

A movement to simplify legal language

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

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From the chair

This is my first message from the chair. So let me start by thanking my predecessor, Mark Adler, for all his work over the past decade or so. If anyone deserves the title “Mr Clarity”, it is Mark. Under his guidance, Clarity has grown from its British base into a genuinely world-wide organisation. It has members in every continent, and they work in an astonishingly wide variety of occupations. Mark will say that this success is due to the efforts of many people, working together – and that is true. But those of you who know Mark and the work he has done for Clarity will know that his drive and commitment – and his cheeky humour – have enthused us all. So on your behalf, may I say a genuine “Thank you, Mark”, for all you have done.

I’m glad to report that Mark has agreed to continue co-ordinating Clarity’s website, and collating members’ email details.

Now let me tell you something of Clarity’s plans for the future. The most exciting is a proposed conference in Oxford, England, on the second or third weekend in July 2002. We hope to stage the conference jointly with the Statute Law Society. A joint conference will help us share the financial and administrative burdens, and of course many of the aims of the two organisations are similar. The overall theme will be international improvements in statutory drafting, but there will be sessions of interest to all who work with legal language. After all, good legal drafting uses the same basic techniques, whatever the type of document. Clarity members will lead some of the discussions. We plan to involve leading figures in legal drafting from around the world – including a “masterclass” by acknowledged experts. And the costing will be kept as low as possible – so you can all come! More details later.

We would also like to improve email access with members. Most of us now have email addresses. It is much easier, and less costly, to inform you of future events if we can contact you by email. To that end, if you are on email, could you let Mark

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(continued from page 1 – From the chair)

know your email address: his address is adler@adler.demon.co.uk. And if you are not on email, don't worry: we plan to continue to contact members by ordinary mail as well.

So you know what's going on: at its May meeting, the Clarity committee resolved (amongst other things) to:

- award the 2000 Clarity drafting prize to Dr Robert Eagleson, for a redraft of a newspaper agreement
- review membership lists
- consider publishing a directory of members (but remaining alert to privacy issues).

And finally, a date for your diary: Clarity's annual meeting will be held on Saturday, 3 November, 10.30 am, at "Briefs", Lincoln's Inn, to be followed by lunch (optional) at a nearby restaurant. Come and participate in Clarity's future, and meet other members.

Peter Butt

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Editorial

As most of you know, Mark Adler stood down as editor of *Clarity* in November 2000. Phil Knight took over as journal editor-in-chief. He invited me, as South Africa's Clarity representative, to be the guest editor for this edition. My guest editorship is a continuation of the occasional 'regional rotation' of *Clarity's* editorship.

This issue therefore has a distinct South African flavour. To some extent this is an extension of an earlier taste of plain language on South African soil, covered in *Clarity* 33 and 34 of July 1995 and January 1996. The then Minister of Justice, Dullah Omar, contributed to the 1995 issue. He emphasised the empowering role of plain legal language in the lives of ordinary citizens, adding the following:

We must create a culture of human rights that gives South Africans both the confidence and an internalised understanding of their right and role in society. Simplicity of language reflects a commitment to democracy.

This issue examines to what extent the desired accessibility and simplicity have been achieved. However, a comprehensive answer or generalised conclusion can hardly be reached on the basis of these contributions alone. Important issues arising from the complexity of multi-lingualism in South Africa are also not addressed here.

Some of the complexities arise from a trend towards using only English as legislative language. Before the transition in 1994, legislation was published in two languages (Afrikaans and English, then the only official languages). South Africa now has eleven official languages. The Constitution was drafted in all these languages. However, this is not the case with subsequent legislation. The Advisory Board on Social Development Act (3 of 2001) was published in English and Zulu. Others appeared only in English (such as the Promotion of Access to Information Act 2 of 2000, the Promotion of Administrative Justice Act 3 of 2000 and the Promotion of Equality and Prevention of Discrimination Act 4 of 2000).

The plain legal language movement took off in South Africa after 1994, as part of dismantling old, outdated structures and views. Possibly the movement's greatest success in South Africa is the final (1996) Constitution. Even before its drafting, though, some legislation (such as the Labour Relations Act 66 of 1996) was drafted according to plain language principles.

These trends have continued (see the article of Ellison Kahn later in this issue). Some judges have explicitly grappled with the irritations of phrases like "The parties have married on (date), which marriage is still in force" (*Wunsh J in Stassen v Stassen* 1998 2 SA 105 (W) at 108).

In 1999, the Faculty of Law at the University of Pretoria organised a conference on plain legal language. Mark Adler was one of the speakers. A South African publisher is publishing the proceedings of that conference as a book, *Plain legal language for a new democracy*, at the same time as this issue of *Clarity*.

I thank all South African (and other) contributors, especially Annelize Nienaber. She effectively is the assistant editor of this issue. Thank you, also, to Phil Knight and Joe Kimble (for proofreading) and Teresa Lynne (for layout).

Frans Viljoen

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Section 1 – Articles with a South African focus

Plain English in law and commerce in South Africa

by Ellison Kahn SC

English is one of eleven official languages in South Africa. The others, according to section 6 of the Constitution of the Republic of South Africa, Act 108 of 1996, are Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, isiNdebele, isiXhosa and isiZulu. All, save Afrikaans, are languages spoken at home only by blacks (Africans). Only 9 per cent of the population use English as their first language. Yet English is the predominant language in law and commerce. Only Afrikaans, and then to a diminishing extent, owing largely to the concentration of blacks on English, has a place in law and commerce. Acts of Parliament have appeared traditionally only in English and Afrikaans. The black languages are virtually non-existent in law and commerce. Whence the need, so far as is practicable, to promote the cause of the plain English movement. Particularly as nearly half the population is functionally illiterate. Thus it is disappointing that the support in favour of the movement is so limited here. It is not comparable to the support in countries such as the United Kingdom, the United State of America and Australia.

A drafter of words, be it a legislative enactment, a contract, a will or any other type of legal or formal instrument, has no vocal aids at hand. Visual aids are available but exceptionally and then only in the form of symbolic diagrams. He or she is virtually confined to written communication, made up of words, which, as Ludwig Wittgenstein pointed out, have blurred edges. Language has inherent frailties, and words are imperfect instruments for expressing complicated concepts with complete clarity. Modern hermeneutics (the science of understanding the theory of interpretation of written texts) is not confident of the possibility of always arriving at an unambiguous meaning to be given to the words used by the drafter of a document. The hunter may find certainty an elusive prey, yet pursue it the hunter must.

No one minds how experts in a profession or in associated professions write to one another, provided they understand one another. To the person not trained in the discipline or disciplines, much of the content may be unintelligible. An

example is a medical doctor's prescription to a pharmacist. But he or she has no cause to complain. In South Africa there is growing support for the views of the Law Commissions of England and Wales and of Scotland in a joint publication in 1969¹ that accountants, officials, business people, taxpayers and even the ordinary citizen should be able to ascertain the meaning of legislative enactments without having to consult a lawyer. One should go further and say that the same applies to an attorney's (solicitor's) letter and to a communication from a governmental source.

Ideally, Acts of Parliament, local authority bylaws and governmental regulations should be understandable to John and Jane Citizen. This ideal can never be attained, for legal technical terms and language cannot entirely be replaced by a lay-person's language. Take, for instance, the use of Latin expressions in South African law. Some are so commonplace that they have become Anglicised and so are unobjectionable. *Ex officio, inter alia, in camera, prima facie, bona fide*, for example, are found in many statutes. Others appearing in statutes may well not be understood by even the well-educated lay person: the Deeds Registries Act 47 of 1937 speaks in several sections of 'the exception *de duobus vel pluribus reis debendi*', the Intestate Succession Act 81 of 1987 in section 1(4)(a) refers to division of the intestate estate '*per stirpes*'; the expression '*curator bonis*' is used in several sections of the Prevention of Organized Crime Act 121 of 1998.

Those legal terms of long and established use could, of course, be accompanied by an attempted explanation of their meaning without the explanation being made part of the enactment. It must be borne in mind that while statutory enactments are not replete with Latin words and expressions, wills, contracts and other legal documents often are. These are difficult to replace, being legal terms derived in the main from South Africa's inheritance of the Roman-Dutch law of the eighteenth-century Netherlands. These words and expressions, and so too some words and expressions in the Dutch of those times, are part of the lexicon of the law, not fully known to the average lay person.

Every discipline has its own lexicon, little understood by those not trained in it. Each has its conventions in the use of language, to enable it to be employed effectively for a particular purpose,

be it expository or to state intentions. But it is frequently claimed that the discipline of the law is, of all disciplines, the one whose product should as far as possible be understandable to all, for all are directly affected by it. While technical terms and legal language cannot be replaced by the language of the lay person, much can be done to lead to clarity of expression.

Clarity in the drafting of legislative enactments, contracts, wills and other legal instruments can avoid the hapless citizen having to travel the long, sad and expensive road culminating in litigation that benefits only the legal profession. Such documents should attempt to be unambiguous, coherent, free of vagueness, illogicality, over-precision and unintended generality, to be in full accord with all relevant legal principles and rules, and to convey the precise meaning intended.

South Africa has no general legislation along the lines of the Consumer Product Warranty Act of the United States, which requires creditors to disclose the contents of a proposed consumer-credit contract in detail, conspicuously and ‘in simple and readily understood language’. The only step the legislature has taken is passing section 5 of the Credit Agreements Act 75 of 1980. It states that the wording of section 13(1), which gives the credit receiver (such as the buyer on hire-purchase) the right in certain circumstances to terminate the agreement, must be printed in ‘bold type capital letters ... , with a clear space of not less than one centimeter immediately between that wording and any other wording on the same page’.

Business firms in South Africa are gradually beginning to realize the benefits they can derive from making documents they use more comprehensible and better constructed. This results in a drop in the costs of administration, in handling inquiries and complaints arising from failure of customers to understand documents and in training staff to deal with them and to explain the products being offered. It can also improve decision-making by management. Documents would often emerge shorter. Public relations would be enhanced.

Private firms are starting to emerge to guide banks, insurance companies, commercial bodies and even firms of accountants to redesign contracts and other documents to produce clearer and plainer wording. One such firm is Plain Business Writing of Sandton, Gauteng province, which has advised many bodies.

The government is also involved in cleaning up documentation. Of recent years the statute book has attained a somewhat friendlier appearance. A few Acts in particular attempt to help the reader in

understanding what is being conveyed, some being of particular concern to workers. For instance, the Labour Relations Act 66 of 1995 in every section involved prints in italics a word that is defined in the definition section. Footnotes explain references to certain concepts that are explained in other provisions or refer to ‘flow diagrams’ in Schedule 4. There appear fourteen carefully arranged flow diagrams. To take an example, flow diagram 3, headed ‘Collective Agreements’, shows the steps to be taken to resolve a dispute about the interpretation or application of a collective agreement (one concerning terms and conditions of employment between registered trade unions and employers’ organisations). Both the National Water Act 36 of 1998 and the National Forests Act 84 of 1998 under the heading of each chapter give a description of its content.

Recent legislative enactments tend ever more to jettison the peremptory ‘shall’ and replace it with ‘must’ or (infrequently) ‘is required to’, or a simple statement of a situation. Examples are ‘A councillor vacates office during a term of office if ...’, in place of the previous standard formulation ‘shall vacate office’.²

Recent statutes, judgments and writings by lawyers continue to have considerable regard for what the late David Mellinkoff in his superb book *Legal Writing: Sense and Nonsense*³ called the ‘junk antiques of the legal vocabulary’. They are archaic retentions, often imprecise, yet used frequently and almost reflexively by, I would say, most judges and lawyers. As an editor of books and legal journals, I have eliminated them without permission of the authors. Take *said* (and its blown-up cousins, *aforsaid* and *aforementioned*), *herein*, *hereof*, *thereof*, *whereof* and a host of other archaisms that ought to be buried in the cemetery of dead words, such as *aforegoing*, *hereament*, *hereinafter*, *therefrom*. The pronominal use of *same* or *the same* is a heavy, clumsy, unnecessary and sometimes confusing archaism, but it continues to attract drafters. The irritating expression *the said* is still used by some judges and lawyers even though its use is never called for. And, despite one member of the Bench recently criticising it, the use of the relic of the past called the coupled synonym remains; so, for instance, *null and void* and *save and except*.

In recent legislation there has been a commendable avoidance of using *he*, *him*, *his* and *himself* so as to embrace also *she*, *her* and *herself*. The cost of the elimination of sexist language is not inconsiderable, however. It is not possible always to avoid couching a sentence that is clumsy or that lacks euphony or the cadence of pleasing English. To

escape the constant use of *he* or *she* and similar constructions, Parliament in passing the Constitution of 1996 used *they*, *them*, *their* and *theirs* in a singular sense. This aroused the ire of a number of scholars, who condemned the use of *they* as a singular sex-indefinite nominative personal pronoun.

Their objections apparently prevailed, for subsequent Acts have used the *he* or *she* and similar constructions, unless they could be avoided by a device such as repetition of the noun involved. The result of the elimination of the '*he* embraces *she*' convention has been a mite of a contribution to clarity. It is doubtful if a large number of legal practitioners have followed the legislature's lead.

One readily available device to add to clarity of exposition is very seldom resorted to by government or private drafters – the use of illustrative examples. With wills, for instance, they could in the hands of an experienced drafter help show precisely what the intention of the testator was. Yet there seems to be a fear by lawyers of using the device. The legislature has apparently done so twice, following the advice of Jeremy Bentham and the precedents set by Thomas Babington Macaulay and later Sir James Fitzjames Stephen in the drafting of the Indian Penal Code, the Indian Evidence Act and the Indian Contract Act. The first occasion was in section 30(1) of the Bills of Exchange Act 34 of 1964 (based on the United Kingdom legislation) in which examples of a restrictive endorsement are given. The second was in the Labour Relations Act 66 of 1995 in Schedules 2 and 4, in which a few examples are given of meeting the requirements of the statute, the examples not being part of it.

The support of the legal profession in South Africa for the plain English movement has been lacking. The reasons are surely those that have prevailed, often to a lesser degree, elsewhere. I have not heard of a copy editor for improvement of draft documents and precedents of a legal firm, of the type encountered in the United State, Britain and Australia.

Most members of the legal profession are understandably afraid that words and phrases that have become legal terms of art might be assigned different meanings by the courts were they replaced by simpler words and phrases. These lawyers would subscribe to the motto of the Earl of Northampton '*Via trita, via tuta*': 'The beaten path is the safe path'. But this fear is frequently exaggerated, and with small consumer contracts might not be a deterrent to plain English at all.

A second cause of resistance to simplification of legal documents, apart from the cost of embarking on it, is that a firm's precedents might have to be

radically revised. Office precedents are available at a touch of a button. Even if not ideally suited to the occasion, the outcome is charged as if it were the outcome of original thought. The antidynamic property of inertia is great.

None the less, there are books that are dedicated to the protection of consumers, urging them always to read a document before signing it. Efforts are made to explain to John and Jane Citizen the meaning of legal terms and rules. The Law Society of South Africa and some other organisations issue manuals aimed at this end and support the project Street Law, which in attractive publications tells people, in particular schoolchildren, in simple language and with illustrations of their legal rights and how they can protect them.

Business is learning fast that customers are attracted by the use of clear, simple language in consumer advertisements and explaining the broad content of a detailed document that an offeree is asked to sign.

The new, democratic South Africa is gradually attempting in various ways to put an end to obfuscatory and incomprehensible documents.

Endnotes

- ¹ The Interpretation of Statutes' *Law Com* No 21 and *Scot Law Com* No 14(1969) 5.
- ² Section 27 of the Local Government Municipal Structure Act 117 of 1998.
- ³ (1982) 2.

Ellison Kahn is emeritus professor of law at the University of the Witwatersrand, Johannesburg. He is an advocate of the High Court of South Africa, holding the title of senior counsel. He has been involved in editing the South African Law Journal since 1949; from 1969 to 1999 he was its sole editor.

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S v Soci 1998 3 BCLR 376 (E): High Court (Eastern Cape):

"The documents supplied for the use by police operating in the field should set out the rights of arrested and detained persons fully in clear and simple language. It is for example not sufficient to inform the detainee in the abstract language of the Constitution that he has the right to have a legal practitioner assigned to him/her at State expense, 'if substantial injustice would otherwise result'. The accused should be informed in practical terms of the availability of the services of a legal practitioner at that place and time, and what he should do to obtain State assistance. These documents should not be unduly prolix and repetitive, as this could confuse the detainee, and at the same time bog down the police investigation."

South African banks must use plain language

by William Lane

The Banking Council of South Africa, of which all the major banks are members, adopted on 1 April 2000 a Code of Banking Practice that is, to an extent, based on the Banking Code of the British Bankers' Association. Compliance is monitored and enforced by the Office of the Banking Adjudicator.

Under the South African Code, all banking contracts were to be revised in plain language before 1 October 2000. The Adjudicator was given a discretion to decide whether reasonable steps had been taken to introduce such contracts before that date. When the date arrived, the Banking Council informed the Adjudicator that most of the major retail banks had complied to some extent in meeting the deadline. The process had, however, been delayed by the banks' efforts to avoid duplication of effort.

The Adjudicator remained concerned that contracts remained in existence which were not in plain language and fair in substance as required by the Code. The Adjudicator accordingly announced the following in a Media Statement of 11 November:

Not all written banking agreements have been revised in "plain language" and rendered free of unfair provisions by the deadline of 1 October 2000 set by the Code of Banking Practice. To avoid this giving rise to any injustice, the approach of the Office of the Banking Adjudicator will be, in making recommendations relating to complaints being handled by it in respect of contracts entered into between customers and their banks after 1 October 2000, to disregard any unfair term or condition. Legal and technical language will likewise be disregarded unless the bank can show that it was explained to the complainant.

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Clarity Document Services

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

1. Drafting

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

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

2. Vetting

A Clarity vetter will consider a document and approve it as drafted; approve it subject to minor changes; or reject it with a note of the reasons.

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

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

Common principles

In both cases:

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

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

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Plain language in the South African Civil Aviation Regulations

by Mark Lister

The South African Civil Aviation Regulations 1997 (CARs), along with their associated technical standards, comprise about 2500 pages of legislation. Crammed full of ambiguities, obtuse and imprecise language, impossible requirements and poor grammar, they test the resolve of even the most law abiding person. But the Air Navigation Regulations 1976 that they replaced were also difficult to understand and in places ambiguous or obscure, so the case for a new set of regulations was a strong one.

When the CARs were introduced, regulators, realising that portions were totally unusable, excluded some parts, preferring instead to allow the old and new regulations to coexist. This is an uncomfortable arrangement; the removal of the old regulations is a priority. A single set of obscure regulations is preferable to two.

The bureaucracy previously tasked with enforcing apartheid laws retains some of that prescriptive mentality. The CARs formalised an informal committee of stakeholders, a committee tasked with evaluating proposals for their improvement. But the committee, like its apartheid sponsored predecessor, did not feel it needed to account to the public. I challenged this and have been rewarded by an abrupt change of policy. So far over 200 amendments to the CARs have been proposed, most to alter fees or correct obvious ambiguities. Few proposals have succeeded as amendments to the CARs.

Users of the regulations have remained largely indifferent. Most choose to rely on consultants and word of mouth to discover what is required of them. Some organisations have failed to comply with the new regulations for over two years. Forcing people to choose between breaking the law or earning a living fosters disrespect for the law from potentially law abiding people. There is no way to measure the affect on safety, but in 1999 over a dozen people died in circumstances where disregard of basic regulations contributed directly to their deaths.

For some time I have put forward a case for plainer regulations. I have used plainer rewrites of proposals to expose ambiguity or absolute silliness. And I moved the debate from behind closed doors to the public arena by publishing portions of the committee's documentation.

I have had the following encouragement so far:

- The Ministry of Transport has made available

substantial funds for improvement of the regulations.

- The Commissioner acknowledged in a media release that regulations ought to be written in “accessible language”.
- A now aborted project called for a review of the regulations and “accessibility thereof”.
- The National Department of Transport's representative indicated at a committee meeting that a particular proposed amendment would not receive Ministerial approval unless redrafted.
- Recently amendments proposed by the Civil Aviation Authority appear plainer.
- Proposed amendments I had labeled as unacceptable without a socio-economic analysis (to use some jargon) appear to have been shelved.

I am not the only person who believes the current regulations are poorly written: One of the earliest proposals challenged a regulation relating to alcohol testing:

No flight crew member shall commence flight duty while the concentration of alcohol in any specimen of blood taken from any part of his or her body, is more than 0,00 gram per 100 milliliters.

The proposer – a pilot's organisation – had this to say:

The wording of this regulation is clumsy! Where do blood samples get taken from: an earlobe, the tongue, behind the eyeball? Taking blood samples is recognized practice and doesn't need definition in the regulations.

Plain language seems to be taking hold throughout aviation regulation. In Australia the Civil Aviation Regulations 1998 are particularly clear. New Zealand has a complete set of fairly plain regulations. And in the United States the FAA has committed to plain language throughout the administration: their new Part 11 is a model of simplicity and clarity. We use all three countries (and some others) as models when considering changes to our own air law. Potentially the hard work done by drafters in other countries will benefit the plain language effort here.

The arguments for plain language in South Africa are compelling. Our plain language Constitution makes the arguments for legalese – if there are any – hollow and insincere. At the National Department of Transport they are more so since Dullah Omar, a plain language supporter, is now our Minister of Transport. I look forward to a culture of plain language developing in South Africa – perhaps throughout the region.

Mark Lister is a pilot.

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Plain language and developing human rights materials

by Derrick Fine

The 2001 High Court case of The Pharmaceutical Manufacturers' Association v The Government of the Republic of South Africa has focused international attention on the right of access to health care and, in particular, access to affordable treatments for people living with HIV or AIDS.

This article explores the use of a plain language approach in developing a resource book to make the socio-economic rights set out in South Africa's Constitution, such as the right of access to health care, easily understandable and more accessible for all people.

Events shaping the increasing use of plain language in South Africa

South Africa's interim Constitution of 1993 and new Constitution of 1996 heralded a new era of opportunity for developing a plain language culture and practice:

- The Constitutional Assembly took the drafts of our new Constitution through a rigorous process of public participation and user group testing, including a specific focus on plain language.
- The new Constitution itself protected the right of access to information, and included a broad range of civil, political, economic, social and cultural rights.

This conducive environment encouraged attempts to use plain legal language in:

- Legislation and policy documents in several government departments
- Private sector contracts, forms and other documents
- Legal resource materials for public information and human rights training.

The South African non-governmental organisation (NGO) sector has taken a strong lead in developing plain language human rights and public information materials, covering topics such as:

- HIV/AIDS and the law
- Women's rights and gender issues
- Socio-economic rights
- Election laws and voter education
- The monitoring of Parliament and the statutory institutions supporting constitutional democracy.

The aim of the resource book: Socio-Economic Rights in South Africa

Let us look at *Socio-Economic Rights in South Africa: A Resource Book*, produced by the

Community Law Centre at the University of the Western Cape, as an example of our NGO sector's use of plain language in producing accessible human rights information materials.

Previous South African human rights materials placed a much greater emphasis on civil and political rights. The socio-economic rights in South Africa's new Constitution were a product of a very long struggle against poverty, discrimination and inequality. As a result, the Community Law Centre decided to develop a resource book focusing specifically on socio-economic rights. The book aims to:

- Introduce socio-economic rights and their enforcement in South Africa and internationally.
- Explain the meaning of specific rights such as land, housing and health care rights.
- Raise awareness and inspire action to claim and promote these rights.
- Provide useful resource materials on socio-economic rights.

A plain language approach to developing the resource book

We decided to use a plain language approach to help develop a more accessible resource book – in other words, we holistically integrated a plain language vision into our development of the book:

- *Text:* writing in clear, user-friendly language at the level of understanding of most users (for example, legal advice office workers, human rights activists, civic organisations).
- *Methodology:* facilitating a practical understanding of socio-economic rights through the frequent use of examples, guidelines, court case summaries, case studies and talking points.
- *Structure:* organising and sub-dividing content in a logical, consistent and reader-friendly way.
- *Illustration, layout and design:* presenting material in an appealing, flowing and reader-friendly style.

Integrating plain language into the book's development process

We included a plain language vision in all the key steps followed in developing and producing the resource book.

Budget and setting up a team

A plain language editor was part of the book development team and these costs were included in the overall budget. The team also included writers from a range of NGOs working in the field of socio-economic rights, content editors, an illustrator and a designer.

Planning workshop

Plain language, structure and style guidelines were discussed and developed with all chapter writers before they began writing.

First content and plain language edits

On completion of a first content edit, the first plain language edit included a special focus on:

- Harmonising the very different writing styles and accessibility levels of the 12 different chapter authors, and
- Developing consistent and accessible terminology across chapters.

Expert comments

We received detailed comments and feedback on content and language aspects of each chapter from experts identified for specific chapters.

Preparation for field-testing workshop

The plain language editor worked closely with the content editors, the illustrator and the designer in preparing three chapters for a field-testing workshop.

Field-testing workshop

The plain language editor participated in a two-day user group testing workshop, where detailed feedback was received on structure, content, language, illustration, layout and design.

Second content and plain language edits

Following a second content edit, there was a second plain language edit of changes based on expert comments, field-testing feedback and content updates.

Checking during illustration, design and production

The plain language editor continued working closely with the content editing and production team to keep an eye on aspects such as:

- The use of plain language in all illustration captions, graphic headings, the book introduction and cover, and publicity materials.
- The impact of layout and design decisions on the accessibility and flow of text.

Using plain language principles and tools

In our attempts to make often dry and dense text more accessible, we used a range of plain language principles and tools in writing, editing and producing the resource book.

Wherever appropriate, we applied recognised plain language principles and guidelines so as to, for example:

- Break information into digestible pieces, linked to headings

- Use shorter sentences and paragraphs
- Use point-form lists
- Explain necessary legal-technical terms in context or in a word list
- Avoid formal language in explaining or linking text
- Use the active voice
- Use the second person ‘you’ to relate directly to readers
- Use gender-sensitive or gender-neutral language.

We used a number of plain language tools and techniques to assist readers:

How to use the manual

This introductory section directed readers in finding information, and in using lists of abbreviations and key words, and guiding symbols.

Finding information

We made information easier to find and use through:

- A general contents page at the front of the book
- A more detailed chapter contents page at the start of each chapter
- A numbering system designed for easy cross-referencing
- Placing all cross-references in the margins
- Discussion ideas at the end of chapters to encourage readers to engage with the text
- Specific chapter references and resource materials at the end of chapters
- A selection of general resource materials at the end of the book
- A back cover pocket with lists of useful contacts for information and assistance.

Understanding abbreviations and key words

We helped readers understand the many abbreviations and difficult terms through alphabetical lists of:

- Abbreviations and acronyms (at the front of the book)
- Chapter-specific key words, with plain language definitions (at the start of each chapter)
- All key words used in more than one chapter, with plain language definitions (at the back of the book).

Guiding symbols

We designed specific symbols to highlight and facilitate easy use of:

- Case studies – learnings from community actions or experiences
- Court cases – decisions illustrating the interpretation of the law

- Examples – practical examples to explain text
- Guidelines – tips on steps for taking up problems or issues linked to socio-economic rights.

Potential application in other initiatives

The experience of developing *Socio-Economic Rights in South Africa: A Resource Book* and similar NGO materials shows how the integration of plain language into the materials development process, and the creative use of plain language principles and tools, can turn legal resource materials into a practical tool for making rights real.

These important precedents can hopefully be applied in other South African and international materials to empower people and organisations to:

- Influence laws and policies
- Run campaigns, and
- Challenge violations of human rights.

An exciting new initiative is the Plain Language Project being piloted during the first half of 2001 in South Africa's Parliament under the auspices of the Language Services Section of Parliament and the European Union's Parliamentary Support Programme. This pilot project aims to develop appropriate plain language policy and guidelines, and train parliamentary staff in the use of plain language in the production of selected documents, such as committee reports and public factsheets, in English and other official South African languages.

To order a copy of *Socio-Economic Rights in South Africa: A Resource Book* (404pp), please contact:

The Director, Community Law Centre
University of the Western Cape
Private Bag X17
Bellville 7535
South Africa
Phone: (21) 959 2950 Fax: (21) 959 2411
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Acknowledgement

Thanks to Sandy Liebenberg, co-editor of the resource book, for her comments on a draft of this article.

Derrick Fine, a Training, Plain Language and Research Consultant, was the plain language editor of the resource book. Since 1980, Derrick has written and edited a wide range of human rights, paralegal and legal materials and documents, and has designed and facilitated plain language and paralegal skills training programmes in South Africa, Namibia, Zimbabwe, Malawi, Kenya, Uganda, Ethiopia, Gambia, Morocco and Palestine.

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“There is no reason why the law should be, and remain, an occult science understood only by lawyers. In fact society's distrust of lawyers and the law is mainly due to the tendency of lawyers in the past to keep the law to themselves.”

M.M. Corbett, a previous South African Chief Justice

A search for clarity in South Africa's new equality legislation

by Annelize Nienaber

The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (Equality Act) is aimed at eradicating inequalities still permeating post-apartheid South African society. The Equality Act promises to facilitate 'the transition to a democratic society, [...] marked by human relations that are caring and compassionate'¹ and to 'eradicate social and economic inequalities'.²

In this short paper I critically appraise the comprehensibility of the language in which the Equality Act is written. I consider whether the promise contained in the preamble to the Act does not effectively nullify itself given that the Act is written in language that is accessible almost exclusively to legislators and members of the legal profession.

Analysis of the Equality Act

Legislation is drafted for four groups of readers – members of Parliament, officials administering the particular Act, judges, magistrates and lawyers and persons affected by the Act. Once an Act has been passed, it is of vital importance that the fourth group – persons affected by the Act – be able to understand its contents. They must understand what they are entitled to or what they are required to do to escape penalties.

Sections 7, 10 and 12 of the Equality Act are reprinted here for the sake of easy reference:³

Prohibition of unfair discrimination on ground of race

7. Subject to section 6, no person may unfairly discriminate against any person on the ground of race, including –

- (a) the dissemination of any propaganda or idea, which propounds the racial superiority or inferiority of any person, including incitement to, or participation in, any form of racial violence;
- (b) the engagement in any activity which is intended to promote, or has the effect of promoting, exclusivity, based on race;
- (c) the exclusion of persons of a particular race group under any rule or practice that appears to be legitimate but which is actually aimed at maintaining exclusive control by a particular race group;
- (d) the provision or continued provision of inferior services to any racial group, compared to those of another racial group;
- (e) the denial of access to opportunities, including access to services or contractual opportunities for rendering services for consideration, or failing to

take steps to reasonably accommodate the needs of such persons.

Prohibition of hate speech

10. (1) Subject to the proviso in section 12, no person may publish, propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to –

- (a) be hurtful;
- (b) be harmful or to incite harm;
- (c) promote or propagate hatred.

(2) Without prejudice to any remedies of a civil nature under this Act, the court may, in accordance with section 21(2)(n) and where appropriate, refer any case dealing with the publication, advocacy, propagation or communication of hate speech as contemplated in subsection (1), to the Director of Public Prosecutions having jurisdiction for the institution of criminal proceedings in terms of the common law or relevant legislation.

Prohibition of dissemination and publication of information that unfairly discriminates

12. No person may –

- (a) disseminate or broadcast any information;
- (b) publish or display any advertisement or notice, that could reasonably be construed or reasonably be understood to demonstrate a clear intention to unfairly discriminate against any person: Provided that bona fide engagement in artistic creativity, academic and scientific inquiry, fair and accurate reporting in the public interest or publication of any information, advertisement or notice in accordance with section 16 of the Constitution, is not precluded by this section.

Sentence length

As is typical of legislative writing, sections 7, 10 and 12 contain unusually long sentences. Section 7 consists of an astonishing 149 words, section 10 consists of 116 words and section 12 of 76 words. These sentence lengths should be compared with the average of 27,6 words in a typical sentence written in scientific English.⁴

However, longer sentences need not necessarily be difficult to comprehend. In the case of sections 7, 10 and 12 problems in comprehension are not created by the mere fact that sentences are long, but rather by the complicated manner in which these longer sentences are structured.

Disruptions in sentence patterns separating subject and verb

Innate knowledge of language and experience of a specific language's structure cause readers to

become acquainted with possible sentence patterns.⁵ Readers of a specific language tend to become used to a specific sentence pattern. In the case of English, as in many other languages, the reader expects to find a SUBJECT – VERB – OBJECT sequence. We are used to hearing and reading sentences which follow the SUBJECT – VERB – OBJECT pattern, for example: ‘We went to visit my parents’; ‘I took my cat to the vet for her vaccinations’ and ‘I hate that stupid man’.

Longer sentences, such as those commonly found in legislative language and other examples of “legal English”, usually contain more frequent disruptions in the SUBJECT – VERB – OBJECT pattern than shorter sentences. These disruptions tend to obscure the structure of the sentence and the reader is unable to link different parts of the sentence to arrive at a coherent meaning.

The disastrous effect upon comprehension of the disruption in the SUBJECT – VERB – OBJECT pattern may be illustrated by section 10(2). In the case of this section, the subject of the sentence – a court – is not found in its usual position at the beginning of the sentence, but is introduced by a rather long prepositional conditional phrase – *Without prejudice to any remedies of a civil nature under this Act...*

Separation of auxiliary and main verbs

In everyday spoken and written language, the main and auxiliary verb are seldom separated. Legislative language however frequently separates main and auxiliary verbs. Let us return to section 10(2). This section reads – *the court may* (auxiliary verb), *in accordance with section 21(2)(n) and where appropriate, refer* (main verb). Difficulties in comprehension arise because the reader cannot be expected to retain the auxiliary verb in their memories across a gap that often spans as much as 100 or more words. By the time the reader reaches the main verb, *refer*, he or she will need to reread the sentence to make sure what part of the sentence the verb is linked to.

Prepositional phrases and conditions

Prepositional phrases are used in sentences to add information but they may sometimes disrupt connections between the main elements of that sentence. The two prepositional phrases used in section 10(2) – *[w]ithout prejudice to any remedies of a civil nature under this Act and in accordance with section 21(2)(n) and where appropriate, ...* – disrupt the associations between the different sections of the sentence. This disrupting effect is heightened by the fact that this section also starts with an extended conditional

phrase, containing a condition that is only fulfilled at the end of the sentence.

When a condition is given at the beginning of a sentence such as is done in 10(2), readers do not have a context within which to interpret the condition until they get to the main clause of the sentence. In the case of section 10(2) the sentence is further complicated by another condition being inserted into the sentence, right after the verb – *in accordance with section 21(2)(n) and where appropriate ...*

Adverbial insertions between subject and verb

The insertion in section 12 of the adverbial phrases – *disseminate or broadcast any information; and publish or display any advertisement or notice, ...* adds considerably to the already complex syntactic character of this sentence. Consider also section 10 – *the court may, in accordance with section 21(2)(n) and where appropriate, refer any case ...*

Initial case descriptions

Bhatia remarks that sentences in legislative writing typically begin with reasonably long initial case descriptions where the subject of the sentence is delayed by the introduction in the sentence of a long case description in the form of an adverbial clause.⁶ Section 10(2) begins with such a case description – *Without prejudice to any remedies of a civil nature under this Act, the court may, ...* The subject of this sentence – the court – follows only after this initial case description has been given. Bhatia notes that the pre-positioning of case descriptions is crucial in order to specify in which circumstances specific rules apply. However, this strategy contributes to syntactic discontinuities that are unfamiliar to the reader as they are rarely encountered in any other genre.

Qualifying phrases

Another typical feature of legislative writing is the insertion of a qualification after the main verb of the sentence. Consider, for example, the middle part of section of section 10(2) – *[...], in accordance with section 21(2)(n) and where appropriate, ...* and section 12(b) ... *Provided that bona fide engagement in artistic creativity, [...], is not precluded by this section.* Many readers may find it difficult to discover to which part of the sentence this qualification refers.

Passives

Passives are frequently used in legislative writing. Passives enable the author to omit the agent from the process for which he, she or it is responsible. Consider, for example, section 12 – *[...] that could reasonably be construed or reasonably be under-*

stood to demonstrate a clear intention to unfairly discriminate against any person.... From the readers' point of view it is certainly of vital importance to know the agent who is to pass a value judgement in such cases, but it is questionable whether the reader will be able to supply the agent without knowledge of the judicial process.

Lists

Lists, such as the one in section 12, create problems in comprehension. Note how in section 12 the main verb of the sentence – *engagement in [...]* is not *precluded* – is split by the list. This structure confuses the reader, as he or she is unsure of which part of the sentence the list of activities refers to.

Cross-referencing

Cross-referencing to other sections of the Act and the Constitution – here found in all three the selected sections – often presents problems to lay readers. Consider for example – *[s]subject to section 6; [s]subject to the proviso in section 12; in accordance with section 21(2)(n) and in accordance with section 16 of the Constitution.*

Cross-referencing in these sections indicates that the information is not autonomous, but subject to qualification by other sections or the Constitution.

Very few other texts demand from the reader that he or she integrate different sources. Because of this, readers feel at a loss to integrate different sections of legislation with one another in order to make sense out of such cross-referencing. This problem is relatively easy to remedy.⁷

Technical terms

Technical terms such as *bona fide* (s 12), *discriminate* (s 7), *prohibited grounds* (s 10), *remedies of a civil nature* (s 10), *jurisdiction* (s 10) and *common law* (s 10) intimidate the lay reader. These words seldom appear in everyday spoken English or in a standard English dictionary, making it difficult for the lay reader to arrive at their precise meaning. The reader is consequently at the mercy of those with legal knowledge to explain the meaning of such technical terms.

Nominalisations (nouns made from verbs)

Sections 7, 10 and 12 contain examples of nominalisations⁸, such as *engagement* (s 12) and *incitement* (s 7). Nominalisations are problematic as they obscure the distinct features of nouns and verbs and remove the immediacy of a sentence so that a sense of abstractness and detachment is created. Although not all nominalisations present problems to readers, they are very often abstract concepts, which are alien to the reader's experience

of the world. Nominalisations often also serve to conceal the agent of a process.

Latin terms

Lawyers use many Latin terms. Latin terms are an obstacle to effective communication. Although most lawyers would be able to cite the exact meaning of *bona fide* (s 12), it is to be doubted that lay persons would be able to understand its meaning.

Use of inflated or unusual words and phrases

Although there is limited use of archaic words in the Act, inflated or unusual words and phrases are often used. Examples are *propounds* (s 7), *consideration* (s 7), *proviso* (s 10), *construed* (s 10), *in accordance with* (s 10) and *precluded* (s 12). Because these words are not regularly encountered in every-day language, they present difficulties to lay readers.

Overlapping words

Words that overlap in meaning are used in Act 4 of 2000. Consider for instance *publish*, *propagate*, *advocate* or *communicate* (s 10). Although persons trained in the law or reasonably fluent in English may realize the slight nuances of difference in meaning between these four words, an average reader may wonder whether they are exclusive. What about *transmit* or *disseminate*? What about *convey* or *send*? Are actions where you send words covered by the Act or not?

Formal legal expressions

It is to be doubted whether many lay persons (or lawyers) know the exact meaning of formal legal expressions such as *without prejudice* (s 10). The use of this expression in section 10 serves to intimidate and confuse the reader even further.

Graphic design

As plain language practitioners know, the visual appearance of any text is just as important as its contents, as the graphic design of texts sends messages to the reader in the same way as is done by the words in the text. A text is hard to understand if it is difficult to read.

Consider the graphic design and layout of Act 4 of 2000. Although attempts have clearly been made at presenting the material in a more organised way⁹, changing the font size to 11 instead of 10 would aid the reader considerably. Also, a page filled halfway with sub-sections, without headings to break them up, such as section 7, is very daunting to the reader.

Drafters and authors of legal texts should employ graphic design and organisation in order to

elucidate the meaning of texts, and not to obscure that meaning.¹⁰

A plain language version

Although certainly not perfect, I have attempted the following draft plain language version of section 12. I reprint the original for the sake of comparison:

Original:

Prohibition of dissemination and publication of information that unfairly discriminates

12. No person may –
 (a) disseminate or broadcast any information;
 (b) publish or display any advertisement or notice, that could reasonably be construed or reasonably be understood to demonstrate a clear intention to unfairly discriminate against any person: Provided that *bona fide* engagement in artistic creativity, academic and scientific inquiry, fair and accurate reporting in the public interest or publication of any information, advertisement or notice in accordance with section 16 of the Constitution, is not precluded by this section.

Plain language version:

Publication of information that discriminates unfairly

12 a) No one may communicate publicly information intending to discriminate unfairly against anyone or may reasonably be taken to have such an intention.
 b) But people can sincerely take part in:

- artistic creativity; and
- academic and scientific inquiry.

 c) A person can report information that is fair, accurate and in the public interest.
 d) A person can publish information in line with section 16* of the Constitution.

***Note:** Section 16 of the Constitution deals with freedom of expression, propaganda and related matters.

Conclusion

The argument is often put forward that legislation such as the Equality Act is the product of political compromise that leaves no space for clear and elegant drafting. While this is often the case, there should be a distinction between imprecise and muddled thinking by politicians, and imprecise and muddled legislative drafting. The one may not be used as an excuse for the other. Language should not be used to obscure inconsistent thinking or to conceal political agendas.

The Equality Act is a complex legal document. It sets about creating the framework for achieving a

just and equitable society. It describes the structure and powers of the courts in cases of discrimination, hate speech and harassment and it describes the duty that rests on the state to promote equality. It is thus acceptable that a certain level of complexity should exist in those sections of the Act dealing with highly technical issues such as burden of proof and the structure of equality courts. However, chapter 2, containing the most important substantial provisions of the Act, is intended for an audience different from that of the rest of the Act. Chapter 2 is also meant to be read by lay people.

Statistics show that only 3, 458, 434 people in South Africa have a matric or equivalent level of education.¹¹ It is often people who are less educated and who belong to a lower socio-economic sphere who are the victims of unfair discrimination. Incomprehensible legislation such as Act 4 of 2000 would thus harm most the very people it is intended to benefit.

People opposed to plain language often criticise plain language writing as a compromise of the beauty and elegance of “traditional” legal writing. However, legislation is not poetry. Legislation is read by a variety of audiences, including lay people. The Equality Act, aimed at bringing about social change, should be accessible to the average population, to persons of average intelligence and education.

Endnotes

- 1 Preamble, Act 4 of 2000.
- 2 Preamble, Act 4 of 2000.
- 3 Please note that I have increased the font size to make the extracts legible.
- 4 Vijay K Bhatia, *Analysing genre: Language use in professional settings* (Layman, 1993) 106.
- 5 Gopen “Let the buyer in the ordinary course of business beware: Suggestions for revising the prose of the Uniform Commercial Code” (1987) 54 *The University of Chicago Law Review* 1178.
- 6 Bhatia 110.
- 7 References may for instance be added in the margin, or short summaries of the section referred to may be provided at the point of reference.
- 8 Nouns made from verbs, for example, when the verb “achieve” is changed into the noun “achievement”.
- 9 Such as the inclusion of an index.
- 10 For more about how graphic design and organisation may be used to make legal texts more accessible to lay persons, see Law Reform Commission of Victoria *Drafting Manual* (1994).
- 11 This figure is based on the results of the population census in 1996. Information obtained from the Central Statistical Services, Pretoria, in their report “Level of education among those aged 20 years or more” (1996).

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Baring the nation's soul through plain language

by Frans Viljoen

Introduction

When the plain language movement took off in the 1980's, the majority of countries in the world had already adopted their constitutions. Following the fall of the Berlin Wall in 1989, a number of countries, including South Africa, underwent a process of democratisation. In many instances this process resulted in the redrafting of old or the drafting of new constitutions. In none of these countries has the impact of the plain language movement on the constitution-drafting process been as visible as in the case of the South African Constitution.

Constitutional negotiations in South Africa started in 1990, after the release of Nelson Mandela and the unbanning of the African National Congress (ANC). Parties represented at the multi-party negotiating process reached agreement that South Africa should have two successive Constitutions: an "interim" and "final" Constitution. The role of the interim (or 1993) Constitution was twofold. It provided a framework for the first democratic elections, to be held in 1994. It also established 34 fundamental principles from which the drafters of the final Constitution could not deviate. The first democratically elected Parliament, sitting as a Constitutional Assembly, drafted the final (or 1996) Constitution. The Constitutional Court certified that the final Constitution complied with the 34 principles.

When comparing these two Constitutions it is clear that the final Constitution is much closer to being a "plain language" document than the interim Constitution. The interim Constitution was born from intense political debate between 1990 and 1993. It was drafted against the background of underlying conflict, fear and mistrust between negotiating partners who had been enemies shortly before negotiations started. When the interim Constitution was drafted, these tensions did not allow concerns for plain legal language to enjoy centre stage, or even have a small presence in smoke-filled back rooms.¹

However, during the drafting of the final Constitution, plain language became a focal point. Some of the contributing factors were visits by foreign plain language experts, such as Phil Knight, Christopher Balmford and Joe Kimble, and the idea that the Constitution, as the soul of the nation, should be accessible to all. In 1995, a first working draft was prepared and published for comment. The management committee of the Constitutional

Assembly decided to appoint a task team to ensure the linguistic consistency and coherence of the draft Constitution. This team consisted of the executive director (Hassen Ebrahim) and deputy executive director (Louisa Zondo) of the Constitutional Assembly, the chief law adviser under the previous government (Gerrit Grové), an international plain language expert (Phil Knight) and two academics, who also served on the Independent Panel of Constitutional Experts (Johann van der Westhuizen and Christina Murray).

In his book about the drafting of the Constitution, *The Soul of a Nation*, Hassen Ebrahim shows that the task team was very successful in incorporating plain language concerns. "This was the first time that constitutional issues were formulated in this way. Despite the initial hesitation among negotiators, they accepted the idea and got used to the style."² To a significant extent this team is the 'drafter' responsible for the plain language approach in the final text.

South Africa is unique in the evolutionary nature of its transition, and its programmed two-step constitutional drafting process. By its very nature, the Constitutional Assembly had more time to devote to the draft, and less conflict to resolve, than the drafters of the interim Constitution. All these factors allowed room during the drafting process for concerns not only of substance but also of style.

Comparison between interim and final Constitution

The drafters incorporated numerous aspects of plain language into the final Constitution. I discuss four of these here: "shall" disappeared, ordinary English replaced Latin and legalese, the use of item lists, and gender-neutral language. In respect of each aspect, examples illustrate the difference between the two Constitutions:

1. "Shall" disappeared

The use of "shall" has often been criticised for its potential multiplicity of meaning and the uncertainty that could result as a consequence.³ Ebrahim gives us this insight into the drafting process in respect of the use of "shall": "Many politicians felt on numerous occasions that "shall" represented a more forceful obligation than 'must'.⁴ The final version sees the replacement of "shall" by "must", or by the use of the ordinary present tense.

Section 75 of the interim Constitution reads as follows:

The executive authority of the Republic ... shall vest in the President, who shall exercise and perform his

or her powers and functions subject to and in accordance with this Constitution.

The subject matter of section 75 is addressed in two different provisions of the final Constitution. Section 85(1) of the final Constitution uses “is vested” instead of “shall vest”.

The executive authority of the Republic is vested in the President.

Section 83(b) uses “must uphold” in the place of “shall exercise” (used in section 75 of the interim Constitution).

The President must uphold, defend and respect the Constitution ...

The difference in the formulation of the right to life in the two Constitutions further illustrates this point: Section 9 of the interim Constitution provides as follows:

Every person shall have the right to life.

In the final constitution “has” replaces “shall have”. The equivalent provision (section 11) reads as follows:

Everyone has the right to life.

All the provisions of the Bill of Rights are similarly phrased. There is no indication in reported cases that the courts have experienced any difficulties in interpreting these provisions.

2. Latin and legalese disappeared

Like many other statutes, the interim Constitution contains formal language, foreign words (especially in Latin) and legalese. The drafters trimmed many of these excesses. For example, section 9(4) of the interim Constitution deals as follows with the burden of proof in cases where the applicant alleges unfair discrimination:

Prima facie proof of discrimination on any of the grounds specified in subsection (2) shall be presumed to be sufficient proof of unfair discrimination as contemplated in that subsection, until the contrary is established.

Having rid itself of the “*prima facie*” “contemplated” and “until ... is established”, the corresponding provision (section 9(5)) of the final Constitution reads:

Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

3. Listing

Huge chunks of information often appear in legislative writing. Section 13 of the interim Constitution contains such congested information:

Every person shall have the right to his or her personal privacy, which shall include the right not to be subject to searches of his or her person, home or property, the seizure of private possessions or the violation of private communications.

These aspects are tabulated “like in a laundry list”⁵ in section 14 of the final Constitution:

Everyone has the right to privacy, which includes the right not to have –

- (a) their person or home searched;
- (b) their property searched;
- (c) their possessions seized; or
- (d) the privacy of their communications infringed.

4. Gender-free language introduced

Traditionally, masculine pronouns were used in South African legislation.⁶ As the Constitution proclaimed the principle of non-sexism,⁷ attention also had to be given to sexist language in the Constitution itself. However, the interim Constitution rather inelegantly emphasises gender with its repeated references to “his or her”. Section 10 is an example:

Every person shall have the right to respect for and protection of his or her dignity.

Using the plural form, the final Constitution adopts gender-free language. The same provision now reads as follows in the final Constitution:

Everyone has inherent dignity and the right to have their dignity respected and protected.

However, in other instances the drafters decided to make specific reference to gender. The aim is to draw attention to the fact that women may also hold high public office, as in section 86(1) of the final Constitution:

At its first sitting after its election, and whenever necessary to fill a vacancy, the National Assembly must elect a woman or a man from among its members to be the President.

Section 174(1) is similar:

Any appropriately qualified woman or man who is a fit and proper person may be appointed as a judicial officer. Any person to be appointed to the Constitutional Court must also be a South African citizen.

Conclusion

The Constitution raised the expectation that subsequent legislation would use plain language. This promise has largely been fulfilled. For example, legislation use “must” and not “shall”, and “come into operation” rather than “commence”. However, as the discussion of the Promotion of

Equality and Prevention of Unfair Discrimination Act (4 of 2000) in this volume illustrates, this has not always been the case. Some legislation passed before the final Constitution, such as the Labour Relations Act (66 of 1995) and the Mine Health and Safety Act (29 of 1996), has adhered more closely to plain language principles. The struggle for clarity therefore continues, even in a democratic South Africa.

Endnotes

- ¹ For an incisive criticism of the interim Constitution, see Ailisa Stewart-Smith, “Legislated double bluff: How democratic rights are undermined by the language of the new constitution in South Africa” (1996) 34 *Clarity* 14.
- ² Hassen Ebrahim, *The Soul of a Nation* (Oxford University Press, 1998) at 193.
- ³ See eg Joseph Kimble, “The many misuses of shall” (1992) 3 *Scribes Journal of Legal Writing* 61.
- ⁴ At 345.
- ⁵ Richard C Wydick, *Plain Language for Lawyers* (Carolina Academic Press, 1994) at 46.
- ⁶ In terms of the Interpretation Act (33 of 1957) words “importing the masculine gender includes females” (section 6).
- ⁷ Section 1(b) of the 1996 Constitution identifies “non-racialism and non-sexism” as two of the founding values of the democratic South African state.

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Papers presented at a conference on plain legal language, held at the Faculty of Law, University of Pretoria, July 1999.

Contributors include:

Justice Johann van der Westhuizen, plain language experts Mark Adler and Derrick Fine, Minister Dullah Omar and Enver Daniels

Catt, Dogg and Mows: Introducing candidate attorneys to clear correspondence

by Ann Harris

Re: Your matter

Upon receipt hereof kindly contact the writer in order that a mutually convenient time and day may be arranged for a consultation to be held herein. Your prompt response would be appreciated as there is some urgency in the matter.

Yours faithfully

This letter, dear *Clarity* readers, is not a figment of my imagination. It is a real-life letter from the office of a real-life South African attorney. Only the names have been omitted to protect the guilty of such an appalling style of letter writing!

In fact, the letter was almost a piece of evidence in an action for professional negligence. It was totally incomprehensible to the client to whom the letter was written. Too intimidated to ask for an explanation, she put it aside for a few days until the short prescription period in her labour matter had nearly expired.

Who, what, when, where?

After almost a lifetime of legal practice, I was asked to teach a course called “Effective Legal Writing” at the Association of Law Society’s Practical Training School in Johannesburg. The school, one of several in the country, provides six months long practical training courses for law graduates who are either already serving as candidate attorneys or who are seeking positions. The courses are mostly comprised of practical aspects of the major subjects of substantive and procedural law, but some time is also allotted to skills training. The aim is to give students the basic skills required of lawyers but rarely learned from academic study.

Why?

Why should it be necessary to use valuable time to teach graduates such skills when they have spent most of their lives writing examinations, obviously with some measure of success?

The letter at the beginning of this article really shows only the tip of the iceberg. In South Africa the standard of correspondence coming from attorneys’ offices is generally poor, not only in style and tone, but, more importantly, in structure and comprehension. What is more, such a standard

is apparent not only at isolated, one-person, far-off law practices, but also at the most prestigious and fashionable firms!

There are several reasons why this situation exists. Some reasons are the same the world over, while others are unique to South Africa.

In the last 15 to 20 years, law practices all over the world have been caught up in the increasing tempo at which they function. The phenomenal rise of word processing, fax and electronic mail has forced lawyers out of the mode of careful deliberation of words to a breathless attempt to keep up with an avalanche of paper.

What began as a useful servant has become a tyrannical master. One of the results of this new technology has been the increased recycling of material; precedents for everything from simple letters to the most complicated of documents are available at the click of a mouse so that word patterns are perpetuated almost without a thought as to their true meaning.

Add this phenomenon to the traditional view that lawyers must continue to work behind their mysterious veil of special language so as to convince their law clients that they are really earning their fees, and you have a formula for verbal disaster.

In the South African context, there are additional problems. First, while many aspiring lawyers see English as the language in which they will conduct their law practice, in a country with 11 official languages there are some who will make the choice to practise, at least partially, in another tongue. Even this language may not be their home language or one used in their primary instruction. This creates many problems, but I continually emphasize that I am not teaching Plain English, but plain language – the principles for effective communication apply to any language the students choose.

Second, thanks to the collapse of the apartheid system, we are now seeing many black graduates emerging from South African law faculties. Sadly for them, the inequalities of the past often denied them a basis of a sound elementary education. This impedes their formal communication skills.

Third, because of the system which then prevailed, even those young South Africans who received a privileged education were taught in a manner which did not encourage them to question, to analyse, to solve problems or to make decisions. Surely, these skills are the basis of the lawyer's

craft and they need to be improved before a new generation descends on the world of legal practice.

How?

At my fictitious firm of attorneys in Johannesburg, the partners, Pat Catt, Rover Dogg and Millie Mows, tackle all their cases and communications according to my rules.

1. Analysis

We begin the course with several exercises in analysis. I use a number of stories, each covering a wide variety of legal issues. The learner lawyers listen to the client's tale and debate the main points. They then complete a case analysis form for each fictitious file. Some of the points they must note are quality of facts, client's objectives, all possible legal issues, areas of contention, and alternative methods to a solution. After three or four stories, analysis becomes a habit for these students.

2. Grammar and vocabulary

We also spend a short period of time looking at common errors in grammar, particularly in the all too frequent use of the passive mood of verbs, punctuation, and a little more time on vocabulary.

I ask for simple alternatives for redundant words (Away with "at this point in time"). I expect instant translation for the layman of Latin terms, such as *sine die* and we argue over the abolition of "legalese" until I get "Thank you for your letter..." instead of "The above matter refers" and "described in Clause 2 of this document" instead of "hereinbefore".

3. Formalities

We deal with rules of letter writing such as titles and references, methods of dispatch, enclosures and signatures. We also discuss style. Catt, Dogg & Mows Attorneys usually write to clients "Dear Mr -, Yours sincerely" and reserve "Dear Sir, Yours faithfully" for unfamiliar firms of attorneys and government departments.

4. Structure

When we come to deal with structure, the time spent on analysis begins to pay dividends.

I ask the students always to begin their letters by looking at the history of the case. They should refer to the last communication made by any method. If there isn't one, they must introduce themselves.

I tell them that they should indicate immediately what you are writing about. They should separate facts from law, and make sure their message is clear. Their final sentence should leave the

recipient of their letter in no doubt as to what is expected of them. My favourite is “I look forward to hearing from you”.

If these lessons are learned, the technical rules about sentences and paragraphs to be found in any grammar book fall into place.

5. Looking at other people’s work

Before we begin to write our letters, we consider other people’s examples. Some of them are just frightful. For example:

“Sir/Madam

The aforesaid matter refers as well as your letter dated the 1996.

As stipulated in the first paragraph, writer hereof in each and every occasion returned your telephone calls but you were never available and did not return same. However we hereby confirm same in writing.

Notwithstanding the above effective service our instructions are that a Notice of Intention to Defend is agreed to be delayed regarding the said matter.

At this time writer is unsure in which direction you wish to continue and as an outsider it is clear that our clients were correct in instructing service on said summons since your client is in breach of contract by non-payment for goods sold and delivered.

Writer trusts that you will provide this office with the necessary time to consider your arguments. In return we confirm not to obtain default judgement against your client without further due and proper notice.

Your URGENT attention to this matter will be highly appreciated.

Yours sincerely”

Some students actually have difficulty in deciding whether the writer is acting for the plaintiff or the defendant when reading this letter. I often ask them to translate it.

Sometimes, we look at other people’s writing in the form of a comprehension test. For example, if we are faced with a term for an insurance policy which states that the truth of the statements and answers in the proposal shall be a condition precedent to any liability of the Insurance Company to make any payment under this policy, I ask the students to write down what that means so that a lay client can understand it. After all, the client is paying the attorney’s fees in order to find out if his insurance company is going to pay his claim for loss.

At last, Messrs Catt Dogg & Mows are ready to start to write letters on their new notepaper. But the first few letters must be planned.

The following is an example of a letter of demand in a motor collision matter:

- Introduce yourself
- Brief description of accident
- Indicate cause of action and place liability
- Make demand with a time limit
- Strong conclusion reserving right to sue

Our second exercise deals with a labour matter. On the facts of an alleged wrongful dismissal, we write a formal letter to the employers carefully separating substance from procedure. After this we write to the client, using the same material and explaining the same legal issues so that he can understand his position.

Does it work?

Pat Catt, Rover Dogg & Milie Mows write letters which are perfect examples of clarity and style and hand every graduate a compendium of examples to take with him or her into practice. Still, the battle is often lost to the entrenched views of old established attorneys who continue to write as they have done for the past hundred years, substantially aided by modern technology.

But some of the teaching does bear fruit. The students are always full of surprised and pleased compliments about the novel way of thinking about the theoretical law they have been studying for so long. They see very quickly the need for analysis, structure and plain expression. And what they learn in the drafting of simple correspondence is soon transferred to the writing of opinions and heads of argument; the drafting of documents and even in preparations for trial.

And what is more, they find the workshop fun. That can’t be bad!

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Section 2 – Other articles

A missed opportunity: The United States Supreme Court upholds a convoluted death penalty instruction

by Peter M Tiersma

Clarity is important in any legal context. Members of the public have a right to understand documents that may profoundly influence their lives, a point that the profession is slowly but surely beginning to realize.¹ Yet there is one area where change has come at a glacial pace: the language of jury instructions.

In most criminal trials in the United States, the defendant's fate rests in the hands of the jury. At least in theory, the jury must decide what actually happened. It is the judge's role to determine what the relevant law is, and to communicate that law to the jurors. The jury is then expected to apply the law to the facts and reach a verdict.

Unfortunately, there is mounting evidence that jurors do not always understand their instructions very well. The possibility that jurors may not understand the law is disturbing enough in ordinary cases, for it suggests that the jury system may be incompatible with the rule of law. It is even more troubling when – in a capital case – the defendant's life is at stake.

Recently, the United States Supreme Court was confronted with a set of capital cases that focused on jury comprehension of legal language. It was an historic opportunity for the Court to ensure that defendants are not put to death unless the jury clearly understands the legal rules that govern this momentous decision. Rather than seizing the opportunity, the Court effectively dropped the ball.

Numerous studies have shown that jurors have difficulties comprehending the legal rules that are supposed to govern their verdicts. Some of the earliest work was done by Robert and Veda Charrow. The Charrows studied 14 pattern civil jury instructions from California. Subjects listened to a tape recording of the instructions and then paraphrased them as best they could. Only about one-third to one-half of the information in the instructions found its way into these paraphrases. The Charrows also discovered that when they revised the instructions to eliminate many of their more troublesome linguistic features, comprehension scores improved substantially.²

Many other studies, using varying research methodologies, have come to similar conclusions.³

Inadequate understanding of death penalty instructions is even more problematic. No judicial proceeding is more serious than when life itself hangs in the balance. In American states with the death penalty, it is almost always lay jurors who must decide on a sentence. Normally, the defendant must first have been found guilty of a serious crime (for instance, murder committed in a particularly brutal or heinous way). The jury is then required to choose between life (often without the possibility of parole) and death.

The United States Supreme Court has held that if states want to impose capital punishment, they must guide the discretion of juries to insure that when they decide who should live and who should die, they do not act in ways that are "arbitrary" or "capricious."⁴ To comply with this Constitutional mandate, many states instruct jurors that they must reach their decision by weighing or balancing the **mitigating** against the **aggravating** factors.⁵ Other jurisdictions simply tell jurors to consider such aggravating and mitigating factors in reaching their decision.⁶ An aggravating factor might be that the defendant had killed another victim a few years before. Mitigation might include that he was mentally disturbed when he committed the crime.⁷

If a defendant's life depends on the jury's consideration of aggravating and mitigating circumstances, it goes without saying that the jurors should understand what mitigation means, and that they should be aware that they can and should take it into consideration. Unfortunately, it has become evident in recent years that quite a few jurors do not properly understand the concept of mitigation. Even if they do, they often believe – contrary to the law – that they cannot take it into consideration. Jury instructions, in other words, fail to properly explain the law to jurors. The problem is illustrated by two recent cases that came before the Court, both from Virginia.

The *Buchanan* case

In *Buchanan v Angelone*,⁸ the defendant had been charged with murder for killing his father, stepmother, and two brothers. There was evidence that he was mentally disturbed, largely because of the death of his mother. The jury found him guilty.

At the next stage of the trial (the penalty phase), the jury had to decide whether or not he should be

sentenced to death, because the prosecutor had asked for the death penalty. The judge read Virginia’s standard capital sentencing instruction to the jury:⁹

You have convicted the Defendant of an offense which may be punishable by death. You must decide whether the defendant should be sentenced to death or to life imprisonment.

Before the penalty can be fixed at death, the Commonwealth must prove beyond a reasonable doubt that his conduct in committing the murders of [his family] was outrageously or wantonly vile, horrible or inhuman, in that it involved torture, depravity of mind or aggravated battery to the above four victims, or to any one of them.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the requirements of the preceding paragraph, then you may fix the punishment of the Defendant at death or if you believe from all the evidence that the death penalty is not justified, then you shall fix the punishment of the Defendant at life imprisonment.

If the Commonwealth has failed to prove beyond a reasonable doubt the requirements of the second paragraph in this instruction, then you shall fix the punishment of the Defendant at life imprisonment.

Buchanan was sentenced to death.

When the case reached the United States Supreme Court, Buchanan argued that this instruction had violated his constitutional right to have his jury properly instructed on the role of mitigating evidence. Observe that the instruction does not even mention the word *mitigation*. Moreover, it suggests to jurors that as long as they find that one or more of the aggravators (that the murder was vile, etc.) was proven beyond a reasonable doubt, the jury should fix the penalty at death.

Of course, the instruction continued that jury should vote for life imprisonment if it decided that the death penalty was “not justified.” But what does this mean exactly? Jurors might well think that death was “justified” if the government proved one of the aggravators beyond a reasonable doubt, and that it was “not justified” if the government failed to do so. If so, they would never have considered the evidence in mitigation, which the Constitution requires that they do.

Nonetheless, in a majority opinion by Chief Justice Rehnquist, the Supreme Court rejected the notion that the instruction discouraged the jury from considering all mitigating evidence:

The instruction informed the jurors that if they found the aggravating factor proved beyond a

reasonable doubt then they “may fix” the penalty at death, but directed that if they believed that all the evidence justified a lesser sentence then they “shall” impose a life sentence. The jury was thus allowed to impose a life sentence even if it found the aggravating factor proved.

Like good lawyers, the majority of the Court carefully distinguished between *may* and *shall*. Of course, these jurors were in all likelihood not lawyers. And even lawyers often disagree on the meaning of “may” and “shall.”

Three justices – Breyer, Stevens, and Ginsburg – dissented. They agreed that a lawyer trained in death penalty law would understand the instruction to require the jury to engage in a second step that considers mitigation, as suggested by the majority. But to the average juror,

[the instruction] seems to say that, if the jury finds the State has proved aggravating circumstances that make the defendant eligible for the death penalty, the jury may “fix the punishment ... at death,” but if the jury finds that the State has not proved aggravating circumstances that make the defendant eligible for the death penalty, then the jury must “fix the punishment ... at life imprisonment.” To say this without more – and there was no more – is to tell the jury that evidence of mitigating circumstances (concerning, say, the defendant’s childhood and his troubled relationships with the victims) is not relevant to their sentencing decision.

Because the instruction did not properly apprise jurors of the role of mitigation, the dissenters concluded, the Court should have found that Buchanan’s death sentence violated the Eighth Amendment’s prohibition on cruel and unusual punishment.

Putting the Supreme Court’s decision in the best possible light, we might suggest that the real problem was lack of proof of jury confusion. Maybe if the majority had been confronted with more convincing evidence that the jury misunderstood the role of mitigation, it would have come to the opposite conclusion.

The Weeks case

Such evidence arrived at the Supreme Court a year or two later, in a case presenting almost exactly the same issue, from the same state, and concerning the same jury instructions. In *Weeks v Angelone*,¹⁰ the defendant, Lonnie Weeks, had killed a policeman who had stopped the car in which he was riding. He was tried in Virginia and convicted of capital murder.¹¹ During the penalty phase of the trial, as mentioned, the jury received essentially the same instruction as in the *Buchanan* case, and

as in *Buchanan*, it returned a verdict of death. There was one critical difference, however. During its deliberations, the jury sent the judge this question:

If we believe that Lonnie Weeks, Jr. is guilty of at least 1 of the alternatives [i.e., an aggravating factor], then is it our duty as a jury to issue the death penalty? Or must we decide (even though he is guilty of one of the alternatives) whether or not to issue the death penalty, or one of the life sentences? What is the Rule? Please clarify?

It could not be more obvious that at least some of the jurors incorrectly interpreted the Virginia instruction in exactly the way that the dissent in *Buchanan* suggested they might: as requiring them to return a death verdict if they decided that at least one of the aggravating circumstances was true. Despite the jurors' request for clarification, the judge refused to explain the law. Rather, as judges are wont to do, he sent the jury a message referring them back to the original instruction. Not long afterward, the jury came back with a death verdict.

Subsequent research has shown that the original jury instructions in the *Weeks* case are confusing in just the way that the dissent suggested. One study by Stephen Garvey, Sheri Johnson, and Paul Marcus tested 154 mock jurors in Virginia, who were presented with a summary of the case and the jury instructions. No less than 40 percent believed that if an aggravating factor was proved, death was mandatory.¹²

The mock jurors were also informed that the actual jury had asked a question. Rereading the original instructions to some of the subjects – as the judge in the *Weeks* case did – led to no improvement in comprehension. Yet those mock jurors who instead received an explanation of the function of mitigation were substantially more likely to understand the law correctly (i.e., that even after finding that an aggravating factor was true, they should take into account the mitigating evidence and decide which penalty the defendant deserved).¹³

Unfortunately, the Supreme Court ignored the jury's evident confusion and upheld *Weeks*' death sentence. The majority relied on the rule that “[a] jury is presumed to follow its instructions.” Moreover, “a jury is presumed to understand a judge's answer to its question”.¹⁴

As long as courts trot out such presumptions whenever there is genuine doubt that a jury understood the law, the situation is unlikely to improve. Presumptions can have a useful function when there is no evidence on an issue. It is another matter entirely, of course, when the presumption is contradicted by the evidence, as it was in the *Weeks* case. In such cases, presumptions undermine justice rather than helping to achieve it.

Proposal

Given what is presently known about principles of clear communication, there is no excuse for such poorly written “instructions” to jurors, especially when the stakes are so high. Because the instructions must be legally accurate, they should always be reviewed by lawyers and judges familiar with the subject area. Nonetheless, I will offer a proposed revised instruction in order to show that it is possible to write a more comprehensible charge:

You have convicted the Defendant of an offense which may be punishable by death. You must decide now whether the defendant should be sentenced to death or to life imprisonment.

First, the Commonwealth must prove beyond a reasonable doubt that when the defendant murdered the victims he

- tortured one or more of them, or
- acted with depravity of mind, or
- committed an aggravated battery on one or more of them.

You must unanimously agree that the Commonwealth has proved at least one of the above three requirements beyond a reasonable doubt. If not, you must fix the defendant's punishment at life in prison.

On the other hand, if you all decide that the Commonwealth has proved at least one of the above requirements beyond a reasonable doubt, you must now consider all the reasons the defendant presented, or any other reason, why he should be sentenced to life in prison instead of receiving the death penalty. You may only fix the penalty at death if each one of you believes, based on all the evidence, that the death penalty is the proper sentence.

There are still some problematic aspects to this instruction, of course, including terms (*depravity of mind*, for instance) that should be defined. It is not perfect. Still, as best I can understand the law presented in the original instruction, this proposal seems to me to communicate that law far more clearly than the original. The essential point is that it is quite possible to craft more comprehensible instructions.

Lonnie Weeks has since been executed. A victim of poor drafting? We will never know.

Endnotes

- 1 See Peter M. Tiersma, *Legal Language* (1999).
- 2 Robert P. Charrow & Veda R. Charrow, “Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions” (1979) 79 *Columb. L. Rev.* 1306.
- 3 See, eg, Phoebe C. Ellsworth, “Are Twelve Heads Better Than One?” (1989) 52 *Law & Contemp. Probs.* 205; Amiram Elwork, Bruce D. Sales & James J. Alfini (1982)

Making Jury Instructions Understandable; Geoffrey P. Kramer and Dorean M. Koenig, “Do Jurors Understand Criminal Jury Instructions? Analyzing the Results of the Michigan Juror Comprehension Project” (1990) 23 *U. Mich. J. L. Reform* 401; Laurence J. Severance & Elizabeth F. Loftus, “Improving the Ability of Jurors to Comprehend and Apply Criminal Jury Instructions” (1982) 17 *Law & Soc’y Rev.* 153; Bradley Saxton, “How Well Do Jurors Understand Jury Instructions? A Field Test Using Real Juries and Real Trials in Wyoming” (1998) 33 *Land & Water L. Rev.* 59; David U. Strawn & Raymond W. Buchanan, “Jury Confusion: A Threat to Justice” (1976) 59 *Judicature* 478.

- 4 *Gregg v. Georgia*, 428 U.S. 153, 189 (1976).
- 5 Eg, California.
- 6 Eg, Kentucky and South Carolina.
- 7 See Robert Weisberg, “Deregulating Death”, 1983 *Sup. Ct. Rev.* 305.
- 8 522 U.S. 269 (1998).
- 9 *Id.* at 272n.1.
- 10 528 U.S. 225 (2000).
- 11 *Id.* at 227-28.
- 12 Stephen P. Garvey, Sheri Lynn Johnson & Paul Marcus, “Correcting Deadly Confusion: Responding to Jury Inquiries in Capital Cases” (2000) 85 *Cornell L. Rev.* 627, 636.
- 13 *Id.* at 638-9 (49% of those receiving the judge’s actual reply misunderstood the role of mitigation; the number dropped to 29% for those who received an explanation of mitigation).
- 14 528 U.S. at 234.

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Notice: Tiersma’s Legal Language

The December 2000 issue of *Clarity* published Otto Stockmeyer’s book review of Tiersma’s *Legal Language*. A paperback edition is now available for US \$17.00 at amazon.com. Also, Professor Tiersma has posted corrections and additions to his book at www.tiersma.com/

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Section 3 – News and comments

Presentation of the Legal Writing Institute’s First Golden Pen Award on 8 January 2000, at the National Press Club, Washington, DC.

The Legal Writing Institute presented its first Golden Pen Award to Arthur Levitt, Chairman of the United States Securities and Exchange Commission, for his leadership in requiring plain language in financial disclosure documents.

Professor Joseph Kimble, Thomas Cooley Law School and Chair of the Outreach Committee, Legal Writing Institute, welcomed those present and made the following remarks:

The Securities and Exchange Commission (SEC), under the leadership of Chairman Levitt, has given our cause a huge boost by requiring that investment prospectuses be written in plain language – or at least in much plainer language than they have traditionally been written. Several years ago the Securities and Exchange Commission studied the problem, issued proposed rules, and took on the formidable, not to say monumental, task of trying to persuade the investment and legal communities to use plain language. And they had to train their own staff at the same time. They worked with a number of companies on pilot projects to show that investment documents could indeed be made more understandable for readers. The Commission even produced its own *Plain English Handbook*, an excellent resource. I have two – one for the home and one for the office.

Just about two years ago, the Securities and Exchange Commission produced the final version of the plain-English rules, which you see on the posters in this room. And they have enforced those rules, by sending back prospectuses that don’t make the grade.

So it is just possible to imagine the day, when to be a truly good lawyer, it won’t be enough just to know the law. Good lawyers will need to be able to express it well, to write it clearly, plainly, and succinctly for their readers. And if that glorious day ever comes, we may trace its beginnings to the work of the Securities and Exchange Commission in the final years of this last century.

Mary Beth Beazley of the Ohio State University College of Law and President, Legal Writing Institute, presented the award. Some of her remarks were the following:

The writing regulations that the Securities and Exchange Commission have promulgated are so important because writing rules do more than just fix sentence structure. When you improve your writing, you improve your thinking. When you improve your thinking, you improve your writing. And when you work on both, you’re going to improve communication to your audience. These rules have done so much to help that communication.

Legal writing, like any kind of writing, is not an uncontrollable event. I’ve heard people talk about writing as an art, but it’s not a watercolor. Nor should it be a paint-by-the-numbers set. I’d like to think of legal writing more as an architect’s rendering. First, because it’s meant to communicate specific information to a specific audience; and second, because if you don’t get it right the first time, you can erase it and do it over.

When you write, you are making a series of decisions. Unfortunately, those decisions have often been unconscious decisions. What we as legal writing teachers have been trying to do is to make our students aware of the decisions they make when they write, so that they can make them consciously and do a better job. What we have lacked, alas, is congressionally granted rule-making authority. This is why we’re so pleased with what the SEC has done and with the way that they have done it.

When Congress approved President Clinton’s appointment of Chairman Levitt in 1993, the Chairman made investor protection one of his top priorities. As part of that priority he created the Office of Investor Education, and he held town meetings at which investors were allowed to express their concerns. The Chairman listened to those concerns, and that is where these regulations came from.

I’m so impressed, both with what the SEC did and with how they did it. The SEC didn’t just tell lawyers who write prospectuses to do a better job. The SEC taught them how. They did the pilot project, they did studies, and they figured out what worked and what didn’t work.

And they wrote the *Plain English Handbook*, which you can download from the SEC website

[<http://www.sec.gov/pdf/handbook.pdf>]. I recommend it to you, and you should recommend it to your students. It's a wonderful, wonderful document. The *Handbook* explains how to write an effective prospectus document. It identifies the decisions that you make when you create a prospectus document and explains how to do a better job making those decisions so that the audience will understand the document better.

In creating this *Handbook*, the Chairman and the SEC thought not just of the audience of investors, but also of the audience of the people who write these prospectuses. The *Handbook* is a wonderful recognition of the needs of these two audiences.

Arthur Levitt, Jr, Chairman of the Securities and Exchange Commission, accepting the Golden Pen Award, made the following remarks:

I am deeply honored by the warm welcome and by this singular award. I am especially grateful for the praise from Peggy Foran on behalf of Pfizer, Inc., a company whose every action symbolizes excellence, quality, professionalism, and willingness to take individual and sometimes controversial stands.

I wish that Nancy Smith, the *real* recipient of this award, were at least standing by my side. Without Nancy Smith, we could not have built the unique Office of Investor Education. Her determination and insight made possible what was the beginning of a vast corporate cultural change. Somebody once noted that "to hold a pen is to be at war." If you had read most of the disclosure documents that confronted our investors before the movement to plain English, you'd have thought that the prospectus was a weapon in the war *against* clarity and understanding.

The battle for plain English is not a one-time event. What we're talking about has been tried many times before. It has been tried, but it hasn't succeeded, because it is essential to recognize that this is part of a continuing effort. That effort starts at the Securities and Exchange Commission, and I must add that I'm not at all persuaded that what we have done with our own documents at the Commission has gone far enough. I face some of the same problems that people in corporate America face. Individual division directors say to me, "This is so complex we *can't* say it in any other way." Of course they can.

The effort to promote plain English is a matter of balance. We cannot become grammatical despots. We cannot permanently hold up the process of capital formation because somebody's view of the way something is stated is different from an

examiner's view. We must exercise balance and restraint and wisdom and understanding while constantly pushing forward to promote the use of plain English.

This is something that is the responsibility not just of the Chairman but of every SEC Commissioner. And I'm really proud that my fellow Commissioners have taken the time to join with us today. I'm particularly pleased that Dean Hunt, who is passionate about this issue, is here. And I know that if I slip, he'll be on my back to have us do a better job.

In talking about my background and the influence on my writing and my concern for plain English, you were right to focus on my mother, but there were other parts of my background that are also relevant. If I asked most of you what my major in college was, you'd undoubtedly say economics, possibly mathematics or philosophy. Well, I did honors work with the great American playwright Lillian Hellman. And the first job that I had out of college was as a drama critic for the *Berkshire Eagle* in Pittsfield, Massachusetts. And then I went to work for *Life* magazine in New York and in Cincinnati, and I came back to New York to work for *Time* magazine. After I finished my stint in the securities industry, what I went back to was publishing magazines and newspapers. So I obviously have some concerns about the use of language.

You noted that when I came to the Commission, one of my principal concerns was the investor. I share that concern with every one of my fellow Commissioners. We have an absolute obsession for the primacy of the individual investor above all other considerations. Full disclosure has been the mantra of the Commission ever since its formation. Full disclosure is really the foundation of everything we do and everything that we say. The Commission holds the conviction that it must be part of the public perception that our markets are fair and that what is read by the typical investor is reliable and accurate. This conviction motivates us in the first place to say it right and in the second place to have it right, which is why we are so concerned with accounting standards and the kind of disclosure documents that must be part of our process.

So I challenge our law schools and also legal writing faculty not only to strive for plain English in the classroom, but also to emphasize its importance in the profession for the public good. Our success in this project depends to a large extent on your cooperation and vigilance in ensuring that the next generation of lawyers is trained to prepare legal documents using plain English prose.

I expected the opposition of many of those in the legal profession to this initiative, and I certainly wasn't disappointed in that regard. Many of those people regard themselves as the unique guardians of a system that they believe only they can understand and interpret. And I can understand that feeling.

But if the succeeding generations of lawyers don't give up that kind of blind adherence to what they regard to be their own, that will be your fault in part. It will be my fault in part for not emphasizing sufficiently that what we do begins right in our own headquarters. We've got to be even more vigilant in terms of how we deal with the public, with the media, with our every constituent, and I pledge to you to do that.

The investing public is greeting our combined efforts, I believe, with open arms. I can't tell you how many times in recent weeks and months I've heard from investors and companies that we're on the right track and that they welcome this initiative.

I want to commend you for your ongoing work in this endeavor. A corporate cultural shift of this magnitude simply would not be possible without the commitment of organizations such as the Legal Writing Institute. I am honored to accept this award, I encourage you in your efforts in the future, and I pledge to work with you, with Pfizer, and with other great companies that have embraced this cause to continue these efforts in the future. I pledge to do everything I can to see to it that America's investors get a clearer picture of what their alternatives are and what their basic protections are. Thank you very much.

Chairman Levitt recently announced that he will retire "early this year" – 2001. The remarks above are reprinted from volume 6 of Legal Writing: The Journal of the Legal Writing Institute.

For information about the Legal Writing Institute: www.law.seattleu.edu/lwinstit. A new site is coming: www.lwionline.org.

▼ Clarity's website

We are continuing to develop Clarity's website and further suggestions are welcome.

In particular, we have started a page of articles on plain language matters. If you wish to offer an article of your own please send it, formatted as it is to appear (in Acrobat or HTML), to adler@adler.demon.co.uk.

We now have our own address:

www.clarity-international.net

Clarity is the journal of the group Clarity and is distributed free to members from around the world.

Press release 31 January 2001: Inland revenue making tax law clearer: Eleventh Exposure Draft – employment income

The Tax Law Rewrite project, which will rewrite and restructure almost all the UK's primary tax legislation so that it is clearer and easier to use, has today published its latest Exposure Draft for consultation.

In written answer to a Parliamentary question the Paymaster General, Dawn Primarolo, said on 31 January:

I am pleased to be able to tell the House that the Tax Law Rewrite project is continuing to make good progress. The rewritten Capital Allowances Bill was introduced in this House earlier this month and the Inland Revenue today publish the project's eleventh Exposure Draft, containing draft clauses rewriting a second group of the employment income provisions.

The Inland Revenue's approach to this massive task is highly innovative and involves Inland Revenue officials, Parliamentary drafters and private sector tax professionals. A main feature of the project is the analysis of provisions and their reconstruction in a more logical order.

Details

1. The Tax Law Rewrite project aims to rewrite the UK's primary direct tax legislation so that it is clearer and easier to use, but without changing its general effect. The project commands the support of all parts of the tax community.
2. The key points of the project are:
 - the fundamental restructuring of the legislation into a more logical and helpful order. It is not simply a plain English makeover.
 - shorter sentences; clearer signposts to other relevant provisions; more consistent use of definitions; a clearer, more legible format.
 - greater use, where helpful, of tables, formulae and method statements.
 - no change in tax policy generally. But (possibly) some minor changes in detail where sensible in the interests of clarity and ease of use.
 - full consultation with users of tax legislation throughout the life of the project.
 - new streamlined Parliamentary procedures for enacting "rewrite Bills".

Notes for editors

1. The project was established in 1996 on the basis of full consultation. Since then, one draft Bill, eleven Exposure Drafts and two Technical Discussion Documents have been published. The project is currently rewriting three areas of income tax – trading income, savings and investment income and employment income. The rewritten Capital Allowances Bill, the project’s first Bill, was introduced in Parliament on 9 January 2001.
2. A high level Steering Committee, chaired by The Rt Hon The Lord Howe of Abreton CH, QC, oversees the project. A Consultative Committee of representative bodies and other interested parties also meet every month to consider issues and clauses in more detail.
3. The Exposure Draft – *Employment Income: Part 2* – rewrites the second tranche of employment income legislation and includes exemptions, deductions, and a couple of free-standing Schedule E charges. The first Exposure Draft on employment income was Exposure Draft No. 6, published in May 1999.
4. Comments should be sent by 30 March 2001, preferably by e-mail to David.Mutton@ir.gsi.gov.uk or by post to David Mutton, Tax Law Resrite project, Inland Revenue, Room 826, Bush House, South West Wing, Strand, LONDON WC2B 4RD.
5. Companies of this Exposure Draft, like all the Tax Law Rewrite project publications, can be obtained free of charge from the Inland Revenue Information Centre, Bush House, South West Wing, Strand, London WC2B 4RD. Tel 0120 7438 6420/6425.
6. Copies are also available on the internet at the Inland Revenue home page, the address of which is given below.

Media enquires to:
020 7438 6692/6706/7327 (out of hours: 0860 359544)

Non-media enquiries to:
020 7438 6420/6425 (office hours only)

www.inlandrevenue.gov.uk

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“Whatever we do, and whatever medium or language we use, the challenge before us is to make sure that all our communications are written and spoken in a way that people can understand, a way that empowers them by giving them the information they need to take charge of their lives and exercise their rights as citizens of this country.”

Dullah Omar, South African Minister of Transport
(previously, Minister of Justice)

Letters

“I Could Care Less”

by Kenneth Bulgin

David Marcello’s manifesto (*Clarity* 45, pages 22-23) raises a couple of points:

First, it strikes me that one of the things we are talking about here is a difference between American and British English. (I’ve no idea what the position is in other versions of the language). I first heard “I couldn’t care less” during or shortly after the war and, although it seems not to be so popular now as it once was, I must have come across it scores of times since then but until I read the article I had never heard or read “I *could* care less”. (Your reaction to this may be that I should get out more. I can only say that such a variation is the sort of thing I would certainly have noticed: my original training was in the use of the English language and it has remained a life-long interest – I became a lawyer as an afterthought in order to earn a living).

But that is by the way. The problem with this sort of usage is its tendency to encourage the tide of illiteracy which threatens to engulf us. (In the UK at least; standards may be higher in other parts of the world). And I use the word deliberately: I’m not talking about the inevitable changes in usage since I was young but to the wide-spread inability to use the language accurately evidenced every time I open my (allegedly heavyweight) newspaper. Misspellings, homophones, words and expressions used in contexts which show clearly that the writers don’t understand them, nonsenses like “centering round” and “based around” appear every day.

In the world of plain English there’s no recourse to jargon, so it’s all the more necessary to use language accurately. With this sort of confusion already rife, the idea of deliberately coining (or encouraging) an expression to carry a meaning the exact opposite of its natural one seems to me frankly perverse.

News from the United States

by Annetta Cheek

First, for those of you who haven't heard from me for a while:

Yes, the grassroots plain language movement in the Federal Government is alive and well.

I now work at the Federal Aviation Administration. I am doing principally plain language projects in my new job. However, please use this e-mail to communicate with me <acheek@patriot.net>. Currently, I get it both at home and at my desk at FAA.

The Federal Register, which publishes federal regulations, is proposing some format changes in the interest of readability. While the plain language fanatics among us would like to see even more changes, this is a significant improvement and a big step for the Federal Register, and they need and deserve our support. The following e-mail message from the Director of the Federal Register tells you how to view the document.

In addition, the Federal Register is using a plain language rule from the National Archives to illustrate its proposed sample format. Take a look at the rule language and see what you think.

Please take the time to look at these proposed improvements and let the Federal Register know of your support.

Memorandum from the Director of the Federal Register

Date: March 23, 2001

From: Raymond A. Mosley, Director of the Federal Register

To: Federal Register Liaison Officers

Subject: *Proposed Federal Register Format Changes in a Document Published by the National Archives and Records Administration (NARA)*

I am writing to draw your agency's attention to the Office of the Federal Register's (OFR) progress on a plan to redesign the printed format of the Federal Register. Over the past several years, we worked with federal agencies and the Government Printing Office to develop a new document format. We have designed a two-column format, which is illustrated in a NARA document published on 23 March 2001 at 66 FR 16374.

You may view the PDF version of the document on the NARA web site, at <http://www.nara.gov/fedreg/plainlan.html> or on the GPO Access service, at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001_register&docid=01-6555-filed.pdf.

The two-column format and other changes in fonts, headings, line spacing, and tables are intended to improve readability and public understanding of federal regulations and notices, while minimizing increases in white space that affect printing costs charged to agencies.

For cost comparison purposes, we ran pre-publication drafts of the document in two-column and three-column formats. The two-column format required 9 percent more page space than the three-column format. We would like your comments on the proposed format; specifically as to whether the two-column format and the other typesetting changes make it easier to read Federal Register documents, and whether resulting cost increases would be justified.

The major changes reflected in the proposed format are summarized below:

1. Two wide columns instead of three narrow columns.
2. Larger and bolder headings and captions in the Preamble and Regulatory Text.
3. Increases in space between lines of Regulatory Text (leading).
4. A revised table format uses larger headings set in bold, and more horizontal lines.
5. Amendatory instructions for the CFR are highlighted with bold squares.
6. Table of contents designations in Regulatory Text appear in bold.
7. Paragraph designations in Regulatory Text appear in bold.
8. Bullets may appear in the Summary (none were used in the NARA document).
9. Bold lines indicate where documents begin and end.
10. Running heads have a fresher appearance.

We invite you to send the OFR your comments on the proposed format changes through one of the following methods:

email: fedreg.legal@nara.gov

U.S. Mail:

*National Archives and Records Administration
Office of the Federal Register (NF)
Attn: Federal Register Format Changes
700 Pennsylvania Ave, NW
Washington, DC 20408-0001*

Messenger and Private Delivery:

*National Archives and Records Administration
Office of the Federal Register
Attn: Federal Register Format Changes
800 North Capitol St, NW, Suite 700
Washington, DC 20002-4244*

Fax: 202-523-6866

Minutes: Clarity committee meeting, 19 May 2001 held at DJ Freeman, 1 Fetter Lane, London, 10.30 am

Present

- Mark Adler
- Paul Clark
- John Pare
- Nick Lear
- Peter Butt

Apologies

- Christopher Balmford
- Michèle Asprey
- Richard Castle
- Bob Lowe
- Simon Adamyk

Membership

Joe Kimble has the master list. Paul Clark to get together with John Pare to sort out British membership list, and to check whose subscriptions are current.

Finances

John Pare reported that current UK bank balance is £1,234. That will increase after banking a number of membership cheques received but not yet banked.

Journal

Peter Butt to check with Frans Viljoen as to progress with forthcoming issue.

Peter Butt to circulate for comment a short note for inclusion in the Journal, to the effect that:

- authors retain copyright in articles published in *Clarity*
- persons who wish to reproduce articles in whole or part should obtain author's permission, and should acknowledge *Clarity* as the source of the original.

No need for

- statement that views are those of the author, not *Clarity*
- general disclaimer of liability (since journal does not carry legal advice)

Discussion of circulating journal electronically (by Acrobat or similar). Mark Adler reported that several members had asked for electronic version

instead of printed version. Discussion of difficulties in keeping lists of members who want electronic version and those who want printed version.

Patrons

- Peter Butt had met and had discussions with Sir Christopher Staughton
- Peter Butt had received letter of congratulations from Justice Michael Kirby

Clarity's aims

Discussion of email circulars between committee members in January and February this year, relating to Clarity's stated aims (as appear on reverse of application form). Decision to leave focus of Clarity as it presently is (but without cutting off future discussion) – that is, chief concern is with legal language, but that membership is open to all.

Joint activity with Statute Law Society

Peter Butt reported on meeting with Lord Clyde (of Statute Law Society). Many common aims. Suggestion that Clarity and SLS should have some common activities, in particular a joint conference. (Peter Butt has been told that SLS should have some administrative capacity to help arrange the conference.)

Suggestions in relation to conference:

- theme: international developments in plain language, both statutory and common law.
- location: Oxford (easily reached from most parts of Britain; attractive to overseas visitors)
- date: 2002, perhaps weekend in June (to coincide with normal date of SLS conference)
- keynote or after-dinner speaker: perhaps Dr Robert Eagleson

Peter Butt to contact Lord Clyde in relation to these suggestions and to check availability of conference facilities and accommodation.

Clarity awards

- Award for 2000 to Dr Robert Eagleson, for redrafted newsagency agreement. Paul Clark to have his publicity people design a suitable certificate (with Mark Adler to print out the design if required).
- Peter Butt to write to runners-up (Mark Adler to provide names and contact details).
- No competition to be held in 2001 (number and standard of entries for 2000 award quite disappointing)

Web site

Mark Adler to continue as web site co-ordinator.

Email circulars

Given the ease of contacting members by email, we should encourage members to provide email addresses:

- Peter Butt to ask Frans Viljoen to put notice in forthcoming journal, encouraging members to provide email details
- Paul Clark to ask new UK members for email particulars

Mark Adler to continue as email co-ordinator.

Directory of members

In principle, Clarity should produce a directory of members. However, the directory should normally be available only to existing members and should contain only names and country (not email addresses and other details).

Newsletter

Discussion of benefits of newsletters between Journal issues. Peter Butt to ask Phil Knight (as Journal editor) if he would be able to circulate a short newsletter. Contents to include:

- news of Clarity committee meeting decisions
- encouraging members to supply email details
- news of possible conference

Annual meeting 2001

- Date: Saturday 3 November, am (followed by lunch at nearby restaurant)
- Place: “Briefs”, Lincoln’s Inn (Peter Butt to advise Simon Adamyk, who has offered to help arrange)
- Speaker: Justice Michael Kirby (Peter Butt to approach). If Justice Kirby not available, then Peter Butt

Next committee meeting

17, 18 or 19 July (preferred date 18 July), when Michèle Asprey will be in London. Location either London or Dorking. Further details when Michèle’s itinerary known. Mark Adler to contact Michèle on this, and to advise Peter Butt.

Meeting closed 12.30.

Welcome to new members

United States

Avi Arditti, Sr. News Editor, Voice of America; Falls Church, Virginia

Carolyn Banks, Executive Director, Upstart, Inc.; Bastrop, Texas

Prof. John Butcher, Columbia, Missouri

Dr. Annetta Cheek, Exec. Ass’t., Federal Aviation Administration; Falls Church, Virginia

Columbia University Law Library, New York, New York

H. Douglas Barclay Law Library; Syracuse University College of Law, Syracuse, New York

Florida Coastal School of Law, Library & Technology Center, Jacksonville, Florida

Sam Harrison, Tucker, Georgia

Deborah Jacobs, writer; Brooklyn, New York

Dr. Carolyn Matalene, Professor of English; University of South Carolina; Columbia, South Carolina

Emily Pollock, attorney; Minneapolis, Minnesota

Santa Clara University, Heafey Law Library, Santa Clara, California

Wendy Smith, Pillsbury Winthrop, LLP; Palo Alto, California

Tina Wallis, attorney; Oakland, California

Washington Univ./St. Louis, School of Law Library; St. Louis, Missouri

Australia

Australian Securities & Investments Commission [Emma Johnston]; Sydney, New South Wales

Crown Law, Office of the Crown Solicitor; Hobart, Tasmania

Kathryn Kearley, director, Chris MacDonnell Pty. Limited; North Sydney, New South Wales

Catherine Hughes, precedents manager, Crown Solicitor’s Office; Annandale, New South Wales

Margo MacGillivray, attorney, Corrs Chambers Westgarth; Brisbane

New Zealand

John Wendell, barrister, Thorndon Chambers; Wellington

South Africa

Dr. Caroline Nicholson, Senior Lecturer, Faculty of Law, University of Pretoria; Highveld, Pretoria

University of Pretoria Law Library, Pretoria
 F. Adriana Nuss, Lex Language Service Company;
 Green Pointe
 Quinn Setshedi, Lecturer, Department of African
 Languages, University of the Witwatersrand,
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Montréal H3A 1M8 Québec, Canada

Call for participation: Third French-American conference on technology and legal practice

(Friday & Saturday, 12 and 13 October
2001 Syracuse College of Law, Syracuse,
New York USA)

Web site and list serve:

- The conference web site address is:
http://legal.edhec.com/3rd_french-american_conference.htm. The web site can also be reached via Conference icon in the lower right corner of the EDHEC home page:
<http://legal.edhec.com/>.

Conference goals:

- This conference is designed to focus on how technology (including especially internet and internet-related technology) can improve the substantive quality of legal practice. The goal requires the cooperation of public and private sector lawyers, academics, professional regulators and others interested in harnessing technology for the benefit of all consumers of legal services.
- The conference is also designed to provide opportunities for cross-cultural exchanges so that each legal culture can benefit from the experiences and insights gained by the use of technology in other legal cultures.

Conference formats:

The conference is interested in using a variety of formats for exploring its topics. Usual formats, such as papers, presentation or discussion panels, workshops.

Conference topics:

The conference is interested in addressing the issues generated by the intersection of evolving technologies (including especially internet and internet-related technologies) and substantive legal practice (in one or multiple legal cultures).

Conference costs:

- The conference registration fee will be \$ 250 (to cover a copy of the conference proceedings, attendance at conference sessions and presentations, incidental refreshments, lunch on Friday and Saturday, and the conference dinner on Friday night).
- The conference registration fee will be discounted by 30% for those presenting at the conference.

- A limited number of bursaries for students will be available. Interested students should check the conference web site for application details.
- Lodging is not included in the conference registration fee.
- See the conference web site for additional details about airport and ground transportation, lodging, maps, parking and other services and facilities.

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D U E S

If you have not yet paid your 2001 dues, would you please do so. Pay your country representative or Joe Kimble, as explained on page 33. We have never raised the modest dues, even though our funds are barely enough to cover the cost of producing and mailing the journal.

Also, if you change your address, please let us know.

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**For members who do not have
a country representative**

We need a system for depositing foreign checks in Clarity's account at the U.S. bank used by Prof. Kimble. If you are from one of the countries listed below, you can send Prof. Kimble a personal check; the bank has an arrangement with those countries so that the bank will charge only \$1 to convert the check. But if you are not from one of the countries listed below, then would you please send a bank draft for \$25, payable in U.S. dollars and drawn on a U.S. bank. Otherwise, we have to pay a conversion charge that is larger than the amount of the check.

Of course, in either case, the check or bank draft should be made payable to Clarity.

Austria	Germany	Mexico
Belgium	India	Netherlands
Denmark	Italy	Norway
Finland	Japan	Spain
France	Malaysia	Switzerland

Please use the back cover, or a copy of it, to apply for membership in Clarity.

W e b p a g e : w w w . c l a r i t y - i n t e r n a t i o n a l . n e t


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Country	Number of Members	Country	Number of Members
Australia	97	Japan	1
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Belgium	1	Malaysia	1
Brazil	1	Malta	2
British West Indies	3	Netherlands	5
Canada	46	New Zealand	23
Denmark	5	Northern Ireland	1
England	452	Scotland	12
France	0	Singapore	11
Germany	2	South Africa	31
Gran Canaria	1	Sweden	2
Hong Kong	13	Switzerland	4
India	5	Thailand	1
Ireland	2	USA	375
Isle of Man	1	Wales	10
Italy	1	TOTAL	1,114

MARK YOUR CALENDAR

Proposed joint Clarity and Statute Law Society conference

Date: 12, 13, 14 July 2002 (Friday evening to Sunday lunchtime)

Place: Oxford, England 

Although only in the early planning stage, the conference theme will be the “language of legislation”, with a special emphasis on the techniques and needs for clarity in legislation. Speakers and panelists will include leading Clarity members from around the world. Justice Michael Kirby, one of Clarity’s patrons, has accepted an invitation to give the keynote address. A highlight will be a drafting Masterclass, in which four eminent drafters will exercise their skills in public.

The conference will be of interest to all Clarity members – and will be held in the unique location of a traditional Oxford college.

The conference will be priced as reasonably as possible, and will include all accommodation and meals.

The Statute Law Society is a long-standing and highly regarded United Kingdom organisation. Some of its members are also members of Clarity. Its interests partly overlap with those of Clarity: hence the decision to hold a joint conference.

Write the dates in your diary now! More information in future newsletters.

Clarity annual general meeting

Date: Saturday 3 November 2001

Place: “Briefs”, Lincoln’s Inn, London

Time: 10.30 am

Guest speaker: to be announced

Followed by lunch at a nearby restaurant for those able to stay.

Come and have your say – and meet your fellow Clarity members.

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