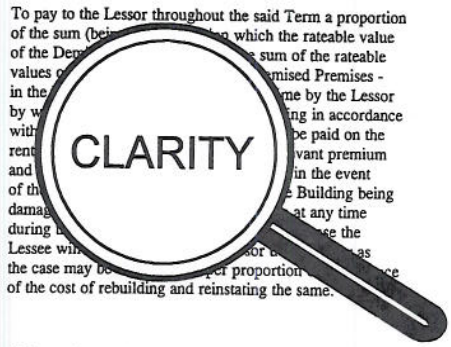

A movement to simplify legal language

Patron: Rt Hon Sir Christopher Staughton

No. 42: September 1998

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Time for Renewals

Renewals were due on September 1, unless you joined after April 1. Please send a check, made out to Clarity, to your country representative on page 18. If your address has changed, please include a note.

Membership in Clarity

If you would like to join Clarity, there's an application form on the back cover. We publish two issues of *Clarity* and two newsletters a year. Dues are modest, and the cause is important.

Clarity now has 905 members in 29 countries. For a breakdown by country, see our web site: www.adler.demon.co.uk/clarity.htm. Although we started as a lawyers' organization, we now have members in many different fields. Clarity is the organization for anyone who is interested or involved in plain language.

Annual Meeting

The annual meeting will be held on November 7, from 10:30 a.m., at "Briefs," 7 Stone Bldgs., Lincoln's Inn, London WC2. For more details, see the August 1998 newsletter or the web site.

Next Issue

The next issue, No. 43, is being edited by Christopher Balmford in Australia. His contact details are on page 18. The issue will be sent in early 1999.

Editor's Note

I'm honored to serve again as guest editor for *Clarity*. Having now done it for the second time, I can only marvel that Mark Adler has done it for 11 years. Mark became the editor with Issue No. 7, in 1987, when the publication was still a short newsletter. Now we have a journal. Hats off to Mark, and thanks to everyone who has helped Clarity grow.

I tried to edit lightly. I did use the serial comma (a, b, and c) and the long dash, and I hyphenated phrasal adjectives (plain-language movement). But, in general, I did not try to conform the articles to one style, British or American, or to one system of citation. And I didn't abbreviate citations without first giving a full name.

Naturally, this issue has a U.S. flavor. Perhaps readers in other countries will forgive that, since so much is happening in the U.S. and we have now passed the 200 mark in members. The nice thing about the U.S. developments is that they have all happened more or less independently — indicating that plain language is starting to take hold in different quarters. First, the executive branch of the federal government (pages 2-8). Second, the Securities and Exchange Commission (pages 9-14). Although the SEC is an executive agency, it's a so-called independent agency — which does not have to follow presidential orders. And it's a very powerful and influential agency, as you know. Third, the federal judicial system (pages 15-19), which has started to reform its procedural rules. And fourth, the commercial-law section of the professional bar (pages 20-21), which is starting to reform U.S. commercial statutes. Any one of these developments would be big news. Taken together, they're huge news.

After this first group of articles — the U. S. news — come an article by John Bell, an interview with Christopher Balmford, and an article by Robert Eagleson. You are not likely to find a stretch of 20 pages by three persons who speak more effectively and eloquently about the benefits of plain language and the damage done by legalese.

Beginning on page 42, I have continued the policy that Mark introduced in the last issue: have a part of *Clarity* devoted to drafting guidance, with before-and-after examples. I hope you'll find these articles helpful.

Onward and upward, then, on the road to clarity.

— Joe Kimble

President Clinton's Memorandum on Plain Language

[On the next page is the full version of President Clinton's long-awaited memorandum on plain language. The memorandum was announced by Vice President Gore on June 1, 1998. The text of the Vice President's remarks follow the memorandum. The Vice President's National Partnership for Reinventing Government is responsible for helping federal agencies comply with the memorandum. (You can follow the NPR's efforts at www.plainlanguage.gov.)

Plain-language mavens might be inclined to criticize some parts of the memorandum. And they might be discouraged to know that it's effective only until the end of the President's term, and that to carry it out will take good faith and a considerable effort by the federal agencies.

But this is still a banner event in the history of plain language. The memorandum — together with the initiatives by the Securities and Exchange Commission — has given new life to the plain-language movement in the United States. In fact, the federal government has never been more engaged in plain language than it is right now. And maybe, just maybe, the next president will renew President Clinton's memorandum. Ed.]

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

June 1, 1998

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Plain Language in Government Writing

The Vice President and I have made reinventing the Federal Government a top priority of my Administration. We are determined to make the Government more responsive, accessible, and understandable in its communications with the public.

The Federal Government's writing must be in plain language. By using plain language, we send a clear message about what the Government is doing, what it requires, and what services it offers. Plain language saves the Government and the private sector time, effort, and money.

Plain language requirements vary from one document to another, depending on the intended audience. Plain language documents have logical organization, easy-to-read design features, and use:

- common, everyday words, except for necessary technical terms;
- "you" and other pronouns;
- the active voice; and
- short sentences.

To ensure the use of plain language, I direct you to do the following:

- By October 1, 1998, use plain language in all new documents, other than regulations, that explain how to obtain a benefit or service or how to comply with a requirement you administer or enforce. For example, these documents may include letters, forms, notices, and instructions. By January 1, 2002, all such documents created prior to October 1, 1998, must also be in plain language.
- By January 1, 1999, use plain language in all proposed and final rulemaking documents published in the Federal Register, unless you proposed the rule before that date. You should consider rewriting existing regulations in plain language when you have the opportunity and resources to do so.

The National Partnership for Reinventing Government will issue guidance to help you comply with these directives and to explain more fully the elements of plain language. You should also use customer feedback and common sense to guide your plain language efforts.

I ask the independent agencies to comply with these directives.

This memorandum does not confer any right or benefit enforceable by law against the United States or its representatives. The Director of the Office of Management and Budget will publish this memorandum in the Federal Register.

WILLIAM J. CLINTON

Vice President Gore's Remarks on the Presidential Memorandum

[The following is taken from a tape of the Vice President's remarks on June 1, 1998. Because of an interruption toward the end, the second-from-last and next-to-last paragraphs are from the published version of the remarks. See www.npr.gov/library/speeches/gorepln.html. Ed.]

Under our reinventing-government initiative, we are continuing to work extremely hard to apply business principles to government. In fact, we put out our annual report about 10 months ago and entitled it "Business-Like Government." And we have used the best techniques of the best-managed businesses to eliminate more than 200 outdated programs, 16,000 pages of unneeded regulations, and 640,000 pages of internal rules that were just hog-tying the people who were trying to make our self-government work better and cost less. And we're not done yet. In fact, we're just warming up.

Today, I'm proud to announce — on behalf of the President — a new initiative that will go a long way toward making government easier to understand. The President is issuing today an Executive Memorandum to the heads of all executive departments and agencies directing them to begin writing in plain language to the American people.

Plain language. Here's a general guide to plain language. Short is better than long. Active is better than passive. It's okay to use pronouns like *we* and *you*. In fact, you should. As many of our departments and agencies are already finding out, when you apply these simple rules, a 72-word regulation can shrink down to 6 words. The title of a regulation can change from "Means of Egress" to "Exit Routes." And letters to customers can create understanding instead of confusion and frustration.

Let me give you a few examples. How many of you have gotten a letter like this, and I quote,

> If we do not receive this information within 60 days from the date of this letter, your claim will be denied. Evidence must be received in the Department of Veterans Affairs within one year from the date of this letter. Otherwise, benefits, if entitlement is established, may not be paid prior to the date of its receipt. Show veteran's full name and VA file number on all evidence submitted. Privacy Act Information: The information requested by this letter is authorized by existing law, 38 U.S.C. 210(c)(1), and is considered necessary and relevant to determine entitlement to maximum benefits applied for under the law. The information submitted may be disclosed outside the Department of Veterans Affairs only as permitted by law.

Well, the Veterans Benefits Administration, at the instigation of federal employees — who I guarantee you are sicker of that stuff than anyone else — is now working directly with their customers to translate letters like that into plain language. One of those customers, a veteran named Jock Lindsey, told them that some of their letters were, and I'm quoting from Jock, "confusing and insulting." Now that's plain language. Well, VBA kept writing and rewriting until Jock reviewed their latest effort, and he said, "This is how the government should write to its customers. I feel like I'm talking to a real person."

Because of VBA's leadership in reaching out to customers like Jock, letters that used to read like the one that I quoted from now read like this. Here's the new version:

> We have your claim for a pension. Our laws require us to ask you for more information. The information you give us will help us decide whether we can pay you a pension.
>
> What we need: Send us a medical report from a doctor or clinic that you visited in the past six months. The report should show why you can't work. (It goes on . . .)

> When we need it: We need your doctor's report by (and then it gives the date). We'll have to turn down your claim if we don't get it by that day. (That's pretty clear, isn't it? Then it goes on to say . . .)
>
> If you have any questions, please call us toll-free by dialing 1-800-827-1000.

Here's another example that makes the same point, also from the VBA. Here's the before example:

> We are providing the following information about an insurance payment you indicate you have not received or which is otherwise missing. We have given the Treasury Department the necessary information to trace the check in question.

Now, the new version is:

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

Here's one . . . Aw, that one's too long — the before one is too long to read on that one. I'm going to skip that one.

Here's one from OSHA [Occupational Health and Safety Administration]. The title of the old regulation is "Means of Egress." I referred to that earlier. "Egress," of course, means exit. I say of course. I really didn't know that. The word is so little known that research turned up the fact that practical joker P.T. Barnum used to put up a sign at the circus that said "To The Egress." And people followed the sign thinking that they were going to see some exotic animal, and suddenly found themselves out on the street. Anyway, back to our regulation.

Here's the old one:

> Means of Egress. Ways of exit access and the doors to exits to which they lead shall be so designed and arranged as to be clearly recognizable as such. Hangings or draperies shall not be placed over exit doors or otherwise so located as to obscure any exit. Mirrors shall not be placed on exit doors. Mirrors shall not be placed in or adjacent to any exit in such a manner as to confuse the direction of the exit.

Here is the proposed new regulation, entitled "Exit Routes":

> An exit door must be free of signs or decorations that obscure its visibility.

Now that's better. It went from 76 words to 14. Now I think that some of these — even the after versions — I think could be a little better. In fact, I don't want to step on the toes that have done a good job in improving it quite a bit, but the words "obscure its visibility" still have a little bit of that gobbledygook turkey-language ring to them, and I was trying my own hand at it. What about:

> Don't put up anything that makes it harder to see the exit door.

That's all right, isn't it? Thank you.

Now, I'm sure the folks at OSHA could listen to my version and do better still, and I look forward to that. But the point is that as soon as people begin to understand the principles of plain language and apply those principles, I predict that everybody is going to be coming up with ideas about how to write and speak more clearly. As a matter of fact, in a minute, I am going to announce a prize for that.

But as these examples tell you, we're already making great progress in plain language all across the government. During one of the recent storms that ripped through California during the height of El Nino's impact, an SBA [Small Business Administration] loan applicant paid a visit to the SBA disaster office. He had already filed his loan application by mail, but he wanted to double-check with someone in person because the form was so clear and so easy he was absolutely certain he had missed a page or had somehow been given the wrong form. And that's a good sign.

Another one. Our Securities and Exchange Commission is also getting out in front on plain language. SEC Chairman Arthur Levitt, who is doing such a great job, once said that — and he's a very smart guy — he said he can't even understand some of the industry language. So he not only made plain language a requirement in his agency, he encouraged the private sector to practice it as well. And we have here today with us Edward Crooke, President of Baltimore Gas and Electric. BGE was one of the first companies to respond to the SEC's challenge of putting its prospectus into plain language. And the customer response was so encouraging — they were amazed to find something that just actually sounded simple and easy to understand — that the company made plain language the theme of their 1997 report. And now plain language is beginning to take hold all across the securities industry. It's got a way to go, just as it does in the federal government. But one brokerage firm now even insists that their funds are selling better just because their language is clearer and the small investors feel like nothing is being slipped by them or nobody is trying to pull the wool over their eyes. It doesn't matter if you are in the private sector or public sector: customers appreciate plain language.

Well, today, with the President's memorandum, plain language literally becomes the rule, rather than the exception, in the federal government. And so on behalf of the President, I am now calling on every agency to make plain language a priority, and give the go-ahead to the plain-language fans on the front lines who are eager to help us speak and write more clearly to our customers. I am announcing a monthly award that will be given to a federal employee who comes up every month with the best example of how to eliminate gobbledygook. And this award is going to be called the Gobbledygook Elimination Prize. So encourage federal employees to compete for this, and they will receive a little button with a turkey head with a line through it. We already have a Hammer Award, which goes for excellence in reinventing government, and it is a much-prized award. You will find a few people with those on their lapels here, and I hope that the competition for this award will be just as keen as it has been for the Hammer Award.

We are talking about more than a new approach to communications. We're talking about enduring principles of self-government. Clarity helps advance understanding. Understanding can help advance trust. And trust — especially trust in the promise of our self-government — is essential if we are to come together to solve the problems we face as a nation.

So let me conclude by illustrating once again the point of our plain-language initiative. The point is *not* — to enhance the level and facility of reading comprehension attained by the government's interlocutors according to objectively considered contemporary standards and measures. That was the old point; the new point is to make sure you can understand us.

Thank you very much, and I appreciate your being here. Thank you.

An Update from the National Partnership for Reinventing Government

Andrew Sisk

The plain-language movement is alive and well in the United States.

Plain language has become a priority in the drive by the President and the Vice President to reinvent government so that it works better and costs less. On June 1, 1998, Vice President Gore announced the President's memorandum on plain language. At the same time, the Vice President announced a new "No Gobbledygook" award to be given monthly to the federal employee who does the best job of converting a government document to plain language.

The National Partnership for Reinventing Government (formerly the National Performance Review) is coordinating the plain-language initiative. NPR is an interagency task force; it consists of federal workers from agencies across government who are dedicated to making government work more effectively and efficiently.

As part of its effort, NPR created the Plain Language Action Network. PLAN consists of federal-government workers who are interested in improving communications between government and the public. The group meets weekly to discuss current developments in the government and in the plain-language movement generally. Recently, the group drafted a comprehensive guidance document designed to help agencies comply with the President's memorandum. In July, executive heads of agencies received the guidance document with a cover memo from the Vice President emphasizing the importance of this initiative. The guidance document takes the writer step-by-step through the process of writing in plain language. It uses a question-and-answer format to deal with any questions about the executive memorandum. It also instructs agency heads to designate a senior official as its plain-language contact.

NPR has created a web site — www.plainlanguage.gov — to keep the public up to date and to promote plain language. The web site includes the following:

- A "What's Happening" section.
- Advice on how to write in plain language.
- Examples of plain language in government documents.
- A reference library with lots of links to handbooks, articles, and international sites (including Clarity's home page).
- A list of plain-language consultants.
- The criteria for the "No-Gobbledygook" award.

By August 1, the Vice President had presented two awards. He personally selected the winners and gave them the award. The inaugural award went to Marthe Kent of the Occupational Safety and Health Administration. She received the award — a six-inch Lucite triangle of a turkey with the international "No" slash — at the White House. Here is part of the federal regulation that she rewrote:

> **Before** (29 Code of Federal Regulations 1910.94(d)(1)(i)):
>
> General.
>
> This paragraph applies to all operations involving the immersion of materials in liquids, or in the vapors of such liquids, for the purpose of cleaning or altering the surface or adding to or imparting a finish thereto or changing the character of the materials, and their subsequent removal from the liquid or vapor, draining, and drying. These operations include washing, electroplating, anodizing, pickling,

quenching, dyeing, dipping, tanning, dressing, bleaching, degreasing, alkaline cleaning, stripping, rinsing, digesting, and other similar operations.

After:

When does this rule apply?

This rule applies to operations using a dip tank containing any liquid other than water:

(i) to clean an object;

(ii) to coat an object;

(iii) to alter the surface of an object; or

(iv) to change the character of an object.

In July, the Vice President gave the second award to two workers at the Bureau of Land Management, Chris Fontecchio and Richard Hoops. They rewrote a geothermal regulation, trimming it from a page to a short, readable paragraph. At the ceremony, comedian Al Franken, a former writer and performer on *Saturday Night Live*, stopped by to "bemoan" the new plain-language version of the regulation. Claiming that his late, beloved Uncle Morrie wrote the original regulation, Franken cracked, "What's not to understand? If you ask me, this [new regulation] is about the MTV generation and their short attention span."

As one other event, NPR and the American Bar Association — through its Administrative Law Section — sponsored a symposium on plain language in June. It drew over 300 people — administrators, federal lawyers and writers, private lawyers, consultants, and others.

Naturally, many agencies are still in the early stages of their plain-language efforts. They are holding training sessions, developing plans, and designating their plain-language specialists. But other agencies were at work well before June 1 and have already made considerable progress. The Veterans Benefits Administration, for instance, has undertaken an agency-wide program to rewrite its letters. The Small Business Administration has completely rewritten its federal regulations.

NPR will continue to prod, to provide general advice, and to hold plain-language forums. The task is monumental, but we are under way.

***Andrew Sisk** is serving as a White House Intern at the National Partnership for Reinventing Government. He is a second-year Master of Public Administration student at The George Washington University in Washington, D.C. He graduated magna cum laude from Wake Forest University in Winston-Salem, North Carolina, with a degree in politics.*

Coming in the Next Issue

One of the U.S. agencies that has been most engaged in plain language is the Veterans Benefits Administration. How have they done it? How do you change — or even start to change — the culture of an organization? That is the eternal question.

The next issue of *Clarity* will include an article by Susan Kleimann and Melodee Mercer that describes the process of change at the Veterans Benefits Administration. There will also be an article about the cultural-change project at Australian Mutual Provident that Christopher Balmford mentions on page 32 of this issue. Stay tuned.

Plain Language Turns the Corner: New SEC Rules for Prospectuses

Thomas M. Clyde ©

In late January 1998, the Securities and Exchange Commission announced new rules calling for plain English in prospectuses.[1] These are the first actual mandates to come out of the campaign by Chairman Arthur Levitt and the Commission for simpler, clearer disclosure to an ever-widening investing public.

The new rules affect only the prospectus that a public company or a mutual fund must provide to prospective investors when selling securities. The rules do not apply to other parts of the registration statement that the company or fund must file with the SEC, to other types of SEC filings, or to underlying documents like merger agreements.

These new prospectus requirements are part of the SEC's response to a rapidly changing, increasingly electronic marketplace. Company and mutual-fund filings are now readily available over the Internet and through the SEC's EDGAR system to all types of investors — large and small. To make those filings understandable, the SEC has had to take aim at the homogeneous culture and rigid writing style of American lawyers who do big-time corporate and securities work. The lawyers have tweaked and traded turgid legalese and dreary boilerplate back and forth so much that SEC filings and corporate papers are virtually impenetrable to ordinary investors.[2]

At the same time, the SEC release announcing the new rules recognizes that the SEC itself has been part of that culture. SEC rules have normally been pretty inscrutable to anyone not in the trade. Only recently has the SEC begun to try to write clearer rules and releases. A big question will be how tightly the SEC staff will enforce these new rules, given the SEC's own difficulties in writing "clear, concise, and understandable" documents.

But plain language is almost certainly here to stay. In all likelihood, we are seeing the beginnings of a watershed change in our legal and corporate culture. In future years, plain language should become the instinctive standard for securities filings, corporate agreements and other papers, and legal drafting in general.

Background

For the past several years, SEC Chairman Levitt has said repeatedly in one way or another, "Disclosure tells us nothing if it fails to communicate."[3]

In 1996, the SEC launched a pilot program asking public companies to volunteer to use plain language in filings or parts of filings. The program was successful, although most participants changed only parts of filings. Most of the voluntary efforts focused on merger or other proxy statements where the company was already trying hard to get shareholder votes and wanted to be understood.

In January 1997, the SEC proposed new rules for bringing plain language to prospectuses. At the same time, the SEC brought out a draft *Plain English Handbook* with guidance on clear writing. (More on the *Handbook* in a moment.)

After absorbing the pilot program and comments on the proposals, the Commission approved the final rules on January 28, 1998, with only a few changes from the original proposals. The release describes the new rules as undertaking "a sweeping revision of how issuers must disclose information to investors." With these rules, "prospectuses will be simpler, clearer, more useful, and we hope, more widely read."

There are two key features to the new rules:

- Plain-English standards for the front and back covers, summaries, and risk-factors sections of prospectuses.
- Guidance on what the overall "clear, concise, and understandable" requirement for the rest of a prospectus calls for.

Again, the new requirements apply only to prospectuses. Filings must comply with the new rules starting October 1, 1998, for public companies and December 1, 1998, for mutual funds.

Rule 421(d): "Plain English"

The new Rule 421(d) of Regulation C actually uses the term "plain English."[4]

Paragraph (1) of Rule 421(d) calls for the prospectus issuer to use "plain English principles" to organize, write, and design the (i) front and back covers, (ii) any summary, and (iii) any risk-factors section.

Paragraph (2) of Rule 421(d) specifies what those plain-English principles are:

- Short sentences.
- Definite, concrete, everyday words.
- Active voice for verbs.
- Tables or bullet lists for complex material.
- No legal jargon or highly technical business terms.
- No multiple negatives.

This list in an SEC rule is a landmark for the plain-language movement: it has been pushing hard for these features for decades.[5] In the Postscript to this article, I have attempted two before-and-after examples showing how these new plain-English standards in Rule 421(d) might affect the writing in a risk-factors section.

Paragraph (3) of Rule 421(d) shows that, along with organization and writing, the SEC rightly considers design to be part of plain English. It urges the use of tables, charts, graphs, pictures, and other design elements that will convey information more effectively than straight text.

The SEC has also amended Rule 461 of Regulation C involving requests to accelerate a registration statement's effectiveness.[6] In deciding whether to grant acceleration, one factor the staff will have to consider is whether the issuer has made a genuine effort to satisfy Rule 421(d)'s call for plain English in the early prospectus sections.

Rule 421(b): "Clear, Concise, and Understandable"

What about the rest of the prospectus beyond the front sections covered by the plain-English standards of Rule 421(d)? The SEC has also revised Rule 421(b) to "provide guidance" on this rule's long-standing requirement that the prospectus present information in a "clear, concise, and understandable" manner.[7] Rule 421(b) now lists the following standards:

(1) Write clear, concise sections, paragraphs, and sentences. Whenever possible, use short, explanatory sentences and bullet lists.

(2) Use descriptive headings and subheadings.

(3) Avoid overuse of glossaries. Do not use definitions as a way to explain something or to provide information. Set up a definition only if the term's meaning is not clear from the context. Any glossary must facilitate the reader's understanding (not an easy standard).

(4) Avoid legal and technical business jargon.

A new Note to Rule 421(b) adds four other practices that should be avoided:

- Legalistic or complex presentations that interfere with disclosure.
- Vague boilerplate explanations.
- Complex formulations copied directly from legal documents without any clear, concise explanation.
- Repetitive disclosure.

The most revolutionary feature of Rule 421(b) may be the injunction against copying complex material verbatim from underlying documents such as merger agreements — without explaining how that information affects investors. Prospectuses have typically just quoted significant provisions of underlying documents word for word, rather than making an effort to paraphrase and clarify them. Sometimes a provision will appear verbatim again in a "summary." If the entire underlying document is then included as an exhibit, the provision will appear verbatim a third time — never having been paraphrased and clarified.

Now, if an underlying provision is legalistic and hard to read, you must explain it more clearly in the prospectus. Of course, if the underlying document happens to be clearly written, you presumably do not have to rework the language for the prospectus.

Concerning requests for acceleration, Rule 461 of Regulation C continues to direct the SEC staff to consider as one factor whether the overall prospectus is reasonably concise and readable.[8]

The SEC's *Plain English Handbook*

Just recently, the SEC released the final version of its *Plain English Handbook*.[9] The SEC obviously expects people to pay attention to the *Handbook*, and presumably the staff will be using it to improve their own writing.

The *Handbook* is an excellent guidebook to plain-language writing, with many before-and-after examples. It is sure to be a landmark publication in the history of plain language — not only because it comes from the SEC, but also because it's done so well.

What to Do for October 1

The strictest standards, the plain-English principles in Rule 421(d), apply only to the front and back cover, summary, and risk-factors section of a prospectus. Possibly, the SEC staff will focus on those up-front sections. A real unknown, however, is how the staff will approach the "clear, concise, and understandable" standards of Rule 421(b) for the rest of the prospectus.

You can see what the staff might be after by looking at the pilot-program filings listed in the release's Exhibit B.[10] The release identifies these filings as being part of the new era and as a real service to investors. Exhibit B provides file numbers so that it should be easy to find the filings on the SEC's EDGAR system using EDGAR's search engine.

It's clear from the Exhibit B filings that merely using a question-and-answer format and the pronouns *we* and *you* may go a long way with the SEC. In these filings, though, some of the *we/you* questions and answers are pretty lengthy and convoluted. And many of the filings revert to traditional drafting in the bodies of the prospectuses. Some continue to quote complex, legalistic formulations from underlying documents — particularly merger agreements — verbatim in the bodies.

At any rate, issuers seeking minimum compliance starting October 1 will certainly want to be serving up Q&A's and *we/you*'s in the mandated early sections of prospectuses.

But minimum compliance has to be a risky strategy. It will surely be uncomfortable to have the staff slow up processing of a filing because you have not made an effort to answer the call for plain English in the early sections or for "clear, concise, and understandable" in the rest of the prospectus. Virtually every registration-statement filing seeks an acceleration, and you would not want to be on the wrong end of the staff's authority to recommend that the Commission decline the request.

The new requirements are not that hard to satisfy. Yet it will take concentration, time, and effort. The SEC has made clear its readiness to work with issuers that are making the effort.

The real problem may be the resources and drafting culture at law firms and departments. At this economic high point, many firms and departments are fully stretched, with little slack. Some will also have a true cultural problem — training, habit, way of thinking — in making the needed changes in writing style. To produce filings that clearly meet the new standards will take resources and desire — items that may be in short supply in late 1998.

The New Mutual-Fund "Profile"

From the plain-language standpoint, another exciting development is the SEC's authorization of a "profile" disclosure document for mutual funds.

In March 1998, the SEC adopted Rule 498 under the Securities Act of 1933, authorizing open-end funds to use profiles to sell shares starting June 1, 1998.[11] A profile is a standardized, stand-alone summary of key information from a fund's prospectus. A fund can deliver a profile in print, electronic, or other format.

The entire profile must be in plain English, adhering to the guidelines of Rule 421(d). The SEC has coordinated the profile's requirements with other new standards for mutual-fund prospectuses announced at the same time.[12] The summarized information on investment objectives, principal strategies, risks, performance, and fees called for in a profile will match up closely with the comparable plain-English summaries now required in the fund's full prospectus.

The SEC treats a profile as a summary prospectus under the 1933 Act, and a fund may use a profile alone to sell the fund's shares to an investor. But the profile is not part of the fund's registration statement, and a fund's full prospectus in its registration statement continues to be the primary disclosure document. After reviewing a profile, an investor may request further information in the form of a full prospectus, or proceed to buy shares and then receive a full prospectus with the purchase confirmation.

The SEC's Own Efforts

Meanwhile, the SEC will itself be struggling with the challenge of writing in plain language. The release, the Commission speeches, and the *Plain English Handbook* have all candidly acknowledged the SEC's own problems in the field.

SEC rules coming out since its plain-language proposals in early 1997 have continued to be complex, convoluted, and difficult to read. For instance, the heralded proposed revision of Rule 14a-8 on shareholder proposals is in the Q&A format and does improve considerably on the style of 14a-8; but it still has sentences in some of the answers that run on in the old, unwieldy fashion.[13]

Even the new Rule 421(d) has its bad-flashback moments. It begins, "To enhance the readability of the prospectus . . . . " A plainer alternative might have been, "To make the prospectus more readable . . . . "

A Nuisance or an Opportunity?

Some law firms and departments will treat these new SEC rules as an opportunity rather than a nuisance. They will seize the day, recognize that major changes are under way in the business and legal communities, and begin a complete shift to the clarity of plain language.

In the short term, the advantage will be in staying ahead of the curve with the SEC staff. You do not want to run any risk that they will ask the Commission to not accelerate a registration statement because the prospectus fails to meet Rule 421's new standards.

In the longer term, firms and departments may see a marketing opportunity, or even necessity, in committing to plain language across the board. Business executives have long been impatient with the length, complexity, and cost of legal documents, yet law firms have not moved decisively to meet those concerns. The SEC has now endorsed plain language and given it new momentum. A firm that does not streamline its written product and make its papers more readable, hard-hitting, and cost-effective may find itself at a competitive disadvantage with firms that do.

Law firms have just not competed on the basis of the clarity and readability of their business papers. Firms do compete hotly to be "better," "more effective," "more responsive," or "tougher" in providing advice and negotiating support. But when the documents appear — prospectuses and proxy statements, agreements, closing and other papers — they tend to look pretty much the same from firm to firm.

Firms may want to combine a new strategy emphasizing simpler, clearer communication with a value approach to billing to create a powerful marketing pitch to business clients. Simpler, clearer communication will help a client to understand the value of the firm's services and to assess the fairness of the firm's bills. That should be a good deal for everyone.

Postscript: Two Examples

These are examples applying the new Rule 421(d). These are just my own suggestions and do not come from the SEC release or the SEC *Plain English Handbook*.

Example 1

Old Style

No Intention to Pay Dividends. The Company has never declared or paid cash dividends on its capital stock. The Company intends to retain future earnings for use in its business and does not anticipate declaring or paying any cash dividends on shares of Common Stock in the foreseeable future. In addition, the Company is currently restricted under the terms of the Credit Agreement and the Notes Indentures from declaring or paying cash dividends on its Common Stock.

Plain English

No Dividends. We have never paid cash dividends on our stock and do not intend to. Our current strategy is to use all our earnings in our business, rather than to pay any out to stockholders. Also, our borrowing arrangements currently prevent us from paying any cash dividends.

Example 2

Old Style

Dependence Upon Operations of Subsidiaries. Substantially all of the tangible assets of the Company are held by, and substantially all of the Company's operating revenues are derived from, operations of the Company's subsidiaries. Therefore, the Company's ability to pay interest and principal when due under the Credit Agreement and the Senior Subordinated Notes is dependent upon the receipt of sufficient funds from such subsidiaries.

Plain English

Subsidiary Funds. We do almost all our business through our operating subsidiaries. To pay our obligations, we have to be able to control and use those subsidiaries' funds.

Endnotes

1 SEC Release 33-7497 (also 34-39593 and IC-23011), dated January 28, 1998. URL<www.sec.gov/rules/final/33-7497.txt>.

2 See Chairman Levitt's remarks on November 6, 1997, to the Practicing Law Institute's 29th Annual Institute on Securities Regulation. URL<www.sec.gov/news/speeches/spch184.txt>.

3 See note 2.

4 17 Code of Federal Regulations (C.F.R.) § 230.421(d).

5 See Richard Wydick, *Plain English for Lawyers* (4th ed. 1998); and Joseph Kimble, *Plain English: A Charter for Clear Writing*, 9 Thomas M. Cooley Law Review 1, 11-14 (1992).

6 17 C.F.R. § 230.461.

7 17 C.F.R. § 230.421(b).

8 See note 6.

9 URL<www.sec.gov/news/handbook.htm>.

10 URL<www.sec.gov/rules/final/33-7497b.txt>.

11 SEC Release 33-7513 (also IC-23065), dated March 13, 1998. URL <www.sec.gov/rules/final/33-7513.htm>.

12 SEC Release 33-7512 (also 34-39748 and IC-23064), dated March 13, 1998. URL<www.sec.gov/rules/final/33-7512r.htm>.

13 SEC Release 34-39093 (also IC-22828), dated September 18, 1997. URL<www.sec.gov/rules/proposed/34-39093.htm>.

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The Substance of Style in Federal Rules

Bryan A. Garner

On April 24, 1998, something extraordinary happened. The United States Supreme Court approved a wholly revamped and rewritten set of rules for federal appellate courts. The extraordinary thing was that the only purpose in revising this important set of rules was to improve their style — not to amend substantive provisions. The new draft eliminates every *shall*. It breaks up long provisions into vertical lists. It adds headings. And it cuts excess words. In short, it makes the rules easy to use.

The draft was many years in the making, and the story behind the effort is instructive for those who work on revisory projects.

In December 1991, I received a strange call from Washington, D.C. Some official at the Administrative Office of the U.S. Courts wanted to know my social-security number. Naturally, I was reluctant to give it out, and I asked why he wanted it. "It's for the government contract we're going to be sending you." I knew nothing about a government contract. Then he said, "Hasn't Judge Keeton called you?" No, he hadn't. But I knew the name Keeton — a hallowed name in the fields of insurance, torts, and trial tactics — and I gave the caller my social-security number.

A few hours later, Judge Robert E. Keeton called. He explained that he was chair of the Standing Committee for Rules of Practice and Procedure, and that he had created a Style Subcommittee to improve the drafting of federal rules. He said that the Subcommittee had been referring to my books — *A Dictionary of Modern Legal Usage* and *The Elements of Legal Style* — and that the Subcommittee members wanted me to be their consultant on rule-drafting. I was delighted to accept.

Shortly after that I learned about the work of the Standing Committee, which makes rules for federal courts. It's responsible for the various sets of federal rules: Civil, Criminal, Appellate, Bankruptcy, and Evidence. Each of these sets of rules is amended periodically. Here's how it works. An advisory committee of 10 to 15 members — distinguished specialists in the field along with state and federal judges — works with a reporter to bring amendments before the Standing Committee, which, in its twice-yearly meetings, can approve the amendments and pass them on to the Supreme Court. (The Standing Committee can also reject the amendments or send them back to the advisory committee for further study.) The reporters and chairs are primarily responsible for drafting the amendments.

Over time, of course, reporters and chairs change. So does the style in which the rules are drafted. And in any event, the committees are avowedly (and understandably) more interested in content than in form. Gradually, stylistic inconsistencies develop within a given set of rules. That's what led Judge Keeton to establish the Style Subcommittee in 1991. I began working with the Subcommittee, originally chaired by Professor Charles Alan Wright, in early 1992.

At first, our charge was simply to work on amendments. But our stylistic improvements were often so dramatic — and so at odds with some of the language elsewhere in the rules — that the chair of the Civil Rules Advisory Committee, Judge Sam C. Pointer, suggested a wholesale rewrite of the Civil Rules. The view was that we shouldn't improve rules in piecemeal fashion if what they really need is an overhaul.

We embarked on that effort in early 1992. I was asked to revise the rules from front to back, being careful not to change meaning. The thought was that it's better to have a single skilled hand working than to leave an initial redraft to a

committee. It took me several months. When I finished my work, the draft went out to the Style Subcommittee. One by one the members commented on my draft — suggesting further improvements rule by rule, clause by clause. I would take the various comments and enter them on a color-coded draft for my own use in preparing a second draft. Judge Keeton's suggestions were in red ink; Charles Alan Wright's were in green; Joseph F. Spaniol's were in blue; Judge George C. Pratt's were in orange; and Judge Alicemarie Stotler's were in purple. Once I had a complete (and quite colorful) edited copy, I produced a new draft with footnotes explaining judgment calls. It was no longer a Garner draft: it was a Style Subcommittee draft. Now it was ready for the Advisory Committee.

The Civil Advisory Committee had two meetings to consider the restyling. Some of the judges had begun using the new version on the bench, and they reported that it was much easier to use. There was much enthusiasm for the new draft, but there was also some trepidation about changing old rules. And there was impatience with the tedium of working through so many rules so painstakingly in committee meetings. Meanwhile, a new chair had taken over the Advisory Committee, and his interests lay elsewhere. Work on the Civil Rules stalled.

But the Style Subcommittee's work had caught the eye of the new chair of the Appellate Advisory Committee, Judge James K. Logan. He knew that I had been compiling a list of style conventions, later published as *Guidelines for Drafting and Editing Court Rules* (1996). He invited us to restyle the Appellate Rules, using *Guidelines* as our stylesheet. Among members of the bar, the Appellate Rules are less controversial than the Civil Rules. So those rules, it was decided, would be the bellwether: if uniform drafting standards are a good thing, we'd find out with the Appellate Rules.

The Style Subcommittee worked through 1994 to revise the Appellate Rules. We presented a draft to the Appellate Advisory Committee toward the end of that year. After nearly two years of scrutiny by that committee — and further scrutiny by the Style Subcommittee — the revised rules were ready for publication in April 1996. The public-comment period ended on December 31, 1996. All the comments but one were favorable. Here's a typical sampling:

- "I have now taught almost a generation of law students. They know my passion for plain language. Many times over the years, they have brought me examples from the federal rules and wondered why something hadn't been done about them. I have wondered myself.

  "Now something has been done about it. You've taken a momentous first step with the appellate rules. Equally important, you have done it systematically, through the excellent drafting guidelines that Mr. Garner has developed. I urge you to adopt the proposed appellate rules and continue in the same vein with the other sets of federal rules." — Professor Joseph Kimble, Lansing, Michigan
- "I'm glad to look over the restyled Appellate Rules and curled up with them on part of a recent train trip to Washington. In general I like the restyling a great deal and think it would be most helpful to users . . . . The breakouts into discrete subparts, and more frequent and prominent boldface subheads, are welcome aids even apart from the changes in textual style. One question is whether we can do the Civil Rules similarly in my lifetime!" — Professor Thomas D. Rowe, Jr., Durham, North Carolina
- "The restyled rules are clearer, more concise, and certainly more readable. As a true believer in brevity and simplicity, I took real pleasure from seeing the cumbersome language of the present rules translated into

plain English. I think the project was well worth doing, and will benefit both courts and appellate practitioners." — John R. Reese, San Francisco, California

The only naysayer was a city bar group that said, in essence, "If it ain't broke, don't fix it." All in all, though, it must be said that the main response was utter silence — a reaction that shouldn't surprise any author.

In any event, the most controversial point was the Style Subcommittee's decision to uniformly delete *shall* and replace it with a more appropriate word, usually *must*.[1] I had recommended this change, and the Subcommittee had heartily endorsed it in late 1992 — after a year of trying to use *shall* consistently as a mandatory word. Still, the point had repeatedly resurfaced in various ways. For example, if we're amending a single rule within a larger body of rules (such as the Criminal Rules), should we delete *shall*? What if the *shall* appears in a nonmandatory future sense? What if it means *may*? And what if there's already a precedent for using *must* in the same set of rules? These might seem like easy questions, but they can get tricky. On the whole, we favored replacing *shall* whenever possible.

But seemingly every time the Standing Committee considered some rules, a new member would say, "What's happening to the word *shall*?" I would then be asked to deliver a minilecture on the subject — something I'm always prepared to do, given that I routinely teach CLE seminars on legal drafting. Here's what I say in the minilecture. Even if you look at the U.S. Supreme Court's decisions on *shall*, they're remarkably inconsistent. The Court has:

- held that a legislative amendment from *shall* to *may* had no substantive effect;[2]
- held that if the government bears the duty, "the word 'shall,' when used in statutes, is to be construed as 'may,' unless a contrary intention is manifest";[3]
- held that *shall* means "must" for existing rights, but that it need not be construed in that mandatory way when a new right is created;[4]
- treated *shall* as a "precatory suggestion";[5]
- acknowledged that "[t]hough 'shall' generally means 'must,' legal writers sometimes use, or misuse, 'shall' to mean 'should,' 'will,' or even 'may.'"[6]

These examples, which could be multiplied, show only a few of the travails that *shall* routinely invites.

Luckily, the Judicial Conference approved the careful use of *must*, *may*, and *should* in the Appellate Rules. And so did the Supreme Court. But there was much hand-wringing over this issue at both stages.

On December 1, 1998, the newly redrafted Appellate Rules will take effect unless Congress somehow changes them (and that seems unlikely).

So, is stylistic review now a permanent part of federal rulemaking? Perhaps. But perhaps not. There are reasons to believe that its position remains precarious. Judge Keeton's term as chair of the Standing Committee expired in 1993. His successor, Judge Alicemarie Stotler, values style. (She was one of the original Style Subcommittee members.) But the Standing Committee's membership changes every two years, and some members aren't inclined to think of style as being vital. It's the mindset that says, "All I care about is substance, not style." Never mind that style-related issues are surely the most common source of litigation over rules.

After Charles Alan Wright's departure from the Standing Committee in 1994, the Style Subcommittee was chaired by Judge George C. Pratt (who presided over most of the work on the Appellate Rules). Since 1996 the chair has been

Judge James A. Parker. The members today are Judge William R. Wilson, Jr., Professor Geoffrey C. Hazard, Jr., and Mr. Joseph F. Spaniol, Jr. We're now working on a stem-to-stern revision of the Federal Rules of Criminal Procedure. I've completed my work and am now color-coding the Style Subcommittee's edits. People who see the initial redraft react favorably.

But it remains to be seen whether all the various decision-makers will believe that the effort is worthwhile. There will be opposition — as there always is to any kind of change. And the outcome will be years in the making.

If there's any reason for optimism, it's the caliber of the people involved in federal rulemaking. As with any group, there are varying levels of experience and talent. For some, style is natural and easy: they're always aware of the language around them, and they know the value of clarity. For others, it's a major struggle: they're relatively uninterested in language and are therefore unattuned to linguistic subtleties. As long as the former group remains a majority, all will be well with the federal rules.

May the Keeton legacy endure.

Endnotes

1 See Garner, *A Dictionary of Modern Legal Usage* 939–42 (2d ed. 1995); Joseph Kimble, *The Many Misuses of "Shall,"* 3 Scribes Journal of Legal Writing 61 (1992).

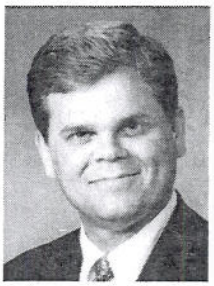
2 *Moore v. Illinois Cent. R.R.*, 312 United States Reports (U.S.) 630, 635 (1941).

3 *Railroad Co. v. Hecht*, 95 U.S. 168, 170 (1877).

4 *West Wisconsin Ry. v. Foley*, 94 U.S. 100, 103 (1876).

5 *Scott v. United States*, 436 U.S. 128, 146 (1978) (Brennan, J., dissenting).

6 *Gutierrez de Martinez v. Lamagno*, 515 U.S. 417, 432 n.9 (1995) (adding that "certain of the Federal Rules use the word 'shall' to authorize, but not to require, judicial action").



***Bryan A. Garner** is the author of* The Elements of Legal Style *(1991),* A Dictionary of Modern Legal Usage *(2d ed. 1995), and other books on legal writing. Through LawProse, Inc., of Dallas, he conducts CLE seminars on legal writing in major cities throughout the United States.*

A Restyled Federal Rule

Rather than redlining old rules, Bryan Garner developed a method of displaying old and new drafts side by side. That way, the new format would be apparent to anyone wishing to compare the two versions. The following rule shows the original version of a Federal Appellate Rule on the left, and the revised version on the right.

Rule 18. Stay Pending Review	**Rule 18. Stay Pending Review**
Application for a stay of a decision or order of any agency pending direct review in the court of appeals shall ordinarily be made in the first instance to the agency. A motion for such relief may be made to the court of appeals or to a judge thereof, but the motion shall show that application to the agency for the relief sought is not practicable, or that application has been made to the agency and denied, with the reasons given by it for denial, or that the action of the agency did not afford the relief which the application had requested. The motion shall also show the reasons for the relief requested and the facts relied upon and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant to the relief sought. Reasonable notice of the motion shall be given to all parties to the proceeding in the court of appeals. The court may condition relief under this rule upon the filing of a bond or other appropriate security. The motion shall be filed with the clerk and normally will be considered by a panel or division of the court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single judge of the court.	**(a) Motion for a Stay.** (1) **Initial Motion Before the Agency.** A petitioner must ordinarily move first before the agency for a stay pending review of its decision or order. (2) **Motion in the Court of Appeals.** A motion for a stay may be made to the court of appeals or one of its judges. (A) The motion must: (i) show that moving first before the agency would be impracticable; or (ii) state that, a motion having been made, the agency denied the motion or failed to afford the relief requested and state any reasons given by the agency for its actions. (B) The motion must also include: (i) the reasons for granting the relief requested and the facts relied on; (ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and (iii) relevant parts of the record. (C) The moving party must give reasonable notice of the motion to all parties. (D) The motion must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge. **(b) Bond.** The court may condition relief on the filing of a bond or other appropriate security.

Plain English Comes to the Uniform Commercial Code

Steven O. Weise

The Uniform Commercial Code is a body of state statutory law that provides rules for commercial transactions ranging from the sale of goods to security interests in personal property. During the last few years, the UCC has been under revision. The new emphasis in the U.S. on plain English, including the Securities and Exchange Commission's new rules, has encouraged the revisors of the UCC to seek to use the principles of plain English.

For four years, a Drafting Committee worked on revisions to Article 9 of the UCC. (The UCC has 11 articles.) Article 9 governs transactions that create a security interest in personal property. The Drafting Committee consisted of eleven experienced commercial lawyers, a chair, and two reporters. I am the American Bar Association's advisor to the Drafting Committee.

The reporters, the chair, and the Drafting Committee wanted practicing lawyers who do not regularly work with Article 9 to be able to use it without difficulty. So the chair asked me to chair a Simplification Task Force that would help the reporters shape the text of Article 9 to make it as accessible as possible, within the constraints of its subject matter.

Several years ago, I wrote *Plain English Will Set the UCC Free*, 28 Loyola of Los Angeles Law Review 371 (1994). As the work on Article 9 progressed, I joined with Professor Louis Del Duca and others to prepare specific suggestions and models for the reporters to consider. (See Del Duca, DeLiberato, and Hostetter, *Applying Plain English Techniques in Revising the UCC*, 29 Uniform Commercial Code Law Journal 428 (1997)). The reporters undertook to incorporate many of those suggestions into the new Article 9.

The "black letter" of the final draft consists of over 200 double-spaced pages. Because we needed to adapt Article 9 to modern financing transactions, it necessarily contains many complex rules. But that does not mean that clarity had to be sacrificed.

The final draft uses techniques of plain English that will be well known to *Clarity* readers. Here are some of them:

- Active voice
- Short sentences and paragraphs
- Tabulation
- Captions on subsections as well as sections
- Logical grouping of related rules
- General rules before exceptions

The last principle — general rule first, exceptions later — proved to be an important technique, not always used in plain-English drafting. At the same time, we decided against using some techniques that are often part of plain-English drafting, such as the use of personal pronouns. Not everything can be accomplished at once.

The new draft of Article 9 has met with wide acceptance and approval. In fact, it has been unanimously approved by its two sponsors — the National Conference of Commissioners on Uniform State Laws and the American Law Institute. Article 9 now goes to the individual states for adoption, with a proposed uniform effective date of July 1, 2001. The goal is to have it come into effect in as many states as possible at one time, to ease the effects of the transitional rules.

All 50 states adopted the previous version of the Uniform Commercial Code. If the same happens with Article 9, we will have converted a highly important statute — one that provides the framework for most commercial financing in the U.S. — into plain English. Moreover, the

Article 9 Drafting Committee and its Simplification Task Force have brought plain-English techniques to the attention of the UCC's sponsors. So we can expect that the techniques will find wide use in other revisions to the UCC.

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Three Dangerous Words

John A. Bell

[John Bell publishes an instructive and witty — and free — newsletter on legislative drafting called *Dispatch*. See *Clarity* No. 33, page 54. Write to him at his new address: P.O. Box 2101, Fort Davis, TX 79734. Ed.]

For almost ten years, I have waged a quixotic campaign to promote better-written federal statutes. My campaign is quixotic because I am laboring against the ways and traditions of not only the United States Congress but also most executive-branch departments and agencies that have a major hand in the way federal statutes are written.

Of course, to most lawyers statutes are not "written" at all. They are instead "drafted," and drafting is considered an art quite distinct from that required for writing a persuasive memorandum, a winning brief, or a memorable opinion. Drafting eschews emotion, aims at high precision (or precise imprecision), and requires or forbids action with no burden of persuasion. But within the limits of what has to be done in a draft, there is still ample room for good, plain-English prose. Unnecessary obstacles need not be placed before the reader. Rarely will the call for precision have to overwhelm the basic tenets of readability.

If high standards of drafting consistent with the ideals of democracy are called for anywhere, surely they should prevail in the statutes produced by the United States Congress. Unfortunately, this is not usually the case. But at least we can learn from the deficiencies of federal statutory prose, even though few of us will ever be called on to help produce it.

Some kinds of statutory provisions are far removed from any writing challenge the ordinary lawyer is likely to meet — appropriations acts, for example, with their vast hunks of block text and extended march of provisos; or much of the Social Security Act, with its "state plan" requirements set forth in sentences built from myriads of subsections, paragraphs, subparagraphs, clauses, and subclauses. But one need not look to exotic prose for reminders of what to avoid. Contorted sentences, sentences whose length overtaxes any reader's patience, a vast surplus of weighty nouns, a shortage of verbs, unnecessary and ill-conceived definitions, bits and pieces of legal jargon — these and similar features of today's federal statutes are also characteristic of too much everyday legal writing. And while most people associate lawyer prose with an overabundance of big, fancy words, largely of Latin ancestry, the problems of small words are often more difficult to weed out, a fact well illustrated in the realm of federal statutes.

As a point of departure for considering three dangerous words pertinent to much legal writing, I'll draw on the following brief sentence that was added to the Federal Food, Drug, and Cosmetic Act a few months ago:

> If the Secretary does not act within *such* 90 days, the petition shall be *deemed* to be denied unless an extension is *mutually agreed upon* by the Secretary and the petitioner.[1]

[The *shall* is bad too, but that's another subject. Ed.]

The Perils of Mutuality

Readers of *Clarity* will see the redundancy of *mutually agreed upon*. *Mutually agreed* is similar to a variety of other needless combinations, like *null and void*, *valid existing rights*, or *of no further force and effect*. These gewgaws are somehow appealing to lawyers and so decorate a number of recent federal statutes, as in —

> Any fines assessed pursuant to 36 CFR Part 223 . . . shall be *null and void*.[2]

and

> Subject to *valid existing rights*, the Secretary shall administer the scenic area in accordance with the laws, rules, and regulations applicable to the National Forest System . . . .[3]

and

> Upon the enactment of this Act, any Federal implementation plan that has been promulgated by the Administrator . . . for the South Coast, Ventura, or Sacramento areas of California pursuant to a court order or settlement shall be rescinded and shall have *no further force and effect.*[4]

Very often, phrases like these are put to paper out of habit or simple carelessness. Lawyers are conditioned to precedents. Particular words may have been joined so often and for so long that the foundations of the marriage, and the arguments for divorce, are rarely considered.

Mutually agreed in its several forms seems to be a particular favorite of some federal drafters. So we find that there are periods of time to be *mutually agreed upon* in determining when labor-management bargaining has reached an impasse;[5] that the Secretary of the Treasury and the Student Loan Marketing Association may *mutually agree* to a time for considering a capital restoration plan;[6] that an independent-living plan may be *mutually agreed upon* by a service provider and a disabled individual;[7] that certain modifications to a facilities plan may be *mutually agreed* to by the Sun Valley Company and the Secretary of the Interior;[8] and that the Secretary of the Interior and the Chairman of the Hawaiian Homes Commission may *mutually agree* to determine the value of certain lands.[9]

This desire to inject an extra dose of mutuality may suggest that agreements with or between federal officials are apt to be more than a little slippery. A better — and less cynical — explanation would focus on the word *mutual*. As Bryan Garner points out, *mutual* leads to a number of redundant expressions, including *mutually contradictory*, *mutual cooperation*, and *mutually binding on both parties*.[10] It is one of those words that seems to come with glue attached to one end. It should be handled with care, whether one is drafting a statute or arguing a client's case.

Aforesaid's Obnoxious Heir

Aforesaid begat *said*. *Said* joined with *same*. *Said* and *same* are now in their declining years. But an interloper appeared, elbowed *said* and *same* aside, successfully claimed their inheritance of legalese, and now corruptly prospers at the expense of good legal prose. That interloper appears in the first line of our opening example from the Federal Food, Drug, and Cosmetics Act — the demonstrative adjective *such*.

The word *such* is not in itself objectionable; it has appropriate uses. For example, a statute may provide that a certain report is to be made "in *such* form and *such* manner as the Secretary may require."[11] In a phrase like this, *such* may be easier to take than *whatever*, because *such* implies due consideration as opposed to unlimited discretion. Also, *such* with *a* or *an*, or in the phrase *any such*, appropriately serves to designate a thing of the same kind as something else or within a particular category:

> The Council may by act authorize the issuance of general obligations bonds for purposes specified in section 461. *Such* an Act shall contain . . . .[12]

But now compare this sentence:

> No tax shall be imposed by paragraph (1) on any aviation liquid held on the tax effective date by any person if the aggregate amount of *such* liquid (determined separately for aviation gasoline and aviation fuel) held by *such* person on *such* date does not exceed 2000 gallons.[13]

This is *such*, the demonstrative adjective. Substitute *aforesaid* for *such* (and hay for aviation fuel) and you have a sentence that might have been penned in the days of the Stamp Act. Substitute *that* and you have a sentence free from the easily avoidable odor of legalese.[14]

The difficulty with this variety of *such* is not merely that it can usually be replaced by *the*, *that*, or *those*. It may also contribute to ambiguity by tempting the drafter to attach it to a word or phrase whose antecedent may be many lines or paragraphs removed. Finally, *such* tends to support awkward, plodding, or lazy constructions, encouraging drafters to produce soporiferous prose that lulls even a willing reader into a state of hazy indifference.

Our little word, *such*, is a friend to many who labor in the law, but it is a particular favorite of those who draft the statutes that emerge, often in gargantuan packages, from the nation's capital. These men and women are so attracted to *such* that it carries them beyond the bounds of mere friendship; it amounts to passion, a passion from which we can learn just how dangerous one four-letter word can be.

Consider this sentence from the Food Quality Protection Act of 1996:

> The Administrator shall review tolerances and exemptions for pesticide chemical residues in effect on the day before the date of the enactment of the Food Quality Protection Act of 1996, as expeditiously as practicable, assuring that —
>
> (A) 33 percent of *such* tolerances and exemptions are reviewed within 3 years of the date of enactment of *such* Act;
>
> (B) 66 percent of *such* tolerances and exemptions are reviewed within 6 years of the date of enactment of *such* Act; and
>
> (C) 100 percent of *such* tolerances and exemptions are reviewed within 10 years of the date of enactment of *such* Act.[15]

The drafter here seems to be straining for more precision than the situation reasonably requires. And certainly six *such*s in nine lines should have suggested the need for another approach. Perhaps something like this:

> As expeditiously as practicable, the Administrator shall review tolerances and exemptions for pesticide chemical residues in effect at the time the Food Quality Protection Act of 1996 was enacted. The Administrator shall ensure that the following percentages of those tolerances and exemptions are reviewed within the following times after the enactment of that Act:
>
> (A) 33 percent within 3 years;
>
> (B) 66 percent within 6 years; and
>
> (C) 100 percent within 10 years.

Another example of *such* at its nefarious work is this provision from the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, better known as the Welfare Reform Act:

> REDISTRIBUTION.
>
> IN GENERAL. With respect to any fiscal year, if the Secretary determines . . . that any amounts allotted to a State under this paragraph for *such* fiscal year will not be used by *such* State during *such* fiscal year for carrying out the purpose for which *such* amounts are allotted, the Secretary shall make *such* amounts available in the subsequent fiscal year for carrying out *such* purpose to one or more States which apply for *such* funds to the extent the Secretary determines that *such* States will be able to use *such* additional amounts for carrying out *such* purpose.[16]

Do you think that either the Secretary or the States would be unable to pry the meaning from this provision if it had omitted all the *such*s?

> If for any fiscal year the Secretary determines . . . that a State will not in that year use the funds awarded to it [under this paragraph?] for the purpose for which they were allotted, the Secretary shall redistribute the funds in the next fiscal year to one or more other applicant States which the Secretary determines are capable of using the funds for that same purpose.

Because it is so short, simple, and appealing to our slothful instincts, *such* is probably even more obnoxious than its forerunner, *aforesaid*, ever was in its prime. *Such* is too easy a crutch for lame prose.

Devious Deeming and Its Cousins

Referring again to our opening quotation, we read that an application will be *deemed* denied unless it has been acted upon within 100 days. *Deem* is another of those little words that tempts lawyers into the lair of legalese.

In common writing, *deem* may be used in place of *consider, think, believe*, or *suppose.* It is seldom used in conversation, but it is useful to writers, especially when they want to convey a judgmental, pontifical, or even supercilious attitude, as in this sentence from a recent article in *Lingua Franca:*

> Though his books are published in Oxford's World's Classic series . . . , some of the press's scholarly referees have *deemed* Sutherland's puzzles an undignified endgame for literary criticism.[17]

It's not surprising that *deem* should convey an aura of special authority, since it is akin to the Old English *dom,* which referred to a law, decree, or judgment. And so, too, we might expect *deem* to have a special appeal to lawyers, including those who draft legislation.

Lawyers use *deem* in various ways. Sometimes, *deem* or *deemed* serves simply to suggest a conclusion in the nature of a legal judgement:

> Nothing in this chapter shall be *deemed* to affect or reduce the authority of the Secretary of Commerce or the Director of the Office of Management and Budget pursuant to Reorganization Plan No. 1 . . . .[18]

Other times, *deem* takes the form represented by this sentence from the Higher Education Amendments of 1992:

> Each institution of higher education receiving a grant under this subpart shall submit to the Secretary such reports and other information regarding programs conducted under this subpart as the Secretary *deems* necessary.[19]

As in this example, *deem* fits well with the words "such . . . as . . . necessary" or "such . . . as . . . appropriate." In these phrases, the party deeming is apt to be a cabinet secretary or agency head. The wording will not call on these officials to *think* that something is necessary or appropriate; indeed, in our statutes, high officials are rarely expected to *think* at all. Nor are they likely to *believe* that an action would be necessary or appropriate. Occasionally, an official might be told to *consider;* more often, he or she will be required to *determine* something. But nothing beats *deeming.* To *deem* is to overleap the realms of merely thinking or considering. Subordinates, laboring unmentioned in the law, will typically do the thinking or considering. The boss may then *deem. Deeming* can rarely be challenged. It is an act of discretion that draws on a legal tradition extending back to before the battle of Hastings.

Because *deem* carries with it a special kind of authority, it is often used in statutes in still another way. This variety of *deem* is beloved by lawyers because they can use it to create what is called a legal fiction. They can give something a legal status that it may not otherwise be entitled to by the law or the facts of the situation. In statutes, *deem* commonly serves to exact from some official or body an action they never took and indeed may never have intended to take.

Thus, we have this awkward, *such*-laden statutory provision:

> Such application shall include . . .
>
> (3) an assurance that the State application described in this section, and any amendment to such application, has been submitted for review to the State legislature or its designated body (for purposes of this section, such application or amendment shall be *deemed* to be reviewed if the State legislature or such body does not review such application or amendment within the 60-day period beginning on the date such application or amendment is submitted) . . . . [20]

In other — and more direct — words, what is required is "an assurance that the State legislature has reviewed the application or has failed to review the application after having had 60 days to do so."

This last variety of *deem* can be used to manipulate an event so that it fits into the law, rather than having to amend or change the law to accommodate the event. And so it was that the Republican 104th Congress, in an extended volley against spotted owls, was able to flush those birds from their shelter of a whole forest of potentially protective statutes without having to write a single amendment or exception:

> The documents and procedures required by this section for the preparation, advertisement, offering, awarding, and operation of any salvage timber sale subject to subsection (b) . . . shall be *deemed* to satisfy the requirements of the following applicable Federal laws (and regulations implementing such laws):
>
> (1) The Forest and Rangeland Renewable Resources Planning Act of 1974 [U.S.C.A. citations omitted].
>
> (2) The Federal Land Policy and Management Act of 1976.
>
> (3) The National Environmental Policy Act of 1969.
>
> (4) The Endangered Species Act of 1973.
>
> (5) The National Forest Management Act of 1976.
>
> (6) The Multiple-Use Sustained-Yield Act of 1960.
>
> (7) Any compact, executive agreement, convention, treaty, and international agreement, and implementing legislation related thereto.
>
> (8) All other applicable Federal environmental and natural resource laws.[21]

This is devious deeming — in effect a concealed amendment that changes the law while seeming to honor it.

Of course, while the law may be bent or evaded by a properly placed *deemed*, sometimes the facts of a situation are intractable. That doesn't prevent Congress from deeming them to be otherwise. But what works to change the legal status of something cannot make written words say what they do not say. A common case of this failure can be seen in the many statutes that change the name or title of something. For example, section 1 of Public Law 105-10 declares that what had been known as the "Southern Piedmont Conservation Research Center" will instead be called the "J. Phil Campbell, Senior, Natural Resource Center." Section 2 then states:

> Any reference in a law, map, regulation, document, paper, or other record of the United States to the building referred to in section 1 shall be *deemed* to be a reference to the "J. Phil Campbell, Senior, Natural Resource Center."[22]

Anyone reading one of those laws, maps, regulations, documents, papers, or other records is not going to be helped much by that section 2. What read "Southern Conservation Research Center" before the statute came along will still read "Southern Conservation Research Center" afterwards. That may not be of great

consequence in this particular instance; the new name is illuminated in the law even though our reader remains in the dark. But the same practice of deeming is potentially of more consequence when it is applied to statutory cross-references, as in the following provision from the Higher Education Amendments of 1992:

> With respect to reference in any other provision of law to the definition of institution of higher education contained in section 435(b) of the Act, such provision shall be *deemed* to refer to section 481(a) of the Act.[23]

But of course our lawmakers need not worry much about such details, since they have on their side that greatest of all legal fictions — the one that tells us that everyone is deemed to know the law.

The ordinary writer of legal prose probably has fewer opportunities to engage in fiction-making by deeming than the drafter of legislation. Certainly, few will have the kind of opportunity to elevate deeming to the level achieved in one 1995 statute, a level so lofty that outsiders must apply to be properly deemed:

> The Secretary may not under paragraph (A) *deem* an entity or an officer, governing board member, employee, or contractor of the entity to be an employee of the Public Health Service for purposes of this section, and may not apply such *deeming* to services described in subparagraph (B)(ii), unless the entity has submitted an application for such *deeming* to the Secretary in such form and such manner as the Secretary shall prescribe.[24]

What, then, are the lessons for legal writers? Often, *deem* is simply an example of avoidable jargon. It can sometimes be replaced by *considered* or *considered as* or *treated as*. Ordinary folk are accustomed to these usages and so may be spared the aroma of legal talk arising from *deem* or *deemed*.

Sometimes *deem* or *deemed* can simply be omitted. For example, the following provision tells the Secretary of the Interior and the directors of a certain trust to:

> determine cooperatively which records, equipment, and other personal property are *deemed to be* necessary for the immediate administration of the properties to be transferred . . . .[25]

The writer should have deemed *deemed to be* to be what it is — unnecessary clutter.

And never should *deem* be used to manipulate the circumstances of an act or event so as to avoid a straightforward, honest amendment or exception. A proviso relating to wetland reserves states:

> [T]he condition on enrollments provided in section 1237(b)(2)(B) . . . shall be *deemed* met upon the enrollment of 43,333 acres through the use of temporary easements.[26]

Why not say what this means, namely that "the condition on enrollments provided in section 1237(b)(2)(B) no longer applies once 43,333 acres have been enrolled through use of temporary easements"? No fiction would then be required. And one more bit of jargon would have been denied entry into U.S. statutes.

We will close with the following obese sentence from the same statute, having to do with the inspection of fish to be sold for consumption.

> Hereafter, notwithstanding any other provision of law, any domestic fish or fish product produced in compliance with food safety standards or procedures accepted by the Food and Drug Administration as satisfying the requirements of the "Procedures for the Safe and Sanitary Processing and Importing of Fish and Fish Products" (published by the Food and Drug Administration as a final regulation in the Federal Register of December 18, 1995) shall be *deemed* to have met any inspection requirements of the Department of

> Agriculture or other Federal agency for any Federal commodity purchase program, including the program authorized under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c) except that the Department of Agriculture or other Federal agency may utilize lot inspection to establish a reasonable degree of certainty that fish or fish products purchased under a Federal commodity purchase program, including the program authorized under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), meet Federal product specifications.[27]

Here it seems that more than one federal agency has requirements that apply to fish purchased under federal commodity-purchase programs. Congress chooses to make the standards of the Food and Drug Administration controlling, with a limited exception. This means that the standards of other agencies to that extent will no longer apply. But our lawmakers cannot bring themselves to be so direct. Instead, they tell us to *deem* fish-processing procedures to be what they well may not be. So, with the help of lawyer jargon, the non-FDA standards remain intact. But now there is something fishy about them.

[I doubt that many readers will be scurrying to check the citations that follow. Anyway, for our international readers, U.S.C.A. stands for *United States Code Annotated*, which most international libraries should have. If the statute is not yet available in U.S.C.A., you have to find it in the *Statutes at Large* (Stat.), which collects in numerical order the individual statutes (called Public Laws, or Pub. L.) passed during the year. Of course, you can also check electronically. Ed.]

Endnotes

1 21 U.S.C.A. § 343(r)(4)(A)(i) (West Supp. 1998).

2 Pub. L. No. 104-37, § 729, 109 Stat. 299, 332 (1995).

3 16 U.S.C.A. § 460ggg-1(b)(1) (West 1993).

4 Pub. L. No. 104-6, 109 Stat. 73, 88 (1995).

5 22 U.S.C.A. § 3701(c)(3)(B) (West Supp. 1998).

6 20 U.S.C.A. § 1087-2(r)(5)(A) (West Supp. 1998).

7 29 U.S.C.A. § 796c(e) (West Supp. 1998).

8 Pub. L. No. 104-333, § 304(e)(2)(A), 110 Stat. 4093, 4126 (1996).

9 Pub. L. No. 104-42, § 203(a)(4)(A), 109 Stat. 353, 358 (1995).

10 Bryan A. Garner, *A Dictionary of Modern Legal Usage* 578-79 (2d ed. 1995).

11 29 U.S.C.A. § 1021(g) (West Supp. 1998).

12 Pub. L. No. 105-33, sec. 11503, § (a), 111 Stat. 251, 769 (1997).

13 26 U.S.C.A. § 4081 note (West Supp. 1998).

14 "[W]hen used as a demonstrative adjective to modify a singular noun, *such* typifies legalese as much as *aforesaid* or *same*." Garner, *supra* note 10, at 849.

15 Pub. L. No. 104-170, sec. 405, § 408 (q)(1), 110 Stat. 1514, 1534 (1996).

16 42 U.S.C.A. § 618(a)(2)(D) (West Supp. 1998).

17 Daniel Zalewski, *The Uses of Error*, Lingua Franca, Oct. 1997, at 18.

18 44 U.S.C.A. § 3518(b) (West Supp. 1998).

19 20 U.S.C.A. § 1110d (West Supp. 1998).

20 42 U.S.C.A. § 3796aa-2 note (West 1994) (repealed 1994).

21 16 U.S.C.A. § 1611 note (West Supp. 1998).

22 Pub. L. No. 105-10, § 2, 111 Stat. 21, 21 (1997).

23 20 U.S.C.A. § 1085 note (West Supp. 1998).

24 42 U.S.C.A. § 233(g)(1)(D) (West Supp. 1998).

25 16 U.S.C.A. § 460bb note (West Supp. 1998).

26 Pub. L. No. 104-180, § 721, 110 Stat. 1569, 1599 (1996).

27 21 U.S.C.A. § 342 note (West Supp. 1998).

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An Interview with Christopher Balmford

[This is reprinted, with slight changes, from Volume 8, Issue 2, of *Polemic*. The interviewer is Veronique Maury.]

What is your background: what path did you take to get where you are today?

Complete luck. After university, I worked at a major international law firm for three years. I didn't like it very much; that wasn't the firm's fault — it was just that I didn't like being a property lawyer even though it was during the late-1980s property boom. I resigned and spent a summer working as a volunteer helping to build a nonprofit outdoor education centre. I came back from that thinking I needed to do something more connected with the law. Then I was lucky enough to get a part-time research job at the Law Reform Commission of Victoria; and while I was there, I was lucky enough to work with David Kelly, who was the Chairman of the Law Reform Commission of Victoria. Both he and the Commission led the plain-language movement in Australia (LRCV, 1986; 1987), and I became heavily involved with it there.

What propelled you into the plain-language movement?

I saw it as an opportunity to cause change:

- to empower consumers, and
- to make business and government more efficient.

That's what it boils down to: people don't understand the documents they sign; they don't understand the law that binds them; they don't understand the forms they fill in for government departments, for banks, for insurance companies; they don't understand the letters they receive. All those documents can be improved out of sight, and if we improve them out of sight, we greatly increase the chance that people will be able to know what their rights are. There's lots of research to show that rewriting documents can achieve that (Kimble, 1994-5: 62-65). So it's worth doing. That's one side of the coin.

The other side of the coin is that unintelligible documents cost organisations, and therefore consumers and taxpayers, vast amounts of money (Kimble, 1996-7: 7-19). So if we can rewrite documents to improve efficiency (by which I mean make them do their job more cheaply) and improve effectiveness (by which I mean make them achieve the desired result more successfully and more often), then rewriting documents is worth doing.

It's time that lawyers seized this opportunity as a way to add value to the community and to the economy.

You talk about making documents more efficient and effective: more understandable to readers and thereby more empowering to consumers. How does plain language achieve these objectives? What principles do you use?

There are six categories you need to think about:

1. Language: what words you use to express the thought, how you construct your sentences.
2. Structure: the order in which you put the ideas, how you organise the document, and what headings you include.
3. Design: for example, what typeface you use, what size paper, your use of white space and colour.
4. Content: what information you put in.
5. Things you can include or avoid to make sure that you don't offend readers. For example, think of all the documents out there that use "he" to refer to both "he" and "she". They're offensive to large parts of the community.
6. Reader response: check your audience's response. You can only be sure you are communicating successfully if your intended audience actually received your intended message. Testing should be done as part of

the writing process. Then the feedback from the testing can be used to improve the draft. It's often humiliating: what the writer thought was stunningly clear may be numbingly obtuse to the reader! Testing always adds value. Even informal testing on your colleagues is better than no testing at all.

So any plain-language project or task needs to take all of these things into account.

But the two overriding principles — which apply before and above those six categories — are a rigorous commitment to focussing on your audience and on your purpose: who are you writing to, and why are you writing to them? These are the driving considerations.

You have been one of the driving forces behind the plain-language movement in Australia. How receptive have people been to the message?

Cab drivers think it's fantastic! As do people you talk to at parties. Lay people. Anyone out there who's ever not understood a legal document thinks plain language is fantastic, which is good for morale.

I was lucky. When I joined the Law Reform Commission and became involved in the plain-language movement, the tide had turned. The game hadn't actually been won, but those people who were opposed to plain language were falling silent. In the past, they had claimed that plain language just could not be as accurate, as certain, and as precise as traditional legal language. That debate has been won by the plain-language movement. Indeed, most people now acknowledge that when you rewrite something in plain language, you increase the accuracy, you increase the certainty, and you increase the precision. My experience bears that out.

Most lawyers I've worked with start out saying that they believe plain language is a "good thing", while at the same time expressing reservations about its ability to maintain "accuracy, certainty, and precision". Yet by the end of a project, these lawyers are almost as enthusiastic about plain language as I am. That's a classic example of the pattern for people in insurance companies, in banks, and in law firms. Once they get to work slowly and carefully on a plain-language project, their comfort level rises, and they end up being enthusiastic and effective plain-language drafters.

Is plain language as precise and accurate as traditional legal language?

I maintain that any document written in traditional legal language is not just unintelligible, but also often imprecise, uncertain, and inaccurate. I have worked on many documents in many organisations where the people responsible for signing a document off to reprint each year are appalled by what they discover in the document during the rewriting process. The document just doesn't say what they thought it said, often in areas of fundamental importance.

When you talk about "plain language", it seems you have a much wider concept of the issue in mind than just "language" itself. Is this true?

Absolutely. Many people think about plain language as only about eliminating the jargon — for example, not using words like *terminate* when they could use *end* or *cancel*, and not using phrases like *chose in action*, whatever that means! But plain language goes much further than that. It is concerned with those things, and it is also concerned with what material goes into the document, what the message is, and what information we need to include to make sure that the readers will not only understand what we say to them, but also find it useful.

When you focus on who you're writing to and what the purpose of your writing is, it's much easier for you to get it right the first time and change the very concept of the document itself — not just a few words.

Do you think there is a need to change the terminology of the movement to reflect this more wholistic approach to making documents more understandable to readers?

"Plain English" in Australia and the UK, "plain language" in North America, are great brand names. People know what they mean. At Phillips Fox, we talk about our "clear communication strategy", not our "plain-language strategy". But at the end of the day, it doesn't matter what you call it. Some people call it "effective writing", some call it "writing for action".

Perhaps the name should be changed, but maybe the people criticising plain language need to accept the reality of what stands behind the name, and not simply focus on the name.

Do you think that eventually the need for a plain-language movement will become obsolete?

Yes I do. We might be talking 20 or even 50 years. But hopefully, the day will come when people who write professionally will all write brilliantly. It's not easily achievable, but it is definitely achievable. The hard part is creating the desire and the commitment. It's getting organisations to recognise that the people they write to, their "customers", want communications they can understand.

If an organisation is going to have the "customer focus", "total quality", and "international best practice" that people talk about, then it has to communicate with its customers, its suppliers, its advisers, its distributors. Documents that alienate, frustrate, and confuse those people are no help at all.

You were in South Africa when the new Constitution was being planned. Given that South Africa now has 11 official languages, what are some of the problems of drafting and interpretation you can foresee for the writers?

It's a huge issue, and one that several countries are familiar with and have dealt with for years. In South Africa, they have always drafted in Afrikaans and English. In the European Union, there are many laws that are drafted in one language and then translated to apply to several different countries. Canada has always had French-English drafting. There are a lot of experts in this area — I'm not one. I spoke at a conference called "Linguists and Lawyers: Issues We Confront" in Denmark in 1994, and those experts discussed lots of different styles of drafting and how they cope. In Continental Europe, they draft in broad principles (Dale, 1977), not in the detailed, black-lettered Anglo tradition. Continental European translators complained about the fact that they could translate the "message" easily, but the words and sentence structure they used bore no relation to the original. When translating English law, these translators became frustrated by the fact that they had to preserve particularly long sentences and convoluted structure. It is an important issue, but not one that I've dealt with directly.

You did some drafting for the South African government though.

I spoke at a conference in Cape Town, and was asked by the Minister of Justice to be involved in a demonstration rewrite. We rewrote the Human Rights Commission Bill. Philip Knight from Canada, Joseph Kimble from the States, and I worked by fax and telephone over several months to write an alternative version of that Bill. Our rewrite was published in South Africa as a model for future legislation (Knight, Balmford & Kimble, 1995). Phil then ran a testing project — sponsored by the Plain English Campaign — to measure the improvement in people's ability to understand and use the Bill (Knight, 1996).

Turning now to issues closer to home, what has been your experience with plain language at AMP, where you were based in-house for 2.5 years?

[AMP is an Australian insurer and financial-services organization, with more than Aus$150 billion under management. AMP owns Pearl Insurance in the UK and 50% of Virgin Direct. Ed.]

I did several different types of work for AMP. One was helping to rewrite existing documents: for example, insurance policies, standard letters, annual statements, and the documents sent out to a customer when they first buy a product. It was interesting and worthwhile.

Second, I worked on a cultural-change project. It was the most exciting part of the work I did with AMP. It is also what the world really needs in terms of plain language. We can rewrite the standard documents here and there, but we're not really changing that much. I helped AMP develop a "clear communications strategy" to try to have all its staff committed to plain language. I trained about 400 people (which is a small percentage of the people who work at AMP), but they are the key people who write documents and letters. We took the best 15 of those people and gave them four days of extra training. They're now operating as clear communication "change agents", agitating for change, identifying where change is needed, and playing a consulting or editing role to the people around them who produce documents. Another thing we did as part of the strategy was to launch a "Clear Communication Kit".

Trying to deliver that cultural change is really exciting and is what we need to do if we are to add value (through efficiency, effectiveness, and informed consumers) on a broad scale. Sadly, plain-language projects often have such a narrow focus that they can deliver only piecemeal gain.

The third task I did at AMP was work intensively on the 200-page explanatory memorandum sent out to the nearly 2 million members to help them decide how to vote on whether AMP should demutualise. I also worked on the AMP prospectus — a short form (for retail investors) and a long form (for institutional investors). These are very high-profile documents, and it's exciting to think that an organisation like AMP wanted them to be in plain language.

Have you been able to measure the effectiveness of those documents with consumers yet?

Sadly, I haven't. But Joseph Kimble has written some excellent articles about testing projects that measure the significant improvement in communication that plain language can deliver (Kimble, 1994-5; 1996-7). There is also a useful report by the Centre for Plain Legal Language at the University of Sydney, which looks at the benefits of plain language (Duckworth & Mills, 1994; 1996).

You've given a number of talks to businesses and organisations about the benefits of using plain language in their documents.

Selling the benefits of plain English to business and government has been a substantial part of my role at Phillips Fox since I joined, and indeed was one of our roles at the Law Reform Commission of Victoria. That's because people are much more likely to spend money on plain language when they realise that it adds value to their business by giving customers what they want, by making staff happier, and by increasing efficiency.

One of the criticisms directed at plain language is that it neglects the reader, even though it purports not to. What do you say about that criticism?

It's completely invalid. Some of the people who've run that argument have been looking at documents that were said to be written in plain English, but they were not good documents.

When someone tells you a document is in plain language, you don't really believe it until you know that the intended audience can understand and use the document. It's easy to take a document that someone asserts is in plain language, and then tear it apart and say plain language is inadequate. But the fact is that everybody I know who is in the plain-language movement believes that plain language goes way beyond (for example) crossing out *prior to* and writing *before*.

The criticism is unfounded given that there is much more to plain language than many of its critics seem to acknowledge. Joseph Kimble has written an excellent article on this issue (Kimble, 1994-5).

Joseph Kimble has also commented that plain language is the most important law-reform issue of our time. Do you agree?

Absolutely, because of all the things I've mentioned. And I think it's worth re-emphasising here that when people communicate in plain language, their analysis is much more rigorous, they focus on the content much more carefully, they are much more likely to make the point they want to make, and they are much more likely to get it right, in terms of accuracy, certainty, and precision. Plain language improves more than communication; it also improves the message itself.

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Plain English: Changing the Lawyer's Image and Goals

Robert Eagleson

[This is a shortened version of an article that will appear in the next volume, Volume 7, of *The Scribes Journal of Legal Writing*.]

Towards the end of 1997, Judge A Callaway commented in a ruling:

> The provisions of the Corporations Law that include s.553C are, as I observed in the course of the argument, drafted in the language of the pop songs. Section 435A speaks of "maximis[ing] the chances" and s.435C of "[t]he normal outcome" and "the deed's administrator". Section 435C(3) begins with the word "However" and a comma, a style that, at least until recently, has been eschewed by good writers. I am aware, of course, that there are those who believe that a statute should be drafted like a notice to quit or even a novel: their distinguished predecessors were the draftsmen of the *Code Napoleon*, later called the *Code Civil*: but an Australian Stendhal would not refresh his spirit or purify his style by dipping into legislation where the quest for simplicity pays the price of vulgarity and ends in obscurity.[1]

Given my involvement on the Corporations Law Simplification Task Force, perhaps I should hasten to observe that Judge Callaway was referring to sections of the Corporations Law that we had not yet touched! Nonetheless, his remarks are revealing. He worries about what an Australian Stendhal would think of a newer style drafting; but he seems not to have contemplated what a renowned writer might think of traditional legal drafting.

[Omitted: Quotations from Jonathan Swift, Charles Dickens, James Joyce, and Groucho Marx that condemn and mock legal language.]

Consider subsection 87(2) of the Complaints (Australian Federal Police) Act 1981:

> 87(2) Subject to this section, a person who is, or has been, a person to whom this section applies, shall not, either directly or indirectly, and either while he is, or after he has ceased to be, a person to whom this section applies, except in the performance of his duties or with the consent, in writing, of the appropriate person, make a record of, or divulge or communicate, prescribed information acquired at any time by him by reason of his being or having been a person to whom this section applies.

Add to this piece of tortuous prose a few other examples of real-life legalese. First, from our Primary Producers Act 1958:

> 35H The provisions of sections 43 and 48 shall with such modifications as are necessary extend and apply to and in relation to this Division and, without affecting the generality of the foregoing, in particular with the modifications that — (a) a reference to eggs or to eggs or egg products or to eggs and egg products shall be construed as a reference to citrus fruit.

For the heights — or perhaps more accurately, the depths — this from a lawyer in Texas:

> It fully appears from the affidavit of the publisher thereof heretofore herein filed.

With examples like these coming to light every day, it is little wonder that lawyers have such a poor image among writers of literature and the public in general. How can the legal profession profess to respect the law, uphold its dignity, and promote its virtue in the community at large when lawyers present the law in misshapen and dishevelled language? The linguistic deeds of lawyers belie their avowals. If we hold something precious, we strive to present it in the finest of displays, not in rags that will be scorned.

Scorned by the community it certainly is. Think of the constant flood of jokes at the expense of lawyers.

Q: Why does New Jersey have more nuclear waste dumps while Washington has more lawyers?

A: New Jersey got the first choice.

Q: What is the difference between God and a lawyer?

A: God never thinks He is a lawyer.

Members of the community react this way because they feel that they are being cheated, that a grand deception is being played on them. Worse, they believe that lawyers defraud them deliberately because it is inconceivable to them that anyone with an ounce of literacy would produce such tangled, labyrinthine documents naturally. They see legalese as a shabby device to line legal pockets. This is the common perception. At social junctions whenever people discover what I do, they voice immediate support, for they complain that "lawyers only write the way they do to force us to go back to them so that they can make more money!" As soon as Professor Peter Butt, my fellow co-director in setting up the Law Foundation Centre for Plain Legal Language in New South Wales, finished addressing a monthly meeting of his local Rotary Club, the whole discussion turned on the practice of lawyers writing legalese just to enrich themselves — and these comments despite the fact that he was their guest.

A few years ago at Mallesons Stephen Jaques we produced a lease in plain language for a government agency. A senior manager in the agency rang a senior partner to be assured that the lease offered the agency full protection. Questioned, he acknowledged that he could find no loopholes in it, but it was so clear that he wondered whether it was legal. This is sad. We have so conditioned the community that it doubts comprehensible language.

Tragically, lawyers are bringing not only themselves into disrepute through their shoddy writing, but also the law. Many in the community condemn it and are ready to dispense with it because they have suffered at the hands of its convoluted small print. It is grievous that lawyers should betray themselves and destroy what they are seeking to uphold. The community cannot appreciate what they are trying to do for it and how solidly based and wise their schemes are because they persist in clinging to such deplorable conventions of writing.

The wounding of the lawyer's image is all the more tragic because it is a self-inflicted wound. They do not have to write the way they do: the solution is to hand in plain English.

Does It Have To Be Like It Is?

[Omitted: Several examples of convoluted legal writing converted to plain language.]

It is critical to recognise that there is no difference in meaning, no loss in law, between these examples of legalese and the plain-English solutions I have offered in their place. Indeed, each one of the plain-English versions has been subjected to close scrutiny by experts in the particular areas of law, who have confirmed their accurate representation of the originals. Plain English does not place the law's precision in jeopardy. It does not seek as a matter of principle to change laws or policies or to tamper with their content.

What it challenges — and what the complaints against legalese challenge — is the quality of the current expression of laws and policies. Essentially, a plain-language project is concerned with communication and efficiency. It aims to produce documents that are written in such a way that their intended audience can read them easily and understand them readily. Where it touches most centrally on equity is where the form of expression disadvantages and even disfranchises one of the parties.

This is not to say that the plain English is not concerned with matters of justice and fair play, that one would be content to have bad laws so long as they were written clearly. On the contrary, plain language projects regularly lead to the removal of injustices and the elimination of cumbersome and costly procedures. One project I worked on — a residential tenancy lease — exposed clauses that were so outrageously unfair that when the landlords saw them in plain language, even they felt the clauses had to be abandoned. When we rewrote the Takeovers Code in plain language, we uncovered errors in law, ambiguities, and uncertainties, for example, in sections 16, 17, 18, 34, and 48. There has hardly been a legal document that I have worked on in the past 22 years where we have not exposed mistakes.

Any properly conceived project to increase comprehensibility will begin with an examination of the underlying policy content. We cannot make an artificial division between content and language, for it is frequently an overly intricate policy that lies behind an impenetrable publication. The trouble with many legal documents is that they retain provisions that are either obsolete or inapplicable. Sometimes, we expect the 1 contract to serve all purposes when it would be better to have 2 or more different types of contract, thereby enabling at least one of them to be simpler. At other times, several forms could satisfactorily be merged into one to reduce the burden on the public or business. But the ultimate responsibility for these changes and simplification in content rests with the professionals in the area because only they are expert enough to know what is necessary and what can be omitted safely.

This point must be emphasised: the thrust for plain English is concerned with communication, not with the law or policy as such. We are seeking to improve the quality of that communication. The central platform of the plain language movement is the right of the audience — the right to understand any document that confers a benefit or imposes an obligation. It reminds us of the ethical dimension of writing: documents are not equitable if they cannot be understood by all parties who have to read them and comply with their requirements. Plainness encompasses language both to express a message accurately and to convey that message to an audience readily and without confusion or misunderstanding. In the past we have been content just with getting the message right. Now we embrace a more challenging task: not just accuracy but also clarity; and it is only when we have both these qualities present that we display a proper mastery of and full competence in language. Plain English will never reduce the scope of the law, but will rescue the law's expression from the obscurantism and mumbo-jumbo in which it is often encased. Above all, plain language will help us come closer to a clarity of expression and an ease of comprehension which should be the goal whenever one human being speaks to another.

It intrigues me that I should have to give these assurances about the commitment of plain language drafters to precision. Told that a document is in plain language, lawyers will stand on their heads to find a fault in it. They do not exercise the same stringency with traditional legal documents. Instead, there seems to be a blind, unthinking acceptance of them. It is a misplaced trust, as countless examples demonstrate.

For Lawyers Also, Not Just the Public

It should not be imagined, however, that plain language is only valuable for members of the public not trained in the law. On the contrary, it has equal — if not more — value for the legal profession.

In 1989 I was asked by the Department of Employment, Education and Training to help it rewrite the Austudy Regulations. The Department had just lost a case in the High Court, where the judges had struggled long over a couple of clauses in the Regulations and eventually condemned them as among the most incomprehensible they had seen.

In *The National Bank of Australia Ltd v Mason*, Justice Stephen commented about one of the documents involved:

> However the remainder of Cl. 1(I) must be read, no easy task consisting as it does of one unpunctuated sentence of over 450 words of small print which is presented to the reader in twenty-five closely set lines, each of excessive length. There, the resolute and persevering may find, in the midst of much else, the phrase 'and whether contingently or otherwise'.[2]

It is proper that judges might have to equip themselves with resolution and perseverance to come to grips with the complexity of the law in particular cases, but it is worrying when even they — expert as they are — have to call on these attributes just to unravel the expression of the law. It is not efficient to distract them in this way.

In 1986 we conducted tests with lawyers in Melbourne. They were presented written problems that required consulting legislation to solve them. At times, the lawyers were given the legislation as it had been written in the traditional style; on other occasions, they had to deal with versions written in plain English. By and large, they managed to come up with the correct answers whether they used the traditional or the plain versions, but when they could consult the plain versions they arrived at their solutions on average 30% more quickly. This is a significant gain in reading efficiency and a great saving in costs for the community. We cannot afford to tie up our legal profession needlessly in legalese. Clearly, lawyers and judges are not so adept with it and do not find it so much easier than the rest of the community.

There is more to the value of plain English for lawyers than just efficiency. It can also save them from making errors and from advising their clients wrongly. A few years ago I was part of a team developing a revised lease that a major organisation decided to introduce for its clients at the same time as it released innovations in its products. Clause 12 read:

> You must get our written consent before you can act as a handling agent for another [company]. We have absolute discretion in giving approval for this.

Two major legal firms responded angrily on behalf of their clients:

- This clause is absolutely unacceptable and should be deleted in its entirety.
- This would seem to be an unreasonable fetter. If a [company] wishes to act as a handling agent for another [company] what business is it of [the lessor]? Is there some industry problem of which I am unaware which has lead (sic) the [lessor] to include this clause.

We politely reminded the lawyers of the corresponding clause (14) in the earlier version of the lease, which they had allowed their clients to sign each year for the past 20 years:

> Not to assign charge underlet or part with the possession of the demised premises or any part thereof nor to hold or occupy the demised premises or any part thereof whatsoever as trustee or agent or otherwise for the benefit of any other person without the written approval of the [lessor].

Both outstanding leases turned up signed without further comment! Whether the lawyers had just not taken any notice of the original clause 14 or had not understood its cumbersome language, I suppose, must remain an open question. I suspect incomprehension rather than carelessness on the part of 2 major legal firms. Whatever the cause, the episode illustrates that plain language is more effective for lawyers as well as for the rest of us.

Image and All That

A few years ago, I was conducting jointly with a senior judge a workshop for registrars on how to develop and communicate decisions, with an emphasis on plain language. We had combined and supported each other admirably all day, but going down the lift at the end of the workshop, the judge commented:

> What you said about writing plainly was excellent but of course I cannot present my judgments like that. I have to appear erudite.

Unwittingly, in those closing words he put his finger on a major cause of difficulty and incomprehensibility in legal writing. Too often legal writers are concerned with establishing an image rather than concentrating on the needs of the audience. They become preoccupied with demonstrating that they know technical terms and arcane vocabulary, for example — preoccupied with sounding like lawyers and learned people — and lose sight of the fact that the primary goal of lawyers is to convey a message to others.

It's baffling that for all their concern to impress, lawyers have not sought to consider what really impresses. They delude themselves that legalese and inflated language are the way. There are the comments of Swift, Dickens, and so many others that should have made them question their practices. There is the illuminating work of Christopher Turk in Great Britain.[3] He presented over 400 scientists at a conference with 2 versions of a report on a piece of medical research — 1 version in the traditional scientific style as it had been written originally by the researchers, and the other in plain language. He asked the scientists to answer the following questions:

1.1 Which passage is more interesting?

1.2 Which passage is more difficult to read?

2.1 Which style seems more appropriate for scientific writing?

2.2 Which style is more precise?

3.1 Which writer gives the impression of being a more competent scientist?

3.2 Which writer inspires confidence?

3.3 Which passage shows a more organised mind?

4.1 Which passage seems more dynamic?

4.2 Which passage seems more stimulating?

The scientists voted overwhelmingly that the plain-English version was more interesting, more precise, more stimulating, showed a more organised mind, and gave the impression of a more competent scientist. They voted that the traditional passage was more difficult to read. As for question 2.1, they voted that the traditional style was more appropriate for scientific writing.

It may be comforting to realise that scientists can also be irrational, but irrational their response certainly is. They want every other scientist to write to them in the plain style: it will be easier to read, more dynamic, inspire confidence, and so on. But when they themselves come to write, they are going to write in the traditional way. They are unthinkingly acting from convention, not principle. They are turning their back on what really impresses them to compose in an unappealing manner.

Lawyers are acting in the same illogical way. Friends in the profession are constantly sending me extracts of gobbledegook from commercial

legal documents that they have received from other lawyers. Judges are frequently castigating the endeavours of legislative drafters. But these same lawyers and judges are equally guilty of producing legalese as they strive to impress us.

Robert Benson and Joan Kesler have conducted among lawyers in the United States similar experiments to those conducted by Turk among British scientists.[4] The American lawyers rated the passages in legalese to be "substantively weaker and less persuasive than the plain English versions". Even more fascinating, they inferred that the writers of the plain-English versions came from the more prestigious law firms!

When it comes to writing, so many are widely mistaken on what really impresses. As Dullah Omar, the South African Minister of Justice, observed:

> The use of language above the heads of the average citizen may swell the heads of its users but it does little else.

It certainly does not create a good image.

Words, Words, Words

Another area where lawyers need great help is in language and communication. They know too little about them, and what they do know is frequently misguided or hopelessly outmoded.

This may seem an outrageous suggestion to make, given that lawyers often claim for themselves that they are wordsmiths and that words are the life-blood of their activities. Yet if not ignorance about language, how else are we to explain the long cumbersome sentences of 200, 300, even 800 words that still appear; the absence of coherent organisation in documents; the misunderstanding about punctuation; the attachment to so-called "settled terms", no matter how ill-chosen they might be.

Lawyers have a great fear of departing from terms whose meanings they imagine have been determined by a court. It is a debilitating fear.

Let me illustrate from the recent experience of a friend who is head of a communications and public relations section within a large organisation. Since her section endeavoured to practise plain English in the documents they produced, she thought it only proper that the contracts they entered into with free-lance writers, designers, and photographers should be in plain language. She set about amending the standard contract and then sent it to the firm's legal section for checking. She had modified clause 1 as follows:

> 1. This Agreement shall ~~commence~~ start on 20 January 1992 and ~~expire~~ finish on 23 December 1992.

The legal section responded:

> Clause 1
>
> We would prefer to retain the words "commence" and "expire" rather than "start" and "finish". The words retained are quite clear and have accepted meanings in law whereas the words "start" and "finish" do not yet have established meanings, although we concede they would be unlikely to cause concern.

The craven dread that is expressed here is too sad: how could *start* possibly get the lawyer into trouble? But worse, the response is so erroneous. Lawyers are too concerned with how courts have ruled on certain words in the past. They do not ask whether the courts should have had to rule in the first place. If a word needs interpretation, then perhaps it was the wrong word to choose originally. What we could have is a deficiency in drafting. Rather than clinging to a faulty term because a court has ruled on it, we should be getting rid of it altogether. If not, everyone is being asked to be aware of the court's ruling to interpret their documents aright. We are maintaining a patched-up precision rather than striving for a pristine precision.

In passing, it is worth recording that in our experience in Australia plain-language documents have led to less litigation. We need have no fear of going down the path of rethinking our terminology and of making new solutions.[5]

[Omitted: A discussion of the linguistic misconceptions behind the long sentence.]

Not Wordsmiths — Only Lawyers

Let me return to the remarks of Justice Callaway with which I began this paper. In the midst of them is the comment:

> Section 435C(3) begins with the word "However" and a comma, a style that, at least until recently, has been eschewed by good writers.

How does he come to hold such an idea? I know some benighted teachers used to teach this as a rule, but surely Justice Callaway is not harking back to his distant school days. Surely he has read more widely since then and listened intently. *However* has never had a fixed place in the English sentence; it has always been mobile, and this characteristic has enabled us to achieve different emphases. What of the practice of Shakespeare and Burke? Are they poor stylists because they placed *however* first on occasions? Why do we have to be so hidebound? *However* is frequently more effective as a signal of contrast or qualification in the initial position in a clause. God gave us language as a liberating, enriching gift so that we could communicate with each other and share ideas. It is not an arbitrary, burdensome yoke under which we should be enslaved. Yet it is on the foundation of unenlightenment — of poor learning rather than a true knowledge of language — that Justice Callaway mounts his condemnation of plain language.

Because a limited and uncertain knowledge of language — but not of law — is the central cause of incomprehensible legal documents and lest it be thought that I am constructing this argument on flimsy evidence, let me cite another instance from the many that may be quoted. We have ignored this deficiency for too long; we need to become alive to it, not to despise lawyers but to help them.

Justice Tadgell of the Supreme Court of Victoria has an aversion to the replacement of *shall* by *must* in legislation and legal documents generally. In a ruling in 1995 he devoted some 3 pages to berating the change, even calling on Queen Elizabeth I to uphold him. While virtually every line of the ruling gives us ammunition, I want to quote portions that are particularly telling for our present discussion:

> Positive obligations are expressed in the Act, in some instances understandably, by force of "must", rather than by means of "shall". This practice makes the questionable assumptions, first, that "shall", in order to be understood, needs to be fixed and absolute in meaning and, secondly, that the average reader is incapable of perceiving that it need not . . . .
>
> Even those who do not tolerate much history might admit that there are places where "must" carries its own stamp of absurdity; and that "must not", when ill-used, is even worse. There are several examples of the latter in the Planning and Environment Act 1987. One is to be found in s.100(2), which proclaims that "The amount paid under this section must not exceed 10% of the amount of compensation which would have been payable except for this section". Again, s.180 provides that "An agreement must not require or allow anything to be done which would breach a planning scheme or a permit". Who in these two cases is enjoined? Who "must not"? Is there any sanction? What if that which "must not" happen does happen? Is it to be treated as a nullity? Is the blow of the blunt instrument to be as effective as the senseless thunderbolt? Even more grotesque is s.122(4), which asserts that "A person must not be convicted of an offence against any other section of this Act if . . . ." Who is being prohibited here?[6]

Justice Tadgell could replace *must* with *shall* in each of the sections he has referred to, he could even print it in block letters and bold, and he would still not remove the imprecision he complains of. It is not an issue of *shall* or *must* out of the passive voice in s.122(4), for example. He has missed the point completely, and all he has done is to expose an ignorance of quite elementary grammatical matters. He and numbers like him should be far less confident of their linguistic knowledge. He would be better served sticking to the law, in which he has some qualifications.

There is no need for us to go searching for these embarrassing pronouncements of lawyers on language. Lawyers continually confirm by their actions that they have little understanding of language and little appreciation of how readers tackle texts and what they find congenial.

Write the Speech

The misconceptions and myths that lawyers have about language manifest themselves predominantly in the domain of writing. Most speak clearly and plainly. Time and again lawyers with whom I am rewriting documents answer my requests for explanations of the law underpinning a document with admirable lucidity. We need to help them carry over the plainness of their spoken words appropriately into their written words. Because they use words to express the law, they need more training about words. I am not thinking of the weary, unimaginative solution of some first-year writing courses, but more effective professional programs that develop a knowledge of the reading strategies of audiences, of the knowledge they bring to a text, and of the language they use; that promote understanding that one structure in language may be equivalent to another; and that foster a recognition that many of the conventions lawyers currently revere emerged in a time when they were paid by the word and have to do with economic factors and not the requirements of legal accuracy. As well, just as other specialists freely call on lawyers for their expertise, so lawyers need to be encouraged to combine more willingly, freely, and respectfully with other specialists in the writing segment of their undertakings so that they can broaden their linguistic competence and elevate their language performance.

The Benefits of Plain Language

Plain-language legal documents have now been in use for 22 years in Australia. They have not led to the disasters predicted for them, but have continued to notch up impressive gains.

- They have reduced the number of invalid claims in many enterprises.
- There has been much less litigation over them than over the former legalese versions.
- They save lawyers from making mistakes. (With the pre-1995 Family Court form, 25% of divorce application forms submitted by lawyers were rejected. Within 1 month after the new plainer form was introduced, the error rate had almost halved to 14%.)
- They save lawyers' time. (While brevity as such is not the goal of a plain-language project, it is regularly the result as verbiage is eliminated. I have just been converting a contract that we have reduced from 12 to 3 pages and yet have included extra items. The Corporations Law Simplification Program to date has shrunk the text from some 580 pages to 340 pages, a saving of 240 pages — the size of many novels.)

But most significantly, plain legal language upholds the law and promotes respect for it and for lawyers. Rather than concealing the law in mumbo jumbo and confounding understanding with humbug, it communicates the law and illuminates the minds of clients. Rather than bespeaking a low professionalism and a limited competence in language, it evidences an expertise in subject and a mastery of words.

There is an even higher gain than respect for the law and lawyers in writing plainly. Because its overarching goal is the understanding of the audience, it is the one style that enables us to serve others. And service to others is the quintessence of living. It enables lawyers to reach out from the confines of the law to use their legal qualifications for the elucidation of their clients and the well-being of the community. It constrains them to put their skills at the disposal of the community for the benefit of the community rather than the elevation of themselves. It does not turn the clients into lawyers: they need training for that. But it does foster a greater sense of comfort in and serenity with the law. The principles of plain language suffuse the law and lawyers with a human and a humane sensitivity.

Endnotes

1 *GM & AM Pearce and Co Pty Ltd v RGM Australia Pty Ltd* (1998) 16 Australian Company Law Cases 429 at p. 432.

2 (1975) 133 Commonwealth Law Reports 191 at p. 203.

3 *Do you write impressively*, 9 Bulletin of the British Ecological Society (1978: 5-10).

4 *Legalese v Plain English: An Empirical Study of Persuasion and Credibility in Appellate Brief Writing*, 20 Loyola of Los Angeles Law Review 301 (1987).

5 There are other problems with settled terms, but they have been discussed elsewhere.

6 *Hallwood Corporation Ltd v Roads Corporation*, (unreported, Victorian Court of Appeal, 30 June 1997; case no 6596 of 1995).

***Robert Eagleson** did groundbreaking work in introducing plain English into legal documents in Australia in 1976 while still a member of the Department of English at the University of Sydney. Since then he has won a worldwide reputation in developing our understanding of the clear communication of the law and received several awards for his work. He now serves as a consultant in Plain English to Mallesons Stephen Jaques, a major Australian legal firm, as well as consulting on government and commercial enterprises.*

Getting the Structure Right: Process, Paradigm, and Persistence (Part 1)

Christopher Balmford

The Need

We need more information about how to organise the information in documents. We have lots of information on language and a fair bit on design; but there isn't so much on structure. Also, what we do have on structure tends to be more about the hallmarks of a well-structured document rather than about how to create one — more about the goals themselves than how to score them.

The Difficulty

The hardest part of making documents as clear as they can be is getting the structure right. It is for me anyway.

- Where to start?
- Which ideas to group together?
- What order to put them in?

It's the same whether I am writing an insurance policy, a prospectus, a letter of advice to a client, an essay for university, or an article for *Clarity*. Part of the problem is that — even with a clear idea of my audience and the purpose for writing — I'm not always sure just what I'm going to say, just where it is that I'm going. The struggle to remove that insecurity eases as soon as the structure comes good — although the structure may morph several times as other issues, and my thinking, become clearer.

The Importance

Getting the structure right is vital if a document is going to be useful for its audience. As the Law Reform Commission of Victoria has said:

> The success of a document in communicating depends greatly on the careful organisation of the material in it. The right facts must not only be selected, but must also be put in an order that shows the interconnections between the facts, that allows one fact to support or qualify the other. Incisive clarity of thinking, sensitive consideration of the audience, skilful choice of language, and thoughtful attention to all the other components in the writing process can all be undermined by slipshod organisation.[1]

Absolute rigour is essential. Poor structure often reflects muddled thinking. And muddled thinking causes communications to fail.

This Article

Part 1 of this article sets the scene and considers three examples that reveal the problems of poor structure.

Part 2 will appear in the next issue, No. 43, of *Clarity*. Part 2:

- discusses a process and a paradigm for achieving the goals of good structure; and
- contains a detailed analysis of a before-and-after example.

I should say right at the outset that much of the material about the process and paradigm discussed in Part 2 is from others — notably Bryan A. Garner (from an article about a paradigm developed by Dr. Betty S. Flowers), Professor Joseph Kimble, and the Law Reform Commission of Victoria (the work being done by the Commission's chair, David Kelly). The purpose of this article is to bring their ideas together, add some of my own, and perhaps encourage others to contribute their thoughts. If enough people share their ideas, we could effectively have a "Seminar in Print" dealing with structure.

The Guiding Principles

Here then are the goals, the guiding principles:

- put the main message first;
- put closely related material together;
- put material in an order that makes the best sense to the reader;
- use headings liberally and rigorously;
- make sure that pieces of information with comparable heading levels have comparable weight, and comparable levels of importance; and
- use a numbering system which forces you to draft clearly — even if you don't use that numbering system when you print the document.

These principles are discussed in considerably more detail in Part 2 of this article. But for now, just keep them in mind as we review some documents.

The Problems

Let's look at three examples that illustrate the problems created by poor structure. Those problems are many and varied. Usually they result from an utter failure to focus on things from the reader's point of view.

Example 1: Voicemail Instructions

This ugly little document was handed to me when I started work somewhere. It's for people to pin up near their phone to help them when they need to turn their voicemail on.

5. CALL FORWARDING
You will need to instruct voice mail when you would like your phone answered. This can be done via 3 call forward options:

CANCEL EXISTING FORWARDING

BUSY CALLS	NO ANSWER CALLS	ALL CALLS
Press # 3	Press #6	Press #9
Hang Up	Hang Up	Hang Up

SET FORWARDING TO VOICE MAIL

BUSY CALLS	NO ANSWER CALLS	ALL CALLS
Press # 3 76999	Press #6 76999	Press #9 76999
Hang Up	Hang Up	Hang Up

It's not a pretty sight! The language isn't too flash either. But what I want to focus on is the structure — the order in which the ideas are presented.

First, the results of some real-life research — my experiences as a user of the sheet. For my first few days in the organisation, I never got one voicemail message, even though several friends told me that when they rang me to see how I was doing in my new job, the phone rang out. I assumed I'd done something silly, and so I reset my phone to voicemail. Still no messages.

Clearly, something was wrong. I examined the sheet more carefully and realised that every time I'd tried to turn voicemail on, I'd actually turned it off.

Why? Because I didn't read the sheet very carefully, and I had assumed that the sheet dealt with things in what I thought was a logical order:

- first, how to turn voicemail on; and
- second, how to turn voicemail off.

I paid the penalty for not reading the sheet carefully.

But lots of readers don't read carefully. We need to create documents that people can't misread — even if they aren't really concentrating and don't read every word carefully. It's a tall order.

Let's look at the voicemail instruction sheet again:

- "Cancel existing forwarding", which means "Turning your voicemail off"

is dealt with *before*

- "Set forwarding to voicemail", which means "Turning your voicemail on".

Surely, that order is counter-intuitive. Surely, a new user of any machine (or a new user of a machine's — dare I say it — "functionality") wants to know how to turn it on before they want to know how to turn it off. Not only that, but they expect to be told the information in that order.

By the way, you can turn voicemail on even if the phone is already set to some other call forwarding. You don't have to turn off the call forwarding first — I checked.

Example 2: Australian Securities and Investments Commission, Class Order 94/1289

The Australian law regulating the structure and activities of companies is called the Corporations Law. It is administered by the Australian Securities and Investments Commission. The Commission has the power to issue "Class Orders" to modify the law as it applies to certain persons or classes of persons.[2]

The example we are going to look at is Class Order 94/1289. It runs for a little less than five pages. It deals with Employee Share Schemes — that is, offers of shares that a company makes to its employees and directors. The offer is made separately from any general offers to the public or to institutional investors. The Class Order exempts employee share schemes (that satisfy

various criteria set out in the Class Order) from complying with several divisions of the Corporations Law. The exemption makes producing an employee prospectus a much simpler and cheaper task than producing a prospectus for a public offer.

This Class Order has a number of structural problems. I want to look at just a few of them.

- *What is the class order about?* Employee share schemes — we are told that in the heading. But after the heading, the first time that the phrase "employee share scheme" is used (or even hinted at!) is two-thirds of the way down the second page in section 4(b), under a heading "Further requirements". This information should be in the opening paragraph. After all, for the exemption to apply, it's crucial that the scheme be an employee share scheme. There are many other important requirements, but they are all subordinate to that one.
- *What sort of employee share schemes are covered*? Well, there are all sorts of restrictions. But a key restriction is this one — from 4(b), which you'll remember is the first time the phrase "employee share scheme" is used:

  > The offer or invitation must be made pursuant to an employee share scheme *extended only to* persons who at the time of the offer or invitation are full or part-time employees or directors of the issuer or of associated bodies corporate of the issuer. [My italics.]

That makes sense. And it should have been explained early on in the order — if not in the opening paragraph.

- *But wait, there's more!* There's a qualification of the meaning of the phrase "extended only to" (the phrase I put in italics in the last quotation). The qualification has a big impact. And it is located two pages later in the section headed "6 Interpretation":

  > A scheme shall not be regarded as *extended to a person, other than an employee or director of the issuer or an associated body corporate of the issuer,* merely because such an employee or director may renounce an offer of shares made to him or her under the scheme in favour of his or her nominee. [My italics.]

That qualification is important. It means that if you have a friendly director, friendly employee, or friendly body corporate (or one that's prepared to accept your price), they can renounce the shares in your favour. In those cases, the qualification effectively negates the requirement about the persons to whom the scheme can be extended. This qualification should be with the information it qualifies — that is, the information about to whom the scheme can be extended.

The only possible reason for separating the message from the qualification could be to save space. If the main message about "extended only to" is used so many times that to repeat the qualification each time would be a burden, waste words and paper, etc, then it might be worth separating the ideas. But, lo and behold, the phrase "extended only to" is not used anywhere else in the whole Class Order.

The decision to separate the qualification from the main message reflects confused logic and the (ill-founded and rarely acknowledged) desire to create concepts, name them, define them, and place the definition somewhere far away from the main message. That desire must be repressed, suppressed, oppressed, and destroyed.

Example 3: Clause 231 of the Corporations Amendment Bill 1991

This clause was proposed as part of a wide-ranging attempt to prevent company directors from gaining improper benefits from their position. It is a long clause. It runs for 25 subclauses on four full pages. There is only one heading for all that information, and it is right at the start.

Here is my summary of the information in each subclause. The *italicized text* in *[square brackets]* is my commentary on the structure.

Disclosure of interests by directors

Subclause 1 Definition of "transaction"

Subclause 2 Definition of "a matter with which a company is concerned"

Subclause 3 Definition of "interest"

Subclause 4 Definition of "minor interest"

Subclause 5 Definition of (or, strictly, an assumption about) "the nominal value of shares"

[We are 5 subclauses into the clause, nearly a whole page, and we haven't got one main message yet. Nothing of substance. Nothing that tells us the story.]

Subclause 6 A director with an interest must give written notice to the company of the prescribed particulars

[At last, some substance! Somebody has to do something. A director has to give notice of an interest. But what are the "prescribed particulars"?]

Subclause 7 Notice is to be given to the secretary

[Surely, that tiny piece of information could be included in subclause (6).]

Subclause 8 Company must keep a register of interests

Subclause 9 Company must keep the register of interests open for inspection

Subclause 10 Company must give a copy of information from the register to someone who asks for it

Subclause 11 Company must produce the register at the Annual General Meeting

[That is fairly good structure. All the information about the register is together and is in a sensible order.

Mind you, it could probably be dealt with all in one subclause — with a main paragraph and three subheadings. After all, subclauses (9), (10), and (11) — about access to the register — are really subsidiary messages of subclause (8), the obligation to keep the register. The existing structure places each idea on the same level in the hierarchy: they are all subclauses. This wastes the opportunity to use structure and layout to give the reader a message about the comparative weight of the pieces of information and their interrelationship. The message is one that — as long as the structure and layout are right — the reader can gather without even having to read the text.]

Subclause 12 When the secretary receives a notice about an interest, the secretary must send a copy to every other director

[Whoops, we're back to the notice again.]

Subclause 13 The directors must record the details of a notice in the minutes of the next meeting

Subclause 14 The prescribed particulars that must be in the notice are . . . .

[Can you believe it? It's a definition of "prescribed particulars". So why isn't it with the other definitions at the start of the clause? That would make sense, I suppose. But wouldn't it be better if it was with the requirement to give the notice? That's way back in subclause (6)! Couldn't the very first subclause say something like:

"A Director with an interest must give written notice to the Secretary of the following details about the interest:

- *[with a dot-point list of each of the "prescribed particulars"]*

Not only would that bring the two ideas from (6) and (14) together (and the idea from (7) that the notice had to be given to the Secretary), but it would also avoid the artificial and unnecessary concept of "prescribed particulars". We could define "interest" either in the opening sentence, or straight after the dot-point list.]

Subclause 15 Minor notices can be dealt with in a simpler way

Subclause 16 Notice given under section 236 is adequate notice for this clause

Subclause 17 Notice about an office held in another company must be given once every 12 months

[These last three subclauses are about situations in which a director either doesn't have to give the notice or can give a different sort of notice. Shouldn't they come immediately after the requirement to give the notice?]

Subclause 18 Qualification of subclause 17

Subclause 19 Qualification of subclause 18

[The information in (18) and (19) is subordinate in importance to the information in (17). It is merely a qualification of (17). Indeed, (19) is doubly subordinate: it qualifies (18), which in turn qualifies (17). Yet each of them is given the same prominence in the hierarchy. That is, each point is dealt with in a subclause. But (18) and (19) should be in a "sub-subclause". That way the reader would notice their weight simply by looking at them. As the document stands (and remember, there are no sub-headings) a reader has to read each of the subordinate messages to find out what they are about. The structure (and design) of the document should save the reader that effort. The reader should be able to tell — at a glance — that if they are not interested in (17), then it is unlikely that (18) and (19) are interesting either. Also, a reader interested in (17) should know — again, at a glance — that they had better read the qualifying messages in (18) and (19) to make sure they get the full story. All that can be made clear by structure and layout.]

Subclause 20 Directors can call for more information about a notice

Subclause 21 A director who receives a request for more information must comply with it

[Shouldn't 20 and 21 be together? Shouldn't this information go either:

- *with what has to be in the notice — much earlier in the rewrite of (6) and (14), which should be at the very beginning; or*
- *immediately after the requirement for the secretary to give a copy of the notice to the directors?]*

Subclause 22 A director's voting rights are restricted in relation to an interest which she has given notice of

[This is the most important thing of all.

Who cares if I have to give a notice and all that stuff? But boy, I care if my voting rights are limited. Yet the rule is buried in subclause 22. And the only heading for the whole clause talks about disclosure of interests. It doesn't mention voting rights.]

Subclause 23 What the minutes must record about the directors' decision to allow a director with an interest to vote

Subclause 24 Rule about a quorum for a decision of the type mentioned in subclause (23)

[Again, the message in (24) is part of the message in the previous subclause. It should be in there, or in a sub-subclause of it.]

Subclause 25 This clause — or a breach of it — does not invalidate an act of the company

The material in Clause 231 is a shemozzle! There are about five main ideas. They are neither grouped together logically nor ordered logically.

The truth of that statement is proved by the Explanatory Memorandum produced with the Bill. When writing the Explanatory Memorandum, the drafter is concerned to explain things clearly. This is the order in which the information appears in the Explanatory Memorandum. Are you ready? (6), (3), (2), (14), (6 again!), (7), 12(a), (8),and (12)(b). Bizarre.

(To be fair, legislative drafting in Australia has moved on since 1991 when this section was produced. See the box below.)

Recent developments in the language, structure, and design of legislation in Australia (particularly, Commonwealth and New South Wales legislation) should delight all *Clarity* readers. Just have a look at the first six major headings in the Local Government Act 1993 (NSW). They fill the reader with confidence:

Chapter 1 — Preliminary

Chapter 2 — What are the purposes of this Act?

Chapter 3 — What is a council's charter?

Chapter 4 — How can the community influence what a council does?

Chapter 5 — What are a council's functions?

Chapter 6 — What are the service functions of a council?

Not only that, but each chapter has an introduction. Here's the last paragraph from the introduction to Chapter 2:

> The Chapter also aims to give an overview of the major elements in the system of local government in this State. It contains a diagram showing the way in which these elements relate to one another.

It does too. A diagram, in legislation. Marvellous.

Here are three more pieces of good news from New South Wales:

1. In the Firearms Act 1996, subsection 8(1) has a subheading for each of six types of licences. Under each of those subheadings are these two sub-subheadings: "Firearms to which the licence applies" and "Authority conferred by the licence". Beautiful, rigorous structure that helps the reader find and follow information.

2. The Strata Schemes Management Act 1996 has many question headings — even in the schedules. Some subsections have their own headings. The structure is good too. The "Strata Schemes Commissioner" is set up in Chapter 6 after the information that will be of most interest to most readers. Traditionally, that sort of body is set up in the early part of the legislation, even though it's of interest to few readers.

   The Act also contains a table describing the types of orders that may be made and who may apply for them. The left-hand column is headed "To do what?" The middle column is headed "Who may apply?" And the right-hand column shows the relevant section number. How's that for a finding aid?

3. The Duties Act 1997 provides useful cross-references in notes. For example, at the end of Section 245, a note warns that it "would always be prudent to check the registered status of the insurer. This may be done by inspecting the register kept under section 252 by the Chief Commissioner".

All this is set out in the clear design established by the Parliamentary Counsel's Office and the (sadly, no longer with us) Centre for Plain Legal Language.† That design uses running heads on each page. They show the name, year, and number of the Act; the name and number of the chapter and part; and the number of the section.

Oh happy day!

† See *Review and Redesign of NSW Legislation*, a joint project of the Parliamentary Counsel's Office & the Centre for Plain Legal Language, June 1994. The proposals in the discussion paper were adopted in 1995. Consequently, a final report was not produced.

At the Law Reform Commission of Victoria, I was involved in producing a demonstration rewrite of Clause 231 to show how we thought the drafting could be improved. We structured our rewrite as follows (the references to subclause numbers are to where we got the information in the original):

> **Voting rights restricted for Directors with an "interest"**
>
> **Overview**
>
> Directors must give notice of certain interests. Having an interest restricts your voting rights in relation to matters involving the interest.
>
> [We then set out a Table of Contents for the section.]
>
> **Directors to disclose interest**
>
> **1** Subclauses (6), (7), (14), and (15)
>
> **1.1** Subclauses (17) and (18)
>
> **1.2** Subclause (16)
>
> **1.3** Subclause (6)
>
> **Definitions used in 1** Subclauses (3), (1), (2), (4), (5), and (19)
>
> **A company must keep a register of declarations of interest**
>
> **2** Subclause (8)
>
> **2.1** Subclauses (9) and (10)
>
> **2.2** Subclause (11)
>
> **What happens when a director gives notice**
>
> **3** Subclauses (12) and (13)
>
> **Directors may ask for more information**
>
> **4** Subclauses (20) and (21)
>
> **Effect of an interest on voting rights**
>
> **5** Subclauses (22), (23) and (24)
>
> **This clause does not invalidate acts**
>
> **6** Subclause (25)

No doubt, more could be done to improve that rewrite. But at least the structure is helpful to the reader. The main points of the section — the obligation to give notice, and the restriction on voting rights — are drawn to the reader's attention in the Overview. The Table of Contents tells the reader where to find the information they're looking for. Then the information is set out in a chronological order.

So those are the types of problems. What is the solution?

The Solution

The solution lies in a rigorous approach to sorting and ordering the information in the document. There are some useful ideas around to help us do that. The best of those ideas (from a range of sources) will be summarised in Part 2 of this article — in the next issue of *Clarity*. Those ideas establish a process and a paradigm to help readers to get the structure right. Of course, there are no guarantees. At the end of the day, like all aspects of the writing process, it comes down to persistence and a commitment to the reader.

Endnotes

[1] Law Reform Commission of Victoria, *Plain English and the Law*, Appendix 1, Drafting Manual 1987, page 17.

[2] Section 1084(2) Corporations Law.

Christopher Balmford *is a consultant with the Australian law firm Phillips Fox. He provides plain-language writing, training, and cultural-change services. He recently spent 2.5 years on secondment to AMP, a major Australian insurer and financial-services organisation. Christopher is Clarity's honourary Australian agent.*

Excerpts from *Writing Readable Regulations*

Thomas Murawski

[I recommend this book to all drafters. Some of the advice will be familiar to *Clarity* readers, but much of it will be new and useful. And the examples are excellent. You can order the book directly from the author, for US$21. Write to him at The Murawski Group, 1431 North Tejon Street, Colorado Springs, CO 80907 (murawskig@aol.com).

Incidentally, as you probably gathered from earlier articles, federal regulations are federal law from the executive branch — the federal agencies. Regulations are first published in the *Federal Register*, then collected in the *Code of Federal Regulations*.

Here are some of the author's own comments about the book. Following that are a few excerpts from the book. Ed.]

My aim is to make regulations easier to read by making them easier to write. That's why I make such a thing of "I" questions and "you" answers. Questions focus sections so much better than the usual cryptic headings. They make it easier to check for flow and gaps. And pronouns, natural references to people, incline writers to consider their readers more. There's less hiding behind language.

A good many agencies have bought into these techniques. And if their acceptance doesn't convince the precedent-conscious, the ideas in the book are echoed in the *Federal Register*'s new *Document Drafting Handbook* (www.nara.gov/fedreg/intro.html), which includes my chapter, "Making Regulations Readable."

I believe the book has a wider audience than federal reg writers. It can help legislative drafters, state and local regulators, and authors of other policies and procedures. Only the "Core Ideas" portion requires the wider audience to see past the references to the *Federal Register* system. The "More Ideas" portion, the model documents, and the exercises will communicate directly.

I find books on legal drafting inadequate as style guides for reg writing. They assume more skill at writing than I've found among my workshop participants, and they stick too close to old ways. What's more, they tend to duck the abstract and unwieldy challenges of organization in favor of tidy sentence-level improvements. But if readers can't find the sentences in the first place, improving them amounts to rearranging deck chairs on the Titanic. I was able to treat organizational issues because of the shorthand provided by headings that ask questions.

This book gives official policies and procedures a fresh look and sound. And it won't get anyone in trouble. Its techniques are practical, tested, approved. They work — for writers and readers alike.

Sections

■ Write section headings as questions

Short, vague headings make navigating difficult to impossible. Veteran users may learn to compensate for cryptic headings, but first-time readers are stuck to study entire sections to tease out what, if anything, applies to them.

What are new readers to make of a section heading such as "Requirements"? Just about everything is a requirement. And what about the tired teaser "Scope"? Scope of the regulation? Scope of the activity regulated?

The fog rises when each section heading asks a direct question. With its subject and predicate, a question ensures that a heading will not only name a subject but say something about it:

Short, vague headings

PART 82 — PETITIONING . . .

Sec.

82.1 Applicability.
82.2 Purpose and scope.
82.3 Petition format.
82.4 Entitlement to petition.
82.5 Sufficiency of a petition.
82.6 Notarization of petition signatures.
82.7 Filing of petitions.
82.8 Action on the petition.
82.9 Duration.

Longer, informative headings

PART 82 — PETITIONING . . .

Sec.

82.1 Who must follow this part?
82.2 Why have a regulation on petitions?

Subpart A — Creating a Petition

FIRST STEPS

82.3 What is the format for a petition?
82.4 Who may conduct a petition?

SIGNATURE REQUIREMENTS

82.5 Who may sign a petition?
82.6 When does a petition have enough signatures?
82.7 How are signatures authenticated?

Subpart B — Processing a Petition

82.8 How is a petition officially filed?
82.9 How is a petition validated?
82.10 May a petition be used more than once?

Compare the last headings of both columns. Which one tells you more?

Questions and answers are natural for writers and readers alike. We all use them in conversation, and they are the way many people think (80 percent of us, according to some research).

As old as the teaching method of Socrates, questions and answers appear throughout mainstream writing today. A few examples:

- Product warranties.
- Internet FAQs (frequently asked questions).
- Newspaper interviews and conventional articles.
- Frequent-traveler instructions by United Airlines and Marriott hotels.

Questions and answers clarify a wide array of federal documents:

- Handbooks for the Federal Employees Retirement System, the Civil Service Retirement System, and the Thrift Savings Plan.
- Model disclosure documents by the Securities and Exchange Commission.
- All the model regulations at the back of this book, and the hundreds of other policies and procedures that my workshops have produced.
- The *Document Drafting Handbook* by the Office of the Federal Register. Itself organized by questions and answers, the handbook calls for using the technique in regulations (www.nara.gov/fedreg/intro.html).

In theory, section headings needn't ask questions to be informative; in practice, nothing else produces informative headings consistently. Most of the reg writers my associates and I work with are program people who have technical degrees and little reg-writing experience. For them, questions and answers make writing easier. A writer gets started by jotting down a reader's likely questions. What might a reader ask first, second, third, and so on? Soon the writer has outlined a subpart or more.

Readers, in turn, need only surf a table of contents to find what interests them. Once they get into the text, they hear the conversation between section questions and answers. "I" questions and "you" answers work especially well because they help readers to find their place amid all the complexity.

Finally, questions and answers boost public confidence in government. Their fresh, helpful look and sound make Washington more accessible.

■ Limit paragraph levels

Mercifully, the *Document Drafting Handbook* discourages excessive levels of paragraphs, a point it makes no fewer than five times: "The OFR [Office of the Federal Register] strongly recommends that you do not use more than 3 paragraph levels" and "Rarely use three designated levels (a)(1)(i) and never use more." This limit is crucial. Who can follow paragraphs in four, five, or six levels? Paragraphs are especially hard to tell apart in the *Federal Register* because all start the same distance from the left margin. (Breaking news: OFR will soon test my recommendations for a clearer layout: staggered first lines of paragraphs; blank half lines between paragraphs; horizontal lines, no vertical ones, in if-then tables.)

Excessive levels

(a)
(1)
(i)
(A)
(1)
(i)

Acceptable levels

(a) use routinely
(1) use routinely
(i) use rarely

To eliminate levels of paragraphs, look for opportunities to raise lower paragraphs to higher ones, paragraphs to sections, and sections to center headings:

2 paragraph levels

Subpart A — Debris

§ 1.1 State and tribal programs.

(a) In general, debris must not . . . .
(b) The following procedures apply . . . .
(1) States may . . . .
(2) Tribes may . . . .

Level eliminated

Subpart A — Debris

§ 1.1 State and tribal programs.

In general, debris must not . . . . The following procedures apply:
(a) States may . . . .
(b) Tribes may . . . .

Paragraphs as sections

Subpart A — Debris

STATE AND TRIBAL PROGRAMS

§ 1.1 General.
§ 1.2 State procedures.
§ 1.3 Tribal procedures.

Few techniques are as important to readable regulations as limited levels of paragraphs. Live by the rule: rarely use three levels and never use more.

You!

The most important word in regulatory writing is "you." Nothing does more to straighten out thinking, streamline writing, and speed up reading. Without "you," there's no plain English. Almost as valuable are other natural references to people, "I" and "we."

■ Rely on "you"

Get a fix on who must obey your regulation, and "you" will come naturally. Whether stated or implied, "you" overcomes three telltale marks of roundabout regulatory writing:

Roundabout	***Direct*** [*"You," defined earlier, is implied*]
The valve remains closed. [*static statement of fact*]	Keep the valve closed.
The valve is kept closed. [*vague passive voice*]	Keep the valve closed.
The operator keeps the valve closed. [*remote third person*]	Keep the valve closed.

Writing is easier when you talk directly to your readers. There are fewer gears to shift because "you" is the familiar word we all use in conversation and correspondence. "You" straightens out sentences and saves words. Many students tell me that "you" helps them understand the content better and spot omissions.

Beyond writing ease, "you" does wonders for reading. It pulls readers into a regulation, giving them a consistent point of view by which to see how all the complexity applies to them. Research shows that readers compensate for roundabout writing by imagining themselves in little dramas. Spared that effort by "you," readers have more energy to cope with the content.

Support for "you" is widespread:

- In his executive memorandum on plain language, President Clinton talks directly to agency heads by using "you," sometimes stated and sometimes implied: "I direct you to do the following: By October 1, 1998, use plain language in all new documents . . . ."
- The Office of the Federal Register uses "you" for a reader throughout its *Document Drafting Handbook* and calls for regulations to do the same.
- You'll see the difference "you" makes the next time you use the revised travel regulations by the General Services Administration, which talk directly to a reader.
- "You" appears in all the model regulations at the back of this book.

■ Ask "I" questions

By writing headings that ask "I" questions, you think more like a reader and pull that person into the sections. Statements that were aimed at no one become pointed requirements. Headings flow with greater consistency:

No particular audience	***Aimed at a reader***
1.1 Who is covered by this subpart?	1.1 Does this subpart apply to me?
1.2 What definitions does this rule use?	1.2 What definitions do I need to know?
1.3 How are applications evaluated?	1.3 How will my application be evaluated?

"I" questions and "you" answers create a conversation between headings and text. (You can hear it in the extended examples on pages 12, 118, and 119.) Some regulations use "you" in section headings *and* answers, but the effect is flat, a monologue rather than a conversation. "I" works better in section headings.

If-then tables

Complex choices are clearer when they appear in if-then tables and other side-by-side arrangements. Look for sentences and paragraphs that express variations on a theme. Arranged in a grid, those variations are easy to compare.

You have the makings of an if-then table where your draft presents a series of options and results. Often the tipoff is the repetition of "if" or its synonyms "when" and "provided." Usually "then" is just implied.

Dense text hides choices

(c) If you appeal an MMS decision or an order to pay any obligation under 30 CFR part 290 regarding Indian leases and —
(1) The amount under appeal is less than $1,000, MMS will suspend your obligation to comply with that order. As collateral for the obligation, MMS will use the lease surety posted with the Bureau of Indian Affairs.
(2) The amount under appeal is more than $1,000, MMS will suspend your obligation to comply with that order if you submit a surety instrument that MMS approves as adequate to guarantee payment of the obligation.

If-then table clarifies choices

(c) If you appeal an MMS decision or an order to pay any obligation under 30 CFR part 290 regarding Indian leases, the procedures in the next table apply:

If . . .	And if . . .	Then . . .
(1) The amount under appeal is less than $1,000		MMS will suspend your obligation to comply with that order. As collateral for the obligation, MMS will use the lease surety posted with the Bureau of Indian Affairs.
(2) The amount under appeal is more than $1,000	You submit a surety instrument that MMS approves as adequate to guarantee payment of the obligation	MMS will suspend your obligation to comply with that order.

***Thomas Murawski** has taught writing for 25 years, first at the U.S. Air Force Academy and now as a consultant. He has labored to improve regulatory writing since he was on the Reagan White House staff. Lately he has seen real progress.*

A Standard Motion Revised

Lynn N. Hughes

[This is reprinted from Volume 75, No. 8, of the *Michigan Bar Journal*.]

A. Original

This is an ordinary motion that might be filed in a U.S. district court. It's typical of the overwriting that occurs in lawsuit papers. The underlined parts are the words that contribute to the meaning.

Motion to Dismiss
of Franklin Well Control, Inc.

THE HONORABLE UNITED STATES DISTRICT COURT:

Now comes Franklin Well Control, Inc., hereinafter referred to as "Franklin," Third-Party Defendant in the above-styled and numbered action, and files this its Motion [moves] to Dismiss[.] pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and in support thereof would respectfully show unto the Court as follows:

I.

The action was initially filed by Garret A. Hobart [sued] against defendants Clinton Service Company, Clinton Producing Company, Clinton Pipeline Co., and Barkley Offshore Company, as the owners and operators of a special purpose drilling platform Clinton No. 6, located on the Outer Continental Shelf of the United States adjacent to the State of Texas. The lawsuit was filed on October 21, 1985 and claim[ed] that the plaintiff was an employee of Franklin. At no time has the plaintiff filed any claim[ed] or cause of action against Franklin in this action.

On April 2, 1986 Franklin filed its answer to the third-party complaint of Clinton Service Company, defendant and third-party plaintiff, based upon the original in which there was an attempt to state a cause of action based upon an alleged agreement of indemnification.

More recently, however, the defendant and third-party plaintiff Clinton Service Company has [added] attempted to state a claim based upon [of] negligence against the plaintiff's employer Franklin. As will be addressed more particularly hereinbelow, Clinton Service Company has no claim or cause of action against the plaintiff's employer Franklin on an independent theory of negligence.

II.

The Outer Continental Shelf Lands Act, 43 U.S.C.A., Sec. 1331, *et seq.*, makes the laws of the United States applicable to all artificial islands and fixed structures erected on the Outer Continental Shelf for the purpose of exploring for, developing, removing and transporting resources therefrom. Section 905 of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C.A., Sec. 901, *et seq.*, provides that the liability of an employer prescribed in Section 904 of the Act shall be exclusive and in place of all other liability of such employer to the employee, his parents, next of kin, and anyone otherwise entitled to recover damages from such employer on account of injury or death. This action is therefore barred by the exclusivity provisions of the Longshoremen's and Harbor Workers' Compensation Act and should be dismissed as to Franklin Well Control, Inc.

III.

In response to third-party defendant Franklin's Request for Admissions, third-party plaintiff [Clinton] has admitted to the following facts (the numbers correspond to the Admissions):

1. That the alleged accident in question involving Garret A. Hobart occurred on a fixed platform.
2. That the location of the fixed platform in question was at the time of the alleged occurrence involving Garret A. Hobart on the Outer Continental Shelf.
3. That the fixed platform on which Garrett A. Hobart had his alleged accident is more than three miles from the shore.

A true, correct and accurate copy of the Answers to Franklin's Requests for Admissions are attached hereto, marked as Exhibit "A" and incorporated herein by reference.

IV.

In light of the above, third-party defendant Franklin states that there are no disputed fact[s] issues with regard to whether it is an employer under Sections 904 and 905 of the Longshoremen's & Harbor Workers' Compensation Act, which sections were made applicable to this cause by way of the Outer Continental Shelf Lands Act, 43 U.S.C.A., Sec. 1331, *et seq*. Accordingly, the liability of an employer prescribed in Section 904 of the Longshoremen's & Harbor Workers' Compensation Act is exclusive and in place of all other liability of such employer to the employee and anyone who might otherwise be entitled to recover damages from such employer on account of injury or death. This action is therefore barred by the exclusivity provisions of the Longshoremen's & Harbor Workers' Compensation Act and should be dismissed as to Franklin Well Control, Inc.

V.

In the alternative, if and in the unlikely event that this Court determines that the Longshoremen's & Harbor Workers' Compensation Act does not apply to the facts of this case then, and in that event, this defendant says that at all times material hereto it [Franklin] had in force and effect a policy of Worker's Compensation Insurance and thus the third-party [Clinton's] claim is still barred under the applicable provisions of the Texas Workers' Compensation Act. A true, correct and accurate copy of such policy is attached hereto, marked as Exhibit "B" and incorporated herein by reference for all purposes.

WHEREFORE, PREMISES CONSIDERED, third-party defendant, Franklin Well Control, Inc., respectfully requests this Honorable Court to grant its Motion to Dismiss and dismiss this cause of action against it with prejudice.

Respectfully submitted,

B. Edited Version

This version is simply the underlined parts of the original without the fluff. Which reads better?

Motion to Dismiss
of Franklin Well Control

Franklin Well Control, Inc., [moves] to dismiss. Rule 12(b)(6).

Garret A. Hobart [sued] Clinton Service Company, Clinton Producing Company, Clinton Pipeline Co., and Barkley Offshore Company, as the owners and operators of special purpose drilling platform Clinton No. 6, on the outer continental shelf adjacent to Texas. The lawsuit claim[ed] that the plaintiff was an employee of Franklin. At no time has the plaintiff claim[ed] against Franklin.

[T]he third-party complaint of Clinton Service Company was on indemnification. Clinton [added] a claim [of] negligence against the plaintiff's employer, Franklin. Clinton has no action against Franklin on negligence.

The Outer Continental Shelf Lands Act, 43 U.S.C. § 1331, makes the laws of the United States applicable to all fixed structures on the outer continental shelf for developing resources. The Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901, provides that the liability of an employer [under] the Act shall be exclusive in place of all other liability of [the] employer to the employee and anyone otherwise entitled to recover damages from [the] employer. This action is barred by the exclusivity provisions of the Longshoremen's and Harbor Workers' Compensation Act.

[Clinton] has admitted:

1. The accident involving Hobart occurred on a fixed platform.
2. The fixed platform was on the outer continental shelf.
3. The fixed platform is more than three miles from the shore.

[The] Admissions are attached.

There are no disputed fact[s] whether [Franklin] is an employer under the Longshoremen's & Harbor Workers' Compensation Act, applicable by the Outer Continental Shelf Lands Act.

[Franklin] had in force a policy of Worker's Compensation Insurance and thus [Clinton's] claim is still barred under the Texas Workers' Compensation Act. A copy of [the] policy is attached.

Franklin Well Control, Inc., respectfully requests this Court to dismiss this action with prejudice.

Respectfully submitted,

C. Suggested Version

This is how it should be written.

Franklin's Motion to Dismiss Clinton's Third-Party Action

1. *Dismissal.* Franklin moves to dismiss Clinton Service Company's third-party action for indemnity and negligence because, as Hobart's employer, Franklin is protected by the Exclusivity Clauses of the Longshoremen & Harbor Workers' Compensation Act, as applied by the Outer Continental Shelf Lands Act, and of the Texas Workers' Compensation Act.

2. *Facts.*
   A. Franklin employed Hobart at the time of the accident on a fixed platform.
   B. The platform was on the US-Texas continental shelf and engaged in resource development.
   C. Clinton was the operator of the platform.
   D. Hobart sued Clinton, and Clinton sued Franklin.

3. *Longshoremen Compensation Act.* The Longshoremen & Harbor Workers' Compensation Act is a federal plan for injured workers that parallels the ordinary state workers' compensation statutes. It includes a provision that "The liability of an employer [under the act] shall be exclusive and in place of all other liability of such employer to the employee . . . and anyone otherwise entitled to recover damages from such employer . . . ." 33 U.S.C. § 905.

4. *Continental Shelf Land Act.* The Outer Continental Shelf Lands Act applies the Longshoremen Compensation Act to structures like the platform on which Hobart worked. 43 U.S.C. § 1331.

5. *Texas Act.* Franklin carried a policy of workers' compensation insurance covering Hobart; therefore, Clinton's action is barred by the similar exclusivity provision of the Texas statute. Tex. Rev. Civ. Stat. art. 8306 (1967).
6. *Conclusion.* Clinton's third-party action is barred by federal and state statutory law, and its action should be dismissed with prejudice.

Submitted respectfully,

Attachments:

A. Admissions

B. Insurance Policy

***Lynn N. Hughes** is a United States District Judge for the Southern District of Texas. Since 1973, he has been an adjunct professor at South Texas College of Law. He received his bachelor of arts from the University of Alabama, his doctor of jurisprudence from the University of Texas, and his master of laws from the University of Virginia. Judge Hughes serves as chairman of the advisors of the* Houston Journal of International Law *at the University of Houston and as a director of the Houston World Affairs Council. He was a member of the Texas Supreme Court's Task Force on Revision of the Texas Rules of Civil Procedure. Also, he has been a pro-bono advisor on constitutional law and privatization to the European Community, Moldova, Romania, Albania, Belarus, and the Ukraine.*

The Lessons of One Example

Joseph Kimble

It's unrealistic to think that any one example could possibly reflect the manifold sins of traditional legal writing — or all the remedies. Many members of Clarity have argued long and hard for a flexible, expansive approach to plain language. We know that there is no one solution or one set of guidelines.

Still, some of the sins of legalese are committed with such confounded regularity that you just want to scream. How can lawyers be so stubborn or indifferent or unskilled? When will they start to change? Why can't they learn at least a few basic techniques? Learning and practicing even some of the plain-language techniques would go a long way toward improving the state of legal writing. And having made a start, many lawyers would catch the spirit and change their writing dramatically.

Below is a typical example, a 1975 Michigan statute — specifically, Michigan Compiled Law 691.1502. It protects medical professionals who, like good Samaritans, voluntarily help someone in an emergency.

> **691.1502 Hospital or Other Medical Care Facility Personnel**
>
> (1) In instances where the actual hospital duty of that person did not require a response to that emergency situation, a physician, dentist, podiatrist, intern, resident, registered nurse, licensed practical nurse, registered physical therapist, clinical laboratory technologist, inhalation therapist, certified registered nurse anesthetist, x-ray technician, or paramedical person, who in good faith responds to a life threatening emergency or responds to a request for emergency assistance in a life threatening emergency within a hospital or other licensed medical care facility, shall not be liable for any civil damages as a result of an act or omission in the rendering of emergency care, except an

act or omission amounting to gross negligence or wilful and wanton misconduct.

(2) The exemption from liability under subsection (1) shall not apply to a physician where a physician-patient relationship existed prior to the advent of the emergency nor to a licensed nurse where a nurse-patient relationship existed prior to the advent of the emergency.

(3) Nothing in this act shall diminish a hospital's responsibility to reasonably and adequately staff hospital emergency facilities when the hospital maintains or holds out to the general public that it maintains such emergency room facilities.

There are fundamental flaws here that can be remedied by plain language. You can tick off the fixes as well as I can:

- Break up the first sentence, which is way too long. Critics of plain language often argue that long sentences are not necessarily bad; they can be managed. But lawyers almost never manage them well. And that leads to related deficiencies.
- Close up the gap between the subject of the first sentence, all those medical persons, and the verb phrase, *shall not be liable*. (And get rid of *shall*. Make it *are not liable*.)
- Consider a more general way to describe the list of medical professionals. How can you be sure that you have listed every kind of professional? And what happens when a new kind of professional appears, as it surely will? My redraft below — which uses "a licensed or certified medical professional" — is obviously more general than the original is. And I'd say that it's not too vague. I realize, though, that the choices between general and specific language, and between vague and precise language, are perhaps the most difficult and controversial issues in drafting.
- Fix the two critical ambiguities in the middle of that long first sentence. The overload produces a syntactic ambiguity before and after the two possibilities in the middle of the sentence: "who in good faith responds to a life threatening emergency or responds to a request for emergency assistance in a life threatening emergency within a hospital or other licensed medical care facility." Ambiguity one: what does *in good faith* modify? Just the first *responds* or also the second *responds*? Ambiguity two: what does *within a hospital or other licensed medical care facility* modify? Just the second *life threatening emergency*? Or does it also modify the first *life threatening emergency*? In other words, is a doctor protected if he or she responds to a life-threatening emergency along the side of the road?
- Group related material together. Notice that the statute puts one exception at the end of subsection (1) and another in subsection (2).
- Use vertical lists.
- Get rid of inflated diction, like *prior to the advent of the emergency*.
- Use more headings.

Below is a possible redraft. I'm assuming that the "in good faith" requirement always applies. I'm also assuming that the statute does not apply to a doctor who stops to help along the road; that is, as the original title suggests, the statute applies only within a medical-care facility.

Immunity of Medical Professionals in an Emergency

(1) Immunity for Responding to a Life-Threatening Emergency in a Hospital

Under the following circumstances, a licensed or certified medical professional is not liable for civil damages that result from giving emergency care within a hospital or other licensed medical-care facility:

(a) if the professional responds in good faith to a life-threatening emergency or to a request for assistance in a life-threatening emergency; and

(b) if the professional's actual hospital duty [job responsibilities?] did not require him or her [them?] to respond.

(2) Circumstances in Which the Immunity Does Not Apply

This immunity does not apply in any of the following circumstances:

(a) if the professional's conduct amounts to gross negligence or to willful and wanton misconduct;

(b) if a physician who responds had a physician-patient relationship [with the treated person?] before the emergency; or

(c) if a licensed nurse who responds had a nurse-patient relationship [with the treated person?] before the emergency.

(3) A Hospital's Continuing Duty To Staff Its Emergency Facilities

This act does not diminish a hospital's responsibility to properly staff its emergency facilities if the hospital maintains, or holds out to the public that it maintains, emergency-room facilities.

One last observation. In (1)(a), what is the point of specifying both of the "responds" possibilities — responds to an emergency and responds to a request for assistance in an emergency? Doesn't the first possibility swallow up the second? If we just said "responds in good faith to a life-threatening emergency," is there some danger that the statute might not be applied to a professional who responds to a request for assistance? I wonder. In any event, this is exactly the kind of uncertainty and possible redundancy that plain-language drafting tends to expose. And even if we err on the side of certainty and precision, we don't have to sacrifice clarity.

So how would you do it? I welcome your comments.

***Joseph Kimble** teaches legal writing at Thomas Cooley Law School in Lansing, Michigan, edits the "Plain Language" column in the* Michigan Bar Journal, *and is the managing editor of* The Scribes Journal of Legal Writing. *He recently published "Writing for Dollars, Writing to Please" in Volume 6 of the* Scribes Journal.

About Scribes

Scribes, like Clarity, is devoted to improving legal writing. Although Scribes is U.S.-based, the articles on drafting and legal language in *The Scribes Journal of Legal Writing* should be of interest to many Clarity members.

Membership is open to lawyers who have written a book or two articles (even short ones) or have edited a legal publication. Dues are US$65. For an application form, write to Glen-Peter Ahlers, Leflar Law Center, University of Arkansas, Fayetteville, Arkansas 72701-1201, U.S. Or e-mail him at gahlers@mercury.uark.edu. For more information, see www.shepards.com/scribes/home.htm.

News About Members

Mark Adler is starting a collection of judicial dicta and law reports in favor of plain language. Please send him anything that you come across. His contact details are on page 18.

Lord Bingham LCJ is to chair a panel making awards for commitment to alternative dispute resolution. Lawyers will be eligible for the awards.

Fiona Boyle was appointed Plain English Editor and Adviser to the Financial Services Authority. The FSA is being created from the merger of nine organisations currently overseeing different types of financial regulation. Once the legislation has been passed, it will be responsible for all UK financial regulation.

For the past five years, she worked at the Securities and Investments Board, where she introduced a number of plain-English initiatives in addition to drafting and editing literature for consumers and managing the Public Enquiries Department.

Sue Nelson has been elected to the Law Society's Council to represent the City of Westminster.

Malcolm Niekirk has qualified as an insolvency practitioner. This means that he is qualified to take formal insolvency appointments (as a liquidator or administrative receiver, for example). He remains a partner in Lester Aldridge. He wonders if there are any other solicitors in Clarity who are also insolvency practitioners.

David Spalding has moved from James, James & Hatch to Gwilym Hughes & Partners, also of Wrexham.

Sue Stableford is the Director of the Maine AHEC Health Literacy Center at the University of New England. She and a colleague have written a guide for health professionals called *Write It Easy to Read.* If you would like to order the guide, contact her at AHEC Health Literacy Center, University of New England, Hills Beach Road, Biddeford, ME 04005, U.S. E-mail: sstableford@mailbox.une.edu. She would like to hear from other Clarity members about legal obstacles — or perceived legal obstacles — to plain language in medical and health-care materials.

Other News

Shelley Dunstone reports that Clarity – South Australia has held several meetings this year. The meetings have included discussions about resolving specific drafting issues and about how to best promote an understanding of the use of plain English. Members have given several presentations on plain English to lawyers and other professional groups.

The **Pennsylvania Bar Association** has formed a Plain English Committee. The Committee plans to give awards for clear documents, offer courses for credit toward continuing legal education, and make some documents available on the Internet. One Committee member, Hollis Hurd, was quoted in the August 10 *Pittsburg Business Times*: "Our clients rave about our plain-English employee-benefit plans, about one-quarter the length of the normal 401(k) plan. Once the business community and others understand that legal documents can be written in plain English, they will ask their lawyers to do it or they will get new lawyers." The chair of the committee is Judge Richard Klein of the Philadelphia Common Pleas Court.

With Clarity's help, **Singapore's Academy of Law** recently put on a series of three 1.5-day workshops on plain legal drafting for bankers, conveyancers, and insurers.

Welcome to New Members

[contact names in square brackets]

Australia

Gale Jamieson, Deputy Parliamentary Counsel, Office of the Parliamentary Counsel, Northern Territory

Blake Dawson Waldron [Moyra McAllister], Melbourne, Victoria

Gail Williamson, consultant, Rozelle, NSW

British West Indies

Cheryl Neblett, Legislative Drafting Department, Caymen Islands Government

Canada

Clear Language Works [Diane Macgregor], Dartmouth, Nova Scotia

Anna Fried, attorney, Boutiliers Point, Nova Scotia

Major Vihar Joshi, attorney, Office of the Judge Advocate General, Canadian Forces

Linda Terras, attorney, Ottawa, Ontario

England

Gordon Ashton, District Judge, Cumbria

James Crowe, bookseller, London

Stephen Gerlis, District Judge, London

Grants Solicitors [Simon Grant], Croydon, Surrey

Christine Kendall, solicitor, Oswestry, Shropshire

Moore & Blatch [Colin Bosher], solicitors, Southampton

Colin Pryce, chartered (company) secretary, London

Jeffrey Shaw, solicitor, Sheffield

Geoffrey Shindler, solicitor, Halliwell Landau, Manchester

James Trafford, solicitor, Wilsons, Salisbury

Wace Morgan [C.E. Swan], solicitors, Shrewsbury, Shropshire

Japan

Kimihiro Imamura, Itochu Academy Inc, Tokyo

Netherlands

Dr. Hans Reinders, legal translator, NS Maasbree

Scotland

Joanna Thompson, student, Edinburgh

Singapore

Michael Hwang SC, attorney, Allen & Gledhill, City House

USA

Joan B. Bryan, Write for Results, Pikesville, Maryland

David Caner, attorney, Manhattan Beach, California

Julie Clement, attorney, Lansing, Michigan

Marian Connolly, U.S. Department of Agriculture, Washington, D.C.

Brent Cutler, Federal Aviation Administration, Atlantic City, New Jersey

James Dodds, attorney, Austin, Texas

William DuBay, technical writer, Phoenix Technologies, Costa Mesa, California

Judith Gordon, Active Voice, San Francisco, California

Harvard Law School [Harold Moren], Cambridge, Massachusetts

Jeanne Huey-Erickson, attorney, Dallas, Texas

Jeffrey Jablonski, attorney, Kearny, New Jersey

J. Richardson Johnson, Circuit Judge, Kalamazoo, Michigan

Judicial Council of California [Tom Kitzmann], San Francisco, California

Duane Kampa-Kokesch, attorney, Kalamazoo, Michigan

Loyola Law School Library, Los Angeles, California

Ohio State University Law Library, Columbus, Ohio

Paula Pomerenke, professor, Illinois State University, Normal, Illinois

Regina Shepherd, attorney, Elizabethton, Tennessee

Gary Spivey, Shepard's Publications, Colorado Springs, Colorado

Patricia Sproat, Office of the Attorney General, Clinton, Mississippi

Stacey Walter, attorney, Lansing, Michigan

Christopher Wren, Office of Corporation Counsel, Barron, Wisconsin

University of Akron Law Library, Akron, Ohio

Clarity: Application for membership (please keep original and send photocopy)

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