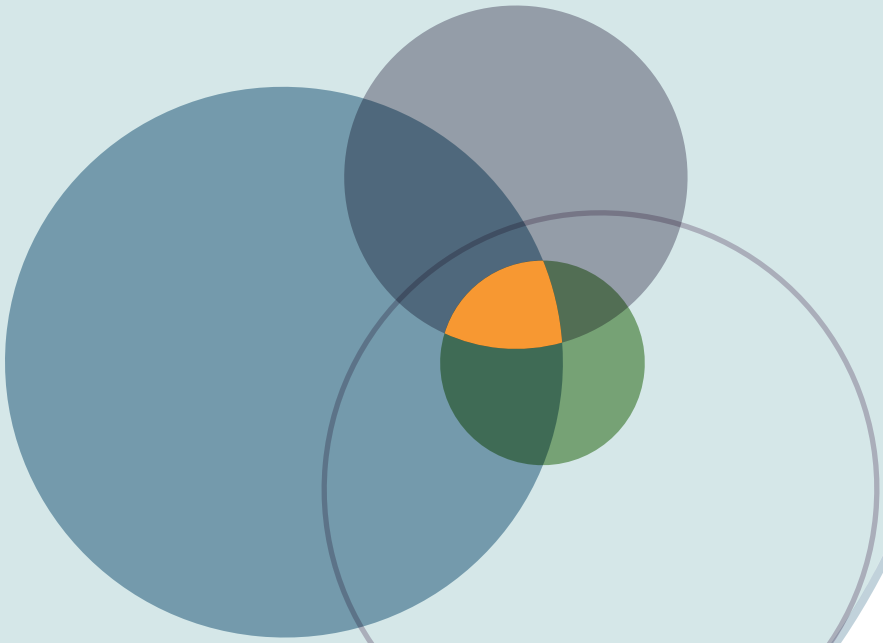
Number 73(1) 2015

The Clarity Journal

Published by Clarity, the international association promoting plain legal language



clarity

From the President

Welcome to the 73 edition of the Clarity Journal which is the second in our new design courtesy of our friends at More Carrot. Thank you once again.

It is great to be able to announce our next conference: Clarity2016: The Business of Clarity – a plain language conference for law, business and government. This year we have partnered with Lynda Harris and the team at WRITE to deliver the conference and it will be held in Wellington, New Zealand, on 3-5 November 2016.

Many of you will know Lynda and her work. She has been a regular presenter at our conferences and contributor to the journal. If you attended the recent PLAIN conference in Dublin you will also be aware that she received the prestigious Christine Mowat Plain Language Achievement Award in recognition of her service to plain language. More information on WRITE is available on their website WRITE.co.nz.

Already we have a great range of speakers in place and I am particularly pleased that the conference will be opened by Clarity Patron, the Hon Michael Kirby AC CMG. But we also want to hear from you. The 'call for papers' for Clarity2016 is now open and closes on 22 April 2016. If you have an idea for a presentation or workshop that covers evidence-based, accessible writing in law, business, and government submit your proposal today.

Wellington and the surrounding area is one of the most beautiful parts of the world with lots of activities and culture to experience. So don't be daunted by the distance – it will be worth the effort.

I know from working with Lynda and her team that their passion and dedication to plain language will ensure that Clarity2016 will be an exciting and stimulating event not to be missed.

To find out more about the conference including registration and call for papers visit the conference website at clarity.org.

Reading this journal is a good way to inspire you about our conference. Our editor-in-chief, Julie Clement has once again brought together an excellent journal filled with a range of thought provoking papers that relate directly to our work. Thank you once again Julie for your dedication.

Clarity2016
3–5 November 2016 Wellington, New Zealand

Joh Kirby
Clarity International
claritypresident@gmail.com

Editor's note

When I took over as editor in chief of *Clarity* (now *The Clarity Journal*), I felt confident it would be a short gig – maybe a few years, tops. It's now been over a decade, and I learn something new with every single issue. I hope you do, as well. This is one of our "catch-all" issues, in which we feature articles that haven't worked neatly into one of the themed issues. In my view, these are goldmine issues, packed full of myriad tips, research, and ponderings from a variety of voices.

We start this issue with two colleagues from my law-professor days: Professor Mark Cooney and Professor Joe Kimble. Mark provides us with a practical approach to clarifying legal text in a statute, although his methods and examples are useful with any legal text. I especially appreciate Mark's step-by-step approach. Joe (forgive the lack of formality, Professor Kimble) has shared one of his well-received articles from the Michigan Bar Journal, in which he, too, takes us step by step through a legal document – this time, a court rule.

Next in our examination of drafting is a piece from Cheryl Stephens, *Recent developments in contract drafting techniques*. Cheryl not only delivers what the title promises, but she provides a number of valuable resources along the way. Fascinating!

This issue then turns away from drafting and addresses a question that many, many of you have raised throughout the years: "How do I start local Clarity meetings?" Daphne Perry is the reigning leader in this area, having created and sustained Clarity meetings in London for many years. Her article provides readers with straightforward, step-by-step advice. Wouldn't you love to connect to other plain-language enthusiasts in your own area? I hope Daphne's advice will result in at least ten new local meetings by this time next year!

The next piece in this issue diverges a bit (okay, a lot) from the journal's typical fare, and I'm delighted to include it. Carol Clasby takes us on an entertaining romp through history, and invites us to think about what comes next in the communication world. Will we be the innovators or the responders?

We then turn to reports from Justyna Zandberg-Malec in Poland, and from Professor Arnfinn Muruvik Vonen in Norway. These pieces help us catch up on what's going on in both countries, including debates, progress, and strategies to advance plain language.

Finally, this issue includes reviews of books by Sarah Carr, Susan McKerihan, and Lynda Harris. I can't wait to read all three, and I'm grateful to reviewers Catherine Buckie, Justice Michael Kirby, and Kate Harrison Whiteside.

I hope you'll enjoy this eclectic, multi-faceted issue. But if themes are more to your liking, stay tuned: the next two issues are conference issues. In issue 74, we've pulled together a collection of articles from the Clarity conference in Antwerp, and in issue 75, we'll cover articles from presentations at PLAIN's Dublin conference last year. Both issues will be out soon.

Julie Clement
The Clarity Journal
clarityeditorinchief@gmail.com

In this issue

The architecture of clarity

Mark Cooney,
Mark Cooney chairs the writing department at Western Michigan University Cooley Law School. He is editor in chief of *The Scribes Journal of Legal Writing* and has served as a plain-language consultant to the Michigan Supreme Court's and the State Bar's committees on model criminal jury instructions. His book, *Sketches on Legal Style*, collects his "Plain Language" columns from the *Michigan Bar Journal*.

By Mark Cooney

Some may see the quest for plain language as little more than an exercise in word choice—picking a smaller word here or there in place of a bigger word, or picking a single word in place of a wordy phrase. But achieving clarity involves much more. It's a process that works a variety of analytical and editorial muscles.

Clarity comes from a firm grasp on substantive meaning, of course. At the micro level, it requires an acute radar for ambiguity and a host of fine editorial techniques. And yes, word choice plays a role. But we mustn't forget about large-scale architectural work: the careful organization of text. If we miss that part of the process, our quest for clarity will fall short.

With all this in mind, let's go through the process of clarifying a legal text, working systematically. And let's see how a large-scale redesign becomes the foundation of our effort.

1 THE PATIENT

For our original text, I've chosen a single subsection of Michigan's medical-marijuana statute. (Though the statute spells *marijuana* with an *h,* I'll use a *j*, the primary spelling found in Merriam-Webster and in Oxford's American and English dictionaries.) The statute is fairly recent, enacted in 2008. And it's not the worst provision I've seen, not by a long shot. It's not laden with hardcore legalese. But it's still woefully typical:

> (f) A physician shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by the Michigan board of medicine, the Michigan board of osteopathic medicine and surgery, or any other business or occupational or professional licensing board or bureau, solely for providing written certifications, in the course of a bona fide physician-patient relationship and after the physician has completed a full assessment of the qualifying patient's medical history, or for otherwise stating that, in the physician's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition, provided that nothing shall prevent a professional licensing board from sanctioning a physician for failing to properly evaluate a patient's medical condition or otherwise violating the standard of care for evaluating medical conditions.[1]

As you surely noticed, this provision is a single 165-word sentence with a number of distinct ideas in it. It's the type of dense, disorganized text that we've grown accustomed to in the legal profession. It needs help.

2. THE CURE

First, the usual disclaimers. An actual redraft of legislation would be a comprehensive effort. And the drafter would consult experts to avoid straying from intended meaning or true terms of art. This type of collaboration leads to some give-and-take, but it's the prudent—not to mention realistic—approach.

Having said that, a drafter shouldn't work scared. We don't want inhibitions to suffocate good drafting instincts. So, recognizing the probability of later tweaks, let's attack this medical-marijuana provision step by step, until it's a writing that's more accessible while still sophisticated in content.

Step 1: Read it. After you've read it, read it again—and again.

This step is obvious, and cynical readers might view it as fluff or a grab at silly humor. It's not. And my point goes beyond practicalities: too many readers blame themselves for struggling through unwieldy text. But those struggles more often reflect the drafter's lack of training or empathy, or both. So take your time and feel no shame, reader. Give it another look—or two. Then we'll move on.

Step 2: List the big ideas.

Now that we've read over the text a few times, we can list its main ideas. As is too often the case with traditional legal drafting, our medical-marijuana provision crams a number of big ideas into a solid wall of unbroken text—into a single sentence—with no signals to help readers figure out what's in there.

Professor Joseph Kimble found similar provisions during his work on the (U.S.) Federal Rules of Civil Procedure, noting that many of the original rules "used no headings," thus obscuring their "disorder."[2]

By pulling out the big ideas and listing them, we have the start of a new reader-friendly organizational structure:

- Doctors are usually protected (for prescribing marijuana)
- There are conditions for this protection
- There's an exception for malpractice

With just a little reworking, this primitive list of big ideas translates into a heading and subheadings for our first draft, allowing us to divide the text into more manageable parts:

(f) Protection for Physicians
  (1) Scope
  (2) Conditions
  (3) Exception

These headings will be our reader's best friend. After all, "[g]ood headings and subheadings are vital navigational aids for the reader."[3]

Step 3: Put each part of the text beneath the big idea it belongs to.

Now that we have our provision's new skeleton, we can put some meat on those bones. Some call this "classifying" text.[4] We'll go back to the original text and pull it apart, being careful to put each piece beneath the heading it logically belongs to—kind of like sorting laundry into piles. (Don't put a red idea into the white section.)

I often use highlighters at this stage. For instance, if I use yellow to highlight language expressing a general rule, I'll switch to orange for language stating the rule's conditions and to green for language stating exceptions, and so on. If the original text is in disarray, the highlighters show it in living color. You'd be surprised (or maybe not) how often intruding ideas separate language that relates to the same concept.

For now, let's just paste the fragments of original text into their proper places under our rough headings; let's not worry about editing the text itself, no matter how ungainly the draft looks when we're done. Undue worry about microedits now may distract us from our immediate goal: large-scale reorganization. There will be plenty of time later for fine-tuning language.

Our initial—rough—effort might look something like this:

(f) Protection for Physicians

(1) Scope

- A physician shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by the Michigan board of medicine, the Michigan board of osteopathic medicine and surgery, or any other business or occupational or professional licensing board or bureau, solely for providing written certifications . . .
- or for otherwise stating that, in the physician's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition

(2) Conditions

- the patient's serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition
- in the course of a bona fide physician–patient relationship and after the physician has completed a full assessment of the qualifying patient's medical history,

(3) Exception

- provided that nothing shall prevent a professional licensing board from sanctioning a physician for failing to properly evaluate a patient's medical condition or otherwise violating the standard of care for evaluating medical conditions.

It's fragmented and incoherent, yes. But we're only halfway done.

Step 4: Now, attack the text.

Now that we're organized, we can polish the text. During this step, we should think about whether to divide or shorten sentences, create reader-friendly vertical lists, define terms, and the like. A definition might help us tame a complex series. For instance, in our tentative subsection (1), we need to state that doctors won't face any sort of punishment for prescribing marijuana or concluding that a patient will benefit from it. We'll streamline that with a definition of "punished" and, for this initial redraft, tuck that definition right into the text, knowing that we might move it later.

By the way, the statute refers to *written certifications* instead of *prescriptions*, so we're probably stuck with that term of art. And we may resort to the passive voice because so many potential actors might take action against a doctor (police, prosecutors, medical boards, patients).

Our first attack on the text might produce something like this:

(f) Protection for Physicians

(1) Scope

A physician may not be punished for giving a patient a written certification for marijuana or for concluding that the patient will benefit from marijuana. "Punished" includes being arrested, prosecuted, assessed a civil penalty, or professionally disciplined.

(2) Conditions

The protection described in subsection (1) applies only if:

(a) the patient's medical condition was serious or debilitating, and the marijuana treated that condition or its symptoms;

(b) the physician had a bona fide physician–patient relationship with the patient; and

(c) the physician fully assessed the patient's medical history before giving the written certification or diagnosing the patient's condition.

(3) Exception

Subsection (1) does not prevent a professional licensing board from sanctioning a physician who fails to properly diagnose a patient's condition or who otherwise violates the standard of care.

Note again that the original was a single 165-word sentence covering all the subjects in our redraft. Yet there was enough in that one sentence to easily justify three subparts covering three related, yet distinct, concepts.

Step 5: Let the new draft sit, and revisit it later with fresh eyes.

After our reorganization and initial attack on the text, our next step would be to put the draft away and stop working on it. Then, with refreshed eyes, we could go back and wrestle with the finer points—word choice, for example.

This step would bring to bear our earlier research. Does the broader statute define *physician* and thus prevent us from using the word *doctor* instead? (Yes.) Is a *serious* condition different than a *debilitating* condition? Doesn't *serious* cover both categories? Could a condition possibly be debilitating without being serious? Probably not, but the statute specifically defines *debilitating medical condition*, so we'd have to leave it or tweak the defined term. (In my redraft, I've broken up and reshuffled the phrase *debilitating medical condition* to enhance readability.)

I'm still not happy that our main provision is so passive-voice heavy. But again, in this context many potential actors might try to punish a doctor in one way or another. So the passive voice makes sense for capturing the statute's broad protections without risking the accidental omission of a possible actor.

Our redraft also uses the normally discretionary *may*. The *not* that follows it eliminates discretion and signals a prohibition.[5] Still, we'd mull that *may not* choice to ensure that it wouldn't leave a gap for bad-faith readers to sneak through. Some might prefer "A physician is not subject to punishment for . . . ." Yet that version leaves a nominalization. It could come down to a choice between the lesser of two evils. (Oh, the joys of drafting.)

We'd also want to revisit our headings. There's no rule requiring one-word subheadings. Some drafters might prefer a more informative style. For instance, our redraft's first subheading is *Scope*. We might experiment with something like this instead:

(f) Protection for Physicians

(1) No punishment for decisions about marijuana

A physician may not be punished for providing a written certification for marijuana or for concluding that a patient will benefit from marijuana. . . . [etc.]

3. HEALTH RESTORED

Again, clarity—"plain language"—means so much more than word choice or small-scale edits. It's a process, and it's a process that begins with a look at the big picture.

The original provision here wasn't full of hardcore lawyerspeak. Yes, there was a false imperative at the start ("A physician shall not be subject to" instead of "A physician is not subject to"). There was an old-school proviso, which is always a recipe for potential ambiguity.[6] There was the usual overprecision.

Yet overall, the word choices weren't egregious. Our clarification came mostly from our reorganization—our architectural work. We tried our best to divide the text with informative headings, and we put each part of the text where it best fit. This produced a draft that would be much easier for readers—judges, lawyers, the public—to use and understand.

That's plain language in my book.

Notes

1 Mich. Comp. Laws Ann. § 333.26424(f) (West, WestlawNext through P.A. 130 of 2015 Reg. Sess.).

2 Joseph Kimble, Lessons in Drafting from the New Federal Rules of Civil Procedure, 12 Scribes J. Legal Writing 25, 28 (2008–2009).

3 Id. at 72.

4 See, e.g., Barbara Child, Drafting Legal Documents: Principles and Practices 133 (2d ed. 1992)

5 See, e.g., Jean Steadman, Drafting Legal Documents in Plain English 78 (2013) (noting that *may not* "indicates a prohibition").

6 A Dictionary of Legal Usage 727 (Bryan A. Garner ed., 3d ed. 2011).

You think lawyers are good drafters?

By Joseph Kimble

Joseph Kimble,
Joseph Kimble is a distinguished professor emeritus at WMU–Cooley Law School. He now provides seminars for legal and business organizations. (See kimblewritingseminars.com.) He has written two books—Lifting the Fog of Legalese and Writing for Dollars, Writing to Please—along with many articles. He is senior editor of The Scribes Journal of Legal Writing and the longtime editor of the "Plain Language" column in the Michigan Bar Journal. Since 1999, he has been a drafting consultant on all U.S. federal court rules. He has received several national and international awards, including a 2007 award from PLAIN for his leadership in the field. And he is a former president of Clarity.

No, I'm sorry, but most lawyers are not skilled drafters. It doesn't matter how smart or experienced they are or how many legal documents they have drafted. Most — a supermajority, probably — are lacking. And yet, oddly enough, while they tend to be blind to their own shortcomings, the poor quality of others' drafting is plain for them to see.[1] When was the last time you heard a lawyer praise the clarity of a statute or rule or contract?

Elsewhere, I've identified five reasons for this professional deficiency,[2] but I think two of them stand out. First, until very recently, law schools have tended to neglect legal drafting. Shamefully neglect. For how can lawyers practice effectively without training in how to draft — and critically review — legal instruments? Second, rather than take it upon themselves to acquire the skill, lawyers naturally turn to formbooks — those bastions of dense, verbose, antiquated drafting. So the ineptitude cycles on.

Neglect by law schools. The poor models in formbooks. If anything, law schools have historically provided a perverse kind of antitraining — through the models that the profession itself saddled them with. Think of the generations of law students who studied, intensively, the Internal Revenue Code, the Uniform Commercial Code, the Federal Rules of Civil Procedure, and the Federal Rules of Evidence, among other such promulgations. And I doubt that many professors made it a point to criticize the drafting in those laws and rules or occasionally asked the class to work on improving a provision. So most law students must have come away with the impression that the drafting was perfectly normal and generally good. Well, it may have been normal, but it was far from good, as I've tried to show.[3] The heartening news is that current and future generations will at least not have to endure the old Federal Rules of Civil Procedure and Rules of Evidence, since completely redrafted sets took effect in 2007 and 2011.

Still, we need to be constantly reminded of how pervasive the ailment is in our profession, so I'll dutifully keep nagging.

Another Would-Be Model

In October 2012, the Charleston School of Law hosted a symposium on Federal Rule of Evidence 502 — governing the extent to which a waiver occurs when a party discloses legally protected information. As part of the symposium, the participating judges, lawyers, and professors prepared a "model" order to carry out Rule 502(d), which allows a judge to order that a disclosure connected with pending litigation does not create a waiver. The order was published in the *Fordham Law Review*,[4] and it presumably has since come to the attention of federal district judges. Thus, another typical piece of drafting makes the rounds as an imitable form, an example to follow, a convenient resource.

At the end of this article, I have reproduced the order as published. (On a positive note, the word *shall* is nowhere to be found.) Alongside it is my redraft. I decided against annotating the original in detail — to spare readers a swarm of forbidding

footnotes. Instead, I'll just highlight the drafting slips in the original and stand on the comparison between the two versions.

So what's wrong?

- The original uses 125 more words than the revision.
- The first sentence favors us with hardcore legalese — *pursuant to.*
- The original uses four unnecessary parenthetical definitions (starting with "Disclosing Party"). This is one of the worst tics of all — producing any number of distracting, unnecessary capitals.
- In several places, the original departs from the language of Rule 502 for no apparent reason. For instance, section (a) uses *waiver or forfeiture,* but *forfeiture* does not appear in 502. And then (b) drops *forfeiture*, creating further inconsistency. For another instance, (a) refers to information that is *privileged* — generally — or *protected by the attorney–client privilege*. But 502 refers to the latter only. Why the difference?
- The sequence of events seems questionable. Under (b), the receiving party must — unless it contests the claimed privilege or protection — notify the disclosing party that the receiving party will make best efforts to properly handle the information. Then the disclosing party has five business days to explain its claim. But can the receiving party usually know whether to contest the claim before getting the explanation? My redraft follows the sequencing in the original, but should the disclosing party's explanation (my (d)) accompany its original notification (my (b))?
- The second sentence in (a) is 94 words. The average sentence length in the original is 34 words. The revised version averages 26.
- The second sentence begins with the truism *Subject to the provisions of this Order.* And note the pointless (and inconsistent) capitalization of *order*.
- Besides *pursuant to*, (a) contains two other multiword prepositions — *in connection with* and *with respect to.*
- (b) and (f) both contain unnecessary cross-references.
- (b) should be divided into additional sections.
- (b) uses *review, dissemination, and use*, but (e) uses *examining* or *disclosing* for what seem to be the same ideas.
- (e) and (g) start with *Nothing in this order,* but (h) doesn't follow suit.
- (e) uses *privileged* only, not *privileged or protected*. Is that difference intended?
- (f) switches from *Proving* in the heading to *establishing* in the text. What's the difference?
- The relationship between the two sentences in (h) needs clarifying, but I didn't venture into that.
- After the first mention, *attorney-client privilege or work product protection* can be shortened to *privilege or protection*. That's what Rule 502 does.
- *Work-product protection* needs a hyphen throughout.

Incidentally, if my revision makes some inadvertent substantive change, it would be easy to fix and would hardly rationalize the old-style drafting in the original.

One more time: legal drafting is a demanding skill that needs to be learned and practiced. The more important the project, and the more it affects the public or the profession, then the more important it is that this skill shine through.

Notes

1 *See* Bryan A. Garner, *President's Letter*, The Scrivener 1, 3 (Winter 1998) (reporting on the author's survey of lawyers at his seminars: they view only 5% of the documents they read as well drafted, but, amazingly, 95% would claim that they draft high-quality documents).

2 *See Another Example from the Proposed New Federal Rules of Evidence*, 88 Mich. B.J. 46 (Sept. 2009), available at www.michbar.org/journal/pdf/pdf4article1570.pdf.

3 *Lessons in Drafting from the New Federal Rules of Civil Procedure*, 12 Scribes J. Legal Writing 25 (2008–2009); *Drafting Examples from the Proposed New Federal Rules of Evidence*, 88 Mich. B.J. 52 (Aug. 2009), 46 (Sept. 2009), 54 (Oct. 2009), 50 (Nov. 2009), available at www.michbar.org/generalinfo/plainenglish/.

4 Symposium Participants, *Model Draft of a Rule 502(d) Order,* 81 Fordham L. Rev. 1587 (2013).

MODEL DRAFT OF A RULE 502(d) ORDER	REVISED DRAFT
(a) No Waiver by Disclosure. This order is entered pursuant to Rule 502(d) of the Federal Rules of Evidence. Subject to the provisions of this Order, if a party (the "Disclosing Party") discloses information in connection with the pending litigation that the Disclosing Party thereafter claims to be privileged or protected by the attorney-client privilege or work product protection ("Protected Information"), the disclosure of that Protected Information will not constitute or be deemed a waiver or forfeiture — in this or any other action — of any claim of privilege or work product protection that the Disclosing Party would otherwise be entitled to assert with respect to the Protected Information and its subject matter.	**(a) No Waiver by Disclosure.** This order is entered under Federal Rule of Evidence 502(d). It applies when a party discloses information connected with this litigation and later claims that the information is covered by the attorney–client privilege or work-product protection. By disclosing, the party does not waive — in this action or any other — any claim of privilege or protection concerning the information or its subject matter.
(b) Notification Requirements; Best Efforts of Receiving Party. A Disclosing Party must promptly notify the party receiving the Protected Information ("the Receiving Party"), in writing, that it has disclosed that Protected Information without intending a waiver by the disclosure. Upon such notification, the Receiving Party must — unless it contests the claim of attorney-client privilege or work product protection in accordance with paragraph (c) — promptly (i) notify the Disclosing Party that it will make best efforts to identify and return, sequester or destroy (or in the case of electronically stored information, delete) the Protected Information and any reasonably accessible copies it has and (ii) provide a certification that it will cease further review, dissemination, and use of the Protected Information. Within five business days of receipt of the notification from the Receiving Party, the Disclosing Party must explain as specifically as possible why he Protected Information is privileged. [For purposes of this Order, Protected Information that has been stored on a source of electronically stored information that is not reasonably accessible, such as backup storage media, is sequestered. If such data is retrieved, the Receiving Party must promptly take steps to delete or sequester the restored protected information.]	**(b) Giving Notice of the Disclosing Party's Claim.** The disclosing party must, in writing, promptly notify the party receiving the information that it is privileged or protected and that no waiver is intended. **(c) Action by the Receiving Party if It Does Not Contest the Claim.** Upon receiving notice, the receiving party must promptly do the following unless it contests the claim: (1) notify the disclosing party that it will make its best efforts to identify and to return, sequester, or destroy (or electronically delete) the information and any reasonably accessible copies it has; and (2) certify that it will not further review, disseminate, or use the information. [The information is sequestered if stored on an electronic source that is not reasonably accessible. If the information is retrieved, the receiving party must promptly take steps to sequester or delete it.] **(d) Explanation by the Disclosing Party.** Within five business days after receiving the best-efforts notice in (c), the disclosing party must explain as specifically as possible why the information is privileged or protected. [*Should the explanation accompany the notice in (b)?*]
(c) Contesting Claim of Privilege or Work Product Protection. If the Receiving Party contests the claim of attorney-client privilege or work product protection, the Receiving Party must — within five business days of receipt of the notice of disclosure — move the Court for an Order compelling disclosure of the information claimed as unprotected (a "Disclosure Motion"). The Disclosure Motion must be filed under seal and must not assert as a ground for compelling disclosure the fact or circumstances of the disclosure. Pending resolution of the Disclosure Motion, the Receiving Party must not use the challenged information in any way or disclose it to any person other than those required by law to be served with a copy of the sealed Disclosure Motion.	**(e) Contesting the Claim.** If the receiving party contests the claim of privilege or protection, then within five business days after receiving notice of the claim, the receiving party must move for an order compelling disclosure of all or part of the information. The motion must be filed under seal and must not assert as one of its grounds the facts or circumstances of the disclosure. While the motion is pending, the receiving party must not use the challenged information in any way or disclose it to anyone except those who are legally required to be served with the motion.
(d) Stipulated Time Periods. The parties may stipulate to extend the time periods set forth in paragraphs (b) and (c).	**(f) Stipulating to a Different Time Period.** The parties may stipulate to extend the time periods in (d) and (e). **(g) Burden of Proving Privilege or Protection.** The disclosing party has the burden of proving a contested claim of privilege or protection.
(e) Attorney's Ethical Responsibilities. Nothing in this order overrides any attorney's ethical responsibilities to refrain from examining or disclosing materials that the attorney knows or reasonably should know to be privileged and to inform the Disclosing Party that such materials have been produced.	**(h) Attorney's Ethical Responsibilities.** This order does not override an attorney's ethical responsibility to (1) refrain from reviewing, disseminating, or using materials that the attorney knows or reasonably should know to be privileged and (2) inform the disclosing party that those materials have been produced.
(f) Burden of Proving Privilege or Work-Product Protection. The Disclosing Party retains the burden — upon challenge pursuant to paragraph (c) — of establishing the privileged or protected nature of the Protected Information.	
(g) In camera Review. Nothing in this Order limits the right of any party to petition the Court for an in camera review of the Protected Information.	**(i) In Camera Review.** This order does not limit a party's right to petition the court to review the information in camera.
(h) Voluntary and Subject Matter Waiver. This Order does not preclude a party from voluntarily waiving the attorney-client privilege or work product protection. The provisions of Federal Rule 502(a) apply when the Disclosing Party uses or indicates that it may use information produced under this Order to support a claim or defense.	**(j) Voluntary and Subject-Matter Waiver.** This order does not preclude a party from voluntarily waiving the attorney–client privilege or work-product protection. Federal Rule of Evidence 502(a) applies when the disclosing party uses or indicates that it may use information produced under this order to support a claim or defense.
(i) Rule 502(b)(2). The provisions of Federal Rule of Evidence 502(b)(2) are inapplicable to the production of Protected Information under this Order.	**(k) Inapplicability of Rule 502(b)(2).** Federal Rule of Evidence 502(b)(2) does not apply to producing information under this order.

Recent developments in contract drafting techniques

Cheryl Stephens, BA (Hons), JD, has devoted 25 years to the plain language movement, founding Plain Language Association InterNational and International Plain Language Day. She has written 4 books on plain language, including Plain Language Legal Writing.

By Cheryl Stephens, with thanks to Sylvie Gregoire for sharing her thoughts and examples

There is an ever-increasing need and demand from the public for information that is accessible, transparent, and easy to understand. When we view contracts as working documents—binding guides to action–rather than legal records, we write to engage people to read and understand them, improve commercial relationships, minimize risk, and prevent workplace frustration.

This report brings you up to date on developments applying brain research, empathy, collaboration, and design principles to contracts.

Scientific research in two fields affects writing as communication–neuroscience and psychology:

> Writers employing plain language plan, design, and organize their documents in an overall effort to achieve clear communication with the reader.

And the Winner Is: How Principles of Cognitive Science Resolve the Plain Language Debate (2011) by Julie A. Baker, Associate Professor of Legal Writing, Suffolk University Law School, http://ssrn.com/abstract=1915300.

Baker adds:

> ... most of the time, plain language is, in fact, the right way to write, as it is 'fluent' and thereby inspires feelings of ease, confidence, and trust in readers (whereas legalese is 'disfluent,' engendering feelings of dislike and mistrust).

Stephen R. Diamond has also written about cognitive science:

Cognitive disfluency: Simpler isn't always better at *http://disputedissues.blogspot.com/2011/09/cognitive-disfluency-simpler-isnt.html*

The dialectic of clarity: Cognitive fluency vies with cohesion at *http://disputedissues.blogspot.com/2012/04/dialectic-of-clarity-cognitive-fluency.html*

Other resources

Legal ease and 'Legalese' by James Hartley (Department of Psychology , Keele Universit,Staffordshire, STS 5BG, UK) at *http://www.tandfonline.com/doi/abs/10.1080/10683160008410828#.VMFs1Cz4Qrg*

The Reader's Limited Capacity: A Working-Memory Theory for Legal Writers by Andrew M. Carter (Associate Clinical Professor, Sandra Day O'Connor College of Law, Arizona State University) at *http://www.alwd.org/lcr/fall-2014-volume-11/the-readers-limited-capacity-a-working-memory-theory-for-legal-writers/*

Understand the transaction

What are the client's goals and expectations?

Is the client's intention met?

A contract's purpose is to reflect the parties' common intention. The drafter must devote the necessary time and energy to capture the scope of the parties' understanding:

- what are their needs, requirements, and objectives, and
- how will they be achieved?

Clients understand their own business environment, issues, and desired outcomes of the transaction for which a contract is required. These need to be clearly communicated to you, the drafter. The actual process, mechanics, steps, and limits must be discussed and understood. Without this very important preparatory work, the best-drafted contract may fail to reflect the parties' common intention.

Understand the transaction to:

- Select the right type of transaction
- Decide on appropriate contract provisions

Practice Empathy

Using plain language requires the writer to identify with and understand the reader and his or her perspective: feelings, thoughts, attitudes, and expectations. Russell Willerton, professor of English at Boise State University, authored Plain Language and Ethical Action. Here is how he puts it:

> When you empathize with the users of a website or system, you see things from their perspectives and not just your own. Through empathy, you can realize that not everyone knows who does what or what goes where in an organization. Not everyone knows the jargon, buzzwords, and insider lingo.

Empathy is also key to harmonious relations and retention with clients, suppliers or other partners. Empathy isn't limited to family law and probate kinds of matters, but can be applied in many other contexts. Lawyer J. Kim Wright gives workshops around the world on writing contracts that help establish, nurture, and change business relationships. She recently commented on the LinkedIn group Plain Language Advocates:

> Conscious Contracts aren't just a translation of boilerplate. They have a different tone, structure, and purpose: rather than creating a document to protect your client from potential harm, you make a document that creates a sustainable relationship. Some of the words and clauses may be the same, but the context and language are relational, not protective. In CC, we have conversations about purpose and values that then get integrated into the contract, with a dispute resolution clause that ties the values to resolution.

Wright recently posted this article: *http://jkimwright.com/conscious-contracts-bringing-purpose-and-values-into-legal-documents/* She also offered these resources on that approach:

www.consciouscontracts.com

www.discoveringagreement.com

http://resolutionworks.com/

http://www.amazon.com/The-Book-Agreement-Essential-Elements/dp/1576751791

http://www.blueprintofwe.com/

Who else says plain language can improve your contracts?

The new CEO of IBM focused its legal department on simplifying contracts to improve customer service. A new 4-page relationship agreement is used for all IBM products. The contract for cloud services is just 2 pages. Critics have suggested that they could still make it plainer if not shorter. Still the International Association for Contract and Commercial Management named IBM a finalist for its 2014 Innovation Award for Operational Improvement.

Writing in American Banker, Duncan MacDonald, former General Counsel of Citigroup Inc. European and North American card business, is a long time-supporter of plain legal language. He supports simplification: "There is no good reason that basic loans can't fit on one page in a reasonable type size, and mortgages in not more than four. Don't let the lawyers bully you into thinking otherwise." *http://clarity-international.net/journals/51.pdf*

In her comprehensive book *"Drafting contracts, How and why lawyers do what they do"*, Tina L. Clark states, "Legalese annoys almost anyone who reads contract – whether client, lawyer or judge. Obscure words and phrases, hailing from times past, clutter provisions and make them difficult to understand."

Spell out the application of formulas

Before including any formula, understand how it works, and test that it does. Test whether it results in a negative number. Draft a formula using an algebraic equation first, before translating it into words: this will test whether it works. If it does not, the parties' intention may not be clear or they may not have agreed on the same concept.

Include an example in the contract to show how the formula should be interpreted and applied. This serves to avoid any misinterpretations. You may even decide to include more than one example where the formula leads to very different conclusions, to ensure common understanding, and to test the formula in unusual circumstances.

Here is how you would do that:

Pricing: customer sale price per Item will be calculated by adding shipping and publicity costs per Item to the amount paid by A to purchase the Item from the approved suppliers. Said amount will be increased by 15% (this percentage will be retained by A as its profit per Item, as per clause XX).

Example:

Item cost from supplier: $15.00
Shipping cost per Item: $1.00
Publicity cost per month, divided per Item sold during that month: $0.50
Price: $16.50
Increased by 15%: $2.47
Total Item price: $18.97

This clause would be even more readable with bulleted levels:

Pricing: customer sale price per Item will be calculated as follows:

1. Purchase cost of Item by A from approved suppliers, plus

2. Shipping cost per Item, and

3. Publicity cost per Item, and

4. 15% (profit per Item, retained by A)

Use visuals and appendices

How do visual objects make information easier to understand? Read *What Is Contract Visualization?* at *http://www.mindspace.fi/en/contract-visu/*

Information in visuals is encoded explicitly by the brain so it is easier to grasp the meaning. Integrating pictures and text improves processing by sharing the work between 2 different processing systems of the brain. Visual structures and cues also lower the possibility of misinterpretation—acting as paralanguage.

Working together to agree upon visual features can help parties align their goals and common understanding. They can explore their important issues more easily during negotiations.

Using these makes the contract information more accessible. Use lists, charts, and tables that are examples of brevity and clarity—to help readers easily pick out key information.

Consider adding flowcharts, timelines, payment tables, and other graphic features. Be sure to place drawings, photographs or examples next to the words they illustrate.

Leaders in Visual Design in Law

Two women are guiding us forward in making law more understandable by using design processes and visuals: Stefania Passera and Margaret Hagan.

Stefania Passera has produced 2 SlideShare sets supporting conference papers:
- Beyond the wall of text: how information design can make contracts user-friendly at *http://www.slideshare.net/StefaniaPassera/hci-passera*

and
- User-Centered Contract Design: New Directions in the Quest for Simpler Contracting *http://www.slideshare.net/StefaniaPassera/passera-iaccm-presentation*

Margaret Hagan has created a toolbox to show you how, when, and why to create visuals for law here: *http://www.legaltechdesign.com/LegalDesignToolbox/communicate-info-in-a-better-way/*

Watch these two to keep up with the newest developments.

Setting up a local Clarity meeting

Daphne Perry
has been a plain English enthusiast since 1993. At first, she used plain English to become more persuasive as a barrister. Later, she used it to write for the web and save time for her readers, who were all busy lawyers. She became plain language co-ordinator for her law firm and started arranging Clarity events in London.

Daphne is now a trainer, writer and consultant on plain English for law and business, and UK representative of Clarity. An experienced writer and editor, she is quoted in the Law Society's textbook "Clarity for Lawyers". For more information, see http://uk.linkedin.com/in/daphneperry.

By Daphne Perry

Some Clarity members have said they envy our London meetings and wish they had something similar where they live.

True, we have great advantages in London – a large population, transport networks from all the surrounding country into the centre of London, and a generous sponsor in the City Remembrancer's department of the City of London, who provide a central, prestigious and highly suitable venue with a free breakfast. This all contributes mightily to a good regular turnout.

However, this is not how we started off. We began with a free announcement in the Law Society Gazette and a meeting in a coffee shop. It wasn't hard to arrange, it cost nothing, and many of the other factors that make these meetings so good could be replicated anywhere.

These are the habits that seem to keep the energy up in our London meetings.

1. **Stick to clarity in the law.** Clarity exists only to promote plain legal language. We don't hold a meeting on any topic, however interesting, unless it relates to this aim.
2. **Focus on the solution, not the problem.** After our first London meeting, we've only had one that focused on the problem of unclear writing, and that one attracted our smallest turnout ever. Some members rightly point out that we are all guilty of poor writing sometimes, and it's good to be reminded where we are likely to lapse. However, there is only so much you can say about it. When our discussion strays into criticising poor legal writing, it becomes repetitive.
3. **Start and finish on time.** More than this, we publish a timed agenda in the invitation, and keep exactly to time. For breakfast meetings, the end time is the most important, because people need to know they can keep their next appointment. Only once in 5 years have we run over – by 5 minutes.
4. **Suggest questions for discussion in the invitation.** This prompts us all to start thinking about the topic before we arrive. And, if we have a speaker, finalising the draft invitation becomes a tactful way to introduce topics we know will interest our audience, and to keep the focus on plain legal language.
5. **Keep to a regular venue.** We've had to move a few times, and whenever we did, there was always someone who set out but didn't make it to the meeting. They got lost, or went to the old place. So it's good to be consistent. Also, it's less admin work if you always deal with the same venue.
6. **Invite non-members to every meeting.** Especially at first, I would publicise each meeting to non-members who might be interested in the meeting topic as well as clarity in the law. The best way was to contact a suitable network and invite them to publish the invitation to their members. For example, the Legal Education and Training Group told their members about our meeting on plain language in legal education, the judicial network told their members about our meeting on clarity in the European Court of Justice, two networks of property lawyers told their members about our meeting on the Clearlet lease, and so on.

7. **Encourage non-members to join.** Very early on, one member volunteered to approach all newcomers at each meeting and encourage them to join. We also track attendance at meetings, to check non-members attend just one free meeting before they join.

8. **Share out the work.** From the most regular attenders at the London meetings, half a dozen now share the work of arranging and chairing meetings. Once a year we meet for 45 minutes to discuss the programme for the coming year. We do the rest by email.

10. **Invitation text.** The text of our first invitation to a Clarity breakfast, in March 2009, is below. The topic(s) and format were chosen to focus on Clarity's objective of plain legal language and our plans to encourage like-minded people to meet. On the day, the participants chose to discuss the topic of barriers to adopting plain language.

11. **Inviting Clarity members.** Once you have the text of an invitation ready, it usually takes a day or so to email it to Clarity members worldwide. We send the invitations worldwide because it's good to tell members the full range of Clarity activities, plus we often get international visitors at the London meetings. But members of PLAIN in Toronto, who have set up their own local meetings, use www.eventbrite.com, which also worked well for a London event in April 2014.

12. **Wider publicity.** For our first London meeting, we also got a (free) mention in the Law Society Gazette, which brought in quite a few non-members. They published another short article in 2014 to publicise a talk on clarity in contract law: *http://www.lawgazette.co.uk/practice/talking-our-language/5040029.article.* If I were starting again now, I'd also tell everyone in my network through LinkedIn, Facebook, email, Twitter or whatever, and ask my Clarity friends to do the same.

I don't suggest keeping to a regular day of the week or time of day. We mainly stick to breakfasts because we get free access to venues which are heavily used at other times of day. Once or twice a year, we try to run an evening event for a change. Either way, working parents and out-of-towners have trouble getting to our meetings. Sometimes we get requests to hold a Clarity event outside London. The answer is that anyone can arrange a get-together of Clarity members wherever and whenever they like. In 2015, we have a meeting in Cambridge.

So, if you would like a local Clarity meeting – go ahead and set one up!

Invitation to first London Clarity breakfast in March 2009

Friday 13 March ; 8.30 - 9.30 am
Starbucks, 28 Chancery Lane, London WC2A 1LB
(Get your coffee at the bar and join us upstairs)

Clarity members, and anyone interested in Clarity, are invited to get together for an hour of coffee and informal discussion before work - the first of many, we hope. There is no charge except Starbucks' normal prices for refreshments.

The idea is to share experience about plain language in the law.

Agenda

8.30	introduce ourselves
8.40	introduce a topic for the meeting. This time, we suggest either a short report on the bank charges litigation (are current account terms in "plain and intelligible" language?), or barriers to adopting plain language.
8.50	discussion
9.15	what would we like to do next? Set a date, venue and topic for the next meeting. Come with ideas!
9.25	wind up

You don't need to book, but please email Daphnadd (2009 invitation text continued), daphne.perry@dentonwildesapte.com to help us measure interest and estimate numbers. Please say which topic you would prefer.

2009 invitation text continued

About Clarity

Clarity promotes the use of plain language in the law to:

- make legal documents more precise and effective for the benefit of lawyers and clients alike;
- reduce mistakes and negligence claims;
- comply with legal requirements for plain language;
- increase lawyers' profits by reducing both their overheads and the cost to their clients and by attracting new clients; and
- increase people's understanding of their rights and obligations.

We are an informal, non-profit-making organisation of about 1,000 people and organisations, founded in England but now with a presence in about 40 countries worldwide. Members include lawyers from one-person provincial practices to magic-circle partners, parliamentary counsel and others in local and national government, academic lawyers, law libraries, judges, legal translators, plain language consultants (some of whom are themselves lawyers), a few linguists, and a few members of other professions.

We offer support to those who share our interest. We communicate with each other (and with other plain-language groups) by:

- meetings like this;
- a 6-monthly journal;
- email; and
- international conferences.

Membership costs a tax-deductible £20 a year (towards the cost of producing and mailing the journal). It is subsidised by voluntary work, sponsorship, and occasional donations (for none of which will your arm be twisted).

For more details, a lot of free information, and details about joining, see *www.clarity-international.net*.

Take your protein pills and put your helmet on: we're going places!

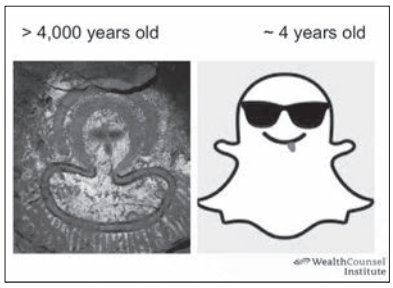
By Carol Clasby

Carol Clasby,
Independent Contractor
Carol Clasby has been playing with words ever since her mom put her in front of that manual typewriter. She holds a BA in English Literature from Emmanuel College, Boston, and a JD from the University of Missouri. She has earned an online-course-development/teaching certificate from Quality Matters. With over 20 years of business writing experience, Carol has been working specifically in the plain-language domain five years. She makes her home in Southern California.
carol.clasby@gmail.com

The centerpiece of EPCOT at Disneyworld, Florida, is Spaceship Earth. The enormous space-age sphere hosts a slow, perpetually looping blue tram that snakes its riders through the history of communication. If you're a language enthusiast, you might drag your family through Spaceship Earth several times so that you can take notes on each scene for an article you want to write.

Here's the progression. Please be tolerant of any errors and omissions. This is, after all, history as told by a mouse in the entertainment industry.

> Cave dwellers work together to bring down a woolly mammoth and record the moment in their cave paintings. In India, papyrus is invented and used for communications, which is further enhanced when the Phoenicians develop the alphabet. The Greeks excel in math and technology and the Romans develop the first "world wide web" in the form of a vast network of roads. Rome falls and Alexandria's library is burned, but Arab and Jewish scholars save some copies of the books. In Europe, monks laboriously hand-copy books. In 1450, the Gutenberg press heralds the beginning of more efficient mass production of the written word, and this ability to exchange information leads to the Renaissance. Michelangelo is painting ceilings in Italy. A steam press is developed, enabling the mass production of disposable newsprint. (Hold on, the ride is still moving at the same snail's pace, but historically, things really start moving quickly here.) The telegraph . . . the telephone . . . radio . . . cinema and newsreel . . . television . . . space travel . . . computer language . . . large computer . . . home computer . . . the current World Wide Web . . .



At this point you exit the tram, perhaps wondering what could possibly come next. I think the intent is to get riders starry-eyed about the future. But if you're a plain-language evangelist, you think differently: you know what's next is the beginning. I propose it's time for Disney to end the ride back at beginning cave scene—when people communicated with drawings.

Here's why.

Humankind craves shortcuts. Technology feeds that hunger . . . or does that hunger feed technology?

We've got a few things to sort out. Let's take a quick trip back to the late 60s.

I must have been a fairly easy kid to raise. My mom could park me in front of the lava lamps at Gemco. Twenty minutes later, her shopping completed, she could still find me there, watching the colorful waxy blobs sink to the bottom of the liquid only to rise up again after warming up near the light. Fascinating! At home, she could sit me in front of her *Remington Rand Two-Tone Deluxe Portable Typewriter* (circa 1948)

with a stack of typing paper, and I'd be occupied for hours. While I still find lava lamps mesmerizing, I've made an actual career from the passion that the typewriter—and my mom—inspired: Words. Glorious words!

A quick word about "portable." This Remington typewriter comes with a hard case, approximately 7x13x14 inches. Together, the typewriter and case weigh an awkward-to-handle 17 pounds. (To my international audience: believe it our not, I was taught the metric system in elementary school because the "whole world is going metric." And yet, here in the US, my scale and measuring tape are still reporting pounds and inches.)

If you've never typed on a manual typewriter, here are some things to know. There is no exclamation point (apostrophe/backspace/period); no boldface (type the words/backspace/type over them again/repeat to desired effect); no underlining (type words/backspace/type underline key). Toward the end of each line, a delightful bell alerts you that it is soon time to *hit*—and I do mean hit—the carriage return to advance to the next line. You'll have to hyphenate if you're in the middle of a long word. You want the document double spaced? Hit it twice. Mistake? Uh oh. If the document must be perfect, the only option is draconian in measure. Start. All. Over.

The whole process was wildly entertaining to this kid, but it'd never fly today.

Contrast this to the technology we carry around with us. A MacBook Air weighs in at 2.96 pounds for starters. And with that laptop, word-processing software, and a printer, you can create a full-color document that incorporates photos, graphs, and charts. For the text alone you can choose your font and font size. There's kerning and other fancy features I don't know how to use. You can highlight text with italics, boldface, or underlining—so many options at the touch of a button. If keyboarding isn't your thing, that's OK too. Buttons are becoming optional as better and better voice-response software is developed.

But we're communicating with far more than just our laptops. In our hands, we carry immense power in the form of our smart phones. I recently toured the Boeing 707 that had been President Reagan's Air Force One. The on-board communication center included a two-person command center that reached from floor to ceiling of the passenger deck. "That cell phone in your hand has more power than this entire communication center," the tour guide informed me. Wow.

That power is taking us right back into the caves where the Spaceship Earth ride starts.

Facebook, arriving on the scene in 2004, enabled us to communicate instantly with all our "friends," sharing pictures, videos, and messages. Next came Twitter in 2006, challenging us to communicate in 140 characters or less. Instagram arrived on the scene in 2010 and capitalized on our growing capacity for taking and exchanging photos with emerging smart phone technology. In 2011, Ghost Face Chilla symbolized the disappearing photo and later video phenomenon. Although you can superimpose 31 characters of text on your Snapchat photo, most communication is done completely through pictures. I know because this is how I sometimes communicate with my teenagers.

Pictures. Not words.

At first glimpse, it might seem that we value words less. But think about it. While our tolerance for dense language—any language really—is diminishing, the demand we place on each word we print is increasing exponentially. Every word must pull its weight. If you expect someone to read what you've written, you MUST clear all obstacles to reveal—even showcase—the message. If the information is not readily accessible, you'll lose your reader. The busy judge may skim your well-reasoned motion, miss your sound logic, and deny your motion. The impatient jury may misread the jury instructions and convict your client. The over-burdened trustee may misinterpret your client's intent and sell the family's treasured show horse stud to pay estate taxes.

And now back to now: singing, chickens, eggs, and a toast.

But you know this. You're a member of Clarity International. What could any of us write at this point that hasn't already been said? Not much. I'm preaching to the choir. Someday, we'll be singing the Hallelujah Chorus together. But not yet.

In the meantime, I offer you the opportunity to contemplate this chicken-and-egg conundrum with me. Which came first? Is technology driving our demand for information access, or is our demand for information access driving technology? Are we communicating in pictures because we can, or can we communicate in pictures because we must? And in exploring that question, can we find a way to help connect legal communicators (the ones who aren't singing Kumbaya with us—yet) with the people they're communicating with?

I hope to contemplate this with you in New Zealand later this year. We can raise a glass to my mom, to your mom, and to Mr. Bowie. Until then . . . cheers!

Plainly in Polish

Justyna Zandberg-Malec is a language specialist at Wardynski & Partners. As far as she knows it is the only law firm in Poland that employs a person at such a position. She is also the managing editor of "In Principle" (inprinciple.pl), a portal about law—for business but not only. Before that she was a movie translator and editor. Translating subtitles taught her to write concisely (with a strict character limit). She is a biochemist by education but has never worked in that field.

By Justyna Zandberg-Malec

At the PLAIN 2015 conference in Dublin in September, I was often asked if there's much happening in the plain-language movement in Poland. I had to say: it depends. Compared to English-speaking countries, not much at all. There are probably no firms providing services of this type. Few publications mention the concept. But considering that just five years ago hardly anyone in Poland had even heard of the notion, I would say that interest in the topic is spreading quickly.

I have been an editor for over 15 years, and over most of that time, I intuitively applied plain-language principles. After all, the task of an editor—apart from checking the linguistic correctness of the text—is to be sure that the reader will understand the text as the author intended. Many of the changes editors make are designed to make the text clearer and more understandable. The editor will suggest shortening sentences, breaking text up into paragraphs, or trimming fat.

How to bring lawyers around

But formally, I encountered the plain-language movement as such only after I was hired by a law firm and began looking for arguments to persuade lawyers to make certain simplifications to their texts. I was certain that it wasn't just my ignorance of the law that made many legal texts utterly opaque to me.

However, I couldn't find any guidelines on this topic in the Polish linguistic literature. Most language guides didn't mention legal or official texts at all. At most they admitted that the style of writing in government offices or law firms is highly formal and impersonal, employs the passive voice or impersonal verb forms, and displays a preponderance of abstract or verbal nouns over verbs as such. They didn't suggest that this isn't how things should be. The point was rather that these are obvious features of the genre which writers (and readers) should adjust to. (As stated in a recent book entitled *Polish from the Office: On the Correctness of Official Language*, "Impersonality is a fixed feature of official texts, and could be said to be characteristic of this genre of writing.")

So I began to seek out English-language guides to legal writing (I think the first was How to *Write For Judges, Not Like Judges*, by Mark P. Painter—a judge). Through them I encountered the notion of simple writing. The principles stated in these guides were a revelation to me. Of course, when I myself was writing, I had already applied many of these principles intuitively, but it goes without saying that intuition is not the best argument to use on a lawyer when a layperson suggests cutting a text by half, moving the conclusion to the introduction, and throwing out most of the hard words.

The English-language guides to legal writing and plain writing gave me the support I needed, but the sheer number of them was overwhelming. In Poland at that time there were probably no guidebooks on writing for lawyers. Law students took no courses on writing. Many young lawyers told me that drafting pleadings or legal opinions was something they had to learn on the job, and they sensed that this was somehow backward. Encouraged by them (and armed with my newly acquired self-confidence) I proposed that I could conduct a course on writing for law students at the University of Warsaw. The answer was no—and not because the dean doubted my professional competence. The argument that prevailed was that future lawyers have no need for such a course. Lawyers need to know the law. Writing skill they can do without.

First changes

A lot has changed since then. In 2012 the Plain Polish Workshop was established at the Institute of Polish Philology at the University of Wrocaw, with the brief of developing a Polish version of plain-language standards. But one of its founders, Dr Tomasz Piekot, admitted in an interview that just two years before he had never heard of the plain-language movement. He learned about it when working on a project with the Ministry of Regional Development, which requested the university staff to evaluate the comprehensibility of texts about European Union funds. This was a time when Poland was offered huge financial support from the EU, but the information about opportunities to receive grants was written like all official texts, in dense, hermetic and impenetrable language. This project resulted in publication of a concise guide entitled *How to Write about European Funds*—the first guide to writing in Polish I was aware of designed specifically for bureaucrats. It offered the recommendation—revolutionary in Poland—to write first and foremost so that the reader understands the text and it isn't a torture to read.

In 2012 as well, the 1st Congress on Official Language was held under the auspices of the Ombudsman and the Polish Senate. In her keynote address, the Ombudsman pointed out that while she rarely received complaints specifically about the incomprehensibility of official communications, nonetheless most of the over 50,000 complaints filed each year with the Ombudsman's Office could be explained by the recipient's inability to understand an official document. Moreover, the Ombudsman often has to respond to the citizen that unfortunately there's nothing left to be done, for example, because the deadline for taking some action has already passed. Thus the incomprehensibility of official communications can irrevocably destroy the chance of seeking justice. But in the very same case, the clerk who wrote the missive swells with a sense of a job well done: the communication complied with the applicable regulations, the justification for the decision was provided, the instructions on available recourse were correctly formulated, and the relevant legal grounds were identified. The takeaway from the conference was clear: clerks need training on how to write, and their prevailing style of writing must change.

At the initiative of the Ombudsman and the Polish Language Council, a social campaign was launched under the slogan "Citizen-Friendly Official Language." The biggest national newspapers published a series of articles on the need for clear writing. The articles condemned unclear contracts and judicial rulings and suggested solutions such as including summaries with such documents, highlighting the key points. The online comments were overwhelmingly positive. Everyone agreed that change in this direction was highly desirable.

The first IT tools for measuring the clarity of Polish texts appeared. That year Jasnopis[1] was launched, created by linguists, psychologists and computer scientists. Such tools may have been known for years in the English-speaking world, but for Polish-language texts it is a novelty. This application takes into account many different aspects of a text to estimate how many years of education a reader would need to be able to understand it.

Meanwhile, the courts themselves have begun to recognise the need to use understandable language. For example, the Warsaw Court of Appeal issued a judgment holding that a business must be held to a professional standard which requires that contractual provisions be clear and comprehensible to consumers.[2]

Better in theory than in practice

So it might seem everything's headed in the right direction. The concept of plain writing has support at the highest state levels. Citizens support change. But little is happening to implement that change. Officials I have spoken to even feel offended by the suggestion that their communications should be comprehensible. That is not their job, and they feel that they perform their duties well. Involvement in drafting by a linguistic specialist is associated mostly with technical proofreading and nitpicking. As an adviser to a minister in the Prime Minister's Office said in 2012, "People employed at the Prime Minister's Office who take part in drafting documents are highly educated, and there's no need to multiply positions and pay people to check the writing of documents signed by the Prime Minister and our other ministers." There is a widespread belief that the mere fact of earning a university degree (or even a secondary school diploma) is proof of mastery of our native language. The reports on the state of protection of the Polish language published by the Polish Language Council demonstrate otherwise.

The Polish Language Council, established in 1996, issues opinions on any and all matters related to the use of Polish in public communications. Every two years the council presents a report to the Sejm and Senate of the Republic of Poland on the state of protection of the Polish language, selecting in each case a different area for review, such as school textbooks, documents used in consumer transactions, content on ministry websites, and business language. The most critical comments recently have been raised concerning bureaucratic language and the language used by bosses and staff of private companies. The public officials whose communications were evaluated by the council in 2010–2011 "can't, won't or are afraid to write in plain language. They create hermetic texts, saturated with information, formulaic, and rarely differentiated depending on the audience, which reduces their effectiveness at communication." Officials also believe they must repeat the formulations used in legal acts even when they are not comprehensible to the average citizen.

The problem with bureaucratic language (and, indirectly, legal language) in Poland has certain historical roots. Throughout the 19th century, Poland did not exist on the map of Europe, but its territory was divided up among the neighbouring states. For a long time, the official languages in Polish lands were Russian and German. Thus Polish official language is increasingly recognised as "the hidden victim of the partitions." (Literary language did not suffer so badly, and great works of Polish literature were created in the 19th century.) At the time when the modern public administration was forming, clerks in what is now Poland were writing in German and Russian. Polish legal and administrative terminology thus arose late, and was largely translated from German. The effect is a great number of German lexical and syntactical borrowings in official texts. Clerks thought that Germanisms ensured precision, and their very foreignness heightened the impression of professionalism. A legacy of those times is the belief that an official document must be impenetrable—and the blame for not understanding it must always be assigned to the poor supplicant who is ignorant of official language.[3]

Notes

1 www.jasnopis.pl

2 Warsaw Appeal Court judgment of 30 November 2012, Case VI ACa 795/12, http://orzeczenia.waw.sa.gov.pl/details/$N/154500000003003_VI_ACa_000795_2012_Uz_2012-11-30_001

3 Interview with Polish linguist Professor Jerzy Bralczyk: Petent, klient czy interesariusz? [Supplicant, client or stakeholder?] published in Rzeczpospolita [Polish daily] on 7 October 2013 http://www.rp.pl/artykul/1054577-Petent--klient-czy-interesariusz.html#ap-6

Status of Polish in Poland

Language in Poland has a special status. On one hand we're proud to use what has been called "the hardest language in the world" (although that's not entirely true), but on the other hand, there's a popular belief—particularly among young people—that mastering the intricacies of Polish is unnecessary because English is the only thing that counts for employers. This notion began to appear in the 1990s, shortly after the communist regime was toppled. After years of empty drabness, colourful foreign goods began to appear in shops, along with the sense that Polish goods were shoddy, crude and shameful. The labels lacked Polish descriptions or instructions, but they were foreign and that was enough to make them irresistible. Things are much better now, but a certain distaste for the Polish language remains.

Poles are more willing to invest in learning foreign languages than in the skill of communicating in their own language. "After all, everyone has known how to speak Polish since they were a child," goes the prevailing view, and "form doesn't count, only content." Even when a road sign was installed in Warsaw with a typo, some commentators said not to bother fixing it, because it would cost money and everybody can figure out where they're going anyway.

Businesses are aimed at making a profit, not at proficient and linguistically correct communication. The point has not sunk in that if communications were more proficient, profit might be higher. Linguistic correctness thus seems like a needless cost and a relic of former times. According to the reports by the Polish Language Council, the heads of the great majority of companies see no connection between the linguistic skills of their employees and achievement of the company's goals.

But maybe it's just a question of time. I myself work at a Polish law firm, and one of my tasks is to help ensure the accuracy and comprehensibility of documents drafted by lawyers.

Plain Polish

Most of the universal principles of plain language apply equally to Polish. Understanding the audience's needs, arranging the content in the best order, dividing text into paragraphs and short sentences—all of this makes reading easier for users of Polish. But two issues get in the way of direct application of plain English principles to the Polish language. The first is the recommendation to avoid long words. The second is that you should address the audience directly.

The rule that short words are native words and universally understood, while long words are borrowings understood mainly by highly educated people, is not borne out in Polish. Words in Poland are pretty long. My experience as a translator shows that a text in Polish will be some 30% longer than the same text in English. Of course, for psychological reasons, a long word is harder to grasp than a short one. But in Polish, words of four syllables or more are not that unusual. Take for example the word *powiedziałabym* (meaning "I would say"). That's a five-syllable word but easily understood by a preschooler. In a Polish guide to plain writing, the guideline to use short words might be replaced by the guideline to use words that are commonly known and used. But it's not that obvious, and there's no time in daily life to consult a list of linguistic frequency. That leaves intuition and knowledge of the language.

Another recommendation that doesn't entirely work in Poland is to speak directly to the reader. Here the barrier is our fairly complex rules of polite usage. In Polish, as in French or Spanish, you speak one way to a stranger, another way to a friend, and differently to men and women. Addressing a person you don't know or someone higher up the hierarchy requires the use of third-person verbs, whereas you address friends, relatives and children in the second person. Courtesy forms are much longer. This is probably why some publications on plain Polish suggest replacing the third person *Pan/Pani* (Mr/Ms) form with the second person *ty* ("you"). In July of this year such a publication was issued to Polish clerks. The authors recommended writing clearly, concisely, and with the reader in mind. Along with this, they suggested addressing the reader directly with the *ty* form—or as they say in English, "on a first-name basis." This seems misguided, and it attempts to bypass several intermediate stages. Polish official writing right now is so long, stiff and incomprehensible that the greatest emphasis first should be on accessibility. For an official who is used to talking down to the citizen to switch to the second person—as a schoolteacher might address a pupil—seems to exacerbate the situation. In an unscientific sampling, I found that four out of five people I tested this on would find it patronising.

In short, the plain Polish movement is only just being born. We need to adapt specific principles of plain language to suit the specifics of Polish. We need to convince public officials, lawyers and businesspeople that simple writing makes sense. It won't be easy, but it's a chance to take part in a linguistic revolution.

Clear language awareness in language policy in Norway

By Arnfinn Muruvik Vonen

In this paper, I describe the place for clear language in the overall national language policy of Norway. I also provide information about some of the clear language activities carried out by the Language Council of Norway.

The work for the present article was carried out while I was Director General of the Language Council of Norway, Oslo, and presented as an oral paper at the Association for Language Awareness conference (ALA 2014) at Hedmark University College, Hamar, 1st–4th July, 2014. I would like to thank Torunn Reksten and Kristin Solbjør for valuable comments on an earlier version of this manuscript.

Arnfinn Muruvik Vonen has a doctoral degree in linguistics from the University of Oslo and is a professor in the Department of International Studies and Interpreting at Oslo and Akershus University College of Applied Sciences, Norway. His research covers such fields as bilingualism, language policy and sign languages in education. From 2011 to 2015, he served as Director General of the Language Council of Norway, the government's consultative body on language issues, which follows up Norway's language policy on assignment for the Ministry of Culture. The Language Council cooperates with public and private players on language policy measures, including the use of clear language in public administration.

What is clear language?

A government office may produce a text for various reasons. For example, an official letter to a private citizen may serve to inform the citizen about some state of affairs, such as the reply to an application; to direct the citizen to carry out an action, such as a request to fill in a tax return form; to commit the office to some future action, such as a letter stating the addressee's future pension; or to define an aspect of the addressee's life, such as a marriage certificate. The "speech acts"[1] carried out by means of official text may thus vary. However, in all the cases mentioned and many others, we can assume that there is an intention on the part of the authors that the reader of the text should be able to understand it, and that such understanding is necessary for the "speech act" to have been carried out felicitously. A way to achieve such understanding is to consciously aim at producing texts in clear language (also called "plain language"). *Clear language* can be defined as *the use of correct, distinct and user-adapted language*. In Norway we apply the term "clear language" ("klarspråk") primarily in connection with texts from official authorities, and I will limit my use of the term to apply to such texts.

It should also be made clear what clear language is not. Clear language does not mean impoverished and oversimplified language. Further, not all texts can be simple, and not all texts can be without academic terminology. The most important thing is that the text should be adapted to its receiver.

Why clear language?

Kvarenes, Reksten and Stranger-Thorsen[2] list five reasons why clear language should be used:

1. **Clear language promotes democracy and the rule of law.** Public information is, among other things, about rights and duties. Unclear language may prevent people from participating in matters relevant to them.
2. **Clear language builds confidence.** An addressee who receives an incomprehensible letter, may easily believe that the sender is hiding something.

3. **Clear language saves time and money.** Clear language leads to fewer misunderstandings, and thus to fewer questions from addressees and less time spent on explaining.

4. **Clear language promotes communication.** Clear language makes the addressee grasp the sender's message more easily.

5. **The official authorities should be role models.** A linguistically poor text easily creates a negative image of the sender. Clear language, therefore, should be an ideal for language use in the public sector.

Clear language as part of an overall language policy: the case of Norway

The main governance document defining current government language policy in Norway is *Report No. 35 to the Storting*.[3] The Storting is the parliament or legislative assembly of Norway. This document defines an overarching strategic objective and a holistic language policy in the following way:

> The overarching strategic objective of the language policy outlined in this report is to counteract domain loss for the Norwegian language and to ensure the full status and use of the Norwegian language within all parts of Norwegian society.
>
> This overarching objective must be implemented within the framework of a holistic language policy which takes into account the overall language situation in the country, both the equality of the written standards of Bokmål and Nynorsk, the old and the new multilingual diversity, the need for foreign language competence, and the Nordic fellowship of language.[4]

Furthermore, the report states the following overarching language policy objectives as fundamental ideals to be considered in the formulation and implication of all relevant public policy in Norway:

1. Norwegian shall be the main language and the common national language of Norway
2. Norwegian shall be a society-bearing and full language
3. Special measures shall be taken to ensure that Nynorsk becomes more equal in reality with Bokmål
4. The public sector shall strive to use correct and comprehensible language
5. Everybody shall have the right to language, to develop and acquire the Norwegian language, Bokmål and Nynorsk, to develop and use their own mother tongue or first language, including sign language, their own indigenous language or national minority language, and everybody shall have the opportunity to learn foreign languages.[5]

As we can see, clear language is one of the main objectives of public language policy in Norway (number 4). The point is elaborated later in the report:

> The challenges for the language of official authorities may be schematically divided into two main parts: one is to assure that the language is correct and proper, the other to facilitate its comprehensibility, so that it communicates in a suitable way with the respective target groups.[6]
>
> Official authorities have a particular responsibility for being a role model when it comes to the use of good and clear language.[7]

Another relevant Norwegian governance document is the Central Government Communication Policy, whose objectives are that citizens shall
- get correct and clear information about their rights, responsibilities and opportunities
- have access to information about the government's activities
- be invited to participate in the formulation of policies, arrangements and services[8]

Notes

1 Austin, J. L. (1962): How to do things with words. Oxford: Clarendon Press.

2 Kvarenes, Margrethe, Torunn Reksten and Ingrid Stranger-Thorsen (eds.) (2010): Klar, men aldri ferdig. En praktisk veileder i klarspråksarbeid [A practical handbook in clear language work]. Oslo: The Language Council of Norway and the Agency for Public Management and eGovernment.

3 Report No. 35 to the Storting (2008) = St.meld. nr. 35 (2007–2008) Mål og meining. Ein heilskapleg norsk språkpolitikk [Report to the Storting No. 35 (2007–2008) A holistic Norwegian language policy]. Oslo: Norwegian Ministry of Culture. Online version: https://www.regjeringen.no/nb/dokumenter/st-meld-nr-35-2007-2008-/id519923/

4 Report No. 35 to the Storting, Chapter 3.1.1, my translation. Original text: Det overordna strategiske målet for den språkpolitikken som er skissert i denne meldinga, er å motverka domenetap for norsk språk og sikra det norske språket ein fullverdig status og bruk innanfor alle delar av norsk samfunnsliv.

Dette overordna målet må realiserast innanfor ramma av ein heilskapleg språkpolitikk som tek omsyn til den totale språksituasjonen i landet, både likestillinga mellom bokmål og nynorsk, det gamle og nye fleirspråklege mangfaldet, det framandspråklege kompetansebehovet og den nordiske språkfellesskapen.

In the same document, "Openness", "Participation" and "Reaching all" are listed as three out of five "Principles for good communication".

Digital platforms are rapidly taking over as the preferred means of communication between the citizens and the government. In this process, clear language becomes more crucial than during face-to-face interaction, where misunderstandings may be more easily clarified.

How does the Language Council of Norway promote clear language?

For several years, information and assistance in clear language matters have been among the Language Council's important missions. Several employees have clear language as their primary field of work. The Language Council carries out many of its clear language activities in close cooperation with another government agency, the Agency for Public Management and eGovernment (Difi).

The Language Council's clear language objectives are those stated in *Report No. 35 to the Storting* and quoted above. In the Strategy for the Language Council for 2013–2015, the objective is formulated in the following way: "Public language shall be a model for the rest of society, and the linguistic shaping of public documents shall follow the norms of clear language."[9]

In order to achieve this objective, the Language Council offers services of various kinds. Some activities are organised as physical meetings, such as clear language training courses for public servants, for public managers, or for more specific target groups. Typical training topics are content and structure, syntax, lexical choices, and orthography and punctuation, with special attention to texts with wide distribution. These training courses usually last for up to one day, but they can be tailored to the recipients' needs.

Government agencies planning language improvement projects may get assistance by specialists from the Language Council.

The Language Council also offers assistance to public agencies working to improve the linguistic quality of specific documents. The responsibility for the text remains with the agency in question, and the Language Council does not have the capacity to carry out copy-editing or translation.

On a broader scale, the Language Council regularly organises seminars and conferences on various topics related to clear language. Some of these aim beyond the national level. For example, in May, 2015, the Nordic Clear Language Conference (nordisk klarspråkskonferanse) was held in Norway.

The Language Council provides the secretariat for the annual Clear Language Prize ("Klarspråksprisen"), which is awarded by the Ministry of Local Government and Modernisation.

In order to spend its resources as efficiently as possible, the Language Council pays much attention to producing and maintaining a rich body of information and tools on its website. This website is accessible to everyone in full, not only to those who attend a course or receive project assistance. Importantly, while the Language Council's capacity limits the target group of their training courses and their project assistance to government agencies, the website may be helpful also to employees in municipalities or in private companies.

The website has the URL *www.sprakradet.no/klarsprak/* and contains general information about clear language and advice for government employees, both linguistic advice on text production and advice on project organising. In the section "Writing help" ("Skrivehjelp"), advice is given for those writing texts, and example texts are provided and discussed. Information about courses and links to relevant

Notes

5 Report No. 35 to the Storting, Chapter 3.1.1, my translation. Original text:

1 Norsk skal vera hovudspråket og felles nasjonalspråk i Noreg

2 Norsk skal vera eit samfunnsberande og fullverdig språk

3 Det skal leggjast spesielt til rette for at nynorsk blir meir reelt likestilt med bokmål

4 Det offentlege skal leggja vekt på å føra eit korrekt og forståeleg språk

5 Alle skal ha rett til språk, å få utvikla og tileigna seg det norske språket, bokmål og nynorsk, å få utvikla og bruka sitt eige morsmål eller førstespråk, inkludert teiknspråk, sitt eige urfolksspråk eller nasjonale minoritetsspråk, og alle skal få høve til å læra seg framande språk.

6 Report No. 35 to the Storting, Chapter 8.6.1.1, my translation. Original text: Utfordringane for forvaltningsspråket kan skjematisk delast i to hovuddelar; det eine er å syta for at språket er korrekt og ordentleg, det andre å leggja til rette for at det også er forståeleg slik at det kommuniserer på ein formålstenleg måte med dei aktuelle målgruppene.

7 Report No. 35 to the Storting, Chapter 8.6.1.1, my translation. Original text: Det offentlege har eit særleg ansvar for å stå fram som eit godt føredøme når det gjeld å bruka eit godt og klart språk.

materials are also provided. An example of these materials is the Kvarenes, Reksten and Stranger-Thorsen book,[10] which is accessible on the website in pdf format. In the section "Project help" ("Prosjekthjelp"), step-by-step advice on clear language projects is given. Examples of projects are reported, and information is given about project assistance and about the Clear Language Prize. The third main section of the clear language URL is "Legal language" ("Juridisk språk" – see below), and then there is a section called "Laugh and learn", which uses humour as a learning tool. Among other things, we find the popular "oratory generators" ("svadageneratorer"), computer programmes that combine typical "bureaucratic" (unclear) words and expressions to generate apparently eloquent, but meaningless sentences.

The Language Council also publishes a four-page quarterly in paper and electronic format, *Statsspråk* ("Government Language"), with useful advice about practical language use and good language in government, and several brochures about clear language and other issues of government language.

Among text types produced by government agencies and ministries, law texts are among the most important, and the language used in a law text may have strong impact on the language used in a large array of other texts using the law text as a point of reference. Therefore, the project "Clear Legal Language" ("Klart lovspråk") is currently a priority activity. In collaboration with Difi and several ministries, the Language Council works with the language of selected laws that are being revised. The project builds on a previous four-year (2009–2012) collaborative project with Difi and the ministry responsible for Difi, "Plain Language in Norway's Civil Service" ("Klart språk i staten"), which was evaluated positively after it ended in 2012.[11]

A very special example of work on legal language is the translation of the Constitution of Norway into modern Norwegian. The Constitution was written in Danish in 1814, and its linguistic form had only been revised once in the early 20th century. Specialists from the Language Council took part in the translation work in 2012. In 2014, two modern versions, one in Bokmål and one in Nynorsk, were officially adopted by the Storting as the valid texts of the Constitution.

Let me end this presentation of activities aimed at improving the language in public texts by reporting briefly from the results of a questionnaire study that was carried out for the Language Council in 2012.[12] The majority of those government employees asked found it important to improve the language of texts from official authorities. However, the majority also found that they themselves wrote sufficiently well. This indicates that there is still a potential for sensitising public employees on issues on text quality in general and clear language in particular.

Conclusion

Writing in a way that is understood by the audience is an important aspect of the quality of language use in government and may be crucial for the impact of the texts in question. The Norwegian government is among those governments in the world that are aware of this fact, and it has started systematic work to sensitise and advise public employees to produce their texts with the reader clearly in mind. Thus, clear language awareness is a particular form of language awareness that may have an important impact on many people's lives.

Notes

8 Central Government Communication Policy (2009). Oslo: Norwegian Ministry of Government Administration, Reform and Church Affairs. Online version: https://www.regjeringen.no/globalassets/upload/fad/vedlegg/informasjonspolitikk/statkompol_eng.pdf, Part 1

9 Strategy for the Language Council (2013) = Strategi for Språkrådet 2013–2015 [Strategy for the Language Council of Norway 2013–2015]. Oslo: The Language Council of Norway. Online version: http://www.sprakradet.no/Vi-og-vart/Om-oss/Strategi-for-Sprakradet/. My translation of Objective 3 c Public clear language (Offentleg klarspråk). Original text: Det offentlege språket skal vera eit føredøme for samfunnet elles, og den språklege utforminga av offentlege dokument skal følgja normene for klarspråk.

10 See note 2.

11 Dahle, Malin and Jostein Ryssevik (2013): Klart vi kan! – en evaluering av effektene av prosjektet "Klart språk i staten" [Clearly, we can! – an evaluation of the effects of the project "Plain Language in Norway's Civil Service"]. (Ideas2evidence rapport 11/2013.) Bergen, Norway: Ideas2evidence. Online version: http://www.difi.no/filearchive/klart-vi-kan-_1.pdf

12 Ipsos MMI (2012) = Hvordan står det til med språkarbeidet i staten? [How is language work in government doing?] [Oslo:] Ipsos MMI. Online version: http://www.sprakradet.no/upload/Spr%C3%A5k-dagen%202012/Spr%C3%A5karbeid%20i%20staten_Ipsos%20MMI.pdf

BOOK REVIEW

Communicating with Older People: Writing in Plain English *by Sarah Carr*

Reviewed by Catherine Buckie

Sarah Carr has written a concise yet comprehensive guide to communicating with older people that succeeds in offering practical advice without ever coming across as patronizing. Not only is Carr's book about plain language, it is a model of plain language.

The first few words in Carr's book drew me in: "I think it is sad that our society is so youth-oriented." She then challenges us to check our own ageist thoughts and expressions, providing useful tips from Third Age Ireland, a voluntary community organization that promotes the resources of older people, and the Facebook group Gray and Proud. These tips offer us a reflection of our own ageist behaviours and, in doing so, draw us in further and prime us for Carr's message.

Finally, Carr skilfully hammers home the point that we are ALL older than someone else, simply by using the term "older" rather than "old", "elderly," or "senior". That aging is a process. So her guide isn't really about writing for a particular "other" audience. It's about writing for people like ourselves who want to read and understand the information we need easily and quickly.

Carr has clearly done her research and outlines the many problems older people face when reading written information. She also explains why it is important that we make information accessible to older people. Hint: It's the right thing to do AND it's good business.

The rest of the guide is a guide to writing in plain language or, as Carr calls it, "inclusive writing." She takes us through the five elements of any written work:

- Purpose
- Content
- Structure
- Style and grammar
- Layout and design

And she does so with clear advice, examples, evidence, and resources to follow-up.

I particularly appreciate that this guide does not assume that once the reader has read through it, they will feel qualified to write for older people themselves. She allows that people may need to hire editors and designers to do some of the work for them and provides information on how to contact such people.

I would definitely recommend this guide to any organizations I work for if they are looking to communicate with older people. The guide was written for a UK audience but I work in Canada and find that all the advice holds true here as well.

Communicating with Older People is available as a free download from www.clearest.co.uk.

BOOK REVIEW

Clear & Concise – Become A Better Business Writer *by Susan McKerihan*

Reviewed by Michael Kirby

Susan McKerihan did not write this book specifically for lawyers. It is a text addressed to corporations and business professionals. These are the people she has been advising on plain language for 20 years. Yet her advice is equally apt for lawyers.

The structure of her book (as one would expect) is clear and simple.

- The first part deals with selection and use of clear and concise language.
- The second identifies a number of basics of English grammar. This addresses common mistakes. Its explains the correct use of punctuation and of words frequently confused (such as 'which' and 'that').
- The third explains the importance of 'the big picture'. By this she means using layout as 'your secret weapon' and learning how to structure communication and highlight key messages.
- The fourth lists frequently asked questions; commonly confused words and a code-breaker that proposes simple words for cliques and space-fillers.

It is probably inevitable that a book expressing, and illustrating, simple 'rules' will sometimes contain disputable instruction. For example, nothing will persuade me to drop the apostrophe in place names like St George's Terrace in Perth. Ms McKerihan excuses her endorsement of this modern practice simply because of a '1966 decision of the geographical names board' adopted 'to help with national consistency'. In an age when many young writers are confused by placement of apostrophes, consistency might be better achieved by following the traditional rules. But this is a trifle.

"It is probably inevitable that a book expressing, and illustrating, simple 'rules' will sometimes contain disputable instruction."

On some 'rules', Ms McKerihan acknowledges the differences that have emerged in North American usage and the practice followed in most other English speaking countries. For example, the North American style might say: 'I believe that the decision that we have arrived at will be acceptable…' the British and Australian style will more commonly omit the two 'thats'. Perhaps it is because of the power of American media that I feel that the first 'that' should survive. At one point, the author offers as a test what 'sounds right'. Yet that ultimate criterion will depend on whether a speaker has English as a mother tongue. As the sign at Heathrow Airport in London tells us, more people are learning English in China today than live in the British Isles. This is a good reason for having, and teaching, rules.

The biggest message for the book is to encourage the clear layout of messaging. The second main lesson is to encourage us all to write as we speak: in simple familiar language. The language of the kitchen tends to be Germanic. We have the Norman clerks for the more wordy language of the courtroom.

This is an excellent handbook that shares the 'secrets' of an experienced professional in plain language. Clarity International should buy up the rights; upload it; promote a fee app; post it on Facebook; and draw it to the notice of law schools around the world.

BOOK REVIEW

Rewrite: How to overcome daily sabotage of your brand and profit *by Lynda Harris*

Reviewed by Kate Harrison Whiteside

The legal profession has known about the cost of words for years. After all, it used be paid on a fee-for-word structure. Today's relationship between words and the bottom line is firmly under the microscope in the recently released *Rewrite: How to overcome daily sabotage of your brand and profit* by Lynda Harris, New Zealand's Write Limited. The case for careful cost analysis is backed by a substantially supported, five-stage Rewrite for Change™ Model. But is the legal profession ready to embrace this approach?

Rewrite's model for plain language initiatives includes 'Rethink, Reboot, Reinvent, Replay and Reinforce.' Step two calls for a total Reboot — a 'radical change in writing style'. Harris takes a hard stand about the importance of weighing costs of writing against the outcomes. Will the cases, drawn from years of experience, motivate – or mortify – the legal community?

We know the risks of poor writing include loyalty, retention and IT security issues. Unclear communication can also lead to public and client relation problems, financial settlement scenarios and lawsuits. Plain language reduces these risks, and ensures a more positive link between words, brand and clients. A successful program can have a big impact – internally and externally. So, why don't more firms put it at the top of their practice agenda – and stand out from the crowd?

Write Limited tested their Rewrite for Change™ Model on legal clients. Asia-Pacific law firm Jacobs Ohlman (based on a 'real story of a real law firm': names and details changed to protect privacy) tasked their professional development manager to set up a plain language pilot project. She contacted Write Limited. The project met with resistance at top levels. Progress was slow, until the firm received a complaint about unclear writing. The case was made. The evidence was in. The verdict: the firm needed to understand and support client-centered communication – at all levels.

Despite supporting evidence of the need and the benefits of plain language, the project still met with some resistance. This finding indicated a need for a clearer – and evidence-based – understanding of what plain language is and can do. It is so much more than just replacing legalese. It is about clients, reputation, brand.

Harris draws a straight line between words, money and reputation. She provides evidence on how clear communication leads to success. Once Harris has a client's attention, she delivers a strong statement: give the five-step model a chance and reach a conclusion based on facts.

You be the judge. Harris outlines a case for plain language, supports it with client experiences, maps out a plan, provides tools and leaves no stone unturned. If you are uncertain where to start, or are stuck along the way, let this set a precedent on how to make it work.

Check out their Rewrite for Change™ video series to get a clearer picture in your mind: http://www.rewritebook.com/videos.html.

The aim of Clarity — *the organization — is "the use of good, clear language by the legal profession." With that in mind, what path would you like to see the journal take? Do you have an article you would like published? Can you recommend authors or potential guest editors? No organization or publication can survive for long if its members (or readers) are not gaining something of value. How can Clarity help you? Please contact editor-in-chief Julie Clement at clementj@cooley.edu with your suggestions and other comments.*

How to join Clarity *Complete the application form and send it with your subscription to your country representative listed on page 2. For the address, please see www.clarity-international.net/membership/wheretosend.htm.*

If you are in Europe and there is no representative for your country, send it to the European representative. Otherwise, if there is no representative for your country, send it to the USA representative. Please make all amounts payable to Clarity. (Exception: our European representative prefers to be paid electronically. Please send her an email for details.) If you are sending your subscription to the USA representative from outside the USA, please send a bank draft payable in US dollars and drawn on a US bank; otherwise we have to pay a conversion charge that is larger than your subscription.

Annual subscription

Argentina ARS90
Australia AUD50
Bangladesh BDT1500
Brazil BRL50
Canada CAD40
Chile CLP30
Finland EUR35
Hong Kong HKD275
India INR1000
Israel NIS125
Italy EUR35
Japan JPY4000
Lesotho LSL100
Malaysia MYR95
Mexico MXN250
New Zealand NZD70
Nigeria NGN2500
Philippines PHP1500
Portugal EUR35
Singapore SGD55
Slovakia EUR700
South Africa ZAR100
Spain EUR35
Sweden SEK280
UK GBP20
USA USD35
Zimbabwe ZWD35

Other European countries EUR35
All other countries USD35

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
Anonymous (1)

$1,000+
Christopher Balmford
Joseph Kimble
Julie Clement

Advertising rates
Contact Julie Clement,
clarityeditorinchief@gmail.com

***The Clarity Journal* is published twice a year.**

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

Announcements and Upcoming Events

The next Information Design Summer School will be in Bath, England, 5–9 September 2016.

The Summer School is organised by the Simplification Centre, London. It is aimed both at people with a design background, and also at others interested in learning about information design to apply to it to their own field. We've been joined in the past by people working in parliamentary drafting, legal education, government, technical writing and health, as well as designers wanting to build their information design skills. They came from as far afield as New Zealand, Colombia, USA, Finland, the Netherlands, Brazil, France, UK, Singapore, Lebanon, Cyprus and Greece.

Information design has developed as a specialist field, with a growing research literature and critical tradition. But education and training in information design is hard to find, and people who want to develop their expertise can find themselves isolated, without access to expert help, and often without like-minded colleagues.

At the summer school you will meet with experts in information design with a depth of experience in design practice, research and education, and who cover a range of different specialisms: diagramming, typography, clear writing, content structure, design education, health information design, financial information, government information, management communications and legal information design.

Here are some comments from students on previous summer schools:

"It was the most engaging and inspiring course I've ever been on, with the right balance between teaching sessions and workshops / exercises / group work. It has opened me up to so many new processes and resources to explore as well as highlighting areas for me to work on to improve my own work… so it's really just the beginning."

"I'm pretty sure that I learnt more relevant stuff last week than I did on my whole degree course!"

"I really enjoyed the summer school, it was a great week. The presentations, exercises and discussions made for an effective package. I also feel re-energized to do the time-consuming work of improving government information."

"The summer school was great! I learnt so much and it was wonderful to be with people who had such a strong interest in information design no matter what their background!"

Bath is a beautiful city, and one of the most popular tourist destinations in England. The early bird rate ends on 1 May, and there is an additional 10% discount for Clarity members.

http://www.simplificationcentre.org.uk/events/schools/

Join us at Clarity2016 in Wellington, New Zealand

Inspiration, education, connection — a chance to get together with friends and colleagues from previous conferences and to meet new people too.

We're excited to announce that Clarity's next international conference will be held in Wellington, New Zealand on 3-5 November 2016. Called 'The Business of Clarity', the conference will consider an evidence-based approach to the benefits of accessible writing in law, business, and government.

Lynda Harris and her colleagues at Write Limited will be our hosts for this exciting event in what Lonely Planet calls the 'coolest little capital in the world'.

Clarity2016 will have a strong focus on practical, interactive learning. We promise compelling keynote speakers along with interactive workshops, case study presentations, panel discussions, mentoring appointments, and 'speed learning' events. The conference will of course have a strong legal theme along with topics relevant to all sectors and industries. Watch for the call for papers early in 2016.

We know how important it is to connect with colleagues old and new and to have some fun! You'll have plenty of time for relaxing and networking with a welcome reception, an informal 'This is New Zealand' social evening, and a gala dinner planned, as well as generous coffee and lunch breaks in between the daytime sessions.

How about choosing New Zealand as the destination for your next vacation by adding some time before or after the conference? Wellington is famous for its cultural activities, its coffee culture, its restaurants, and its burgeoning craft beer scene. And Wellington's central location makes it the perfect jumping off point for your visit to Middle-earth — stunning scenery, hot pools, vineyards, cultural attractions, and adventure tours all await you!

For more information and to register your interest, go to the Clarity2016 conference website: www.clarity2016.org

We look forward to seeing you at Clarity2016!

Clarity2016

3–5 November 2016 Wellington, New Zealand

The Business of Clarity: A plain language conference for law, government, and business

Photo credit: Rob Suisted

Join us in Wellington, New Zealand to be inspired and to learn from world leaders about evidence-based, accessible writing in the law, business and government.

Clarity2016 will have a strong focus on practical, interactive learning. We guarantee compelling keynote speakers along with interactive workshops, case-study presentations, panel discussions, mentoring appointments and 'speed-learning' events. There'll be a strong legal theme along with topics relevant to all sectors and industries.

Our conference brings together world leaders in plain language, including:

The Hon. Michael Kirby AC CMG
Patron of Clarity

Deborah Bosley PhD
The Plain Language Group

Joseph Kimble

Susan Kleimann PhD
Center for Plain Language

Clarity2016 is hosted by

clarity

WRITE
Information with clarity

For more information visit
www.clarity2016.org
to register your interest