

Clarity

Number 70

December 2013

Journal of the
international association
promoting plain legal language

In this issue

Creative

Charles E. "Chuck" MacLean
*Helping legal writers embrace their inner Salieri:
Re-vision is just "seeing again"* 5

Tammy R. Pettinato
*Two letters, one message: teaching plain language
through letter writing* 8

Consulting and Training

Sara Rösare
Teaching plain language through editing 11

Joanna M. Richardson
*Case study
Comparison of plain language teaching for
two non-native English-speaking professional
groups: lawyers & engineers* 14

Colleen Trolove
Teaching grammar without scaring people 17

Judy Knighton and Rosemary Knight
We follow Aristotle 19

Editor in chief:
Julie Clement

Guest editors:
Cynthia M. Adams & Kara Zech Thelen

Guest editor for *Clarity 71*:
Deborah Bosley

In this issue (continued)

Maria Otilia Bocchini, Cristina Yamazaki, and
Livio Lima de Oliveira
*François Richaudeau's inspiring concepts on
readability* 21

Olivier Beaujean and Anne Vervier
*Plain-language writing-training course: A challenge,
an ambition, and a method in five steps* 24

Academia

Karine Nicolay
IC Clear course almost ready for pilot 28

Donna Bain Butler, Ph.D.
Strategies for clarity in legal writing 31

Eunice Park
*"Plain language": Practical tips for how to make
it not so plain* 38

Jill Barton
A "Show, don't Tell" lesson on plain language 41

Ann Nowak
*Writing clearly: What I teach may be hazardous
to your wallet* 43

Legislative Drafting

David Marcello
*Teaching plain language drafting in a legislative
and administrative advocacy clinic* 46

Contract Drafting

Natasha Costello
*Teaching non-native English speakers to draft
contracts with clarity* 50

Karin Mika
Visual clarity in contract drafting 52

Healthcare

Sue Stableford, MPH, MSB
Audrey Riffenburgh, MA
*Lessons from the workshop trenches: Challenges
in teaching plain-language writing to health
professionals* 56

Democracy

Javier Martínez Villarroya
Clearer words, clearer justice 60

Clarity and general news

This issue 3

Remembering Robert Eagleson 4

Contributing to the journal 7

How to join Clarity 40

Book reviews 64

Message from the presidents 66

Patrons The Rt Hon Sir Christopher Staughton; The Honorable Michael Kirby AC CMG; and Sir Kenneth Keith, ONZ, KBE, and QC

Founder John Walton

Committee

President: Joh Kirby (claritypresident@gmail.com)

Members: Country Representatives *plus* Simon Adamyk, Michèle Asprey, Peter Butt, Sir Edward Caldwell, Richard Castle, Annetta Cheek, Julie Clement, Gérald Delabre, Robert Lowe, John Pare, John Walton, Richard Woof.

Country representatives

Australia

Christopher Balmford
Christopher@balmford.com

Belgium

Olivier Beaujean
o.beaujean@droitsquotidiens.be

Canada

Nicole Fernbach
juricom@juricom.com

Chile

Claudia Poblete Olmedo
claudia.poblete@ucv.cl

Finland

Heikki Mattila
heikki.mattila@ulapland.fi

France

Jenny Gracie
jenny@partnersforlaw.eu

Germany

Siegfried Breiter
s.breiter@t-online.de

Hong Kong

Elizabetha Grindey
elizabethgrindey@doj.gov.hk

Israel

Myla Kaplan
mylak@law.haifa.ac.il

Italy

Christopher Williams
cjwilliams72@hotmail.com

Japan

Kyal Hill
kyal.hill@hplt.jp

Malaysia

Juprin Wong-Adamal
jadamal@gmail.com

Mexico

Rosa Margarita Galán Vélez
mgalan@itam.mx

The Netherlands

Tialda Sikkema
tialda.sikkema@hu.nl

New Zealand

Lynda Harris
lynda@write.co.nz

Nigeria

Dr. Tunde Opeibi
drtundeopeibi@gmail.com

Pakistan

Mazhar Ilahi
mazharilahi@hotmail.com

Philippines

Victor Eleazar
attyvye@msn.com

Portugal

Miguel Martinho
miguel.martinho@gmail.com

Slovak Republic

Ing. Ján Rendek
jan.rendek@gmail.com

South Africa

Candice Burt
candice@simplified.co.za

Spain

Raquel Taranilla
raqueltaranilla@gmail.com

Sweden

Helena Englund Hjalmarsson
helena.englund@
sprakkonsulterna.se

UK

Daphne Perry
daphne.perry@clarifynow.co.uk

USA

Prof Joseph Kimble
kimblej@cooley.edu

Zimbabwe

Walter Zure
wzure@cbz.co.zw

All other countries:

Please contact the USA
representative

Honor roll of donors to Clarity

Clarity is managed entirely by volunteers and is funded through membership fees and donations. We gratefully acknowledge those financial supporters who have contributed to Clarity's success:

- \$2,500+ Plain English Foundation, one anonymous donor, Christopher Balmford
- \$1,000+ Joseph Kimble, Julie Clement
- \$500+ Nicole Fernbach
- \$100+ None



An international association
promoting plain legal language

www.clarity-international.net

Clarity ... the journal

Published twice each year

President

Joh Kirby
claritypresident@gmail.com

Editor in chief

Julie Clement
PO Box 13038
Lansing, Michigan 48901
Fax: 1 517 334 5781
clementj@cooley.edu

Advertising rates

Full page: £150
Smaller area: pro rata
Minimum charge: £20
Contact Joe Kimble, kimblej@cooley.edu

Copyright policy

Authors retain copyright in their articles. Anyone wanting to reproduce an article in whole or in part should first obtain the author's permission and should acknowledge *Clarity* as the source.

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

Presumably, as readers of *Clarity*, we are interested in communicating more clearly and concisely. And, undoubtedly, most of us are devout adherents to plain-language principles in our own writing. We understand that becoming an accomplished writer takes time and effort, and we are perpetually working to improve our writing skills.

Perhaps the only challenge more daunting than improving our own writing is successfully teaching our students and clients to become better writers. Unfortunately, we are all too familiar with the glazed, bored, or impatient looks of our audience when we explain word choice, sentence structure, brevity, and precision. No wonder that we are constantly on the lookout for better ways to motivate our audience to embrace the "whys" and to understand the "hows" of good writing.

For those of us grappling with these teaching challenges, *Clarity* 70 is bursting with novel and creative ideas. Here is just a sampling of what you will find in this issue:

In a particularly imaginative article, "Helping Legal Writers Embrace their Inner Salieri: Re-vision is Just 'Seeing Again,'" the author juxtaposes the creative approaches of composers Salieri and Mozart with creative methods for writing clearly and comprehensibly for an intended audience.

For consultants who provide editing and writing services to business clients, "Teaching Plain Language Through Editing" explains a successful step-by-step approach used by a Swedish language consultant agency; by the way, plain-language professors will likely find the author's tips extremely helpful for giving thoughtful feedback to students.

To those teaching legislative drafting, be sure to read “Teaching Plain Language in a Legislative and Administrative Advocacy Clinic,” which describes a comprehensive approach to teaching legislative drafting.

And for striking examples of plain language’s power to improve healthcare and cultivate democracy, don’t miss “Lessons from the Workshop Trenches: Challenges in Teaching Plain Language Writing to Health Professionals” and “Clearer Words, Clearer Justice: Teaching Plain Language to Future Mexican Lawyers.”

We hope that each of you finds in this edition at least a few golden nuggets that will reinvigorate your plain-language teaching or practice.

Wishing you all the best in 2014!

Cynthia M. Adams is a Clinical Professor of Law at Indiana University Robert H. McKinney School of Law where she teaches transactional drafting, negotiations, and legal analysis. She is the coauthor of two books for non-US lawyers and law students: *Drafting Contracts in Legal English: Cross-border Agreements Governed by U.S. Law* (Aspen 2013); and *The International Lawyer’s Guide to Legal Analysis and Communication in the United States* (Aspen 2008, 2d ed. forthcoming). Professor Adams serves as a clinical consultant to non-U.S. universities and governments, and presents internationally on issues related to plain-language drafting in the law. Contact her at cadams@iupui.edu.



Kara Zech Thelen is an assistant professor at Thomas Cooley Law School, where she teaches legal research and writing. Before teaching, she clerked for a federal magistrate judge and practiced employment and higher-education law at an international law firm. As a plain-language advocate, she has served as a judge for New Zealand’s Writemark competition and the Center for Plain Language’s ClearMark and WonderMark competition, which recognize the best and worst in plain language in the private and public sectors. Contact her at zechthek@cooley.edu.



Remembering Robert Eagleson

As many of our Clarity members will have heard, Professor Robert Eagleson died late last year. Robert was a pioneer of plain language. He was a professor of English at the University of Sydney, Australia, initially specialising in linguistics and Shakespeare, and later moving to the language of the law. His initial work was on plain language insurance policies in Australia—probably the first in the English-speaking world. He came to international prominence with his ground-breaking report for the Victorian Law Reform Commission, *Plain English in the Law*. Later, he co-founded the Centre for Plain Legal Language at the University of Sydney, and then spent a generation training lawyers, linguists, public servants and parliamentary drafters in the techniques of plain language. Those who knew him marvelled at his knowledge, his wit, his teaching ability, and his genuinely humble and self-effacing nature. A fuller acknowledgment of his life and work will appear in a forthcoming issue of *Clarity*.



— Peter Butt

I have been very touched by the many condolences I have received from Clarity members. They all spoke of Robert with great fondness and admiration. I trust you will understand if I do not reply personally to every one, but I have been quite overwhelmed by the number and warmth of the messages.

— Muriel Eagleson, Robert’s widow

Creative

Helping legal writers embrace their inner Salieri: Re-vision is just “seeing again”

Charles E. “Chuck” MacLean¹

*Assistant Professor of Law, Indiana Tech Law School
Indiana, USA*

As dramatized in the 1984 film, *Amadeus*,² Antonio Salieri saw himself as a musical rival to Wolfgang Amadeus Mozart, of whose music Salieri remarked, “It seemed to me that I was hearing the very voice of God!” For his part, Mozart noted Salieri’s work as well but with obvious disdain: “I never knew that music like that was possible . . . One hears such sounds, and what can one say but, ‘Salieri’.” But Mozart’s genius was not exclusively divinely inspired, and Salieri’s mediocrity was not immutable. Genius for both required revision with a keen ear—Mozart had the ear and applied it, but Salieri did not. For legal writers, the same applies: The solution to mediocrity requires revision, that is, “seeing again,” this time with the readers’ eye.

Mozart’s composing genius appeared miraculous; on his handwritten original sheet music there was not a single erasure. But Mozart’s genius rested in revision

Salieri, on Mozart’s music: *It seemed to me that I was hearing the very voice of God!*

Salieri, on Mozart’s music: *Displace one note and there would be diminishment. Displace one phrase and the structure would fall.*

that took place in his mind rather than on paper. As noted by Salieri, “[Mozart’s scores] showed no corrections of any kind. Not one. He had simply written down music already finished in his head . . . as if he were just taking dictation. And music, finished as no music is ever finished. Displace one note and there would be diminishment. Displace one phrase and the structure would fall.” And, in the film, Mozart demonstrated that all drafts can be improved. If you have seen the movie recall the scene where Emperor Joseph II had just received Mozart by playing on the harpsichord a welcoming march clumsily penned by Salieri. Mozart memorized the march upon that single hearing and rhetorically blurted, “That really doesn’t work, does it?” Then, on the spot, Mozart re-wrote Salieri’s draft into a sublime phrase. Simple re-vision!

Too many legal writers and far too many law students deem their work—even their first drafts—to be perfect. Many among us have remarked after reading our own writing, “Ahh, now that’s outstanding.” Of course it feels right; we wrote it! It sounds great *to our ear*. But that is scarcely the point. It is not enough to be satisfied with Salieri’s perspective, that his music was good enough, because, “I liked myself.” A legal writer’s quest is to avoid furrowing the readers’ brows, not to avoid furrowing the writer’s own brow. That requires re-visioning—seeing again, with the readers’ eyes. Too many of us see ourselves as Mozarts and our writing as angel’s singing rather than seeing the truth: We are Salieris.

Legal writers can ill afford seeing Mozart in the mirror—perfect on the first draft—and can ill afford seeing their work only through their own eyes. For legal writers, the legal reader is the target. Legal writers need to prepare plead-

Salieri, on Mozart’s music: *God was singing through this little man!*

ings that are clear to the judge and opponents, not just clear to the writers. Legal writers need to draft contracts that are clear to the parties and interpreting courts, not just clear to the writers. Legal writ-

Mozart on his own music: *They say I have to rewrite the opera. But it's perfect as it is! I can't rewrite what's perfect!*

ers need to create briefs that persuade the judge, not just persuade the writers. So legal writers should always select each word, phrase, sentence, paragraph, and point heading to reach the intended reader. They must ask: Will my client understand that clause? Do I need to lay more groundwork so the judge can follow my argument? Have I crafted headings that allow a busy legal reader to efficiently find the "good stuff" in my brief? Legal writers are not Mozarts, so they must see themselves as Salieris—always in need of additional re-vision to ensure their readers' needs have been met. How, then, can a legal writer see with the readers' eyes? Consider the text from the readers' perspective.

Seeing with the client's eyes: The writer need only ask what the client already knows, needs to know, and wants to know. For example, an experi-

Salieri, on clients: *I think you overestimate our dear Viennese, my friend. You know you didn't even give them a good "bang" at the end of songs, to let them know when to clap..*

enced client already knows the basics and will not have a furrowed brow if the writer inserts a legal term of art or two, but a less-educated client may be confused by even a rudimentary legal term of art. Every client needs to know what the lawyer has done and will do next on the case, and when the lawyer will do it. Every client needs to know what the client needs to do next and when the client needs to do it. Every client wants to know what will happen next and what it will cost. Armed with the client's background, wants, and needs, the writer can then select each word and phrase so that it will be understood by the reader. The writer can use subject lines and headings to make the writing clear and easy to follow. The writer can highlight and clarify deadlines for the reader. More specifically, when drafting a

contract for a client, the writer must draft provisions that are clear and enforceable to all who will rely on it—including the client and the other contracting party—and to the judge who might ultimately be called upon to interpret it. It is all re-vision.

Seeing with the judge's eyes

Judges are busy and thus prone to resent verbosity. Judges want to know the best arguments and facts for and against each side without *ad hominem* attacks and gratuitous emotional appeals. Judges need to know the controlling authority.

Emperor Joseph II, to Mozart: *It's quality work. And there are simply too many notes, that's all. Just cut a few and it will be perfect.*

So a legal writer re-visioning with the judge's eyes will be succinct and direct, will be persuasive without unnecessary emotion or vitriol, and will illuminate the current state of the law clearly, comprehensively, and honestly. The judge must let the law control and must not let emotion hold sway. After all, it is axiomatic that hard cases make bad law. But the legal writer who courteously remembers that judges are typically busy people would do well to present concise and direct writing for judges to review.

Seeing with the opponent's eyes

When writing for the opponent's eyes, the legal writer must consider what the opponent knows, needs to know, and wants to know. But, in addition, the writer must consider what he or she wants the opponent to know. In any event, the opponent should "see" between the lines of the writing the writer's professionalism, preparation, courtesy, and stridency.

Seeing with the partner's eyes

When writing for a law-firm partner or supervising attorney, the writer must answer the specific questions asked, make the answers concise and clear, and present the best arguments and facts for and against both sides. But the supervising attorney is especially attuned to two additional key factors: likelihood of success and cost to achieve that success. Thus, when writing to a partner or supervising attorney, the writer must respond to all questions raised.

Principles that apply regardless of the reader's role or characteristics: The sublime perfection of Mozart's compositions arose from his ability to present complex material clearly, cleanly, and without pretense or excess. Mozart's compositions are accessible to all listeners. They do not require the listener to have had special training or experience. They do not presuppose that the listener has been exposed to some musical jargon or genre. The music "speaks" to everyone. And that is the goal for all legal writers—to speak to all legal readers. The writing must be accessible and clear regardless of each reader's background or expertise. The writing must be pure essence without pretense. It must not force the reader to struggle to comprehend. It must not furrow the reader's brow. That can all be condensed into one concept: Great legal writers make economic use of plain language. Now, reflect on that concept when considering the groups of legal readers identified above, and the legal writer will find that the concept applies to every group. Although each group has its own needs and wants and its own level of expertise or experience, legal writing that is presented economically in plain language will ensure that clients are served and informed; judges are more likely to be persuaded; and partners and supervising attorneys are educated and advised.

All of this only requires that the legal writer re-vision, to see again with each reader's eyes.

But no matter the type of reader, plain language will better achieve the goal that the writer seeks. Plain legal language informs and advises without risk of inadvertent confusion. It persuades without furrowing the reader's brow. Remember, we are Salieris, not Mozarts who can "simply [write] down music already finished in his head!" We must spend the time to re-vision and rewrite in plain legal language.

© 2013 C MacLean
CEMacLean@indianatech.edu



Endnotes

¹ J.D. *cum laude*, M.B.A., B.A., Assistant Professor of Law, Indiana Tech Law School, Fort Wayne, Indiana USA.

² *Amadeus*, directed by MilošForman (The Saul Zaentz Co. 1984) (all quotes herein are from the screenplay).

Chuck MacLean, who has taught legal research and writing since 1997, serves as an Assistant Professor of Law at the Indiana Tech Law School in Fort Wayne, Indiana USA, and currently coordinates its *Lawyering Skills* program. He has presented widely on criminal law and lawyering skills, and his research has been published or is forthcoming in the *Dicta Bar Journal*, the *Federal Courts Law Review*, the *Hamline Law Review*, the *Washburn Law Journal*, the *Law Teacher journal*, and the *Supreme Court (Canada) Law Review*. He also authored four chapters in the forthcoming *Encyclopedia of Criminal Justice Ethics*.

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.

Two letters, one message: teaching plain language through letter writing

Tammy R. Pettinato

*Assistant Professor, University of North Dakota
School of Law
North Dakota, USA*

Have you ever noticed that you tell the same story different ways depending on your audience? The traffic jam that made you late might be a humorous anecdote full of inside jokes when the appointment is for coffee with your best friend, but it becomes decidedly serious when the appointment was with your boss.

We all wear different hats, and one task of legal writing professors is to teach students how to “wear the hat” of the legal profession. Just as students must learn to “think like lawyers,” they must also learn to write like lawyers. In many ways, writing like a lawyer is no different than any other type of writing. In all cases, tone, organization, effective word choice, and proper grammar and punctuation are essential to good writing.

But perhaps most important of all to good writing is to know one’s audience. One of the fundamental lessons legal writing students must learn is to think about the needs and wants of their reader. Students must understand the importance of adjusting their language or tone based on whether they are writing to a judge, a fellow attorney, a client, or someone else.

While some students understand this instinctually, their instincts are often flawed. The more prestigious the audience, they think, the more complicated and obscure the language they must use. Thus, the beginning legal-writing student often starts out using stilted or inflated language, mistaking the use of large or uncommon words, complicated sentence structure, and other forms of legalese for more “professional-sounding” writing. Most of us have probably had those students who pepper their work with latin phrases or anachronistic word choices that seem pulled directly from a book on how to write like a lawyer in 17th century England.

The task of legal-writing professors is to help students understand that complicated is not always better. In fact, overly complicated prose at best obscures their argument or analysis, and, at worst, convolutes it to the point of misunderstanding. Students must learn that judges and fellow attorneys want and need the same things from what they read as almost any other audience: for the writer to “get to the point.” This is true not in spite of, but because of, the often complex ideas that legal writing requires lawyers to convey.

The exercise described in this article teaches students the importance of both plain language and audience. The exercise uses a form of writing with which most students are familiar—letter writing—to push students to reflect on how and why they change their writing styles for given audiences. By letter writing, I don’t mean the client letter, although this exercise could certainly inform that type of instruction. Instead, this exercise uses ordinary letter writing and gives students the opportunity to tell a story without the added pressure of legal analysis. For those who worry that today’s students may not actually be familiar with writing “real” letters, emails may be easily substituted without losing the essence of the lesson. The important point is the function, not the form. In this case, the function that matters is writing a story with a specific reader in mind.

The twist in this exercise is that students write two letters addressed to two separate people. Both letters must tell essentially the same story, although students should have some choice in how much detail they choose to include. Additionally, to make assessing the letters manageable, there should be a 500-word maximum. However, there should be no minimum length and no requirement that the letters be of the same length. Allowing some variation in detail and length provides the students with the opportunity to think about how they adjust their storytelling depending on audience.

The first letter should be written to someone whom the student considers “above” him or herself in some way. Encourage the students to think of someone they respect but perhaps find a little intimidating. A former boss or professor is a good candidate as is a judge or potential employer. The goal is for the students to think of the audience for this letter as someone whom they want to impress.

The second letter should be written to someone with whom the student has a more informal relationship. The audience for this letter could be a best friend, a sibling, or someone who is much younger than the student.

The insight from this exercise comes when students are asked to compare the two letters that they wrote and explain the differences. Although the professor might ask the students to jot down some thoughts on this ahead of class, this exercise works best when the letters are composed outside of class but the discussion takes place as a group in class. Students will be challenged to think about how and why they chose to present the same information to different people and to defend those choices.

Some possible questions for discussion include asking the students: What information did you choose to present? Did you include anything in one letter that you left out of the other? What language did you choose to use? What tone were you trying to convey? Why did you make these decisions, and how did you achieve your goals?

Most importantly, students should be asked which of their letters they think is most clear. When students compare the letters side-by-side, some interesting insights arise. For example, in writing the more “prestigious” letter, students often resort to a thesaurus, digging for ways in which to make themselves sound sophisticated and intellectual. This is precisely what some students do when writing legal arguments for the first time.

Yet, in nearly all cases, when asked which letter is more clear and straightforward, students will choose the more informal letter. In this letter, students typically strive to sound “normal”—in other words, to write in plain English. While this letter might suffer its own defects in being too casual or including unnecessary asides, the ultimate message is clear: Simple is best.

One possibility for this exercise would be for students to write on a topic of their choosing. But to give this exercise a little extra punch, students could be asked to write on the same topic: “What I’ve learned in legal writing so far.”

Using the same topic allows students to compare notes on the information that each of them chose to emphasize in different scenarios. Additionally, when they write on the same topic, they can more easily identify inaccuracies in language and storytelling in each other’s work. Such inaccuracies most often occur in the

“prestigious” letter when, in an effort to sound intelligent and important, students choose words for their “weight” rather than for their meaning or clarity.

Furthermore, asking the students to write about what they’ve learned in legal writing so far has benefits for the professor. If the professor chooses to collect the letters, her or she may obtain valuable feedback about what students are taking away from the course as its being taught. The professor learns what impression the students are getting about what’s most important, and may even notice that central concepts are being overlooked. He or she may also be able to “take the temperature” of the class and uncover problem areas before they become disasters.

Finally, a particular benefit of having the students write about what they’ve learned in legal writing so far is that it provides yet another opportunity to talk about audience, in this case, secondary audiences. As students compose their letters, they will no doubt be aware not only of their purported audiences but of you as the professor of the class about which they are writing.

This last factor provides an excellent jumping off point for discussing how to adjust one’s writing to multiple audiences. With interoffice memoranda, lawyers often are not just writing to the particular partner or associate who assigned the memo but to future associates who may need the same information later. With briefs, they are writing not just to the judge but also to the judge’s clerks and to researchers and perhaps even members of the media who might read the documents as well.

A major lesson that students learn from this exercise is that language matters. They learn that using the biggest words is not always best and may even detract from their message. Similarly, overusing complicated sentence structure or other artificialities to make their work sound more “important,” or otherwise elevate their own status actually obscures their meaning and makes conveying their arguments more difficult than it need be.

The ultimate goal of this exercise is to facilitate discussion about plain language and audience. Students must learn the importance of thinking about the language they choose and what it conveys about both their

own authority and the strength of their cases. Asking them to tell the same story to multiple audiences gets them thinking about how to adjust what they have to say and how they say it based on who needs to hear their message and why.

© 2013 T Pettinato
tammy.pettinato@gmail.com

Tammy R. Pettinato is an Assistant Professor at the University of North Dakota School of Law where she teaches lawyering skills, employment discrimination, and disability law. Before joining the University of North Dakota, she was a Visiting Assistant Professor at the University of Louisville School of Law, an Adjunct Professor and Assistant Director of Career Services at the University of La Verne College of Law, and a Reference Librarian and Lecturer at UCLA School of Law.



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

Writing for
DOLLARS,
Writing to
PLEASE

The case for plain language
in business, government, and law

Joseph Kimble

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

Consulting and training

Teaching plain language through editing

Sara Rösare

*Consultant, Språkkonsulterna
Stockholm, Sweden*

This article deals with how the Swedish language consultant agency Språkkonsulterna teaches plain language through reviewing and editing other writers' texts. The keys are keeping a good report to the writer, explaining the proposed changes in a pedagogical way, and offering tools through complementary comments to the writer. The agency's method is an efficient way of achieving the motto of the company: to make the world a more comprehensible place for everyone.

Språkkonsulterna is comprised of nine graduates from the Swedish Bachelor program for language consultancy. We offer a broad range of communication services, mostly related to plain language: advising, training, coaching, and text services, including writing and editing. The aim of our text services is to ensure the text achieves its purpose and reaches the intended audience; often this means applying the principles of plain language. In this article, I describe our agency's process for editing, which has worked successfully and is greatly appreciated by our clients.

Improve the writer, not only the text

For us, a principal question in plain-language editing is whether the aim is merely to improve the text or whether the aim is to improve the text as well as improving and empowering the writer. We promote the latter aim.

As language consultants we have the competence to analyze a communication (mostly a text); to suggest improvements to make it more suitable to its purpose and audience; to implement our suggestions; and to explain to writers the reason for our edits. In our plain-language editing, this is exactly what we do.

The client always receives a text that is edited to better reach the intended audience. But we also deliver a set of recommendations to the writer as well as explanations so the writer is made aware of what we have done as well as of his or her writing strengths and weaknesses.

We attend to the contact with the writer

We always try to involve the writer from the very start of the editing process. Before beginning the actual editing, we discuss with the writer the text's intended audience and purpose. This makes the writer aware that these two concerns need to be considered. Of course, we also ask writers if there is something specific to which we should pay attention, e.g., the use of technical terms or if there is an internal style guide we must follow.

During the editing work, we often communicate with the writer again in order to make mutually agreeable decisions about such things as choice of words, abbreviations, or explanations. By doing this, we make the writer aware that we can't just "fix the text". We need to work together since we have the linguistic and plain-language knowledge, while the writer has the professional knowledge on the subject matter.

Sometimes working together is especially critical because of the circumstances giving rise to the editing assignment. Often the writers work in organizations where management has decided that all texts should be in plain language. Thus, the writers are more or less forced to send their texts

to us, and this can create a resistance to being edited. And a writer unwilling to be edited is more defensive; he or she might not understand the aim of plain language or learn to implement it. And, in the worst case scenario, the writer will not accept the changes we propose and our work is undone. Therefore, central to our editing method is attending to our relationship with the writer.

We explain the changes that we propose

Mostly, we edit in MS Word, using the Track Changes and Comments functions. This means that the writers must review the edited text sentence by sentence or, as we recommend, paragraph by paragraph, accepting or ignoring each of the changes.

Based on our experience (including feedback from writers), we know that the work of the writer is easier if we add comments to some of the changes. Of course, if there is a spelling mistake, we don't need to explain why we changed it. But if we make changes in the syntax, we know that we can help the writer decide to accept the proposed change if we explain the reason behind it. For example, as language consultants, we know why certain syntactic constructions are less readable, and in a short comment, we explain this to the writer.

We also make comments about different ways ambiguous sentences or words might be interpreted and ask the writer to clarify the meaning. In these cases, we use the Comments function to offer alternate wordings in addition to the one we propose in the text.

In our editing work, we often encounter subject matter that is unfamiliar to us or passages that we do not understand. Inexperienced editors may feel uncomfortable in these situations. Our solution, though, is to rewrite in plain Swedish our interpretation of the text. In these instances, we use the Comments function to ask the writer if the interpretation is correct, adding that if we interpret the passage in this way and it is not correct, then other readers might also misunderstand. Sometimes the result is that the writer rewrites it again using wording different from the original or our suggestion. Without our comment, the writer might simply reject our suggestion because it is not correct and leave the ambiguous text as it is.

We supply tools to the writer

When we deliver the edited text, we always provide a report to the writer summarizing our edits. In this way, we make the writer aware of his or her common mistakes and give advice on areas where he or she can develop as a plain-language writer. Of course, we also mention the writer's strengths.

In this report and in comments in the edited text, we often reference dictionaries, paragraphs in official language guide lines, or other useful sources. This offers the writer tools that can also be used in later writings. That is, we strive to improve the writer's skills beyond the current text. Based on the feedback we have received in our ongoing contact with writers, we know that they appreciate our recommendations.

To deepen our understanding of the writers being edited, our agency organized a discussion earlier this year with some of our clients that are public officials. In this discussion, we learnt that writers use our recommendations. We also discovered that writers who had their texts edited several times have developed an awareness that the quality of the draft they initially send to us for editing affects the quality of the end product. One of the officials had estimated—probably correctly—that we improve the quality of the final draft by 10-20 percent. He also realized that our suggestions and recommendations were on a higher level if he had worked harder on his initial draft. For us, this evidenced that our communications with writers can also heighten their overall awareness when working on their texts.

Why all this work, why don't we just rewrite and be done with it?

Our editing method is perhaps not the most time efficient. But to edit a text without giving explanations, without offering alternatives, or without taking time for the writer means not caring about the excellence of the result. Using our pedagogical method of editing accomplishes several goals, all of which strengthen plain language:

1. Increased quality of the end product, since writers are often more willing to accept changes that they understand.
2. Cost and time savings for the client, since employees skilled in writing and

editing in plain language will be more cost effective and efficient for the organization than hiring external consultants to do the work.

3. Increased satisfaction for the writer who has the opportunity to strengthen his or her language skills.

The pedagogical method enhances our business

Since our method is good for the end product as well as for the client and the writer, it also enhances our business: We frequently wind up receiving more assignments from the same client. For example, we have a contract with a public authority that initially requested 20 monthly hours of plain-language editing. However, we sometimes spend as much as 20 hours *a day* for this client. Furthermore, during the first eight months of the contract, we received from the client 70 assignments of plain-language editing. Of course, we cannot be sure that this is a direct result of our giving feedback to the writers. But we are sure that the increase of assignments (compared to the expected amount) is a result of our high quality work, of which our pedagogical method of editing is an integral part. In addition to receiving more texts to edit, we are sometimes asked to produce writing guidelines for the organization and to train its employees.

But our pedagogical method of editing also serves our agency's personal and professional philosophy to spread the plain-language practice. We strongly believe that we can change the world through ensuring people their right to language—not only the right to understand important texts but also the right to express oneself in a way that most people will understand.

Conclusion

Why does Språkkonsulterna put so much effort into this pedagogical editing process? The answer is simply because it is worth it. For us, this approach is a satisfactory and efficient way to achieve our overall goal of making the world a more comprehensible place for everyone. In addition, using this editing process better serves our clients, who receive not only quality texts but also the opportunity for its writers to improve their skills. And by improving an organization's individual writers, the text culture of the entire organization is improved. Lastly, our editing process satisfies the writers. After all, most people are eager to learn when they see the point in learning.

“Epilogue”

I assume that many Swedish language consultants work in a similar way, but how about the rest of the plain-language world? I look forward to hearing from you.

© 2013 S Rösare
sara.rosare@sprakkonsulterna.se,
www.sprakkonsulterna.se

Sara Rösare has a Bachelor degree in Swedish Language Consultancy and a Bachelor degree in Political Science. She is one of the employees at Språkkonsulterna, the biggest bureau of plain language consultants in Sweden. As a consultant, she applies plain language principles when editing and writing texts, and when training and coaching other writers and plain language editors. Her handbook on editing, *Uppdrag textgranskning (Mission text editing)*, will be published by Producta förlag in 2014. Sara is also a member of the reference group for curriculum development and enhancement of the Language Consultancy Program at Stockholm University.



Case study
Comparison of plain language teaching for two non-native English-speaking professional groups: lawyers & engineers

Joanna M. Richardson

Plain English instructor at Marval, O'Farrell & Mairal Argentina

This case study draws on over ten years' experience of teaching plain-language writing skills in English to Spanish-speaking professionals. It outlines the teaching method and highlights the different approaches required for these two groups: lawyers and engineers. Each group is well educated, competitive, highly motivated to learn, and includes a wide range of competence in written-language skills, varying from intermediate levels to people who have taken postgraduate studies in English. All, of course, make a number of errors which I will not address here, as I wrote about them in the article published in *Clarity* #61 *Plain English for Spanish-speaking lawyers: specific language-based issues*. While each group is disciplined, and willing to learn, my experience has shown me that lawyers work better in teams and in pairs, whereas engineers generally prefer to work alone.

Group 1: Lawyers

Since 2002, I have worked in-house at Argentina's leading law firm, Marval, O'Farrell & Mairal. The firm employs over 300 lawyers and operates a two-year trainee program with around 50 new trainees per year who are each given work experience in four different departments. Although the plain-English writing course is not mandatory, it is available to all trainees. This means that those who come to the course are more open to the learning process as they are not obliged to attend.

As well as teaching plain-English writing courses, my other task is to edit most of the work the lawyers publish in English, so I have constant access to real-life material with its examples of grammatical and stylistic practice. This means that I can use this material, once cleaned of sensitive content, in my courses, making them much more relevant to the lawyers.

Method: Classes are held over lunch, the only break in a busy day for most of the lawyers. They are held in a workshop environment where everyone is encouraged to contribute and discuss. I clarify when a point is grammatically or stylistically incorrect, or outside normal current use. I constantly emphasize that writing is subjective and each of them must find their own style. Although of course I do encourage them to write in a plain-English style!

As an instructor, I encourage them to participate and give their opinions. Because lawyers tend to be very self-confident and loquacious, this is not normally a problem. But sometimes I have to encourage the younger, less confident ones to share their suggestions. I am in-house, which means the lawyers know and trust me. Although they may be argumentative, which goes with the profession, they generally respect my opinion.

Over a two-year period, I give the lawyers a series of courses:

Plain-English Writing Course I

This course covers 10 basic principles of plain English:

1. Focus on the reader
2. Use active voice
3. Write in short sentences
4. Avoid legalisms
5. Use personal pronouns
6. Avoid hidden verbs
7. Avoid the negative
8. Avoid "shall" language of obligation
9. Avoid sexist language
10. Use clear layout and design

This course presents the theory of plain language, introducing each aspect with an example from legal writing, and uses real-life examples from the lawyers' actual work to illustrate each issue. Using the theory they have just learnt, the lawyers then have to change examples of real-life work. The course is divided into eight parts, each 1.5 hours long, which are held over an eight-week period. Each class usually deals with two or three topics in the context of different activities, the participants working as teams, pairs, or individuals.

Most of the work they do in class is highly structured, correcting or rewriting real-life

examples. There is only one free-writing opportunity in the whole course when they have to write a short piece of about 300 words to show that they can plan and develop a piece of well-written plain English.

Individual Class

Once the lawyers have taken the plain-English writing course, I invite them to send me approximately 15 pages of their written work, preferably a mixture of memos and e-mails. I then comment on this and usually a pattern of similar errors or stylistic tendencies emerges. In an individual class I give them feedback with explanations on how to change their writing style. Often it is only the more senior lawyers who take these classes, as they may not have time to take the whole plain-English writing course.

Plain-English Writing Course II

A year after they have taken the first plain-English writing course, I invite the lawyers to take a second course. This course is shorter and held over a period of six consecutive weeks but is much more demanding as there is a lot of writing in class. Only the really dedicated take this course! The aim is to apply plain-writing techniques to the following genres in class:

1. Letter
2. Memo
3. Contract
4. CV
5. Translation
6. Article

When we look at the memo, we only work on the executive summary, and this is the most important part of the course. When it comes to writing an article, we exercise the five different roles as outlined by Dr. Betty S. Flowers and quoted by Bryan A. Garner in *Legal Writing in Plain English*. I use a small, soft ball to throw around the class to illustrate brainstorming, which they always find great fun! I always try to make my classes dynamic and entertaining with plenty of anecdotes so that they may remember by association what they have learned.

Group 2: Engineers

Since 2004, I have worked as a consultant for Argentina's largest oil & gas pipes and service

supplier, Tenaris. I wrote several courses for their communications department as well as for their corporate training centre, Tenaris University. This course was first written in 2011 for engineers from the research & development department, and it addresses technical writing. There are around 200 engineers in the department, including chemists, physicists and geologists. The Technical Writing course is mandatory for them, and I found this meant they were initially sceptical as to its value.

To prepare the course, I was given access to a wide variety of engineers' reports so that I was able to include real-life examples in the course, thus establishing relevance.

Method: A full-day, eight-hour workshop that presented the theory of plain language with real examples from their work, which they had to update in class. With approximately 15 engineers in each workshop, I presented the topic and the theory with an example and then practiced a few examples orally before asking them to change some real-life examples in class and to share those.

As a consultant, I was external to the Company, so the engineers did not initially know or trust me. They each work in highly specialized areas and for them content has a much higher priority than writing style, so it was difficult to get them to see the point of improving their writing. Some aspects, such as focusing on the reader, were met with resistance. This course underwent many changes, and I gave several pilots before it began to work to the satisfaction of both teacher and students. For example, in the first pilot, I talked about "plain" language but found it created such a negative response that subsequently I only referred to "clear" language, which got better reception. I still taught them all the techniques of plain language, but without calling it that. Another exercise that did not work with this group was the free-writing exercise following Dr. Betty Flowers's model, which had to be taken out.

Because each engineer works in such a narrow field, it was very difficult to find a sample report and executive summary that would interest a majority.

The Technical Writing Course covers these aspects:

1. Focus on the reader
2. Define when to use active and passive voice
3. Improve layout and tabulation
4. Use logical structure to describe procedures
5. Punctuate long strings of nouns typical of technical writing to improve meaning
6. Avoid gerund at the start of sentences
7. Do not fear repetition for clarity's sake
8. Use natural emphasis to create meaningful paragraphs
9. Report writing: write up an executive summary
10. Assignment: Rewrite a report of your own for individual feedback

They worked throughout the day on a sample report with many errors and problem areas that they had to identify. Lastly, they had to write up the executive summary of the same sample report in pairs. The final task was an individual assignment to improve one of their own reports in their own time, applying the techniques learnt on the course.

Follow-up: Individual Feedback on Report

One week after the course, the engineers sent me a report of their own to which they had already applied what they had learnt on the Technical Writing course. I updated it with visible track changes and comments. Then, I gave them a 20-minute individual class explaining problem areas and how they might improve their writing style, both grammatically and to make it clearer. In these individual sessions the engineers were much more forthcoming and receptive to my suggestions. They clearly did not enjoy working in a group and were much more comfortable working one-to-one.

Conclusions

Partly as a consequence of my being external, the engineers were less receptive than the lawyers to many of my suggestions. However, this did change when working individually, when the engineers were happier to receive feedback.

For both groups, content takes a higher priority than language, and they have often been working on a document for several weeks, or even for months. This means that they actually know too much about their topic and have a lot of difficulty in explaining it to their readers, i.e. standing back and being objective. When they do apply plain-language techniques, logical structure, and good layout, they learn how to bring the reader alongside the protagonist, and produce documents that achieve their purpose: clarity and precision.

© 2013 J Richardson
JMR@marval.com.ar

Joanna M. Richardson is a British national who resides permanently in Argentina. With a degree in languages from King's College London, she worked for many years as a translator. Since 2001 she has taught plain-English writing skills to lawyers at Marval, O'Farrell & Mairal. She also works as a consultant on plain language for non-native speakers for multinational companies such as Tenaris, teaching engineers and communications professionals face-to-face as well as writing e-courses for their in-house training program. An enthusiastic promoter of plain language in Latin America, Joanna has been on the board of PLAIN since November 2012.



Teaching grammar without scaring people

Colleen Trolove

*Plain English Specialist, Write Limited
Wellington, New Zealand*

Introduction

Do our participants need to understand grammar to become great writers? If so, then here in New Zealand we need to be creative about how we teach grammar—it was taken off the school curriculum in the 70s. Colleen confronts this question, and offers some practical tips for teaching grammar to participants who shudder at the words ‘noun’ and ‘verb’.

Correct grammar is a core part of plain English. It prevents misunderstandings and helps readers to understand a message the first time they read it. But the language of grammar can be such a huge barrier to New Zealanders that teaching grammar hinders rather than aids learning.

In New Zealand, many people never learnt grammar at school. From the 1970s until about 2010, the English curriculum in state schools didn't include grammar. The government expected students to absorb it by osmosis—read a lot and grammar will grow on you. Now, generations of New Zealanders have no idea what an adjective is and turn white when you say ‘subject and verb’.

Grammar: from help to hindrance

Before I worked as a plain-English specialist, I taught English to speakers of other languages. In that world, the language of grammar was a lifeline—a common language the students and I used for communication. When teaching a new word, I'd show how it could be used as a verb, adverb, and adjective. I'd show how it could be nominalised. What a big step it was going from that world to helping native speakers understand at a conscious level what they only knew intuitively.

As a plain-English trainer, I use grammatical concepts as the backbone of a lot of my teaching. Yet, if I say, ‘Keep the subject and verb close together,’ I get blank looks. The language of grammar is foreign to many of the people I train. I may as well be speaking another language, or, heaven forbid, using jargon! The walls of fear come up and no learning goes in.

Introductory workshops don't need to blast people with grammar

In our introductory workshops at Write Limited, I don't aim to daunt people who come in eager to find out how to write more effectively. Yet, in the 20 minutes I allot to teaching participants to favour the active voice, I tend to achieve confusion rather than understanding. Phrases are buzzing round in their heads like *the subject must be the actor* and *performing the action of the verb*. At the end of the 20 minutes, though, most people can't change passive sentences to active ones. Many people still can't tell whether or not a sentence is active or passive.

This conundrum started me wondering whether people needed to understand grammar to be able to improve their writing. I would say definitely, yes, at an advanced level. If people want to be great writers, they need to know how their sentences work from the inside out. For example, they need to be able to spot an independent clause so they can use commas consistently, and so they can tell whether or not they're starting their sentences with a main or subordinate point.

But I teach people who fear grammar. And they have only one day out of their busy work lives to improve their writing. So to practise what I preach and *avoid technical terms for audiences who don't understand them*, I'm experimenting with teaching grammar while reducing the alienating language that accompanies it.

Active and passive voice

To deal with active and passive voice, a colleague taught me to follow Joseph Williams's suggestion in *Style: The Basics of Clarity and Grace*.¹ Williams says to identify the characters within a sentence, for example, ‘The implementation of the project will be conducted by the Steering Group’. Then pick a character to start the sentence with. ‘The

Steering Group will implement the project.’ Note that this sentence changed from passive to active without any need to talk about voice.

When no character is present in the sentence, I ask people to invent a character. *The project plan is expected to take 3 days to complete.* Or *We expect the project plan will take 3 days to complete.*

Of course, people sometimes end up writing passive sentences when using this technique. But such sentences tend to be appropriately passive. *It was expected that the CEO would arrive at 3pm* could become *The CEO was expected to arrive at 3pm.* It’s passive, but it’s an appropriate use of passive voice.

Independent and dependent clauses

Rather than talking about independent and dependent clauses, I now talk about clauses that can stand on their own (*Anne Burgess is our new administrator*) and those that don’t feel complete standing alone (*Because Anne Burgess is our new administrator*).

Nominalisations

I try not to say *nominalisation* in workshops now. Instead, I ask people to find the action hiding inside words ending in *-ion*, *-ment*, and *-nce*. So *reduction* becomes the action *reduce*, *development* becomes *develop*, and *governance* becomes *govern*.

Limitations of the technique

This technique of talking about grammar without using its technical language has limitations. For example, a lot of independent clauses don’t sound complete on their own: *I missed it on the way home*, or *The only thing that could possibly be boring about it is how writers treat it in documents*. Participants can get confused when they don’t know that pronouns are valid subjects. They’ll object that *It doesn’t sound complete*, but grammatically it is.

Some nominalisations have endings different from *-ion*, *-ment*, and *-nce*: *analysis* and *use*, for example. You must be able to identify the part of speech of each word in a sentence if you want to catch all the abstract nouns.

So, again, I conclude that this technique has value at an introductory level. You’ll need to get stuck into grammar once you’ve gone past the first few steps of your journey into good writing.

Meet people where they are

At times I need to say *verb*, *clause*, or *subject*. I try to give an everyday explanation of a term before I introduce it. I won’t get rid of all grammatical terms in my training, but I want to meet my clients where they are and use language they’re comfortable with. After all, the idea of meeting someone where they are is the most important plain-English principle I want my participants to take away from a day with me.

© 2013 C Trolove
colleen@write.co.nz

Endnote

¹ Williams, J M. *Style: The Basics of Clarity and Grace*. 2nd ed. New York: Person Education, 2006. (By the way, the man is brilliant. If you haven’t read his book, get a copy and devour it!)

Colleen Trolove trains people to write plain English documents and webpages. She also writes, edits, and proofreads for Write’s clients. She is on the steering group for this year’s WriteMark New Zealand Plain English Awards. Colleen has a degree in English and History and a Certificate in English Language Teaching to Adults. She taught English as a second language before diving into the world of business communication.



Write is a professional services company that helps government and business organisations create clear, reader-friendly communications. We have been leaders in plain English for 20 years—plain English is our business and our passion.

We follow Aristotle

Judy Knighton

*Plain English Specialist, Write Limited
New Zealand*

Rosemary Knight

*Plain English Specialist, Write Limited
New Zealand*

Introduction

Coaching is one of the oldest methods of teaching and learning. The Greek philosopher, Aristotle, was a coach. He coached Alexander the Great in clear thinking and other language skills that made the young Emperor an ace communicator and military leader.

At Write, we value the coaching relationship as a means of supporting writers to achieve their specific writing goals—to write confidently, to write effective reports, or to get the structure right so that their reader gets what they need.

Aristotle's advice still works for coaching. He said:

All men seek one goal: success or happiness. ... First, have a definite clear, practical ideal—a goal, an objective. Second, have the necessary means to achieve your ends—wisdom, money, materials and methods. Third, adjust all your means to that end.¹

In this article, we use a case study to look at the elements of coaching and we discuss our first, second, and third steps to coach writers to achieve their goal; that is, to take them from where they are to where they want to be. Our steps for a successful coaching relationship follow Aristotle:

- first, have a clear, practical goal
- second, have the necessary means
- third, adjust all your means to that goal.

First, have a clear, practical goal

Having a clear, practical goal matters because the client is paying for our time and we need to use it well. And it matters because we need a purpose for the coaching just as a document needs a purpose and a journey needs a destination. A clear purpose gives focus to each coaching session.

The goal will be what the client wants to achieve. Discuss their goal in the conversation you always have at the start of a coaching relationship, and remind them at the beginning of each coaching session. Write a clear statement about the goal and discuss how they will know when they've achieved their goal. Say that it might not be obvious until they practise the skills you are working on.

Case study: Ben knew where he wanted to be, but he didn't know how to get there

Our client 'Ben' was a great communicator—in conversation. When he sat in front of a computer screen to start writing the newsletter for his small legal firm, he forgot everything he knew about getting his message across. His newsletter was hard to read, confusing, and—worst of all—boring. Ben asked our writer to write newsletters that his clients looked forward to reading. But he also wanted to learn how to do it himself.

Second, have the necessary means

For coaching, the necessary means include the people, the plan, the materials, and the method.

- The people: effective coaching depends on a relationship of trust between a motivated client and a knowledgeable coach.
- The plan: the coach and the client agree on a plan that documents the goal and sets out the steps between where the client is and where the client wants to be. The plan acts as the map for the journey to the destination.
- The materials: plain-English coaching uses written texts as the material for coaching. The coach and client discuss the client's own workplace writing, and explore ways to improve it.
- The method: coaches use a variety of methods, depending on the needs and the relationship. Pausing at each small step for

reflection and practice embeds learning. 'Chunk and check' is a recognised teaching technique that gives the brain time to take in information, then process and use new learning. Coaching is a conversation; an opportunity for clients to discover things for themselves.

Many of our clients face the challenge of un-learning. We see clients who:

- are trained to be experts in complexity
- believe that documents need to be complex—that their readers expect their writing to use complex language and structures; that their status depends on writing in a complex, convoluted style.

Coaching makes the lives of such writers easier. It gives them a place to start, a path to follow, and a companion to encourage them on the journey. It frees them from the rules that have bound them to academic writing. Coaching gives them permission to undo some of their beliefs; to not be a slave to the rules of writing.

Case study: Ben used the coaching sessions to reflect on what he was learning, then applied that knowledge in his workplace

The coach created the first newsletter from Ben's notes, then sat with Ben and went through all the decisions she'd made. Ben wrote the articles for each newsletter after that, and sat with the coach to work through each paragraph, discussing possible changes. At every coaching session, Ben reported on how he'd used his new skills in the workplace.

Third, adjust all your means to that goal

Each coaching session brings new challenges and new rewards. The coach needs to work with whatever materials the client produces, and adjust the plan and the methods to help the client take the next step towards the goal.

Coaching is an ongoing relationship. Coaching isn't taking over; it isn't leading. The coach's job is to walk alongside the client, offering just as much support as the client needs.

Coaches work to become redundant, reducing support gradually as the client does more and more on their own. As one skill is mastered, one goal is achieved; the coach supports the client to set new goals.

Case study: Ben writes his own newsletter—and sets a new goal

By the sixth coaching session, Ben was making his own writing decisions and the coach was simply asking questions and offering ideas for Ben to consider. Now Ben was ready to set a new goal. He wanted to set up his own blog—and write at least three posts a week. And he wanted his coach to walk this new journey with him.

Go forth and coach

We're enthusiasts for coaching, because we've seen it work well for our clients. As Aristotle, that great coach of ancient times, said: "For the things we have to learn before we can do them, we learn by doing them." Coaching allows people to learn by doing.

© 2013 J Knighton
judy@write.co.nz

© 2013 R Knight
rosemary@write.co.nz

Endnote

¹ <http://thoughts.forbes.com/thoughts/success-aristotle-all-men-seek> accessed 8 July 2013

Judy Knighton has been a writer, editor, and publications developer of government and corporate documents for more than thirty years. As well as writing, editing, and managing a variety of print and online publications, Judy enjoys acting as a plain English coach and trainer. Judy holds a Masters of Communication (with distinction) from Victoria University of Wellington (2003), and is Accredited in Public Relations (2008).



Rosemary Knight has worked in the health sector as a registered nurse. Through her work in producing health information for a wide range of readers, she developed an interest in the value of plain English. Rosemary holds a current Practising Certificate in her new scope of practice in health literacy and writing information in plain language. She also holds a Bachelor of Arts and a post-graduate diploma in the Teaching of English as a Second Language.



François Richaudeau's inspiring concepts on readability

Maria Otilia Bocchini

Professor, University of São Paulo
São Paulo, Brazil

Cristina Yamazaki

Partner and Editor, *Todotipo* Editorial
São Paulo, Brazil

Livio Lima de Oliveira

Partner and Editor, *Todotipo* Editorial
São Paulo, Brazil

“Readability” is a concept that effectively guides writers in preparing texts for their intended audience.

For years, the authors have studied and successfully applied the concept of readability as proposed by the French researcher François Richaudeau (1920–2012).¹ An organizational engineering graduate specializing in the printing industry, Richaudeau worked at a major printing company in northern France. Later, as the director of a book club, he began to reflect on his company's publications and sought to produce works that were as accessible as possible to their readers. In the 1960s, he helped found the Centre d'Étude et de Promotion de la Lecture (Centre for the Study and Promotion of Reading) with the objective of investigating the nature of reading and readability. His initial experiments focused on reader behavior relating to the typographic characteristics of printed works. He later conducted several studies on readers' memory capacities and the relationship between memory and reading comprehension.² Richaudeau also combined psycholinguistics with cognitive theories undertaking in-depth studies analyzing readability.

In *Conception et production des manuels scolaires: guide pratique*, written as part of an initiative by United Nations Educational, Scientific and Cultural Organization (UNESCO) at the end of the 1970s, Richaudeau defined and distinguished two types of readability—linguistic and typographic:

linguistic readability

The capacity of a text—independently of its typographic transcription—(i) to be read without extraordinary effort, and (ii) to be entirely understood and memorized in a satisfactory manner by the reader. The linguistic readability of a text should naturally correspond to the level of education and cultural and ethnic characteristics of the reader. Readability is a function of the choice of words used, sentence length, and, more precisely, the length and syntax of the sub-phrases employed.

typographic readability

The capacity of a printed text—independently of its linguistic content—(i) to be read without extraordinary effort, and (ii) to be entirely understood and memorized in a satisfactory manner by the reader. As in the case of linguistic readability, typographic readability must be suited to the reader's age and cultural and ethnic characteristics.

The breadth of Richaudeau's concept of readability is evident in his research. He takes into account the cognitive processes involved in the production and reception of a discourse as well as in the comprehension and memorization of the reader. His notion of readability goes beyond measuring the text itself. This is a primary reason the authors adopted Richaudeau's approach for writing and editing texts.

Focusing on readability during the writing or editing process emphasizes the importance of considering the reader (e.g., literacy and social conditions). Thus, the text is not isolated in its production or in its intended reception, in the same way that readability does not exist independently of the reader, as stressed by Richaudeau.

Yet, how does one assess the readability of a text before it is written or before editing has begun? By applying Richaudeau's concept of readability together with psycholinguistic principles, the authors believe that professionals can forego a simply intuitive process in favor of a more structured process for guiding their decisions.

Even among many professional writers and editors assessing a text's readability is mainly intuitive. But there are more technical and precise ways to determine whether a text is readable: through the application of principles developed and studied since the

beginning of the twentieth century, and through the verification of elements that facilitate reading as studied in cognitive psychology. These formulae critically assess aspects of a writing to create a more readable text.

Innumerable critical reviews of various readability formulae developed in the US, France or other countries state that it is possible to produce a “caricature of efficient text”³ and emulate a good result in the readability indices without the text really being readable and effective in its communication. Although these criticisms have some justification, readability formulae should not be ignored. At the very least, according to the Brazilian Neide Mendonça,⁴ “it is true that the low intelligibility [or, as the concept is referred to in this paper, the *readability*] coefficient serves to demonstrate that the reader encountered problems in processing the text,” even if the result does not indicate “what the problems are, or how to solve them.”⁵ Even with these limitations, readability formulae are important tools, especially for those who routinely deal with written communication, such as professors, editors, writers, and journalists.

The French professor and researcher Bertrand Labasse⁶ warned in the 1990s that a positive result when applying readability formulae may not mean much; however, a negative result—little readability—is almost always an indication of some kind of problem in the writing.⁷ Richaudeau, who developed a readability formula based on his own studies, also stressed the value of using a formula for measuring readability:

Knowledge of my formula forces writing professionals into useful reflection regarding their texts (or those they are editing)—do they know their target audience well enough? Have abstract subjects been sufficiently elucidated through examples or analogies? Has the average sentence length been adapted to the cultural level of the intended readers? Are the fastidious enumerations rare? Do the sentence structures facilitate pre-reading, etc.? And, for research purposes, does calculating the efficiency index of some passages eventually lead to new critical reflections, through the confirmation or invalidation of these qualifications?⁸

The purpose of readability formulae is not to present a recipe for writing clear and accessible text; rather, these formulae offer indices that allow writers and editors to question whether the text is suited to and will be understood by its intended audience. Thus, the formulae raise possible readability issues rather than providing rules for drafting. As Labasse asserts,⁹ analyzing readability can only offer information on how easy it is to acquire content from a text—nothing more.

Since the 1990s, Richaudeau’s work has inspired writers interested in clearly communicating to Latin America’s less proficient readers.¹⁰ Richaudeau’s work has also inspired academic study, particularly among professionals participating in the Descomplica Brasil group. His recommendations are consistently applied alongside concepts developed in the fields of psycholinguistics (Kato) and cognitive psychology (Kleiman).¹¹ Among publications written by Descomplica Brasil’s professionals,¹² the following plain language works are worthy of special mention:

- 1990, São Paulo City Council: juridic concepts presented in plain language to São Paulo city’s financially disadvantaged population. The publication explains the city council’s concession of land use for inhabitants of “precarious urban nuclei” (shantytowns).
- 1993–2003, *Mulher e Saúde* bulletin (print run of 10,000): health concepts for women, for women-centered NGOs throughout Brazil.
- 1993, *Fala Preta* magazine: health and AIDs prevention concepts for the young, black, low income population.
- 2002, Campinas City Council, SP (1 million inhabitants): political participation and citizenship concepts in publications aimed at financially disadvantaged citizens.
- 2009, Várzea Paulista, SP (60,000 inhabitants): political participation, public budget and citizenship concepts in publications aimed at financially disadvantaged citizens.
- 2012, 2013, Brazilian Ministry of Culture (MinC): explanation of the Goals of the National Culture Plan and how to create a Culture Plan.¹³

In a future article, the Descomplica Brasil group plans to elaborate on its strategies for understanding the reading and literary skills of Brazil's common public audiences. This knowledge is essential for appropriate writing and editing of any text targeted toward these audiences.

© 2013 M Bocchini
otiliabocchini@uol.com.br

© 2013 C Yamazaki
cristina@todotipoeditorial.com.br

© 2013 L Oliveira
livio@todotipoeditorial.com.br

Endnotes

¹ ASSUMPÇÃO, Maria Elena; BOCCHINI, Maria Otilia. *Para escrever bem*. São Paulo: Manole, 2002; BOCCHINI, Maria Otilia. *Formação de redatores para a produção de textos acessíveis a leitores pouco proficientes*. Doctoral thesis in Communication Sciences at São Paulo University's School of Communication and Arts (ECA-USP), 1994 (Tutor: Alice Mitika Koshiyama); YAMAZAKI, Cristina. Editor de texto: quem é e o que faz. In: Intercom — Sociedade Brasileira de Estudos Interdisciplinares da Comunicação. Brazilian Congress of Communication Sciences, 30, 2007, Santos.

² RICHAUDEAU, François. *La lisibilité*. Paris: Centre d'Étude et de Promotion de la Lecture, 1969; *Le langage efficace: Communiquer, persuader, réussir*. Paris: Marabout, 1973; *Linguistique pragmatique*. Paris: Éditions Retz, 1981; *Sur la lecture*. Paris: Albin Michel, 1992; *Manuel de typographie et de mise en page: du papier à l'écran*. Paris: Retz, 2005.

³ *Linguistique pragmatique*, p. 188.

⁴ Neide Rodrigues de Souza Mendonça researches and teaches plain Brazilian Portuguese since the 1980s. Her work is based on psycholinguistics and sociolinguistics, on the guidelines of the Document Design Center of the American Institutes for Research and on the work of Richaudeau.

⁵ *Desburocratização linguística: como simplificar textos administrativos*. São Paulo: Pioneira, 1987, p. 27.

⁶ Former professor at University of Lyon and nowadays professor at University of Ottawa, he has been studying readability since the 1990s.

⁷ La lisibilité rédactionnelle: fondement et perspectives. *Communication et Langages*, n. 121, 3rd quarter of 1999: 102.

⁸ *Linguistique pragmatique*, p. 188.

⁹ La lisibilité rédactionnelle: fondement et perspectives, p. 103.

¹⁰ See, e.g., Berthoud, Olivier. Imágenes y textos para la educación popular. Tegucigalpa/La Paz, Comunica/Cimca, 1992. PDF available at: <<http://www.edinter.net/docs>>. Berthoud's work includes guidelines for developing print material for those who have recently learned to read.

¹¹ KATO, Mary. *O aprendizado da leitura*. 5th ed. 2 reprint. São Paulo: Martins Fontes, 2002; KLEIMAN,

Angela. *Texto e leitor: aspectos cognitivos da leitura*. 9th ed. Campinas: Pontes, 2004.

¹² The other members of the group, in addition to the authors of this paper, are:

Maria Elena Assumpção is a specialist in accessible communication with more than 15 years of professional experience. She was a professor at São Paulo University's School of Communication and Arts (ECA-USP) from 1979 to 1992.

Moema Kuyumjian is a graphic designer specialized in creating and developing graphic design projects for publications and a variety of communication materials for a broad range of target audiences.

Yuri Brancoli graduated in Publishing from São Paulo University and worked for 15 years in Brazil's public administration at the municipal and federal level. He has 20 years of experience of study groups in plain language and the right to information.

¹³ PDF available at <<http://pnc.culturadigital.br/wp-content/uploads/2013/07/2%C2%AA-edição-As-Metas-do-Plano-Nacional-de-Cultura-versão-final-espelhado-para-o-site-19MB.pdf>>. Online version: <http://issuu.com/isabelea/docs/as_metas_do_plano_nacional_de_cultura_2__edi_o>.

Maria Otilia Bocchini

specializes in writing accessible texts and teaching writing. She has taught and undertaken research at São Paulo University's School of Communication and Arts (ECA-USP), since 1985 and co-authored Para escrever bem (2006) with Maria Elena Ortega Ortiz Assumpção.



Cristina Yamazaki is an editor with 15 years of professional experience. A graduate in Publishing from São Paulo University, she also holds a Masters from the same institution where she researched text editing and readability. She is a partner at Todotipo Editorial.



Livio Lima de Oliveira

graduated in Publishing from São Paulo University's School of Communication and Arts (ECA-USP), in 1997, where he also obtained a Masters (2002) and doctorate (2008) in Communication Sciences. He is an editor and partner at Todotipo Editorial.



Plain-language writing-training course: A challenge, an ambition, and a method in five steps

Olivier Beaujean

Lawyer and head of the Plan Legal Language unit at *Droits Quotidiens*
Brussels, Belgium

Anne Vervier

Professional Writing trainer and consultant
Brussels, Belgium

No doubt *Clarity* readers are aware of the value of clear legal language. Clarity in the law is a right and a necessity for citizens, people going to court, consumers, and even the lawyers themselves.

As part of a lawyer's education, he learns to master the law and its techniques. But, during his career, the lawyer must communicate his knowledge of the law to others. He may be asked, for example, to draw up contracts, pronounce judgments, and issue regulations. His writings will be read and likely understood by his peers. But will these writings be understood by the primary people concerned: the consumer, the person going to court, or the citizen? Not always, as a lawyer has not been trained to communicate the law to non-lawyers. Yet, learning to clearly communicate so that the general public can understand is a social and economic necessity.

The course's instructors: a winning duo

The article's authors recognize the challenge that many legal writers face in clearly communicating legal concepts to non-lawyers. Therefore, the article's authors, a linguist and a lawyer—both French-speaking Belgians—have joined forces to teach legal writers how to achieve clarity in their writing. In their dynamic and innovative course, *Plain Legal Writing*, the authors teach course participants how to clarify the law for their intended audience. The course has proven extremely effective.

- Anne Vervier is a linguist, a trainer, and a consultant in plain writing. In the course,

she shares her expertise in the methodology of professional writing.

- Olivier Beaujean is a lawyer, a journalism graduate, and a specialist in the simplification of the law. In the course, he ensures the participant's proposed clarifications of texts are in legal compliance.

The course's target audience: writers of legal texts

The course is intended for every writer of legal documents, whether a lawyer or otherwise, if he writes:

- Documents with a regulatory impact (laws, orders, decrees, regulations, etc.) and administrative letters.
- Judicial documents (judgments, summonses, pleadings, etc.)
- Contractual documents (contracts, general conditions, notarial deeds, etc.)

The course's primary objective: to learn a method for writing in plain legal language

The principles for drafting clear legal text are well known. Teaching course participants to apply these principles methodically when drafting legal text is the essence of the course. The course lessons give course participants the tools to write clearly and instruct them on how to use these tools in their drafting.

The course has three goals for course participants:

- To master the techniques of plain legal language.
- To successfully apply the techniques by following a writing process that guarantees a clear text.
- To be able to evaluate and improve legal texts so that they will be clear to the intended audience.

The course's activities: variety in the service of learning

The training course is aimed at groups of no more than 20 participants.

The course consists of two one-day sessions, each session separated by one or two weeks. The intervening period between the two sessions enables the participants to experiment with the techniques they learned at the first

session and to discuss their results with the trainers at the second session.

The training activities alternate with presentations and discussions in large groups, and with exercises performed in small groups, in pairs, or individually.

The learning method is a deductive process:

- The participants evaluate the clarity of excerpts from authentic legal documents.
- From these documents, the participants deduce the principles of *plain legal writing*.
- Then, the participants draft legal texts or excerpts of legal texts.
- Lastly, the participants evaluate and improve the drafted texts.



The training is interactive, fun, and collaborative. More importantly, the participants learn good writing skills.

The training aids include:

- A manual that presents an overview of all writing techniques, application exercises, and, for assessment or rewriting, examples of legal texts.
- Flash cards of the course's five steps and 15 good writing practices.
- An *evaluation grid* for evaluating the clarity of the legal text for its intended audience, and a *solutions grid* for the legal writer.

The course's beginning: what is at issue with clear legal texts?

"Why produce clear legal texts?" That is the first question put to the course participants.

Beginning with an example situation is most effective means to answering this question. Standing in the reader's shoes, the participants

are given a confusing legal document, such as a judgment or an administrative form. They are asked to assess the impact of it and to point out the elements that hinder its readability.

Then, in a role-playing exercise, some of the participants are asked to write a plea for clarity, while others are asked to develop an indictment against making legal texts understandable to non-lawyers. Through this role-playing, the participants themselves highlight the historical reluctance and difficulties that legal writers experience in writing clearly.

Next, the participants analyse the characteristics of the following types of legal documents, taking into consideration the writing constraints of these types of documents and their intended audiences:

- Documents with a regulatory impact and administrative letters.
- Judicial documents.
- Contractual documents.

The course's common thread: five steps to clarity

The course is divided into five steps, which the authors call "the five steps for 15 good writing practices." At the end of each step, the participants apply the good practices they have learned in that step by drafting a legal text similar to the type of text they draft in their profession.

Step 1: define the parameters of the communication situation.

- The participants devise a scenario giving rise to the drafting of a legal text.
- They determine:
 - The issuer of the message.
 - Its intended audience.
 - The objective to be achieved.
 - The channel, i.e. the type of legal text used (documents with a regulatory impact and administrative letters; judicial documents; or contractual documents).

Step 2: analyse and summarise the information

- The participants use a technique taught in the course, such as "mind-mapping" or "the seven questions to gather the information to be conveyed."

- Then they identify the relevant information according to the document's objective and the document's intended audience.

Step 3: structure the information

- The instructors review different types of structures that could be used for the legal document.
- For the text to be written, the participants choose a structure suitable for the document's objective and the document's intended audience.

Step 4: write the text in plain legal language

- The participants choose the vocabulary to be used by keeping three aspects in mind:
 - The different registers of legal vocabulary (legislative, judicial, contractual).
 - A vocabulary that is comprehensible for the readers of the document: the citizen, the person going to court, or the contracting party.
 - The possible connotations of legal terms.
- The participants construct short and clear phrases (i.e. clear syntactic structure, limited use of subordinate clauses, coherent bullet point lists).
- The participants make the text concise by eliminating all superfluous words and information.
- The participants use current turns of phrase and a factual tone with minimum formalism.
- The participants make the text reader-orientated by favouring example situations, questions, specific examples, etc.
- The participants use a clear page layout in order to aid readability, understanding and memorisation.

Step 5: read and reread from the reader's point of view.

- Working in pairs, the participants assess their text using the *evaluation grid*. This measures the effectiveness of a legal text for its target audience.
- Then, for evaluation, the participants give the text to other participants who put themselves in the shoes of the reader.
- Finally, the participants correct and improve their text by using the *solutions grid* for the legal writer.

In conclusion: application to the legal texts brought in by the participants

As an overview of the training received in *Plain Legal Writing*, the participants, working in smaller groups, browse through examples of legal texts brought in by other members of the group. Using the *evaluation grid* they assess each text's readability for its intended audience. Using the *solutions grid* they rewrite particular passages so that they can be readily understood by their intended audience.



The course in practice

The first training course took place in September 2013. The participants were about a dozen lawyers from the non-profit sector. They appreciated learning a method for rigorous and practical writing that they can apply to all their legal documents.

Anne Vervier and Olivier Beaujean are currently developing educational tools in relation to blended-learning techniques. Their aim is to further strengthen the effectiveness of this training course by providing an introduction to the course's theoretical concepts through an e-learning module, webinars (virtual classes), and coaching from a distance.

Other French-speaking lawyers will undoubtedly want to take this training course in the next few months. All further information is available on www.langagejuridiqueclair.be.

© 2013 O Beaujean
o.beaujean@droitsquotidiens.be
<http://www.droitsquotidiens.be>

© 2013 A Vervier
avervier@redaction-claire.com
www.redaction-claire.com

Olivier Beaujean

- Lawyer
- Head of the Plain Legal Language unit at Droits Quotidiens
- Belgian representative of Clarity International
- Tel: + 32 8139 0620



Anne Vervier

- Romanist (linguist in Romance philology)
- Trainer and consultant in professional writing
- Author of *Rédaction claire, 40 bonnes pratiques pour rendre vos textes professionnels clairs et conviviaux*, *EdiPro*, 2011 (Plain writing, 40 good practices to make your professional texts clear and accessible)
- Tel: + 32 494 33 3865



Come to Dublin for PLAIN 2015, September 17-20 at Dublin Castle

Clearer language, greater efficiency and effectiveness



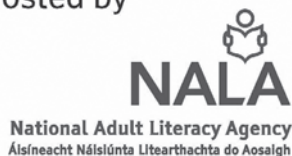
PLAIN 2015

The theme of clear language as a means to greater efficiency is key for the climate we are in today. It is increasingly important for information providers to be efficient and effective in their communications with their customers.

The PLAIN 2015 conference will show how organisations can improve their efficiency and effectiveness. It will:

- present and discuss research-based plain language initiatives;
- share best practice in – written, verbal, numerical and visual communication; and
- consider communication developments in Europe and further afield.

Hosted by



The National Adult Literacy Agency of Ireland (NALA) is a membership organisation and a registered charity. Our mission is to promote the development of adult literacy. An important part of our work is to support organisations to become more accessible to the public. As part of this, we offer a Plain Language Editing and Training Service.

We have worked with most Government Departments and a wide range of public and private bodies. **NALA is delighted to be the host of PLAIN 2015 and look forward to welcoming you.**

Dublin, Ireland

The conference will be held in Ireland's capital city, Dublin, a city that is steeped in over a thousand years of history yet buzzing with energy.

Dublin is easily accessible from the UK, continental Europe, the east and west coasts of the USA and Canada and the Middle East. More than 36 airlines fly regularly into Dublin Airport, which is located 12 km from the city centre.

Further information

Please contact **Claire O'Riordan**, Plain English Coordinator, NALA
Tel: + 353 1 412 7922
Email: coriordan@nala.ie

Websites: www.simplyput.ie www.nala.ie

Academia

IC Clear course almost ready for pilot

Karine Nicolay

*Project Coordinator, IC Clear Project
Belgium*

The one skill employers most often say is lacking in the workplace is the ability to communicate effectively. At the same time big disruptive societal shifts reshape the future landscape and influence the critical skills needed for success in the future workforce. That's why, in October 2011, four European partners and one Canadian partner, with the support of the lifelong learning program of the European Commission, united in the IC Clear consortium to develop, pilot and offer a postgraduate course in clear communication.

With the course the consortium responds to the anticipated increase in demand for clear, easy-to understand information and the lack of well-trained clear communication professionals.

The course objectives and learning outcomes are built on the findings of renowned research institutes, the results of a needs analysis and an international survey of clear communicators, the partner's own experience and expertise and the critical eye of a panel of experts. The course fits the European Quality Framework for the European Higher Education area (EQF).

The consortium wants to offer the course in a practical and user-friendly multilingual networked learning environment which can easily be adapted to local societal needs and context.

The course is expected to especially appeal to people with a part- or full-time job who feel the need for more clear communication in their work place but are hesitant to take up another study or training course due to time- or other practical constraints.

The consortium awards participants with an IC Clear certificate recognized in all partner institutes and intends to open the path to an internationally acknowledged professional certification in the future.

Partners and extended network

The IC Clear consortium is based on a very strong partnership. It is built on the expertise of each of the institutions and the people working in it.

Project coordinator:

Thomas More University College – Belgium

plays an important strategic and international role in Flanders – more than 13.000 students study at seven campuses in the province of Antwerp. Thomas More brings in expertise in project management, plain language and clear communication.

Project partners:

- Sigmund Freud University Vienna Paris – SFU - Austria

Sigmund Freud University is an Austrian private university with key activities in psychology, psychotherapy, security research and comparative wealth science.

- Institute for the Estonian Language – EKI - Estonia

EKI provides training for translators in EU institutions. EKI took the lead in the research on innovative lifelong and online learning, and actively contributes to the dissemination of clear communication in Estonia.

- Instituto Superior Educação e Ciências – ISEC - Portugal
ISEC is a private, non-profit higher education institution in Lisbon. It contributes to the curriculum development and dissemination of the project. It has expertise in adult education, linguistics, communication design, information design and web design.
- Simon Fraser University – SFU - Canada
SFU Canada brings in expertise in the fields of plain language and lifelong blended learning. SFU is known as one of Canada's top 3 comprehensive universities.
- European Association of Distant Teaching Universities– EADTU – The Netherlands
EADTU has a strong position in course development in higher education, more specifically in open and online education, (virtual) mobility and networked curricula.

Associated partners:

- PLAIN - Plain Language Association International
- IIID - International Institute for Information Design
- Université Paris Diderot
- ESS – Association of Swedish Language Consultants
- IPLWG - International Plain Language Working Group
- Stockholm University – with its Swedish Language Consultants Program
- Tallinn University – with expertise in online learning

Advisory group:

made up of experts to the consortium who provide feedback and guidance on the direction of the course: Christopher Balmford, Deborah Bosley, Frances Gordon, Joe Kimble, Robert Linsky, Karen Schriver, Ginny Redish, Karel Van der Waarde, Dominique Joseph, Josiah Fisk.

Project objectives, approach and results

To successfully carry out all the tasks needed to meet the project objectives, the partners divided the work load into 9 work packages. The project partners are all active in the field of plain language, information design or us-

ability, project management and lifelong and online learning.

Project management

The objective of the work package on project management (work package 1) is to achieve effective project communication, administration and reporting. Under the leadership of the project coordinator (Thomas More - Belgium) the partners in the first project half reached the following results:

- set up a project management team
- appoint an experienced external evaluator and financial expert
- reach an agreement with the European Commission and the partners
- write, execute and monitor a detailed project plan and financial management plan
- set up a virtual workspace for the partners and advisory group
- reach a first agreement with the partners on intellectual property rights (IPR).

Defining course outcomes and modules

Work package 2 is about the definition of the learning outcomes and modules of the course. With Sigmund Freud University (Austria) as leader of this work package the partners achieved to

- appoint an EQF and curriculum development specialist for advice in this work package
- acquire a good understanding of the European Qualification Framework (EQF)
- appoint a learning outcomes team
- start with researching stakeholders' needs
- conduct a web-based survey of practitioners in the field
- publish a wiki on the state-of-the-art of plain language, information design and usability
- set up an intensive (online) feedback process with the project's advisory group
- work with subject matter experts to define the learning outcomes
- draft a first version of the course profile and the course objectives

- design a first draft of the IC Clear Curriculum Plan

In the second project half the partners will transfer this input into the final IC Clear Curriculum Plan to be ready for piloting.

Develop and pilot modules

The aims of work package 3 are to develop and pilot the modules, to adapt them to stakeholders' evaluation outcomes.

Evaluation and adaptation

The execution of work package 4 - evaluation and adaptation of the learning outcomes and modules is closely entangled with work packages 2 and 3. In the first project half there was a close cooperation between the partners and the advisory group on evaluation. In the next project half other stakeholders and especially end users will get more closely involved in the process.

Innovative learning environment

Work package 5 is on the research and selecting an innovative learning environment. Under the leadership of EKI (Estonia) and with the support of SFU Canada and the input of an external expert, the partners

- did desk research and studied literature on the subject
- interviewed experts in the field
- described the state-of-the-art of lifelong and online learning in the partner countries
- gathered good practices
- wrote a research report on the findings thus far.

Dissemination

The main aims of work package 6 on dissemination are to raise awareness on the importance of clear communication, to make the project and its results known, to ensure that the results will be optimally used by the different target groups and decision makers. ISEC (Portugal) took the lead in this work package and the partners succeeded to

- choose a catchy name 'IC Clear'
- design a logo
- announce the project to stakeholders (newsletters, articles, blogs, mailing, Twitter etc.),

- write and design project poster and flyer
- set up and maintain the project website (www.icclear.net)
- launch the website to the public.

A major dissemination activity in May 2012 was the participation of the project coordinator at the Clarity2012 conference in Washington. Another great dissemination opportunity was the TEDx talk of Sandra Fisher-Martins (Portugal) on the 'right to understand'. The video reached 320.000 viewers since. Also the appearance of Katre Kasemets (Estonia) on Estonia's major television channel on the importance of clear communication was a success. Also worth mentioning is the intensive collaboration with important and relevant international organizations in the field (Clarity, PLAIN, IPLWG, IIID, Clear Writing Campaign). In the next project half the consultation of end users will be intensified.

Exploitation and sustainability

Work package 7 is about exploitation and sustainability of the project after it finishes in December 2014. Decisions have to be made on creating a sustainable partnership and the delivery mode of the course in the next project half. Also accreditation options must be further explored.

Quality management

The aim of work package 8 on quality management is to ensure that the project runs on time and that all tasks and deliverables are completed as promised and to evaluate the project both internally and externally. The consortium has recruited an external expert to take forward the external evaluation. Internal evaluation is coordinated by the project coordinator with the partners and will be mainly concentrated on product evaluation. Both product and process evaluation will be tackled by the external evaluator.

Partner meetings

In the first project half the partners had 4 live partner meetings (work package 9). They took place in Stockholm (December 2011), Lisbon (April 2012), extra meeting in Lisbon (April 2012), Tallinn (April 2013).

Plans for the future

At the last partner meeting in Tallinn, Estonia, the partners and the external evaluator took some time to explore the strengths, weaknesses, threats and opportunities for the project. Based on this SWOT-analysis the partners and the external evaluator came to the conclusion that the IC Clear project has very ambitious goals and the exchange of experiences between partners through collaboration in this project can definitely contribute to improve the work of all communication professionals active in the domain of plain language and clear communication.

The work during the first project half was mainly concentrated on getting things organized, surveying the needs of the users and target group of communication professionals, starting up the development work by discussing and elaborating the course structure, drafting the learning outcomes and initializing the design and development of course modules. In this respect the project succeeded in its objectives so far through strict project management and planning. Some corrections will be considered in implementing the work plan and the financial resources.

Now that the presence of the project in the field is a fact, the project must take advantage of this position to increase its impact. Special attention has to be dedicated to the drafting of the course content and creating an effective online learning environment.

© 2013 K Nicolay
karine.nicolay@thomasmore.be

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.



Strategies for clarity in legal writing¹

Donna Bain Butler, Ph.D.²

*Adjunct Professor, Washington College of Law,
International Legal Studies Program
Washington, D.C., USA*

Introduction

This article draws from empirical research into how international lawyers develop plain legal style for clear communication in legal writing. An interdisciplinary field, legal writing requires both legal and linguistic skills and knowledge. There are different kinds (genres) of legal writing: for example, (a) academic legal writing as in law journals, (b) juridical legal writing as in court judgments, and (c) legislative legal writing as in laws, regulations, contracts, and treaties.³ Another variety is the language used by lawyers to communicate with clients requiring a more “reader-friendly” style of written communication than that used with law professionals.⁴ For lawyers operating internationally, communicating with clients across cultures implies a need for transnational legal and linguistic awareness.⁵ Whatever the form of legal writing, both legal skills and language skills acquisition forms a vital part of professional education and training in today’s global age.

Goddard (2010) identifies some factors that global legal skills instructors need to consider given Mellinkoff’s (1963) observation that “the law is a profession of words.”⁶ First, legal systems tend to be specific to nation states. Second, the use of language outside its natural context can be problematic (for example, legal English). Third, there are several genres of legal language, each of which has its own audience and purpose.⁷ Fourth, the rise of the Plain Language movement challenges traditional forms of legal language use. Fifth, cross-cultural aspects of legal communication may need to be considered.⁸

What is Legal Language?

Legal language has been referred to as a “sublanguage.”⁹ This term suggests that legal language differs from ordinary language “not just in vocabulary, but also in morphology (structures of words), syntax (structure of sentences and parts of sentences), semantics (meaning of words, phrases, and sentences), and other linguistic features.”¹⁰ Specialized use of certain terms and linguistic patterns govern the teaching of legal language: “we study legal language as a kind of second language [L2], a specialized use of vocabulary, phrases, and syntax that helps us to communicate more easily with each other.”¹¹

Legalese, on the other hand, is a pejorative term associated with a traditional style of legal writing that is part of this specialized discourse of lawyers: communication that “lay readers cannot readily comprehend.”¹² It describes poor legal writing that is cluttered, wordy, indirect, and uses unnecessary technical words or phrases. “Historically, ‘legalese’ is language a lawyer might use in drafting a contract or a pleading but would not use in ordinary conversation.”¹³ For this reason, the traditional style of legal writing has been labeled reader-unfriendly. Proponents of plain language argue that legal “writing style should not vary from task to task or audience to audience...; whatever lawyers write must be Clear, Correct (in law, fact, and language), Concise, and Complete.”¹⁴ The 4 C’s describe “characteristics of good legal writing style.”¹⁵

Empirical Research

This article fills the need for investigating how legal writers develop good legal writing style across academic legal cultures. The research was conducted in English in a U.S. law school setting in 2008.¹⁶ English was not the native language of the foreign-trained lawyers participating in this study; all had a need for developing professional writing ability and knowledge of language in legal context for work as international lawyers. Further, some needed to publish their legal research in international publications to effect change as human rights lawyers and as legal scholars. All wanted a professional voice and needed “high communicative precision” to participate successfully in the specialized communication in their field.¹⁷

Research Participants

Two levels of legal writers contributed variability to the study (N=6). The first level consisted of 3 lawyers entering a U.S. Master of Laws program (from Cameroon, Palestine, and Ukraine). The second level consisted of 3 lawyers exiting the program (from Italy, Republic of Moldavia, and the United States). Participants differed in terms of spoken and written language proficiency, which includes use and understanding of academic language in legal context. All had been developing analytical writing ability and knowledge of English as a legal *lingua franca* (global language). Languages used by the six research participants before studying in the U.S. were the following:

- native Mbo; foreign English, French: Anyo from *Cameroon*
- native Italian; foreign English: Ferra from *Italy*
- native Arabic; foreign English, French: Sam from *Palestine*
- native Romanian; foreign English, French, Russian: Tory from *Republic of Moldavia*
- native Ukrainian; foreign Russian, Polish, English: Liv from *Ukraine*
- native Urdu, English; foreign Spanish, Arabic: Gee from the *United States*.

Pseudonyms are used here, and the identity of each participant was masked by code numbers in all the data.

Theoretical Background

The research views legal writing as developmental learning in two domains—language and law—and as socialized cultural practice. Learning denotes gaining knowledge, understanding, or skill by study, instruction, or experience.¹⁸ “All knowledge, especially but not exclusively linguistic knowledge, is the result of learners’ interaction with their social context, and acquisition is both social and cognitive.”¹⁹ Foreign-trained international students and legal professionals opting to study in the U.S., for example, may seek assistance writing research papers and law journal articles, finding that surface-level editing by native English speakers is insufficient. Those studying in a second legal culture may also need understanding in how academic texts are shaped by topic, audience,

purpose, and cultural norms.²⁰ Knowledge itself is constructed in varying discourse patterns²¹ that vary from language to language and from culture to culture.²² The process of knowledge construction and presentation in academic legal discourse (communication) may need to be taught or made explicit, especially when law students come from contrasting academic legal cultures.

Knowledge, understanding, and skills acquisition in legal writing translates into social, cultural, and economic “capital”²³ for lawyers through academic legal writing instruction, opening the possibility for publication in internationally refereed law journals. “Explicit strategies instruction”²⁴ in writing intervention context puts emphasis on the following:

- learning contrastive approaches to legal writing;
- filling gaps in knowledge and experience;
- building on background knowledge;
- developing formal academic language and legal discourse; and
- providing cognitive tools necessary for “bilingual literacy”²⁵ and self-regulation (control) in legal writing.

Bilingualism for lawyers, at the very least, means “proficiency in their native tongue and in its legal usage.”²⁶ Strategies “support students’ ability to leverage their first [academic, legal] language to develop understandings of their second [academic, legal] language” in writing, efficiently and effectively.²⁷

Developing Proficiency as a Legal Writer

Strategies are defined as conscious, goal directed actions legal writers may take more than once during the writing process. They help build legal writers’ competence by bridging declarative knowledge of “what” with procedural knowledge of “how to” in all genres of legal writing. Plain-language writing strategies help the writer express legal ideas clearly and correctly in all genres of legal writing. Clear expression is important for managing differing expectations between reader and writer; beliefs about writing may differ, cognitively and socioculturally. For example, the following issues in writing may be unknown, invisible, or unstated: (a) writer

versus reader responsibility; (b) the roles of revising and editing; (c) logic and patterns of development; and (d) the relationship among reading, writing, and critical thinking (versus translation from the L1).

Two kinds of competence interact with each other in a law journal article, for example: legal knowledge and linguistic proficiency. Both are developmental from a theoretical, pedagogical, and research perspective. There is strong evidence that content (legal) knowledge is developed through problem solving and that academic (legal) writing is a problem-solving activity through which knowledge is a by-product.²⁸ Such knowledge needs to be communicated and comprehended by the highly educated reader. This means that the legal writer’s message must be “clear (easy to understand, and not ambiguous or vague).”²⁹

Surface-level editors may focus on usage and remedial issues related to native-speaker grammar; however, the legal writer must be responsible for language use that is clear, concise, correct (in content and in language), and complete (covering everything that needs to be covered) the 4 C’s of good legal writing style.³⁰ A basic premise of this article is that grammar needs to be taught and used in relation to stylistic choices.³¹ Developing proficiency as a legal writer may mean changing “present writing habits . . . [and] avoid following the example of much of the legal writing [lawyers] are required to read.”³²

Research Instruments: Key Findings

The researcher used a survey with follow-up interviews to explore how legal writers develop professional proficiency and plain legal style for clear communication in scholarly (academic) legal writing. Collecting both quantitative (numeric) and qualitative (written and spoken text) data brought together the strengths of both forms of research to cross-validate or triangulate the results.

Research instruments revealed that language was both a cognitive tool for learning law and a sociocultural tool for communicating ideas about law for the 2 groups of culturally and linguistically diverse lawyers participating in the study. As previously mentioned, one group was acculturated and the other unacculturated to the U.S. law school envi-

ronment: academic legal context for the study. Both groups of legal writers shifted from drafting for their own eyes to the reader-centered activity of iteratively revising and thus constructing knowledge in their scholarly legal writing. In other words, knowledge and use of strategies for revising and for editing helped all the legal writers move from writer-centered thinking to reader-centered communication. Developing professional proficiency in writing further impacted:

- (a) acculturated participants' confidence, motivation, and self-regulation at each stage of writing (pre-writing, drafting, and revising); and
- (b) non-acculturated participants' linguistic knowledge and skills development across stages of writing (pre-writing, drafting, and revising).

Defining Terms: Editing

Editing has been seen as "a distinct step in revising a written work, focusing on clarity, tone, and correctness."³³ Research results found that editing, on the one hand, involves polishing and checking for conventions related to syntax, diction, punctuation, capitalization, spelling, citation, and document appearance (such as spacing and indentation). On the other hand, research results disclosed that editing also involves good legal style techniques to enhance clarity and readability. These were plain-language strategies with grammar seen as an element of good legal writing style for clear and accurate expression of ideas. Tone, the writer's attitude toward the content material and the legal reader, was objective and formal. In short, editing can be seen as a strategic tool for self-regulating legal writing that operates on two levels: (a) correctness, and (b) clarity.

Discussion of Research Results

Surface-Level Editing Strategies

Editing, described by one research participant as proofreading "with a purpose in mind," was reported to be a most helpful strategy in the final stage of legal writing for all research participants. For polishing and checking for writing conventions, participants found the following editing strategies most helpful: (a) asking oneself whether the paper is an example of good legal writing; (b)

proofreading for sentence structure (syntax); (c) proofreading for proper word choice (diction); (d) proofreading for punctuation; (e) proofreading for spelling (Microsoft "Tools"); and (f) proofreading for citation to authority.

Deeper-Level Writing Strategies

For clear and accurate expression of ideas, research participants reported the following plain-language grammar strategies most helpful: (a) making one point per sentence using simple and complex sentences; (b) avoiding long, multi-clause sentences; (c) avoiding nominalizations (the practice of changing short verbs to longer nouns); and (d) keeping subjects and verbs, and verbs and objects, undivided—without interrupting phrases. Other most helpful plain-language grammar strategies reported by participants were: (a) using familiar words instead of flowery or ornate words; (b) using consistent wording and phrasing without changing words for variety; (c) using consistent parallel word signals such as "first" and "second"; and (d) using accurate and adequate punctuation as "road signs" to communicate effectively to the law school educated reader. Together, these act as guidelines for style in legal writing.

Contrast

In sum, research participants found these plain-language grammar strategies (32 mentions) more helpful than the previously mentioned editing strategies for correctness (15 mentions) in the final stages of writing. The plain-language strategies helped the L2 writers express complex legal ideas in academic legal writing, clearly and accurately. Further, not only did the plain-language strategies contrast with the editing strategies for correct grammar, they also contrasted stylistically with L2 writers' first language preferences for more sophistication in syntax, or more length and sophistication in vocabulary (such as nominalization). Because the deeper-level writing strategies, rather than the surface-level editing strategies, were found most helpful for legal writers regardless of language proficiency or acculturation, they are offered for use in Appendix A.

Principles for All Legal Writing

Although different styles and types of legal writing present unique challenges, they all

have some things in common.³⁴ From an academic and disciplinary literacy perspective, they all require strong analytical legal reading and legal writing skills. Besides planning and ordering a legal document logically into sections and subsections, phrasing sentences clearly and choosing words carefully are principles that contribute to the reader-friendly style in legal writing. Whatever the document, a lawyer will be doing these things.³⁵ Stylistically, this means:

- (a) “promoting plain legal language, concise sentences, stated positively, focusing on one idea with subject + (active) verb + object where the main idea comes first”; and
- (b) “avoiding obsolete words and phrases, redundancies, long sentences, subordinate and embedded clauses, nominalizations, passive verb constructions, double negatives, exceptions to exceptions, legal pairs, *and/or, shall, etc.*”³⁶

In addition to punctuating carefully,³⁷ these are basic principles of all legal writing. Advanced principles may include using cohesive devices, using headings with verbs, using technical terms consistently, making the text context independent, citing sources within the text, minimizing the use of footnotes, and using graphics where appropriate.³⁸

“Using language precisely, communicating easily with clients, and conveying technical information accurately are career-long activities for lawyers everywhere. Each culture has developed specific definitions of terms and patterns of usage and continues to develop these.... [Bilingualism in legal language] may persuade a decision maker, promote a transaction, or permit a client to escape harm. The secret to fluency begins with research, continues through analytical design, and culminates in appropriate documents.”³⁹

Conclusion

Self-editing with a strategies checklist, such as that in Appendix A, helps the legal writer communicate clearly in a legal document or law journal article. Further, clear writing style demonstrates competence in legal communication. The end result is a product free of errors that may interfere with writer’s meaning or reader’s comprehension.

Benefit to Legal Writers, Legal Skills Instructors, and Law Professors

Legal writers can benefit from this study by editing for reader-centered professional communication. Lawyers who teach legal writers can benefit by being learner-centered and “culturally responsive” to students’ needs and backgrounds.⁴⁰ The point is to teach the legal writer versus the legal writing (genre) from any one cognitively ingrained perspective or cultural view. Furthermore, legal skills instructors and law professors who use writing for law student assessment can consider using more sophisticated, research-based strategies with checklists that help (a) guide legal writers’ processes, and (b) develop legal writers’ existing competencies in legal language use and communication.

This article offers an informed, research-based approach beyond (a) exclusive focus on legal writers’ product, or (b) surface-level editing of law students’ writing in-text. Deeper-level, plain language, writing strategies can be taught explicitly and used as tools that develop legal writers’ product and legal writers’ processes: in this case, processes of editing with grammar strategies seen as an element of good legal writing style.

© 2013 D Butler
dbbutler@wcl.american.edu

Acknowledgment

I would like to thank my colleague, Yelena Sapozhnikova-Trosclair, Head of English Language Section, Sub-department of Russian, Foreign Languages and the Culture of Speech, Ural State Law Academy, Yekaterinburg, Russia, for making this article possible.

Endnotes

- ¹ This article was originally published in the *Journal of the Russian Academy of Legal Sciences* RUSSIAN LAW: THEORY AND PRACTICE, Issue No.1, 2012 and is republished with permission.
- ² Donna Bain Butler is a Fulbright Specialist in Applied Linguistics. She holds a Ph.D. in Second Language Education and Culture from the University of Maryland College Park and teaches EFL/ESL legal writers at American University’s Washington College of Law (13 years)
- ³ Bhatia, V. K. (1993). *Analyzing genre: Language in professional settings*. London: Longman.
- ⁴ Goddard, C. (2010). Didactic aspects of legal English: Dynamics of course preparation. In M.

- Gotti and C. Williams (Eds.), *ESP across cultures [Special issue]: Legal English across cultures: Vol. 7*, 45–62.
- ⁵ Goddard, 2010
- ⁶ As cited in Wydick, R. (2005b). *Plain English for lawyers: Teacher's Manual* (5th Ed.). Durham, NC: Carolina Academic Press, p. 3.
- ⁷ Ramsfield, J. (2005). *Culture to culture: A guide to U.S. legal writing*. Durham, NC: Carolina Academic Press.
- ⁸ Goddard, 2010, p. 46
- ⁹ Peter Tiersma (1999), *Legal Language* (as cited in Wydick, 2005b)
- ¹⁰ Wydick, 2005b, p. 10
- ¹¹ Ramsfield, 2005, p. 145
- ¹² Oates, L. & Enquist, A. (2009). *Just writing: Grammar, punctuation, and style for the legal writer* (Rev. ed.). New York, NY: Aspen Publishers, p. 127.
- ¹³ Oates & Enquist, 2009, p. 128
- ¹⁴ Wydick, 2005b, p. 3
- ¹⁵ Wydick 2005b, p. 3
- ¹⁶ Bain Butler, D. (2010). *How L2 legal writers use strategies for scholarly writing: A mixed methods study*. Unpublished dissertation, University of Maryland College Park.
- ¹⁷ Engberg, J. (2009). Individual conceptual structure and legal experts' efficient communication. *International Journal for the Semiotics of Law*, 22, 223–243.
- ¹⁸ Merriam Webster Online Dictionary <http://www.merriam-webster.com/dictionary/learning>
- ¹⁹ Sanz, C. (2005). Adult SLA: The interaction between external and internal factors. In C. Sanz, (Ed.), *Mind and context in adult second language acquisition: Methods, theory, and practice* (pp. 3–20). Washington, DC: Georgetown University Press, p. 4.
- ²⁰ Hyland, K. (2002). Genre: language, context and literacy. In M. McGroarty (Ed.), *Annual Review of Applied Linguistics*, 22, 113-35. Hyland, K. (2003). *Second language writing*. New York, NY: Cambridge University Press.
- ²¹ Byrnes, H. (2005). Content-based foreign language instruction. In C. Sanz, (Ed.), *Mind and context in adult second language acquisition: Methods, theory, and practice* (pp. 282-302). Washington, DC: Georgetown University Press.
- ²² Oates & Enquist, 2009
- ²³ *The Forms of Capital* (Bourdieu, 2001)
- ²⁴ Oxford, R. L. (2011). *Teaching and researching: Language learning strategies*. Essex: Pearson Longman.
- ²⁵ Pray, L. & Jiménez, R. T. (2009a). Developing literacy in second-language learners. [Review of the recently published compilation of research titled *Developing literacy in second-language learners: Report of the national literacy panel on language-minority children and youth* (August & Shanahan, 2006)]. *Educational Researcher*, 38(5), 380–381.
- ²⁶ Ramsfield, 2005, p. 147
- ²⁷ Pray, L. & Jiménez, R. T. (2009b). A response to "Literacy and English-language learners: A shifting landscape for students, teachers, researchers, and policy makers" by Jim Cummins. *Educational Researcher*, 38(5), 384–385.
- ²⁸ Krashen, S. (2011). Academic proficiency (language and content) and the role of strategies. *TESOL Journal*, 24, 381-393.
- ²⁹ Wydick, 2005b, p. 2
- ³⁰ Wydick, 2005b, p. 2
- ³¹ Bakhtin, M. (2004). Dialogic origin and dialogic pedagogy of grammar: Stylistics in teaching Russian language in secondary school. *Journal of Russian and East European Psychology*, 42(6), 12–49.
- ³² Gallacher, I. (2005). *A form and style manual for lawyers*. Durham, NC: Carolina Academic Press, p. 22.
- ³³ Fowler, H. R. & Aaron, J. E. (2001). *The Little, Brown handbook* (8th ed.). New York, NY: Addison-Wesley Educational Publishers Inc., p. 951.
- ³⁴ Garner, B. A. (2001). *Legal writing in plain English*. London/Chicago: University of Chicago Press.
- ³⁵ Garner, 2001, p. 2
- ³⁶ Goddard, 2010, p. 50;
- ³⁷ Wydick, R. (2005a). *Plain English for lawyers* (5th Ed.). Durham, NC: Carolina Academic Press.
- ³⁸ Ramsfield, 2005, pp. 172–183
- ³⁹ Ramsfield, 2005, p. 185
- ⁴⁰ Gay, G. (2000). *Culturally responsive teaching: Theory, research, and practice*. New York: Teachers College Press.

Donna Bain Butler, Ph.D. is a Fulbright Specialist in Applied Linguistics at American University's Washington College of Law (13 years). She designs and teaches specialized graduate students and legal scholars aiming for professional proficiency (and higher) in speaking and writing. Her work with international lawyers is interdisciplinary and based on empirical research. She has published part of this research for the U.S. legal writing community and has written articles pertaining to second/foreign language legal education. Donna can be contacted at dabutler@wcl.american.edu.



Appendix A

STRATEGIES CHECKLIST: SELF-EDITING FOR CLARITY

The following checklist will help legal writers communicate effectively in writing before submitting a legal document or law journal article to an editor (*check one*).

- | |
|--|
| <ol style="list-style-type: none">1. Yes, true of me2. No, not true of me3. Don't know |
|--|

- I checked to see whether I used short and medium-length sentences.
- I checked whether my sentences contained concrete subjects and active verbs.
- I tried to avoid nominalizations (the practice of changing base verbs to nouns)
- I made one point per sentence, preferring simple and complex sentence structures to compound sentence structures.
- I made sentences affirmative, not negative.
- I preferred active voice to passive voice with some exceptions.
- I used parallel structures in sentences containing multiple elements.
- I used clear and logical lists with grammatically parallel elements.
- I used familiar words instead of flowery language or ornate words.
- I used consistent wording/phrasing without changing words for variety (e.g., "The defendant *proposes*...This *proposal* is...").
- I preferred nouns to pronouns as in the example above.
- I kept subjects + verbs/verbs + objects undivided, without interrupting phrases.
- I used accurate and adequate punctuation as "road signs" in my legal writing.
- I used precise transitions to convey exact connections.
- I used consistent parallel word signals such as *first* and *second*.
- I provided structural clues and repeated key structure words to improve readability (e.g., *that*).
- I used quotations only when necessary.
- I avoided long, multi-clause sentences (*legalese* style that obscures meaning).

“Plain language”: Practical tips for how to make it not so plain

Eunice Park

*Assistant Professor of Lawyering Skills
Assistant Director, Legal Writing and Research,
Western State College of Law
California, USA*

“Plain language” does not literally mean *plain*. If it did, then our expectations of our students’ writing would be quite low. Rather, what we mean by plain language is simple and direct language that is interesting, readable, and even—dare we hope—a little eloquent.

Adding to the challenge of teaching plain language is the fact that we are asking students to resist verbosity and legalese while we are also asking them to resist using the minimalistic sound bytes of language that have become the norm with texting, e-mails, tweets, and instant messaging. By using these technology-driven forms of communication, students easily become accustomed to sentence fragments, abbreviations and acronyms, no punctuation or capitalization, and merely passable proofreading and spelling. Moreover, writers of these types of communication frequently rely on emoticons to dispel the possibility that the communication will be viewed as harsh, sarcastic, or in some other negative way.

How do we teach students to write in plain language while using appropriate grammar, syntax, paragraph development, and style? Some students arrive at law school lacking confidence in their writing and may need explicit prompting to be able to apply good writing principles. Dim recollections of what they learned in their pre-college years are often subsumed by everyday technology-driven means of instant communication. And if we were to tell our students that we will be teaching them grammar, syntax, paragraph development, and style, they would likely groan. Nor do we have the time to incorporate these lessons into our curriculum. Yet,

without some grasp of good writing principles or a methodology for recognizing and correcting errors, students will not be able to write plainly, and skillfully.

Rather than simply telling the students what the end product should look like or what they should avoid, we can equip them with simple methodologies for applying important writing principles. These methods can help those students who struggle with writing. While there is no one-size-fits-all formula, the following suggestions can help students identify and correct some of their most basic writing issues in a way that is easy to remember and to apply.

Hunt for “plane-cloud” words.

The goal is to avoid unnecessary prepositional phrases, passive voice, and nominalizations. These technical grammar terms often give rise to apprehension in students uncomfortable with this terminology. However, since many of us tell our students that a preposition can be recognized as a word that reflects what a plane can do to a cloud, you may simply tell your students to avoid plane-cloud words and, in fact, to hunt for them in the final stages of their work product. Once the student catches such a word, he should consciously ask himself if it would be better to rephrase. For example, rather than writing, “Modifications by the defendant from the original contract terms took place,” the student may recognize that a plane can fly “by” and “from” a cloud, and then rewrite the sentence more concisely thus: “The defendant modified the original contract terms.” The unnecessary plane-cloud words have been obliterated, and the nominalization and prepositional phrases along with them. On the other hand, the student, noting the plane-cloud words, may knowingly opt to keep the sentence in the original if he wants to minimize the defendant’s wrongdoing.

Check the first words of sentences and paragraphs.

The goal is to incorporate transitions between words and sentences, and vary sentence structure. Although we remind students that the default desirable sentence structure is to place the subject before the direct object, this grammatical lesson, if always applied, can

result in stilted writing. Ask students to check the first word of each sentence and paragraph. Is the wording too repetitive? For example, do a series of sentences all begin with the word “the,” as in, “The defendant claimed the contract was signed on December 9. The court found that the contract was signed on December 10. The defendant appealed.” Repetitive wording can be boring. Similarly, three “however” in a row do not a “however” make. Students should consider varying beginning words and phrases, if it makes sense to do so.

Between paragraphs, are logical transitions being made? Do two paragraphs appearing before or after each other logically connect when reading the first sentence of each? What is the theme of each paragraph? Will the reader understand the theme before reading the details? For example, if one paragraph begins with, “The wife continued to cook his meals. She also did his laundry,” and the next paragraph begins with, “Second, the continued intertwining of financial resources also determines the spouses’ date of separation,” the reader will not necessarily understand that the unspoken topic sentence of the first paragraph should be, “Providing domestic support is the first factor in determining the spouses’ date of legal separation.” Urge students to identify the theme of each paragraph and use that concept to form a topic sentence. If the student is unable to articulate a theme, it probably means there isn’t one and the paragraph needs to be re-thought.

Omit underlining and italics for emphasis.

The goal is to create emphasis through the natural progression of words. Explain to students that using italics or underlining words to make a point would be like using an emoticon in their legal writing: It is an unacceptable and lazy technique if it is used in the hope that the reader will better understand the meaning of the text. (Of course, an exception to this rule is when the writer is quoting language that is underlined or italicized in the original source.) Instead, students should find a better way to create emphasis. Remind students that one easy way to accomplish this is by introducing the thought with a transition word. Indeed, even a term as seemingly simple as “indeed” may create impact when placed strategically.

Match the two halves of a sentence.

The goal is to achieve parallel grammatical structure in a sentence that makes a comparison. In this instance, ask students to insert the subject in the same place in each comparison and use the same verb tense. Do the comparisons match? For example, one could say, “Just like the grandparent in Leong who lived with the child, serving as his caretaker, our client is a grandparent who lives with the child, serving as his caretaker.” If there is an extra clause in one comparison, does it make sense to add an equivalent clause to the other half or should the clause be omitted in all comparisons? An awkward construction features a clause only in one half of the comparison, as in, “Just like the grandparent in Leong who lived with the child, serving as his caretaker, our client is a grandparent who lives with the child.”

This same test could be applied in a more sophisticated sentence that includes a series of ideas separated by semicolons.

Replace commas with periods whenever possible.

The goal is to avoid comma splices or run-on sentences. Does the sentence make sense if a period is substituted for the comma? If so, then it probably should be two sentences. Thus, “The student felt humiliated, the next day she withdrew from school and sued for sexual harassment,” should be, “The student felt humiliated. The next day she withdrew from school and sued for sexual harassment.”

Place describing words as close to the subject as possible.

The goal is to avoid misplaced modifiers. What is the subject that is supposed to be modified? Put the clause right next to it. Now where is the verb? Is the sentence becoming cumbersome? If so, consider rewriting the modifier into a separate sentence. If “Sue talked to Jill, hoping for a better grade and after their conversation, in which she clarified the meaning of a fee simple absolute, she felt better,” who is hoping for the better grade—Sue or Jill? Who clarified the meaning of a fee simple absolute? Who felt better? Instead, rewrite as, “Sue, hoping for a better grade, talked to Jill. After their conversation in which Jill clarified the meaning of a fee simple absolute, Sue felt better.”

Peer edit.

The goal is to proofread and revise on paper. Students frequently find themselves confused by other students' writing. A peer review exercise is not only an opportunity for the writer to receive useful critiques from an objective third party, but the exercise also allows the editor to self-reflect on his or her own writing. Receiving a critique from a peer can be an effective way for a student to realize that issues in his or her writing are not just the opinion of the professor.

Keep pen in hand.

With this tech-savvy generation, students may write and revise entirely on the computer screen. Remind students of the importance of simply putting pen in hand and pen to paper before the first draft and between subsequent drafts, because it is not possible to flip between pages to assess the development of themes, or refine or reorganize thoughts in a holistic and detailed manner, without all the physical pieces of paper of the document simultaneously before them. Students may think they are saving time by heading straight to the keyboard, but by working screen-by-screen rather than comprehensively, the work product will be ineffective, and time wasted. Instead, encourage students to invest the time to mark up each draft with a pen, re-type the edited version, print it out, review, and repeat this process, until completely satisfied.

Conclusion

Plain writing is skillful writing that includes the application of basic writing principles. While we may not have time in our legal writing classes to provide detailed lessons in grammar, paragraph structure, and syntax, we can do more than merely remind our students that these are important concepts. We can provide students with simple methods to implement them. Even for more skilled writers, these simple tools are effective self-editing checks. Using these methods, students of all levels can improve their writing and gain understanding that plain language is not so *plain* after all.

© 2013 E Park
epark@wsulaw.edu

Eunice Park is the Assistant Director of Legal Writing and Research and Assistant Professor of Lawyering Skills at Western State College of Law in Fullerton, California. She received her J.D. from the University of Michigan Law School and her A.B. from Smith College, where she majored in English Language & Literature. You may contact her at epark@wsulaw.edu.



How to join Clarity

The easiest way to join Clarity is to visit <http://sites.google.com/site/legalclarity/>, complete an application, and submit it with your payment. You may use PayPal or a credit card to pay.

Prospective members in Canada, Italy, and the United States may also pay by bank draft. If you prefer to submit a hard copy of the application, you may contact your country representative for submission instructions. Country reps are listed on page 2.

A “Show, don’t Tell” lesson on plain language

Jill Barton

*Professor of Legal Writing, University of Miami
School of Law
Florida, USA*

Introduction

To create enthusiasm about plain language on day one, appeal to your law students’ competitive spirit. This article describes an in-class contest that encourages students to translate legalese into English. The article also describes a “show, don’t tell” approach to teaching plain language. The teaching method shows students how to revise their own epic sentences into plain language.

When I teach plain language to law students, I remind myself of the “show, don’t tell” rule for good writing. This rule applies to good teaching as well. For instance, telling students how to write plainly is a first step. But showing students how to write plainly nets more rewards.

I use this “show, don’t tell” approach when teaching first-semester law students. I start by explaining the basic tenets of plain language and showing students how to translate parts of a dense, century-old opinion into plain English. Next, drawing on their competitive spirit, I encourage students to work with—and against—each other to revise other sentences in the opinion. Finally, I show students how to make their writing more concise by revising an excerpt of their early writing assignments.

This “show, don’t tell” approach identifies that while many new legal writers struggle to write plainly, their weaknesses vary. Some students write epic sentences; others favor epic words. Some incorporate legalese; others use poor grammar or weak sentence structures to add unnecessary words. A one-size-fits-all approach is not the most effective way to guide students to achieve clarity.

As a first step, I introduce students to my guiding principles of plain language on the first day of class:

- (1) Make every word count.
 - Cut out the unhelpful, the redundant, and the unhelpful.
- (2) Use vigorous English.
 - Use forceful, direct, and concise language, avoiding weak and negative wording.
- (3) Use short words, short sentences, and short paragraphs.

Before showing them how to incorporate these principles into their own work, I use a legalese-ridden case to show them that plain language is the best way to convey meaning. The following examples show students how to simplify two intimidating sentences from *Bostock-Ferari Amusement Co. v. Brocksmith*, 73 N.E. 281, 281 (Ind. Ct. App. 1905).

- It is sought to maintain an action for damages resulting from the fright of a horse at the sight of a bear, which its keeper and owner was leading along a public street for the purpose of transporting it from a railroad train by which it had been carried to Vincennes to the point in Vincennes at which the bear was to be an exhibit, as a part of appellant’s show.

– *Translation:* The bear’s owner was leading the bear from a railroad car, which brought the bear to Vincennes, down a public street to the show where the bear would be on display. The bear frightened the plaintiff’s horse, and the plaintiff seeks damages.

72 words to 42 words

- It is not claimed, either by allegation or proof, that the show was in itself unlawful; and there is no pretense that the transporting of the bear from one place to another for the purpose of exhibition was unlawful, or in itself negligence.

– *Translation:* The plaintiff does not claim that the show or transporting the bear to the show was unlawful or negligent.

44 words to 19 words

Examples like these immediately show students the value of plain language. Because the dense *Bostock-Ferari* case is among the

Sample Plain English Revision Lesson

The physical characteristics of the instrument in question are taken into consideration including size, shape, sharpness, and other potentially harmful attributes. *Curry v. State*, 674 S.W.2d 495, 497 (Tex. Ct. App. 1984). In extrapolation of the aforementioned, the Curry court considers factors external to the instrument such as significant disparity in physical stature between the perpetrator and the victim; these circumstances serve to increase the dangerous nature of the instrument – in this case Curry’s increased ability to thrust a knife in a deadly manner in proportion to the consequences of an attack on a perceptibly weaker victim. *Id.*

Comment 1: Plain English Revision Lesson:

A weapon’s physical characteristics, including size, shape, and sharpness, are considered.

This revision reduces the sentence length to 10 words from 21, and it adds specificity by changing “instrument” to “weapon.” The revision maintains the passive voice construction, which is correct grammatically but not preferred for its lack of directness.

Comment 2: Plain English Revision Lesson:

To determine whether the perpetrator could carry out his threat the *Curry* court considered the relative size of the perpetrator to the victim and the proximity of the perpetrator—and his knife—to the victim.

This revision reduces the sentence to 35 words from 66 by using more direct, concise language.

first that students read in my course, they are often relieved to see the legalese translated into plain English. In addition, the sample revisions provide an opportunity to reinforce my plain language principles, including making every word count, using the active voice, and keeping sentences short. This initial lesson causes students to buy in to the idea that plain language is best.

As a second step, I create an in-class contest. I urge students to examine my revisions and try to make them more concise. I also highlight a few other examples of particularly egregious sentences from the same opinion and encourage students to cut out as many words as possible—without cutting out meaning. The student who revises away the most words wins. This informal competition provokes enthusiasm and motivates students to focus on plain language.

Additionally, the contest forces students to practice the plain language revisions they have seen me do. And it often results in one student taking another student’s revision and making it better—which shows students that revision is a long and layered process.

But I have found that revising other writers’ poor sentences does not always help students revise their own. Even with early lessons on plain language, students regularly use jargon and legalese in their first writing assignments. So within a comprehensive critique of each student’s paper, I include at least one “Plain English Revision Lesson.”

To show students how to address their individual weaknesses, I select at least one dense excerpt from their early writing assignments and rewrite it in plain language. These revision lessons include a word count for the original and the revision. (My record is reducing a whopping 183-word sentence into two sentences totaling 62 words). In addition to the revision, I include an explanation of the change and point out that the revision reduced wordiness, not meaning.

The following screenshot shows an excerpt from a student’s first legal memorandum and two Plain English Revision Lessons in the comments field.

As this example shows, rewriting students’ sentences when they are ambiguous and wordy is challenging. In some cases, the lack of clarity in the students’ work means that that any revision might misinterpret the writers’ intent. But if the revision fails to correctly assess the students’ meaning, the exercise allows for an additional lesson: If you want your professor, judge, colleague, or supervising attorney to understand your meaning, then write plainly so interpretation is unnecessary.

The Plain English Revision Lessons and explanations take time, but they produce many “light bulb” moments. Students who struggled with a limited word count see how many words they wasted—and how much more analysis and explanation they could have added to their memorandum if they

made “every word count.” And students who have always been praised as strong writers see that they can still improve, thus allowing them to embark with enthusiasm on a path to even stronger writing.

© 2013 J Barton
jbarton@law.miami.edu

Jill Barton is a former appellate judicial clerk and award-winning journalist. She earned her bachelor of journalism magna cum laude from the University of Missouri. After a ten-year journalism career, she received her M.S. in journalism from the University of Kansas and her J.D. summa cum laude from the University of Missouri-Kansas City. She is a founding faculty member of the Legal Communication and Research Skills program at the University of Miami School of Law. She and colleague Rachel H. Smith are the authors of the forthcoming Handbook for the New Legal Writer.



PerfectIt

THE FASTER WAY TO FIND CONSISTENCY MISTAKES

PerfectIt helps deliver error-free documents. It improves consistency, ensures quality and helps to enforce style guides. PerfectIt lets editors control every change, giving you the assurance that documents are the best they can be.



TOP CHOICE AMONG PROFESSIONALS

More than 200 members of the Society for Editors and Proofreaders use PerfectIt.

DOWNLOAD NOW

PerfectIt is available for a free 30-day trial or a \$99 purchase at www.intelligentediting.com

CLARITY MEMBER DISCOUNT

Enter the coupon code Clarity-Member to receive a 15% discount.

www.intelligentediting.com

Writing clearly: What I teach may be hazardous to your wallet

Ann Nowak

*Writing center director, Touro Law Center
New York, USA*

I am a hypocrite. I passionately believe in teaching law students to write in plain language. That is how I earn my living. But sometimes I consider ignoring my own advice because writing in plain language generally produces documents that are more concise than those that contain overly elaborate language and legalese. And shorter documents do not always further my economic best interest—either in law practice or in academia. The question is: Do I have a duty to warn my students that this could happen to them?

For the first two years of my law-school teaching career, I didn't discuss this dilemma with students. At first, I decided that they would discover the disturbing reality for themselves when they began to practice. Then I began to rethink the situation and realized that this discovery would force them to make ethical decisions for which they would be unprepared. I did a lot of soul-searching about whether I had a moral duty to warn them. And I decided that I did.

To deliver this message, I developed a two-part program. The first part teaches students how to write in plain language by engaging them in exercises from screenwriting classes and theater workshops. The second part guides students through a discussion of the ethics and morality involved in making a temporary decision not to write in plain language for reasons of economics.

This article contains a description of the program, which I have been teaching in Touro Law Center's writing center for the past three years. This article also contains a brief discussion of why I am thinking about abandoning plain language temporarily. (This involves a large bounty that a dean is willing to pay if we write long articles.)

Background

By nature, I am a clear writer. As a young journalist, I was trained to write in plain language. Later, in law school, my professors lauded lucid prose and said that it would serve us well in the practice of law. I believed them. Then I became a lawyer and discovered that they were wrong. To be fair, they were not wrong all the time. There are many successful lawyers who write with clarity and grace. But there are a lot more lawyers—even very successful ones—whose prose resembles a jungle where you need a machete to hack your way through. Nonetheless, many clients are impressed by the jungle's density and size. In comparison, those clients regard a manicured garden of lucid prose as lacking in power and presence. And they often are more than willing to pay for the additional hours that it will take to produce the much-longer brief, even if it is filled with language that could politely be characterized as rococo.

My journey to hypocrisy began in my second year of law practice when a client asked me why my court brief was only twenty pages when the adversary's was thirty-five. I was surprised by the question because I had worked hard to make my submission concise, and I had written it in plain language that the judge would not have to work hard to understand. I did not want the power of my persuasive argument to be hidden by a jungle of language. The client, however, thought that "more" was better—that a larger brief would be more persuasive. I explained that the adversary's bigger brief was repetitive and that it contained a lot of extraneous, unpersuasive information, but my client looked unconvinced.

This situation cropped up repeatedly during the nineteen years in which I ran my law office. I never "sold out" and succumbed to the allure of making more money by spending additional hours padding my briefs with compound, complex sentences and the mysterious incantations of lawyers-gone-wild. But I considered it.

The Technique

I was concerned that my students also would encounter this conundrum, and I did not want them to be surprised. To assist them, I designed a two-part plan that would first

help them hone their plain language skills and then help them deal with the dilemma of whether to make more money by abandoning the plain in favor of the rococo.

The two parts of the plan are as follows:

- A. Learning to write in plain language through techniques from screenwriting and acting workshops:
 1. "Talk It to Me"—In this exercise, each student is required to meet with me and explain the contents of the legal memo that the student just wrote for Legal Writing class. I play the role of a law firm partner, and the student plays the role of an associate. I tell the associate that I am preparing for court and that I do not have time to read the memo. Then I give the associate ten minutes to explain its contents. I record the session and give the recording to the student for future listening. By requiring the student to speak the information, rather than write it, the student is freed from worrying about punctuation and syntax and can focus on clarity of expression and plain language.
 2. "Teen or Dean"—In this exercise, students work in pairs. One plays the role of a teenager, while the other plays the role of a law student. The law student spends five minutes explaining to the teenager why a professor acted in a grossly unfair and unreasonable way. The law student is required to speak with the teenager as if they were pals. Then, the teenager is required to play the role of a law school dean. The law student spends five minutes explaining the same scenario to the dean, but using language appropriate to speaking with a dean. After that, the students switch sides so that the teenager/dean can play the role of the law student. This exercise teaches students how to explain concepts in plain language and how to choose language that is appropriate to particular audiences.
 3. "The Elevator Pitch"—This is a take-off of an exercise in which

screenwriting students must describe their screenplay to movie moguls in twenty seconds and make it sound exciting enough for the moguls to option the script. In this law school version, which can be done either in pairs or groups, students are given twenty seconds to explain the contents of the legal memo that they wrote for their Legal Writing class. The explanation does not have to be exciting, but it has to be concise and clear—and no more than twenty seconds long. Each student takes a turn. This exercise teaches students to use plain language, to be concise, and to focus their thoughts.

- B. Ethics and morality discussion: “Simplicity Versus Cash”—In this exercise, I tell students true stories about clients who believed that lawyers are more powerful advocates when they write in compound-complex language, use a lot of fancy words when simple ones will work just as well, and produce unnecessarily long legal documents. I engage students in a discussion of what they would do if they had to decide between writing in plain language or getting paid more for using a large number of words when a modest amount would be equally or more effective. I ask them what they would do if they could bill more hours by producing a big, heavy brief with a lot of puffed-up prose.

The Bounty

Throughout my legal career, I managed to avoid the allure of making more money by writing unnecessarily convoluted and long legal documents. But now I am seriously thinking of departing from plain language—just temporarily—because of the lure of a bounty.

The brief version of the story is that one of our associate deans offered faculty members large financial bonuses for publishing articles of at least 20,000 words in first-tier general law reviews. If we publish shorter articles there, we still will receive bonuses, but the bonuses will be substantially smaller. Given that my driveway could use repaving, I am

seriously considering the option of inflating the language in my recently written article to expand it from 12,000 words to 20,000 words so that it will be long enough to qualify for the big bonus. Or, to put this another way: I am thinking about retrofitting my bare-bones buggy of an article to add unnecessary chrome trim, some blinged-out rims, and maybe even a double spoiler to transform it into a chariot of desire for young law-review editors who will gleefully drive it over the finish line to publication as I stand on the sidelines smiling, my brain swirling with visions of gold coins flying into a cash register that softly but steadily ching-chings a heady bossa nova beat as I sway in time to the music of economic prosperity and bask in blissful delight at having gamed the system simply because I understand the enormous value of plain language—including when to display it and when to leave it at home in the garage.

© 2013 A Nowak
anowak@tourolaw.edu

Ann Nowak is an attorney and the Director of the Writing Center at Touro Law Center on Long Island, New York. Before joining Touro, she founded and spent 19 years running a general-practice law firm in a Long Island area known as The Hamptons. Before practicing law, she worked for many years as a newspaper reporter and feature writer at *The Southampton Press and Newsday*. She also enjoyed a stint as a copy editor and staff writer at *Moneysworth*. She has taught legal writing at CUNY School of Law, persuasive writing at Axia College of the University of Phoenix (online division), and creative writing at the Usdan Center for the Creative and Performing Arts.



Legislative drafting

Teaching plain language drafting in a legislative and administrative advocacy clinic

David Marcello

*Executive Director, The Public Law Center
Louisiana, USA*

To those who are not members of the plain-language academy, the subject of drafting—much less the teaching of it—can seem deadly dull. That’s why, when teaching drafting to law students and international trainees,¹ my assistant director and I like to share this anecdote drawn from a training event in Tbilisi, Georgia. One of our participants said she didn’t feel well served by her legal education because she had been taught to draft in flowery language—and, she felt, that may have been deliberate: “A system governed by ‘rule of edict’ rather than ‘rule of law’ doesn’t want substance in its legislation. It’s easier to conceal a vacuum at the heart of legislation if you surround it with a lot of meaningless verbiage.” Her story illuminates the connection between an apparently “academic” pursuit—plain-language drafting—and its “political” use in imposing meaningful constraints on the arbitrary use of official power.

The Public Law Center (TPLC) brings a similar message about the political implications of plain-language drafting to second- and third-year law students enrolled in its Legislative and Administrative Advocacy course at Tulane Law School. Since 1988, students in the Leg/Ad clinical course have drafted bills and agency rules (“subordinate legislation”) to advance the political interests of clients who are traditionally underrepresented before legislative bodies and in agency

rulemaking proceedings.

Tying plain language drafting to the representation of clients imparts a “higher purpose” to the development of writing skills and facilitates learning by students, who want to do a good job for their clients. Leg/Ad students learn from the earliest classes² that plain-language drafting is essential in competently crafting their clients’ legislation or agency regulations. This marriage of style to substance produces a powerful learning model, motivating students to develop their plain language drafting skills in the service of clients’ interests. Marrying style and substance also expresses a meta-message that is a truth known to most readers of *Clarity*: Plain-language drafting is more than a stylistic aid to reader understanding; it’s also an analytical aid for drafters in developing the substantive content of an instrument.

Leg/Ad Drafting Projects

In teaching the Leg/Ad course, we believe in “learning by doing.” Each student produces multiple drafts, taking a research and drafting topic from the initial “idea” stage through to completion as an instrument. Richard Wydick’s superb book, *Plain English for Lawyers*,³ is our drafting guide and is assigned reading for each student in the class. We help students integrate their hands-on drafting experience with the wisdom in Wydick’s text by giving them written and oral feedback on each of the following drafts:

- (1) During the first week of the semester, students write a *research plan* identifying preliminary research questions; any legislation or agency regulations from other states that might serve as a model; a “resource person” with relevant subject-matter expertise; and other useful tasks (e.g., researching the legislative history of earlier efforts to pass the measure). Leg/Ad instructors

return the research plans in individual student conferences during the second week, giving handwritten revisions and oral feedback to reinforce lessons learned from the readings, lectures, and exercises on plain language drafting.

- (2) Over the next 6-8 weeks, students submit the proposed legislation or agency rule as a *preliminary draft*, a *revised draft*, and ultimately a *distribution draft* that goes to every member of the class before students begin their mock hearings. Leg/Ad instructors again give the students written markups and oral feedback in individual conferences on each draft—except for the distribution draft, which endures “trial by fire” in a mock hearing without the benefit of an instructor’s corrective feedback. Drafting without the safety net of an instructor’s feedback may motivate some students to work harder on improving their drafts before subjecting them to the scrutiny of other students and the Louisiana legislators who often sit in on these hearings.
- (3) Students may choose to produce yet another, *final draft* informed by insights gleaned from the mock hearing. They might draft various “*collateral documents*,” such as a one-page information sheet; a press release; a fiscal and economic impact statement; potential amendments; testimony for a client or advocate to deliver before a legislative committee or in an agency hearing; or a regulatory instrument to implement the proposed legislation. They also write *research papers* of approximately 20–30 pages in length, preserving for use by others the substantive knowledge and political insights they’ve accumulated in researching and drafting their topics. Leg/Ad instructors review and grade these end-of-semester documents, but students rarely receive any instructional feedback from the grading process—except when a student with a disappointing grade requests a post-semester conference. Instructors who want to provide this final feedback could require all students to come in for a post-semester conference—admirable

pedagogy, probably beyond the ambitions and capacity of most instructors, but undeniably an additional learning opportunity for students.

Students in the fall semester course on Legislative and Administrative Advocacy experience how a single topic comes to fruition—from its conceptual origins to embodiment in a bill or rule. A spring semester course in Advanced Legislative and Administrative Advocacy offers a different experience, approximating the challenges faced in a “real world” drafting office by assigning students to work simultaneously on multiple drafts of different instruments at various stages of completion (e.g., a poorly-drafted bill or rule that needs improvement, amendments to existing law, or a completely new bill or rule drafted against tight time constraints).

Steps in the Legislative Drafting Process

We use Reed Dickerson’s “steps in drafting”⁴ to give students a sense of the sequence through which each draft moves: (1) gathering factual information and objectives from the client; (2) analysis; (3) legal research; (4) synthesis or outline; (5) drafting; (6) revising; (7) horizontal cross-checking; (8) dialogue with others; and (9) polishing the final version of a bill or rule. The first four steps Dickerson describes as the “think” part of the process; steps 5-9 comprise the “write” or compositional stage. Actual drafting is not so discretely structured in practice, but Dickerson’s framework imparts a useful organizational overview.

We pay particular attention to the heart of this process—creating a good outline—because “attention to the architecture of the instrument will do much to improve the substantive policies that it is intended to serve.”⁵ In *The Plain English Guide*, Martin Cutts suggests multiple organizational strategies, including the top-heavy triangle; problem-cause-solution; chronological order; or question-and-answer.⁶ A discussion of structural issues helps students understand that plain-language drafting goes beyond words-text-grammar-style; it also demands a well-conceived organizational scheme. Clear expression depends upon appropriate structure and organization—the good “bones” over which plain-language style is draped.

Students view the drafting process through another useful lens developed by Dr. Betty S. Flowers, a University of Texas English professor.⁷ The “Flowers Paradigm” attributes four distinct “personalities” to the drafter: Madman, Architect, Carpenter, and Judge. The Madman engages in “brainstorming”—a chaotic, creative, and (crucially) nonjudgmental process that captures all ideas, good and bad. The Architect discards some ideas and organizes others into a “blueprint”—an outline for drafting. The Carpenter builds on these structured ideas, creating a text to which the Judge brings critical faculties, editing and improving the document’s word choice, grammar, organization, and overall readability.

We point out to students how these four personalities correspond to the sequence described by Dickerson. The Madman initiates what Dickerson described as the “think” part of the drafting process. The Architect completes the “think” part by producing an outline, which lays the predicate for transition into the “write” part, when the Carpenter takes over and begins to draft. Finally, the Judge’s editorial revisions affirm Justice Brandeis’s wisdom about drafting: “There is no great writing, only great rewriting.”⁸

We emphasize that the drafting process is not relentlessly linear. Dickerson’s “steps” explicitly acknowledge the importance of “feedback loops” that return drafters repeatedly to earlier stages for more fact-gathering, analysis, and legal research. We encourage students to move freely between the later compositional and the earlier conceptual stages of drafting. Dickerson elaborates on this concept by encouraging drafters to listen to “talk back” from the draft and to engage in a “two-way conversation” with what they’ve written.⁹ We recommend Dickerson’s “write early” approach to students, liberating them to start writing before completing their research and encouraging them to establish an early, ongoing dialogue with the developing text. But we also caution them to honor Dickerson’s wisdom about the feedback loop, letting later research inform and reform their earliest products in the drafting process.

Drafting Is Thinking on Paper¹⁰

Like Dickerson, Robert Martineau describes the drafting process as a vehicle for developing—not merely expressing—content:

The drafting of legislation or a rule does not merely express the previously formed intent of those for whom the drafter is working. Only in the drafting is the proponent’s intent developed. . . . Drafting thus becomes not merely the process by which words are chosen to reflect policy choices previously made, but . . . the process by which the range of choices are identified and one of the alternatives selected.¹¹

This relationship between text and policy formation has political and ethical implications for student-drafters: “[L]egislative drafters do not operate in a political vacuum. The legislative process and its essential derivative, the drafting process, are inherently political in nature. The choices made within such a context are inescapably political, advocacy choices.”¹²

We highlight how drafters might occasionally exert inappropriate influence on legislative policymaking. We do so not to foster an attitude of cynical manipulation among law students or to suggest that the legislative process is populated with subversive drafters. Instead, we seek to heighten students’ awareness of the drafter’s ethical obligation to consult early and often with clients throughout the drafting process. As Martineau observes, “At this stage of the legislative or rule making process, almost every word chosen by the drafter reflects a policy choice.”¹³ Drafters must maintain a continual dialogue with policymakers in order to avoid usurping the legislator’s policymaking prerogatives.

Writing legislation is no mere scribe’s task; drafting creates policy, which should be driven to the maximum possible extent by the needs and choices of clients—not drafters.

Conclusion

Plain-language drafting is not simply about “style.” It’s also a tool for developing and expressing the “substance” of legislation. Also intertwined with the drafter’s stylistic and substantive role at the heart of this process are “political” and policy choices that demand our ethical attention. As instructors in

Legislative and Administrative Advocacy, we understand these truths; we hope our students share a similar understanding after completing their coursework.

Endnotes

- ¹ See International Legislative Drafting Institute: <http://www.law.tulane.edu/ildi/>.
- ² See Leg/Ad syllabus under "Clinic Course and Curriculum" at The Public Law Center's website: <http://www.law.tulane.edu/tlscenters/PublicLawCenter/index.aspx>.
- ³ Richard C. Wydick, *Plain English for Lawyers* (5th ed., Carolina Academic Press: Durham, No. Carolina 2005).
- ⁴ F. Reed Dickerson, *The Fundamentals of Legal Drafting* 51-78 (2d ed., Little, Brown & Co. 1986).
- ⁵ *Id.* at 16.
- ⁶ See Cutts on "Using reader-centred structure" at 108-117 in *The Plain English Guide* (Oxford University Press, 1995).
- ⁷ See Bryan A. Garner, *Garner on Language and Writing* 4-7 (American Bar Association, 2009).
- ⁸ See <http://www.brandeis.edu/acserv/fellowships/essays.html>.
- ⁹ Dickerson at 74.

¹⁰ William Zinsser, *On Writing Well* 147 (HarperCollins: New York, N.Y. 2006): "Writing is thinking on paper."©

¹¹ Robert Martineau, *Drafting Legislation and Rules in Plain English* 65-66 (West Publishing Co., 1991).

¹² David A. Marcello, "The Ethics and Politics of Legislative Drafting," 70 *Tulane L. Rev.* 2437, 2446 (1996).

¹³ Martineau at 65.

© 2013 D Marcello
dmarcello@tulane.edu

David Marcello has served as Executive Director of The Public Law Center since its inception in 1988. He teaches "Legislative and Administrative Advocacy" to second and third-year students at Tulane Law School. Beginning in 1995, he and his colleagues have organized annually the International Legislative Drafting Institute, which will celebrate its 20th Anniversary during June 9-20, 2014 in New Orleans. The Public Law Center has also conducted tailored training events in the United States and distant training events on legislative drafting in Africa, Asia, Europe, and the Caribbean.



clarity

IC·Clear
International Consortium for Clear Communication

kindly invite you to their
conference in Belgium
12 -14 November 2014

with the support of the European Commission's
Clear Writing Campaign

IC Clear is developing an international
postgraduate course in
clear communication

for the latest news visit
www.icclear.net
karine.nicolay@icclear.net

This project has been funded with support from the European Commission

Partners

Associated Partners

Contract drafting

Teaching non-native English speakers to draft contracts with clarity

Natasha Costello

Freelance legal-English coach
France

I remember the first time that I was asked to draft a contract (as a trainee solicitor); I was simply given a precedent document and asked to adapt it to the transaction. Does this sound familiar? Of course, in more complex transactions, it was sometimes necessary to draft additional clauses, but the instinct was always to look for a template first. In my experience, nobody dared to stray from the “tried and tested” approach, and in this way, traditional contract language was perpetuated.

I have spent the last three years in Paris, working with French lawyers to improve their legal English skills, particularly in contract drafting. This has provided an ideal opportunity to challenge traditional contract language and to promote the use of plain and clear English.

Drawing on this experience, the aim of this article is to illustrate how non-native English speakers can be encouraged to draft contracts with clarity. Other legal training tends to concentrate on the content of contracts rather than the way in which they are written. The approach that I use, whatever the length of the course or lawyer’s level of English, is to focus on the following five key drafting points: Purpose, Consistency, Avoiding Legalese, Sentence Structure, and Active Voice. These key points can be used to introduce a course on drafting, to reinforce learning during the course, and to reflect and consolidate at the end of the course.

Five key drafting points

1. Purpose: what is the purpose or objective behind the drafting?

Non-native speakers have a tendency to translate contract provisions too literally from their own language into English. As a result, the syntax is often incorrect and it can be difficult to understand the lawyer’s objectives. The first thing I always do is encourage my clients to think about their aims in drafting particular contract provisions. By understanding what they are trying to achieve, I can then help them find the language to achieve it.

For a comprehensive course in contract drafting, I recommend Tina Stark’s excellent book “Drafting Contracts: How and Why Lawyers Do What They Do”.¹ The basis of her method is “Translating the Business Deal into Contract Concepts”.² Whilst her book is not aimed at non-native speakers, it provides an excellent structure for teaching, insisting that the lawyer considers the business deal and drafts the most appropriate type of contract provisions to reflect it.

For example, in my experience it can sometimes be unclear, from the language used, whether a covenant is imposed on a party to the contract or a discretion is given. I need to discuss with my client what is intended: Is the objective to impose an obligation, for which remedies will be available for breach (a covenant), or is the intention simply to give a party permission to do something (a discretion)? I can then assist with the appropriate English language to achieve my client’s aims. As a starting point, I suggest that they use the word “shall” to indicate a covenant and “may” for a discretion. I appreciate that plain-language purists might prefer other language, but my clients find these words clear and easy to remember and it helps them focus on identifying which type of provision is most suitable for their purpose.

2. Consistency

Consistency in drafting will promote clarity. If the same idea is expressed in different ways, then it may be open to different interpretations.

For example, in one of my client's contracts, the words "commits to", "agrees to" and "will" were used in three consecutive clauses to introduce an obligation. After checking that a covenant was intended in each case (see key point 1 above regarding purpose), I suggested that consistent language was used throughout the contract to express an obligation, for example, by using the word "shall" for each covenant. This made the contract easier to read and the covenants easier to identify (and also allowed the lawyer to consider whether a covenant was the appropriate type of provision to use in each case).

Definitions can also aid consistency. If there is a lengthy description of a formula, process, or property, then the use of a definition would make the contract easier to read and ensure that the relevant expression was interpreted in the same manner each time.

3. Avoiding legalese

Unlike lay people, non-native English speaking lawyers are quite used to legalese, as they also have legal terms of art in their own language. In addition, European lawyers often find it easy to understand some of the archaic legal English terms due to the historical development of the English language, with many legal words derived from French and Latin. It can sometimes be a battle to convince them to write in clearer, plainer English (especially when you consider that in French at least ten words are used to express "Yours sincerely"!)

Ken Adams, in the introduction to his book "A Manual of Style for Contract Drafting"³ talks about the "fog of legalese".⁴ I try to help my clients see through this fog, by avoiding archaic and Latin terms, eliminating redundant language and promoting the use of single words over couplets and triplets. Unencumbered by verbose language, the lawyer is able to see more clearly and concentrate on drafting to reflect the business deal.

The first example I give my clients is that instead of "in the event that" they can use the word "if". It seems so simple, yet by using a

single word it immediately allows the lawyer to focus on the words which are to follow.

4. Sentence structure

As mentioned earlier, literal translations by non-native speakers can often affect sentence structure. It is important to be able to identify the "essential message"⁵ of a sentence and a good way to achieve this is to keep the subject, verb, and object together. I often start with a simple example to illustrate this:

Correct: I am drafting a contract for the sale of a property.

I (subject) am drafting (verb) a contract (object).

Incorrect: I am drafting for the sale of a property a contract.

Once the subject, verb, and object become separated, the sentence can be difficult to follow and the essential message becomes harder to identify. This can be a particular problem with complex conditional contract clauses.

Many techniques used to teach general English writing to non-native speakers are also relevant to contract drafting, such as keeping sentences short. If sentences are longer than three or four lines, consider breaking them down into two or more sentences or tabulating.

5. Active voice

I always advise my clients to use the active voice (wherever possible) when drafting contracts. This is particularly relevant when drafting covenants in order to make it clear who is to perform the action. One client told me recently that this was one of the most useful things she had ever learned!

It is helpful to use an example from the field in which the client works. So, for real estate lawyers, compare "*the Tenant shall pay the rent...*" (active voice) with "*the rent is to be paid...*" (passive voice). The active voice is more direct and clearly shows that the Tenant is under an obligation to pay the rent.

There may be times when the passive voice is more appropriate: when the action is more important than the actor or when the actor is unknown. However, as can be seen in the above examples, when using the active voice, the language is clearer and the clause will usually be shorter.

Conclusion

Non-native speakers can find the prospect of drafting contracts in English daunting. They sometimes lack legal English vocabulary and make syntactical errors. I use five key drafting points: Purpose, Consistency, Avoiding Legalese, Sentence Structure and Active Voice. These key points are not meant to be used in isolation; by using them to introduce, reinforce, and consolidate courses on drafting, we can help lawyers develop the skills to draft more clearly and gain confidence to challenge contract language which is not clear. Clients tell me that using these key points has also helped them to draft more clearly in their native languages.

Endnotes

- ¹ Tina L. Stark *Drafting Contracts: How and Why Lawyers Do What They Do* (Aspen Publishing, 2007)
- ² *Ibid.*, Chapters 3 and 4. Tina Stark identifies seven different "Contract Concepts": representations, warranties, covenants, rights, conditions, discretionary authority and declarations.
- ³ Kenneth A. Adams *A Manual of Style for Contract Drafting* (American Bar Association, 3rd ed. 2013)
- ⁴ *Ibid.*
- ⁵ I take this expression from my grandfather in his book: Bernard Benjamin *Benjamin's Elementary Primer of English Grammar* (Futura, 1989) p.130

© 2013 N Costello
4costellos@orange.fr

Natasha Costello is English, a Solicitor (non-practising) and former senior lecturer in law at Manchester Metropolitan University, England. She has over 10 years' teaching experience and currently lives near Paris, France, coaching French lawyers to improve their legal English. She teaches various courses, including contract drafting, negotiating and preparation for the Cambridge International Legal English Certificate. She has also recently lectured on contract law at EPF Ecole d'ingénieurs.



Visual clarity in contract drafting

Karin Mika

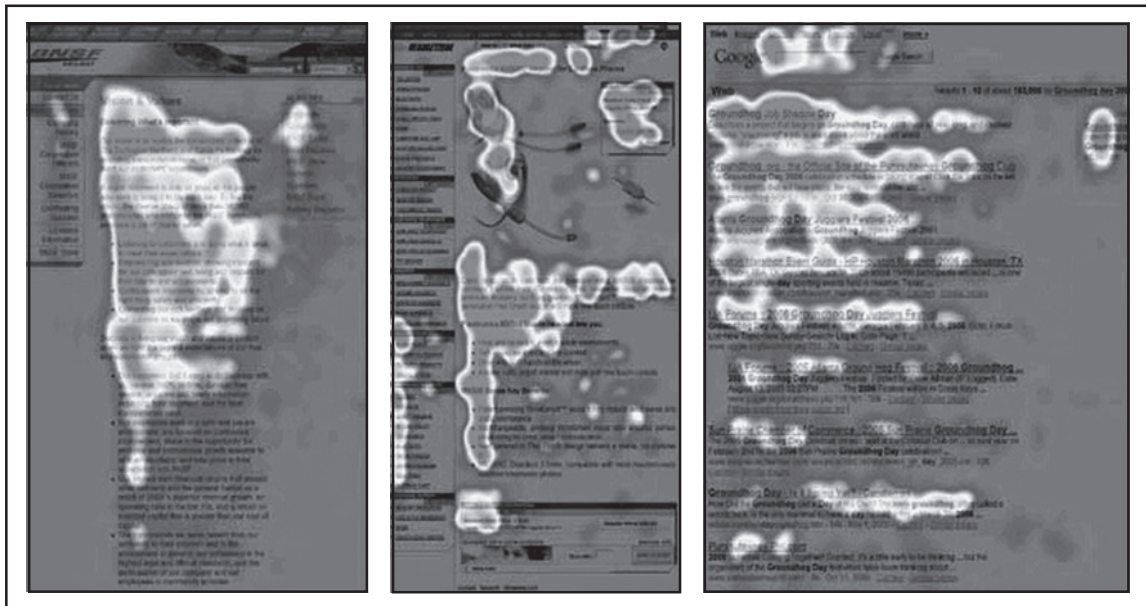
*Professor of Legal Writing, Cleveland-Marshall College of Law
Ohio, USA*

One of the underlying concepts of teaching clarity in contract drafting is teaching visual clarity as well as verbal clarity. Visual clarity is not too far afield from verbal clarity because visual clarity necessitates the same underlying themes of verbal clarity: avoiding verbose sentences containing legalese, and making a document accessible to the reader so that the reader can easily find and understand pertinent clauses.

Visual clarity takes verbal clarity a step further by making a document not only more visually easy to navigate, but also uses typeface and organizational concepts in order to set out an organization that contains content that is easier to read and thus easier to absorb.

Recent research in how information is processed indicates that there is no doubt that, as a society, we read faster, and that our attention span is less than it has ever been.¹ Most people are continually on information overload, and the day-to-day existence of everyone's life requires that more and more information is being continually processed.

This shift in the "speed" of life has changed the way in which information is organized and absorbed by our brains. Most people no longer have the luxury of reading for depth, and our brain has accommodated by honing its skimming technique, and this, in and of itself, has enabled a study of how people read and process information. Studies examining how we read online material suggest that we skim at the onset with a focus on the parallel structure on left side of screen while examining center content.² Changes in font or visuals catch our eye, and the longer a segment, the less focus the reader has. Decisions about the relevancy of content are made within three seconds.³



Mapping recent shifts in the “speed” of life and how information is organized and absorbed by our brains.

Because how we read has changed, the visual organization we teach our students in contract drafting should also change to reflect a visual ease in organization. We should endeavor to teach our students that information contained in contracts must be visually accessible and easily understandable within just a few seconds of looking at a document.

Compare these two clauses and their visual accessibility. (The clauses deal with a Tenant’s Maintenance obligations and a Landlord’s obligation to make emergency repairs within 72 hours.):

In Example 1, the font modifications (e.g., boldface, and underlining), points of

MAINTENANCE

(a) **TENANT’S OBLIGATION:** Tenant shall make no alterations or improvements to the premises or construct any building on the premises without the PRIOR WRITTEN CONSENT of Landlord. If the Tenant believes a repair or improvement is necessary, Tenant should contact Landlord through the 24-hour central voice mail service at 440.555.1222.

(b) **COVENANT TO REPAIR WITHIN 72 HOURS:** Landlord agrees to arrange for all necessary major repairs to be made within **72 hours of Tenant’s notice** at Landlord’s expense. Major repairs are determined on a case-by-case basis at the a landlord’s discretion and shall include:

- * Heating issues
- * Air conditioning issues
- * Sanitation issues
- * Hot water issues
- * Issues that Landlord finds affecting the major use of the Leased Premises

(c) **FAILURE TO REPAIR WITHIN 72 HOURS:** If the repair is not made within 72 hours, Tenant will receive a **\$10 deduction of rent per day** beginning at the expiration of the 72 hour timeframe until the repair is made. Such deduction shall be prorated for any partial days including the day the repair is made. The deduction shall not occur if the failure to repair is (i) beyond the Landlord’s control, (ii) Landlord notified Tenant within 24 hours of the original repair time and (iii) Landlord provided a new repair time that does not exceed one week of the original repair time. If the repair cannot be arranged within the 72 hours at the fault of the Tenant, there shall be no deduction in rental amount.

Example 1

1.3 Maintenance:

Tenant shall make no alterations or improvements to the premises or construct any building on the premises without the prior written consent of Landlord. If Tenant believes a repair or improvement is necessary, Tenant should contact Landlord through the 24-hour central voice mail service at 440.555.1222. Landlord agrees to arrange for all necessary major repairs to be made within 72 hours of Tenant’s notice at Landlord’s expense. Major repairs are determined on a case-by-case basis at the Landlord’s discretion and shall include: Heating issues, Air Conditioning issues, Sanitation issues, Hot water issues, Issues that Landlord finds affecting the major use of the Leased Premises. If the repair is not made within 72 hours, Tenant will receive a \$10 deduction of rent per day beginning at the expiration of the 72 hour timeframe until the repair is made. Such deduction shall be prorated for any partial days, including the day the repair is made. The deduction shall not occur if the failure to repair is beyond the Landlord’s control, Landlord notified Tenant within 24 hours of the original repair time and Landlord provided a new repair time that does not exceed one week of the original repair time. If the repair cannot be arranged within the 72 hours at the fault of the Tenant, there shall be no deduction in rental amount.

Example 2

organizational emphasis, division of topics through paragraph headings, symmetric columns, and white space, draw the reader's visual attention to the most important components of the clause without the reader doing much more than taking a few second glances at the document.

In Example 2 (which contains the exact same wording as Example 1, but does not include the purposeful visual separations), the reader is first drawn to the visual of a large block of text without consideration of content. The reader, rather than instantaneously gathering content, must momentarily consider the physical task of reading the block of text while attempting to orient his or her brain to organizing

and prioritizing content. Thus, Example 2 presents a multiple step process for the reader in which information cannot be obtained by mere skimming.

Creating large blocks of text is not the only obstacle to creating visual clarity. Although varied organization may enhance absorption of content through visual clarity, too much varied organization in addition to asymmetrical organization detracts from clarity. Consider Example 3:

Similar to the clause created in all block text, Example 3 presents its own challenges to quickly determining and prioritizing content. First, the boldfaced text draws the reader's eyes, however, the lack of uniformity in terms being bolded, underlined, or italicized forces the reader to try to disengage

from the visual to focus on the content to determine the significance of the content that is created with other fonts. Second, the asymmetric and lengthy list at the bottom of the page further forces the reader to engage in another type of visual shift as well as a mental re-prioritizing of content. Finally, the overall lack of symmetry in structure and missing white space between segments causes the reader to first assess the disconcerting elements of the visual picture being presented as opposed to being able to quickly absorb important content. Thus, the overall result of the visual organization is to force the reader out of the skim mode and into a mode

1. MAINTENANCE:

Tenant agrees to maintain the Premises throughout the Term of the Agreement in as good condition and repair as the time of commencement of this Agreement, normal wear and tear excepted. Tenant must notify Landlord of any major repairs that need to occur. Major repairs include the heating issues, air conditioning issues, sanitation issues, hot water issues, and any other issues that affect the major use of the apartment. **Tenant must report issues to a central voice mail** service at any time. Major repairs will be completed with **72 hours** of reporting, Tenant shall receive a ten dollar (\$10) deduction from rent per day for every day the repair is not completed after the **72 hour grace period**. Tenant will be prorated for the part of the day the repair is not completed. If repair cannot be made within 72 hours, with no fault of Landlord, Landlord may avoid the ten dollar (\$10) penalty if the delay is reported to Tenant within 24 hours, and a time set to repair as soon as possible. It is Tenant's responsibility to arrange a mutually convenient time for entity repairing problem to fix problem. ***If this mutually convenient time is not within the 72 hour grace period, there will be no ten dollar (\$10) penalty per day.***

The Landlord promises to keep all Provisions in working order. Provisions include:

- (a) Stove,
- (b) Refrigerator
- (c) Microwave
- (d) Dishwasher, Kitchen Sink and Faucets
- (e) Kitchen Cabinets
- (f) Bathroom sink, Bathtub, Toilet
- (g) any and all Doors
- (h) any and all Attachments to said Doors
- (i) any and all Fixtures
- (j) any and all Electrical Connections
- (k) any and all Water Piping and or Connections
- (l) Mailbox; Two Fire Extinguishers
- (m) Washer and dryer for clothes
- (n) Storage cubicle
Said storage cubical is located in the basement, tenant shall provide their own combination lock and provide management with the combinations
- (o) communal access to the Dumpster
trash is collected once a week

Example 3

where understanding content quickly is impossible.

Here is a checklist of elements to consider when drafting for visual clarity:

- Make sure content is in smaller and more manageable segments.
- Use bullets and left-justification for lists rather than incorporating lists into paragraphs.
- Use left-justification to highlight major components of segments.
- Make sure major points of emphasis are set off by font change, such as boldface.
- Include white space for better content absorption by the reader.
- Avoid using too many different visual devices on a page.
- Use parallel grammatical structure as well as a symmetric visual representation that is easy to follow and not disconcerting to the reader.

Plain language is an essential component of writing any document that is to be used as a living document in which the parties must be able to quickly find and absorb a clause pertinent to a contractual relationship. However, because of the way in which we have come to process information, clarity of a document is no longer tied only to direct and clear wording, but to a visual presentation that enhances the clarity of the underlying language

of the document. This is particularly important in contract drafting because contracts are living documents to be used by the parties in ascertaining their rights and obligations. The easier the document is to access and use, the more beneficial the document will be for parties to the agreement.

Endnotes

¹ Jakob Nielsen's Alertbox, F-Shaped Pattern for Reading Web Content, (Discussion on) How People Read the Web: The Eyetracking Evidence, Nielsen Norman Grp. (April 17, 2006), <http://www.nngroup.com/articles/f-shaped-pattern-reading-web-content/>.

² *Id.*

³ *Id.*

© 2013 K Mika
k.mika@csuohio.edu

Professor of Legal Writing

Mika has been associated with the Cleveland-Marshall Legal Writing Program since 1988. Professor of Legal Writing Mika teaches first year Legal Writing as well as upper level writing courses, including Document Drafting. Professor of Legal Writing Mika has presented nationally on various topics, including those related to using technology in the classroom and improved methodology for teaching legal analysis to first year students. She has published various articles on teaching writing, as well as on substantive topics including Labor Law and privacy issues.



Healthcare

Lessons from the workshop trenches: Challenges in teaching plain-language writing to health professionals

Sue Stableford, MPH, MSB

*Director, Health Literacy Institute,
University of New England
Maine, USA*

Audrey Riffenburgh, MA

*Health Literacy Specialist,
University of New Mexico Hospital
New Mexico, USA*

What's the point? What do you want your patients, clients, or audience members to *do*? And who are they? What do they think, feel, believe, and do now related to the action you propose? How can you communicate your point in a clear, concise way that makes sense to them?

These are the core questions we ask health professionals, our participants at our plain-language workshops. While common, perhaps even mundane questions, to readers of this journal, they are much harder for our health-professional pupils than we ever expect. As plain-language writers and trainers with more than 20 years' experience, we are still surprised by how challenging it is for many to communicate simply and clearly.

Communication style learned in health professions training

Our usual workshop participants—clinical-care providers, public-health professionals, health-professions faculty, and others—bring strong science backgrounds and learned patterns of collegial communication. These skills and patterns, required for professional suc-

cess, necessarily focus on precise, efficient information sharing, including the use of discipline-specific vocabularies. Clinicians learn the case-presentation format whose structure requires starting with patient data, such as problems, symptoms, and diagnosis, and builds to a conclusion an action recommendation. Similarly, public-health professionals learn to argue an issue by presenting the epidemiologic and statistical facts, leading up to an action recommendation. Publishing in professional journals typically requires a similar approach: presenting data and evidence that pave the way for a discussion—which often concludes with an action recommendation.

Professional, and especially publication success, is enhanced by using technical terms, citing research, using statistics, and communicating in a dispassionate manner, often in passive voice. Health-profession students are repeatedly exposed to this type of communication during their training years as they read assigned journal articles and venture into clinical and community practice settings. This is sometimes labeled the “medical model” of communication. Having been trained to think, write, and speak to each other using this model, health professionals easily slip into the same style with public audiences—their patients, clients, or community members.

Need for a style change in communicating with patients and communities

Unfortunately, this style of communication does not serve well in meeting public-audience needs. In fact, it's the opposite of how professionals need to write and teach to engage most adults, who are not graduates of health-profession programs and likely have not even attended college. Most people need and want brief, clear, action-focused information.

Many adults know little to nothing about how their bodies work, and even less about how to care for them. In addition, millions have limited literacy skills, lacking both context and skills to master complex health and medical information. Just 12% of American adults have *Proficient Health Literacy Skills*, according to the 2003 National Assessment of Adult Literacy.¹ That same Assessment also pointed up the very limited numeracy skills of the general adult public, with 55% demonstrating basic or below basic *Quantitative Literacy Skills*. Even well-educated adults can be flummoxed in managing health, due to limited time, understanding, illness, or stress. And most adults want information fast, without struggling to find, read, understand, and use it.

Yet, this is typically not how health professionals provide it. They write (and teach) using the patterns and vocabularies learned in their training. Hundreds of research articles have shown the yawning gap between the levels of written health information (printed and web-based) and the abilities of American adults to read, understand, and use it.² Dozens more studies have shown the limited abilities of many adults to manage common health tasks, such as reading food labels, using medicines according to instructions on the bottle, getting a flu shot, managing a chronic condition such as diabetes, etc.^{3,4,5,6}

Surprisingly (at least, surprising to us), health professionals in our workshops are often unaware of and unfamiliar with basic health-literacy statistics and research results. This, in spite of over 2 decades of research and numerous national policy reports. In workshops, Step 1 is often “framing up” the issue, presenting the backdrop and rationale for transitioning to a new way of presenting information for public audiences. Usually at least one participant resists, harping on the deficits of the American educational system and the low levels of adult literacy skills. We gently remind the group of our obligation to meet the people we serve where they are now. We are responsible for doing what we can to reach out and help our patients and communities understand. This means learning to communicate in new ways, using plain-language techniques.

Communicating more effectively: starting with the purpose in mind

Participants are startled when, after laying out the health-literacy framework, we don't plunge them immediately into writing practice. Instead we begin with 2 key questions: (1) What's the purpose, the needed action or behaviors? and (2) who, precisely, is the audience? Our participants struggle mightily with these questions.

Most topics about which they write involve action steps, but they have a hard time focusing on purpose and drilling down to a limited number of “doable” essentials. And they have a hard time reversing the order of presentation learned in their training, putting the action messages up front, early on. This newspaper style writing, with key points first, is a schematic switch from the one learned in their training. We find ourselves having to return to this same point many times—to laser in on key behaviors fast, and limit other information to why and how to carry them out.

This first step—planning—is crucial, and often resisted. When skipped, materials tend to wander off in many directions and into irrelevant detail. Clarity about purpose is especially important if different personnel or units in an organization must approve or will use the material.

Given the fast pace of organizational life and quick turnaround time for many written pieces, our participants tell us that they usually just sit down at the computer and start writing. When we advise them to spend at least 50% of allotted project time to plan—whether it's an hour, a day, or a week or more—we see them react with consternation. We assure them this will save time due to fewer revisions and will result in more reader-focused and, therefore, effective materials.

Communicating more effectively: starting with the audience in mind

The 2nd big question—about the audience—is equally challenging for our workshop participants to grasp and address in depth. They can usually cite basic demographics about the populations they serve, but have often not considered health issues and concerns from different perspectives,

perspectives that likely differ widely from their own. It's hard work for professionals to let go of their frames of reference, their personal cultural backgrounds and professional cognitive 'maps.' We encourage them to think like an anthropologist (or detective) to help ask better questions before writing—questions about how others think, feel, and behave, and perhaps why. We stress the many ways health professionals can learn more about the audiences they serve, from using the Internet to interviewing key informants or audience members.

We try to impress upon our participants the need for clarity in not only what we want the audience to do to improve health, but how to present the action, or "frame" the message, so it fits with audience views and lifestyles and addresses concerns and barriers to action. Knowing the audience well is even more critical when the recommended actions are difficult to carry out, which is true more often than we realize. We likely can't or don't have the time to figure out how to write the "perfect" piece. But, by better knowing our audiences, we can at least write in a way that acknowledges them, that blends our agendas with theirs, invites partnership, and supports new possibilities. This isn't easy. It's new for many of our workshop participants to consider their audiences at this depth. And even newer to consider inviting audience members to help develop or review draft materials, to help "get it right."

We do, of course, get around to teaching actual plain-language writing skills, concentrating on those included in most guidelines, such as using familiar words (conversational language), shorter sentences and paragraphs, personal pronouns, active voice, etc.^{7,8,9} All of these are more complex skills for our training participants than they first seem, especially since they contradict a more familiar professional journal and presentation style. Information structure, tone, and design are addressed as well. Proficiency with this new approach comes only with practice. And, as with any skill, abilities vary.

We continue to emphasize that the actual writing or rewriting of information is a later step, not the starting point. We keep refocusing participants on the core (action) messages and how to present them using context and language the audience will understand. And

we remind them that their efforts to communicate simply and clearly are critical for an increasingly diverse population to protect and promote personal, family, and community health.

Hopefully, over the years we have guided our workshop participants into new ways to develop, structure, and write information that they can bring with them into their verbal communication and teaching as well. Hopefully, we have helped them learn to write (and speak) more clearly and simply, to better share their expertise and improve the health of their patients and communities. Effective communication will not solve all the complex health issues facing the nation, and perhaps not even some of the simpler ones. But without it, other solutions will fail.

Endnotes

1. Kutner M, Greenberg E, Jin Y, Boyle B, Hsu Y, Dunleavy E. *Literacy in Everyday Life: Results from the 2003 National Assessment of Adult Literacy*. Washington DC: U.S. Department of Education, National Center for Education Statistics, 2007.
2. Rudd, RE, Anderson JE, Oppenheimer S, Nath C. [2007]. Health Literacy: An Update of Public Health and Medical Literature, chapter 6 in Comings JP, Garner B., Smith C. (eds), *Review of Adult Learning and Literacy, volume 7*. Mahway NJ: Lawrence Erlbaum Associates, pp 175-204.
3. Rothman R et al. Patient Understanding of Food Labels. The Role of Literacy and Numeracy. *Am J Prev Med*, 2006. 31(5):391-398.
4. Wolf M et al. To err is human: Patient misinterpretation of prescription drug label instructions. *Patient Education & Counseling*, 2007. 67:293-300.
5. Lagasse LP et al. How Accessible Was Information about H1N1 Flu? Literacy Assessments of CDC Guidance Documents for Different Audiences. *PLOS ONE*, 2011. 6(10): e23583 (open access).
6. Sarkar U, Karter AJ, Liu JY, Moffet HH, Adler NE, Schillinger D. Hypoglycemia is more common among type 2 diabetes patients with limited health literacy: the Diabetes Study of Northern California (DISTANCE). *J Gen Intern Med*. 2010 Sep; 25(9):962-8.
7. Centers for Disease Control and Prevention. *Simply Put: Tips for creating easy-to-read print materials your audience will want to read and use*. Access: http://www.cdc.gov/healthliteracy/pdf/Simply_Put/pdf
8. National Institutes of Health, National Cancer Institute. *Clear and Simple: Developing Effective Print Materials for Low-Literate Readers*. Access: <http://www.cancer.gov/cancertopics/cancerlibrary/clear-and-simple/allpages>

⁹. Centers for Medicare and Medicaid Services. CMSTOOLKIT for Making Written Material Clear and Effective. Access: <http://www.cms.gov/Outreach-and-education/Outreach/WrittenMaterialsToolkit/>

© 2013 S Stableford
sstableford@une.edu

© 2013 A Riffenburgh
ariffenburgh@salud.unm.edu

Sue Stableford, MPH, MSB, is the Director of the Health Literacy Institute at the University of New England in Portland, Maine. For 25 years, she has provided health literacy/plain language consulting, training, and materials development services. She works with hospitals, public health agencies, health plans, pharmaceutical firms, quality assurance organizations, and others across the country. She also participates in research projects, publishes in professional journals, and teaches in health professions programs. Sue is a founding member of the Clear Language Group, a national consortium of specialists in health literacy, plain language, and cross cultural communication.



Audrey Riffenburgh is the Health Literacy Specialist at the University of New Mexico Hospitals in Albuquerque, New Mexico, U.S. She leads the health literacy/plain language initiative and trains hospital employees in creating patient-friendly materials. For the previous 18 years, Audrey was President of Plain Language Works. Her firm produced plain language and low-literacy materials for the medical community, government agencies, and others. Hundreds of people have attended Audrey's workshops on creating plain language materials. She is a founding member of the Clear Language Group, a national consortium of plain language specialists. She is pursuing a PhD in health communication.



Democracy

Clearer words, clearer justice

Javier Martínez Villarroya

*Departamento Académico de Lenguas, Instituto Tecnológico Autónomo de México (ITAM)
México*

Teaching plain language to future Mexican lawyers

1. Overview

A big tree has strong roots. To *expand plain language*, there are no formulas. It is necessary to know the context of the country you are writing in. In Mexico, a few teachers of language are trying to change the juridical language: if we make clear rules, there will be no misunderstandings; and if there is no chance of misunderstandings, the corruption will decrease. So the point is to focus our work on the future lawyers to prepare them to change a system that now is not working fairly. What are we doing in Mexico? What are we looking for? Which are our main problems? Which are our main goals? In this essay, we will answer to these questions.

2. Who are we? What are we doing? *The actors*

In November 2008, Clarity, the Mexican Ministry of Public Administration, and the Instituto Tecnológico Autónomo de México (ITAM) co-hosted the 4th Clarity Conference. Since then, there have been few punctual actions to promote plain language in Mexico (Galán & Canizales, 2012). Fighting against this neglect, the ITAM's Language Academic Department has a small but important presence in the ITAM's law degree: we teach plain language for approximately one month to all the students.

The subject called *Investigación y Redacción Jurídica* (Juridical Investigation and Writing) has two modules. The first of them is dedicated to plain language and rhetoric (and it is the one taught by professors from the Language Academic Department). The elaboration of this part of the program was not easy. For instance, in order to adapt our speech to the audience (the Law Academic Department), we should avoid plain language on many occasions. Lawyers in Mexico commonly use impersonal sentences and subordinates. In the same way, the teachers of law don't usually have a clear notion of plain language: they usually think that plain language is only about writing clearly (without errors, but, of course, using impersonal and subordinated sentences). Paradoxically, in order to implement a program of plain language, we must avoid plain language in many occasions.

3. How do the students create a norm? *The shock*

After the teacher introduces a little bit of the history, goals, and features of plain language, the students have their first activity: they must create a norm in plain language. The topic is free: how to use the parking of the university, how to form a line, how to behave with your partner, requirements to teach in the ITAM, pets in the university, how to dress in class, for example. The students feel good. They want to be lawyers. They want to change their country. But *they forget completely what the teacher has said* about plain language during the previous lessons. Almost all the assignments start with a date, the number of the article, a generic name for the rule, the abstract name of the law, the punishment to those who break the norm, and so on. No one starts with the order that must be given: the order in which what we want is accomplished. Moreover, the future time is a lot more common than the present time, there are no bullets, bold letters highlight secondary information (and not primary), it is not clear the subject of the sentence, and so on. What happened? Why isn't the theory applied?

4. The first reaction: *The fear*

The students don't apply plain language because *the models* they are trying to imitate *don't use it*. The most of them argue against plain language when the language teacher makes objections to their texts: "My other teachers never allow me to write like that"; or "In my job, my boss will never accept a rule written so simple". The juridical and administrative texts in Mexico are full of subordinates, passive sentences, anacoluthon and technical words.

So how can language's teachers require the student of law to do what law's teachers don't require? Like many countries in America, Mexico is a classist country. The richest man in the world is Mexican, but some of the poorest men and women of the world are also Mexican. The statistics of The National Council for the Evaluation of Social Development Policy (CONEVAL, 2012) indicate that almost five from each ten Mexicans are poor. Mexican wealth is dramatically concentrated in a few

hands, education is very unequal, and justice is commonly not applied. In other words: *poverty brings bad education and bad education brings a defenceless plight against power*. There is an invisible but powerful chain that connects all those factors.

5. Can literates read in Mexico? *The context*

In Mexico, there are states where almost two persons from each ten are illiterate (INEGI, 2011). Although Mexico has literacy statistics similar to countries like Italy, Argentina or Spain (more than 90% of the population is literate) (UNESCO, 2012), the reality is very different. In 80 years, the average of the illiterate population decreased from 61.2% (1930) to 6.9% (2010) (INEGI, 2011).

What does it mean? Firstly, that there is an enormous literate population whose parents or grandparents were or are illiterate. Secondly, much of the literate

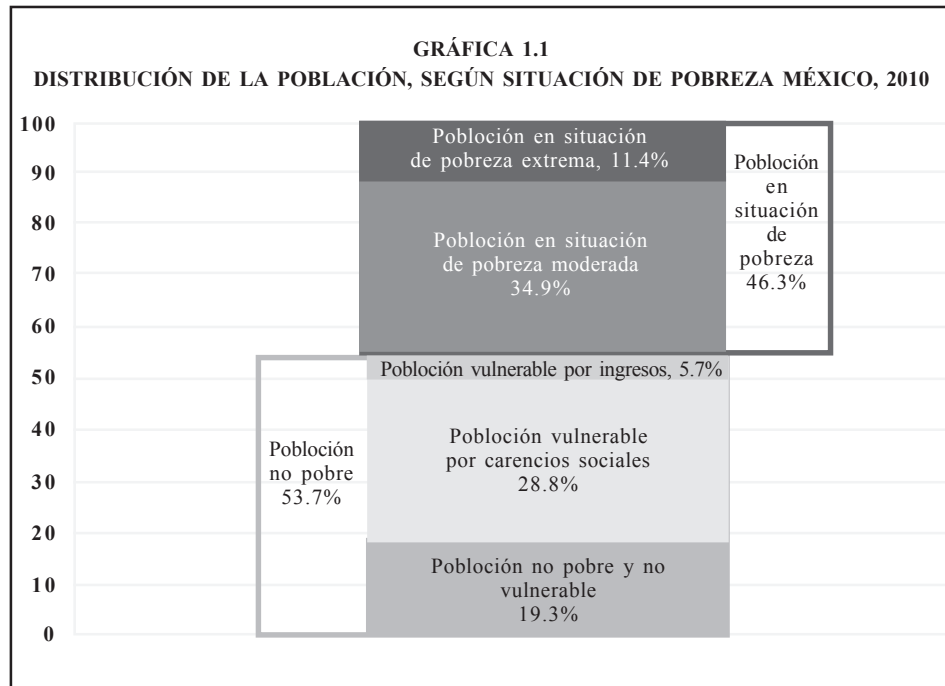


Figure 1: Distribution of the Mexican population according to their economic level (in average) (CONEVAL, 2012: 23).

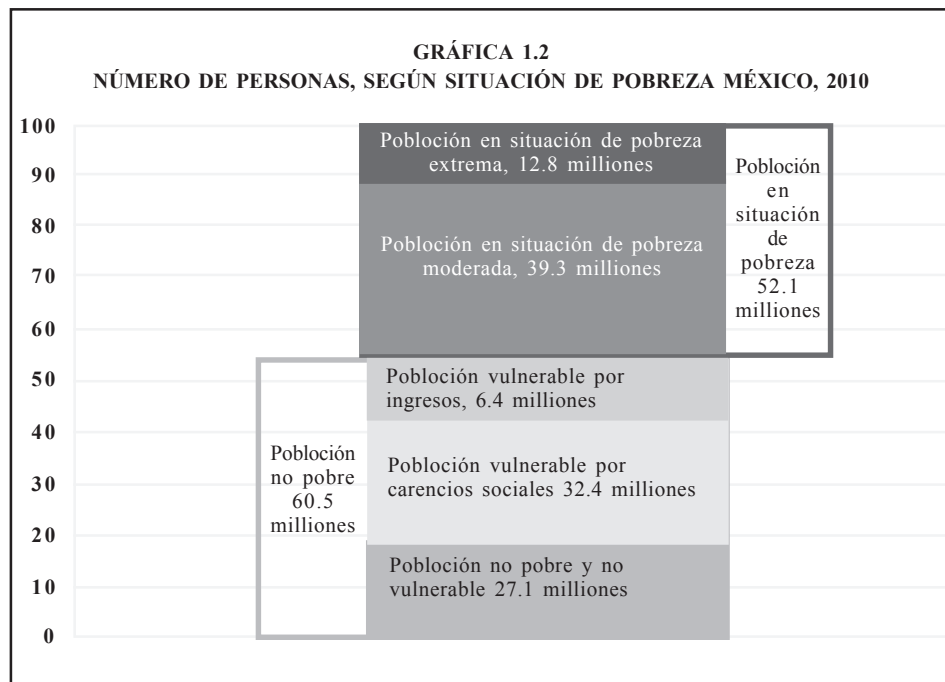


Figure 2: Distribution of the Mexican population according to their economic level (in absolute numbers) (CONEVAL, 2012: 24).

population is, in fact, merely *functional illiterate*. We consider someone a functional illiterate if he hasn't studied at least three years at the school (INEGI, 2011). In a similar way, we consider someone illiterate if he is incapable of writing and reading a simple message (Hernández, 2011). In Mexico there are 152 municipalities where the functional illiteracy is more than 38%, and some of them markedly exceed this average. For instance, in Cochoapa el Grande, Guerrero, more than 6 from each 10 persons are functional illiterate. In that sense, the worst states are Chiapas, Guerrero, and Oaxaca. Why? Some reasons seem to be clear: they are also *the poorest and the richest* (the poorest in economy, the richest in cultural diversity). In Mexico, almost 8 indigenous from each 10 are poor or extremely poor. Oaxaca is the state with more ethnic and linguistic wealth of all the country: *Mixtecos, Zapotecos, Triquis, Mixes, Chatinos, Chinantecos, Huaves, Mazatecos, Amuzgos, Nahuas, Zoques, Chontales*, and so on. The approximately 3.8 inhabitants of Oaxaca belong to 18 different ethnic groups. What happens in a land where the people who can read cannot read very much? In a land where the people learn to read in a language that they don't hear at home? In a land where the people are really poor, and they quickly abandon school?

6. Who takes advantage from obscure language? *The problem*

By a process of osmosis, all the Mexicans are influenced by the oral thinking of the poorest.

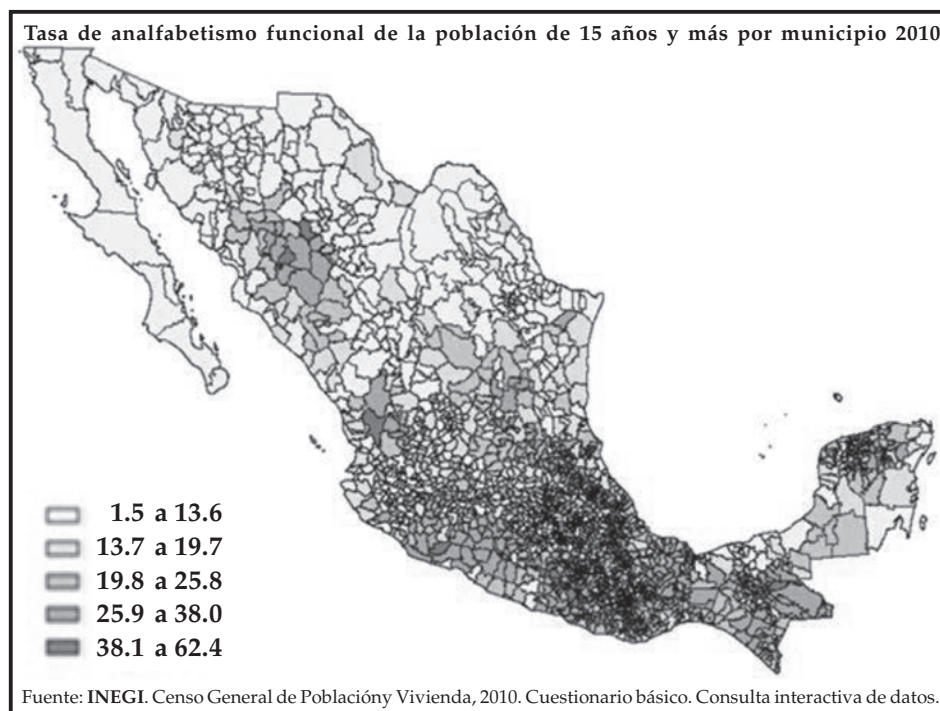


Figure 3.

The orthography, punctuation, and accentuation are so bad that we could define the situation as *"institutional illiteracy"*. As we know, plain language must be adequate to the worst readers of the community. So if it is very important to implement plain language in the administrations all over the world, in Mexico it is fundamental.

The paradox is robust: Mexico needs plain language more than anyone (because a lot of people hardly speak good Spanish); but Mexico is living with an administration conquered by baroque and contradictory language. The *diglossia is double*: on the one hand, the indigenous cannot express themselves in their mother tongue at trial; on the other hand, the Mexicans cannot understand clearly the equivocal Spanish of the administration (because of the administration and, in a lot of cases, because of themselves).

Who benefits in that situation? When the laws are not clear, the criminals are free and the innocents are in jail. When nobody understands what the rules say, anybody with money can make the words say what they want them to say. In the rankings of how Mexicans perceive the transparency of its country, Mexico is the number 105 of the world, below countries like Mali or Burkina Faso (Transparency International, 2012). And until a few years ago, we would read in the newspapers that Mexico is (after Iraq and Afghanistan) the most dangerous country to journalists throughout the world.

What does it mean?

In Mexico you cannot talk clearly. If we are looking for justice, plain language is a modest but an important field of combat.

7. Transforming a text to plain language? *The work*

After *the shock*, we encourage the students to transform a text to plain language. This is their second task. Now they are aware that there are *historic, social, and political factors* that have hurt the expansion of

plain language in Mexico and that these same factors seem to be the cause of injustice and inequality. Besides, they have some conscience of the difficulty of writing with “the art” of plain language. To help them, we elaborate *panels* like the next one.

Is it plain language?	Yes	No
Has it design ?	<input type="checkbox"/>	<input type="checkbox"/>
Is it univocal ?	<input type="checkbox"/>	<input type="checkbox"/>
Has it shortsentences ?	<input type="checkbox"/>	<input type="checkbox"/>
Does it avoid subordinates ?	<input type="checkbox"/>	<input type="checkbox"/>
Is the intention clear?	<input type="checkbox"/>	<input type="checkbox"/>
Is it adequate to the audience ?	<input type="checkbox"/>	<input type="checkbox"/>
Does it hierarchize the information?	<input type="checkbox"/>	<input type="checkbox"/>
Has it order ?	<input type="checkbox"/>	<input type="checkbox"/>
Has it precise lexicon?	<input type="checkbox"/>	<input type="checkbox"/>
Does it avoid repetitions ?	<input type="checkbox"/>	<input type="checkbox"/>
Is it affirmative ?	<input type="checkbox"/>	<input type="checkbox"/>
Does it avoid negations ?	<input type="checkbox"/>	<input type="checkbox"/>
Does it avoid gerunds ?	<input type="checkbox"/>	<input type="checkbox"/>

Figure 4: Example of panel to assess if a text is plain or not.

8. How to adapt a historical document? *The understanding*

Having done these two activities, the students rewrite a historical text. In that task, the students become aware of another use of plain language: it works to *adapt* an almost indecipherable text to an understandable one. In that case, we use plain language to *divulgate* information that is not strictly administrative. The students transform *capital texts of the history of Mexico*: the texts of Diego de Landa about the Mayan, the Columbus Letter on the first voyage, the Independence Act, the Treaty of Guadalupe-Hidalgo, the Treaty of Mesilla, for example. To do it, the students use all we have seen in the classroom and, moreover, they include maps, figures, statistics and images of *codices* or sculptures or whatever they want. In conclusion, they understand that *there are rules to make a text comprehensible* to other students, to children and, in general, to people with a different educational level. They appreciate their own work because, above all, they can understand documents that they hardly could understand before they transformed them.

9. How to test? *Evaluation and publishing*

The last two activities of the course are the exam and text’s publication. In the test, the students must transform a *real administrative text* using the knowledge they should have learnt. All the chosen texts are official and taken from authorized websites: the instructions to get the license to drive cars, the guidelines to renew the immigration document, the directions to make the tax declaration, for example. Finally, we publish the best plain-language documents of the class in *our website* (Martínez Villarroya, 2013): this is the way we have found to motivate the students, to publicize in Mexico what plain language is, and to denounce the obscurity of the majority of Mexican official documents.

10. What do we conclude? *The future*

Despite the difficulties we have explained, we also have successes: the law’s department of our university is renewing its confidence in us, and some ex-students proudly assure us that they are trying to use plain language in their jobs. Will the students use plain language when they become lawyers, judges, politicians, or public servants? Future will bring us the answer, but at least we know that our students know plain language a little bit. As our university is one of the most important in Mexico, it’s likely that some of them will be executive manager and directors in the private or public sector in a near future. Will they apply and require their subordinates to use it? We are working, but our work is modest and limited: we can only throw more and more seeds into space with the hope that, one day, they germinate. Maybe then, with clearly written words, Justice will be less blind.



Figure 5: *Justicia y Lengua* (Justice and Language): “our website” (Martínez Villarroya, 2013):

References

Consejo Nacional de Evaluación de la Política de Desarrollo Social (2012). *Informe de Pobreza en México 2010: el país, los estados y sus municipios*. México D.F.: CONEVAL.

Hernández, S. (2011). El analfabetismo pega a 640 municipios: *El Universal*. Recovered from <http://www.eluniversal.com.mx/primera/37448.html>, June 1, 2013, 12:00h.

Galán, R. M. & Canizales, A. (2012). The risks and challenges of fostering plain language in Mexico: *Clarity. Journal of the international association promoting plain legal language*. *Clarity*, number 68, November, pp. 38-39

Instituto Nacional de Estadística y Geografía de México (2011). *Estadísticas a propósito del día internacional de la alfabetización*. Recovered from <http://www.inegi.org.mx/inegi/contenidos/espanol/prensa/contenidos/estadisticas/2011/alfabetizaci%C3%B3n11.asp?s=inegi&c=2808&ep=69>, May 20, 2013, 14:00h

Martínez Villarroya, J. (Dir.) (2013). *Justicia y Lengua*. México D.F.: ITAM. Recovered from <http://carle.itam.mx/moodle/Justicia/>, June 6, 2013, 11:11h

The UNESCO Institute for Statistics (2012). *Adult and youth literacy*. Recovered from <http://www.uis.unesco.org/Library/Documents/fs20-adult-youth-literacy-2012-en.pdf>, June 6, 2013, 11:11h

Transparency International. *The 2012 corruption perceptions index* (2012). Recovered from, <http://cpi.transparency.org/cpi2012/>, June 6, 2013, 11:11h

© 2013 J Martínez Villarroya
javier.martinez@itam.mx

Javier Martínez Villarroya has the degrees of Philosophy and History, and a Ph. D. on Ancient Philosophy and Hermeneutics (Universitat de Barcelona). Moreover, he has done studies on Anthropology at the Universidad Nacional Autónoma de México. He has worked as cultural manager from the Catalan Government in Mexico and Hong Kong. He founded, and he is the director of Ex Novo, Revista d'Història i Humanitats. His research is focused on literary creation, plain language, rhetoric and comparative religion. Nowadays, he is a Full-Time Professor of the Instituto Tecnológico Autónomo de México, where he trains students of Law in plain language.



Book reviews

Comparative Legal Linguistics, by Heikki E S Mattila, translated by Christopher Goddard, 2nd edition, Ashgate Publishing Limited, 2013, ISBN 978-1-4094-3932-5, 485 pages, £75 GBP (publisher's website price £67.50)

https://www.ashgate.com/default.aspx?page=637&calcTitle=1&title_id=11450&edition_id=11805

Heikki E S Mattila is Professor of Legal Linguistics at the University of Lapland, Finland. With research interests in comparative law and legal linguistics, Mattila has published several studies on legal languages, especially legal Latin. He is also Docent of Comparative Law at the University of Helsinki. Mattila has a long-held interest in legal languages, which started in his undergraduate days. Having worked as a government official in the 1980s, and as a translator and lexicographer in the 1990s, he has a sound applied – as well as academic – background in legal language. Several other linguistic specialists have contributed to the book, including the head of the Finnish Division at the Translation Service of the Court of Justice of the European Union; a professor of law from the University of Oslo; and a professional Latinist.

So what is comparative linguistics? The Encyclopedia Britannica's website describes the discipline as the 'study of the relationships or correspondences between two or more languages and the techniques used to discover whether the languages have a common ancestor'. It explains the history of the field as follows: 'Comparative grammar was the most important branch of linguistics in the 19th century in Europe. Also called comparative philology, the study was originally stimulated by the discovery by Sir William Jones in 1786 that Sanskrit was related to Latin, Greek, and German.'

Legal linguistics is an important subject with much to contribute to the field of law in general – and to that of legal language in particular – but appears to be covered by very few other publications. Originally published in Finnish in 1998, Mattila’s groundbreaking book was first translated into English in 2006. It is dense (in the nicest-possible sense) and comprehensive: both the writing and the translation of such a detailed, precise and thorough work cannot fail to impress.

Structured in four parts (containing a total of ten chapters), the book opens with a general introduction looking at legal language and legal linguistics. It then examines legal language as a language for special purposes, evaluating its functions and characteristics, and the terminology of law, before analysing in detail (in the largest part of the book) the major legal languages of Latin, German, French, Spanish and English. Other languages are also discussed, including Arabic, Catalan, Danish, Dutch, Esperanto, Finnish, Flemish, Greek, Malaysian, Mandarin, Rumanian, Russian, Sami, Sanskrit, Swedish and Urdu.

The book concludes with a chapter on lexical comprehension and research needs, which would be of particular value to those wishing to pursue their own original work in this field. A useful appendix comprises a comprehensive table of the various foreign language terms and other expressions appearing in the main text – in not only Roman but also Cyrillic and Greek script. Laws and institutions in foreign languages are included, by name.

New to this second edition are the chapter on legal Spanish (in light of the increasing importance of the language) and a section exploring the use in legal circles of the two variants of the Norwegian language, Bokmål and Nynorsk. A key area of change since the first English edition has been in language use within the European Union, and these parts of the book have been thoroughly updated. All other chapters have also been revised, and include more detailed footnote referencing.

The book includes discussion of clarity and plain language in law, with a focus on the clarity of legal French, German and Latin; the precision and quality of legal language, and

efforts to improve this; plain-language wills; and the structure of judgements. Both Clarity International itself and Plain Language Association International get several mentions.

The target readers for the book are students, researchers and practitioners in legal history and theory, comparative law, semiotics and linguistics – as well as legal translators and terminologists. And Mattila’s masterpiece doubtless does deserve the attention of anyone concerned with the role of language in practising law, interested in comparing international and national legal systems, or motivated to explore linguistics in a range of contexts, from law to politics.

Sarah Carr has a first degree in French and Scandinavian language and linguistics with teaching English as a foreign language, and a master’s in business administration (MBA). Having worked as a healthcare manager for seven years, she became a freelance writer, editor and proofreader in 1997. Sarah has written a book, ‘Tackling NHS Jargon: getting the message across’ (Radcliffe Medical Press, 2002). Living in the UK with her husband and four children, Sarah enjoys volunteering as a holistic therapist at a local cancer support centre.



So goes *A Verb’s Lament*, one of 15 pieces in *Sketches on Legal Style*, by Mark Cooney (Carolina Academic Press 2013).

A verb and an author walk into a bar. In a twist on the usual bar joke, this morose verb laments his “nominalization” by lawyers who try to change a nice, simple verb into “some sort of highfalutin, abstract noun with a bunch of extra words.” So goes *A Verb’s Lament*, one of 15 pieces in *Sketches on Legal Style*, by Mark Cooney (Carolina Academic Press 2013). Extra words also form the “chains made from the boilerplate, archaic language that built a wall of intimidation and confusion,” shackling the ghost of Jacob Morely, the long-dead law partner of Ebenezer Scribe, in *A Legal-Writing Carol*, the lead sketch in this delightful collection.

Full disclosure: author Mark Cooney is my colleague in the writing department at the Thomas M. Cooley Law School, and my friend. I read many of these pieces before their original publication in the Michigan Bar

Journal's Plain Language Column, or in other journals. Mark's writing always makes me laugh, and it always makes me post his articles to my course web page, so my students can see that mastering all this clear-writing stuff that I keep harping on can be fun and entertaining.

But these short, funny pieces aren't just for academics—they are for all lovers of good writing who just wanna have fun. The 15 sketches include vignettes like the *Verb's Lament*; a Poe parody, in *The Pleading* ("Quoth the pleading, 'Heretofore.'"); a letter to a teacher, in *A Letter to Mrs. Finklebean*, wondering why she forbade beginning sentences with "And" or "But"; and a coming-of-age story in *I Was a Teenage Semicolon*. They also include essays like *The Extra-Stuff Rule*, to help simplify comma rules for those who aren't sure about the difference between a restrictive and non-restrictive element or a participial or prepositional phrase. So call it extra stuff and set it off with a comma.

In just 100 pages, Mark Cooney brings to life the world of words and clear sentences. He uses real-world examples (with footnotes!), coupled with witty stories and essays. *Sketches on Legal Style* makes the case for plain language, and if the medicine goes down with a laugh, so much the better.

Eileen Kavanagh is a professor at Thomas M. Cooley Law School, having taught *Legal Research & Writing* for 18 years. Before that, she was an appellate and civil litigation lawyer in Lansing, Michigan, and Chicago, Illinois, following her graduation from DePaul University College of Law.



Messages from the Presidents

Candice Burt's term as president ended at the October 2013 members' meeting in Vancouver. The members' meeting recommended and Clarity Committee approved the appointment of Joh Kirby as president.

This message from the presidents is in two parts — first a backward glance and farewell from Candice, and then a greeting from Joh.

From immediate past president Candice Burt

My warmest congratulations to Joh Kirby on her appointment as the next president. Clarity is in good hands and I have no doubt it will go from strength to strength.



The past three years were interesting times for Clarity. I took the helm of an organisation that had recently started a new course under the stewardship of Christopher Balmford. It was both an exciting and a challenging task. I am proud to have been part of this new direction and I am especially thrilled that the Clarity Constitution is to be adopted shortly.

The process of drafting the Constitution was a rigorous one, starting in 2010 with a survey of what members wanted from Clarity and its Constitution. Francesca Quint prepared the first draft based on the survey results. (Francesca Quint is a barrister practising from Radcliffe Chambers, Lincoln's Inn (London).)

The subcommittee worked through several drafts drawing on feedback from the main committee until we were able to present a draft for members in April 2013. By September 2013, the subcommittee produced a 'close to final' version (having incorporated the members' feedback). At the October members' meeting in Vancouver, a timetable for finalising the Constitution was put in place.

The Washington Conference in 2012 was another excellent Clarity conference. The quality of talks and the enthusiastic — and at

times hotly debated — discussions prove that there is strong support and commitment to plain language.

Clarity depends on the generosity of volunteers. Much of the work is done quietly, behind the scenes and we seldom get the opportunity to say thank you. So I am going use this platform to thank the following volunteers (in no particular order) for all their effort:

- Julie Clement, Editor-in Chief of Clarity, project coordinator of new journal design and constant source of advice and support;
- Joe Kimble, Membership secretary, ardent promoter of Clarity, and sage;
- Eamonn Moran, Chair of Constitutional subcommittee and Clarity liaison for the International Plain Language Working Group;
- Christopher Balmford, immediate past President, adviser and friend;
- Peter Butt, Committee member and source of much advice and encouragement;
- Helena Englund Hjalmarsson, website manager for many years;
- Cindy Hurst, coordinator of the administrative office;
- Francesca Quint, writer of first draft of Constitution;
- Amy Bunk, fellow member of the Constitutional subcommittee;
- Ben Piper, fellow member of the Constitutional subcommittee and project coordinator of the Laws project ;
- Tialda Sikkema, project coordinator of the Laws project ;
- Daphne Perry, organiser of Clarity breakfasts in London and initiator of Clarity LinkedIn;
- Nicole Fernbach, Clarity conference 2014 organiser;
- Josiah Fisk, designer of new Clarity look;
- James Fisher-Martins, fellow compiler of the survey and developer of online survey;
- Joh Kirby, social media coordinator
- Frances Gordon, developer of web strategy for Clarity;

- guest editors of Clarity over the past three years;
- the Clarity committee, including the country representatives (there are 26 countries represented on the committee);

Thank you, finally, to the members. I feel so humbled by the many wonderful messages I received after the letter announcing the end of my term. I look forward to being part of Clarity for many years to come.

Candice Burt, immediate past President of Clarity

From president Joh Kirby

This is my first message as President, and it is with a great deal of excitement, but also some trepidation, that I take on the role. Clarity is an organisation that has played an important part in my professional life and I want to repay it during my term.



One of my first formal responsibilities as President must be to warmly thank our outgoing President, Candice Burt, for her hard work. One of Candice's most significant achievements has been nurturing the organisation's first constitution through to its final draft. By the time this journal goes to print, hopefully the constitution will be fully signed off and stand as a legacy of her term. Without Candice's contribution the constitution would not have happened. So thank you, Candice, and I look forward to working with you in your continued role as a country representative.

While I have met many members at conferences over the years, it is inevitable that some of you won't know me. So here's a little about myself. I am a lawyer with a focus on helping members of the public understand the law and their legal system. I am the Executive Director of the Victoria Law Foundation located in Melbourne, Australia. In 2011 I completed a research paper as part of my Churchill Fellowship on best practice in community legal information and produced a report that has been used widely in Australia to improve this information. You can find more information about my work at

www.victorialawfoundation.org.au. Apart from plain language, I have a strong interest in corporate governance and management that I hope will assist me in my new role.

As President I plan to pick up the work that Candice has already commenced on governance. This will look beyond our new constitution to the future and how we can work more effectively as an international body. Part of this will be about capturing existing knowledge in Clarity and setting up systems that will survive beyond the terms of individuals.

Another area that I plan to focus on is communication. Julie Clement does a fantastic job publishing our journal each year and ensuring that it is one of the organisation's key strengths. We need to build on this work and broaden our range of communication channels. This will include the addition of an e-newsletter starting in 2014 and a review of our website. The website review has already commenced. There has already been considerable work done on updating the content on the current website. As many of you have already recognised, there is a need to redesign the website to make it speak more accurately to the work of the organisation. This work will commence in 2014. Please be patient while this activity moves forward.

In the meantime, keep up-to-date with the progress of both of these activities through Twitter (#clarityInterna). Following us is a great way of finding out about new information added to the website and as well as about what's on. We are also trying to build the profile of our country representatives through Twitter, so look out for new members in this area. If you are a country representative and have a Twitter account, please let the claritywebsitemanager@gmail.com know so that it can be included on the website and Tweeted to our followers. And if you are a country representative and don't have a Twitter account, but would still like to get your message out there, send any comments or ideas to the same address.

So what has been happening since the last journal? A lot. Some of this has been covered in Candice's message. To other things, though.

Many Clarity members attended the PLAIN2013 meeting in Vancouver. It was great to catch up with so many members and find out what is happening in their country. Clarity held a meeting at the conference in which members had an opportunity to review the final draft of the constitution. I am pleased to say that it received in-principle support from the membership that has allowed the final approval to move forward. I was also elected at this meeting.

A meeting of the International Plain Language Working Group also took place at this time and reinvigorated its work going forward. A full report can be found on our website.

Work is still continuing on the Law Project, with Ben Piper and Tialda Sikkema as joint project coordinators. This project, which looks at what laws exist across the world to promote plain language, needs your help. If you know of laws of this type in your country, can you please send them through to Tialda at tialda.sikkema@hu.nl.

And looking forward, Clarity's next conference will take place in conjunction with IC Clear on 12-14 November 2014 in Belgium. Put the date in your diary and watch this space for more information.

Finally, an organisation such as ours is only as good as our membership. If you have ideas or would like to be more involved in the work of Clarity, please do not hesitate to contact us.

Best wishes for 2014.

Joh Kirby

December 2013