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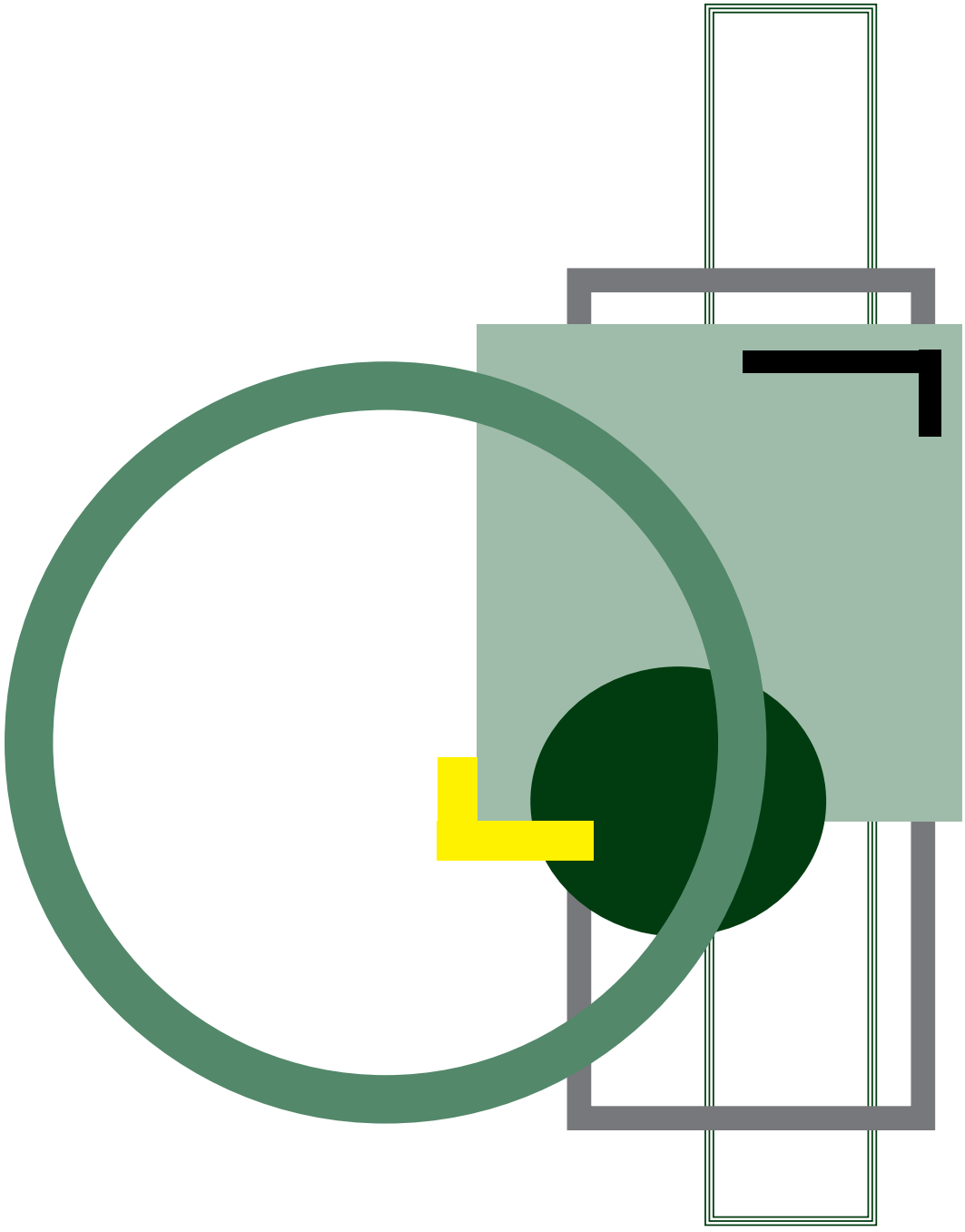

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From the President

Friends and colleagues,

There is much news to share, but first, how are you? I hope you and those you care about have been spared the worst of what the world is giving us: COVID, humanitarian crises, environmental disasters, and so much more. I'm encouraged by those who are improving lives everywhere by simply communicating clearly. But I'm also reminded – every day – how much better things could be if more leaders used plain language in their crisis communication. So thank you for all you can to improve the world through this work.

Our upcoming conference

The pandemic has required many changes. Last year, we began planning Clarity2020: Access for All – a traditional conference in Washington, DC, co-hosted by Clarity and the Center for Plain Language. That conference has now become a two-part virtual event co-hosted by all three organizations: Clarity, the Center for Plain Language, and PLAIN. This has been my hope for many years – that Clarity and PLAIN could work together on a conference. So despite the circumstances that led us here, I'm delighted about this result. And the Center's involvement completes the partnership!

Visit https://www.accessforallconference.com/ for details about the conference (and to register for part 1). It starts on October 13 and ends on October 15 – about 4 hours each day. I am eternally grateful for the amazing work that Clarity's Secretary, Dr. Susan Kleimann, is doing as conference chair. And Clarity's conference representative, Dr. Ingrid Slembek, has also been an incredible volunteer. Every time one of them tells me about another speaker or another feature of the conference, I'm excited all over again. I hope to see all of you there.

A new website

For more than a year, our Vice President, Stéphanie Roy, has been working on a redesign of our website. Here is her update:

> Julie and I felt that modernizing and humanizing Clarity's website was necessary to enhance Clarity's credibility and to support and increase our membership. We are working hard to rethink the website's design and the content, having two goals in mind : (1) making it more inspiring, rallying and serious, and (2) answering more efficiently our expert members' needs in sharing their knowledge and projects, as well as our non-expert members' needs in finding guidance on plain language.
>
> None of this would be possible without the extremely rigorous and professional work of Kevin Zoschke on UX and graphic design, as well as the valuable work of En Clair team members Elizabeth Robertson, Claire Farnoux and Levon Misirliyan on creating the website's content. We hope members will like it!

Plain language standards

Clarity is heavily involved in the International Standards Organization's Working Group that is developing a multi-language, plain language standard. At least 10 of

the 50-ish members of the Working Group — who represent standards bodies from 13 countries — are Clarity members, as are 4 of the 7 members of the Working Group's Drafting Committee. Just as importantly, Clarity (along with PLAIN and the Center for Plain Language) has been officially accepted by ISO head office as a Liaison Organization to the Working Group. Clarity's representative on the Working Group is Justyna Zandberg-Malec, from Poland. Lastly, the Working Group is chaired by former Clarity President, Christopher Balmford. My thanks to the members for their contribution to this important work. You can read more about the ISO plain language project here: https://www.iplfederation.org/our-work/

We will soon send information about our upcoming meeting, to be held during the conference. Please let me know if you are interested in becoming a country representative or if you want more information about serving on Clarity's leadership board.

Until we meet again (in October?), please stay safe, and please keep doing what you're doing. Plain language has never been more important.

Warm regards,

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In this issue

Access to justice. What does it mean to you? Or maybe the better question is, What does it mean to *not* you?

What does access to justice mean to the millions of tenants who live just 15 miles east of you? Many of them lost their jobs after the pandemic, and landlords are threatening to evict. They feel helpless and hopeless. And even if they knew their rights, they have no idea how to protect them. And if you're being honest with yourself, you don't either. After all, the process is a puzzle, and the statutory language is dense (at best).

What does access to justice mean to the single mom who lives two houses away? You know, the divorced woman with the red car who was a victim of domestic violence and didn't know what to do about it. Her car has had a cracked windshield for more than two years and is older than her son. Speaking of the son, rumor has it, he has been in the juvenile court system since the divorce. All he seems to do is mope around. He seems sad and depressed all the time. In fact, you've never once seen him smile. What are their names again?

So again I ask, What does "access to justice" mean? Seriously — think about it. Stop reading, silence your phone and other life distractions, and take five minutes to think about the answer to this important question.

. . .

Some words that came to mind for me: Fairness. Equality. Fundamental. Dignity. Humanity. Access to justice is not a political position (or at least, it shouldn't be). It's not leverage. It's not selfish. It's not self-promoting. It's not a cute idea that just seems like the right thing to do. However you define it, access to justice is incredibly important, perhaps more important now than ever.

Issues 81 and 82 of *The Clarity Journal* share this important theme. I sent out the call for papers for what was supposed to be Issue 81 only. And I was overwhelmed by the response. The number of excellent articles led to carrying the theme through two issues of the *Journal*.

In another first, we are publishing several articles in both English and in the authors' native language. For the first time, I'm delighted to say that *The Clarity Journal* includes articles in French, Spanish, Polish, and Hungarian.

The two issues include 19 articles, and 9 of them are in two languages. A short introduction isn't enough, so I urge you to read every one to get a full flavor of the life-changing work that you and your plain-language colleagues are doing every day, the progress we have made, and the work still to be done.

Finally, the issues are an introduction to Clarity's upcoming 2020 conference Access for All: Plain language is a civil right. The 2020 conference began as a traditional in-person conference to be held at the historic Watergate Hotel in Washington, D.C., in late September and early October 2020. Then came the pandemic, and everything changed.

The conference is now in two parts (October 2020 and May 2021) and is co-hosted (for the first time) by all three major international plain-language organizations: Clarity, the Center for Plain Language, and PLAIN. I'm thrilled about this collaboration and how the three groups can work together to improve communication.

The October part of the conference will be three half days. You'll see some of these authors, and many others, as we share more about the ways plain language changes lives throughout the world. The conference begins on (you guessed it) International Plain Language Day. October 13 is also the 10-year anniversary that former U.S. President Barack Obama signed the Plain Writing Act.

I'm looking forward to the conference — and seeing you.

Access for All:
Plain language is a civil right

COVID-19 and Black Lives Matter
dominate the headlines of 2020.
But the deeper story is one of access.
Who has it? Who needs it?
How do we get it to everyone?
As practitioners, we have a responsibility
to increase access: to information,
to justice, and to health care.

www.accessforallconference.org

Access to justice requires plain language

Bridget McCormack

Chief Justice Bridget Mary McCormack joined the Michigan Supreme Court in January 2013, and became the Chief Justice in January 2019. She graduated from NYU Law and joined the Yale Law School faculty in 1996 and the University of Michigan Law School faculty in 1998. Chief Justice McCormack was elected to The American Law Institute in 2013. She serves as an editor on the ABA's preeminent journal, *Litigation.* Chief Justice McCormack serves on various state and national boards and continues to teach at the University of Michigan Law School.

There have long been lawyers and judges and others working on ensuring access to justice. And plain language advocates, too, have been hard at work for decades. They even work together sometimes, because each constituent group understands well its relationship to the other. As the Chief Justice of a state court system that adjudicates almost 4 million cases each year, many involving self-represented litigants, I see plain language as an enormous tool for achieving equal access to our courts. It is critical to empowering low-income individuals to navigate the legal system on their own, ensuring procedural fairness for all and therefore to the legitimacy to the rule of law.

Why access to justice matters: the legitimacy of the branch and the rule of law

The rule of law is a defining feature of our constitutional democracy. It is perhaps the single feature of the American experiment that most defines us culturally; it is an idea and an ideal. That means it is fragile; its sustainability depends on the public sustaining it. And when people feel excluded from our justice system, its fragility is most acute. Equal access to justice is fundamental.

But the number of people with legal needs who cannot afford lawyers in our county is staggering. Of course, in the criminal context, the Constitution requires that the government fund lawyers for people accused of crime who cannot afford to hire their own lawyers. That system has its imperfections, many of them significant. But that's not my focus here. Instead what I want to figure out is how to make sure the people in my state who have important civil legal problems can nevertheless use the legal system to advocate for themselves and their interests regardless of income. That everyone can participate in our justice system, and know they are listened to. Not everyone is going to like the outcome of a particular legal proceeding (by definition, usually only about 50% of the people like the result). But more fundamental than liking the outcome is believing that the process was fair. It will not be fair when litigants cannot understand it.

The justice gap

In Michigan, an estimated 2 million Michiganders qualify for legal help, according to the Legal Services Corporation. The corporation is a national entity that secures federal funding states can use to support legal aid clinics for an estimated 60 million people who live at or below 125% of the federal poverty level.[1] The State Bar of Michigan estimates that there are approximately 285 "legal aid" attorneys in Michigan providing legal services for an estimated 1,961,687 people living at or below 125% of the federal poverty level. That means every 6,883 low income Michiganders have one legal aid lawyer who can help them with critical needs around housing, family and safety. [2]

1 https://www.michbar.org/file/programs/atj/pdfs/JusticeGap.pdf

2 Id.

The lack of representation can be devastating. Take evictions, just for one example. In most eviction cases landlords are represented and tenants are not.[3] And in most cases, pro se tenants are evicted. The opposite is also true: in most cases where tenants are represented by counsel, favorable outcomes are achieved for those tenants.[4] Eviction is devastating to families, but also to communities and to a local economy. In fact, the cost to communities is now understood as so significant that some jurisdictions are funding a right to counsel in eviction cases.[5] But that solution is unlikely to be a national solution. And even in jurisdictions where indigent people facing eviction have a right to counsel, those same indigent people are likely to have other civil legal needs which they will have to navigate on their own. The justice gap is more of a canyon.

And it's not only the people who show up to court on their own to try to navigate the legal process. There are others who do not understand they have a legal problem that has an available remedy. Think of a parent whose son or daughter has a right to special education but does not know that he or she qualifies. Or the consumer who has a defense to an unfair loan practice but lacks any information about her legal rights.

Faith in government is lost when people come to court and are not in a position to advocate for themselves — or they never bother to come at all because they do not believe there is any hope for them in our legal system. What's at stake in finding innovative solutions to allow all of our neighbors to advocate for their interests in our courts is the very legitimacy of the system. Today's tenant facing eviction is tomorrow's witness in a personal protection order. The public's belief that the court system is one where being right is more important than being powerful is fundamental to its future.

Plain language: the foundation on which to build all solutions

Plain language is a critical first step in any solution to our access to justice problem. Clear communication is fundamental to reaching people who do not come to court at all or come to court but cannot advocate for themselves. Plain language makes it easier for people to find the information they need to make decisions. It gives them agency in those decisions. And it allows them to communicate their concerns and their views to judges and court staff who are in a position to give those concerns legal meaning.

But making sure that the people affected by our justice system understand what is happening to them while they are experiencing it is essential to access to justice. People who come to courts, as litigants or witnesses or families of both, want to understand what is being said about them, around them and to them. And they have a right to understand it.

Procedural fairness

There is strong research supporting the understandable view that people care more about how they experience justice than the particular outcome in any given case.[6] That is, procedural fairness is as important as a case's outcome to the individuals in that case. And researchers identify four aspects of a procedurally fair process that matter most:

3 Matthew Desmond, "Unaffordable America: Poverty, housing, and eviction," Fast Focus 22 (2015): 1–6, available at https://www.irp.wisc.edu/publications/fastfocus/pdfs/FF22-2015.pdf.

4 Sandefur, The Impact of Counsel: An Analysis of Empirical Evidence, Seattle Journal for Social Justice Vol. 9: Issue 1 (2010), available at https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1076&context=sjsj (noting studies indicating that "tenants facing eviction for nonpayment of rent who were represented by lawyers were more than 4.4 times more likely to retain possession of their apartments than similar tenants who were not represented").

5 See https://www1.nyc.gov/site/hra/help/legal-services-for-tenants.page (noting that New York City became the first city in the country to ensure universal access to legal services for tenants); https://www1.nyc.gov/office-of-the-mayor/news/613-19/350-000-new-yorkers-receiving-free-legal-help-fight-evictions-right-counsel (same).

6 See Tom Tyler, Ben Bradford, and Jonathan Jackson, Psychology of Procedural Justice and Cooperation, ResearchGate (2013), available at https://www.researchgate.net/publication/228242160_Psychology_of_Procedural_Justice_and_Cooperation.

(1) voice: the ability to participate in the process and be heard,

(2) neutrality: the belief that the rules are applied in an unbiased and transparent way,

(3) respect: that people are treated with dignity and their rights are protected, and

(4) trust: that the decision-makers are benevolent and out to help the litigants, that they listen to litigants' concerns and explain their decisions in language that is understandable.[7]

All of this is on the one hand sensible and unremarkable; anyone who has raised kids knows that fair process produces better outcomes for everyone. And yet it isn't what judges or court staff are primarily trained to be good at, so it does not always come easy.

We all learned how to speak in code in law school. That code became second nature, and we can speak it now effortlessly. We do it without thinking, using legal terms of art that have common language equivalents, but those common language equivalents no longer roll off our tongues. Translating forms and court orders and other official court communications into plain language is likely to be easier than training ourselves to use it.

But our efforts to use plain language in our interactions with court users is at least as important as translating our form and orders and opinions. We can and should explain to litigants how and why we reached a particular decision. And we can explain to them what they can do as a result of our decision. The benefits of clarity to courts has been demonstrated: people who understand court decisions and orders are far less likely to violate those orders or come back to court because of confusion about them.[8] Better communication improves compliance, and reduces additional litigation.

That should be reason enough for people who work in courts to work to use plain language in our communications. But the benefits to access to justice are even more fundamental to the legitimacy of our work. We can give people the tools to advocate for their interests, a voice in the processes they are subject to and the dignity of listening to their concerns and translating those concerns into legal claims and defenses. And when we do, we will build trust in our branch of government and the foundation for bridging the access to justice gap.

The rule of law is a set of principles that require buy in for sustenance. Access to justice grows buy in and lack of access erodes it.

7 See Judge Steve Leben's article exploring court programs building on these principles of procedural fairness. https://www.ncsc.org/~/media/Microsites/Files/Future%20Trends%202014/Procedural%20Fairness%20Movement%20Comes%20of%20Age_Leben.ashx

8 See https://richardzorza.files.wordpress.com/2016/11/plain-language-report_10-24-16.pdf (noting a decrease in the number of violations of protective orders after the court began issuing orders that used plain language and contained a Spanish language version for those with limited English reading comprehension).

Do you understand your rights?

Making the Letters of Rights more accessible

Lili Krámer is a sociologist-criminologist at the Hungarian Helsinki Committee (HHC), a human rights NGO. She coordinates HHC's project for promoting the use of plain language by criminal justice actors (judges, lawyers and police), in order to make the criminal procedure more accessible to people without a legal background.

Lili Krámer, Zsófia Moldova, and Vera Gergely

The Letter of Rights is a text that informs suspects of their fundamental rights (such as the right to remain silent or the right to have a lawyer). If you are suspected of something the police will either read out your rights, or provide you with the text so you can read it. The police must inform you about your rights at the beginning of your police interview as a suspect or your arrest.

Even if you are highly educated, being notified of your rights might not mean you will fully understand them because:

1. when you're in custody or just simply sitting in front of a police officer you're probably extremely stressed, therefore your cognitive capacities are limited; and
2. the language used in the Letters of Rights is often complex and technical.

As a result, many people are not able to understand their rights. It is self evident that suspects who do not speak the language of a country have the right to an interpreter. But how are people with lower literacy expected to understand the texts written in "legalese"?

Moreover, if people can't understand their rights, they won't be able to exercise them, which means they can't properly defend themselves. Since the Letter of Rights contains the most basic information you need to know if you become a suspect, it's of paramount importance that it is comprehensible. The right to information is a crucial building block of the right to a fair trial. Without it, other rights which exist in law are, in practice, illusory.

Letters of Rights in the EU

A study in 2010[1] showed that in the European Union:

- the Letters of Rights are vastly different in their accessibility and their level of detail, and m
- any of the Letters of Rights use an inaccessible, technical language.[2]

The EU has been working on developing common minimum rules, so that procedural rights and guarantees linked to basic human rights are protected in all member states. One of the measures taken is the Directive 2012/13/EU on the right to information in criminal proceedings, which requires both information on procedural rights and the rights of detainees to be provided in "simple and accessible language".

The Directive also provides an "indicative model" of the Letter of Rights in the Annex and lists which rights must be included in them:

1 Spronken, Taru (2010): EU–Wide Letter of Rights in Criminal Proceedings: Towards Best Practice. Maastricht University, online edition. Available on: http://www.ecba.org/extdocserv/projects/ps/EU_LoR_Spronken.pdf

2 Our 2017 international comparative research report suggests very similar findings. Available on: https://www.helsinki.hu/wp-content/uploads/Comparative-Report_FINAL_ENG.pdf

- assistance of a lawyer
- entitlement to free legal aid
- information about the accusation
- interpretation and translation
- right to remain silent
- access to documents
- informing someone else about your arrest or detention / informing your consulate or embassy
- urgent medical assistance
- [information about] period of deprivation of liberty

A case study: the Hungarian Letter of Rights

A typical paragraph of the current Hungarian Letter of Rights reads:

"As per Article 185 (1) b) of the CC [Code of Criminal Procedure], I warn you that if you refuse to testify, this fact does not interfere with the continuation of the proceedings. The refusal to testify shall not affect your right to ask questions, or to make objections or motions."

The Hungarian legal tradition prefers texts written in "legalese" and the use of foreign (mainly Latin) phrases. The Letter of Rights is in line with this tradition. It was written by lawyers for lawyers:

- It contains information important for legal professionals and not the most vital information suspects need if charged with a crime;
- It is written in a technical legal language;
- It contains a massive amount of references to particular articles of the Code of Criminal Procedure, without explaining what the given article means.
- It is clear to us that the Letter of Rights is not accessible, but in order to advocate for change we needed hard evidence.

In cooperation with our partners we developed a new research methodology to test the accessibility of the Letter of Rights. We wanted to measure how much people understand it, and which parts they understand. We had to answer several questions first, such as:

1. How to reflect the socio-economic characteristics of the potential "target audience"? Who are the potential suspects?
2. How can we simulate the stressful situation in which the suspect receives the information?
3. How do we measure the comprehensibility of the text?

We also drafted another, plainer version of the Letter of Rights, and tested it with the same methodology. The results[3] have clearly shown that the official version is not accessible. Our version fared better, but there is still a lot of room for improvement.

Zsófia Moldova is a lawyer at the Hungarian Helsinki Committee and head of its Justice Programme. She contributed to researches assessing the enforcement of defendants' rights. She coordinated the project 'Accessible Letters of Rights of Europe', which developed a unique methodology for testing the accessibility of the Letters of Rights.

3 You can read our full research report at https://www.helsinki.hu/wp-content/uploads/Accessible_LoRs_sociolinguistic-testing_HHC.pdf

Vera Gergely is a plain language consultant, who offers editing and training services to various companies and organizations. She introduced plain language to Hungary and wrote the first comprehensive Hungarian guide to plain language. She is a Board Member of PLAIN and the Hungarian representative of Clarity.

How can we make Letters of Rights more accessible?

Building on our previous research, we partnered up with other human rights organizations[1] for the EU-funded project called "Demystifying Justice: Training for justice actors on the use of plain language and developing clear and accessible Letters of Rights".

During the project we:

- meet up with plain language experts and criminal justice stakeholders from 15 EU countries to share experiences and assess training needs,
- write alternative, plainer versions of the national Letters of Rights in 15 member states[2] with the help of national experts,
- get feedback about the alternative Letters from local lawyers, and
- create an e-learning module about plain language for lawyers in 10 member states.

In each participating country we have a plain language expert and a criminal defense lawyer working together on the national Letter of Rights. Although the national legislations and practice differ significantly, the main rights are the same, as laid out in the Directive. We did not want to reinvent the wheel each time, therefore we discussed best practices at a meeting where all the expert partners were present.

We are also developing an e-learning module about plain language, targeting legal professionals. The module will be localized by the plain language experts, and it will be available for free to anyone interested.

Afterwards, the local experts who worked on the Letter of Rights will organize national workshops. Legal professionals with an interest in plain language will be invited to take the e-learning module and then participate in the workshops. A crucial component of each workshop will be collecting feedback on the re-drafted Letter of Rights.

Our major goal with this project is to contribute to the development of an open and accessible legal culture in Europe that works in the interest of the people. We want to achieve this goal by sparking a movement to promote the use of plain language in criminal procedures.

We believe in our success because:

- legal and plain language experts cooperate with each other,
- more than half of the EU member states are participating in the project,
- more and more organizations strive for plain language not only because they are obliged to, but also because they recognize its advantages in their daily work, and
- we will be advocating for the full implementation of these new Letters of Rights all across Europe.

We strongly believe that access to justice starts with understanding your rights. Strengthening cooperation between different professions across Europe and creating accessible Letters of Rights are significant steps on the long journey of making European legal culture more accessible to all.

4 Fair Trials Europe (Belgium), Antigone (Italy) and Apador-CH (Romania)

5 Austria, Belgium, Croatia, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Netherlands, Poland, Portugal, Romania, Spain.

Megértette a tájékoztatást?

Hogyan tesszük érthetőbbé a terhelti tájékoztatókat

Lili Krámer, Zsófia Moldova, & Vera Gergely

Lili Krámer szociológus és kriminológus a Magyar Helsinki Bizottságnál. Ő koordinálja a Helsinki Bizottság azt a projektjét, ami a közérthető fogalmazást szeretné elterjeszteni a büntetőeljárás szereplői (bírók, ügyvédek és rendőrök) között annak érdekében, hogy a jogi szakképzettséggel nem rendelkező emberek jobban értsék az eljárást.

A terhelti tájékoztató arra szolgál, hogy a gyanúsítottakat tájékoztassa az alapvető jogaikról (pl. hogy nem kötelesek vallomást tenni, vagy hogy joguk van ügyvédhez). Ha Önt meggyanúsítják valamivel, akkor a rendőrök vagy felolvassák a jogait, vagy odaadják Önnek papíron, hogy elolvashassa. A rendőröknek tájékoztatniuk kell Önt ezekről a jogokról a gyanúsítotti kihallgatás, illetve a fogvatartás kezdetekor.

Még ha viszonylag magasan képzett is, akkor sem feltétlenül fogja teljesen megérteni a jogait ez alapján a tájékoztatás alapján, mivel:

1. ha fogva tartják, vagy csak szimplán egy rendőrrel ül szemben, valószínűleg nagyon ideges lesz, tehát korlátozott a figyelme és a felfogóképessége; továbbá
2. a terhelti tájékoztató nyelvezete gyakran bonyolult és tele van szakkifejezésekkel.

Mindez azt eredményezi, hogy sokan nem értik meg a jogaikat. Az magától értetődő, hogy azoknak a gyanúsítottaknak, akik nem beszélik az országban használt nyelvet, joguk van tolmácshoz. De hogyan várhatjuk el a rosszabb szövegértésű emberektől azt, hogy megértsék a jogi bikkfanyelvet?

Ráadásul, ha valaki nem érti meg a jogait, akkor nem is tud élni velük, tehát nem tud megfelelően védekezni. A terhelti tájékoztató tartalmazza azokat az alapvető információkat, amikre szüksége van, ha meggyanúsítják - ezért kiemelkedően fontos, hogy a tájékoztató érthető legyen. A tájékoztatáshoz való jog létfontosságú alkotóeleme a tisztességes eljáráshoz való jognak. Nélküle a többi, elméletben létező jog pusztán illúzió marad.

A terhelti tájékoztatók az Európai Unióban

Egy 2010-es kutatás szerint[1] az Európai Unióban:

- a terhelti tájékoztatók érthetősége és részletessége nagyban különbözik, és
- sok terhelti tájékoztató használ érthetetlen, szakkifejezésekkel teli nyelvet.2

Az Unió törekszik közös minimumszabályok lefektetésére annak érdekében, hogy minden tagországban védve legyenek az alapvető emberi jogokhoz kapcsolódó eljárási jogok és garanciák. Az egyik ilyen szabály a 2012/13/EU A tájékoztatáshoz való jog a büntetőeljárás során irányelv, ami előírja, hogy mind az eljárási jogokról, mind a fogvatartottak jogairól “egyszerű és közérthető nyelven” kell tájékoztatást nyújtani.

1 Spronken, Taru (2010): EU–Wide Letter of Rights in Criminal Proceedings: Towards Best Practice. Maastricht University, online kiadás. Elérhető: http://www.ecba.org/extdocserv/projects/ps/EU_LoR_Spronken.pdf

2 A saját összehasonlító nemzetközi kutatásunk 2017-ben hasonló eredményekre jutott. Elérhető: https://www.helsinki.hu/wp-content/uploads/Comparative-Report_FINAL_ENG.pdf

Zsófia Moldova a Magyar Helsinki Bizottság rendészeti programjának vezetője. Részt vett azokban a kutatásokban, amik a terheltek jogainak érvényesülését vizsgálták. Ő koordinálta „A tájékoztatáshoz való jog érvényesülése a büntetőeljárás során az Európai Unióban" projektet, melynek során egy új módszertant dolgoztak ki a terhelti tájékoztatók érthetőségének vizsgálatára.

- joga van megismerni a vádat
- joga van tolmácshoz és fordításhoz
- joga van hallgatni
- joga van hozzáférni az ügyével kapcsolatos dokumentumokhoz
- joga van harmadik személyt (illetve konzulátust vagy nagykövetséget) értesíteni az őrizetbevételéről vagy fogvatartásáról
- joga van sürgősségi orvosi ellátáshoz
- joga van tudni, meddig tarthatják fogva

A magyar terhelti tájékoztató - egy esettanulmány

Így néz ki egy jellemző bekezdés a magyar terhelti tájékoztatóból:

"A Be. [A büntetőeljárásról szóló törvény] 185.§ (1) b) pontja alapján figyelmeztetem, ha a vallomás tételét megtagadja, ez az eljárás folytatását nem akadályozza. A vallomás tételének megtagadása nem érinti az Ön kérdezési, észrevételezési és indítványtételi jogát."

A magyar jogi hagyomány előnyben részesíti a jogi szakzsargont és a külföldi (jellemzően latin) kifejezéseket. A terhelti tájékoztatót ugyanebben a szellemben írták. Jogászok írták jogászok számára:

- a jogászok számára fontos információt tartalmazza, nem pedig azokat a legfontosabb információkat, amikre egy gyanúsítottnak szüksége van;
- jogi szakkifejezésekkel van tele;
- rengetegszer idéz szó szerint a büntetőeljárásról szóló törvényből anélkül, hogy elmagyarázná, mit jelent az adott paragrafus.

Nyilvánvaló számunkra, hogy a terhelti tájékoztató nem közérthető. De ahhoz, hogy a módosítását követelhessük, szükségünk volt bizonyítékokra is.

Partnereinkkel együtt kidolgoztunk egy új kutatási módszertant arra vonatkozóan, hogy megmérjük, mennyire érthető a terhelti tájékoztató. Ehhez előzetesen több kérdést is meg kellett válaszolnunk, mint például:

- Hogyan képezzük le a "célközönség" társadalmi-gazdasági jellemzőit? Kik közül kerülnek ki általában a gyanúsítottak?
- Hogyan tudjuk szimulálni azt a stresszes helyzetet, amikor a gyanúsított megkapja a tájékoztatást?
- Hogyan mérjük a szöveg érthetőségét?

Készítettünk egy másik, érthetőbb változatot is a tájékoztatóból, és ugyanúgy teszteltük ezt is. Az eredmények[1] egyértelműen megmutatták, hogy a hivatalos változat nem közérthető. A mi változatunk jobban teljesített, de még bőven van hova fejlődni.

Hogyan tehetjük érthetőbbé a terhelti tájékoztatókat?

Az előző kutatásunk eredményeire támaszkodva összefogtunk más civil szervezetekkel[2] egy újabb EU-s projektre, melynek címe "Az egyértelmű igazság:

3 A teljes kutatási jelentést itt érheti el: https://www.helsinki.hu/wp-content/uploads/HHC_kutatasi-jelentes_HUN.pdf

4 Fair Trials Europe (Belgium), Antigone (Olaszország) és Apador-CH (Románia)

képzés a büntetőeljárás résztvevőinek a közérthető fogalmazás használatáról és a világos terhelti tájékoztatókról".

A projekt során:

- találkozunk közérthető fogalmazás szakértőkkel és a büntetőeljárás szereplőivel 15 tagországból, hogy megosszuk a tapasztalatainkat és felmérjük a képzési igényeket,
- a helyi szakértők elkészítik a saját terhelti tájékoztatójuk közérthető változatát ugyanebben a 15 tagországban,[3]
- visszajelzést kapunk az átírt tájékoztatókról a helyi jogi szakemberektől, és
- készítünk egy e-learning tananyagot a közérthető fogalmazásról a büntetőeljárás szereplői számára 10 tagországban.

Mindegyik részt vevő országban együtt dolgozik egy közérthető fogalmazás szakértő és egy ügyvéd a saját országuk terhelti tájékoztatóján. Bár a nemzeti szabályozások és gyakorlatok jelentősen eltérnek egymástól, de az irányelvben lefektetett főbb büntetőeljárási jogok megegyeznek. Nem akarjuk újra és újra feltalálni a spanyolviaszt, ezért előzetesen átbeszéltük a jó gyakorlatokat egy olyan találkozón, ahol mindegyik szakértő jelen volt.

Fejlesztünk továbbá egy e-learning tananyagot a közérthető fogalmazásról, kifejezetten a büntetőeljárás szereplőinek. A tananyagot a közérthető fogalmazás szakértők ültetik át a saját nyelvükre, és ez az anyag minden érdeklődő számára ingyenesen elérhető lesz.

Végül az egyes országokban workshopokat szerveznek a helyi szakértők az érdeklődő szakembereknek. A workshopon akkor vehetnek részt, ha előtte elvégezték az e-learning kurzust. A workshopok egyik lényeges feladata az, hogy visszajelzéseket kapjunk az átírt terhelti tájékoztatókról.

A projekttel a legfőbb szándékunk az, hogy hozzájáruljunk egy nyitottabb és közérthetőbb európai jogi kultúra fejlődéséhez. Célunk az is, hogy létrejöjjön egy mozgalom, ami a közérthető fogalmazás igényét terjeszti a büntetőeljárásokban és általában a jogászok között Európában.

Hiszünk a sikerünkben, mivel:

- jogi és közérthető fogalmazás szakértők együtt dolgoznak,
- az uniós tagországok többsége részt vesz a projektben,
- egyre több szervezet nem csak azért törekszik a közérthető fogalmazásra, mert köteles rá, hanem mert felismeri, hogy milyen előnyökkel járhat a napi munkájában,
- sokan, több országban, egy európai uniós finanszírozású program keretében dolgozunk azért, hogy a gyakorlatban is használják majd az átírt tájékoztatókat egész Európában.

Hiszünk abban, hogy a tisztességes eljáráshoz való jog ott kezdődik, hogy mindenki megérti a jogait. A különböző szakmák közötti együttműködés erősítése Európa-szerte, valamint a közérthető terhelti tájékoztatók létrehozása komoly előrehaladást jelent a közérthető európai jogi kultúra felé vezető hosszú úton.

Vera Gergely a közérthető fogalmazás szakértője, a PLAIN igazgatósági tagja, és a Clarity magyarországi képviselője. Vállalatoknak és szervezeteknek ad tanácsokat, átírja a szövegeiket érthetőre, továbbá megtanítja őket érthetően írni. Ő honosította meg a közérthető fogalmazást Magyarországon, és írta meg a témában az első átfogó magyar nyelvű útmutatót.

5 Ausztria, Belgium, Észtország, Finnország, Franciaország, Hollandia, Horvátország, Írország, Lengyelország, Magyarország, Németország, Olaszország, Portugália, Románia, Spanyolország.

Lawyers would like to write clearly, they just don't have time

Justyna Zandberg-Malec helps lawyers to write clearly. She is the country representative of Clarity in Poland. She used to be a movie translator. Translating subtitles taught her to write concisely and with a strict character limit.

Justyna Zandberg-Malec

Simple writing is not easy. As specialists in plain language, we sometimes forget how long we trained in this skill. Almost instinctively we write in short sentences, change clunky noun phrases into strong verbs, and avoid the passive voice. But in assuming that others will do the same (or will pick up the habit with brief training), we succumb to the curse of knowledge.

Clear writing is hard. As writers, we must thoroughly digest the subject matter and arrange it into a logical structure. We must ruthlessly trim all ornament and asides. We must clearly identify our audience. If the audience aren't specialists in the field, they may not know words that are obvious to us. We must paraphrase rather than quote, particularly when it comes to judgments full of long sentences and convoluted constructions. This all takes time, but it's time lawyers say they don't have.

Over a decade ago, when I was ending my career as a film translator, I wrote that speed had become the fundamental virtue of a translator. Clients in the industry prefer a translator who can deliver a decent translation of a feature-length film in a couple of days over one who will spend a week chiselling at the text to convey all the nuances of the original. The effect is translations that lose the levity, subtlety, and even the basic meaning of the original.

It seems to me that lawyers find themselves in a similar situation. Speed counts. Of course the lawyer must review the case file, but once the lawyer grasps the intellectual solution, the work should be practically done. The mere act of writing is not prized. I have even encountered the view that a lawyer should be able to draft a four-page legal document in an hour. This would reduce the lawyer's fundamental skill to speed-reading and fast typing. For carving and shaping the writing to make it concise and understandable there just isn't time.

The survey

For 11 years I have worked at one of the largest law firms in Poland as editor, publications coordinator, and specialist in plain language. I edit texts intended mainly for publication, conduct training for those who want to brush up on their writing skills, and serve as an on-site language clinic. I persuade lawyers that writing clearly is a worthy aim. Last year I decided to check what lawyers think about the principles of clear writing.

I prepared a survey which I distributed to lawyers and assistants at the firm, in total about 150 people, and it was completed by 45 (26 advocates or attorneys, nine advocate or attorney trainees, three law graduates, one law student, and six staff without a legal education). I asked four questions:

- What sorts of texts should be written by lawyers (understandable, effective, linguistically correct, concise, thorough, elegant, formal)?
- How important are plain-language rules in legal texts and can they be applied at all? (tailoring the text to the audience; short sentences; short paragraphs; starting the text, section or paragraph with the most important information; avoiding noun clusters, writing in first-person singular or plural; avoiding jargon and complex terminology; navigational aids (subtitles, bullet points); graphic elements (tables, infographics))
- If the final text is not linguistically ideal, what is the reason?
- Who is the addressee of your text?

What I found out, and what pleased me a lot, was that lawyers value clarity of a text just as much as its effectiveness—or even slightly higher, although the difference is probably statistically insignificant ("The text has to be understandable": 41 respondents strongly agreed, four agreed; "The text has to be effective": 40 respondents strongly agreed, five agreed). They also care about linguistic correctness (34 respondents strongly agreed, 11 agreed) and tailoring the text to the audience (29 respondents strongly agreed, 13 agreed—although one respondent found it hard to apply and two considered it not very important). They don't care much about formality (four respondents said it's unimportant, 13 said it's not very important; only three thought it is very important). They all know who they are writing for: nobody chose the answer "I don't know who my addressee is" (and they know that they often write for non-lawyers). Only one person wrote that it's not important to waste time on the language.

In the space for open-ended responses, the lawyers wrote that documents should be concise, clear, understandable and persuasive. They should be written in natural language, without bombast, in short sentences, and without difficult words (one respondent commented that if the reader doesn't know a word and has to check it in the dictionary, they will immediately take a negative attitude, hindering their understanding of the rest of the text). Legal documents should be tailored to the legal knowledge and awareness of the audience. They should have a carefully considered structure, logical and composed in an orderly fashion. They should not contain long quotations from court decisions. Apart from litigation pleadings at least, the summaries and recommendations must be understandable to a non-lawyer. Texts written by lawyers should also be properly formatted, divided into paragraphs, using outline points and subtitles.

So if it's all so great, why is it so bad?

No time, no control over the final version

In the multiple-choice question "If the final text is not linguistically ideal, what is the reason?", 23 respondents chose the answer "There's never enough time for the final proofreading and polishing" and 22 answered "I'm just one of several people working on the text and I have no control over the final version." Some even had the courage to admit that they lack knowledge (eight respondents). Some said they lacked support (five respondents). Three people said that their texts are always linguistically perfect (one with the disclaimer that he only strives for perfection). But most of the respondents stressed the lack of time.

"I try to make my texts linguistically correct, but if they aren't it's because of a shortage of time." "Authors don't always see their own typos." "The problem is that careful proofreading of the final version to catch typos or small linguistic mistakes

That's just typos—what about clarity?

In the answers to the question about the desired characteristics of a text, the respondents focused on less tangible aspects such as comprehensibility. The responses to the question about the reasons for shortcomings mainly referred to correctness. Maybe this is because the question wasn't phrased ideally, but the reason could also be that a typo is easy to catch. The author might notice it even after sending out the text, and someone else could point it out. But lack of clarity is much harder to test. Authors usually understand their own texts, as do their professional colleagues. A reader familiar with the subject matter can unpack even a seriously mutilated sentence. But laypeople often don't want to admit that some passage in the text is utterly opaque to them.

What's the solution?

I have described a pilot survey conducted at a perhaps atypical firm. First, the firm places great stress on the quality of its written work product. Second, the firm employs an editor and plain-language specialist, and that is definitely outside the norm. The firm's declared allegiance to clear writing may be a bit higher than in the general population of lawyers (it also can't be ruled out that those choosing to respond to the survey pay above-average attention to the linguistic aspect of their work).

But even the declared adherence to these principles does not result in the drafting of perfect texts. I don't know if there is any cure. The lawyer's task is to find a solution to the client's problem or win the client's case. Admittedly, those goals can be achieved with the help of texts of dubious linguistic quality. And lawyers are much better paid than language specialists. Whatever we think of that, it seems that it would be inefficient for lawyers to waste time polishing their texts. Perhaps the solution would be "an editor for every lawyer"? Perhaps the assistants who do the final proofreading of the text should be required to have higher linguistic skills? But here we run into the belief drilled into assistants at many firms that "the lawyer is always right." For an assistant to correct a lawyer's text requires courage and even insubordination. Training in plain language certainly doesn't hurt, but once the training is over it's too easy to conclude that we know the rules so our writing must be alright. And so far as I know there are still no studies showing that judges are more likely to rule in favour of applications written in plain language (there are studies concluding that judges prefer to see clearly written pleadings, but preference and effectiveness are two different things).

I'm writing all this as an advocate for plain language. I strongly believe that clarity in legal writing is a human right and a civic obligation. But how can lawyers be encouraged to apply this approach, apart from the argument that it saves time (the reader's if not the writer's)? That's an open question.

Prawnicy chcieliby pisać prosto, ale nie mają czasu

Justyna Zandberg-Malec

Justyna Zandberg-Malec pomaga prawnikom pisać po ludzku. Jest przedstawicielką Clarity w Polsce. Wcześniej pracowała jako tłumaczka filmowa, co nauczyło ją pisać zwięźle i skracać przekaz do niezbędnego minimum.

Pisanie prostym językiem nie jest łatwe. Jako specjaliści od prostego języka czasem zapominamy o tym, bo długo ćwiczyliśmy tę umiejętność. Niemal odruchowo piszemy krótkimi zdaniami, przerabiamy rzeczowniki na czasowniki i unikamy strony biernej. Zakładając jednak, że inni robią tak samo (albo że nabiorą takiego nawyku po krótkim szkoleniu), sami ulegamy klątwie wiedzy.

Proste pisanie jest trudne. Trzeba dokładnie przemyśleć temat i ułożyć go w logiczną strukturę. Trzeba bezwzględnie wyciąć wszystkie ozdobniki i poboczne wątki. Trzeba dobrze rozpoznać odbiorcę. Jeśli nie jest specjalistą w naszej dziedzinie, trzeba pamiętać, że może nie znać słów, które dla nas są oczywiste. Trzeba parafrazować zamiast cytować – zwłaszcza wyroki, pełne długich zdań i zagmatwanych konstrukcji składniowych. To wszystko wymaga czasu, a prawnicy tego czasu nie mają.

Ponad 10 lat temu, kończąc swoją karierę tłumacza filmowego, pisałam, że podstawową zaletą tłumacza stała się szybkość. Zleceniodawcy wolą tłumacza, który w ciągu dwóch dni dostarczy przyzwoite tłumaczenie pełnometrażowego filmu, od tego, który będzie przez tydzień cyzelował tekst, żeby oddać wszystkie niuanse oryginału. Efektem są tłumaczenia, które gubią humor, lekkość, a często i sens pierwowzoru.

W podobnej sytuacji – o ile mogę to ocenić – są prawnicy. Liczy się szybkość. Oczywiście trzeba się zapoznać z aktami sprawy, ale z chwilą, gdy prawnik znajdzie jej intelektualne rozwiązanie, praca powinna być już właściwie zakończona. Sam akt pisania nie jest wysoko ceniony. Spotkałam się nawet z opinią, że prawnik powinien umieć w godzinę przygotować czterostronicowe pismo. Oznaczałoby to, że podstawową zaletą prawnika powinna być umiejętność szybkiego czytania i szybkiego maszynopisania. Na cyzelowanie pisma, tak by było zwięzłe i zrozumiałe, po prostu nie ma czasu.

Ankieta

Od 11 lat pracuję w jednej z największych kancelarii w Polsce jako redaktorka, koordynatorka publikacji i specjalistka ds. prostego języka. Redaguję teksty przeznaczone głównie do publikacji, prowadzę szkolenia dla chętnych, jestem miejscową poradnią językową. Przekonuję, że warto pisać prostym językiem. W zeszłym roku postanowiłam sprawdzić, co prawnicy myślą o jego zasadach.

Przygotowałam ankietę, którą wysłałam do prawników i asystentek w kancelarii, w sumie do około 150 osób, z których 45 wypełniło ankietę (26 adwokatów/radców prawnych, dziewięciu aplikantów adwokackich/radcowskich, trzech absolwentów prawa, jeden student prawa i sześć osób bez wykształcenia prawniczego). Zadałam cztery pytania:

- Jak istotne jest, żeby pisane przez prawników pisma były zrozumiałe, skuteczne, poprawne językowo, zwięzłe, wyczerpujące, eleganckie, sformalizowane?
- Badacze wyodrębnili pewne cechy tekstu, które mają wpływ na jego zrozumiałość. Jak istotne są one w tekstach prawniczych? Czy w ogóle dadzą się zastosować? (dostosowanie tekstu do odbiorcy; krótkie zdania; krótkie akapity; zaczynanie tekstu/działu/akapitu od najważniejszej informacji; unikanie zbitek rzeczownikowych, zamiana rzeczowników na czasowniki; pisanie w pierwszej osobie liczby pojedynczej albo mnogiej; unikanie żargonu i skomplikowanego słownictwa; elementy nawigacyjne (śródtytuły, listy wypunktowane); elementy graficzne (tabele, infografiki))
- Jeśli finalny tekst nie jest idealny językowo, jaka jest tego przyczyna?
- Kto jest odbiorcą Państwa tekstów?

Okazało się – co bardzo mnie ucieszyło – że prawnicy cenią zrozumiałość tekstów równie wysoko jak ich skuteczność – a nawet trochę wyżej, choć różnica jest zapewne statystycznie nieistotna („Tekst musi być zrozumiały": bardzo istotne dla 41 respondentów, istotne dla czterech; „Tekst musi być skuteczny": bardzo istotne dla 40 respondentów, istotne dla pięciu). Wysoko cenią też poprawność językową (bardzo istotna dla 34 respondentów, istotna dla 11) i dostosowanie tekstu do odbiorcy (bardzo istotne dla 29 respondentów, istotne dla 13 – choć jeden respondent uznał, że byłoby to trudne do zastosowania, a dla dwóch jest to nieistotne). Nie bardzo troszczą się o sformalizowany język (dla czterech respondentów było to nieistotne, dla 13 mało istotne, tylko dla trzech bardzo istotne). Wszyscy wiedzą też, do kogo piszą – nikt nie wskazał odpowiedzi „Nie wiem, kto jest moim odbiorcą" (i mają świadomość, że często ich czytelnikami są nieprawnicy). Tylko jedna osoba wskazała, że językowy kształt tekstu nie jest tak ważny, żeby tracić na to czas.

W miejscu na swobodną wypowiedź prawnicy pisali, że pisma powinny być krótkie, przejrzyste, zrozumiałe i przekonujące. Należy je pisać naturalnym językiem, bez nadęcia, krótkimi zdaniami, bez trudnych słów (jeden z respondentów skomentował, że jeśli czytelnik nie zna jakiegoś słowa i musi sprawdzić jego znaczenie, od razu ma negatywne nastawienie, co utrudnia zrozumienie całego tekstu). Pisma prawnicze powinny być dostosowane do wiedzy i świadomości prawniczej adresata. Powinny mieć przemyślaną strukturę, być logiczne i kompozycyjnie uporządkowane. Nie powinny zawierać długich cytatów z orzecznictwa. W pismach nieprocesowych przynajmniej podsumowania i rekomendacje powinny być zrozumiałe dla nieprawnika. Teksty pisane przez prawników powinny też być odpowiednio sformatowane, podzielone na akapity, z wykorzystaniem list wypunktowanych i śródtytułów.

Jeśli jest tak dobrze, to czemu jest tak źle?

Brak czasu, brak kontroli nad finalną wersją

W pytaniu o przyczyny niedoskonałości językowej tekstu (w którym można było zaznaczyć kilka odpowiedzi) 23 respondentów wybrało odpowiedź „Nigdy nie ma czasu, żeby go finalnie sczytać/dopracować", a 22 odpowiedziało „Jestem jedną z kilku osób pracujących nad tekstem i nie mam kontroli nad jego finalną wersją". Ośmiu miało odwagę przyznać, że brak im wiedzy. Pięciu wskazało, że brak im wsparcia. Trzy osoby napisały, że ich teksty zawsze są idealne językowo (jedna z zastrzeżeniem, że stara się, aby tak było). Ale jednak większość podkreślała brak czasu.

„Staram się, żeby moje pisma były poprawne językowo, jeśli tak nie jest, wynika to z braku czasu". „Autor nie zawsze widzi swoje literówki". „Kłopot z tym, że dokładne przeczytanie finalnej wersji, celem wychwycenia literówek albo drobnych błędów językowych, może zająć godzinę, dwie, albo i więcej". „Nawet jeśli pismo jest sczytywane kilkakrotnie, zawsze można coś poprawić". „Nie ma czasu na profesjonalną weryfikację; dokumenty w wersji finalnej są sczytywane językowo tylko przez prawnika i asystentkę".

Mowa o literówkach, ale co ze zrozumiałością?

W odpowiedziach na pytanie dotyczące pożądanych cech tekstu respondenci skupiali się na mniej uchwytnych cechach, takich jak zrozumiałość. Odpowiedzi na pytanie o przyczyny niedociągnięć odnoszą się głównie do poprawności. Może wynika to z niefortunnie sformułowanego pytania, ale przyczyna może być też taka, że literówkę łatwo jest zauważyć. Autor może spostrzec ją sam już po wysłaniu tekstu, ktoś też może mu ją wytknąć. Brak zrozumiałości znacznie trudniej jest zbadać. Autor zwykle sam rozumie swój tekst, rozumieją go też koledzy po fachu. Jeśli człowiek zna tematykę, zrozumie nawet bardzo wykoślawione zdanie. A laik często nie przyzna się, że jakiś fragment tekstu jest dla niego niezrozumiały.

Czy jest rozwiązanie?

Opisałam pilotażowe badanie, przeprowadzone w dość specyficznej firmie. Po pierwsze, kładzie ona duży nacisk na jakość tekstu. Po drugie, zatrudnia redaktora/specjalistę ds. prostego języka, co zdecydowanie nie jest normą. Deklarowane przywiązanie do zrozumiałości może więc być nieco wyższe niż w całej populacji prawniczej (niewykluczone też, że w ankiecie wzięły udział osoby zwracające ponadprzeciętną uwagę na warstwę językową).

Mimo tych deklaracji widać jednak, że nie prowadzą one do powstawania idealnych tekstów. Nie wiem, czy jest na to jakieś lekarstwo. Zadaniem prawnika jest znalezienie rozwiązania problemu klienta albo wygranie sprawy. Można to osiągnąć również tekstem o wątpliwej jakości językowej. Prawnicy są też opłacani zdecydowanie lepiej niż specjaliści od języka. Niezależnie od tego, co o tym sądzimy, oznacza to, że nierozsądne byłoby, gdyby tracili czas na cyzelowanie tekstu. Czy jednak rozwiązaniem jest „redaktor dla każdego prawnika"? A może należałoby wymagać wysokich kompetencji językowych od asystentek, które finalnie sczytują teksty? Tu jednak problemem jest wpajane w wielu firmach asystentkom przekonanie, że „prawnik zawsze ma rację". Do poprawiania tekstu potrzebna jest odwaga i brak czołobitności. Oczywiście nie zaszkodzą szkolenia z prostego języka, ale po takim szkoleniu zbyt łatwo można dojść do wniosku, że znamy zasady, więc na pewno piszemy nieźle. Nie ma też wciąż (chyba) badań dowodzących, że sędzia chętniej przychyli się do pisma sformułowanego prostym językiem (są oczywiście badania mówiące, że sędziowie wolą tak pisane pisma, czym innym jednak jest jednak preferencja, a czym innym skuteczność).

Piszę to wszystko jako orędowniczka prostego języka. Głęboko wierzę, że zrozumiałość pism prawniczych jest prawem człowieka i obywatela. W jaki jednak sposób możemy zachęcać prawników do stosowania tego podejścia, poza podkreślaniem oszczędności czasu (po stronie odbiorcy, a nie piszącego oczywiście)? Pytanie pozostaje otwarte.

Clarity in books on financial law: An author's view

Philip Wood CBE, QC (Hon) is the author of about 23 books. He was a partner in the international law firm Allen & Overy and head of their Intelligence Unit, a think-tank. He has lectured at over 60 universities world-wide, including Oxford, Harvard, Beijing, Paris and Cambridge. He is currently a writer.

Philip Wood

The problem with financial law is that it is impenetrable, almost completely inaccessible. Knowing your rights is essential to justice.

One upon a time, that didn't matter much. That is because during agricultural times there wasn't much money around. But nowadays, the wealth of people (in developed countries at least) has gone up by a huge multiple in the last century or so. The work of the people is often expressed in money and investments. Money connects us to our future through our pensions and to other countries through trade. Since money is the product of our labour and talents, it is crucial that we know what is going on, especially if something goes wrong.

This is one of the problems I faced when I was recently putting together a revision of a series of works I had written on the law and practice of international finance. The first edition was written in 1980 - a lovely slim little book with a breezy bright green jacket. Now, after several editions, the 2019 version is nine hefty volumes with thousands and thousands of pages, encased in black covers with the titles announced in ceremonial gold. That is what has happened to the law and practice in the meantime. True, I was dealing with all the jurisdictions in the world – 321 of them – when in olden times you only had to deal with a few. Now even Cambodia has a stock exchange.

But mere multiplication of the same thing was not the challenge. The challenge was the mounting complexity in the field.

What is a credit default swap? What is a collateralised debt obligation? What is a central counterparty for multilateral netting? For that matter, what are scalping, ping orders, abusive squeezes, trash and cash, or pump and dump? Or momentum ignition? And, for Heaven's sake, what IS a derivative, after all? All of these things, though having ancient antecedents, are relatively new in their volumes and intricacy.

My first solution to this clarity issue was level of address. My audience was me. Me, as a newly qualified lawyer who knew nothing except a few irrelevant rules about the law of contract. I was explaining things to myself. That meant that there could be no showing off.

Secondly (and alarmingly for some people), there are no footnotes, absolutely no footnotes. Well, at least, no footnotes at the bottom of the page. All the citation is in the text – thousands of references. Which means that the citation had to be short and disciplined. No showing off (again). At least the reader does not have to read the books in two places at once. I resisted the temptation of an easy shot – a footnote 1 on the end of the last sentence on the last page of the last volume saying at the foot of the page, "Thank God, that's over." I hate footnotes and so do most of my readers, that is, people who actually want to know what to do, people who actually want to read what the author is saying, not working notes.

Then I slashed the number of acronyms. Acronyms – supposedly as shortcuts – are pervasive in legal writing on the subject. Since they are in capitals, the page screams at the reader. If you are from Japan, reading capitals is harder than reading normal English fonts. But most of all, acronyms are a way of telling people who don't know what the letters stand for, that they are not members of the secret cult, the holy inner sanctum in the sacred tent of knowingness, who recognise each other only by their use of the arcane symbols of the sect.

When I explain a concept, I aim to start with the simplest definition or example. Then, once the concept can be grasped, I move on to more complicated versions, building step by step. Financial markets are full of jargon. In fact most disciplines have their own idiosyncratic jargon, such as, say, computer specialists and musicologists. Lawyers have still a lot to learn from other experts about effective obfuscation.

There are lots of other techniques of clarifying, staging the steps of learning – how to order, how to group, how to classify and arrange, how to dilute, how to distil.

Then there is style and language. It is generally thought that when you are writing a didactic text, then to be clear you have it write as if you are Jane Austen in a pure ordered classical style with no literary frills.

I am not so sure about that one. When I can, I aim to use as many literary genres as possible – epic, lyric, ode, Augustine, gnomic, the limerick. I switch between, say, the romantic passionate and the vulgar vernacular - to create tension and movement, as in jazz. I use metaphors and other tropes. Why not? We often express things best by exploiting the emotional nuances of the language. We don't have to be dry to be clear.

It would be nice to promote clarity by pictures. Clear pictures, not those taunting diagrams with a maze of arrows and boxes which are more difficult to follow than the text. But that requires the writer also to be an accomplished artist.

Ten years ago I published a book of financial law maps which I had developed in the early nineties and which showed all the jurisdictions of the world in stylised form so the world itself was comprehensible. I took some technical legal topic and then coloured the map in with the colours of each jurisdiction according to its view on that issue. Thus red for very restrictive, yellow for quite restrictive, while green and blue stood for degrees of freedom. The colours I used were intentionally the primary colours of children's plastic toys. I myself thought these maps were a marvellous idea. You could get a general idea of the range of solutions in the whole world – quite hard to do – at a glance in dramatic and visible form.

But I doubt that the legal public generally warmed to these maps. Maybe they did not like law to be like a cartoon or comic strip. It remains true that pictures, and even more so music, require words to bring out or explain complex data. Still, a few of the maps appear in my latest books and, so far as I am concerned, that project is still alive and waiting for its moment as a useful source of illumination.

I have a few confessions to make.

I very frequently do not observe my own rules.

Next, victims of financial wrongdoing will not easily be able to get all the answers simply by reading my books. They are written for practitioners, so a lot has to be filtered through to the lay person by these professionals. I assume a basic knowledge of the law since it would take extra volumes to explain the basics. My

aim is to make is as easy as possible for practitioners to understand the points quickly.

Also, my books are long. The last edition in 2007-2008 was two million words. In this edition I added a further one million words – the equivalent of ten doctoral theses. The main problem was that the timetable required me to do that in a year. One book every six weeks. I could not face spending more than a year on this. So I figured that it was best just to get them done, than not get them done and maybe expire in the meantime.

It is sometimes said that you need time to shorten something and there is truth in that. Ironically however, simplification and clarification sometimes make the text longer, for example, because of the need not to use coded or shortcut language, the need to develop graded explanations and the like.

Life is always just a draft of what it should be.

As for knowing what cash and dash is, or pump and dump, don't worry. You only have to know what they are if you are, well, proposing to engage in some wicked course of financial manipulation, in which case you really do need to read my books. Luckily, contrary to the popular view, the amount of wickedness in financial markets is not that high, and when something does go wrong, it is usually obvious, notwithstanding the obscurity of the scribblers – and the legislators who started it all.

Access to justice – "I did it my way"

John F. Wilson

John F. Wilson, MA (Oxon), Barrister (non-practising). He is a law drafting consultant based in England who has 40 years' experience as a legal advisor and legislative drafter for small Commonwealth jurisdictions, including law revision and model Bills. He co-authored a Manual of Legislative Style & Practices for CARICOM and has given papers to 'Clarity' and 'Plain' conferences on clear legislative drafting.

1.0 Introduction

1.1 The concept of 'access to justice' is distinct from that of 'access to law' although the two are closely linked. Access to law usually refers to the availability of legal texts, statutes, statutory instruments, judicial decisions, etc. It involves the publishing of laws, making them available to the public in a usable (and inexpensive) form and keeping them up to date. Access to justice, on the other hand, means ensuring that people of all backgrounds are able to obtain legal advice and to have a fair trial or other resolution of a legal issue in a reasonable time and at an affordable price.

1.2 In the UK the task of ensuring reasonable access to the statute law in force is largely taken on by the National Archives which maintains the website www.legslation.gov.uk. Achieving good access to law also involves good indexing and word search capacity. It might require the codification of laws which have been amended and it might also require periodical law revision. Law clerks no longer stick slips in copies of the statutes on receipt of the latest Gazette; all is now done online and that has improved the accessibility of the laws of many countries.

1.3 The right of access to justice has become a major preoccupation of many practising and academic lawyers, and there are several organisations in the UK and around the world which focus on the need to provide legal services and fight for justice. For a legislative drafter, the two concepts merge, as the drafter's job is to ensure that legislation is drafted in a way that can be understood by the people at whom it is aimed; that it is 'accessible' and not written in an obscure manner. It also means the law must be laid out in a clear and easily understood manner. So the language and the structure of legislation need to be considered together as aspects of accessibility, whether to law or to justice.

1.4 In my own career as a legislative drafter, I have drafted a Bill whose aim was "to facilitate access to justice in Gibraltar by the provision of legal aid and assistance, etc."[1] I have been involved in a project to improve access to justice in the Caribbean region (see para. 3 below.) I have also been involved in a law revision project, updating the language of existing laws (see para. 4 below.) I can therefore say that improving access to justice through the drafting of clear legislation is very much part of a legislative drafter's professional life.

1.5 One organisation that is not often thought of in the context of access to justice is Clarity; but it could be said to lead the way in achieving access to law and thus access to justice, by encouraging the drafting of laws in a clear and plain manner and thus making them more accessible and justice more likely.

2.0 Drafting accessible legislation

2.1 It is generally agreed that written laws are needed for the effective government of a country and to achieve justice and fairness for all. And they should be clear and accessible. As a former Lord Chief Justice said: "There cannot be

1 The Gibraltar Access to Justice Bill, 2016 (not yet enacted)

can be found in one place and in an organised manner."[2] Accessible legislation needs to be based on clear policy set out in good drafting instructions. It needs a coherent structure for both primary and secondary legislation. It needs clear expression by the use of what is known as Plain English drafting.

2.2 There are various techniques that drafters use to ensure readability. The statement of the rules should be in the active voice and the present tense, not use provisos, use consistent style and grammar and be consistent in capitalisation and punctuation. It should avoid negative wording and use the singular number. The writing should avoid legal jargon and unnecessary verbiage. There is no justification for the 'comfort blanket' of supposedly 'legal' terminology that is not part of normal speech or writing. Laws in the 18th century were written in what was accepted as the plain educated language of the day; they should now be written in the plain educated English of the 21st century.

2.3 The principles of clarity and accessibility apply to the creation of offences and the statement of penalties. The drafter's job does not end with the drafting of primary legislation, but extends to regulations, Schedules and forms. Forms should allow enough space for the answers, should not ask absurd questions, and should not provide a 'Yes/No' box if the question does not apply.

3.0 Improved Access to Justice in the Caribbean

3.1 An ongoing project to improve access to justice in the Caribbean is the 'Improved Access to Justice' (IMPACT) project, funded by the Government of Canada and run by the Caribbean Law Institute Centre of the University of the West Indies in Barbados. The project aims to assist CARICOM Member States in drafting new and amendment laws. In 2016 I was co-author of 'Drafting Legislation in Caricom Member States – A Manual on Legislative Style and Practice.'[3] It was revised in 2018 and is in effect a drafting handbook intended to achieve some uniformity of legislative style among Caricom drafters. The IMPACT project has also produced a Manual on Drafting Instructions and the Legislative Process which I co-authored.[4]

4.0 St Helena law revision project

4.1 During 2008 -10 I drafted what was in effect a consolidated criminal code for Gibraltar.[5] I subsequently did similar work for St Helena and for the Falkland Islands. In 2016 I was appointed Law Revision Commissioner to revise the laws of St Helena, Ascension and Tristan da Cunha and. The resulting Revised Edition of the Laws, 2017, can be found at www.sainthelena.gov.sh/legislation.

4.2 The St Helena Revised Edition of the Laws Ordinance, 1999 gives the Law Revision Commissioner extensive powers to update and reorganise the texts and I used them to the full. As well as the usual revising work (consolidating, updating etc.) I converted archaic text to modern English and adopted Plain English and clear drafting principles as described above. Here are two examples of the changes:

> Births & Deaths (Registration) Ordinance, 1853
>
> *23. Offences by Registrar*
>
> If any Registrar shall refuse, or without reasonable cause omit, to register any birth or death of which he shall have had due notice as aforesaid, and every person having the custody of any register book or certified copy thereof, or of any part thereof, who shall carelessly lose, or allow the same to be injured whilst in his keeping, shall forfeit a sum not exceeding £50 for every such offence.

2 The Rt Hon Lord Thomas of Cwmgiedd, Lord Chief Justice of England and Wales, 'The Role of the Judiciary in a Rapidly Changing Wales', Legal Wales Conference (Cardiff, 11 October 2013).

3 http://caribbeanimpact.org/website/wp-content/uploads/2018/05/IMPACT-Justice-Legislative-Process-and-Drafting-Instructions-Manual-2016.pdf

4 http://caribbeanimpact.org/website/wp-content/uploads/2018/08/IMPACT-Justice-Drafting-Legislation-in-CARICOM-Member-States-A-Manual-on-Legislative-Style-and-Practice.pdf

5 Crimes Act, 2011; Criminal Procedure & Evidence Act, 2011

Revised version

23. Offences

(1) A Registrar who refuses, or without reasonable cause omits, to register any birth or death of which he or she has had due notice as provided by this Ordinance commits an offence.

Penalty: A fine of £50.

(2) A person who has the custody of any register book or certified copy of a register book, or of any part of a register book or copy, who carelessly loses it, or allows it to be injured while in the person's keeping, commits an offence.

Penalty: A fine of £50.

Land Acquisition Ordinance, 2006

4. Payment for damage

So soon as conveniently may be after any entry made under section 3 the officer so authorized as aforesaid shall make arrangements for payment to be made for all damage done and, in case of dispute as to the amount to be paid for such damage, he shall at once refer the dispute to the Attorney General whose decision shall be final subject however to an appeal to the Supreme Court.

Revised version

(1) As soon as is convenient after an entry is made under section 3, the person authorised under section 3(1A) must –

(a) make arrangements for payment to be made for all damage done; and

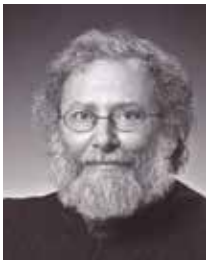
(b) in case of dispute as to the amount to be paid for such damage, at once refer the dispute to the Attorney General.

(2) The Attorney General's decision on a referral under subsection (1) is final, subject however to an appeal to the Supreme Court.

5.0 Conclusion

5.1 The Caribbean IMPACT project and the St Helena law revision project were both about making laws more readable, therefore more accessible. I like to think that by being involved in those projects as a legislative drafter I have helped to achieve greater access to justice in those parts of the world.

The value of plain language jury instructions in facilitating access to justice



Eric Smith, Superior Court Judge (retired), Palmer Alaska, 1996-2016. Chair, Criminal Pattern Instruction Committee. Vice Chair, Fairness, Access and Diversity Committee. Member, Alaska Commission on Judicial Conduct. J.D. Yale University 1979; B.A. Swarthmore College 1975.

Eric Smith

The right to a trial by jury is one of the fundamental elements of the American system of justice. Jurors are asked to engage in a complicated and difficult task, listening to different versions of facts provided by the parties at a trial and applying their understanding of those facts to the relevant law, to determine whether a person is guilty of a crime in a criminal case or who wins a civil case. A key element of this process is the instructions that the judge gives to the jury at the end of the trial. These instructions set out the relevant law, ways to listen to and to evaluate the evidence, and suggestions as to how to conduct their deliberations. In the past, jury instructions were stated in elaborate legalese, which even lawyers at times found hard to follow. But in recent years, judges and attorneys have learned that it is critical to phrase the instructions in plain and readily comprehensible language, in order to assure that jurors really do understand what they need to do and can perform their task in as informed a manner as possible.

Aside from improving the delivery of justice in jury trials, this plain language movement in the writing of jury instructions has important ramifications for overall access to justice. One of the enduring issues facing the justice system is the perception that it is a foreign world, replete with terminology and arcane rules and procedures that only the initiates can understand. Many people walk into a courthouse intimidated and afraid, unsure of what will happen, how they will be treated, and uncertain as to how they should proceed. This is most obviously true of persons who come to court without a lawyer, but it also is true of people called for jury duty. In many cases, all they know is that they have to show up, that they are expected to sit in a courtroom perhaps for many, many days, and that they may well not have any clear idea of what is going on at any particular time in the trial.

Given the critical role that the right to a jury trial plays in our society, it obviously is important that jurors approach the courthouse and their role in a positive and optimistic way. A variety of techniques have been developed to ensure that this occurs, such as an explanation of why they have been called for jury duty and the process that will be followed, assisting jurors with parking, and treating them with respect throughout the proceedings. Reducing confusion through clearly understandable jury instructions is another important element of this approach. To put it differently, providing jurors with as simple an explanation as possible of their task is a key way of ensuring that they embrace the importance of their role, and hence of underlining the legitimacy of the entire process. Finding ways to provide that legitimacy and comfort is one of bedrock concerns of effective access to justice.

There are at least four other ways that jury instructions that are written in plain language can improve access to justice. First, most citizens have virtually no

understanding of technical legal terms; some are not highly literate. This is not to say that they are not sophisticated in their ability to understand what they hear and to come to an understanding of the relevant facts and law, but that they need to be spoken to in terms that are readily understandable. Plain language helps ensure that they can engage in a meaningful way.

Second, and relatedly, a person cannot serve effectively on a jury if they do not have a basic understanding of English, since they must be able to understand the testimony. There are many jurors for whom English is a second language. Jury instructions written in plain language can facilitate their participation in a jury trial, thereby broadening the community of persons who can sit on a jury and therefore have access to the judicial system.

Third, it is important to keep in mind that while the principal "audience" of jury instructions is the jurors, an equally important "audience" is the appellate court. The party that loses a jury trial often will appeal it, and one potentially valuable avenue of appeal is to argue that the judge did not accurately instruct the jury on the relevant law. This means that the judge has to write instructions that are both accurate and understandable – but for better or for worse, it can be very tempting for a desire to be accurate to trump understandability, so as to avoid a reversal of the verdict and the need to do the trial all over again. This tendency means that appellate judges too have to be aware of the value of plain language in their review of the jury instructions – for access to justice is as important at the appellate level as it is at the trial level.

Finally, an important element of effective access to justice is ensuring that litigants understand what is happening in court, both so that they can participate effectively and so that they feel that they have been given justice. The ritual of reading instructions to the jury is one of the most important parts of a jury trial – it is the final step of the process and lays out what the jury is supposed to do. Needless to say, the litigants necessarily will want to pay close attention to what the judge has to say in this respect. As such, instructions that are written in plain language can be a key way to help the litigants understand what is happening and how the jury is supposed to evaluate their case. And this in turn facilitates the overall goal of ensuring that everyone has full access to every key element of the trial in which they are involved.

Explaining rights to returning citizens

Whitney Quesenbery is the Director of the Center for Civic Design, home of the Field Guides To Ensuring Voter Intent. She is proud of the Center's work on projects from modernizing voter registration, usable vote-by-mail envelopes, to clear information that easier for people across the country to vote.

Whitney Quesenbery

A few years ago, we were testing new voting information at an adult literacy center. One of our participants was in his early 50s. He read the page with the Voter Bill of Rights slowly and carefully. When he was done, we asked him if there was any new information for him. His reply was, "I think this says I can vote again." It turned out he has been in prison when he was younger and had no idea that California had made it possible for him to vote again. A colleague from the League of Women Voters was working with us, and when he finished the test, she registered him on the spot.

In many parts of the United States, people convicted of a felony also lost the right to vote, often forever. That is now changing as states have passed laws, voted for citizen initiatives, or changed regulations to restore voting rights to more people.

According to the National Conference on state legislatures:

- In 2 states, people with felony convictions never lose the right to vote
- In 16 states and the District of Columbia, rights are automatically restored once someone leaves prison
- In 21 states, it is automatic after they complete probation or parole
- In 11 states, there are additional requirements or procedures, including requiring a pardon or limiting rights of people convicted of a list of specific crimes.

The approaches vary, but the number of people affected can be large. For example, in Kentucky, the 120,000 people whose rights were restored by the Governor's order represented 4% of the population.

There's a lot of information to communicate

It's exciting to see so many states making it easier for more people to vote. But it takes great communication for new laws to have an impact. This is particularly true for restoring voting rights to people who have been in prison, sometimes for many years. Some of the challenges are:

Getting the word out. People who completed their sentences years ago may not hear about the change. Even if voting rights are automatically restored, returning citizens need to know that they have to register and how to do it

Explaining procedures. Taking advantage of the right to vote can be as simple as filling out a voter registration form, or can be a complex process requiring advance approval from one or more government agencies.

Making the information simple and accurate. The laws are different from state to state, making national campaigns impossible. Even within a state, there's a lot of details that need to be explained, sometimes with conditions based on the conviction.

Overcoming fear of breaking the law. They may be afraid of voting when they shouldn't and being prosecuted.

Elections may have changed for everyone while they were in prison.

On top of the specific details about when and how returning citizens can vote again, they may also need to know about changes in elections. Some changes making voting easier, like mail-in voting, early voting, and vote centers. Registration deadlines are relaxed, with options to register on Election Day in more states.

But there are also more requirements for voters to show identification. And they may be asked to prove that they meet all the conditions for registering, especially if they were removed from the voter lists based on notifications to the election department from the courts.

Returning citizens need help, not just legal information

One of the most basic plain language guidelines to speak directly to the reader is critical for these would-be voters. Their challenge is not just understanding the rules, but understanding which rule applies to them. And that means identifying the possible actions, including any exceptions or differences for specific groups of people.

Use questions as headings to help readers see quickly what answers they can find in the document. When faced with an unexpected legal notice about voter registration, they may not even know what questions to ask. For example, in a letter letting people entering prison know that their voter registration was cancelled until they complete their sentence, we suggested these headings after telling them what had happened:

- Why was my name taken off the list of voters?
- Why might this be wrong?
- How do I get my name back on the list of voters?
- How do I get more information?

Make the source of the information clear with contact information, for this vulnerable population. This has to be more than just a web link or phone number. It helps if a letter is signed by a person, not just a department name.

Tell them what actions they can take, must take, and the results of both action and inaction. In too many of the sample forms and letters we looked at, actions were implicit rather than being clear and visible. Contact information is often buried in paragraph format, making it harder to see.

It may take up more space to put the options in a list, but it also helps people more confident in taking action.

> If [this information] is wrong, you must let the Voter Records office know. You can:
>
> Call us: [phone number]
>
> Or send us email: [email address]@[countyname.gov]

Or write to: Voter Records Office

Street address

City, ST 99999

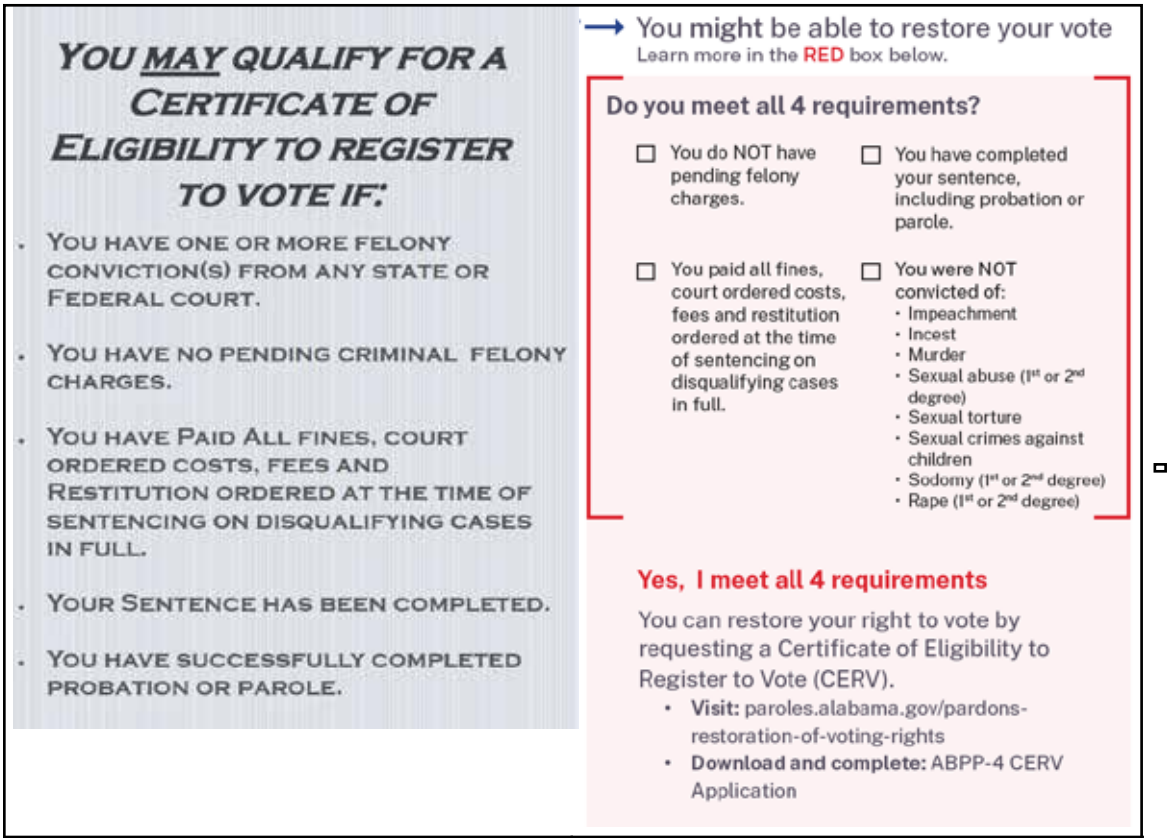
Tell us [what needs correcting]. Give us your full name, date of birth, and how to reach you by phone, email address, or mailing address.

Make information - especially dates and deadlines - specific. For example, filling in an exact date of a deadline rather than a phrase like "30 days from the date of the letter."

Organizing the structure and layout of the information make a difference

In one state, posters in government offices try to explain how to explore voting rights. Most of the space is taken up by a long list of felonies (in all capital letters) with the key information in several sections. Here's how we re-wrote it.

One of the principles of plain language is to start by understanding the audience. You might notice that we have kept words like "restitution" or "probation and parole" because they are well-known to anyone in this situation, even if they are



Before (detail)	After (detail)
The list of requirements to vote was in one part of a large poster. The list of actions to take for each situation and the contact details were in another area.	To make the information clearer, we created an active personal assessment. Then we identified how someone who met all -- or some -- of the requirements could restore their right to vote

not easy words. In another project, we decided to use a shorthand term for a sentencing option, saying "AB109 community service" instead of something like "incarcerated in a community-based penal facility" because the former is the way affected people refer to this well-known law. Even without editing all of the legal phrases into plainer form, participants in our usability testing found the overall redesigned poster easier to understand.

Testing with people in this audience, with their specialized experience, is important. Ideally, we would do usability testing in the state where the materials will be used, but finding similar participants is a good start when this is not possible. We reviewed other information from local community organizations and worked with local partners to help us make editing decisions.

Working on complicated information takes collaboration

Creating information for returning citizens requires striking a balance between being encouraging and being fully, legally accurate. We've been fortunate to work with lawyers who want to communicate rights, not teach people how to read legal documents.

One of the ways we build trust is to start by being sure we understand the law, so everyone on the team has a shared understanding of what must be communicated. Demonstrating from the start that we take this seriously makes the collaboration easier.

We also make it clear that getting to useful, clear information will take some several drafts. Some of our collaborators have turned out to be great editors. Others find writing in plain language harder, so we encourage them to make their comments at any level of legalese that they find comfortable. Then we work on transforming it into plain language. And repeat until we are both happy with a result that tests well.

All that work is worth the time. Even in a challenging, complex legal context, our experience has been that when everyone can see that the information is both clearly written and legally accurate, there are few objections to plain language. And that's better for everyone.

Our collaborators in this work include Demos, Campaign Legal Committee, Ginny Redish and Antonnet Johnson.

Access starts with the precedent: Evaluating the language of leases

Dr Neil James is the Executive Director of Plain English Foundation, which combines plain English training, editing and evaluation with a campaign for more ethical public language. He has a doctorate in English and has published three books and around 100 articles and essays. He was the inaugural Chair of the International Plain Language Federation and has served as Vice President and President of PLAIN.

Greg Moriarty is Plain English Foundation's Training Development and Product Manager. Greg has a law degree and is a qualified solicitor. He has presented at several Clarity and PLAIN conferences and for several years served as a Board member and Secretary of PLAIN. He delivers plain language training to lawyers in large commercial law firms, local legal practices and public sector agencies.

Dr Neil James and Greg Moriarty

Not long ago, the Plain English Foundation was presented with an ideal opportunity to evaluate two precedents for the same commercial transaction. One was written in plain language and the other in traditional legalese.

The two documents related to the commercial lease of an office space of around 300m2. A small business was seeking a new home and negotiating with two landlords in the same area for two similar properties. The key difference they confronted was in the documents each landlord used.

We decided to evaluate the leases at three levels:

1. text
2. users
3. outcomes.

This would help us to assess the relative merits of each text, but also the value of the three different methods in evaluating them. And given the power imbalance between a small business and a corporate landlord, it was also useful to assess whether the leases provided access to a fair legal process.

The two leases

We de-identified the legalese lease by calling it the 'East lease' and the plain language lease as the 'West lease'. Both were around the same length, at 11,700 and 11,000 words respectively. The longer East lease was a traditional precedent with language like this:

> The Lessee will maintain all taps washers cisterns and water outlets in the premises and the Lessee will not without the written consent of the Lessor interfere with any drainage or water supply facilities to or upon the land or with any of the appurtenances thereto ...

The West lease was a model precedent drafted by a state law society. It attempted to apply plain language and it sounded like this:

> There are three different methods described here for fixing the new rent on a rent review date. The method agreed by the lessor and the lessee is stated at item 16 in the schedule.

1. Text analysis

Plain English Foundation's Verbumetric® system evaluates the likely effectiveness of a document by analysing 12 text elements with a 100-point plain language index. Six elements relate to the structure and design, and six to written expression. Table 1 summarises the scores. While neither lease met the Verbumetric® benchmark of 80/100 for plain language, there was a clear difference in quality.

Table 1: Verbumetric® evaluation of leases

Document elements	East lease (legalese)	West lease (plain language)
Structure and design	43	66
Expression	44	60
Plain language index	**43/100**	**63/100**

Most notable was the better structure of the West lease, opening with a clearer summary and contents list, and much more effective numbering and headings to aid navigation. It used a more contemporary layout with white space and readable typography. The East lease was visually very dense.

The written expression of the leases had more similar features, such as an overuse of the passive voice and too many long sentences. They also tended to use inefficient functional phrases such as 'in relation to', 'for the purposes of' and 'in the absence of'.

The big difference was in the tone. The East lease relied on archaic legalese that made the text far more formal than necessary. This also made it more error prone, with meandering sentences often leading to incorrect punctuation—in some cases at the expense of legal meaning.

One surprise is that both fared reasonably well in readability, as both leases were reasonably well pitched for the education levels of their intended audience. This suggests that a single indicator such as readability may not predict the overall effectiveness of a document.

2. User testing

Next, we validated our text analysis with some user testing with two groups representative of the intended readers:

- non-legal readers with a small business background
- qualified practising lawyers.

All participants read both leases, answered questions about each, then compared them. We were particularly interested in which document the small business group perceived to be fairer. The lawyers answered extra questions about legal effectiveness. Table 2 summarises the results.

Small business users

When asked to rate the East lease out of 100 for effectiveness, the small business group scored it below a pass mark at just 42—almost identical to the Verbumetric® rating. They found the document confusing and difficult, which translated into a negative view of the deal. Their comments included:

I would be wary of signing this lease

I don't trust this landlord

Must be read carefully in case there is a trap

The lessor has not thought much about the lessee

The small business group rated the West lease much more positively at 73 for overall effectiveness, which was higher than the corresponding Verbumetric® rating. Qualitative comments were far more positive, particularly about the structure and design. They concluded:

With this format I would be happier doing business

Lessor appears to be reasonable, approachable and not hiding or trying to take advantage

All small business participants agreed the West lease would be easier to use and take less time.

Legal users

The lawyers made identical observations about the structure and expression of the East lease, but on average rated it 58 for overall effectiveness. Their observations included:

I would have to spend a lot of time to explain it to the lessee

Lessor has sought to protect himself to the utmost

Sentences are long and difficult to understand

Could only be understood by a lawyer

The lawyers also rated the West lease more highly at 79 for overall effectiveness. They commented on the 'good structure' and 'clear modern language' and noted the document:

Seems a fair agreement

Makes obligations/rights clear

Want[s] lessee to understand

The lawyers agreed the West lease would take less time to read and 80% thought it would be easier to use. The minority that preferred the East lease noted that, while they 'personally' preferred the West lease, they felt 'courts and lawyers were more used to working with legalese' and would expect it.

The lawyers graded the legal effectiveness of the West lease at 76—far higher than the East lease at 59. This suggests a positive correlation between plain language and legal precision.

Table 2: User testing results

Audience and criteria	East lease (legalese)	West lease (plain language)
Small business users		
Overall rating	42	73
Overall preference	0%	100%
Preference for efficiency	0%	100%
Lawyers		
Overall rating	58	79
Legal effectiveness	59	76
Overall preference	20%	80%
Preference for efficiency	0%	100%

Overall, there was strong consensus about the quality of the two precedents. Most users made the same assumptions about the landlord as a result of reading them: that they were seeking to maximise advantage at the expense of the lessee, reducing the fairness of the transaction. The user testing also supported the Verbumetric® results.

3. Outcome analysis

The third level of evaluation was in some ways the rarest aspect of this case study: an outcome analysis. While text analysis and user preferences are useful predictors, what were the *actual* results? And how well did these correlate with the first two measures?

We developed six criteria to quantify the outcomes, as Table 3 outlines.

Table 3: Outcomes for each lease

Criteria	East lease outcomes	West lease outcomes
1. Duration of negotiation	3 months	3 weeks
2. Exchanges between parties	24	5
3. Points in dispute	46 (16 clarified, 22 agreed, 8 rejected)	5 (all agreed to)
4. Dollar costs	Lessee's legal costs: $10,000 Lessor's lost rent: $50–60,000	Lessee's legal costs: $2,000
5. Indirect costs	Time of all parties Impact on businesses	Nil
6. Result	Lease did not proceed	Lease proceeded

The differences were stark. The West lease negotiation was 75% faster, involved 80% fewer exchanges with 90% fewer points in dispute. Most importantly, it succeeded and the deal concluded. This was in turn much cheaper and less taxing on the parties' time. The legal process was also fairer for the small business owners who were potentially at a disadvantage negotiating with a corporate landlord.

Conclusions

The main conclusion from this exercise is clear: there was a direct correlation between the structure, design and language of the precedents and the user satisfaction and outcomes.

For plain language practitioners, the case study also confirms that a comprehensive assessment of textual features is a useful predictor of likely effectiveness. But this must include a broad sweep of indicators ranging across structure, design and expression.

For lawyers, the most alarming aspect of this study may be the assumptions readers make about their clients. The small business readers assumed the East lease landlord was trying to 'trap' them, which instantly impaired trust. Even the lawyers admitted that the East lease could only be understood by a lawyer and the landlord was trying to maximise its advantage. Both groups regarded the legalese lease as more time consuming, and the lawyers even thought it was less legally effective.

A crucial test is how well a lawyer's document fosters the interests of its client. The lawyers who drafted the East lease may argue it was essential to maximise client benefit. Yet it is hard to see how a client's interests were served by a failed transaction that cost very real dollars in lost rent and time.

For the small business, justice certainly would not have been served had it agreed to the East lease. All it wanted was a new office space and a fair deal. Ultimately, a traditional legal precedent thwarted that process while a plain language alternative secured the right result.

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 Thomas Myers at clarityeditorinchief@gmail.comwith your suggestions and other comments.

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Challenging resistance to plain language in the law

Rosaline Tan

Introduction

Pockets of resistance to plain language in the law remain. Australian solicitors, encouraged perhaps by client demands and commercial pressures,[1] have mostly recognised and adopted plain language principles in drafting legal documents. But there are still barristers, members of the judiciary, parliamentary drafters and some in academia who are less inclined to embrace plain language. Some judges have even been recorded as being "positively hostile"[2] to the notion of plain language in judicial writing.

This essay critically analyses the reasons for the continuing resistance to plain language in the law. Some of the main criticisms are: that plain language is not consistent with the purpose of legal documents, that plain language undermines the role of lawyers (particularly in the context of statutes) and, finally, that plain language is unsafe because it does not adequately recognise long-standing and tested legal precedents. This essay discusses each of those propositions in turn.

Before doing so, it is worthwhile identifying what "plain language" or "plain English" in the law means. Plain language requirements will change from one document to another, depending on the document's purpose and its intended audience.[3] However principles that hallmark plain language can still be articulated. The International Plain Language Federation describes a communication as being in plain language "...if its wording, structure and design are so clear that the intended readers can easily find what they need, understand what they find and use that information."[4] But are clarity, comprehension and useability consistent with the goals of legal documents?

Purpose of legal documents

It is necessary to acknowledge that there are many different types of legal documents. Some of the main kinds are contracts, deeds, judgments, legislation, letters of advice and pleadings. Each of these will serve different substantive purposes. For example, contracts are a written record of what parties have agreed about their respective rights and obligations. Letters of advice convey advice and recommendations. Judgments are written records of decisions and the reasons for those decisions. With such a broad range of documents it would seem impossible to have one set of rules which results in a plain language document.

It is clearly essential, and fundamental, that the meaning of legal documents be certain. However, traditionally, the goals of certainty and simplicity were not seen as being necessarily compatible.[5] Even former Australian High Court Justice Michael Kirby, one of the most vocal supporters of plain language in legal writing, recognised that legal documents may sometimes need to be more complicated because they necessarily reference complexities, exceptions, qualifications, analogies, crossreferences and all of the variations.[7]

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1 Duckworth, M and Balmford, C "Convincing Business that Clarity Pays" (1994) 82 *Illinois Bar Journal* 573

2 Kirby, MD "Ten commandments for plain language in law" (2010) 33 *Australian Bar Review* 10 at 13

3 Clinton, WJ "Memorandum for the Heads of Executive Departments and Agencies dated 1 June 1998" (1996-1997) 6 Scribes Journal of Legal Writing 39 at 39

4 Referred to in the Plain English Foundation, "Plain language practice: structuring legal texts" seminar for the University of Sydney (October 2013) at 1. "Comprehensible insurance documents: Plain English isn't good enough" Communication Research Institute of Australia (August 1990) at 1

5 Penman, above, n5 at 2[7] Kirby, MD "Judicial Attitudes to Plain Language and the Law" Interview, 1 November 2006 (Kirby Speeches 2143) at 7

Yet it has been demonstrated that certainty and accuracy do not need to be sacrificed when plain language is used in legal documents.[6] It is also a misconception that a complex legal style is more precise than plain language.[7] Using more--and more complex--words does not necessarily produce clarity.[8] When done properly, plain language is as accurate and precise as traditional legal writing, and is considerably clearer.[9] For lawyers, there is an element of "habituated readability"[10] which causes some to resist plain language in legal documents. In other words, through exposures to many documents written in legalese, lawyers have come to understand and expect that style of writing in legal documents. But lawyers are not the only users of legal documents. And even then, studies have shown that lawyers can also be significantly assisted by plain language.[11] Language that is unnecessarily complex can obscure a document's meaning for lawyers as well as the general public.[12] That would clearly serve no purpose.

The certainty of meaning of documents written in plain language is supported by the first quantitative readability study of plain-language court forms in the United States.[15] The results from that study showed a significant improvement in reader comprehension of court forms in plain language. Readers more clearly understood what they had to do, when they had to do it and where to seek support if they needed it. So using plain language was validated from the assessment of certainty of meaning. Additionally, the results suggested that reader empowerment and increased autonomy could lead to significant economies for the court.[13] Plain language enables the author to send a clear message to their audience and this, in turn, has been acknowledged to save time, effort and money.[14,15] So assessing plain language from an economic perspective provided further support for its adoption.

As expressed in the Plain Language Federation's definition, plain language is not merely about preferring the active over passive voice, using clear headings or having shorter sentences.[18] It is reader-focussed. Applying plain language principles when drafting legal documents is therefore clearly consistent with the purpose of such documents.

Role of lawyers and statutes

Certainly it is not enough to simply use familiar, and fewer, words.[16,17] However it is the aspect of comprehension – that is, that a reader can readily understand how to use a legal document which is written in plain language – that concerns some in the legal profession. When archaic legalese is removed, so too is the "mystery of technicality".[20] There are members of the legal profession who believe that clients should ask, and should need to ask, their lawyers to explain legal documents to them. There is some unease, and even frustration,[18] that non-lawyers may become too empowered by being able to understand legal documents that are accessible because they are written in plain language. In other words, reader comprehension may lead to over-confidence and readers may not recognise or appreciate the value of legal expertise.

Against this, however, is the argument that plain language enables ordinary, and often disadvantaged, people in the community to understand legal documents that relate to them, thus fostering equity in society.[19] People should not require a lawyer to interpret laws which apply to them because this would mean that only those who can afford a lawyer would understand their legal rights and obligations. Plain language helps the law to "speak with a clearer voice" to those who are bound by it.[23]

I have been unable to find research on the impact of plain language on the role of lawyers. Anecdotally, there is no evidence to refute the assertion that plain language "will do lawyers out of a job". The plain language movement has gained

6 Penman, above, n5 at 2-3, see various citations referred to within.

7 Butt, P "Plain Language in Property Law" [2005] *LAWASIA Journal* 27 at 28

8 Miller, NP "Why Prolixity does not produce Clarity: Francis Lieber on Plain Language" (2007) *Scribes Journal of Legal Writing* 107 at 108; Baker, J "And the Winner is: How Principles of Cognitive Science Resolve the Plain Language Debate" 80 *UMKC Law Review* 287 at 298

9 Kimble, J "Answering the Critics of Plain Language" (1994-1995) *Scribes Journal of Legal Writing* 51 at 81

10 Mindlin, M "Is Plain Language Better? A Comparative Readability Study of Court Forms" (2005-2006) *Scribes Journal of Legal Writing* 1 at 1

11 Asprey, M "Lawyers prefer plain language, survey finds" (November 1994) *Law Society Journal* 76 at 76; Harrington, S and Kimble, J "Survey: Plain English Wins Every Which Way" (1987) *Michigan Bar Journal* 1024 at 1024

12 "Plain English and the Law", Victorian Law Reform Commission, vol 1 at [14], [17] 15 Mindlin, above, n12 at 1

13 Mindlin, above, n12 at 1

14 Clinton, above, n3 at 39

15 Penman, above, n5 at 8

16 Penman, above, n5 at 8

17 Kirby, above, n2 at 12

18 Slater, A "The case for a new federal arts and sciences policy and practice" 19(5) *Australian Intellectual Property Law Bulletin* 75 at 75, 79

19 Penman, above, n5 at 2; Kirby, above, n2 at 11-12; Penman, R "Unspeaking Acts and other deeds: a critique of plain legal language" (1993) 7 *Information Design Journal* 121 at 122 23 Kirby, above, n2 at 16

traction in the legal profession over the past 50 years yet the size of the profession has not diminished. Nevertheless, there is some merit in recognising the tension between reader comprehension and reader over-confidence. This is particularly so in the case of statutes, whose primary audience is the group of people who are affected by it and the officials who must administer it.[20] Self-represented litigants in legal proceedings are the quintessential embodiment of this tension. There must be a balance between the right of litigants to represent themselves and the need to have an efficient administration of justice.[25] Lawyers have an important to role to play in facilitating comprehension and access to justice, but theirs should not be an exclusive one.

Properly employed, plain language in legal documents should allow a reader to better identify when they need to seek legal advice.

Plain language is unsafe and leads to increased litigation

The final criticism of plain language in the law is that it will lead to increased litigation. Essentially, the concern is that the very process of introducing plain language will upset settled and longstanding judicial interpretation of words and phrases. The courts have authoritatively interpreted old formulations over many years so that their meaning is now well understood.[21] Revising legal documents with plain language means that those formulations will be replaced with different, and new, words and phrases. These will require 'fresh' litigation to achieve the same amount of judicial consideration to enable them to be understood. In this way, it is said that plain language may profoundly change the law and introduce greater uncertainty without justification as to the necessity or desirability for doing so.[27]

There are three key assumptions to this argument: firstly, that there is precedent value in continuing to use legalese; secondly, that language can have a settled meaning; and, finally, that plain language leads to more litigation.

The first assumption has repeatedly been exposed as a myth.[22] By way of example, a research project showed that case precedent potentially supported roughly only 3 per cent of a sample document's content.[23] Admittedly, the project's authors acknowledged that the findings could hardly be considered conclusive.[24] Even so, the argument for keeping legalese for its precedent value is overstated.[25] In reality, this argument merely enables an author to avoid identifying whether out-dated and obscure terms or expressions are, in fact, appropriate for the situation before them. In other words, it permits laziness in drafting.

The second assumption ignores the reality that language is not static. Rather, language constantly evolves. English is a language that is, by virtue of its historical evolution, inherently disputable.[26] Because of this, it is also a myth that the meaning of a document cannot change. A text will always require interpretation, and that interpretation will necessarily be created by the reader, rather than discovered.[27] The meaning of a document is identified through the process of interaction between the reader and the text and context.[28] Therefore the meaning will depend as much on the knowledge and understanding of both the author and the reader, as the words chosen by the author.[29] So a document's meaning is potentially "invariably indeterminate".[30] Ironically, if an author tries to achieve perfect self-expression, this will only result in confusion because perfect clarity is an impossible goal.[31] Less is more; more is not more. Recognising that a document's meaning can, and will, change would seem to strike a fundamental blow to the certainty which legal documents require. However, in her article exploring the meaning of plain language, Barbara Child demonstrates, through the poetry of Robert Frost, that there can be confidence in interpretation despite the brevity of his medium.[32]

20 Barnes, J "When 'Plain Language' Legislation is Ambiguous – Sources of Doubt and Lessons for the Plain Language Movement" 34 *Melbourne University Law Review* 671 at 672 25

25 Nicholson AO, R Hon Justice "Australian experience with self-represented litigants" (2003) 77 *Australian Law Journal* 820 at 821

21 O'Regan QC, RS "Law Reform and Politics" (1996) 14 *Australian Bar Review* 2 at 2-3 27 O'Regan QC, above, n26 at 2-3

22 Hathway, G "The Search for Legalese Required by Case Precedent" 69(6) *Michigan Bar Journal* 560; Barr, B, Hathaway, G, Omichinski, N and Pratt, D "Legalese and the Myth of Case Precedent" (1985) *Michigan Bar Journal* 1136; Kimble, J "The Influence of a Little Column" 73 *Michigan Bar Journal* 32 at 33

23 Barr et al, above, n28 at 1137

24 Barr et al, above, n28 at 1137

25 Barr et al, above, n28 at 1137-1138

26 Kirby, above, n7 at 3

27 Child, B "What does 'plain meaning' mean these days?" (1993) Clarity 38 at 40

28 Miller, above, n10 at 111

29 Miller, above, n10 at 111

30 Child, above, n33 at 40; Penman, above, n5 at 11

31 Miller, above, n10 at 108

32 Child, above, n33 at 42

33 Butt, above, n9 at 32 40

40 Butt, above, n9 at 33

34 MacDonald, D "The Story of a Famous Promissory Note" (2005-2006) *Scribes Journal of Legal Writing* 79 at 88

35 Child, above, n33 at 40

36 Hegland, K "Goodbye to deconstruction" 58 *Southern California Law Review* 1203 at 8

37 Kirby, above, n2 at 12

Finally, there is no evidence that plain language increases litigation over meaning.[33] On the contrary, evidence suggests that the use of plain language in legal documents has reduced litigation over meaning.[40] Certainly, the predicted waves of litigation have not eventuated.[34] In any event, the mere fact of litigation in itself and the requirement to make "difficult calls" from time to time do not invalidate the call for plain language.[35] If enough is at stake to warrant the effort, doctrinal uncertainties can always be found; whether there are good arguments for doing so is always another matter.[36]

Conclusion

Fundamentally, plain language shifts the focus away from the author of the document, and their preoccupations, on to the reader and their needs. It challenges the traditionally esoteric nature of the legal profession that has been meticulously cultivated over centuries. Seen in this way, the use of plain language in legal documents is a revolution of words. It is therefore understandable that there should be some continued resistance to it. There are limits on the extent to which established ways of doing things can be changed, especially in the law.[37] But when plain language is properly understood and implemented, there remains no sound justification for continuing to use unclear and uncertain legalese.

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Justice: Plain language in family law helps but it's not enough

Mark Biss

Mark Biss is a process analyst / technical writer in Melbourne, Australia. He has 20 years' experience remediating documentation in different industries. Mark combines process logic with plain language to minimise the "cost of confusion". Mark has an MBA (Monash University), Graduate Certificate in Linguistics (Open University) and Six Sigma certification.

Introduction

This article discusses how plain language in Australian family law combined with a clear process makes justice more accessible. Both substantive and procedural law are discussed.

Justice requires minimal delays, minimal costs and accessibility. Law is accessible when substantive and procedural laws are understood by lay people.

Unrepresented litigants and children are vulnerable where the law is uncertain, procedures cumbersome and delays frequent. Family law should be an exemplar of justice because of the number of unrepresented litigants and children needing certainty.

"Justice is not just denied to parents who are at war but to the whole family, particularly the child, whose life is left in a topsy-turvy world without certainty." [1]

Substantive Law

Lawyers, court officials, judges and bureaucrats benefit from plain language, but they are not the primary beneficiaries of plain language. The primary beneficiaries of plain language should be lay people seeking to avoid or resolve a dispute.

Plain language reduces verbiage and ambiguity. Verbiage creates delays and increases costs. Ambiguity creates uncertainty and confusion, adding to delays and costs.

Plain language in substantive law reduces the risk that the structure or language in a legal document obscures the meaning or intent of the law. If a statute, regulation or judgement cannot be understood, the law cannot be applied effectively *in the first instance* by parties attempting to resolve a dispute without court orders.

The Australian Law Reform Commission was commissioned to enquire into the family law system. The final report [2] (ALRC Report) was published in March 2019.

The ALRC Report cites a number of examples where plain language reform is needed to make the Australian family law system more accessible.

Example 1.1

"Many family law litigants are unrepresented, and many will be encountering the family law system for the first time." [3]

"It will not be possible to avoid complexity, but readers should be able to see what rules or principles apply to their situation. This requires attention to both the wording of particular provisions and to the structure of the Act." [3]

1 Bill Potts, former President, Queensland Law Society, "The Australian", 23/1/2020, article on page 5, "Judge forced father to wait 19 months for abuse ruling".

2 Australian Law Reform Commission: "Family Law for the Future — An Inquiry into the Family Law System", Final Report (March 2019); PDF format, downloaded 24/01/2020 https://www.alrc.gov.au/publication/family-law-report/

Example 1.2

"A law that cannot be understood by the people affected by it – or worse still lends itself to being misunderstood – is a bad law. That is particularly so when we are talking about a law which affects families and children." [4]

Example 1.3

"Simplifying family law legislation

Recommendation 55 The Family Law Act 1975 (Cth) and its subordinate legislation should be comprehensively redrafted.

14.11 The family law system, including its legal frameworks, should be designed to be as accessible and comprehensible as possible to all families who need to use it. Submissions have clearly indicated that the Family Law Act is currently not meeting this need." [5]

Plain language reform in substantive law provides a tool for change. Plain language reform in procedural law is also needed, supported by a clearly documented process showing the accountabilities and actions of the key parties during dispute resolution.

Procedural Law

Plain language in procedural law reduces the risk of the structure or wording of a document from causing delays or confusion in the process of dispute resolution.

Unrepresented litigants must locate appropriate forms, complete each form correctly and submit the form in the prescribed manner. If procedural forms are completed and submitted without error, costs and delays can be reduced and the percentage of disputes resolved without court orders might increase.

103 forms are attached to the Australian Family Court website. [6]

Litigants may be required to locate, complete and submit a number of forms.

The following are examples of forms that are not structured or worded clearly.

Example 2.1

Title: *Affidavit*.

On Page 2 of this form under "Part D Evidence", the form states:

"Set out the facts divided into consecutively numbered paragraphs. Each paragraph should be confined to a distinct part of the subject matter". (22 words).

This could be re-written:

"Write the facts in consecutively numbered paragraphs. The content of each paragraph should be distinct". (15 words)

A simple edit has reduced the number of words by approximately 30%. If the number of words in procedural documents could be reduced by 20% in all family law jurisdictions, forms could be processed faster with fewer errors.

Example 2.2

Title: *Application for Consent Orders (do it yourself kit).*

3 ALRC Report page 424, paragraphs 14.4, 14.5.

4 The Hon Justice R O'Brien quoted in the ALRC Report, page 38.

5 ALRC Report, page 425.

6 http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/forms-and-fees/court-forms/form-topics

The Form has 39 pages. Information pages are identified by a letter (A-I). Subsequent pages are numbered (1-26). Some pages are not identified by letter or number.

On page 2 there is a checklist which states, "*This checklist is provided as a guide to completing the form correctly. It highlights particular questions which the Court has found people do not always answer correctly or fully*".

The questions should be rewritten so they can be answered without referring to a checklist.

Example 2.3

Title: *Initiating Application Kit (do it yourself kit)*.

This Kit needs to be simpler, for example:

The form may be filed in either the Family Court of Australia or the Federal Circuit Court of Australia. Each court has different rules governing filing. Information pages are identified by a letter (A-E). Subsequent pages are numbered (1-10). Some pages are not numbered. Some pages with notes are marked "Remove this sheet before filing". Some pages with notes are not marked "Remove this sheet before filing".

The words "kit" and "form" are used interchangeably in the following paragraph. "Use this kit to apply for final orders. Interim and procedural orders can only be sought in this form if you are also seeking final orders".

Actual Page 9 of the document, but labelled 2:
"Final orders sought
(State precisely and briefly the final orders sought by the applicant – give a number to each order sought)." [21 words]

This could be re-written as:
"Final orders sought
(State each order precisely. Number each order sought separately)." [12 words]

Process

Multiple parties or agencies may be involved in a family law dispute. These include litigants, lawyers, Family Court judges, Federal Circuit Court judges, State Court judges, court officers, support personnel. The interactions between complex interdependent functions in an often emotionally charged environment with confusing documentation may be bewildering for unrepresented parties and children.

A bewildering, confusing process can be clearly explained using a map or chart with graphics and symbols replacing technical words and jargon. Documentation forces stakeholders to ask, "what is the point of this step?", "who is accountable?".

The following examples from the ALRC Report highlight the convoluted, complex process which makes unrepresented litigants and children especially vulnerable.

Example 3.1

"*For parties who are able to engage lawyers, the convoluted and complex decision making pathway, that must be arrived at through an understanding of the*

combination of legislation and case law, adds significantly to the time and cost of any parenting matter, and ultimately to the overall delays within the courts." [7]

This would be more daunting for unrepresented litigants.

Example 3.2

"*The family law system is overly complex: Many people found the law and legal processes that apply to family law disputes too complex to understand and engage with."* [8]

An "overly complex" process makes justice inaccessible, creating confusion and additional costs.

Example 3.3

4.42 "The SPLA Committee also considered that the system of two federal courts with concurrent jurisdiction should be simplified, having regard to the 'overwhelming evidence' received highlighting the complexity of navigating multiple jurisdictions, and multiple courts within the same jurisdiction." [9]

Legislation must cater for evolving family structures. Justice is not served when unrepresented litigants are burdened with complexity and navigation hurdles.

Litigants are entitled know what the process is; the parties involved and the role of each party. For example, do they interpret law? lodge documents? conduct negotiations? collect evidence?

There may be uncertainty about how legislation will be interpreted. The dispute resolution process should not be confusing.

Process reform adds substance to plain language reform. A clear process in visual format is invaluable when there are multiple parties including litigants, counsel, court officers, filing clerks, support personnel and judges. A visual map enables parties to clearly identify accountabilities, plan actions and identify when decisions are required and delays likely.

Australia has had a number of enquiries into Family Law. Recommendations include redrafting of legislation to improve clarity and rationalising the many agencies and jurisdictions involved in the administration of Family Law. Process reform is an overdue, critical component.

Conclusion

The ALRC Report states the need to redraft the Australian Family Law Act (1975). A commitment to *plain language* redrafting is required as well as the need to provide litigants with clear documentation of the dispute resolution process.

Sample size

My assertion that plain language reform improves access to justice, particularly in procedural law, is based on a small sample of edits and examples from the ALRC Report (2019). There are additional examples in the ALRC report referring to the need to redraft the Australian Family Law Act (1975).

7 ALRC Report, page 39, paragraph 1.33.

8 ALCR Report, page 108.

9 ALRC Report, page 123.

Legal self-reliance:
Empowering consumers through plain language

Julie Clement, Fern Fisher, and Maria Mindlin

Julie Clement is Clarity's president and is on the International Plain Language Federation and Center for Plain Language boards. She taught legal research, writing, and drafting for 16 years and now teaches in Simon Fraser University's Plain Language Certificate Program. Her company, J. Clement Communications, focuses on plain legal language and court forms revision.

Judge Fern Fisher is the Special Assistant for Social Justice Initiatives to the Dean of the Maurice A. Deane School of Law. Until July of 2017, she was Deputy Chief Administrative Judge for New York City Courts and also served as the Director of the New York State Courts Access to Justice Program. Judge Fisher graduated from Harvard Law School in 1978 and Howard University in 1975.

With coronavirus and social justice protests now part of the daily fabric of U.S. life, an unprecedented number of people face legal stresses related to health risks, loss of insurance benefits, depression, anguish, unemployment, and the consequent rise of domestic violence, evictions, and foreclosures. Perhaps never before has access to comprehensible and trustworthy legal information been more important.

People with legal problems and questions must be able to find the information they need using the natural, *plain language* search terms they are familiar with. Many now have to do this on their own, *without* the support of people who helped in the past. Many local courts, including court self-help centers are now closed. Legal services organizations, social service, and government agencies already overwhelmed by demand for services are now inundated by the volume of calls and requests for help received during this period of upheaval.

Vulnerable, afraid, and isolated

Many are reluctant to have contact with others because of concerns for their health or immigration status. People may seek help at a distance – often not an easy task. You need to know or find the right legal words to identify your needs. For example, a renter threatened with eviction may not know to search for *unlawful detainer.* Even highly educated readers get stumped trying to understand what *notice* and *service* mean. And those who need the information most may not know about DIY legal instruments to prepare themselves and their families for the serious threats they face: potential financial devastation, COVID-related or other hospitalization, deportation, and even their possible demise.

Unfamiliar technologies

Although most courts and legal professionals are compensating for closures by using remote technologies for hearings and services, how well this works for less computer-literate populations is unknown. Many people lack the ability, knowledge, or equipment to use these new technologies. A few months ago, few had heard of Zoom. Now it is widely known. But that does not mean everyone knows how or can use it. We have enough user feedback to suggest many pro se litigants are struggling with this new way of conducting court operations, despite increased access for others.

Access to justice pathways

With greater limitations on court and legal services, consumers are increasingly relying on websites, info sheets, instructions, and video and audio recordings. The accessibility of our printed and recorded words has become even more important. Legal information that is *plain, user-tested*, and *disability-accessible*

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can do much to increase usability and meet the unique challenges we face today. More importantly, without such adaptations, access to the threshold of justice is unattainable for most legal consumers.

Which text block is more likely to be read *and* understood by a self-represented litigant?

Satisfaction of Required Notice Within seven calendar days after providing this required notice, you must provide documentation showing the inability to pay rent was due to financial impacts of the coronavirus. This requirement can be satisfied with a letter, email, or other written communication that explains the financial impact you are experiencing. *19.1 RGL (Post-graduate reading level)*	**Do I have to give my landlord proof of my financial situation?** **Yes.** After you notify the landlord that you cannot pay, you have **7 days** to give your landlord proof that your financial situation was impacted by the coronavirus. You can do this with • a letter, • an email, **or** • another written communication that explains how the coronavirus affected your situation. *9th grade reading level*

Plain language: consumers need it; the law (sometimes) demands it

A handful of governments – including national, regional, and local – have enacted plain-language legislation, rules, or guidelines. For example, the Plain Writing Act of 2010 requires U.S. federal agencies to use plain language in consumer-facing documents. But sadly, effective plain language remains at a nascent stage in many legal settings. While greatly needed by an even larger number of consumers, it is still exceptional to find widespread plain legal consumer information. A recent review of the Access to Justice Commissions at the U.S.'s National Center for State Courts website shows only *one* state (Iowa) mentioning explicitly the need to provide information in plain language as part of its mission/goals statement.[1]

No current standards or certification

Not enough courts use plain language in consumer-facing environments; no courts have established standards or certification procedures for plain language providers. Absent are discussions of the differences between a plain language provider and a plain *legal*-language provider. Other actors in the legal system, such as law offices, non-lawyer legal services offices, technology providers, and social services and government agencies that provide legal forms, notices, and documents that are not in proper plain legal language would also benefit from these standards.

Standard 7.2 of the American Bar Association's (ABA) Language Access standards for interpreters and translators requires plain English language as the initial step to a successful translation: wherever written translation is required as part of a language access plan, there should be plain English translation first.[2] However, these same ABA standards do not identify the professional standards, qualifications, or process required for plain legal language professionals. The current plain language situation is reminiscent of pre-certification days for court

interpreters when self-certification, an oath, and heaps of faith were the only requirements for hiring court interpreters and translators. Clearly much remains to be done to ensure proper plain legal language.

What court and other legal communications should look like

Plain language experts agree: the goal of plain language is for court consumers to be able to

1. find what they need,
2. understand what they find (the first time they read, see, or hear it), and
3. use that information to access the legal system.[3] And to do so on their own.

Plain language gives courts increased operational efficiency, while affording court and legal system consumers greater access to justice. Each court will do this in its own way. Unfortunately, too few courts (and other legal-services providers) actually test the effectiveness (usability) of their communications to know if their way works.

Two examples of state court messaging on COVID's impact on court operations

SUPERIOR COURT
ADMINISTRATIVE ORDER 2020-07

The Superior Court will work to safeguard court users and court personnel as we continue to operate calendars and handle court matters in our courthouses and via remote WebEx technology. Hearings and conferences that are conducted remotely are encouraged and will continue to be supported by personnel who are specifically trained for this purpose. Public access to court proceedings will continue to be available through YouTube streaming and all scheduled hearings and associated YouTube channels shall be posted on the Judiciary website.

The following provisions shall remain in effect through September 7, 2020 unless or until superseded by subsequent administrative order.

IN-PERSON HEARINGS

Non-emergency matters that cannot be handled remotely shall be conducted in-person on a limited basis. Calendars will continue to be staggered to ensure compliance with the courthouse and courtroom capacity limits and the social distancing guidelines set forth in Supreme Court Order No. 2020-12. Judicial Officers shall ensure that courtroom capacity levels are adhered to and that social distancing and face mask protocols are respected.

The following calendars will continue to operate through September 7, 2020 in Providence County: Daily Criminal Calendar, Miscellaneous Criminal Calendar, Trial/Pre-Trial Calendar, Pre- Arraignment Conference (PAC) Calendar. Civil

GRAND JURY

Grand Jury proceedings have been underway since May 18, 2020 and will continue to operate in a location (s) that provides for suitable social distancing and appropriate safety measures.

CRIMINAL AND CIVIL JURY TRIALS

All Criminal and Civil Jury Trials scheduled to commence between March 16, 2020 and July 31, 2020 shall be continued to a date no earlier than September 8, 2020 and will only take place provided social distancing and precautionary measures are implemented to ensure the safety of jurors, attorneys, witnesses and court personnel.

BENCH TRIALS - CRIMINAL AND CIVIL

All criminal and civil bench trials are continued to a date no earlier than July 1, 2020 unless explicitly authorized by the Presiding Justice.

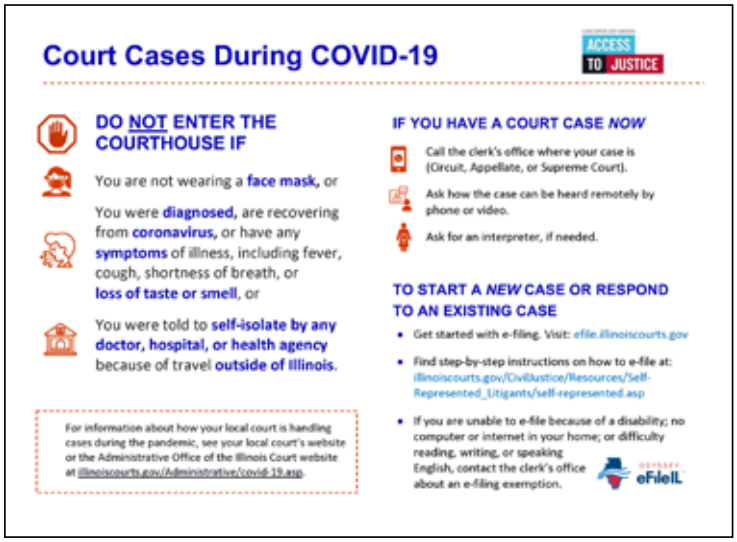
COVID -19 RELATED CALENDAR PROTOCOLS/ORDERS

All calendar protocols/orders issued in response to the Covid-19 pandemic as well as any modifications or amendments, thereto shall remain in full force and effect unless superseded by a subsequent protocol/order.

ACCESS TO CLERKS' OFFICES

Clerks' offices shall continue to conduct court business in all emergency and non-emergency matters, including but not limited to accepting the filing of pleadings and other

Figure 1: This (partial) court communication is written with an elevated register, using design techniques that hinder readability.



Court Cases During COVID-19

ACCESS TO JUSTICE

DO NOT ENTER THE COURTHOUSE IF

You are not wearing a **face mask**, or

You were **diagnosed**, are recovering from **coronavirus**, or have any **symptoms** of illness, including fever, cough, shortness of breath, or **loss of taste or smell**, or

You were told to **self-isolate by any doctor, hospital, or health agency** because of travel **outside of Illinois**.

For information about how your local court is handling cases during the pandemic, see your local court's website or the Administrative Office of the Illinois Court website at illinoiscourts.gov/Administrative/covid-19.asp.

IF YOU HAVE A COURT CASE *NOW*

Call the clerk's office where your case is (Circuit, Appellate, or Supreme Court).

Ask how the case can be heard remotely by phone or video.

Ask for an interpreter, if needed.

TO START A *NEW* CASE OR RESPOND TO AN EXISTING CASE

- Get started with e-filing. Visit: efile.illinoiscourts.gov
- Find step-by-step instructions on how to e-file at: illinoiscourts.gov/CivilJustice/Resources/Self-Represented_Litigants/self-represented.asp
- If you are unable to e-file because of a disability; no computer or internet in your home; or difficulty reading, writing, or speaking English, contact the clerk's office about an e-filing exemption.

eFileIL

Figure 2: The court communication below is written in plain language, using an intuitive design that helps readers find and understand what they need to know.

1 www.ncsc.org/topics/access-and-fairness/self-representation/state-links (last visited: June 28, 2020)

2 The American Bar Association's language access Standard 7.2 states: "To ensure quality in translated documents, courts should establish a translation protocol that includes: review of the document prior to translation for uniformity and plain English usage."

3 The Plain Language Action and Information Network, www.plainlanguage.gov; last visited June 2020

Leveraging our investment in language access resources

Arguably, all U.S. state and federal courts have some type of language access needs. All are subject to the Title VI of the U.S.'s Civil Rights Act of 1964[4] and to the ABA language access standards of using plain language texts as a translation platform. Additionally, courts that receive federal funds are subject to the requirements of Section 508[5] of the Rehabilitation Act, including its plain language requirements.[6] This is because many § 508 beneficiaries have cognitive and learning disabilities for whom clear text and audio presentation is essential.

Professor Richard Wydick, author of *Plain English for Lawyers,* often reminded us that *all* people, not just those with disabilities or limited reading skills, benefit from clear, concise writing. If courts and other legal stakeholders were to leverage the required plain English translation platforms, they could put them to use for the benefit of the larger general public. Plain language is not just beneficial before translating or for those with disabilities; it is clear communication that can give ALL users increased access to the court system and the broader legal system.

Time to define standards and qualifications

Health and other experts tell us it may be a year or more before widespread coronavirus vaccination or viable treatment is achieved. That means the amplified legal stresses and the corresponding need for clear court communication will be with us for some time. As we go through this period, we should work on ways to improve consumer-facing court communications and publications.

Why not use this time to:

- Survey the state courts' awareness and adherence to the plain language laws, 508 requirements, and ABA standards of using plain language texts as a translation platform;
- Catalogue the supply of existing plain legal language resources nationwide;
- Establish standards for plain legal language professionals to ensure the usability and legal sufficiency of future plain language products; and
- Move towards a certification process to ensure specialists and providers are qualified in the area of plain legal language

This final point is especially significant. If we are to enlist the services of plain legal language providers, the time has come to clearly delineate who *is* and who is *not* qualified to "translate" plain legal language on behalf of the courts and other legal stakeholders. To that end, we have drafted proposed standards and qualifications for plain legal language professionals and are eager to share them with those interested in pursuing this goal.

4 42 USC § 2000d; 45 CFR 80

5 www.fcc.gov/general/section-508-rehabilitation-act

6 29 U.S.C. § 794d. See also Web Content Accessibility Guidelines WCAG 2.0/2.1, https://www.w3.org/WAI/GL/WCAG20/; Stapleton, K & Lipscomb, D, The Intersection between Plain Language and 508 Compliance, https://digital.gov/event/2020/04/15/accessibility-intersection-between-plain-language-508/. Sites last visited July 2020.

Autosuficiencia jurídica: Empoderamiento de los consumidores mediante el lenguaje claro

Julie Clement, Fern Fisher, y Maria Mindlin
Mariano Vitetta, traductor del artículo

Julie Clement es la presidenta de Clarity y forma parte de los consejos directivos de la Federación Internacional para el Lenguaje Claro (International Plain Language Federation) y el Centro para el Lenguaje Claro (Center for Plain Language). Enseñó investigación, escritura y redacción jurídicas durante 16 años y actualmente enseña en el Programa de Certificación en Lenguaje Claro (Plain Language Certificate Program) de Simon Fraser University. Su empresa, J. Clement Communications, se especializa en el lenguaje jurídico claro y en la revisión de formularios judiciales.

Ahora que el coronavirus y las protestas por la justicia social son parte de la cotidianeidad de la vida en los Estados Unidos, una cantidad sin precedentes de personas enfrentan problemas jurídicos relacionados con riesgos de salud, pérdida de beneficios de seguro, depresión, angustia, desempleo y el consecuente aumento de la violencia doméstica, los desalojos y las ejecuciones hipotecarias. Quizás nunca antes haya sido más importante poder acceder a información jurídica comprensible y fiable.

Las personas que tengan preguntas y problemas jurídicos deberían poder encontrar la información que necesitan usando los términos de búsqueda naturales y en *lenguaje claro* a los que están habituados. Muchos tienen que hacer esta búsqueda solos, *sin* el apoyo de las personas que los ayudaron anteriormente. Muchos tribunales locales, incluidos los centros judiciales de autoayuda, están cerrados. Las organizaciones de servicios jurídicos, servicio social y los organismos públicos ya estaban sobrepasados por la demanda de servicios, y ahora están inundados por la cantidad de llamados y pedidos de ayuda que reciben durante este período tan convulsionado.

Vulnerables, asustados y aislados

Muchos son reacios a tener contacto con otras personas debido a preocupaciones por su salud o estado migratorio. Algunos pueden buscar ayuda a distancia, lo que no suele ser tarea fácil. Uno tiene que conocer o encontrar las palabras jurídicas adecuadas para detectar las necesidades que tenga. Por ejemplo, el inquilino que se enfrente a la posibilidad de desalojo en los Estados Unidos quizás no sepa que tiene que buscar *unlawful detainer* (retención ilícita de la posesión de un inmueble). Incluso los lectores con un elevado nivel educativo tienen problemas para entender el significado de *notice* (notificación extrajudicial) y de *service* (notificación judicial). Y los que más necesitan la información quizás no sepan sobre la existencia de instrumentos jurídicos que se pueden redactar sin asistencia profesional a fin de que ellos y sus familias puedan prepararse de cara a las serias amenazas que enfrentan: la eventual devastación financiera, la hospitalización por COVID u otro motivo, la deportación e incluso la posibilidad de morir.

La jueza Fisher es asistente especial en relación con las Iniciativas de Justicia Social del decanato de la Facultad de Derecho Maurice A. Deane. Hasta julio de 2017, se desempeñó como vicepresidenta administrativa de los tribunales de la Ciudad de Nueva York y también como directora del Programa de Acceso a la Justicia de los tribunales estatales de Nueva York. La jueza Fisher se graduó de la Facultad de Derecho de Harvard University en 1978 y de Howard University en 1975.

Maria es la directora ejecutiva de Transcend, empresa dedicada a la prestación de servicios de lenguaje claro y de traducción para tribunales y organismos públicos de los Estados Unidos. También se dedica a la enseñanza y la capacitación en legibilidad lingüística y pruebas en usuarios para otros prestadores de servicios jurídicos. El trabajo de Maria integra las tecnologías de hoy en día con el lenguaje claro, la accesibilidad y el diseño.

Tecnologías desconocidas

Aunque la mayoría de los tribunales y los profesionales del derecho superan las restricciones mediante el uso de *tecnologías a distancia* para las audiencias y las notificaciones, se desconoce si esta estrategia funciona bien entre las poblaciones con menos dominio de la informática. Muchas personas carecen de la capacidad, los conocimientos o los equipos para usar estas nuevas tecnologías. Hace apenas unos meses, pocos habían oído hablar de Zoom. Ahora, todo el mundo sabe de qué se trata. Sin embargo, esta difusión no implica que todos conozcan o usen la herramienta. Nos han llegado bastantes comentarios de usuarios que parecerían indicar que los litigantes sin representación de abogados están teniendo dificultades con esta nueva manera de llevar adelante las actuaciones ante los tribunales, a pesar del mayor acceso para otros participantes del sector.

Acceso a los caminos hacia la justicia

Debido a las mayores limitaciones en el acceso a los tribunales y los servicios jurídicos, los consumidores recurren cada vez más a sitios web, fichas de información, instrucciones y grabaciones de audio y video. La accesibilidad de nuestras palabras impresas y grabadas se ha vuelto más importante aún. La información jurídica que sea *clara, probada en usuarios* y *accesible para personas con discapacidad* puede hacer mucho por aumentar la usabilidad y satisfacer las singulares necesidades que tenemos hoy en día. Lo más importante es que, sin esas modificaciones, el acceso al umbral de la justicia es inalcanzable para la mayoría de los consumidores jurídicos.

¿Cuál de los siguientes textos tiene más probabilidades de ser leído y comprendido por un litigante sin representación de abogado?

Cumplimiento de la notificación exigida

Dentro de los siete días seguidos después de cumplir con la notificación exigida, debe presentar documentación en la que conste que la imposibilidad de pagar el alquiler se debió al impacto económico del coronavirus. Esta exigencia puede cumplirse mediante una carta, correo electrónico u otra comunicación escrita en la que se explique el impacto económico que usted esté sufriendo.

19.1 RGL (Nivel de lectura de graduado)

¿Debo enviar al dueño algún comprobante de mi situación económica?

Sí. Después de avisarle al dueño que no puede pagar, tiene **7 días** para enviarle un comprobante de que su situación económica se vio afectada por el coronavirus. Puede hacerlo mediante:

- carta,
- correo electrónico **o**
- algún otro medio escrito en el que se explique de qué manera el coronavirus afectó su situación.

Nivel de lectura de 9.º grado

Lenguaje claro: los consumidores lo necesitan; la ley (a veces) lo exige

Algunos gobiernos —nacionales, regionales y locales— aprobaron legislación, reglas o directivas sobre lenguaje claro. Por ejemplo, la Ley de Escritura Clara (*Plain Writing Act*) de 2010 exige que los organismos federales de los Estados Unidos usen lenguaje claro en los documentos dirigidos a los consumidores. Lamentablemente, el uso eficaz del lenguaje claro sigue estando en una etapa incipiente en muchos entornos jurídicos. Aunque la información jurídica para consumidores en lenguaje claro es muy necesaria para una cantidad de consumidores cada vez mayor, aún hoy es excepcional poder encontrarla de manera generalizada. Un análisis reciente de las Comisiones de Acceso a la Justicia que aparece en el sitio web del Centro Nacional de los Tribunales Estatales de los Estados Unidos indica que solo *un* estado (Iowa) menciona explícitamente la necesidad de ofrecer información en lenguaje claro como parte de su declaración de objetivos o misión.[1]

Falta de normas o certificación actuales

No hay suficientes tribunales que utilicen el lenguaje claro en entornos dirigidos al consumidor; los tribunales tampoco han aprobado normas o procesos de certificación para los prestadores de servicios de lenguaje claro. No se habla sobre las diferencias entre un prestador de servicios de lenguaje claro y un prestador de servicios de lenguaje *jurídico* claro. También sacarían provecho de estas normas otros actores del sistema jurídico, tales como los despachos de abogados, las oficinas de servicios jurídicos sin abogados, los prestadores de servicios de tecnología y los organismos oficiales y de servicios sociales que ofrezcan formularios jurídicos, notificaciones y documentos que no estén en lenguaje jurídico claro propiamente dicho.

La norma 7.2 de Acceso Lingüístico para intérpretes y abogados del Colegio de Abogados de los Estados Unidos (*American Bar Association*, ABA) exige el uso del lenguaje claro como primer paso para una buena traducción: siempre que la traducción escrita se exija como parte del plan de acceso lingüístico, primero debe hacerse una traducción al lenguaje claro en inglés.[2] No obstante, estas normas de ABA no detallan las normas profesionales, la preparación o el proceso necesarios para los profesionales dedicados al lenguaje jurídico claro. La situación actual del lenguaje claro recuerda los días en que los intérpretes y traductores judiciales no tenían certificación y los únicos requisitos para contratarlos eran la autocertificación, el juramento o la mera fe en su trabajo. Es evidente que queda mucho por hacer para garantizar el lenguaje jurídico claro propiamente dicho.

Cómo deberían verse las comunicaciones judiciales y otras comunicaciones jurídicas

Los especialistas en lenguaje claro están de acuerdo: el objetivo del lenguaje claro es que los consumidores puedan

1. encontrar lo que necesitan,
2. entender lo que encuentran (la primera vez que lo lean, vean o escuchen), y
3. usar esa información para acceder al sistema jurídico.[3] Y hacerlo por su cuenta.

1 www.ncsc.org/topics/access-and-fairness/self-representation/state-links (última visita: 28 de junio de 2020)

2 La norma 7.2 relativa al acceso lingüístico del Colegio de Abogados de los Estados Unidos establece: “Para garantizar la calidad de los documentos traducidos, los tribunales deben establecer un protocolo de traducción que incluya la revisión del documento antes de su traducción para confirmar la coherencia y el uso de lenguaje claro”.

3 The Plain Language Action and Information Network, www.plainlanguage.gov; visitado por última vez en junio de 2020.

El lenguaje claro ofrece a los tribunales mayor eficiencia operativa, al tiempo que permite que los consumidores del sistema jurídico y judicial tengan mayor acceso a la justicia. Cada tribunal lo hará a su manera. Desafortunadamente, son muy pocos los tribunales (y otros prestadores de servicios jurídicos) los que efectivamente ponen a prueba la eficacia (la usabilidad) de sus comunicaciones para saber si funciona su manera de hacer las cosas.

Dos ejemplos de mensajes de tribunales estatales sobre el impacto de la COVID en la actividad judicial

SUPERIOR COURT
ADMINISTRATIVE ORDER 2020-07

The Superior Court will work to safeguard court users and court personnel as we continue to operate calendars and handle court matters in our courthouses and via remote WebEx technology. Hearings and conferences that are conducted remotely are encouraged and will continue to be supported by personnel who are specifically trained for this purpose. Public access to court proceedings will continue to be available through YouTube streaming and all scheduled hearings and associated YouTube channels shall be posted on the Judiciary website.

The following provisions shall remain in effect through September 7, 2020 unless or until superseded by subsequent administrative order.

IN-PERSON HEARINGS
Non-emergency matters that cannot be handled remotely shall be conducted in-person on a limited basis. Calendars will continue to be staggered to ensure compliance with the courthouse and courtroom capacity limits and the social distancing guidelines set forth in Supreme Court Order No. 2020-12. Judicial Officers shall ensure that courtroom capacity levels are adhered to and that social distancing and face mask protocols are respected.

The following calendars will continue to operate through September 7, 2020 in Providence County: Daily Criminal Calendar, Miscellaneous Criminal Calendar, Trial/Pre-Trial Calendar, Pre- Arraignment Conference (PAC) Calendar. Civil

GRAND JURY
Grand Jury proceedings have been underway since May 18, 2020 and will continue to operate in a location (s) that provides for suitable social distancing and appropriate safety measures.

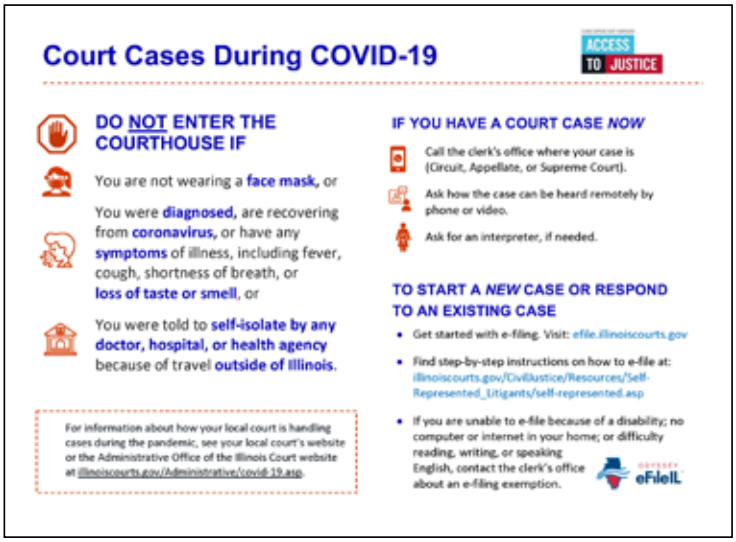
CRIMINAL AND CIVIL JURY TRIALS
All Criminal and Civil Jury Trials scheduled to commence between March 16, 2020 and July 31, 2020 shall be continued to a date no earlier than September 8, 2020 and will only take place provided social distancing and precautionary measures are implemented to ensure the safety of jurors, attorneys, witnesses and court personnel.

BENCH TRIALS - CRIMINAL AND CIVIL
All criminal and civil bench trials are continued to a date no earlier than July 1, 2020 unless explicitly authorized by the Presiding Justice.

COVID -19 RELATED CALENDAR PROTOCOLS/ORDERS
All calendar protocols/orders issued in response to the Covid-19 pandemic as well as any modifications or amendments, thereto shall remain in full force and effect unless superseded by a subsequent protocol/order.

ACCESS TO CLERKS' OFFICES
Clerks' offices shall continue to conduct court business in all emergency and non-emergency matters, including but not limited to accepting the filing of pleadings and other

Imagen 1: Esta comunicación judicial (parcial) está escrita con un registro elevado, usando técnicas de diseño que entorpecen la legibilidad lingüística.



Court Cases During COVID-19

ACCESS TO JUSTICE

DO NOT ENTER THE COURTHOUSE IF

You are not wearing a **face mask**, or

You were **diagnosed**, are recovering from **coronavirus**, or have any **symptoms** of illness, including fever, cough, shortness of breath, or **loss of taste or smell**, or

You were told to **self-isolate by any doctor, hospital, or health agency** because of travel **outside of Illinois**.

For information about how your local court is handling cases during the pandemic, see your local court's website or the Administrative Office of the Illinois Court website at illinoiscourts.gov/Administrative/covid-19.asp.

IF YOU HAVE A COURT CASE *NOW*

Call the clerk's office where your case is (Circuit, Appellate, or Supreme Court).

Ask how the case can be heard remotely by phone or video.

Ask for an interpreter, if needed.

TO START A *NEW* CASE OR RESPOND TO AN EXISTING CASE

- Get started with e-filing. Visit: efile.illinoiscourts.gov
- Find step-by-step instructions on how to e-file at: illinoiscourts.gov/CivilJustice/Resources/Self-Represented_Litigants/self-represented.asp
- If you are unable to e-file because of a disability; no computer or internet in your home; or difficulty reading, writing, or speaking English, contact the clerk's office about an e-filing exemption.

ODYSSEY eFileIL

Imagen 2: La comunicación judicial que aparece abajo está escrita en lenguaje claro, usando un diseño intuitivo que ayuda a los lectores a encontrar y comprender lo que necesitan saber.

Aprovechemos la inversión que hicimos en recursos de acceso lingüístico

Puede decirse que todos los tribunales federales y estatales de los Estados Unidos tienen algún tipo de necesidad de acceso lingüístico. Todos están sujetos al Título VI de la Ley de Derechos Civiles de los Estados Unidos de 1964 y a las normas de acceso lingüístico de ABA en relación con el uso de textos en lenguaje claro como plataforma de traducción. Además, los tribunales que reciben fondos federales están sujetos a las exigencias de la sección 508 de la Ley de Rehabilitación, incluidas sus exigencias de lenguaje claro. La razón es que muchos beneficiarios

de la sección 508 tienen algún tipo de discapacidad cognitiva o de aprendizaje y para ellos es esencial la presentación en audios o textos claros.

El profesor Richard Wydick, autor de Plain English for Lawyers, solía recordarnos que todas las personas, no solo aquellas con alguna discapacidad o escasa capacidad de lectura, se benefician de la escritura clara y concisa. Si los tribunales y otros interesados del ambiente jurídico aprovecharan las plataformas de traducción en lenguaje claro que se exigen, podrían usarlas en beneficio del público en general. El lenguaje claro no solo es beneficioso antes de traducir o para quienes tienen algún tipo de discapacidad; se trata de comunicar con claridad para que TODOS los usuarios puedan tener más acceso al sistema judicial y al sistema jurídico en general.

Es hora de definir normas y preparación

Los especialistas en salud y otras disciplinas aseguran que puede pasar un año o más antes de que se logre una vacuna extendida o un tratamiento viable contra el coronavirus. Estas especulaciones implican que seguiremos lidiando con la intensificación de los problemas jurídicos y la correspondiente necesidad de comunicaciones judiciales claras por un tiempo más. Mientras atravesamos este período, debemos trabajar en maneras de mejorar las publicaciones y las comunicaciones dirigidas a los consumidores.

Sería ideal usar este tiempo para lo siguiente:

- Analizar si los tribunales conocen y cumplen las leyes de lenguaje claro, las exigencias de la sección 508 y las normas de ABA en relación con el uso de textos en lenguaje claro como plataforma de traducción.
- Catalogar el suministro de recursos de lenguaje jurídico claro en todo el país.
- Fijar normas para que los profesionales del lenguaje jurídico claro garanticen la usabilidad y la suficiencia jurídica de los futuros productos en lenguaje claro.
- Avanzar hacia un proceso de certificación que garantice que los especialistas y los prestadores estén capacitados en el área del lenguaje jurídico claro.

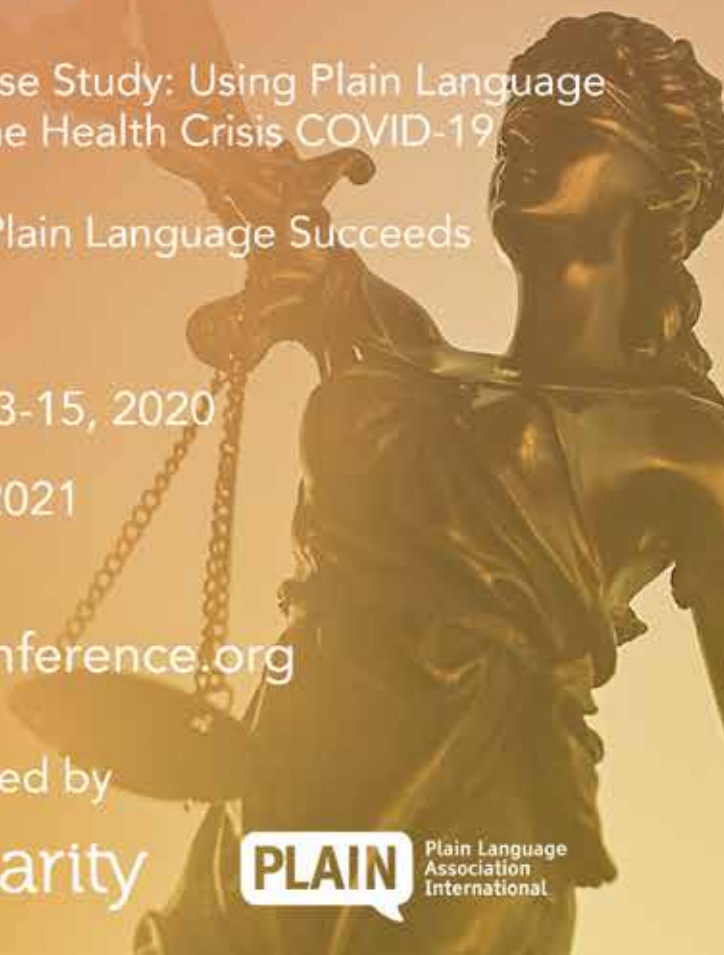
Este último punto es de singular importancia. Si vamos a enumerar los servicios de los prestadores de servicios de lenguaje jurídico claro, llegó el momento de delinear con claridad quién sí está capacitado para “traducir” el lenguaje jurídico claro en nombre de los tribunales y otros actores del ámbito jurídico y quién no lo está. Con ese fin, hemos redactado normas y una lista de conocimientos exigidos para los profesionales del lenguaje jurídico claro y tenemos muchas ganas de compartir la información con quienes tengan interés en alcanzar este objetivo.

ACCESS FOR ALL

Plain Language is a Civil Right

AN INTERNATIONAL CONFERENCE
told in five stories

- Story 1: Plain Language and Our Responsibility as Practitioners and as Citizens to Ensure Access for All
- Story 2: Using Plain Language to Improve the Criminal Justice System
- Story 3: Using Plain Language to protect the rights of vulnerable populations
- Story 4: An International Case Study: Using Plain Language to Affect the Outcome of the Health Crisis COVID-19
- Story 5: Celebrating when Plain Language Succeeds



OCTOBER 13-15, 2020

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