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Submissions
We encourage you to submit articles to be considered for publication in *Clarity*. Send submissions directly to editor in chief Julie Clement. Please limit submissions to approximately 1,500 or 3,000 words.

This issue

With co-hosts, the Center for Plain Language, and Scribes, The American Society of Legal Writers, Clarity's committee decided to hold Clarity 2012 in Washington D.C. The city is the hotspot for all those people in US government agencies working to implement the US *Plain Writing Act* of 2010 across thousands of documents.

The Act requires the US federal government to write all new publications, forms, and publicly distributed documents in a "clear, concise, well-organized" manner that follows the best practices of plain-language writing. Each agency is required to appoint an officer to implement the Act. You can read about the Act on the Center's website. The Center even gives a report card that grades agencies on how well they are complying with the Act.

At the conference, Clarity launched a project to create a database of all the laws around the world that require the use of plain language. The purpose of the project is to encourage and help people everywhere to call for more—and better—plain-language laws. Tialda Sikkema from The Netherlands and Ben Piper from Australia are coordinating the project and, at the conference, gave papers on the relevant laws in their countries. In their combined article, Tialda and Ben report on their discoveries—some encouraging and some less so.

Ben and Tialda invite you to contribute:

- to the database of international clarity laws;
- findings on how lawmakers deal with difficulties about defining plain language, about compliance and about enforcement.

To be sure, some of these difficulties—in particular, the problem of defining plain language—are likely to shrink as the International Plain Language Working Group develops an internationally accepted definition

of plain language and sets plain language standards. You can read about the Group's work in its substantial Options Paper published in *Clarity* 64, November 2010, at http://www.clarity.shuttlepod.org/Resources/Documents/64_032111_04_final.pdf

At the conference dinner, the Center presented its third annual ClearMark Awards. The awards celebrate some of the best documents in the United States, and poke some gentle fun at some of the worst. Both the dinner and the conference were held at the National Press Club in Washington D.C.

As with the location of the conference, the structure and content of Clarity 2012 reflected the likely interests of people—especially lawyers—working on implementing the Act.

Some speakers were from agencies actively implementing the Act. One highlight was Jodi Daniel, Director in the Office of the National Coordinator for Health Information Technology (ONC) at HHS, speaking about a model consumer privacy notice that HHS developed in response to personal health record vendors' concerns about new privacy regulations. They suggested that they can compete on privacy. ONC developed the model notice, with input from vendors and consumer testing, to further this aim and enable companies to communicate complex information to their customers in a clear way. Vendors using this notice, including Microsoft, do so voluntarily as a way of being clear and transparent about their privacy policies.

Terry Lemons of the Internal Revenue Service described the USA tax office's obligation to collect about $2.3 trillion tax from 141 million taxpayers and what the impact was of sending the wrong message. The response of many recipients of the IRS's "Notice of Intent to Levy": to call up to ask what they should do as they had received a notice that was meant for Levi's!

Kathryn Catania from US Citizenship and Immigration Services (which has until recently referred to people as "aliens" and "derivatives") described the benefits of changing an obligation from:

> *You must show that sufficient physical premises to house the beneficiary have been secured.*

to

> *You must show that your employee has an acceptable place to live.*

To help reassure people new to plain language the conference included presentations from a wide range of lawyers—for example, Clarity's own Eamonn Moran spoke on "Confessions of a plain-language legislative drafter". We had the joy of listening to Professor Joseph Kimble. And we heard from the legal lexicographer and author Bryan Garner, and from Lee H. Rosenthal, a United States District Judge.

These combined issues of *Clarity* offer highlights from Clarity 2012—our 5th international plain language conference. Although we can't fit in all the highlights here, you can see nearly all the presenters' slides—and in some cases their full papers—at www.clarity-international.net/conferencepapers2012.html

Next conference

Clarity's next conference will be in 2014 in Belgium. It will be a major event co-hosted by IC Clear (International Consortium for Clear Communication), PLAIN and IIID (International Institute for Information Design). Other partners will be contacted to join.

US plain language awards

See the Center's website <www.centerforplainlanguage.org> for information about the 2013 Awards. They are to be held on Tuesday 16 April, again at the National Press Club.

Christopher Balmford

Managing Director
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Bank (wwww.wordsandbeyond.com); founder and former managing director, online legal document provider Cleardocs Pty Ltd (www.cleardocs.com) acquired by Thomson Reuters, in 2011.

Dr. Annetta L. Cheek *is an anthropologist by training, earning a PhD from the University of Arizona in 1974. She worked for the US federal government from 1980 until early 2007 and spent four years as the chief plain language expert on Vice President Gore's National Partnership for Reinventing Government. She was the chair of the federal interagency plain language advocacy group, PLAIN, from its founding in 1995 until she retired from the government, and administered the group's website, www.plainlanguage.gov. She was a founding member of the Center for Plain Language, www.centerforplain language.org, a federally tax-exempt corporation. She has served as Chair of its board since its founding in 2007. In that role, she was instrumental in getting the US Congress to pass the Plain Writing Act of 2010. Annetta is also Director of Plain Language Programs for R3I Consulting, a DC-area consulting firm.*

Keynote papers

Clarity 2012 opening address

Candice Burt

President
Clarity, Johannesburg, South Africa

Welcome, everyone, to Clarity's Fifth International Conference.

In 1995, the then South African Minister for Justice, Mr Dullah Omar, addressed a plain language seminar about the transformation of justice in our country. He outlined several key principles as being important to achieve that transformation:

- the principle of access to justice
- the principle of participation and
- the principle of empowerment.

He called for 'plain, simple and understandable language' in the country's laws, in court judgments, in consumer documents, in radio and television broadcasts. He referred to plain language as "democratising language", a way to rid ourselves of the exclusionary language of the past.

His speech was captured in law professor Frans Viljoen's book, *Plain Language in a New Democracy*.

Inspiring stuff for a law student to read—especially on a Friday afternoon in a Latin lecture!

It inspired me to find out more about plain legal language and to find lawyers who promoted the use of plain language in their work. Not an easy task in a country where 'democracy' was an unknown concept a couple of

years before. A wider search brought me to Clarity.

Founded almost 30 years ago by English solicitor John Walton, Clarity has grown into a global organisation of some 650 members in 50 countries. There are official representatives in about 30 of those countries and this number is growing. This is our fifth international conference, with previous conferences in England, France, Mexico and Portugal.

It is clear that the desire for plain language in legal and other formal texts has turned into a demand. Citizens are no longer prepared to tolerate impenetrable legalese, small print, and unstructured laws and contracts. Many countries have laws and regulations about the use of plain language in legal, financial, health and other texts. Plain language can no longer be dismissed as a nice-to-have.

Indeed it was during the 2010 conference in Portugal that we heard the US Plain Writing Act of 2010 had been passed into law. And so it is fitting that our fifth conference is here in Washington D.C. the capital of the US. I am excited to be here and I welcome you all to what is certain to be an excellent conference.

Clarity's warmest thanks go to our co-hosts and sponsors, Center for Plain Language and Scribes. We are delighted to partner with these outstanding organisations. We also thank our sponsors, the Plain English Foundation, the Plain Language Commission, the Plain Language Group, Carolina Academic Press, More Carrot Less Stick, Clarify Now, Simplified, the Victoria Law Foundation, and Sprakonsulterna. Special thanks go to sponsors Redish and Associates, and Christopher Balmford's Words and Beyond, both of which have made sizeable contributions to this conference. Ginny Redish hosted last night's reception and drinks, which was a wonderful opportunity to catch up with old friends, meet some new ones and enjoy an evening of getting to know one another.

Personally, I would like to thank Professor Joe Kimble, Annetta Cheek, Christopher Balmford and Joanne Locke for working tirelessly to make this conference as successful as it is set to be.

And there is a lot to look forward to on the conference program: we have the opportunity to learn from the world's foremost experts on plain language, from Hong Kong to Mexico, from Norway to New Zealand . . . and beyond. The diversity of topics shows how widespread the demand for plain language has become.

The International Plain Language Working Group has been working tremendously hard to move forward with several issues affecting the plain language industry. We are looking forward to an update of their progress, as well as to some exciting announcements from the Group.

Also, the International Consortium for Clear Communications (IC Clear) will share with us its goal of developing a post-graduate clear communication course that draws on the disciplines of plain language, information design and usability techniques. This project is a first and its successful implementation will certainly go a long way to producing communication professionals who can meet the international demand for plain language related skills.

Whew! There is a lot to learn and share — we had better get started.

Thank you all for your support for the conference. I hope you have an inspiring time.

22 May 2012

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Candice Burt *is a plain language lawyer. She completed her BA and LLB degrees at the University of the Witwatersrand, Johannesburg, in 1994. Burt was admitted as an attorney of the High Court of South Africa in 1997. Since 1999, she has focused on making legal and financial information clear and understandable. Burt co-founded Simplified, a Johannesburg training and consultancy firm, in 2004. Simplified's training has reached 3000 people in South Africa, Portugal, Kenya, and the UK. In 2009, she contributed chapters on plain language in Neville Melville's The Consumer Protection Act made easy and in Cheryl Stephen's* Plain Language in Plain English. *She also wrote the plain language chapter of the South African Government Communicators' Handbook in 2004. In 2010, Candice co-founded the Plain Language Group of South Africa with other plain language practitioners. It aims to lobby for effective plain language guidelines in South Africa.*

The story of "shall": a parable of plain language

Lee Rosenthal

US District Court Judge
Houston, Texas, USA

Federal Rules of Civil Procedure

When the "restyled" Federal Rules of Civil Procedure took effect in 2007, most lawyers, judges, and—above all—law students and their professors cheered. The style project's goal was to simplify and clarify the procedural rules used in civil cases filed in the federal courts in the United States, but without changing the substantive meaning of any rule.[1] That proved to be a difficult and fascinating task. It took years and engaged scores of talented and dedicated individuals. This is the story of one word in that work.

The redrafters

The style project began years earlier, in 1991, with the overall purpose of promoting uniformity among the different sets of the Federal Rules of Procedure—Appellate, Bankruptcy, Civil, Criminal, and Evidence—as well as simplifying and clarifying each of them. This project was begun by the giants in the procedure and legal-writing worlds. Professor Charles Alan Wright, one of the country's premier experts on procedure, was the first leader and the organizer. Professor Wright asked Bryan A. Garner, a leading legal-writing scholar, to assist. Bryan Garner prepared drafting guidelines to serve as a common set of style preferences; those guidelines have been published as the Guidelines for Drafting and Editing Court Rules. Until 1999, he also served as the style consultant to the Judicial Conference Standing Committee on the Rules of Practice and Procedure, which oversaw the project. In 1999, Professor Joseph Kimble, also a well-known legal-writing expert, became the style consultant.

Restyling the Rules of Appellate and Criminal Procedure

The first rules to be restyled were the Federal Rules of Appellate Procedure, which apply to all appeals filed in the United States federal courts. The second was the Federal Rules of Criminal Procedure, which apply to all criminal cases. The restyled Rules of Appellate Procedure became effective in 1998. The restyled Rules of Criminal Procedure became effective in 2002. The successful completion of the restyled Rules of Appellate and Criminal Procedure demonstrated the benefits.

Restyling the Rules of Civil Procedure

The style work on the Rules of Civil Procedure was third, for good reason. The Civil Rules posed distinct challenges. They were written at an earlier time—the mid-1930s—and had been amended more often, using more inconsistent language conventions, than the Appellate and Criminal Rules. They were longer than the Appellate or Criminal Rules, and often complicated. The style work on the Civil Rules began in mid-2000, took over four years, and produced 775 documents analyzing each word and each proposed change. Both the process and the record it produced demonstrate how much time and care and expertise were involved.

The restyled rules are simpler and easier to read, understand, and use. Here are two short examples.

Rule 8(e)(2) Before Styling

> *When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements.*

Restyled

> *If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.*

Rule 71 Before Styling

> *When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if a party; and, when obedience to an order may be lawfully*

enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if a party.

Restyled

When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party.

Reformatting

Some of the improvement was achieved without changing the words, but instead the form of presentation. Form alone can help, or hinder, clarity. The restyled rules use formatting to achieve clearer presentation, more congenial to the modern eye. The rules are broken down into constituent parts, from block paragraphs to progressively indented subparagraphs, with more than twice as many headings. They use vertical rather than horizontal lists. These formatting changes make the appearance of the rule match its structure and make the restyled rules much easier to read and understand, even when the words were not changed.

Inconsistencies

The project reduced inconsistent, ambiguous, and redundant or archaic words in the Civil Rules. After more than 70 years of amendments, the rules had become inconsistent in small and large ways. Because different words are presumed to have different meanings, such inconsistencies could, and did, produce confusion and arguments that in many cases should not even have been made. The restyled rules used the same words to express the same meaning. Some variations of expression were carried forward, however, when the context made that appropriate and insisting on a single word would have changed substantive meaning. As an example, "stipulate," "agree," and "consent" appeared throughout the rules, and "written" qualified these words in some places but not others. The number of variations was reduced, but at times the former words were carried forward rather than risk a change in substantive meaning.

Intensifiers

The restyled rules minimized the use of redundant "intensifiers." These are expressions that attempt to add emphasis, but instead state the obvious and create negative implications for other rules. An example is rules that stated "unless the order expressly directs otherwise." An order cannot implicitly direct. And using expressly suggests that this order is somehow different from all the other orders in the rules.

Redundancies

The restyled rules also removed the many words and concepts that were outdated or redundant. A reference to long-abandoned forms of pleading—"demurrers, pleas, and exceptions"—was removed in the style project. There was a reference to "mesne process" in what was fortunately a little-used rule. No one even knew what it meant. It turned out to be a medieval French word meaning "intermediate process." This, with other archaic words, can no longer be found in the rules.

Ambiguous words

An important goal was to reduce the use of inherently ambiguous words. The worst offender in the rulebook was the word "shall." Depending on the context, it can, and does, mean "must," "should," or "may." And it is a word that is almost only used in written legal documents, not in modern spoken English or in plainly written English. The style project's goals of having the rules say what they mean and mean what they say, and shedding archaic expression, demanded that "shall" be consigned to the vocabulary scrap heap. Once that decision was made, it became self-fulfilling because the other major goal of the style project was consistency. Leaving "shall" in one or two places and nowhere else was inconsistent with that goal. But the full story of the word "shall" teaches much about the complexity of language, even when every effort is to make it simple.

The story of "shall"

The decision to eliminate "shall" required laborious, but fascinating, work. For every "shall" in the rules, teams of professors and reporters and committee members scrutinized cases and treatises to divine by the use and context what the proper translation would be. Professor Kimble recounts that there were almost 500 "shalls" in the Civil Rules before December 1, 2007[2]. For most of these 500 "shalls," it was easy to decide, based on context and case law applying the particular rule, that the "shall" was meant in the sense of a command, calling for "must." That hap-

pened 375 times[3]. In other cases, context and case law suggested that "shall" was permissive, calling for some form of "may." In yet other cases, a soft imperative—"should"—seemed right.

Rule 56 on summary-judgment motions

One rule, however, defied easy translation: Rule 56, which governs summary-judgment motions.[4] This rule is one of the most important in the book. It is what lawyers and judges use to decide whether cases can be resolved on the record without the need for a jury trial. Because the result is a victory for one side and a defeat for the other, without a trial, the standard used to decide when summary-judgment motions can be granted is critical. The language stating the Rule 56 standard had not been revised for 70 years, despite major changes in the caselaw. For 70 years, Rule 56 stated that summary judgment "shall be rendered" on a showing that no genuine dispute of material fact existed and that the moving party was entitled to judgment as a matter of law. The word chosen—whether "must," "should," or "may"—to replace "shall" could not change the substantive meaning of the existing rule. And there was the rub. The caselaw supported at least two out of the three choices to replace "shall," but the Committee had to choose one.

Decisions on Rule 56

Three 1986 Supreme Court decisions[5] are the basis of the caselaw interpreting Rule 56. Two of the three Supreme Court cases had inconsistent language on this very point. The opinion in Anderson v. Liberty Lobby stated: "Neither do we suggest that the trial courts should act other than with caution in granting summary judgment or that the trial court may not deny summary judgment in a case where there is reason to believe that the better course would be to proceed to a full trial."[6] By contrast, the opinion in Celotex Corp. v. Catrett stated: "The plain language . . . mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial . . . ."[7] The case law after these Supreme Court cases was both inconsistent and varied[8]. The variation depended not only on the substantive area of the law but also on which part of the country you were in, because the different federal circuit courts had developed divergent articulations and approaches.[9]

In 2007, the committees working on restyling Rule 56 pieced all this together and concluded that the soft imperative—"should"—fit best. Although there was a great deal of comment on the proposed restyled rules from bench, bar, and academy, only one comment was directed to this change, and even that one did not argue that "should" changed the substantive meaning of Rule 56.

Later proposed amendments to Rule 56

In 2008, after the restyled Civil Rules became effective, the Advisory Committee published for comment an extensive set of proposed substantive amendments to Rule 56. This set of proposed amendments was the daughter of the style project, which painfully revealed the disconnect between the practice of bringing and litigating summary-judgment motions on the one hand, and the rule's text on the other. Such a disconnect was not surprising. Not only had the case law interpreting Rule 56 changed, making summary judgment motions both more frequent and more important, but civil litigation had changed in other ways that affected summary-judgment motions. The number of trials continues to decline in both state and federal courts. More cases are resolved by means other than trial, including by motions. Discovery has become more complicated, in part because of changes in technology that turned it into electronic discovery, and discovery is in many cases focused on creating evidence to support or oppose summary-judgment motions. The 2007 summary-judgment rule, even as clarified and simplified by the style project, had not kept up with the way these and other changes affected summary-judgment motions because the 2007 rule steered clear of substantive changes.

Public comment on the proposed amendments

The 2008 proposal to make substantive changes to Rule 56 retained the use of "should" and flagged for public comment whether that was the right word to state the standard for granting summary judgment when the criteria for doing so were met. The proposal met with vigorous and numerous comments. The proponents

of using "must"—that is, of requiring a judge to grant summary judgment whenever the requirements were met, with no discretion or flexibility—argued that the rule of law itself was threatened if judges could deny summary judgment to parties who had made the necessary showing to obtain it.[10] The proponents of "should" as the standard—the soft imperative that would recognize that in most cases judges ought to grant summary judgment when the criteria for doing so were satisfied, but that in some cases, when the support was thin or there was no inefficiency from proceeding to develop a fuller record at a trial—argued that access to courts and the interests of justice were threatened if judges were stripped of the discretion to deny summary judgment when it was technically justifiable but fairness demanded a fuller presentation.[11] It was a wonderful debate. Dozens of witnesses weighed in, and many written comments were submitted.[12]

Undoing the change to restore "shall"

What did the brave and beleaguered rules committees do? They made what was, in fact, a brave choice because it was not the obvious one. They chose to revert from "should" to "shall."[13] That is, to undo the style change after only three years.

Retaining words embedded in lore

Reverting to "shall" recognized that the decision to change the word had itself violated a tenet of the style project. That tenet was to leave "sacred phrases" that had become so laden with nuanced meaning from caselaw that to change the words would inevitably risk changing the substantive meaning. The Advisory Committee and the Standing Committee concluded that the statement of the standard—"summary judgment shall be rendered on a showing that no genuine dispute of material fact existed and the moving party was entitled to judgment as a matter of law"—was such a sacred phrase and that it had been a mistake to change it as part of the style project.[14]

Avoiding changes in substantive meaning

The result was that there is only one use of "shall" in the Civil Rules. This is, of course, inconsistent with the goal of having consistent expression, but this goal bowed to the greater desire to avoid changing the substantive meaning of a heavily used rule. The solution was consistent with the overall approach the committees took when they encountered ambiguities in the rules. Usually, those ambiguities could be resolved by research showing that the cases applied a clear and consistent meaning, and that meaning was used. But there were instances in which the ambiguity of the present rule proved intractable. The solution in those cases was to carry the language forward, without change. When the committees could not be sure how to resolve ambiguous meaning, it did not change the rule, to avoid changing substantive meaning. That was eventually what happened in Rule 56.

The complications—and dynamism—of language

The story of "shall" in the Federal Rules of Civil Procedure—from "shall" to a proposal for "may" to "should" and back to "shall"—is a story about language itself. The story reminds us of what we already knew: that language is complicated and dynamic. We knew that words, and word choices, matter; they are consequential. Those of us privileged to work together to restyle the Federal Rules of Procedure, to simplify and clarify them without changing their meaning, were reminded us of that, every day. The story of "shall" reminds us that language is unavoidably nuanced and subtle. That is not a reason to abandon work toward simplification and clarification, or to accept that legal writing must be the convoluted and confusing "legalese" that is all too familiar. To the contrary. The work to simplify and clarify is what lets us see the nuances and the subtleties. The fact that the Civil Rules are not entirely clear or consistent is not a sign of defeat but of success in understanding the balance between simple and nuanced, clear and complex, that is at the heart of language itself.

The Sistine Chapel Cleaned

The style project continued. Since December 2007, when the edited Civil Rules were enacted, the Evidence Rules have been restyled. For each set of the restyled rules, a side-by-side comparison of the former and the edited rules reveals the promise of the new. It is the proceduralist's version of cleaning the Sistine

Chapel. The beauty of the original work is revealed. But its colors, its lines, its forms, are fresh and clear to the modern eye. And will be, in fifty years, one hundred years—and then perhaps it will be time for another style project. In the meantime, the best sign of success is that most have forgotten that there was such a project or that the Civil Rules ever looked different than they do now.

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Endnotes

1 Each Committee Note for every Civil Rule, 1 to 86, contains the following statement: "The language of Rule X has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only." The cases and commentary that applied before the Style Project apply after the project.

2 Joseph Kimble, Lessons in Drafting from the New Federal Rules of Civil Procedure, 12 Scribes J. Legal Writing, 25, 79 (2008–2009).

3 Id.

4 Professor Steven Gensler has written the definitive article on Rule 56 and the Style Project. Steven S. Gensler, Must, Should, Shall, 43 AKRON L. REV. 1139, 1152 (2010).

5 Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986).

6 Anderson, 477 U.S. at 255.

7 Celotex Corp., 477 U.S. at 322.

8 See Memorandum from Andrea Kuperman to Judge Mark Kravitz, Discretion to Deny Summary Judgment (February 19, 2008, as supplemented Jan. 25, 2009), available at http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Rule%2056%20memo.pdf (describing varying case law on discretion to deny summary judgment).

9 See generally Kuperman, supra (describing varying case law throughout the circuits on discretion to deny summary judgment).

10 See Advisory Committee on Civil Rules, Agenda Book for April 20–21, 2009 Meeting 124, available at http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Agenda%20Books/Civil/CV2009-04.pdf.

11 See Advisory Committee on Civil Rules, Agenda Book for April 20–21, 2009 Meeting 127–131, http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Agenda%20Books/Civil/CV2009-04.pdf. http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Transcript_111708.pdf, at 24.

12 See Advisory Committee on Civil Rules, Agenda Book for April 20–21, 2009 Meeting, at 120–69, http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Agenda%20Books/Civil/CV2009-04.pdf (summarizing written comments and testimony on proposed rules published for comment); Hearing Before the Advisory Committee on Civil Rules, February 2, 2009, available at http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/CV02-2009-tr.pdf; Hearing Before the Advisory Committee on Civil Rules, January 14, 2009, available at http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/FedCtHearing011409.pdf; Hearing Before the Advisory Committee on Civil Rules, November 17, 2008, available at http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Transcript_111708.PDF.

13 See Advisory Committee on Civil Rules, Minutes, April 20–21, 2009, at 3, http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Minutes/CV04-2009-min.pdf.

14 The Advisory Committee recognized that, "[b]y substituting 'should' for 'shall,' the Style Project may have inadvertently desecrated a sacred phrase." See Advisory Committee on Civil Rules, Mins., February 2–3, 2009, at 6, http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Minutes/CV04-2009-min.pdf. At its next meeting, the Advisory Committee recommended the restoration of "shall," explaining that

> [i]n February the Committee concluded that "shall" should be restored, despite the general style convention prohibiting any use of this word. Multiple comments on the published proposal, which carried forward with "should" from the Style Project, show unacceptable risks that either of the recognized alternatives, "must" or "should," will cause a gradual shift of the summary-judgment standard. Brief discussion reconfirmed by unanimous vote the recommendation to restore "shall."

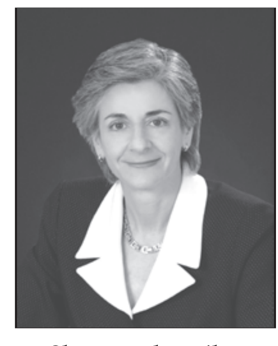
Advisory Committee on Civil Rules, Mins., April 20–21, 2009, at 3, http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Minutes/CV04-2009-min.pdf. Under Rule 56 as amended in 2010, "The court shall grant summary judgment . . ." Fed. R. Civ. P. 56(a). The Committee Notes accompanying the 2010 amendment explained:

> "Shall" is restored to express the direction to grant summary judgment. The word "shall" in Rule 56 acquired significance over many decades of use. Rule 56 was amended in 2007 to replace "shall" with "should" as part of the Style Project, acting under a convention that prohibited any use of "shall." Comments on proposals to amend Rule 56, as published in 2008, have shown that neither of the choices available under the Style Project conventions—"must" or "should"—is suitable in light of the case law on whether a district court has discretion to deny summary judgment when there appears to be no genuine dispute as to any material fact. Compare Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986) ("Neither do we suggest that the trial courts should act other than with caution in granting summary judgment or that the trial court may not deny summary judgment in a case in which there is reason to believe that the better course would be to proceed to a full trial. Kennedy v. Silas Mason Co., 334 U.S. 249 * * * (1948))," with Celotex

Corp. v. Catrett, 477 U.S. 317, 322 (1986) ("In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."). Eliminating "shall" created an unacceptable risk of changing the summary-judgment standard. Restoring "shall" avoids the unintended consequences of any other word.

FED.R. CIV. P. 56, Advisory Comm. Notes (2010). There are other examples of phrases that were not the simplest or plainest expression but were not changed because they were embedded in professional lore. One example is "transaction or occurrence," used to define the relationships that make a counterclaim compulsory. Another is the words stating the basic standard for certifying a class action under Rule 23, which were not changed because they were viewed as "words of art."

Judge Lee H. Rosenthal *was appointed US District Court Judge, Southern District of Texas, Houston Division, in 1992. Before that, she was a Baker & Botts partner. She earned Bachelor's and Law degrees from the University of Chicago and clerked for Chief Judge John R. Brown, US Court of Appeals, Fifth Circuit. Chief Justice Rehnquist appointed her to the Judicial Conference Advisory Committee on Civil Rules in 1996. She chaired the Class Actions subcommittee, which wrote the 2003 amendments to Rule 23. In 2003, Rehnquist appointed her chair, Civil Rules Committee, which "restyled" the Civil Rules and enacted electronic discovery amendments. In 2007, Chief Justice Roberts made her chair, Judicial Conference Committee on Rules of Practice and Procedure. She served until 2011 and oversaw Evidence Rules "restyling." Rosenthal is a member of the American Law Institute, where she's advised the Employment Law, Aggregate Litigation, and Transnational Rules of Civil Procedure projects. In 2007, she was elected to the American Law Institute Council; in 2011, she was Program Committee chair. She writes and lectures on complex litigation and civil procedures, including class actions and electronic discovery. She's a Rice University Trustee and on Duke University's School of Law Board of Visitors. She's Vice Chair, Board of Trustees, Center for American and International Law; and President, District Judges' Association, Fifth Circuit. She and her husband have four daughters.*



Reflections of a plain-language legislative drafter

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Introduction

Legislative drafters are probably the writing practitioners who have been the most heavily criticised by advocates of plain language, indeed by just about anyone. Appendix B to the Renton Committee Report in the United Kingdom[1] sets out many examples of criticism of drafters from members of the judiciary. Much of that criticism was indeed deserved. Academics and plain-language advocates have also been to the fore in heaping criticism on drafters. And again much of the criticism has been deserved. The criticism continues to this day although it is now, in my perception at least, less frequent and less vitriolic. Clearly either legislative drafters are doing something right or the critics have tired of the task. I suggest that drafters are doing something right.

This article sets out to place legislative drafting in context. It explains the constraints on drafters in terms of writing style. It acknowledges that much of what drafters have to write about is of great inherent complexity. Finally, it indicates how legislative drafting offices may best set about making changes in drafting techniques in the pursuit of plain-language drafting.

What is legislative drafting?

Legislative drafting has been defined as "the art of converting legislative proposals into legally sound and effective law"[2]. Legislation regulates how a community operates and allocates rights and duties to members of that community, either across the board or by category of person or activity in which they are engaged. Unlike contractual arrangements between parties, generally there is no element of voluntary agreement on the part of an individual to being bound by legislation. Because of the breadth of its operation and a drafter's inability to foresee all the circumstances that may arise and that legislation needs to cover, both great detail and broad sweeping provisions may be necessary. This is no easy task. And the task is all the more demanding because so much legislation deals with complex subject-areas. The drafter has to work hard at understanding the underlying concepts and then set about describing them in a way that is as readily understandable as possible.

Implications arising from the nature of legislative drafting

There is no getting away from the fact that writing the law by which members of society are bound, and which may result in them losing their liberty or in suffering a large financial penalty should they fail to comply with it, is a highly responsible task. It's understandable that drafters may wish to stick closely to well-trodden paths and avoid trialling new writing techniques or substituting a new word for a tried and tested one. They are also operating within an environment that imposes many restraints on their freedom of activity. These restraints may be both textual and institutional.

Textual restraints arise from the fact that much new legislation is in fact amending legislation, that is, legislation that makes textual changes within an existing law so that it operates differently in the future or covers some matter not previously covered by it. Many jurisdictions publish consolidated texts of their legislation incorporating all amendments to date. Amended laws need to appear to the reader to be coherent and unified, not a motley collection of highly individualised writing styles and structures.

Even a new principal law—that is, an entirely new law, not one amending an existing law—should sit apparently seamlessly within the jurisdiction's statute book. Legislation containing general principles about the interpretation and construction of legislation and even definitions of commonly used terms will already be in place in the particular jurisdiction. There will be legislation about how courts operate and the kinds of penalties they may impose. There will be legislation about how public finance operates and the reporting and accountability provisions that must generally be complied with. There is likely to be an es-

tablished regime for the scrutiny of delegated legislation that must be attracted. All of these, and other legislation with a general application, impose limitations on the individual drafter's capacity to innovate. On top of that, the legislature may have in place rules and practices requiring a particular structure and format—both for legislation as introduced and for amendments moved in the course of a bill's passage. In many jurisdictions legislative drafting is carried out in a centralised office that has in place a manual setting out the styles and techniques that members of that office must use in drafting legislation.[3] And, with varying degrees of thoroughness, legislatures may scrutinise draft legislation for its compliance with established practices.

Drafters understand the need for accessible law

Today's drafters generally recognise the importance of producing comprehensible laws. They are aware of statements like that of the European Court of Justice in *Sunday Times v United Kingdom*[4] that "the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case". They understand that accessibility of the law is increasingly seen as a critical element of the rule of law and as a factor to be considered in determining whether something purporting to be a law is indeed a valid and effective law.[5]

Drafters are conscious of the criticisms of particular characteristics of traditional legislative drafting and they have access to many texts and articles setting out techniques for producing plain writing. They understand that writing must be in a contemporary style if it is to be understandable to community members. And they realise that they will fail in their task if the intent of the law they write cannot be discovered, even by a court carrying out a detailed analysis.

Although it is now a recognised practice in many jurisdictions for courts to read provisions in context and in the light of their apparent purpose, text still plays a vitally important role. A drafter's chosen words are of critical importance. Drafters must also be alert to how they structure the provisions within the draft legislation: a helpful structure and clear document design are every bit as important as the words in producing a plain-language product.

Balanced against all of this is the fact that many subject areas about which legislation is drafted are inherently complex. The drafter cannot be expected to produce legislation in a complex subject area that will be readily understandable by a person without some specialist knowledge in that area. The drafter can, however, be expected to ensure that any difficulties in understanding the text result from the underlying complexity of the concepts, not from the language or structure chosen by the drafter.

Change is both possible and necessary despite the limitations

To my mind there is no doubt that because it is important that members of society understand the laws by which they are bound, it is essential for drafters to strive for change despite the limitations on them. Writing standards and practices evolve over the generations. Drafters cannot operate in a time warp. They must strive for ways to maintain the coherence of the statute book while at the same time adopting changes in their writing techniques and practices. An obvious way of doing this is seeking editorial powers to reshape the existing body of law to make it make it match new law in appearance and layout. In exercising editorial powers, drafters must be careful not to change the legal effect of existing provisions. In granting editorial powers the legislature may provide a fail-safe mechanism by legislating to prevent editorial changes changing the law being edited.[6]

Drafters must continue to explore ways in which they can enhance the accessibility of laws, whether through:

- using notes, examples and other reader aids,
- pruning archaic language from the statute book,
- pursuing a program to rewrite elderly laws,
- effectively using hyperlinking on electronic versions of law, or
- regularly reviewing document design templates.

Conclusion

In the course of my career the call for the use of plain language in legislative drafting has

moved from being mainly the call of outsiders to the profession (whether judges or others) to drafting practitioners themselves. The websites of many drafting offices contain material explaining approaches to achieving plain-language products.[7] Conferences of drafters regularly have sessions focussing on plain language.[8] The issue is no longer should laws be written in plain language but how best might they be. Clarity and certainty are no longer seen as dichotomous but as a unitary concept. Drafting practitioners have become adept at achieving change within a rigid environment.

None of this is to say that we are in drafting nirvana. Some jurisdictions show greater evidence of plain-language drafting than others. This is not necessarily because the drafters themselves are opposed. They may have a legislature that is resistant to innovation in drafting techniques. They may be so overburdened with work that they don't have the time to stand back and review their drafting practices. Because of their lack of internal resources they may have heaped on them the work of outside consultants unskilled in plain-language drafting. And, of course, even in those jurisdictions that have adopted plain-language writing techniques, there needs to be a regular review of current practices and a commitment to continuous improvement. This is time consuming and may be neglected in the face of other demands. Drafters also need to be vigilant to ensure that they do not fall back into old ways. A good way to guard against this is for a jurisdiction to make public its commitment to plain language and to detail the techniques they use to achieve it. It's much harder to break a publicised commitment and statement of drafting practices than to breach purely internal guidelines.

It's time for there to be more public acknowledgement of the steps taken by legislative drafters in pursuing plain-language drafting. Many of their private practitioner colleagues still write much as they always have, whether in drafting wills or conveyances or other private documents. Legislative drafters have pursued plain-language drafting despite the limitations and the intrinsic difficulty of their task. Critics also need to take into account any underlying complexity of the area to which legislation relates and to give credit where the drafter has clearly tried—through the use of plain-language techniques—to make that legislation as understandable as is possible in the circumstances.

Those of us who have adopted legislative drafting as a career path nod in agreement with these words spoken by Lord St. Leonards about statutes more than 150 years ago: "Nothing is so easy as to pull them to pieces, nothing is so difficult as to construct them properly"[9].

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Endnotes

1 Committee appointed by the Lord President of the Council, *The Preparation of Legislation*, Cmnd. 6053 (1975).

2 *How Legislation Is Made in Hong Kong*, published in 2012 by the Law Drafting Division, Department of Justice, Hong Kong and available on www.doj.gov.hk.

3 See, for example, *Drafting Legislation in Hong Kong: A guide to Styles & Practices*, published in 2012 by the Law Drafting Division, Department of Justice, Hong Kong and available on www.doj.gov.hk.

4 (1979–80) 2 EHRR 245.

5 See, for example, *The Rule of Law*, Tom Bingham, London: Penguin Books, 2011, p.37 where it is stated that the law "must be accessible and so far as possible intelligible, clear and predictable".

6 See, for example, section 13 of the Legislation Publication Ordinance (Cap. 614) (Hong Kong).

7 See, for example, *Working with OPC - A Guide for Clients* at http://www.opc.gov.au/about/documents.htm.

8 See, for example, http://www.opc.gov.au/calc/conferences.htm.

9 *O'Flaherty v M'Dowell* (1857) 6 H.L. Cas. 142 at 179.

Apart from brief stints as a barrister and solicitor, **Eamonn Moran** *has been a legislative drafter for 37 years. His drafting career has taken him from Belfast, Northern Ireland, to Melbourne, Australia, and to Hong Kong, China. He was Chief Parliamentary Counsel in Victoria, Australia, 1999-2008, and, since 2008, Law Draftsman in the Department of Justice in Hong Kong. He's on the Law Reform Commission of Hong Kong and instructor in legislative drafting, Athabasca University, Alberta, Canada. Eamonn was a member of the Law Reform Commission of Victoria, Australia, 1989-92; he contributed to the Commission's work on plain language. In 2005 he was awarded a Public Service Medal in Australia for "outstanding public service to legislative drafting and public law, and to the promotion of plain legal language." Eamonn was*

President of the Commonwealth Association of Legislative Counsel 2007-11 and is currently a Council member for Asia on that body. Eamonn holds an honours law degree from Queen's University, Belfast, and a Master of Laws degree from the University of Melbourne. He was appointed Queen's Counsel in Victoria, Australia in 1998.

Contributing to the journal

Clarity often focuses on a specific theme (like conferences or drafting or standards), but we also publish articles on a variety of other plain language topics. Please submit your articles to the editor in chief for consideration.

Would you like to be a guest editor? Our guest editors gather articles, work with the authors, make layout decisions, and edit and proofread a single issue. If you would like to guest edit an issue of the *Clarity* journal, send an email to the editor in chief.

Finally, if you have ideas about improving the journal, the editor would like to hear from you, as well. Our editor in chief is Professor Julie Clement, with the Thomas M. Cooley Law School. Email her at clementj@cooley.edu.

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Plain language in the financial world

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Introduction

Federal financial regulators and Congress are awakening to the need for simplified disclosures that help consumers understand and exercise their rights. Disclosures are at the heart of many of the consumer financial protection laws in this country. Think about the disclosures you receive when you buy a house, open a credit card, or lease a car. Or consider the monthly statements you get for loan payments or regarding your bank accounts.

Embedded in these disclosures are the terms of the product or service that, if not well understood, can come back to haunt any consumer. Terms address topics such as how much you owe each month; whether that amount remains constant or resets at a higher rate over the course of the loan; whether the minimum payment you're making actually leaves you owing more, not less, over time; whether there is a penalty for early payment on a mortgage; and whether you have been charged for a purchase you never made on a credit card.

And so, if we as consumers are to protect ourselves based on these disclosures, we have to understand them. And yet, until recently, the government has been more concerned with the legal precision of these notices than their readability or usability by consumers. And given that focus—and the litigious society we live in—it's only natural that financial companies themselves have been more concerned about liability and legal requirements than the quality of their disclosures.

Graham-Leach-Bliley Act and federal privacy notices

Although the Securities and Exchange Commission has actively promoted plain language disclosures to investors for decades, the other

financial regulators have been late to the game. For those regulators, the aha! moment can be traced to financial privacy notices.

There has been a lot of talk lately about whether Congress should have repealed the Depression-era law that separated commercial and investment banking. Why even mention this? In fact, the law responsible for repealing the depression-era Glass-Steagall Act is the same law that required financial institutions to develop privacy- and information-sharing policies and provide privacy notices to their customers.

In 1999, Congress mandated that all financial institutions establish and abide by privacy policies. Congress required financial institutions to notify their customers of how they use and share consumer personal information and how consumers could opt out of certain sharing practices. This was a big deal—the first time the federal government required mandatory privacy notices.

What drove this law was the revelation in a lawsuit by a state Attorney General (AG) that a very large bank was sharing its customers' credit card numbers and personal information with telemarketers, unbeknownst to the bank's customers and in contravention of the bank's voluntary privacy notice. The AG's office was alerted to this practice when customers began complaining that mysterious charges were appearing on their credit cards. Apparently, bank customers would sign up through the telemarketer for a magazine or entertainment package for a trial period. At the end of that period, they had to opt out to stop the service. Only they didn't think of opting out because they had never given their credit card information to the telemarketer, so how could they be charged? That a trusted financial institution would engage in this type of practice was truly shocking at the time and prompted Congress to act.

The law required seven federal agencies to implement the statute—a consortium of banking agencies, the SEC, and the FTC. In response to proposed regulations, the agencies received a number of comments from the industry objecting to the lengthy notices they claimed would be necessary to comply with all the regulatory requirements. In response, the final rules contained a set of sample clauses companies could use to satisfy the disclosure requirements.

The clauses were provided to demonstrate to financial institutions how brief the notices could be—not the telephone book-length notices they complained about—and to give them an easy means to comply with the rules. In fact, if the companies used the sample notices correctly, they were shielded from liability. I can tell you, the agencies gave little consideration to the consumer's ability to actually understand these clauses. Terms such as "nonpublic personal information", "consumer reporting agency", "nonaffiliated third party", "as permitted by law" were not exactly user-friendly.

When the first notice arrived in my mail box, I was so excited to see the fruits of my labor. My husband took one look at the notice and said "I have no idea what this means." He's a lawyer. To make it worse, these sample clauses were blessed by the agencies and were used as the basis of a number of notices because they were blessed by the agencies.

What a missed opportunity! This first set of notices could have provided THE teachable moment about information-sharing practices. This was something new and novel. Privacy was a hot topic in this pre-Facebook time. If the notices had been done correctly, consumers may have actually paid attention to the notices and may even have reacted to them by opting out of information sharing. Instead, these inscrutable notices dissuaded consumers from reading or using them and thus from exercising their rights. They were often long, in small type, printed on small multi-paneled brochures. They ended up in the trash. In the meantime, companies spent millions of dollars developing, printing, and mailing essentially worthless notices.

In light of the failure of these notices, the federal agencies responsible for the privacy rules decided to host a workshop to highlight best disclosure practices and discuss impediments to improving notices. One of the presenters was Dr. Alan Levy, a senior scientist at the FDA, who had helped develop the nutrition label—the gold standard at the time for consumer disclosures. Levy described the process for developing and testing the notice. He emphasized the importance of testing usability as opposed to what consumers liked—which were not always, or even often, the same. So, for example, could a consumer looking for a bag of chips with the least amount of fat or

calories use the nutrition label to make the right choice?

This was a eureka moment—perhaps a privacy notice could be reduced to a readable, usable nutrition-type label. And so, an unwieldy group of agencies, led by Dr. Susan Kleimann of Kleimann Communication Group, embarked on a self-imposed consumer testing journey—a maiden voyage—with the goal of developing a model privacy notice that (1) increased consumer comprehension, (2) allowed consumers to compare practices across different institutions, and (3) complied with the legal requirements of the statute. Years later, while the project was going full bore, Congress expressed its approval by requiring the formulation of a model notice with a safe harbor for institutions using the form.

Consumer Testing and the Financial Privacy Notice

The seven agency process took six years from start to finish. It involved multiple rulemakings and multiple forms of testing. We began with focus groups, then preference testing, a pre-test to help sort out design elements, one-on-one diagnostic usability testing reflecting a range of demographic and geographic characteristics, and quantitative testing in which we asked the opinions of people we stopped in a shopping mall. The process was iterative, with the agencies continually revising the notice, taking into account the results of each round of testing.

The pursuit of the ideal privacy prototype was a complex and interesting journey. Along the way, we manipulated design elements and wording. Here's what we found:

Model Privacy Notice

Model Form with Opt-Out by Telephone and/or Online

Rev. [Insert Date]

FACTS	**WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**
Why?	Financial companies choose how they share your personal information. Federal law give consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores]
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information: the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purpose— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing purposes with other financial companies		
For our affiliates' every day business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing	■ Call [phone number]—our menu will prompt you through your choice(s) or ■ Visit us online: [website] **Please note:** If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.
Questions?	Call [phone number] or go to [website]

- Word choices are critical and simple is better—simple words, fewer words. It was fascinating observing the one-on-one testing behind a one-way mirror and seeing test participants get hung up on words a group of government lawyers thought were crystal clear—like "nonaffiliated third parties".
- But oversimplification is not good either. We learned how important it was for consumers to have a context in which to understand the notices—many test participants just didn't have a basic understanding of information-sharing practices or privacy protections.
- Design plays a major role. A tabular format highlighting key features of the notice was far more effective than prose. The visuals matter. Lots of white space, large font, bulleted items, bolded words.
- Standardization was essential to allowing consumers to understand information-sharing practices across institutions.

Ultimately, the model notices reflected what we learned. Please see the Model Privacy Notice at the bottom of page 18.

- We found that titles such as privacy notice or privacy policy deterred consumers from reading the notice. The title in the form of a question is more active and helps consumers understand the notice is from the consumer's bank and that their information is being collected and used by the bank.
- "Why?" "What?" "How?" is the key frame. This information provides the reader a context for understanding the rest of the notice.
- The disclosure table is key to the model notice. It shows what the institution is sharing and the reasons for the sharing. The table is critical to readers' understanding and ability to compare.
- The opt-out form tells consumers how to limit sharing and how to contact the company with questions.

And who is using this notice these days? Here is just a handful of the companies: Bank of America, Capital One, Citibank, JPMorgan Chase, SunTrust, TD Bank, Wells Fargo, as well as credit unions, car financing dealerships. Frankly, it's everywhere.

What a shame that this project couldn't have been undertaken at the beginning of the process, rather than 10 years after the law was enacted. But of course, Congress wouldn't have tolerated such a protracted implementation of a new legal mandate.

The Consumer Financial Protection Agency

Today, we have a single new agency with a mandate to promote clear consumer financial disclosures and a testing regime built into the fabric of the agency. The Consumer Financial Protection Bureau (Bureau) was created under the Dodd-Frank financial reform act. It reflects the concerns of Congress and the Administration that consumers were largely ignored before. The financial crisis started with a spectacular failure of consumer protection—the proliferation of millions of unsuitable mortgages. The Bureau consolidates, in a single federal agency, the consumer protection powers of the many financial regulators that failed to stop the burgeoning mortgage crisis. The Bureau was designed to focus on and address risks to the consumer from financial products and services whether they arise from banks or mortgage companies or payday lenders. I think I can safely say, with a single agency at the helm, it is not likely that developing and testing a consumer disclosure will take six years!

Let's take a look at the agency

Baked into the new consumer agency's DNA is the mission to ensure consumers have access to timely and understandable information for making responsible decisions. In the list of statutory objectives of the agency, that is number one.

To further that mission, the agency is authorized to prescribe rules to ensure the features of a product or service are "fully, accurately, and effectively disclosed in a manner that permits the consumer to understand the costs, benefits, and risks associated with the product or service . . ."

These rules can contain a model disclosure that uses "plain language comprehensible to consumers; contains a clear format and design, such as an easily readable type font; and succinctly explains the information that must be communicated to the consumer."

Any model form issued must be validated through consumer testing. Any person subject to the Bureau's rulemaking that uses a model form is deemed in compliance with the disclosure requirements—meaning they won't be liable for the disclosures. This "safe harbor" is very important to institutions.

I had the good fortune to be chief counsel to the Senate Banking Committee during the crafting and passage of the financial reform bill. My experience with developing privacy notices made me realize the importance of plain language, including presentation and formatting, conveying ideas succinctly and in clear terms, and the important role consumer testing plays in arriving at that formulation. Fortunately, I was in the position to advocate for the inclusion of these concepts in the legislation.

The Bureau is taking its mission and its authority seriously, having already proposed simplified disclosures in a few key areas. The Bureau recognises that poor disclosures not only fail to properly inform consumers, but in some cases may also use misleading terms. Clear disclosures can also lead to positive policy changes—after all, who wants to continue a bad practice once a positive alternative has been clearly laid out?

When you go to the Bureau website, you immediately notice that it is not like most other government websites. It's very user-friendly, and appears to use plain language conventions—it's not cluttered, and it is simple to navigate. The agency's Know Before You Owe initiative is an effort to simplify disclosures for critical financial products—mortgages, credit cards, and student lending. In addition, the Bureau has actively solicited feedback of consumers as they develop the disclosures.

This approach makes sense. Do the research before the mandate. Ensure consumers get good disclosures. Protect the industry against liability if they use good disclosures. This may take more time—something Congress isn't great at understanding—but it's prudent, it saves money in the long run, and it works. It is a win-win approach. We've come a long way from the first days of those sample clauses.

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Amy Friend *is a Managing Director with Promontory, a leading strategy, risk management and regulatory compliance consulting firm focusing primarily on the financial services industry. Amy advises clients on a variety of regulatory issues. Having served as Chief Counsel to the U.S. Senate Banking Committee and Assistant Chief Counsel at the Office of the Comptroller of the Currency, she helps domestic and foreign clients understand and navigate a complex regulatory environment. Amy most recently served as Chief Counsel of the Senate Committee on Banking, Housing and Urban Affairs, where she played a leadership role in developing legislative responses to the financial crisis, including the Emergency Economic Stabilization Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Housing and Economic Recovery Act. From 1998 to 2008, Amy was Assistant Chief Counsel to the Office of the Comptroller of the Currency, where she was the lead representative on a number of interagency rulemakings under the Gramm-Leach-Bliley Act and the Fair and Accurate Credit Transactions Act. From 1987 to 1997, Amy served as Minority General Counsel of the House Committee on Banking, Finance and Urban Affairs (now the House Financial Services Committee), and General Counsel to the Subcommittee on Consumer Affairs and Coinage. Previously, she was an attorney in private practice. Ms. Friend earned a Bachelor of Arts degree at the University of Pennsylvania and a Juris Doctor degree at Georgetown University Law Center. She is a member of the District of Columbia Bar.*

The IC clear project

Karine Nicolay

Project Coordinator
IC Clear Project, Belgium

IC Clear stands for International Consortium for Clear communication. It is a 3-year EU-funded project to develop the first international clear communication course. The pilot is expected in October 2013 at the next Plain Language International (PLAIN) conference in Vancouver, Canada.

In 2014, the course will be officially launched at the first IC Clear Conference in Belgium, with the support of all the major clear communication organisations such as Clarity, PLAIN, International Institute for Information Design, and others.

Partners and advisory group

The IC Clearpartners are higher education institutions and a language institute from each of Austria, Belgium, Portugal, Canada and Estonia. The advisory group consists of Christopher Balmford, Deborah Bosley, Frances Gordon, Joe Kimble, Robert Linsky, Karen Schriver, Ginny Redish and Karel Van der Waarde. All those present at the Clarity conference met over lunch to discuss their cooperation and the course. The advisory group will keep very close contact with the partners in the course of the project and will provide feedback and guidance on the direction of the course.

IC Clear survey

At the conference I called on the delegates to take the IC Clear survey to define its learning outcomes. The survey followed a recommendation made by the International Plain Language Working Group's options paper. The Group recommended that 'the first step towards a training program be a survey of practitioners worldwide to decide on the knowledge, skills and competencies future clear communicators need so that this can be reflected in the course'.

Interdisciplinary fields

The IC Clear team is convinced that clear communication today is, or should be, an interdisciplinary field. That's why it invited people to take the survey from the areas of plain language drafting and training, information design, usability testing and people dealing with psychological aspects of communication. The team invited respondents to describe:

- what they do and what they have done in the field of clear communication;
- whether they work for a boss or are self-employed;
- who they get their assignments from and who their audiences are.

Finding out about tasks, skills and future needs

To find out which tasks clear communicators perform, we asked them what they do on a typical and on an atypical work day. The next question was about their accomplishments so far and what's in their portfolio. We also asked what skills they felt a clear communicator should have. Another important question for teaching future clear communicators was about the tools the respondents use. Because the course should cater for the future needs in clear communication, we asked the respondents what they think the next challenges and trends in clear communication will be.

Warm response

The survey was warmly received by the clear communication community. Many people responded and gave us high quality answers. Our Austrian partner will now analyse the answers and we hope to have defined the learning outcomes by early September. We will then start developing the course modules. The results will be published in due course on our project websitewww.icclear.net.

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Link to the survey: http://www.unipark.de/uc/icclear/8205/

With the support of the Life Long Learning Program of the European Union

__Karine Nicolay__ is project coordinator of the IC Clear project. In this EU-funded project, the consortium of partners will design an international postgraduate course in clear communication. Karine is a member of the International plain language working group (IPLWG) and is a lecturer on communication skills and plain language with Katholieke Hogeschool Kempen, a Belgian university college. She's been in the plain language field since the early nineties, starting as editor-in-chief of a Flemish easy-to-read newspaper. Karine participated and coordinated several European-funded projects. In her actual job she established the school's plain language training and rewriting services. She gets training and rewriting assignments from both private companies and public authorities.

Vancouver hosts plain language conference October 10–13, 2013

The Plain Language Association InterNational will hold its 9th biennial conference in 2013. The theme of the international conference is Plain Language Advances: New skills, knowledge, research, and best practices.

"Since 2013 marks PLAIN's 20th anniversary, it is fitting that we will be back in Canada, in the city where it all began," said PLAIN President Deborah Bosley. "We are co-hosting with Community Plain Language Services Corp., a Vancouver-based non-profit created by PLAIN's founder Cheryl Stephens."

"We are excited to recognize our advances over the last two decades, yet focus on the future of plain language," said Cheryl Stephens, Managing Director of Community Plain Language Services Corporation, a conference host. "The program includes international experts and workshops by leaders in the field, who will challenge our thinking and help plan a path for the coming years."

Plenary speakers from around the globe will cover topics like the future avenues for plain language, recent research findings, the design of an international training program, ethical issues, and the affects of recent brain research on our work. Plain language proponents and the main sponsors are the Canadian Union of Public Employees and the Writing and Publishing Department of Continuing Education at Simon Fraser University.

"Technology is having a huge influence on communication, comprehension and creativity," said Kate Harrison Whiteside, PLAIN co-founder and Principal at Key Advice. "We will use the conference to explore technology and plain language. After the success of our International Plain Language Day (IPLDay) virtual conference last October 13, we will be taking IPLDay 2013 to the next level."

Visit the PLAIN2013.org website for more program news as we confirm details. Watch for the call for participation and online registration in January 2013.

For information contact:

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Kate Harrison Whiteside—plain@keyadvice.net or 1.250.521.0454.

Deborah Bosley, PLAIN President—deborah@theplainlanguagegroup.com

Plain language and the role of the visual

Josiah Fisk

President, More Carrot LLC , Boston, Massachusetts

Who needs the visual dimension? Writers for one, especially plain-language writers. In fact, I've yet to see a writing assignment that can be completed without resorting to the visual. Let me explain why.

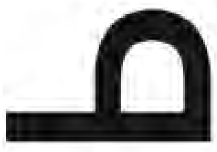
This magazine, we might all agree, is not overly visual. There are a few photos, tables, and graphs, but little else we normally think of as "visual communication." If pressed to look harder, we might note that titles, subtitles, bullets, paragraph breaks, sidebars, and italics are all forms of visual communication—in the sense that we perceive them as visual patterns and also derive some degree of meaning from them. Yet we're still nowhere close to recognizing the full extent of what is visual in this magazine. To demonstrate, here's a passage from which I have removed all visual communication:

That's right. It's blank.

What we writers tend to forget is that the written word itself is conveyed through visual means. Note that this situation is not symmetrical: visual communication has no particular need for words. This is one clue to the nature and power of visual communication, and to the reason that we, as writers, might want to use that power to help us reach our goals.

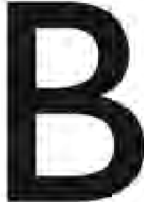
The intuitive and the learned

Consider these two images:



While we easily recognize them as letters, it's also possible when they're in this orientation to see them merely as images. When we do this, we observe that the left image has only one loop while the right has two. This observation is instantaneous, even involuntary.

Now let's look at the same images in their usual orientation:



It's hard for anyone familiar with the Roman alphabet to see these as anything but letters. We recognize them as symbols and this overwhelms their status as images. Each symbol, for us, is connected to a rich network of concepts and attributes—words in which it appears, other letters that often follow it, the way it sounds, and so forth.

All of this may seem as innate as our ability to spot the difference between one loop and two. But it is not.

The visual distinction is intuitive: no one had to teach us how to make it, nor did we have to practice it. The letter distinction is learned. If we do it easily, it's only because of years of daily practice. And if we are very young, or struggle with literacy, or are used to a different alphabet, we will find the learned distinction difficult or even quite beyond us—while the visual distinction will still be effortless.

The ever-present visual

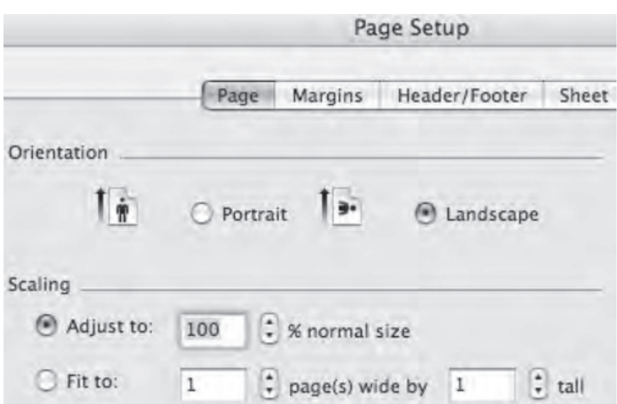
One way to understand the power of the visual is to try turning it off. You can't. So long as we are talking about text on a page or screen, there will be visual cues and they will signal things to us. They will do it quickly, too—we typically process a number of them even before we read the first word.

By "visual cues" I mean the basic connotations that our eye gleans from visual conditions. For instance, through spatial relationships we automatically infer groupings and connections. We also easily perceive similarities and differences of size, shape, and color. We immediately recognize hierarchies and patterns. Our eyes also can visually "connect the dots" to complete certain patterns that are not actually represented in full.

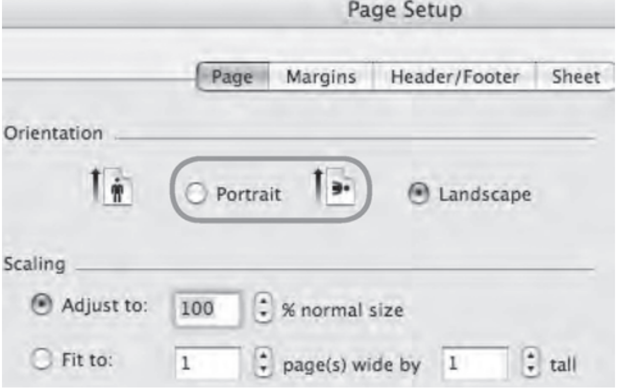
Since these cues are always present, we really have just two options in dealing with them. We can manage them so that they support our communications goals (or at least don't interfere with them), or we can ignore them and let the user deal with whatever unintended consequences ensue.

The latter is obviously expedient but can come back to haunt us. If you are not even asking what messages your visual cues are sending, there is essentially no limit to the amount of confusion that can ensue, as we can readily imagine.

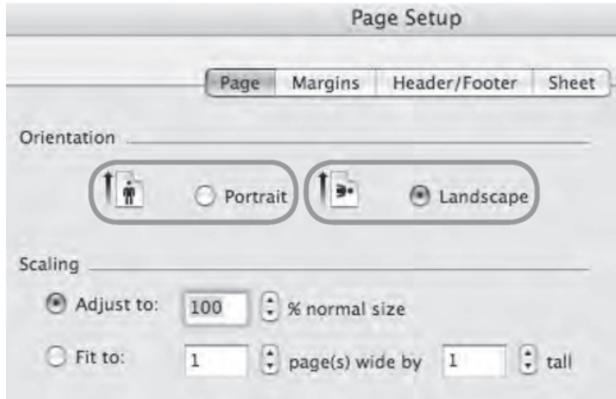
But why imagine when there are actual examples? Let's start with the page set-up menu from one of the most widely used software programs in the world:



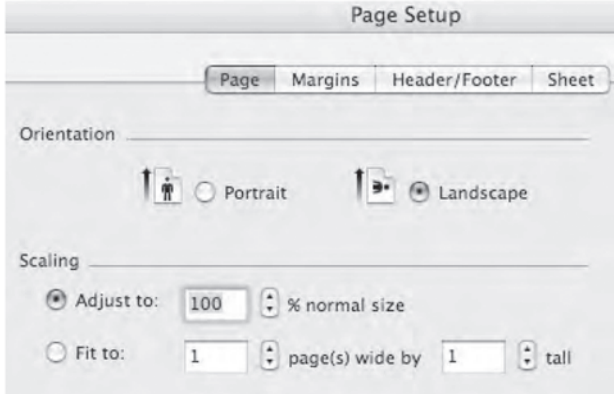
Based on spacing—one of the simplest and strongest visual cues—the eye initially assumes that within the "Orientation" section, the two items in the center form a group:



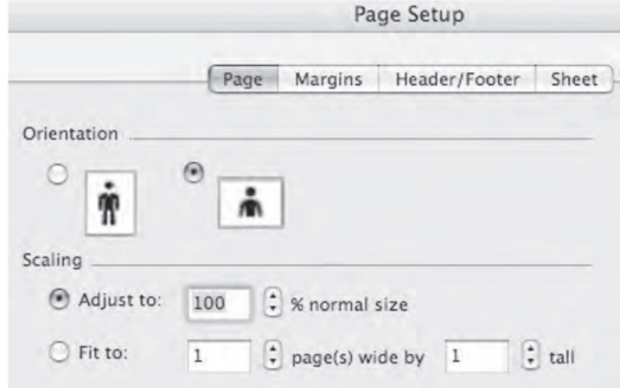
As we further examine content, however, we see that the intended grouping is quite the opposite:



Had the program's developers paused to look at the visual cues they were sending, they could have fixed the problem in minutes with a simple spacing adjustment:



And if the software giant valued its customers enough to apply established principles of information design, they might eventually have ended up with something like this:



As we can see, it is possible to solve this particular communications challenge without using words at all, and without most of the visual clutter and confusing object order of the original.

Why is solving something visually better than solving it with words? As I noted earlier, inclusiveness is one reason—visual solutions are accessible to more people than text solutions. But even for people who have no literacy or language barriers, visual solutions are often easier to absorb. In short, there is *no audience* that is better served by a version of this menu that includes words than a version without words. (The one possible exception is non-sighted people who use automated text readers; for this audience, words are still needed, though they could likely be embedded in hidden form.)

What's the worst that could happen?

While a poorly designed software menu may cause annoyance and may waste the time and paper of millions, it's unlikely to have life-or-death consequences. But there are cases in which ignoring the power of the visual has had serious consequences, even tragic ones.

The December 5, 1999 edition of the *New York Times* carried an article in which a surgeon from a Denver hospital made a stunning revelation. In a certain procedure that involved both a paralyzing drug and a drug that reversed the paralyzing drug, 5 out of 6 doctors admitted giving the wrong drug at least once. This confusion was traced to a simple cause: although the drugs were labeled correctly, the containers looked identical and both drugs were kept in the same drawer.

Note that the visual cues here were not *misleading*, merely *absent*. In theory, since the wording was always accurate there should have been no failures—especially since the drugs were being administered by highly trained professionals, and everyone was well aware they could not rely on any visual cues. And yet failures occurred—not just once with one surgeon, but multiple times with multiple surgeons.

Happily, in this instance the problem was easily fixed. The hospital switched to color-coded containers and put the drugs in different drawers. Reported errors fell to zero. Most importantly, no one died or suffered lasting injury. In fact, the physician who revealed the story stated that this was what made it possible for him to do so. Had the errors created grounds for malpractice claims, his disclosure would have amounted to professional and financial suicide.

Are there cases, then, when people have actually died as a result of confusing or inadequate visual cues? Given the pressures to suppress that information, we'll never know how many times this may have happened. What we do know is that such mistakes are completely understandable on a human level, completely unacceptable on a cultural level (at least when it comes to medical care), and often easy to prevent through small, simple, visual changes.

Actually, it IS rocket science

One of the worst space disasters in history occurred on January 28, 1986, when the space shuttle Challenger blew up shortly after launch. All 7 astronauts were killed and America's space program was dealt a severe and lasting blow. The explosion was traced to the o-rings between booster rocket sections, which failed to "seat" properly when cold weather reduced their suppleness.

Could the Challenger disaster have been prevented? There was plenty of data to indicate that a low-temperature launch was dangerous. But it was not provided to decision-makers in a visual form. Here's what they received instead[1]:

MTI ASSESSMENT OF TEMPERATURE CONCERN ON SRM-25 (51L) LAUNCH

- O CALCULATIONS SHOW THAT SRM-25 O-RINGS WILL BE 20° COLDER THAN SRM-15 O-RINGS
- O TEMPERATURE DATA NOT CONCLUSIVE ON PREDICTING PRIMARY O-RING BLOW-BY
- O ENGINEERING ASSESSMENT IS THAT:
  - O COLDER O-RINGS WILL HAVE INCREASED EFFECTIVE DUROMETER ("HARDER")
  - O "HARDER" O-RINGS WILL TAKE LONGER TO "SEAT"
    - O MORE GAS MAY PASS PRIMARY O-RING BEFORE THE PRIMARY SEAL SEATS (RELATIVE TO SRM-15)
      - O DEMONSTRATED SEALING THRESHOLD IS 3 TIMES GREATER THAN 0.038" EROSION EXPERIENCED ON SRM-15
  - O IF THE PRIMARY SEAL DOES NOT SEAT, THE SECONDARY SEAL WILL SEAT
    - O PRESSURE WILL GET TO SECONDARY SEAL BEFORE THE METAL PARTS ROTATE
      - O O-RING PRESSURE LEAK CHECK PLACES SECONDARY SEAL IN OUTBOARD POSITION WHICH MINIMIZES SEALING TIME
- O MTI RECOMMENDS STS-51L LAUNCH PROCEED ON 28 JANUARY 1986
  - O SRM-25 WILL NOT BE SIGNIFICANTLY DIFFERENT FROM SRM-15

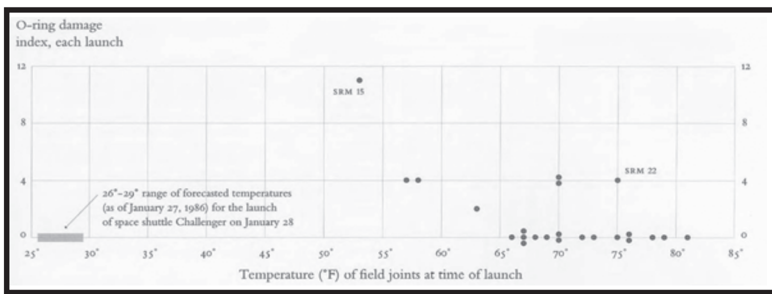
JOE C. KILMINSTER, VICE PRESIDENT
SPACE BOOSTER PROGRAMS

Note how this memo is written. After several statements that raise significant concerns, it concludes by stating support for a launch. Note also that only two lines use direct, immediately understandable language: "If the primary seal does not seat, the secondary seal will seat" and "MTI recommends STS-51L launch proceed." These lines convey a positive message. Meanwhile, most of the negative information is in "engineer-ese."

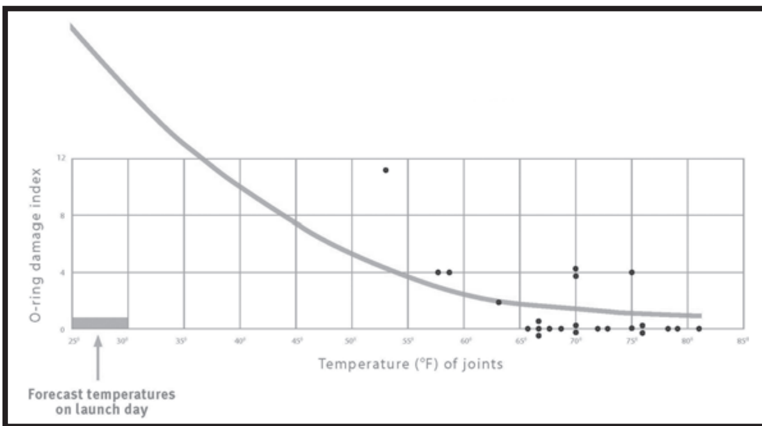
It's not hard to imagine what has happened here. The person signing the memo has

passed along the *factual* concerns of his engineers, thus avoiding any charge of cover-up, while also offering the *opinion* he knows his superiors want to hear. Yet it would be very hard to read this memo and come away with a clear idea of whether proceeding with the launch is a good idea or not.

In his book *Visual Explanations*, the eminent information designer Edward Tufte takes the actual data that the engineers were looking at and graphs it. The horizontal scale represents temperature at time of launch, the vertical scale the overall amount of damage to the o-rings. Each dot represents a previous test firing of the same type of rocket used in the *Challenger*:



Further clean-up and the addition of one crucial element make the point of this chart even clearer:



The curved line is a mean derived from the data points—actual on the right half, extrapolated on the left. The higher the line, the greater the anticipated damage to the o-rings.

Presenting the data this way immediately makes four things clear:

1. There is an apparent correlation between o-ring damage and temperature.
2. There has never been a damage-free firing of this type of rocket below 65 degrees F (and the forecast temperature for launch day is 35–40 degrees colder).
3. If the left half of the curve is correct, the risk of damage is 1–2 orders of magnitude higher than at "normal" temperatures.
4. Ultimately, we really have no idea if the curve is high, low, or about right, because we have no actual data from anywhere near the temperature range in question. We are deep into uncharted waters.

What if the engineers had submitted this chart to their manager? It seems likely he would have had a clearer understanding of the situation. But most importantly, it would have made it far more difficult for him to suggest that the launch should go forward. The very clarity of the chart makes the "cost" of such an act extremely high. That's because the chart is clear not only to rocket scientists but to people like reporters, politicians, and ordinary citizens. That kind of clarity has the power to sway not only decision-making, but public accountability.

Putting the visual to work: Example 1

Even if we acknowledge the power of the visual, does it have much application to the average plain-language task? I believe it does.

In 2009, Manhattan artist Candy Chang created a highly visual guide for street vendors that is rich in factual information—and it does the job of many pages of legalese. The guide unfolds like map. Here is the first information you see when you begin to unfold it:

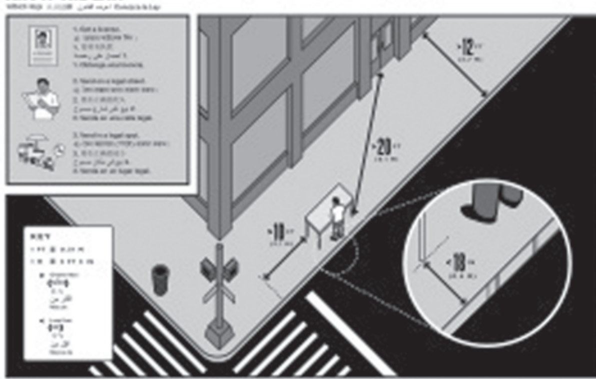
You can see the guide at http://candychang.com/street-vendor-guide/

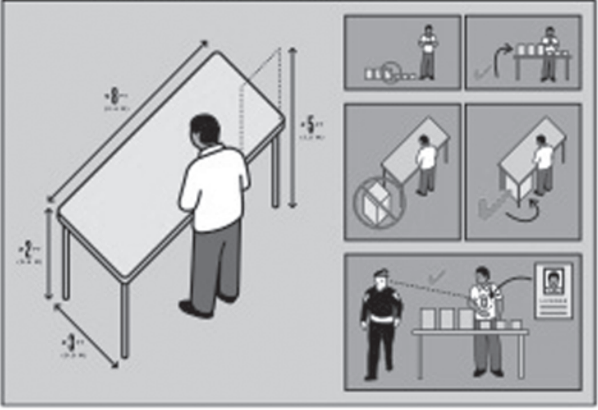
Even before we start reading, we can see how the document is organized. There's a (very short) title, an introduction under the title, and to the right, four panels. We may also notice that by keeping words to a minimum, the piece has room to present text in five languages without even beginning to look cluttered.

Looking at the panels, we see that they are numbered (so we're clear about reading order) and that each one has an icon. While the icons aren't a complete communication, each represents something that is central to the message of the panel. That gives us a "head start" on comprehension, by narrowing down the subject area and giving us a conceptual "anchor." When we begin reading the first panel, for instance, we aren't thinking "what is this panel about?" but rather "what are they saying about a camera?"

The value of this narrowing may seem trivial. But when you think, for instance, of all the texts you've encountered that failed to orient you in their opening sentences (or ever, for that matter) it may be easier to believe that we have seriously underestimated the value of a visual nudge in the right direction.

As the piece opens up further, we see more detailed, but still very clear, translations of written regulations into visual information:





At a glance, this tells a vendor about all of the somewhat fussy measurement standards they must not violate. This information is highly important to street vendors because the standards are strictly enforced and a single violation can cost thousands of dollars. That is a hefty fine by anyone's standards, but it is potentially ruinous in a business where most participants are economically marginal and not highly fluent in English, let alone equipped to tackle long pages of dense legalese.

Putting the visual to work: Example 2

Even in documents where text remains central and the order of information is fixed by statute, the visual can play a very important role.

Key Investor Information

This document provides you with key investor information about this Sub-Fund. It is not marketing material. The information is required by law to help you understand the nature and the risks of investing in this Sub-Fund. You are advised to read it so you can make an informed decision about whether to invest.

Selectum Belgium Fund

A Sub-Fund of SELECTUM STOCK PICKING FUND SICAV Class R Retail LU0652588970

Sub-Fund managed by: SELECTUM Vermogensbeheer N.V. – Belgium

Objectives and Investment Policy

The Sub-Fund has as its objective to offer shareholders a maximum increase in their investment over the medium term (5 - 7 years).

The Investment Manager anticipates that under normal market conditions the Sub-Fund will mainly invest in a broad mix of equities from issuers in Belgium. Equities are securities that represent a share in the business results of a company.

The Sub-Fund may use derivatives for efficient portfolio management or for hedging. Derivatives are financial instruments whose value is linked to one or more rates, indexes, share prices or other values. Hedging means seeking to reduce or cancel out exposure to various investment risks.

The Investment Manager performs intensive research on individual companies, focusing on their fundamental qualities and their potential to increase cash flows. The Investment Manager uses a vigorous and ongoing process of analysis that includes research as well as interviews with senior management.

The Sub-Fund is designed for investors who intend to invest for at least 5 - 7 years.

The reference currency of the Sub-Fund is EUR.

Orders to buy or sell Sub-Fund shares are processed every Luxembourg business day.

The Sub-Fund issues only accumulation shares (shares in which any income earned is added to the share price).

Through nothing more than organizing and formatting, the example above was transformed into the one below:

Key Investor Information 28 September 2011

This document provides you with key investor information about this Sub-Fund. It is not marketing material. The information is required by law to help you understand the nature and the risks of investing in this Sub-Fund. You are advised to read it so you can make an informed decision about whether to invest.

Selectum Belgium Fund

A Sub-Fund of SELECTUM STOCK PICKING FUND SICAV Class F Founder LU0652589275
Sub-Fund managed by: SELECTUM Vermogensbeheer N.V. - Belgium

Objectives and Investment Policy

Objective To offer shareholders a maximum increase in their investment over the medium term (5 - 7 years).

Portfolio Securities The Investment Manager anticipates that under normal market conditions the Sub-Fund will mainly invest in a broad mix of equities from issuers in Belgium. The Sub-Fund may use derivatives for efficient portfolio management or for hedging.

Investment Process The Investment Man ager performs intensive research on individual companies, focusing on their fundamental qual ities and their potential to increase cash flows. The Investment Manager uses a vigorous and ongoing process of analysis that includes research as well as interviews with senior management.

Designed For Investors who understand the risks of the Sub-Fund and intend to invest for at least 5 - 7 years.

Reference Currency EUR

Terms to Understand

Equities Securities that represent a share in the business results of a company.

Derivatives Financial instruments whose value is linked to one or more rates, indexes, share prices or other values.

Hedging Seeking to reduce or cancel out exposure to various investment risks.

Orders to buy or sell Sub-Fund shares are processed every Luxembourg business day.

The Sub-Fund issues only accumulation shares (shares in which any income earned is added to the share price).

Note that even the finished version is not a highly "visual" document. That's intentional. Graphic design—making things look interesting and attractive—is minimal here. Information design—introducing visual cues to help the reader—is used heavily, but within a restrained range. The result is a "serious document" (in this case a summary prospectus) that nonetheless gives the impression of being both sophisticated and approachable.

Incorporating the visual requires a shift in thinking and in work methods. The only way to get the full power of verbal-and-visual teamwork is to truly integrate the two approaches, asking what each one can bring to each communication challenge. But the results of this teamwork can be more powerful than either verbal or visual communication alone. As communications professionals, that's an advantage we can't afford to live without.

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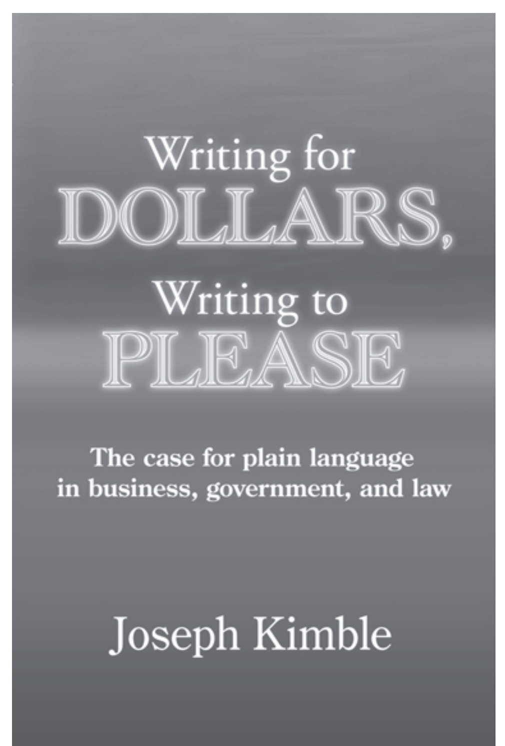
josiah@morecarrot.com

Endnotes

[1] I am indebted to Michael McClory of WriteSmart LLC for bringing this memo to my attention and for pointing out the disconnect between the facts presented and the conclusion.

Josiah Fisk *is the founder and creative director of More Carrot, a firm that combines plain language with information design to create simplified, user-centric documents. Based in Boston, More Carrot just opened a second office in Luxembourg to serve the growing need for simplification in Europe. More Carrot continues and expands on the work done by Firehouse Financial Communications, which Fisk co-founded in 1997. Firehouse developed simplified prospectuses for over 1,500 U.S. and European mutual funds, and has done industry-leading work in business forms, account agreements, shareholder reports, and workplace compliance communications. Before founding Firehouse, Mr. Fisk worked for ten years as an independent consultant for a range of industries, with a focus on financial clients. In 1991, he was the plain language lead for the team that created the first simplified prospectus in the United States. Mr. Fisk is a frequent presenter at conferences in the US and Europe. He holds a B.A. with honors from Harvard University.*



Available from
Carolina Academic Press
(www.cap-press.com)
at a 10% discount;
from amazon.com; or from
bookdepository.com
(with free worldwide shipping)

This book gathers a large body of evidence for two related truths: using plain language can save businesses and government agencies a ton of money, and plain language serves and satisfies readers in every possible way. The book also debunks the ten biggest myths about plain language. And it looks back on 40 highlights in plain-language history. The book's message is vital to every government writer, business writer, and attorney.

Praise for *Writing for Dollars, Writing to Please*

"This is the one we've been waiting for—Joe Kimble's update of his classic earlier work on the benefits of plain language, written in his lively, distinctive style. If this doesn't convince lawyers, business writers, and government writers to use plain language, nothing will. They all need to have this book and take it to heart. It promises to be a game-changer for public communication."
Annetta Cheek, Chair
Center for Plain Language

"When people demand proof that plain language works, we can now utter four short words: 'Read Joe Kimble's book.' Proof aside, it will also give them sound guidelines for creating clear documents, plus a fresh and inspiring history of our field."
Martin Cutts
Author of *The Oxford Guide to Plain English*

"With a refreshingly honest tone, . . . Kimble presents compelling . . . arguments and evidence that plain language is the only sensible choice for any legal document . . . ."
American Association of Law Libraries
"Spectrum" Blog

"If you are looking for clear evidence to support the claim that plain language works, you can't go wrong with a new book, *Writing for Dollars, Writing to Please* by Joseph Kimble, an international expert on legal writing. It's full of examples from real agencies . . . . The book has over 50 case studies showing clear, measurable improvements and the value of plain language in reducing costs and increasing effectiveness."
"Usability in Civic Life" Blog

Laws requiring plain language: a Clarity project

Clarity laws around the world

At Clarity's 2012 conference in Washington D.C., Clarity launched a project to create a database of all the laws around the world that require the use of plain language ("plain-language laws"). The purpose of the project is to encourage and help people everywhere to call for more—and better—plain-language laws.

Ben Piper from Australia and Tialda Sikkema from The Netherlands are coordinating Clarity's project and have provided the information about the laws in their countries.

In this combined article, Tialda and Ben report on their discoveries—some encouraging and some less so. And Annetta Cheek reports on the US Plain Writing Act.

They, and Clarity, invite you to contribute:

- to the matrix of international clarity laws;
- findings on how lawmakers deal with difficulties about defining plain language, about compliance and about enforcement.

To be sure, some of these difficulties—in particular, the problem of defining plain language—are likely to shrink as the International Plain Language Working Group develops an internationally accepted definition of plain language and sets plain language standards. You can read about the Group's work in its substantial Options Paper published in *Clarity* 64, November 2010, at http://www.clarity.shuttlepod.org/Resources/Documents/64_032111_04_final.pdf

Plain language laws in Australia

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Australia has 1 federal government and 8 'provincial' governments. Between them, they have produced 41 different primary or subordinate laws that contain a plain-language requirement[1]. However, unlike America, Australia has yet to produce a law that has the use of plain language as its sole topic. Currently, all of the plain-language requirements in Australian laws appear as part of broader legislative topics. The plain-language laws are a mixed bag. They seem to exist largely because of individual policy officers actively pushing or plain language.

Although the plain-language laws in the Australian Capital Territory are all based on national laws, each of the other Australian governments has produced a plain language law unique to itself.

The laws have all been enacted since 1984. But the vast majority was made after the mid-1990s, with most being made between 2000 and 2011.

Lessons from the Australian laws

Anyone wanting to create a plain language law faces at least 3 crucial questions:

1. How can you have a law about something that—pending the outcome of the work of the International Plain

Language Working Group—is yet to be properly described?

2. Who should you direct the law at?
3. How can you enforce the law?

The Australian laws provide some help with these questions.

How can you have a law about something yet to be properly described?

One only needs to attend a plain-language conference to see the difficulties in defining plain language. Law drafters do not have the luxury of imprecision. For a plain-language law to be effective, the concept of plain language needs to be defined in a way that enables a judge—if the worst comes to the worst—to say that something is, or is not, plain language. Or so the theory goes.

The Australian laws demonstrate that in at least 41 instances Australian drafters were prepared to draft a law imposing a plain-language requirement without defining what plain language is. In some cases, the laws do require specific plain-language elements to be used, for instance by specifying the use of a minimum font size. Sadly, 2 laws require 12 point, 1 requires 10 point, and 1 requires a "size and style that is easy to read".

Of course not defining plain language has consequences:

- It creates uncertainty. If a plain language requirement is not defined, then no one really knows whether they are complying with it. However, 2 of the Australian laws show a way round this. Broadly, they provide a mechanism by which an official opinion can be obtained on whether the document is in plain language. For instance, the Queensland *Manufactured Homes (Residential Parks) Act 2003* has a procedure by which application can be made to a tribunal for its opinion as to whether a relevant document is in plain language.
- It is a broad-brush approach. Short of specifying desired plain-language features, anyone drafting in this way cannot be confident that the law will ensure that each element of plain language is adopted in the documents they regulate.
- It turns the courts into law makers, the arbiters of what is plain language. There are many who would suggest that that is not an ideal situation.

Who should you direct the law at?

An Australian drafter would answer this question by saying "A plain language law should be directed at anyone but the government". This is an answer born of pragmatism—Australian governments do not impose binding requirements on themselves by law except in exceptional circumstances. Of the 41 Australian examples, there is only one that imposes an obligation on executive government, and that is quite a minor obligation. The *Telecommunications (Interception) Act 1979* (Federal) requires the relevant Minister to publish a notice calling for public submissions in a newspaper "in plain English".

But doesn't the US have the *Plain Writing Act* of 2010, which imposes lots of requirements on executive government? It does, but the US doesn't have the Westminster system of government. The US Act was imposed on the executive branch of government by the legislative branch. That can happen in the US because those 2 branches are separate from each other. By contrast, in Westminster systems the executive government controls the legislature.

For a government in the Westminster system there's almost no upside in passing a plain-language law imposing obligations on itself. Although there may be some favorable press when the law is passed, no one will really notice if the law is complied with. But if it isn't complied with, then lots of people are likely to be critical of the government. So a plain-language-friendly government can more safely attempt to give effect to a plain-language policy by administrative means. This potentially gives it favorable publicity but also provides much more wriggle room if things go awry.

So who should you direct plain language laws at? The Australian examples show that there are lots of options, including government entities that are independent of executive government—for example, courts, tribunals and statutory authorities. Those regulated in Australia are mostly the providers of goods and services.

How can you enforce the law?

Speaking as a drafter, my answer to how you can enforce the law is "not very well". You can't make non-compliance with something that is a legally vague concept a criminal offence.

No court would be prepared to convict a person for failing to do something that is yet to be effectively defined, or so the theory goes.

In fact there are a few Australian examples of making a failure to express a document in plain language a criminal offence. They are not great precedents, but they exist. The most extreme example is section 25 of the Queensland *Manufactured Homes (Residential Parks) Act 2003*, which imposes a maximum fine of A$20,000 for site agreements that are not "clearly expressed in plain language".

Of course, laws can achieve results without imposing criminal penalties. In particular, documents that confer rights on those who write them are prime targets for plain language laws. It is easy for a law to provide that such documents are legally ineffective if they are not written plainly. Many of the Australian examples involve those sorts of documents, but curiously only one of them explicitly provides that non-complying documents don't confer rights on those who seek to benefit from them. Section 33 of the South Australian *Second-hand Dealers Act 1995* provides that a purported waiver can be found to be ineffective if it is not "written in plain English".

In many of the other examples it may be possible to argue that those seeking to rely on rights conferred by non-complying documents should not be able to do so, but it would have made it easier for all concerned had the laws put this matter beyond doubt.

It is also possible for a law to provide a mechanism to enable a regulator to stop reliance on documents not written in plain language. A mechanism like this exists in the Commonwealth's *Corporations Act* 2001. Section 715A enables the regulator, the Australian Securities and Investments Commission, to stop a company from using a prospectus that is not "clear, concise, and effective". Anecdotal evidence from plain-language practitioners suggests that ASIC uses this mechanism effectively. The practitioners report receiving calls from agitated representatives of major banks seeking urgent help to improve the clarity of prospectuses that ASIC has just rejected—a fine example of a plain language law directly improving a document's clarity. A similar result can be achieved under the Queensland *Manufactured Homes (Residential Parks) Act 2003* and the Victorian *Credit Act 1984*.

In summary

Although the Australian laws provide some practical assistance to those seeking to promote laws requiring plain language drafting, the Australian laws probably only provide glimmers of hope—hence the need for Clarity's project.

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Plain language laws in the Netherlands

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At what point does a government feel the urge to establish laws that ensure organizations communicate intelligibly? There are two reasons that motivate a government:

1. to protect civil rights; and
2. to protect civilians against risks—or more precisely to enable consumers to best access information so they can make informed choices.

In this paper, you can read about several Dutch laws developed for each of those reasons and about how lawmakers got in, or out of, the woods of prescribing clear language. I cannot say much about the effect of plain-language laws in the sense of civil rights being better

protected, or civilians living a safer life or making better choices. But I do have some considerations that might help give the project depth.

Searching laws

Despite the difficulties of defining plain language, there are laws in The Netherlands prescribing a certain way of informing or writing to civilians. In my odyssey to find these laws, I first defined when a result from a search entry was relevant or not.

I treated a law as a plain-language law if it required that a text be able to be understood by the intended reader—however vague the law's concept of 'understanding' and 'reader' was. On the other hand, I regarded a law as irrelevant for this project if the element of 'understandability' referred to the national language, physically accessible language or oral communication.

In the online database of Dutch law, I searched more than 60 different words or word combinations. The more precisely my entry referred to (written) language, the more likely it was to generate relevant hits. But because there was no way of looking into the legislator's mind, it was very uncertain if all searches actually showed all relevant laws. Of the 60 entries, 10 referred to laws containing plain-language requirements.

Word combinations such as "understandable language", "clearly readable" and "easily readable" produced quite relevant hits. Searches for "understandable", "clearly stated" or "clear" provided too many hits. So, acknowledging the risk of losing relevant information, I only checked entries with 30 hits at most.

I excluded criminal law from my survey, but some of the results there will probably also be relevant.

Civil rights

One of the basics of a constitutional state is the right of civilians to defend themselves against claims or accusations. A necessary condition for defending a claim is the ability to understand the claim in the first place. For this reason, the law requires the relevant documents to set out the claim and its foundation clearly and coherently. The party making the claim is responsible for formulating a clear claim, and the judicial officer is responsible for serving a clear writ. At least, that is what the law says.

However, although there are cases in which attorneys have attempted to nullify a claim because it lacks clarity, I have found no cases in which those attempts were successful.

Other examples of plain-language laws aiming to protect civil rights are the extensive laws concerning the rights of juvenile prisoners. *Reglement justitiële strafinrichtingen, art*. 12 lid 4 requires a jail governor to communicate certain decisions concerning young inmates in *writing and in language that is as much as possible understandable to them*. The 'as much as possible' seems to reflect the difficulty of defining 'understandable language'. I found no cases concerning this obligation of governors.

Consumer protection

Most of the Dutch clarity laws concern consumer protection. Health risks are intended to be avoided by labels on food and medication. Financial risks are intended to be limited by obliging financial institutions to give clear mortgage information. And there is a very important law that protects the rights of chocolate consumers: *Warenwetbesluit cacao en chocolade*, art. 12 requires that part of the label must disclose whether vegetable oils other than cocoa butter are used.

The obligation of financial entrepreneurs to communicate understandably about complex financial products comes close to a true clarity law. However, in a way, this law is both protecting consumers against a disagreeable financial risk, and requiring clear disclosure so consumers can protect themselves against that risk.

A key notion in this law is that the person who obtains the financial information is a 'reasonably informed person' who can be expected to look into information so as to make the right choice. So here we have the legislator trying not to fall into the pit of mentioning only that a document needs to be understandable, but rather also mentioning who the document's intelligibility needs to be measured against—although the concept of a 'reasonably informed person' is just as vague as the concept of 'understandable'.

There have been several cases of clients attempting to hold a financial company liable for financial loss due to loan documents being too complex. Most of these cases concerned a share lease construction in which consumers used borrowed money to buy shares but ended

up with no return and a debt of tens of thousands of Euros to the financial company. In one case, the court said that the company ignored a duty to take care of its customers and to give them the right information to help them make an appropriate decision. In the end, this was the primary reason among many for the judge's dismissing the company's claim to collect the debt from the client.

But this particular case dates from 2005—years before the global financial crisis and before the enactment of a Dutch law that prescribes a bank's duty to inform a client thoroughly. Even though the plain-language law didn't exist then, there was a notion that individual consumers had to be taken care of. Actually the principle to take special care of customers before selling very risky financial products dates from the 1997 Supreme Court judgment in *Rabobank v Everaars*. Today financial companies have to write extensive brochures in understandable language. Research on these brochures by the University of Utrecht shows that there is no evidence that these documents enable clients to make appropriate decisions.

In short

The documents covered by laws requiring information to be clear are food-packaging labels, medical leaflets, pension overviews, financial brochures and judicial writs.

There have been very few cases concerning losses suffered because companies didn't comply with these requirements. There are a handful of cases in which a defendant objected to an impenetrable court document, but in each case the judges rejected the claim. The court has held that readability of court documents is not an objective in itself. Instead, the objective is enabling respondents to understand the documents so as to be able to defend themselves.

Establishing a set of rules to protect people against injustice, or consumers against (financial or health) risks seems for a fitting objective for a government. But the whole concept of providing information to uphold this protection is subject to many preconditions and assumptions. There is the difficulty with definitions, the range of skills in readers, the inability of readers to read and interpret information. Then there are the problems for organizations that are subject to vague laws. There is no reason to believe lack of compliance leads to court cases, nor is there any evidence that clarity laws actually make people do the right thing. Although this result might come across as rather disappointing, the fact that I haven't found complaints about bad writing doesn't mean that there is no cause for complaint. It may just be that the problem doesn't appear in court records.

Research has shown that for many years and in many countries readers have found it difficult to understand the various document types that I have written about in this article. I may not easily show success at this stage of my research but in the years to come, we'll learn more about the US Plain Language Act and we'll learn more about how to use laws as an instrument to improve the effectiveness of documents.

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The US Plain Writing Act of 2010

Annetta Cheek

Credentials
Location, United States

The US Plain Writing Act, PL 111–274, 124 STAT. 2861, applies to Executive Branch agencies, not to the Congress or the Judicial Branch. It is not the only US law requiring plain language. For example, the Affordable Health Care Act requires health providers to write part of every health plan description in plain language. But the Plain Writing Act is the only one that is specifically and exclusively about plain language.

The Plain Writing Act defines "plain writing" to mean writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and the intended audience. It covers both paper and electronic information. Although it does not apply to federal regulations (there were political obstacles), it applies to any other document that:

- is necessary for obtaining any federal-government benefit or service or for filing taxes;
- provides information about any federal-government benefit or service; or
- explains to the public how to comply with a requirement that the federal government administers or enforces.

To achieve its purpose, the Act sets out a series of steps that each agency must take. It also requires the Office of Management and Budget (part of the Executive Office of the President) to develop and issue guidance on implementing the Act. The OMB might have been expected to appoint an established agency to help develop that guidance. However, in an unusual move, the OMB gave that interagency role to the U.S. federal group that advocates for plain language[1]—the group that originally created the Center for Plain Language. And that guidance was issued in April 2011.[2]

Full implementation of the requirements of the Act was not required until October, 2011. Some agencies have done a good job so far, others have not. The Center for Plain Language is monitoring the Executive Branch's progress. In June of this year, the Center issued a report card on 12 different agencies.[3] The Center intends to issue similar reports on these and other agencies every year for the next several years.

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Endnotes

1 http://www.plainlanguage.gov

2 http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-15.pdf

3 http://centerforplainlanguage.org/resources/plain-writing-laws/plain-language-report-card/

Dr. Annetta L. Cheek *is an anthropologist by training, earning a PhD from the University of Arizona in 1974. She worked for the US federal government from 1980 until early 2007 and spent four years as the chief plain language expert on Vice President Gore's National Partnership for Reinventing Government. She was the chair of the federal interagency plain language advocacy group, PLAIN, from its founding in 1995 until she retired from the government, and administered the group's website, www.plainlanguage.gov. She was a founding member of the Center for Plain Language, www.centerforplainlanguage.org, a federally tax-exempt corporation. She has served as Chair of its board since its founding in 2007. In that role, she was instrumental in getting the US Congress to pass the Plain Writing Act of 2010. Annetta is also Director of Plain Language Programs for R3I Consulting, a DC-area consulting firm.*

Plain language in other languages

The rewriting of a statute—a case study

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Agency statutes

An agency's statutes are one of the more difficult text types to change. They are very formal and heavily influenced by the language in the law book. They are in effect the law of the agency for others to follow, and they are at the very top of the text hierarchy—directly under Swedish law. In short, the statutes governing Swedish agencies such as the tax office, the police, the Work Environment Authority:

- complement laws and statutes issued by the Government,
- are issued by the agencies by permission of the Government,
- follow strict rules of publication,
- fall under the Language Act, and
- regulate the conduct of other agencies, official and commercial bodies and citizens.

The trust-method

Texts as formal as statutes need a redrafting method that involves close co-operation between the legal expert and the language expert, working on one statute and one paragraph at a time. The actual editing is done in several steps:

1. The two experts review the statute separately.
2. They meet and compare notes. During this meeting they argue their sometimes different cases.
3. They go back and edit separately. They check and double-check their facts and try to meet halfway. This step often involves several short meetings over the phone or via email.
4. They meet and merge their versions. By this time the versions are not so different from each other.

This process is more about establishing trust between the two experts than about rewriting and editing together. Each has to trust that the other has no ulterior motives, such as over-simplifying or over-legalizing the text.

A question of confidence

As an example of this process I have chosen a short statute of 7 paragraphs about transferring documents electronically.

The agency I chose as an example in this case is the IAF, a supervisory agency under the Swedish Ministry of Labour. It exercises supervision over unemployment insurance funds and the Swedish Public Employment Service's handling of matters that relate to unemployment insurance. The IAF is to inform about its own activities relating to supervision, follow-ups and administrative tasks. It is also to clarify the system of rules in the area of unemployment insurance.

I started by making a priority list of obstacles, with the preamble at the top. This is the most formal part of any statute, and it takes a great deal of courage to make any changes to it. But I know that if you can make a small change there, the rest of the process goes more smoothly because of the confidence a small change gives the legal expert—they are encouraged by the impact of the change on the clarity of the document. So my first suggestion was to make the preamble into a bullet list—

the natural choice for presenting a list of paragraphs. After some discussion and reassuring the legal expert that this was the preferred method for new statutes and laws, we made the change.

The most interesting thing about these discussions is that the legal expert's biggest concern was (and actually always is) how, and if, this change would be accepted by the General Director of the agency. Since the General Director in this case had no legal skills (a typical situation), the concern must be not that the legal status of the statute would suffer from the change, but rather that there would be a "social" cost: There is a deep and widespread fear of "getting it wrong" or of going against tradition and thereby losing face. I have seen many examples of there being sufficient legal basis for making this kind of change but of insufficient courage in the editor to defend the change.

An inspired attitude

But once the legal expert and the language expert understand and trust each other, they co-operate smoothly. In this example, I didn't have to do much of the remaining editing—the legal expert was so full of enthusiasm and excellent suggestions that I just had to stand by and concur. We substituted some long and abstract prepositions, shortened a few sentences and made one more bullet list. The result is a clear and comprehensive statute that is easy to understand and to follow.

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The Swedish approach to clear legislation

Anne-Marie Hasselrot

Deputy Director and Language Expert
Swedish Government Offices, Sweden

Anne-Marie Hasselrot, Office of the Prime Minister, Sweden, describes how changing two little letters in one word can bring about all sorts of other changes.

Clear legislation affects drafting of other documents

Legislation has an impact on decision-making at all levels of society. Modern democracies aim to ensure openness and clarity within public administration and to guarantee that documents are written in a way that meets the readers' needs. To achieve this, it is important to start at the top and modernise the language used in legislation. The idea behind this is that if legislation is written in clear language, this will have an impact on the language used in all administrative documents. The language of the law has a tendency to influence official language at all levels.

Plain-language drafting is integrated into law-making

An important factor for success is that plain language work is an integrated part of the law-making process. In the Swedish Prime Minister's Office, there are four language experts and five lawyers who work as a team in the Secretariat for Legal and Linguistic Draft Revision. They ensure that all new and amended legislation is of high legal quality and as clear and user-friendly as possible. The Secretariat has a key role in the legislative drafting in the ministries. No Government Bill, Government Ordinance or Committee Terms of Reference may be sent to the printer without the approval of the secretariat.

The role of plain-language experts

The work of the language experts involves reading all draft legislation at the government level and offering suggestions on how to improve the organisation, sentence structure and wording of these texts. Obviously, there is a lot of contact and discussion between the language experts and their lawyer colleagues on the one hand, and the drafters on the other. Eventually, agreement is reached for each draft. The language experts are also kept busy helping create guidelines and recommendations and giving in-house training to new personnel on how to write parliament bills and legislation.

Conflict between changing text and keeping it consistent

Most day-to-day drafting involves amending existing legislation, rather than creating new laws and ordinances. This may present something of a challenge, as there may be an inherent conflict between keeping the legislation consistent while modernising the text—changing one section of a law may make its style inconsistent with the rest of the text. On the other hand, it becomes much more difficult to modernise at all if you can't modernise the text a few sections at a time.

Changing ″skall″ to ″ska″

One example of how this might be resolved is the reform from the spelling ″skall″ to the more modern spelling ″ska″ (roughly the Swedish equivalent of ″shall″). Obviously, this is a very common word in legislation. Once the Secretariat had secured agreement at the top to carry out this reform, drafters were instructed that new legislation must contain ″ska″ throughout. In amending existing text, amenders have to change ″skall″ into ″ska″ throughout the whole section. The Secretariat for Legal and Linguistic Draft Revision decreed that making a blanket change from ″skall″ to ″ska″ in the preamble of a document is not acceptable. We believed that inserting the actual word in the text may leave greater scope for modernising the entire section, as drafters always strive to modernise the language of the entire section that is being amended. This often results in changing more than just one word—from ″skall″ to ″ska″. In this way, removing two little letters in one word helps bring about change in larger parts of redrafted legislation.

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The risks and challenges of fostering plain language in Mexico

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Getting the Citizens' Language or Plain Language program started

Vincente Fox's election as president of Mexico in December 2000 ended 71 years of one-party rule in that country. Citizens' Language or Plain Language was a program designed and promoted by the federal government's Ministry of Public Administration. Carlos Valdovinos, with the assistance of Salomé Flores, was in charge of the program.

In two years, Valdovinos and Flores put into action a well crafted project. They immersed themselves in the subject, visited Sweden, designed the program, learned from world experts, and formed a network. The project involved developing materials and manuals, workshop presentations, online training programs, and organizing a great contest. Hundreds of public servants participated in the activities. At the end of 2008, Mexico hosted the Clarity Conference at InstitutoTecnológicoAutónomo de México (ITAM).

However, by 2010, plain language had practically vanished from the Ministry of Public Administration. The program still appears on the Ministry's website, but it is no longer coordinated or promoted.

What happened and why

Plain language virtually disappeared because of a variety of structural, motivational and linguistic factors:

- It was a project fostered during the second part of a six-year government's term of office. The new administration did not maintain the initiative.
- Actions were proposed quickly from the top down, but they failed to take root or to generate commitment.
- The magnitude of the challenge of writing in plain language was not understood. Public servants did not appreciate that using plain language involves higher-order thinking, linguistic maturity, a strong command of basic literacy, and a familiarity with the elements of other types of literacy. So it became impossible to resolve the language deficiencies of public servants with five-hour workshops or basic online courses.
- The movement was new and did not have much of a tradition in Spanish-speaking countries.

What is happening to the cause of plain language in Mexico today

Even though the program no longer has government support, a commitment to plain language endures in the academic world and among key people from the old program. The promotion of plain language drafting is increasingly necessary.

At ITAM, for instance, there is steady demand for plain language writing courses from private industry and government institutions—such as Rural Finance, Bank of Mexico and the Finance Ministry—as well as within the Institute's programs. For example, the Legal Department offers a class on Legal Writing and Research that includes plain language drafting. This course is mandatory so students have to pass the subject to continue with their studies.

But Mexico is going through a period of social and political upheaval. There is disquiet about the quality of education and the country is facing an election. Perhaps educational practices will be improved and there will be a resurgence of support for plain language as a way to fight corruption and as a tool for improving transparency and efficiency.

In summary

Plain language began as a government project, flourished for a few years and then practically vanished. But it is likely to re-emerge. It still has life as an academic project and through consultants. There is hope that it will return to the fore in coming years. Mexicans are facing many uncertainties, turmoil and political transition, but now is also a time to rethink

and review the country's educational programs and to promote plain writing. It is time for action to keep the focus on clear communication sharp.

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Norway's never ending story: improving the language in laws and regulations

Sissel C. Motzfeldt

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Sissel Motzfeldt reports on efforts to ensure the language used in Norwegian legislation, in the civil service and in the legal profession is clear and plain.

In 2008, politicians frustrated by the archaic language they met in administrative documents started an initiative to improve the language of the civil service. They established a central clear language project and since then more than 120 agencies and ministries have been engaged in clear language projects of various sizes and levels of complexity. The project is run by The Agency for Public Management and eGovernment and The Language Council. The project offers grants, courses, coaching and seminars, but perhaps its most important contribution is building a central pool of knowledge where agencies and ministries can find inspiration from others.

The Norwegian public has a high degree of trust in the authorities. But a survey done at the start of the clear language project showed that more than 35% of the public struggled to understand the language used in bureaucratic letters and forms. The project has also revealed the impact that the language in laws and regulations has on other texts from the Government. So in 2011 the Agency started a project to improve the language in laws and regulations with these goals:

1. To establish a knowledge base
2. To fight resistance in the civil service
3. To avoid the use of legalese
4. To establish a knowledge base

Sissel Motzfeldt tells how the agency needed a combination of humility and knowledge to win the support of the legal community. The

Agency started with a roundtable conference to which lawyers from academia, courts officers and the civil servants were invited. Several of them became members of the Agency's resource group. The Agency conducted two surveys—one directed at the general public and the other at civil servants from ministries and agencies. To their surprise, the surveyors found that 54 % of the public said they had read a law or regulation in the previous year concerning work, health, welfare, housing or the economy. This showed that clear legislation was important for the general public too. A civil service survey confirmed that:

- older laws were more unclear than new ones;
- the language is generally more complicated than necessary; and
- the same terms mean different things in different laws.

The survey also showed that linguists were seldom used in the legislative process and that draft laws were almost never user-tested. In the autumn of 2012, the Agency hopes to conduct a third survey directed at judges to find out about their preferred writing styles.

1. To fight unwanted attitude and behaviour in the civil service

The language used in laws and regulations is a theme addressed at seminars and conferences, in articles and on the web. The Agency is currently developing a tailored course for civil servants engaged in writing laws and regulations. In the autumn of 2012, the Agency hopes to have developed a web-based toolbox with advice and tips for making legal language more understandable.

2. **To avoid the use of legalese**

The toughest goal of the project is to dissuade drafters from using legalese. The Agency hopes to work with academia to offer language training for law students. The law-making process is also being reviewed to identify where plain language measures should fit in. The Agency also hopes to rewrite some important laws for the public that can serve as model laws.

The Norwegian prime minister, Jens Stoltenberg, has recently presented the Government's new digitalisation programme. If the programme is to succeed, it will partly depend on how clear the language will be in digitalised services. Working with improving the language is a never-ending story!

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Sissel C. Motzfeldt *is a senior adviser at the Agency for Public Management and eGovernment, which aims to strengthen the Government's work in renewing the Norwegian public sector. She was project manager for "Plain Language in Norway's Civil Service" from 2009 until the summer of 2011, and is now leading the new project on plain language in laws and regulations. She has more than 35 years of experience in the Norwegian Central Government and has played a major role in the development of the new Central Government Communication Policy. In addition, she has primarily worked with user involvement and strategy development for ministries and agencies in the field of communications.*

Simple is smart, smart is fast

Martijn Jacobs

Loo van Eck Communicatie, The Netherlands

How do you make sure a reader can read *and* understand your letter in just 15 seconds? That was the challenge we faced. The result? A new way (for us) of writing. Dozens of insurance companies in the Netherlands are now successfully using our new, scientifically proven style. In this article, I show you what our writing style looks like.

A letter by an insurance company, housing cooperative or local government should be clear. After all, that's in the best interest of both sender and receiver. The question is: what makes a letter clear? Our clients ask us this over and over. However, that question implies the question: how *can we make sure our customers will understand our letters?*

Unfortunately, language is not math. It would be great if I could provide10 guidelines to guarantee a certain output, but that's not how language works. There is no certainty about readability—for the simple reason that people differ from one another. They all have different reading experiences, needs, interests, commands of language, and intellectual backgrounds. Despite that, we succeed in writing letters in such a way that 85% of our readers can understand them.

A fundamental aim is that a reader should have to invest as little time as possible to understand a letter. We use a standard of 15 seconds. Within these 15 seconds, the reader must be able to know:

- what the most important messages are;
- what they need to do;
- where they can find more information.

We target 15 seconds because we believe a reader doesn't want to invest more time than that in a letter from their insurance company, bank, power company, or housing cooperative. Our motto: a letter is clear if the reader learns what they need to know from it within 15 seconds. Here's how we achieve this.

1. Limit the number of messages

Writers often want to include too much information in a letter. This especially happens when experts write the letters themselves, as they often do. Experts usually want to mention all the details. This is strictly forbidden in our new way of writing; letters have room for only 3 or 4 messages. I will illustrate this by rewriting the following letter:

Dear Mr Jones,

In February, you let us know that you wanted to open a savings account. This account is required for paying your mortgage instalments. Thank you for your request. In this letter, I will inform you about your savings account.

Your savings account

We have opened a savings account for you. This account has been opened in <name>'s name. The account number is <number>. The savings account type is "Capital Account Homeowner".

Purpose of your savings account

This account is meant for your mortgage instalments. The law also requires you to use this account to pay off the debts for:

- your house;
- your spouse's house, or;
- your domestic partner's house.

Your savings

You save <amount> every month. This amount will be debited monthly from your other bank account: <number>.

First payment

The first payment is due on the date mentioned on your quote, or on the date you have arranged your mortgage. You will receive a letter with all the details about payment before the first payment is due. Are the data incorrect? Please let us know. You can reach us at <phone number>.

Your interest

You will receive interest from the amount in your savings account. The interest percentage equals the interest percentage of

your mortgage. Both percentages are fixed for the same amount of time. This means more financial stability.

Questions

Do you have any questions? We are here to help you. Don't hesitate to call us at: <phone number>

Kind regards,

This letter is considerably clear in itself. However, the reader needs more than 15 seconds to read it. This is partly because there are too many messages in the letter: at least 5. That is too much. Don't forget that this letter has to compete for the receiver's attention with many other messages and media.

It is important to know that there are 4 types of messages. A letter has information that:

- the reader needs to know;
- the writer needs to tell;
- the reader likes to know;
- the writer likes to tell.

By judging the messages a writer puts into their letter, we delete from bottom to top. This means we first delete the information the writer likes to tell. An example from the letter:

The law also requires you to use this account to pay off the debts for:

- your house;
- your spouse's house, or;
- your domestic partner's house.

It's not necessary to put this information in the letter, because the previous sentence says:

This account is meant for paying your mortgage instalments.

You could easily replace this with:

With this savings account, you pay off your mortgage.

There's nothing unclear about that.

So we keep the number of messages low. Keep to a maximum of 3 messages for uninterested readers, to perhaps 4 for readers who are willing to read, who are familiar with the subject, and who are able to read difficult text.

Let's take another look at the letter. Four messages remain after we delete the unnecessary information. The reader has to know that:

The bank has opened a savings account for them.

They have to pay off their mortgage with this savings account.

Their first payment is on the date in their contract.

The client receives interest on the amount they save.

These are the messages the reader needs to remember after reading this letter.All other information is redundant.

2. Formulate the messages as simple and singular sentences

We have to rephrase the messages we have selected. They have to become simple sentences, with one meaning per sentence. When we rephrase them, the 4 messages look like this:

We have opened a savings account for you.

You have to pay off your mortgage with this savings account.

Your first payment has to be by <date>.

You receive interest on the amount you save.

What you see now is the 15-second line: it's possible to read and understand those 4 sentences within 15 seconds.

3. Shape the messages as headings

We have chosen to use the complete messages as headlines in the letter. It looks like this:

Dear Mr Jones,

Thank you for your request to open a savings account for your mortgage.

We have opened a savings account for you

This account is in <name>'s name. The account number is <number>. The savings account is called 'Capital Account Homeowner'.

You have to pay off your mortgage with this savings account

You save<amount> every month. We will debit this amount monthly from your other bank account: <number>.

Your first payment has to be by <date>

You will receive a letter with all the details

about payment. You will receive this before the first payment. Are the data incorrect? Please let us know. You can reach us at <phone number>.

You will receive interest on the amount you save

The interest percentage on your savings account is just as high as the interest percentage on your mortgage. Both percentages are fixed for the same amount of time.

Call us if you have any questions: (055) 579 81 00

We are here to help you.

Kind regards,

The letter's look has changed entirely. Many writers have to get used to this new way of writing. They feel awkward using a whole sentence as a heading, even though we are all familiar with that technique because it's widely used newspapers.

4. Extend the messages to short and clear paragraphs

Of course, you still need to extend the messages. Paragraphs should:

- be short (6 lines max);
- refer to the message (the headline); and
- have the most important information at the top.

In fact, the paragraph is meant only as background information for the message. This way, the reader can choose whether they want to read the information, or not.

5. Write concretely

Readers prefer a concrete text over an abstract text because it's easier to remember. Research shows that a reader will reproduce information from a concrete paragraph 3 times better than information from an abstract paragraph.1 That's why we use clear language in letters. But that's not all. We also believe that the information itself needs to be concrete. Here's an example of a letter by an insurance company.

> With regard to the request for the C-section (daily payment at temporary disability) the following applies: due to excess weight, the insurance premium is raised with an extra charge of 25 per cent.

This fragment contains abstract words and its meaning is abstract. Better to say exactly what you mean, like this:

We can offer you disability insurance for 345 per year. Unfortunately, you have to pay 83 more for this insurance than is usual. This is because you weigh 130 kg. Because of this, you are more likely to be temporarily disabled.

The difference? We mention the exact amounts by translating the 25 per cent to a concrete number and making the weight issue clear. Of course, this also has a disadvantage. Many readers think it is insensitive to put the information in a letter this way. On the other hand, we would like the reader to learn what they need to know as quickly as possible. Covering it up with abstract language doesn't help. And it doesn't change the insurer's decision, either.

6. Choose common words and expressions

Research results (about the effect of difficult words on text understanding) often contradict each other. Nevertheless we think it is appropriate to choose more common word. There is a better chance a reader will know a common term. This means the words will not obstruct the easy intake of information.

How do we identify easy and common words? This question is hard to answer. There is no scientifically tested dictionary to give us a definite answer, so we must use our common sense. For example:

All insured living abroad and receiving a pension benefit need to send us proof of life, so we can confirm their right to pension benefit is still valid.

This sentence is from a letter from a pension fund. I have underlined the difficult words and expressions. Those words slow the reader down, especially if they go on for two pages. We can easily simplify this language by changing words, or by writing more directly.

Every year, you have to prove that you are still alive. When you do this, we know that you are still allowed to receive your pension. To do this, you have to send us a form. You

can collect this form at the embassy in your country.

7. Be consistent

At school, we learn to vary our words when writing text. If you write about a doctor, you learn that it's better to refer to a doctor with different words. So teachers direct us to use a range of words such as *medical practitioner*, *physician*, or *surgeon*, even though we are referring to the same person.

This is okay if you want to entertain a reader—or when you are learning at school and one of the teacher's aims is to help you expand your vocabulary. But is it good for clarity? I doubt it. The reader needs to think about with which term refers to what. Take a look at the next fragment.

The participant has a right to an old-age pension. Your employee will receive this pension at the pensionable age. They will receive payment on the 21st of every month after reaching 65 years of age. In this letter, you will find an overview of the accumulated capital of each employee.

In this text, the writer refers to the term 'old-age pension' with different words. The writer uses words like 'old-age pension', 'pension', 'payment', and 'capital'. Apart from this, they also mix the words 'employee' and 'participant'. However, both those words refer to the same person. For a lot of readers, this can be confusing and cost the reader too much time.

8. Limit the jargon

Jargon is useful for people in the know. Our advice however is to limit the amount of jargon in texts meant for readers who don't know much about the topic, aren't very interested, have a limited education, or have an average command of language. Chances are these readers will not understand the jargon, and it will slow their reading.

9. Mind the cohesion

Firstly, I want to be clear that I am not advocating writing short sentences. I am advocating writing short sentences *with sufficient cohesion* between sentences. By this, I mean the correct use of easy conjunctions like 'because', 'but', 'so', et cetera.

What about the length of the sentences? I often hear people say a sentence should not be longer than 15 words, or 12. I believe that the problem with sentences isn't in the number of words, but the density of their information. The greater the density becomes, the harder it is to understand the information in a sentence. For example:

Imagine writing this:

During our interview, we pointed out to you that unfortunately, you will not receive compensation for the special chair designed to suit your disability.

In this sentence, three messages are hidden:

1. We have had an interview.
2. You will not receive a compensation for the special chair.
3. We are sorry for this.

The sentence has 19 words. That can be shortened, and it can be easier. Now read this:

We had an interview. I told you that you won't receive money for the special chair. I want to apologise for it.

I have put each message in a separate sentence. With that, the average length of each sentence has significantly decreased. I understand that in English it is somewhat abrupt (perhaps, rude) to put it this way. But in Dutch it is fine.

10. Choose a clear perspective

In our letters, we use both the word 'I' and 'we'. We use 'I' for actions of the writer, and 'we' for actions or decisions of the organization. Because of this, writing becomes a lot easier and, more importantly, the writer feels more responsible for the letter. It is crucial that the writer signs the letter in their own name.

The mix of 'I' and 'we' is also important to the reader. They will experience this as coming from a more involved writer. The reader will read a letter written by a person, not by an organization. See the following letter for an example.

Dear MrJansen,

Your former domestic partner, Ms H.J. De Vries, has been receiving a lifelong old-age pension since July 2009. In this letter, <u>I</u> will

tell you what this means for you.

Ms De Vries will receive an old-age pension of   121.52

We will deduct this amount from your old-age pension. Ms De Vries will receive this old-age pension for the rest of her life. We will pay her this amount monthly.

You will receive a monthly old-age pension of   1,065.00

How did we calculate this?

Your lifelong old-age pension is:
1,490.38 gross monthly.

We deduct wage tax and health insurance premium: -   303.86

We deduct the old-age pension of Ms De Vries: -   121.52

For you will remain:
1,065.00 net monthly

Each month you will receive the amount on the 25th

The first payment will be in August. You will receive   2,130. This is a combination of the amounts of July and August. After this, you will receive   1,065 each month.

If you have any questions, you can call me

My phone number is (034) 345 46 29. You can reach me from 8.30 am until 5.30 pm.

Kind regards,

Karel van Veen

It is my experience that writers have to get used to this way of writing. They aren't used to mixing 'we' and 'I' in one text. I also notice that if the writers *are* used to it, they are very happy with it. The reader, however, doesn't need to get used to it. We also mix 'I' and 'we' in the spoken language, so they are already used to it, just not on paper.

In conclusion

These guidelines have resulted in a new way of writing letters. Our clients and readers were satisfied with it. Even so, we faced several problems when we introduced this style at insurance companies.

In the Netherlands, there is a certification for insurance companies, the *Keurmerk Klantgericht Verzekeren*, which monitors their style of communications.2 We were very surprised to find that the committee disapproved of our new way of writing. The reason? There was no scientific evidence to support the claim that this new style really was clearer than the old style. The committee finally accepted the new style after a long discussion. There was only one condition. We should do research.

To prove our case, we asked the Utrecht University to do research on the new style. Their results were positive: our letters had better ratings on clarity and reproducibility than the traditional letters. We know for sure: the future is clear!

In an article in the next issue of *Clarity*, I will focus on the details of the implementation, the motives of the insurance companies to redesign their letters and the effects on the customer. These effects are being researched as I write this article.

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Endnotes

[1] Bos, J., T. Sanders, L. Lentz,*Tekst, begrip en waardering*, StichtingLezen, 2001.

[2] See http://www.keurmerkverzekeraars.nl/

Martijn Jacobs *is CEO of Loo van Eck Communicatie in The Netherlands. Loo van Eck is a training and consultancy firm that has been helping Dutch organisations and government agencies to communicate clearly since 1983. With almost 50 employees, Loo van Eck is one of the largest communications agencies for plain language in The Netherlands.*

Plain language in the new Finnish model for effective legislative drafting

Aino Piehl

Senior researcher, Institute for the Languages of Finland

Finland's present government, elected in 2011, has promised to introduce a development project called *Effective Legislative Drafting* into the legislative process during its term. This project is a result of evaluation done by the previous government, which found that better regulation objectives were not satisfactorily met. Fresh methods were called for to give the drafters better tools for planning and controlling legislative projects.

Flow chart depicting each stage of the legislative process

The outcome of the project will be a model for the legislative process which describes it stage by stage—starting with planning and ending with approval by the president of the republic. The model is presented as a flow chart showing the actors, tasks and results of each stage. The chart also shows connections to other processes, such as budgetary planning of the ministries and political decision-making. In addition to the flow charts, the model provides a verbal description of the process in which the drafters' obligations are listed in more detail.

Previous provisions for plain drafting

Previous descriptions of the drafting process have mentioned language only in general terms. The Bill Drafting Instructions from 2004, for example, state that "proper, plain language must be used", but no instructions are included for achieving plain language in a draft bill. The only language-related tasks mentioned are the Legislative Inspection—which in Finland focuses on technical legal quality and consistency of expressions—and translation into Swedish, both of which occur only at the end of the drafting process. This was also the case with the draft model produced in the project. However, the Ministry of Justice asked the Institute for the Languages of Finland to suggest how to fit plain language measures into the model.

Suggestions from the Institute for the Languages of Finland

The Institute has long tried to find ways to influence the lawmaking process and now an opportunity has presented itself. The gist of the Institute's suggestions is that plain language measures should be considered from the start and throughout the process. The most important recommendation was that plain language measures should be included on the chart as part of the routine and that drafters should organize necessary resources during the drafting process. For example, recruiting the help of external experts should be factored into the schedule and budget of a legislative project. The model could also be used to emphasize the importance of the translator's comments and questions about expressions that have remained unclear to them as a plain language tool and to remind the drafters that it is possible to ask stakeholders or special target groups to assess the linguistic quality of a draft bill.

The outcome remains to be seen. The response at the Ministry has certainly been positive, and the Institute has been asked to comment on the next version of the model as well. A handbook for using the model is currently being prepared in the Ministry, and the project will also include plain language training for drafters.

Limitations of the project

Of course, this project cannot solve all problems hindering plain and effective legislative drafting. It does not solve the time pressures that affect drafting or lack of personnel, nor does it solve the political demands to prepare an important bill too quickly to make good drafting possible. But for the first time, plain language measures will be visible alongside other measures intended to ensure that Finland has effective legislation.

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Aino Piehl *works as EU language specialist in the Institute for the Languages of Finland. Her research interests include the comprehensibility of laws and the influence of EU legislation on Finnish legislation. She has written handbooks for administrative texts and worked as language expert in groups drafting legislations.*

Member news & upcoming conferences

Clarity conference in Belgium (from Karine Nicolay)

Clarity's next conference will be in September/October 2014 in Belgium. It will be a major event co-hosted by IC Clear (International Consortium for Clear Communication), PLAIN and IIID (International Institute for Information Design). Other partners are contacted to join. At the PLAIN conference in October 2013, IC Clear will pilot its postgraduate course in clear communication and evaluate the course concept, the modules and learning outcomes. At the conference in Belgium, the course will be officially launched. The exact date and place of the conference will be announced soon. Watch www.icclear.net for the latest developments.

10–12 April, CALC conference in Cape Town, South Africa

The Commonwealth Association of Legislative Counsel (CALC) is celebrating its 30th birthday in 2013. The conference is an opportunity to reflect on accomplishments and developments in legislative drafting over the past 30 years. Fittingly, the theme of the conference is Thirty Years of the Winds of Change in Legislative Drafting. To register for the conference or find out more about it, visit http://opc.gov.au/calc/conferences.htm

14–18 April, CLC conference in Cape Town, South Africa

Immediately following the CALC conference is the 18th Commonwealth Law Conference (CLC), hosted by the Commonwealth Lawyers Association. The conference theme is Commonwealth, Commerce and Ubuntu. Ubuntu is a term used in South Africa that signifies the key values of humaneness, social justice, fairness, and conformity to basic norms. To register for the conference or find out more about it, visit http://www.commonwealthlaw2013.org/

10–21 June, International Legislative Drafting Institute in New Orleans, Louisiana USA (From David Marcello)

The Public Law Center (TPLC) launched the International Legislative Drafting Institute in 1995 in response to increasing global demand for training of legislative drafters. The Institute is a two-week summer program that responds to the worldwide demand on legislative drafters for new laws to support the emergence of free market economies and democratic forms of government. The Institute draws together diverse domestic and international faculty members experienced in the legislative process. The 19th annual International Legislative Drafting Institute will be held June 10-21, 2013, in New Orleans, Louisiana.

The Institute's two weeks of lectures, roundtable discussion, instructional site visits, drafting exercises, and faculty consultations provide an excellent intermediate-length training experience. To learn more about the curriculum, visit the Institute's homepage at www.law.tulane.edu/ildi.

10–13 October 2013, PLAIN conference in Vancouver Canada

The Plain Language Association InterNational (PLAIN) is co-hosting the PLAIN2013 conference with Community Plain Language Services Corp., a Vancouver-based non-profit organisation. The conference marks the 20th anniversary of PLAIN and its 9th biennial conference. To register for the conference or find out more about it, visit http://www.plain2013.org/

Clarity breakfasts

Daphne Perry, the UK country representative, continues to organize breakfasts in London for UK Clarity members. In 2012, speakers at these breakfasts included Richard Castle and Martin Cutts—both luminaries in the plain-language field. Clarity members attended from Cambridge, Brighton, Portugal, the Netherlands, China, and London. We also held joint events with the Statute Law Society and the City of London Law Society. Thank you so much, Daphne, and all who arranged these meetings, for your ongoing support and commitment. Contact Daphne if you're interested in attending future London breakfasts: daphne.perry@clarifynow.co.uk.

The Law Project (from Ben Piper and Tialda Sikkema)

The Clarity Law Project aims to provide a regularly updated picture of the various approaches to requiring plain language that are in place around the globe in all languages. By providing that picture—with links to more information and to the contact details of interested people in each jurisdiction—Clarity hopes to help plain-language advocates promote new, and better, laws requiring plain language.
To make this project a success, we need your contribution. So please share your clarity laws with us and all the other Clarity members by sending your contribution to Tialda.sikkema@hu.nl or bpiper@ntc.gov.au.

From Maria Otilia Bocchini—Brazilian Plain Language Group joined Clarity

New members are editors, writers, university professors, researchers and consultants that have been working with accessible language in Brazilian Portuguese, some of them since 1990. They collaborate with government agencies, public administration and companies. Since January 2013, the Brazilian group established connection with Sandra Fisher-Martins, who runs the firm Português Claro, in Portugal. Members include Maria Otilia Bocchini, Maria Elena O. O. Assumpção, Livio Lima de Oliveira, Cristina Yamazaki, Yuri Brancoli, and Luís Carlos F. Afonso.

From Heikki E.S. Mattila

We have recently published a book, *Comparative Legal Linguistics-Language of Law, Latin and Modern Lingua Francas-Second Edition*. This book examines legal language as a language for special purposes, evaluating the functions and characteristics of legal language and the terminology of law. Using examples drawn from major and lesser legal languages, it examines the major legal languages themselves, beginning with Latin through German, French, Spanish and English.

This second edition has been fully revised, updated and enlarged. A new chapter on legal Spanish takes into account the increasing importance of the language, and a new section explores the use (in legal circles) of the two variants of the Norwegian language. All chapters have been thoroughly updated and include more detailed footnote referencing.

The work will be a valuable resource for students, researchers, and practitioners in the areas of legal history and theory, comparative law, semiotics, and linguistics. It will also be of interest to legal translators and terminologists. Full details and page extracts are available at www.ashgate.com/isbn/9781409439325 .

From Karen Schriver: two new publications

Schriver, K. A. (2012). *What we know about expertise in professional communication*. In V. W. Berninger (Ed.), *Past, present, and future contributions of cognitive writing research to cognitive psychology* (pp. 275-312). New York, NY: Psychology Press.

Schriver, K. A. (2013). *What do technical communicators need to know about information design?* In J. Johnson-Eilola & S. Selber (Eds.), *Solving problems in technical communication* (pp. 386–427). Chicago, IL: University of Chicago Press.

Committee members

Michèle Asprey

Michèle Asprey is one of the pioneers of plain language in the law.

She is the author of the text *Plain Language for Lawyers*, now in its 4th edition. She was editor-in-chief of *Clarity* from 2003–2005 and oversaw its redesign.

She is also:

- a film critic, with her criticism published monthly in the *NSW Law Society Journal* for the last 10 years
- a farmer, growing native rainforest trees for cabinet-making and architectural use
- a drummer, one half of a rhythm section, the other half being her bass-playing husband.

Candice Burt

I am a South African plain language lawyer. I have been writing contracts and other legal texts in plain legal language for close to 15 years now. I also train lawyers and other people how to write in plain language.

I find that telling people I am a plain language lawyer breaks the ice at a party. People love to share how misunderstanding a contract or form or legal notice landed them in trouble. I use these stories to convince my clients that it is better to be clear.

When I am not simplifying, I enjoy tennis, acrobranching, travelling to far-flung places, comedy evenings, collecting South African art, and long, lazy Sunday brunches. As you can see from my photo, I also enjoy the pleasures of South African wines.

Peter Butt

Peter Butt is a former President of Clarity. He helped organise Clarity's first ever conference, in Cambridge, UK. Peter has given workshops and seminars on legal writing at universities and law firms in many countries. Peter is Emeritus Professor of Law at the University of Sydney. He has written several books on legal drafting: *Modern Legal Drafting* (Cambridge Uni Press – 3rd edition due out early 2013), and *Piesse's Elements of Drafting* (10th ed, 2004). He is also co-editor of *Butterworth's Australian Legal Dictionary*.

Peter teaches and practises law in Australia, and has written a number of books on Australian land law. This has led to opportunities to draft plain-language land laws for countries as diverse as Mongolia, Dubai and Uganda. Peter's main interests outside law are tennis, music (he is a pianist and organist) and long-distance hiking. He is always willing to introduce Clarity members to the delights of hiking in the Australian bush!

Annetta Cheek

My PhD in Anthropology was good preparation for dealing with miscellaneous bureaucrats (25 years in the government), lawyers (ditto), and association boards (9 years as chair of the Center for Plain Language). My principal hobby is dog training—teaching obedience and protection to pit bulls has helped me develop other skills useful in navigating the world of plain language. I've even co-authored a book on dog training, called *Dog Training with the Touch*. People tell me it's very clear—I should hope so. Aside from advocating for plain language and dog training, I enjoy traveling with my spouse, especially to see World Heritage sites, since we are both archeologists.

Julie Clement

My name is Julie Clement, and I've been the editor in chief of the Clarity journal since 2005. I'm an Associate Professor in the Research and Writing Department at Thomas Cooley Law School in Lansing, Michigan (USA). My plain-language training began when I was a law student in Joe Kimble's Research and Writing class. Years later, when I began teaching full time, Joe enlisted me as editor. Since then, I've met many of you at Clarity and PLAIN conferences and Center for Plain Language events. I've served on all three organizations' boards and am looking forward to meeting more of you in Vancouver this fall! In my "other" life, I'm married to a musician and portrait artist—we own a small art studio in the (also small) town where we live. I've been very involved in local economic-development efforts, as well as our local arts council and city government. Rush (my husband) and I love to travel when time allows. I'm a novice quilter and have just started kayaking. Coming to Michigan? Give us a call!

Elizabeth Grindey

Elizabeth is the editor of English legislation at the Hong Kong Department of Justice, working alongside drafters to fulfil the Government's pledge to communicate the law plainly. It's a job made all the more interesting by the historical context of this tiny dynamic region. Hong Kong's plain language effort straddles the diverse official languages of English and Chinese, and it serves as an integral part of the Rule of Law during Hong Kong's transition towards universal suffrage.

Elizabeth is not a lawyer. She confesses to finding it hard to understand Hong Kong's laws. This surprised her given that she has a degree in English from Lancaster University and a background in writing English educational textbooks and in editing academic texts. To be frank, she found Milton's "Paradise Lost" far easier to read! She is happy to join the Clarity community to promote plain language in the world, and is excited by the possibilities offered by information technology and design to make knowledge attractive and accessible.

Kyal Hill

I am a Kiwi running a legal translation company in Japan. I have been a legal translator (Japanese into English) for about 10 years now since obtaining my masters in Japanese translation. After completing my Australian JD and other legal training this year, I hope to somehow work as a lawyer-translator. For the last 2 years I have also been running legal translation seminars for the Japan Association of Translators. My loves and interests other than clear and effective legal writing and translation are the All Blacks, CrossFit, red wine, and playing the guitar.

Dr. Mazhar Ilahi

I have recently done extensive research work on the Plain Language Movement in Pakistan. I have concluded that the PLM will face additional difficulties of multilingualism, heterogeneous (Islamic and Secular norms of) legal system and emergency legislation in Pakistan. To benefit from the theme of Plain language, Pakistan will have to develop linguistic harmony coupled with educational reforms and rely on parliamentary machinery for legislation. In February, 2013, I plan to hold a Plain Language Conference to promote the idea of clearer legal language in Pakistan.

Maximiliano Marzetti

I always believed Law itself was insufficient. After quitting law practice in Argentina, I became an academic pilgrim. I studied Law & Economics in Europe and by chance I discovered CLARITY. I see a natural relation between economics and language: Plain Legal Language is—after all—about linguistic efficiency. Now, back in Argentina, I teach Intellectual Property Law and Economics at FLACSO Buenos Aires, while I advocate the use of plain legal Spanish—a truly Quixotic quest.

I obtained a Law degree and an Education graduate degree (Pontifical Catholic University of Argentina), an LLM in Intellectual Property (Turin University), an LLM in Law & Economics (Hamburg University) and soon, hopefully, a PhD (Erasmus University).

I'm a qualified barrister and trademark-patent attorney in Argentina.

Tialda Sikkema

My name is Tialda Sikkema and plain legal writing is what I teach law students at the university of applied sciences in Utrecht, The Netherlands. In 2012 I started a PhD-research on the written language in documents concerning debt collection. Think of a final notice, a subpoena, court order or a writ of attachment and you'll understand that those documents can be more effective when content, style and design are adjusted to the needs of the readers. I expect readers and companies to benefit from plain language in these documents, but there is a long path ahead of me. Please join me and let's talk about you do.

John Pare

Like several of the earlier members I was a High Street solicitor. I took a law degree at the University of Kent (at Canterbury), did articles in Kent, got my first job in Shropshire, and stayed there from 1972 until I retired in 2009. At first I did anything that walked through the door; latterly I specialised in Commercial and Agricultural conveyancing (real estate transactions). We have moved to a small town in rural Herefordshire (the adjoining County to the South). I met my wife when at College. She was a Primary Headteacher for the last 20 years until retiring at the same time as I. We have four children (3 boys and a girl) from 40 to 33. The third boy is a Barrister (the other 2 being a freelance translator and a Director of a charitable project, who also has his own charity running a school in Sri Lanka). Our daughter is a teacher also. We have 7 grandchildren, three of whom arrived between March and August last year. My main interests are tennis, skiing, singing in a chamber choir, reading, theatre, cinema and concert-going.

Claudia Poblete Olmedo

Claudia Poblete Olmedo is MA in Applied Linguistics from the Catholic University of Valparaiso and a PhD in Spanish philology (with mention of European Doctor) from the Autonomous University of Barcelona (Spain). He has taught in the areas of general linguistics, production and comprehension and Spanish phonetics and phonology also guided thesis in the area of Forensic Phonetics. From 2011, he has taught undergraduate and graduate courses in the Institute of Literature and Language Sciences at the Pontificia Universidad Católica de Valparaíso. He has participated in research teams in the field of production of texts. His current work focuses on critical studies of parliamentary discourse.

Catherine Rawson

I'm an Australian-born vagabond who has spent most of my adult life abroad. Changing countries and cultures every few years has taught me the universal value of communication based on as few words as possible set in simple sentences.

After giving up legal practice I helped multilingual firms ensure that their staff could write readable English free of typical translation errors aided by tailored editing software. My clients included international law firms and the European Central Bank.

For now family affairs Downunder keep me busy when I'm not travelling with my retired husband from our home in Kuala Lumpur, Malaysia.

Christopher Williams

Ever since graduating in London in 1974 I've lived in Italy. I'm full professor of English at the Law Faculty of the University of Foggia in southern Italy. I try to 'spread the word' about Plain language and the law and about the activities of Clarity not only during my lessons at the Law Faculty where the Plain Language movement is an integral part of the 'advanced' English exam students have to do, but above all through my publications, several of which have been directly related to the question of Plain language and legal English. I've also written about the 'Progetto Chiaro!' in Italy in the *Clarity* magazine, and I've presented a number of papers at international conferences about Plain language and legal English.

Juprin Wong-Adamal

Juprin Wong-Adamal graduated in Bachelor of Arts (Law) with Honours from the University of Wolverhampton, England in 1984. Upon returning to Sabah, Malaysia, he joined the State Attorney-General's Chambers as State Counsel. He was admitted to the Rolls of Advocates of the High Court in Sabah and Sarawak and called to the Sabah Bar in 1986. In 1989, he attended the Legislative Drafting course at the Royal Institute of Public Administration (RIPA) England obtaining the Certificate in Legislative Drafting. He actively promotes the use of plain legal language in legislative drafting and other legal instruments. As a part-time lecturer, his subjects include Legal Research and Writing. He is currently Senior State Counsel and advises government Ministries and agencies in the State of Sabah.