)
100 Avenue Road
London NW3 3PF
Tel: 0207 393 7000
Fax: 0207 393 7880
solicitors.journal@smlawpub.co.uk

US Federal Aviation Authority moves to plain language

From the FAA's website <www.faa.gov/language>:

The FAA is participating in Vice President Gore's National Partnership for Reinventing Government (NPR) Customer Satisfaction Survey. As part of the survey, the National Quality Research Center of the University of Michigan recently interviewed a random sample of U.S. commercial pilots. They asked the pilots about air traffic control, pilot certification processes, and the clarity of regulations and how regulations contribute to aviation safety.

The agency received an American Customer Satisfaction Index (ACSI) score for each of the three areas surveyed. We scored very well on ATC and pilot certification. We did not fare so well in the clarity of our regulations.

To improve customer satisfaction, the FAA is simplifying its rulemaking process by writing all future regulatory documents in plain language. To achieve our goal, we're going to make plain language a part of the FAA culture. We will do this by training FAA employees, actively seek input from our customers through focus groups and work with our regulated community to identify their communication priorities and concerns....

We're very serious about plain language. It is absolutely imperative that we communicate clearly; the safety and security of our aviation system depends on it.

The FAA is liaising with Annetta Cheek to customise her plain language manual (see page 21).

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Clarity: improvements and publication details

Clarity is the journal of the group CLARITY and is distributed free to members.

This issue was edited by Nick Lear, an English solicitor.

Clarity 45 is planned for the middle of 2000 and will be co-edited by Phil Knight, a Canadian lawyer, and Mark Adler, an English solicitor. This will make it the first internationally edited edition. Please send copy to either editor, preferably in electronic form and if possible in Microsoft *Word* in Macintosh format.

We will publish it in two forms. As usual, we will print and mail it to all members. We will also publish it electronically, in what is called *portable document format* (.pdf). We will use Adobe *Acrobat* to publish the file, and it will be readable on, and printable from, any computer that has *Acrobat Reader 4.0* installed. *Acrobat Reader* is the industry standard for portable electronic documents, is free, and can be downloaded and installed automatically from the Adobe web site <www.adobe.com>.

We will distribute the electronic version via email to each member whose email address we have. If you are not sure if we have yours but want to ensure that you are on the list please email a note to <adler@adler.demon.co.uk>. (We hope also to send news by email circular from time to time so that members receive it more promptly than by the journal or newsletter.)

Later in the year, we will evaluate members' impressions of the electronic format and electronic distribution of *Clarity*. We will ask each of you to consider whether you would be willing to receive future issues exclusively in electronic format.

The committee hopes that electronic publishing and distribution will result in large cost savings. Hyperlinks and in-document search facilities will be a more immediate advantage to members.

Clarity 46 is to be edited by a South African team headed by Professor Frans Viljoen of the University of Pretoria law department. It is scheduled for late 2000.

A newsletter will be published between each issue.

Contact details appear on the inside back page.

Clarity's annual meeting

London: 6 November 1999

Overseas members

We were lucky to have at the meeting two stalwart overseas Clarity members, each of whom was passing through England at the time: Phil Knight from Canada and Duncan Berry from Australia (and temporarily Hong Kong).

Speaker

Edward Caldwell, first parliamentary counsel and a recently-joined Clarity member, was warmly received. He spoke very informatively and entertainingly on *The work of parliamentary counsel's office* but as it was a spontaneous and unrecorded delivery — and all the better for it — I am afraid we cannot publish a transcript.

Clarity Awards 1999

Edward Caldwell also presented our 1999 award (for only one was made) for good legal writing.

The winner was a team comprising **Margaret Debenham, Robert Eagleson, David Rohr, Hugh Scott-Mackenzie, Kim Sides, and Frances Williams**, all of **Mallesons Stephen Jacques**, solicitors of Sydney, Australia, for their *Charges for facilities and services* prepared for Airservices Australia. As Mallesons' entire London office had prior engagement at Twickenham RFC, Phil Knight accepted the award on their behalf.

Honourably mentioned were:

Ted Kerr and **Kate Corcoran**, also with the Sydney office of **Mallesons Stephen Jacques**, for their *NRMA Insurance membership principles*.

Michael Lawandi and **Julianna Degeling**, law students at the **University of Sydney**, Australia for their *Lease*.

Malcolm Niekirk of **Lester Aldridge** of Bournemouth, England, for his *Standard terms of trading*.

Mr **Park Sims**, a management and training consultant of Suffolk, England for his *Indemnity for sale of units*

Clarity offers its warm thanks to **Sweet & Maxwell**

and the *Solicitors Journal* for sponsoring the awards.

Thanks also to everyone who entered. The competition was more challenging this year because we ruled out explanatory leaflets, insisting that entries be restricted to formal documents, and we insisted on a high standard.

We are offering further awards in 2000.

Committee

The existing committee was ratified without change. The meeting also ratified the custom that our representatives outside the UK be considered committee members. The agenda and minutes of each committee meeting are now circulated to them, and the ease and flexibility of email enables them to join discussions from afar.

But we are very sorry to announce that since the meeting Richard Oerton has retired from the committee. His thorough knowledge of the law, his commitment to the principles of plain language, and his careful but original thought all combined to make his contributions to our discussions irreplaceable. We would also like to thank him and his wife Marion for hosting committee meetings at their London flat, always a pleasure to visit.

On the other hand, we are pleased to welcome a new recruit, Richard Woof, a solicitor who retired in December.

The committee now consists of: Simon Adamyk (UK), Mark Adler (UK, chairman), Christopher Balmford (Australia), Ken Bulgin (UK), Richard Castle (New Zealand), Paul Clark (UK), Joe Kimble (USA), Phil Knight (Canada), Nick Lear (UK), Bob Lowe (UK), Dominic Minett (Brazil), Nick O'Brien (UK), John Pare (UK, treasurer), Wai-chung Suen (Hong Kong), Frans Viljoen (South Africa), Richard Woof (UK), and Yeo Hwee Ying (Singapore).

Clarity's aims - an edited transcript of a discussion:

Mark Adler: You may have read in the journal the suggestion from Joe Kimble, Christopher Balmford, and others that we widen our aims from *a movement to simplify legal language* to accommodate business language in general. There has been some strong opposition to that on the basis that we are the only legal plain language group (or at least the only non-local one); we are known all over the world for our legal speciality; there is plenty of work to do in law; and it would be a pity to water down what we are

doing to spread into areas which are already well covered by other plain language groups.

But **Gail Jamieson** has written from Australia:

I would also like to register my agreement with the comments in the editorial about the opportunity for the plain-language movement to broaden its focus beyond mere word-substitution. For that reason, I think, it is time for Clarity to consider changing the statement of its aims. Clarity is engaged in the ongoing pursuit of a single goal - to make legal documents more understandable to the reader. Plain language is but one of a number of tools that may be used in that pursuit.

So my suggestion would be: *A movement towards the better understanding of legal documents.*

Richard Oerton: It seems to be reversing what we are really trying to do. Our aim is to use documents which are easy to understand rather than improve the technique of understanding by others, which is what this suggests.

Robert Lowe: The word "language" might not be wide enough to cover things like spacing paragraphs, tabulation, numbering. I don't want to be pedantic but these things are as important as the punctuation and the words.

A voice on the tape: That's what we already always thought; it's not a change of direction: she is trying to clarify what we are asking.

Celia Hampton: I wouldn't change from the duty being put on the writers to proselytising for a better understanding by the public. I think that shifts the emphasis in quite a wrong way.

Ken Bulgin: That's a matter of semantics. I think what she meant was *a movement to make legal documents more understandable.*

RL: Rather than *simplifying*, what about *clarifying*?

Joshua Dubin: As somebody whose legal advocacy is often oral I like the idea of simplifying legal language. You ask what opportunities there are from the Civil Procedure Rules. The answer is that you change the word *plaintiff* to *claimant* and then you've got a Woolf document. It hasn't really affected us that much but the problem is that what we put in words on the paper is what we put in words to the magistrate or the circuit judge, which can be as pompous today as it was 50 years ago. So it strikes me that *simplifying legal language* ought to remain the core, but perhaps it's a question of whether *simplify* is the correct verb. Perhaps if one broadens the verb in the middle then one broadens the focus without changing the aim. So perhaps ... [at this stage the tape, which had only just

joined Clarity, became unclear.]

The courts are public; a member of the public can go into the Court of Appeal and would probably find it one of the duller things they have ever experienced, not only because barristers read previous case reports to judges but because the language is extremely complex and pompous and understandable only between lawyers. We are concerned not only with word substitution but also with the spacing of the words on the page, and it helps, when you hear an advocate talk, if the words come out of his mouth as they would come out of the page. I think being a member of a group like Clarity reminds you to talk, as well as write, in a way your client would understand. That's why I like the word *language* and not just *document*.

Phil Knight: I've heard Christopher Balmford's arguments at some length and have had discussions with him about that. I think Christopher would like to see a focus broader than words and sentences along the lines that you mentioned. His concern seems to go on to the design of documents: the layout, and white spacing, and organisation of groups of documents...

MA: If you look back through the journal you'll see that for years we have always dealt with those things as a matter of course.

PK: I don't disagree. I'm just putting Christopher's ideas as I understand them. I think what Gail is saying is different. I think what she is urging — and I would agree with this — is a shift in emphasis not from the duty on the writer to communicate clearly but rather a duty on the writer to write to a particular standard and to consider how easily the reader will be able to understand. It isn't a shift from writer to reader but from technique to result. And following the previous comment this should extend not just to written language but to spoken language.

Nick O'Brien: Sometimes when I come out of court I have to say to my client *Would you now like me to tell you what that was all about?* and they say *Did I win? Did I lose? Do I have to sell the house?* This is because there has been impenetrable discussion and I'm responsible for that. And it seems to me that when the client is sitting there paying for it and it's going to affect them there must be a better way of presenting some of these arguments in court and an obligation on us to try to make it clearer. I think it's very important. It's the way lawyers are most easily criticised. I do think we should look at this in the coming year. It could be an extension of what we've been doing about written work. It's something we could take up in the

journal. What are the obligations on the advocate? What are the barriers to understanding in the courtroom? We've had a lot of academic articles about the barriers to understanding the written word but I don't remember seeing anything about the barriers to understanding oral argument. Woolf may make it worse because so much is going to be written, and the judges are going to have read everything — or say they have — so there is only a short discussion and the client is not going to be sure that everything has been looked at. So I think there's some scope for seeing what our international academics are saying about the way oral arguments are presented.

As for reflecting the fact that it's not just the words, it does seem to me that there's a point to be made, even if it means that our statement of aims becomes a couple of words longer to read *legal language and documents*. I wouldn't change *simplify* but just add *and documents* to make that point.

MA: I've always been a little dubious about *simplify* because the opponents of plain language confuse it with *over-simplify*. I would prefer *clarify*.

Paul Clark: I was about to say that I didn't think slogans mattered until I heard what Nick had to say. But then I thought again and our present slogan is right on the point. He's talking about legal language and nobody's picked it up and I'm not sure, therefore, that changing the slogan would really affect what we do.

MA: I don't think of it as a slogan, but just a shorthand way of telling people who've never heard of us what we're doing.

PC: But if I were starting again today, in the light of the last 15 or so years of the movement, I think I'd use the word *communication* rather than *language* and *clear* rather than *simplify*. And just off the cuff: *Clarity: promoting clear legal communication* seems to me the sort of thing we're about.

JD: It's the tautologies that are annoying: "It's true to say". They're very useful because they allow you time to think, but I've seen very effective advocacy with long pauses for thought and everyone knows that that's what the advocate is doing. That's why I like the idea of the word *language*. *Communication* may be cumbersome but perhaps *clarify and promote* in place of *simplify*.

MA: I don't think it would be a good idea to agree on any form of words off the cuff like this at a meeting, so I suggest we print the gist of this discussion in the journal, see what people say about it, and try to reach a consensus.

John Fletcher

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Comments and suggestions about this — and any other matters — (preferably by email, please), to Mark Adler (whose address is on the back page) for publication in the next issue.

News about members

Edward Caldwell has been appointed first parliamentary counsel (UK) on the retirement of another member, **Christopher Jenkins QC**.

Three Clarity members have recently started or finished terms of office on the council of CALC (the Commonwealth Association of Legislative Counsel). **Dennis Murphy** (Chief Parliamentary Counsel, New South Wales) and **Edward Caldwell** have stepped down as president and secretary respectively. The new secretary is **Duncan Berry** (currently of Hong Kong), who also edits their journal, *The Loophole*.

Professor **Roy Goode** has been knighted in the new year honours.

Richard Woof, formerly with Debenham & Co but more recently with Coudert Brothers, has retired.

I didn't realise when I took on this job, early in 1999 that it could possibly take this long to produce the journal. I take full responsibility for the lateness and can only apologise.

Nick Lear

Welcome to new members

[contact names in square brackets]

Australia

ACT Parliamentary Counsel's Office [John Leahy, parliamentary counsel]; Canberra
Arthur Robinson & Hedderwicks [Karin Clark]; solicitors, Melbourne, Victoria
Allison Kenny; Unley, South Australia
Sylvia Lang; administrator, Univ of W. Aust, Nedlands
Michael Lawandi; law student; Padstow, NSW
Neil Leslie; deputy parliamentary counsel; Canberra
Eamonn Moran QC; deputy chief parliamentary counsel; Victoria
Paul O'Brien; lawyer, Parliamentary Counsel's Office; Melbourne
Susan Ratray-Wood; precedent lawyer, Blake Dawson Waldron; Bellevue Hill, New South Wales

Brazil

Dominic Minett; solicitor; Lex English Language Services; Sao Paulo

Canada

Roxanne Guérard; federal legislative counsel; Québec
Hon Mr Justice John Laskin; Court of Appeal for Ontario
Graham Price; solicitor and barrister; Calgary, Alberta
Janis Pritchard; solicitor and barrister; Medicine Hat, Alb

England

Morgan Cole [Miss S.M. Cleave]; solicitors; Oxford
Rowe & Maw [Anna Rogers]; solicitors; London EC4
Kevin Bell; solicitor, Clifford Chance; London EC1
Edward Caldwell; first parliamentary counsel; London SW1
Chris Charles; solicitor; Blaggs; Stoke-on-Trent, Staffs
Allyson Colby; solicitor; Wragge & Co; Birmingham
Teresa Cullen; solicitor; Rochman Landau; London W1
Peter Daniels; solicitor, deputy coroner; Cattermoles; Kent
Joshua Dubin; barrister; London WC2
Xenia Frostick; solicitor; Freshfields; London EC4
Nicholas Plaut; solicitor; Fairmay; London SW1
Charles Ranson; solicitor; Ransons; Esher, Surrey
Linda Russell; solicitor; Epping Forest Dist Council; Essex
Lesley Smith; solicitor; Bowcock Cuerden; Nantwich; Cheshire
Lucy Strahan; law student; Downe, Kent
Susannah Taylor; solicitor; Bowcock Cuerden; Nantwich
Andrew Wallace; solicitor; Morgan Cole; Reading, Berks
T.S. Watson; solicitor; Claytons; Luton, Bedfordshire
Frank Widdowson; director of legal services; RSPCA; Horsham, Sussex

Hong Kong

Lawrence Peng; attorney; Department of Justice
Suen Wai Chung; attorney; Department of Justice

New Zealand

Lorraine Banks; Laurel Associates Ltd; Wellington
James Sherer; lawyer; Russell McVeagh; Auckland

South Africa

Dept of Constitutional & Public International Law, University of South Africa [Christo Botha]; Pretoria
Derrick Fine; plain language consultant; Cape Town
Wendy Coetzee; Clubview West
Edgars Consolidated Stores Ltd [D.J. Viviers]; Crown Mines
Prof Shadrack Gutto; Law School & Centre for Applied Legal Studies, Witwatersrand University
Ann Harris; solicitor; Grant Park
Prof Ellison Kahn, Law School & CALS, Witwatersrand University; Johannesburg
Anton Kok; senior law lecturer; University of Pretoria
William Lane; retired lawyer; Grant Park
Mark Lister; pilot; Pietersburg
Riah Mabule; linguist; Vista University; Pretoria
Karin van Marle; legal history lecturer; Univ'y of Pretoria
Keketso Moahloli; lawyer, commissioner; CCMA; Bloemfontein
Brenda Neil; legal administrator; Duke Inc; Bergbron
André van Niekerk; attorney; Perrott van Niekerk & Woodhouse Inc; Sandton
Annelize Nienaber; senior law lecturer; Univ'y of Pretoria
Paul Poto; law student; University of Pretoria
Tumi Seape; lawyer; Department of Justice; Midrand
University of Cape Town Law Library [Linda Krawitz]; Rondebosch
Prof Dawid van Wyk; Dept of Constitutional & Public International Law, University of South Africa; Pretoria
Karin van de Venter; attorney; V.d.V Meiring inc; Radburg
Prof Frans Viljoen; Law Faculty; University of Pretoria
Jakkie Wessels; judicial training lawyer; Justice College, Pretoria

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University of Baltimore Law Library (Periodicals); MD
University of Toledo College of Law Library; Ohio
West Virginia University Law Library; Morgantown, WV
Megan Angell; attorney; Hillsdale, Michigan
Carolyn Boccella Bagin; Center for Clear Communication Inc; Rockville, Maryland
Carl Binns; attorney; Worthington, Ohio

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