

Clarity

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Journal of the
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promoting plain legal language

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Neil James

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\$500+ None

\$100+ None

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Clarity ... the journal

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Submissions

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

This issue

The past several issues of *Clarity* have focused on a number of themes, so *Clarity* 63 is a collection of articles and other short pieces that have been building up in my files. This collection brings us back to an ongoing debate: what should *Clarity* be? At one end are those who would like to see the journal take a more academic approach: perhaps a peer-edited journal. At the other end are those who believe the articles are *too* academic. They want to see a much more practical journal—straightforward ways to use plain language in the day-to-day practice of law.

Clarity 63 is a collection of each—a nice balance, I think. Rather than attempt to classify the articles myself, I'll leave that to you, the reader. For each of you, though, I hope something in these pages will guide your skills and practice. New to this issue is a series of drafting notes, contributed by Mark Adler. Let me know if you would like to see more of these.

As *Clarity*—the organization—grows and changes, the debate over the journal will become more important, I suspect. So give it some thought, and let me know: How can the journal help advance plain legal language? How can the journal (and the organization) help you?

Meanwhile, exciting things are in store. On page 42, president Christopher Balmford invites you to take a more active role in *Clarity* in the coming months. Would you like to help with the journal? Help with membership? Write a blog? Help guide our future? And have you accessed your *Clarity* membership information on our Wild Apricot site yet? This system is making an enormous difference in how we reach you and manage our membership records. If you have not renewed your membership and updated your records, please do so immediately. Use your email address and the password *clarity* to sign on. Then change to a more secure password.

Will we see you in Lisbon in October? This promises to be a wonderful conference, and it's not too late to make plans to attend. Sandra Fisher-Martins extends her personal invitation on page 17.

Neil James will be our guest editor for *Clarity* 64, which will be devoted to the standards papers distributed in draft form at the PLAIN

conference in Sydney last year. *Clarity* 65 (May 2011) will feature papers from the upcoming Lisbon conference, and *Clarity* 66 (November 2011) is underway, as well. Guest editor Sally McBeth is gathering articles on how plain-language consultants can best work with lawyers. That will bring us to papers from PLAIN's 2011 conference in Stockholm, tentatively scheduled to appear in *Clarity* 67 (May 2012). So we have a great deal of work ahead of us when we return from Lisbon. See you there!



Contributing to the journal

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

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

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

Drafting notes 1

A newspaper cutting recently quoted on BBC radio's News Quiz read:

Too many police can't shoot straight or take bribes.

This is a common form of syntactic ambiguity—ambiguity arising from sentence structure. It is caused by the writer's failure to show whether "can't" governs just "shoot straight" or both "shoot straight" and "take bribes". Is the writer complaining that some police take bribes or that they can't take bribes? This structure will cause problems where both alternatives are possible.

So how can writers show what they mean? Mathematicians' formulae use brackets, writing something like

- (A) Too many police ([can't shoot straight] or [take bribes]).
- (B) Too many police can't (shoot straight or take bribes).

Here are some other possibilities:

- (A) Too many police either can't shoot straight or take bribes.
- (B) Too many police can't either shoot straight or take bribes.
- (A) Too many police take bribes or can't shoot straight.
- (A) Too many police can't shoot straight or do take bribes.
- (A) Too many police can't shoot straight, or take bribes.
- (A) Too many police: can't shoot straight or take bribes.
- (B) Too many police can't: shoot straight; or take bribes.

Writing smaller

Judge Mark P. Painter

United Nations Appeals Tribunal

In law school, I don't remember any professor telling us to "write like a lawyer." Maybe "think like a lawyer," but not write like one: take all verbs out of your sentences; make every sentence at least 200 words, with as many clauses as possible; have your paragraphs go on from page to page; use words and phrases such as *pursuant to*, *whereas*, *heretofore*, *prior to*, and *provided that*. And of course use two, and perhaps three or four, words when one would do: *rest*, *residue*, and *remainder*; *free and clear*; *null and void*.

None of these lawyerisms are necessary, and all are distracting and confusing—not only to laypeople, but also to judges and lawyers.

The problem is that we read cases by old dead judges who were not good writers when they were alive. Certainly, there were good judicial writers—Holmes, Cardozo, Jackson—but they did not write on every issue to be covered in a casebook. So the casebook editor had to pick dull cases. And even after editing, they were still badly written.

So we read stilted, backward, and downright clumsy language that had been passed down for generations—and internalized it. When we got out of law school, we thought that's how judges and lawyers write, so I should write that way too. Thus the tradition of bad legal writing continued.

Too long words

We tend to use a longer, more formal word, when a shorter one would do better: *subsequent* rather than *after*, *pursuant to* rather than *under*, *provided* rather than *if*.

Here, *there*, or *where* do not take any extra letters. *Hereinafter*, *therein*, *whereas*, *wherein*, and the like should be banned.

And we use phrases when one word would do: *in possession of* for *possess*; *adequate number of* for *enough*; *make an examination of* for *examine*. Always question these phrases: *in order to* is just *to*, and *by means of* is *by*.

Too many words

It's not just long words—we use way too many words.

Has anyone ever come to your office seeking a *will* and *testament*? Are they two things? And did they then say, "I would like to give the rest of my estate to my spouse, the *residue* to my daughter, and the *remainder* to my son"? Would that be possible? Of course not—they are the same thing, so why do we use three words?

The same goes for *null and void*, *goods and chattels*, *free and clear*. These were couplets in Norman French and Old English.

The explanation of why we started doing this is too long for this article, but you can read a shorthand version in *Kohlbrand v. Ranieri*, 823 N.E.2d 76. It has something to do with the Norman Conquest—we have been doing this foolishness since shortly after 1066. It's time to stop. The *rest* of the estate is enough, as is *clear* title. If anyone tells you these words have different meanings, they are just wrong. (There are a few that are not couplets but separate issues: *joint and several*, for instance. They are the exception and are easy to spot.)

Redundancies

Many times we just write redundancies: *a distance of five miles = five miles* (five miles is a distance); *a period of a week = a week* (a week is a period).

Only write *during the month of May* if you have a poetic license and insert merry, merry before month. See <http://www.youtube.com/watch?v=pQAn0SGDf0M&feature>

Nominalizations

Do not write *filed a motion* unless the filing itself has some significance. *Filed a motion* conjures up in readers' minds someone walking up to the clerk's counter and having a pile of papers stamped. Write *moved*. *Smith moved for summary judgment*.

Nominalization is taking a perfectly good verb, such as *examine*, and turning it into a

noun, *examination*. Then you need a verb, which is always a weak one, in this case *make*. *Make an examination of* is four words, three of them useless.

These are some common nominalizations. See how many word you can save by turning them back into verbs. And you gain clarity.

performed a search on	searched
provide responses	respond
offered testimony	testified
provide assistance	help
place a limitation upon	limit
make an examination of	examine
provide protection to	protect
reach a resolution	resolve
reveal the identity of	identify
makes mention of	mentions
make allegations	allege
was in conformity with	conformed
entered a contract to	contracted, agreed
filed a counterclaim	counterclaimed
filed a motion	moved
filed an application	applied
is in violation of	violates
made application	applied
made provision	provided

The preposition *of* is sometimes a marker for nominalizations. Always question any *ofs* in your writing—they may mark not only nominalization, but also false possessives.

Write *Ohio Supreme Court*, not *Supreme Court of Ohio*. There is nothing wrong with the possessive. Write *the court's docket*, not *the docket*

of the court. Recently I read *upon motion of Harmon*. Why not on *Harmon's motion*? Somewhere, someone told lawyers not to use possessives, maybe because *docket of the court* sounds more formal. Or maybe we got confused by someone banning contractions from legal writing (another error), and the possessive apostrophe got unjustly maligned. Whatever the error's genesis, the *of* construction is clutter. And much harder to read.

But of course start sentences with *and* and *but*

And do not be afraid to start sentences with *and* or *but*. This signifies good writing. The reason your grammar-school teacher told you not to start a sentence with *and* was because you wrote, *I have a mother. And a father. And a dog*. The last two weren't sentences.

Use *but* rather than *however* to start a sentence, and see how much better it reads.

Almost any example of good writing pulled at random will contain numerous examples. *The Wall Street Journal* and *The New York Times* are well-written—look at the front page of either and circle the number of sentences beginning with *and* or *but*.

Pick up any work by a good writer, and you will find countless examples.

Examples of *and* and *but*

Holmes:

Courts proceed step by step. And we now have to consider whether the cautious statement in the former case marked the limit of the law . . .

But to many people the superfluous is necessary, and it seems to me that Government does not go beyond its sphere in attempting to make life livable for them.

Jackson:

But we think the previous cases indicate clearly that respondents are within the Act.

Pound:

Hence it is an unjustifiable interference with a natural right. And this is exactly what the court said in an actual case.

Shakespeare:

But I am very sorry, good Horatio
That to Laertes I forgot myself;
For, by the image of my cause, I see

The portraiture of his: I'll court his favours.
But, sure, the bravery of his grief did put me
Into a towering passion.

Tom Wolfe:

He had grown up associating religion with the self-delusion and aimlessness of adults. But now he thought about the soul, his soul. Or he tried to. But it was only a word!

William Faulkner:

But it was not for him, not yet. The humility was there; he had learned that. And he could learn patience.

Isaac Asimov:

But it would be silly to wear clothes in the rain. You didn't wear clothes in the shower. If it rained, you would take off your clothes. That would be the only thing that made sense.

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Mark Painter served as a judge on the Ohio Court of Appeals for 14 years, after 13 years on the Hamilton County (Cincinnati) Municipal Court. In 2009 he was elected by the UN General Assembly as one of seven judges on the United Nations Appeals Tribunal. An internationally recognized authority on legal writing, Judge Painter is the author of 400 nationally published decisions, 130 legal articles, and 6 books, including *The Legal Writer: 40 Rules for the Art of Legal Writing*, which is available at <http://store.cincybooks.com>. Judge Painter has given dozens of seminars on legal writing. Contact him through his website, www.judgepainter.org.



(A much expanded version of this article appeared in *GP Solo*, a publication of the American Bar Association, in May 2009.)

Members by country

Argentina	3	Gilbralter	1	Nigeria	10
Australia	83	Hong Kong	16	Peru	1
Austria	1	India	8	Philippines	1
Bahamas	2	Ireland	4	Portugal	4
Bangladesh	6	Isle of Man	1	Singapore	6
Belgium	8	Israel	4	Slovak Republic	2
Brazil	1	Italy	6	South Africa	160
British Virgin Islands	1	Jamaica	1	Spain	3
British West Indies	3	Japan	7	St. Lucia	1
Canada	59	Jersey	1	Sweden	23
Cayman Islands	1	Kenya	1	Switzerland	1
Chile	4	Lesotho	2	Thailand	1
Cote d'Ivoire	1	Malaysia	2	Trinidad and Tobago	4
Denmark	3	Mexico	6	United Kingdom	131
Finland	8	Mozambique	1	USA	214
France	2	Netherlands	7	Zimbabwe	1
Germany	1	New Zealand	22		
				Total	840

Plain Language in Plain English

Chapter 8: Identify the purposes of the document

Cheryl Stephens with Michelle Black and Janice (Ginny) Redish

Thoughtfully determining a clear purpose for your project is at the core of plain language. This topic is dealt with in a new book, Plain Language in Plain English, covering the full process of producing plain language. Virginia (Ginny) Redish, Michelle Black, and Cheryl Stephens address purpose in the book chapter we reproduce here. Cheryl edited 18 collaborators in producing the book. See more about this at PlainLanguageInPlainEnglish.com. –Ed.

Part B: Audience Considerations *discussed how important it is to know for whom you are writing. The next step is to identify the purposes of your document—why you are writing. To decide what content to include, or the best way to organize that content, or what tone and style are appropriate, you must first define the purposes of your document.*

Kenneth W. Davis discusses the task in his blog:

If a coworker interrupts us while we're writing a letter and asks, "What are you doing?" most of us will answer "Writing a letter." That answer reveals a focus on the written product, not on its purpose. Such product-focused thinking keeps our writing from being as effective as it could be. This week, when you start each writing job, take a few seconds to think about your purpose—about what effect you want to have on your reader. This week, if a coworker interrupts your writing and asks what you're doing, be prepared to answer (for example), "I'm trying to get this customer to forgive us for a shipping mistake we made."¹

The importance of identifying a document's purpose

Just as an architect's goal is to design a building that is ideally suited for its intended use, a writer's goal must be to create a document that is ideally suited for its intended use.

Architects always know, before they start to design, whether they are creating a house, hospital, office tower, or something else. They ask who is going to use the building and what those people are going to use it for. Architects can only begin to design to meet the users' needs after they learn who the users are and what their needs are.

Similarly, as a writer, you must know

- who will use your document, and
- what the document is meant to achieve.

Figuring out what you want to achieve through your document, before you begin writing, greatly increases your chances of achieving your purposes. Your purposes then drive many of the decisions you make as you further plan, write, produce, and distribute your document.

Almost always, understanding your purposes gives you the reasons for writing in plain language.

For example, think about writing a proposal for a project. Your readers may be company executives, grant officers in a foundation or government agency, or fellow scientists acting as reviewers. They are busy people who have many tasks in addition to reading proposals. They are probably reading several proposals at the same time, and may read them when they are tired or under pressure to meet a deadline.

Your purpose is to convince them to choose you, to fund your project, and accept your way of doing the project.

If you can clearly say to yourself why you are writing something, chances are better that your audience will clearly understand why they are reading it.

Begin defining the document's purpose

To help you know why you are writing, ask yourself: "What do I want to happen after someone reads this document?"

Many writers start with general purposes:

- to persuade
- to inform
- to gather information

That is fine as a first step in thinking about your purposes, but it doesn't go far enough. Those purposes are too vague, and they don't include a measurable outcome.

Other writers create a grocery list of information that must be communicated and call this the document's purpose. But that grocery list is about *what* you want to say, not *why*. It's not a statement of purpose.

To answer the why question, define the document's purpose more specifically and conceptually by defining who and what for each general purpose. Here are some examples to illustrate this:

My document will be successful (that is, it will achieve its purposes) if

- I can persuade (*whom*) to (*do what*).
- I can inform (*whom*) so that (*who*) will (*do what*).
- I can gather information from (*whom*) that will allow (*what to happen*).

At some point, you will want to measure the success of your document by determining whether it has achieved its purposes. You won't be able to measure your success unless you have defined the document's purpose using specific statements that include people and actions.

Here is a tip:

If you have difficulty defining the purposes of your document, focus on picturing what you want your readers to do after they have read it. Putting that mental image into words will help you get started on defining your document's purposes.

Common purposes for functional documents

This book focuses on *functional documents*, like business letters, handbooks, instructions, proposals, progress reports, and so on. When you write a functional document, you want something to happen.

Here are some examples:

When you write this type of document,	you may want readers to . . .
---------------------------------------	-------------------------------

Business letter	<ul style="list-style-type: none">• reply with the answer that you need• be satisfied with your answer and not write back
-----------------	--

Handbook	<ul style="list-style-type: none">• find answers to questions without calling your help line• do the right thing when an issue or problem comes up.
----------	--

Instruction	<ul style="list-style-type: none">• use the product correctly without calling your help line• in the case of medications or medical procedures, follow the directions with the aim of achieving the expect results
-------------	---

Proposal	<ul style="list-style-type: none">• fund the project
----------	--

Progress report	<ul style="list-style-type: none">• continue funding the project
-----------------	--

Insurance policy	<ul style="list-style-type: none">• find information for themselves without calling your help line• submit a claim at the appropriate time
------------------	---

Legal brief	<ul style="list-style-type: none">• accept your arguments so you win your case
-------------	--

Let's look at a few of the most common purposes in more detail.

Purpose: To persuade people to do something

After reading this document, I want readers to:

- take action (what action or actions?)
- make an informed decision (about what specifically?)
- make a specific decision that will help me (what decision?)

- change a habit (what habit and what changes?)
- change attitudes or beliefs (about what specifically to what specifically?)
- buy a product
- adopt an idea or behavior

Purpose: To inform people so they do something or something happens to them

After reading this document, I want readers to:

- feel better (about themselves? how? about something else? what?)
- understand more about something (so that they can do what?)
- learn how to do something (what specifically?)
- use a product appropriately
- apply a policy appropriately
- improve their performance
- inspire and mobilize others

Purpose: To gather information from people so that I or they can do something

I want readers to use this document to:

- fill out a form completely and correctly
- give me (or someone else) information (about what? so that I can do what?)

Other purposes: In some cases, a document must serve purposes beyond the actions that people take.

I want this document to:

- be an official record of something
- ensure compliance with a law, rule, or procedure
- be legally accurate and sufficient

Multiple Purposes, One Document

When you have multiple purposes, you must ask yourself whether one document can achieve all of them.

In many cases, plain language is the key to achieving multiple purposes with one document. Regulations are a good example—typically, they have at least two purposes. Regulations must inform people of what they must do and not do. And they must do so clearly enough that people can find what they need and

understand what they find. Regulations written in plain language reduce problems and lawsuits because people can find out easily what they must do and not do to comply.

Multiple Purposes, Different Documents

Sometimes, multiple documents are needed to achieve multiple purposes—or other solutions—based on when and where people need the information.

For example, consider the instructions for using a product. Your purposes may be to:

- encourage people to buy the product and use it
- help people to use the product correctly, so they won't give up and return it as "broken" when it is not broken, and won't call your help line unnecessarily
- help people avoid harm to themselves, and prevent lawsuits against your company.

You know that the users of your product are busy people who do not have time to read a lot of information. You also know that most people don't read a product manual all the way through before starting to use the product.

You might decide to create a very short (perhaps one or two pages), very visual, step-by-step plain language sheet with just the information that people need to set up the product and start to use it. Keeping this document very short will improve the chances that people will read it and follow the instructions. Making it part of a large manual would probably decrease its use.

You may decide you want to create some removable stickers to attach to the product to draw attention to potential dangers.

You might also decide that the best way to help people while they are using the product is to build plain language into the interface of the product, so people won't need any further help.

Say you are developing a software product for home computers:

- Make the content and layout of each screen so obvious that users won't make mistakes.

For example, specify what format you expect for the date, such as dd/mm/yyyy or mm/dd/yyyy.

- Write the error messages in plain language, always explaining what happened, what the probable cause is, and what to do about it.

For example, avoid error messages that just say something like “error 376, invalid entry”.

Multiple Purposes, Different Documents, Different Audiences

Your document may have more than one purpose. You must identify a main purpose early.

On the blog Information Design, Robert Linsky discussed purpose using the example of the monthly invoice for his auto lease. Different messages were being added most months that pushed the billing details onto a second page of paper and made them more difficult to find.

Most of the variable data documents I work with are perfect vehicles for marketing or cross selling . . . But bear in mind that each of these documents have one and only one main purpose. All other uses are secondary and should be treated as such . . . All of these messages are important to a certain degree, but all are secondary to the payment of the invoice. These messages should have appeared after the detail and only those that could fit on one page should appear and in some kind of hierarchical order. Not every message is “important.” Generally speaking only one message is important, while others are “nice to have.” The simple answer to why this happened, I would guess marketing may have been involved; no one took the time to determine the purpose of the document, the user and the cost of adding pages.²

LEASE BILLING STATEMENT Page 1 of 2
1524002602

Robert H Linsky
99 WALNUT HILL RD
NEWTON MA 02461-1836

Billing Summary		Feb. 21, 2006	
Lease Number	1524002602		
Total Amount Due	\$499.00		
Payment Due Date	03-08-06		

If you do not pay the Total Amount Due by the Payment Due Date, you may be subject to late charges which will appear on your next lease billing statement.

IMPORTANT MESSAGE:

Did you know that you can view your statements on-line on usbank.com? Did you know that you can make your payments electronically from any bank in the United States using Automatic Payments? This is a safe and secure way of making automatic payments. Go to usbank.com and select the **ENROLL FOR ONLINE STATEMENTS** link to sign-up to view your statement on-line. Contact U.S. Bank 24-Hour Banking and Financial Services to sign up for electronic payments. If you sign-up for automatic payments, you will not receive a paper statement or be able to view your statement on-line but you can view your history on-line.

Pay by where? For U.S. Bank checking customers or to set up automatic payments call 800-USA8ANKS (800-372-2657). Non-U.S. Bank checking customers call 800-374-6440 (37.60 fee).

If your U.S. Bank leased vehicle been in an accident that resulted in some damage? The at-fault party (or their insurance company) may owe you for diminished value. It is important that you work with your insurance company or at-fault party to understand how this may impact the value of your vehicle and the money you may owe the bank for excess wear and tear charges at the end of your lease term. Please contact us today if you need additional information at the number provided below.

Please send your payment to the address provided below. Each time you or anyone who pays your bill sends a payment check with this statement encloses you authorize us to process that payment by electronic debit to your account. Your checking account will be debited in the amount of the check and that check will be destroyed. If you have any questions concerning your lease, or if you wish to decline the electronic payment service, please contact U.S. Bank Lease Solutions at 1-800-USA8ANKS for 24-hour access, call 1-800-665-5065. If you have already informed us of your choice, it remains in effect.

1524002602 85 VOIDVO V70

Please detach and send with payment! Lease Number: 1524002602 Invoice: 02-19-06
ROBERT H LINSKY
99 WALNUT HILL RD
NEWTON MA 02461-1836

Address Change? Visit your branch, call 24-hour banking at 1-800-USA8ANKS, or visit www.usbank.com

These payments go against balance:

Payment Due Date:	03-08-06
Total Amount Now Due:	\$716.50
Amount Enclosed: \$	

1524002602 00000071650

BILLING STATEMENT Page 2 of 2
1524002602

Continued

Item	Amount	Tax	Total
	475.24	23.76	499.00
			\$499.00

page for payment coupon.

Remember that plain language is language that is appropriate for your audience. In some situations, this will lead you to create different documents to convey similar information to two or more distinct audiences. Each version is tailored to be “plain” to its target audience.

For example, the US National Cancer Institute website has information about each type of cancer at two levels. The general purpose of both levels is to provide information, but the levels are aimed at different audiences.

Level 1 is for patients, their families, and caregivers. The purpose of this version is to provide enough information so people begin to feel that they understand the disease and get answers to their basic questions. Level 2 is for health professionals. The purpose of this version is to provide health professionals with details of different treatments so they can make an informed decision about how to treat each patient.

Both levels of information are available to everyone. Over time, patients learn the more technical terms that are used in the health professionals’ section, and many go there when they feel ready for that level of detail. Health professionals go to the patients’ section to find the right words to use when talking with their patients.³

The next step: achieving your document’s purposes

As you will see in *Chapters 9 through 17* of this book, using plain language guidelines will increase the chances that your document achieves its purposes. Here is a preview of some of these guidelines, using a project proposal as our example:

- Choose only the content that is relevant to the questions your readers want answered.
- For a project proposal, the program announcement or request for proposal often gives you these questions.
- Organize that content logically so your readers can follow your answers easily.
- Include clear headings that give your readers a quick overview of the project when they first scan the proposal. If the request for proposal gives you headings, use those as the first level. Then write clear, informative sentences of your key messages (main points) for headings within each section.

- Write short sections with short sentences, active voice, action verbs, and words your readers won’t stumble over.
- Raise your credibility by making the proposal a pleasure to read because your readers understand it the first time they read it.

As you work through each step of the designing, writing, and rewriting process, you will need to make many decisions about how to proceed. For help to make these decisions, ask yourself:

- Would doing things this way help or hinder the document’s ability to achieve its purposes?
- How well would this approach work for my audience?
- How would this approach affect how my audience uses the document?

Answering these questions will help ensure that your document achieves its purposes.

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Cheryl Stephens has 20 years of experience in plain language work. See plainlanguage.com. She now publishes books about plain language at plainlanguagewizardry.com. The book from which this chapter was excerpted is Plain Language in Plain English.



For the past fifteen years, Michelle Black has specialized in developing clear, usable information for diverse audiences, from low-literacy to very specialized readers. With SimplyRead (www.simplyread.ca), she helps organizations clearly communicate with their employees, customers, and communities.



Michelle holds an M.Ed in workplace learning and more than 12 years’ experience teaching and facilitating. She also speaks, reads, and writes French and Spanish, which helps her to more ably manage translation projects and understand cross-cultural communication issues.

Ginny Redish helps clients and colleagues communicate clearly. For more than 30 years, Ginny has been a prominent figure in the plain language movement. In addition to her consulting work, Ginny is currently vice-chair of the U.S.-based Center for Plain Language. Her most recent book, *Letting Go of the Words—Writing Web Content that Works*, continues to receive rave reviews.



Endnotes

- ¹ This week: Start with purpose," Manage Your Writing at <http://www.manageyourwriting.com/2009/10/this-week-start-with-purpose.html>, October 19, 2009
- ² The Purpose of the Document," Information Design at http://informationdesigndoc.blogspot.com/2009/10/purpose-of-document_31.html, October 31, 2009
- ³ See an example, go to <http://www.cancer.gov/cancertopics/pdq/treatment/breast/patient>.

New members

Australia

Gina Frampton
Darling Pt.
Kerry Harding
Coorparoo, Queensland
Andrew Harnisch
Westin ACT
Neil James
New South Wales
Office of Parliamentary Counsel
[Natasha Fogarty]
Kingston, AG
Rosy Jolic
Melbourne, Victoria
Marko Laine
City East, Queensland
Anna MacGillivray
Brisbane, Queensland
Helen McGowan
Indigo Valley, Victoria
Walter Munyard
Perth, WA
Robert Phillips
New South Wales

Canada

Wordsmith Associates
[Chari Smith]
Calgary

Finland

Helena Haapio
Helsinki

Hong Kong

J.S. Gale & Co.
[John Gale]
Wanchai

Israel

Ellis Simpson
Ra'anana

Norway

Frederick Esborg
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Bromma
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United Kingdom

Ashurst LLP
[Rosie Warren-Cafferty]
London

Frances Moore
London

Fay Silverstone
London

United States

Jean Brodie
Portage, Michigan

Patrick Long
Buffalo, New York

Thomas Myers
Auburn Hills, Michigan

Hank Wallace
Washington, D.C.

Note: In our recent change to the Wild Apricot online membership-management system, we may have missed a few members. If so, please let us know; we'll include you in the next issue.

How to join Clarity

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

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

Simplifying frequently overlooked customer touchpoints

Irene Etzkorn

Executive director, Siegel+Gale, LLC USA

For the past thirty years, Siegel+Gale, LLC has applied plain English and information design techniques to customer information both in print and online. Repetitive, frequent communications, such as bills, statements, and contracts, can enhance or detract from the overall customer experience. The following case studies, from a hospital, a bank and a technology company, showcase the savings that can accrue from simplification efforts and how customers in diverse industries can benefit.

The Cleveland Clinic

The Cleveland Clinic realized that its highly complex bills were the source of tremendous frustration to patients and the cause of outstanding and bad debts to the hospital. Siegel+Gale's challenge was to simplify and redesign billing statements to provide patients with a clear, comprehensive view of their medical charges and payments.

We quickly learned that monthly account balances fluctuated wildly as physicians and hospital divisions input charges at different times and insurance payments were applied. To bring order to this chaos of charges, we created two documents: a Billing Notice, sent only once, that explains the upcoming billing process, confirms insurance coverage, and informs patients that they will receive monthly Billing Statements once insurance claims have been resolved; and the Billing Statement itself, which requests payment for charges not covered by insurance. Detailed charges are categorized by What you owe now and What you may owe later—clarifying which charges are still pending with insurers and allowing patients to better anticipate future billing.

The response from patients was overwhelmingly positive, as was the impact on The Cleveland Clinic's bottom line. Faster payments

and a sharp drop in bad debts translated to \$1 million per month in additional revenue. Paper and printing costs also dropped, due to a decrease in average bill length. Now, only 10% of bills are four pages or longer, down from 50%.

SunTrust

By becoming one of the top 10 banks in America, SunTrust faced the enviable branding task of dealing with success: They were now playing against the big boys.

SunTrust wanted to announce its new status in a way that would guarantee to attract retail customers and investment bankers alike.

SunTrust also needed to harmonize its internal subcultures (the result of a string of very successful acquisitions) to find its unique branding proposition and brand voice. And, of course, all this had to happen quickly.

Thus began Siegel+Gale's relationship with SunTrust.

After an exhaustive discovery process, Siegel+Gale distilled the views of over 12,000 customers and employees into three very simple and compelling truths:

1. SunTrust customers loved doing business with the bank and its bankers;
2. despite its size, people appreciated SunTrust's local, community flavor; and
3. many people had no idea how much SunTrust offered.

Distilling a Brand Promise.

This led Siegel+Gale to develop a brand promise for driving communications and governing behaviors: "SunTrust. Not just at your service. At your side."

Next, we crafted a new common mission statement and brand architecture built on a master brand strategy that clarified its offerings and

eliminated internal silos. Our designers developed a new corporate identity that drew many of the subcultures together under a new visual identity system and a campaign built around the guiding concept of "Doing the right thing for the customer."

Enhancing Customer Information.

To further demonstrate the organization's commitment to customers, Siegel+Gale worked closely with SunTrust to offer customers access to account information online and in print with greater customization.

SunTrust sends out over 68 million statements per year for checking and savings accounts. They lacked customer focus and friendliness and missed the opportunity to market additional SunTrust products.

Changing Customer Behavior.

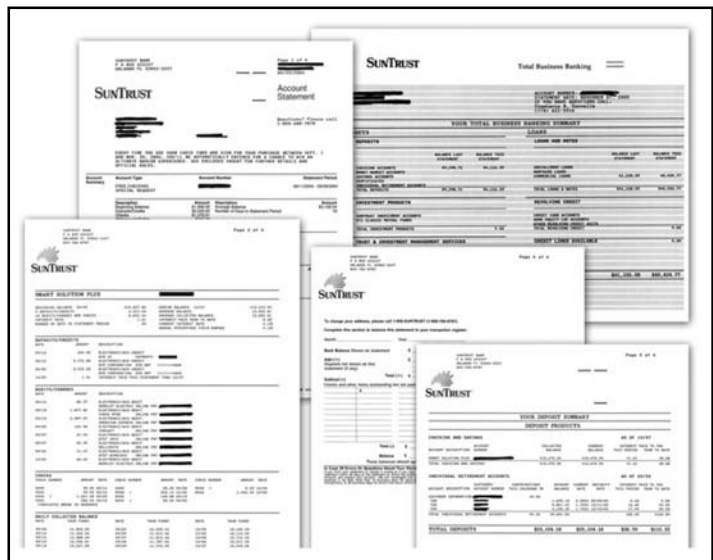
Studies show that 89 percent of customers open and read their statements, looking for inconsistencies and seeking recognition that the transactions are truly theirs. SunTrust realized that they were under-utilizing an important customer touch point.

Siegel+Gale simplified and strengthened the bank statements by devising a format that made them all "Of a Family," further reinforcing its brand promise for customers. Plain English and more colloquial terminology, such as "Money In" and "Money Out," were used as well as customized messaging. These changes dovetailed with creating a compatible online format, easing the desired customer transition to more frequent and personalized transactions over the "net."

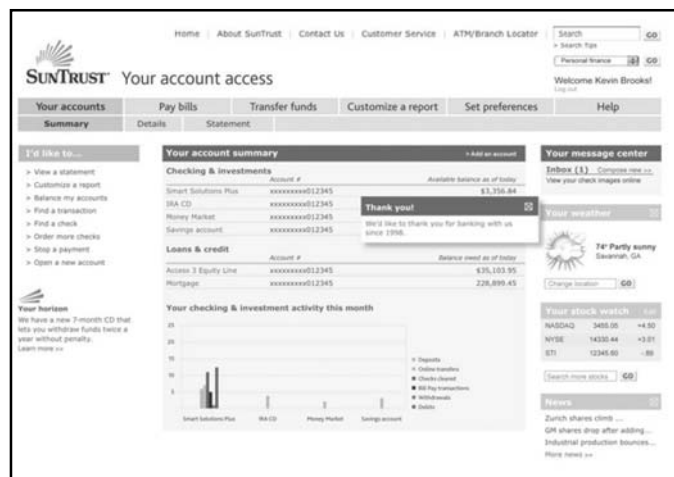
Research revealed that customers preferred the new statements, particularly the new terminology, and that the new formats encouraged customers to combine all their accounts into one postage-saving mailing.

Estimates annual savings of \$5 million as a result of combining statements and having fewer pages per statement.

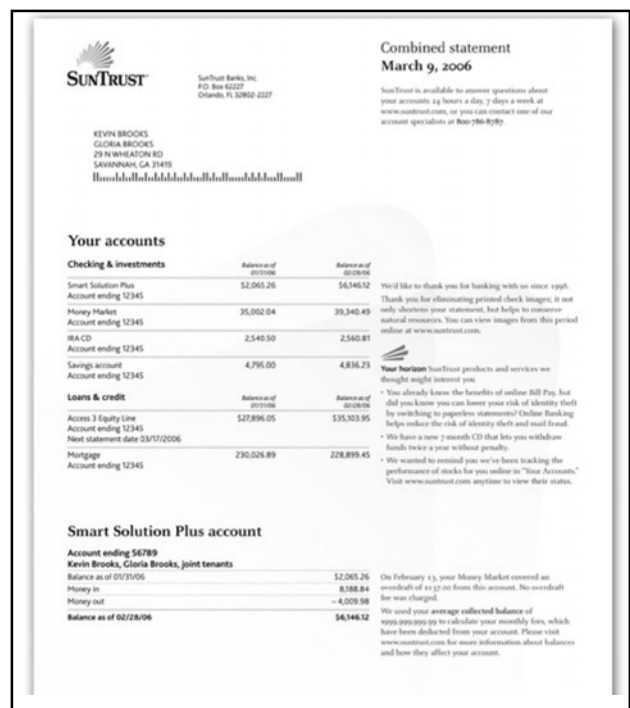
—SunTrust



Old statements.



New web statement.



New print statement.

“Anybody in a service business will tell you that people are their most important asset... Siegel+Gale helped us understand what it is about our people that make us who we are. And then they showed us how to translate that spirit into how we talk and behave as an organization.”

—Craig Kelly, CMO, SunTrust

IBM Canada simplified contracts

Although IBM Canada is a leading provider of high-speed laser printers capable of producing first-class documents, its sales contracts used to look like poor photocopies of typewritten originals—not exactly a ringing endorsement for its own products. Siegel+Gale worked with IBM to make its contracts as state-of-the-art as its technology. The new contracts are easy to use, customized, and crisply designed. The central feature of the simplified contract is a timeline that specifies the rights and obligations of each party in plain language at specific milestones. These innovative contracts don’t just seal the deal, they help cement the customer relationship.

IBM Canada turned a legal requirement into a marketing opportunity with simplified contracts designed for high-speed laser printing—on its own equipment.

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Irene A. Etkorn, as one of the nation’s foremost experts in plain language writing and simplification of business information, has helped set new communication standards in several industries. Her clients have included more than half of the nation’s top ten banks and brokerage firms, and her experience in insurance, trust, credit, energy, telecommunications and health care is equally broad.



She has delivered speeches for executive gatherings sponsored by General Electric, Allstate Insurance, The Conference Board, IBM Canada, American Bankers Association and the Securities Industry Association.

Her speeches and articles include, “Don’t Strategize, Empathize,” “How Financial Paperwork Can Build Your Brand,” “Bundled Billing Formats: Works of

Schedule of Services and Payments		
21 May 2003 Contract Begins, Machines Installed	<p>IBM</p> <p>We sell you 8 machines and 25 copies of DisplayWriter-DOS.</p> <p>We install five 3800 printers.</p> <p>We install three 6670 printers.</p> <p>We begin providing 24-hour-a-day, 7-day-a-week maintenance service on all covered machines.</p>	<p>You pay \$100,000 for the machines and the DisplayWriter-DOS software.</p> <p>To cover rent, maintenance and supplies, you will also pay each month for your:</p> <p>3800 Printers, the following amounts:</p> <ul style="list-style-type: none"> • \$25,000 for up to 8,000 impressions; and • \$1,000 for every 1,000 additional impressions actually used (charged pro rata). <p>6670 Printers, the following amounts:</p> <ul style="list-style-type: none"> • \$3,500 for up to 3,000 feet; and • \$250 for every 1,000 additional feet actually used (charged pro rata).
22 May 2003 Product Shipped	We ship you 25 more copies of DisplayWriter-DOS.	You pay us \$300 for these additional programs.
1 June 2003 Payment Period Begins	We send you the first invoice requesting payment of \$28,500 plus any additional usage fee.	You pay us the amount specified on the invoice by the due date.
21 May 2006 Charges Adjusted 21 May 2006	Beginning on this date, we may adjust the charges once a year. Each adjustment may not increase your charges by more than 5% of our maintenance service charges generally in effect on the adjustment date.	You must receive 90-days written notice of any adjustment.
23 May 2006 Product Shipped 23 May 2006	We ship you 25 more copies of DisplayWriter-DOS.	You pay us \$300 for these additional programs.
21 May 2007 Termination Option 21 May 2007		At any time after this date, you may pay us \$12,000 and end this agreement.
21 May 2013 Contract Ends	The end of this contract coincides with the end of the Supplement to IBM Maintenance Agreement listed under “What this agreement covers.”	

New IBM Canada simplified contract.

“The new agreement doesn’t look like a contract. It answers my questions. It tells me what I own and how much it costs.”

—An IBM customer in a focus group

Art or Tape and Glue?,” and “Achieving Asset Retention Through Improved Communications.” Irene also contributed a chapter, “Why Government Has Difficulty Communicating” to the book, Plain Language: Principles and Practice.

Irene holds an M.A. in professional writing from Carnegie Mellon University and a B.A. from C.W. Post College. She serves on the Board of the Center for Plain Language and has also served on the English Advisory Board at Carnegie Mellon University and on the Communications Advisory Board of Dalbar.



Lisbon gives a warm welcome to Clarity members

Dear Clarity members

I am delighted to invite you to Lisbon, Portugal, for this year's Clarity conference. Our office has been a hub of activity for the last ten months to make this event special and interesting for everyone.

Plain legal language and more

To make sure we got it right, we went around asking Clarity members what you wanted out of these conferences. So we have plenty of case studies, master classes, and specialists from different areas giving us their perspective on communicating clearly with the public.

Along with the world's top experts in plain legal language, you'll have the chance to see information designers demonstrate how images can be used to clarify legal texts, and usability experts discuss ways of testing your documents with real users.

For those of you who asked for evidence, we put together five multidisciplinary teams of students and experts who will rewrite, redesign, and user-test legal documents, and share their results with us.

Making a difference

The concept of plain language is fairly new in southern Europe, with laws and government communication still incomprehensible to most citizens.

In Portugal, clear legal and administrative language just entered the political agenda. For Portuguese professionals and government officials, this conference represents an invaluable opportunity to exchange ideas with the world's top experts. For Clarity members, it's a chance to use your collective experience as plain-language practitioners and advocates to help shape a culture of clarity.

I look forward to seeing you in October. If you've never been to Lisbon, don't miss this opportunity; the White City is beautiful this time of the year.

Sandra Fisher-Martins

PS—Visit the conference website at www.clarity2010.com for the latest news. You can also find us on Twitter and Facebook.

Corrections

On page 31 of the previous issue (No 62), there was an incorrect mention that the new U.S. Federal Rules of Civil Procedure retained the *shall* in this sentence: "There shall be one form of action to be known as 'civil action'." Actually, that sentence was converted to "There is one form of action—the civil action." The full story of how *shall* was (with one painful exception) replaced throughout the rules appears in Professor Joe Kimble's article in Volume 12 of *The Scribes Journal of Legal Writing*.

How to conduct readability research according to the standards of professional market and social research

Susan Bell

Market and social researcher Australia

Introduction

The purpose of this article is to share my expertise in conducting readability research. By way of background, I am a professional market researcher with 20 years' experience. For much of that time, I have had a particular interest in, and have focused on, conducting readability tests for government and commercial clients in Australia. On those projects, I have often worked with plain language professionals—so I understand the practical issues facing writers and designers who need to evaluate documents as part of making those documents as clear as they can be. Along the way, I have attained the Australian Market and Social Research Society's QPMR (Qualified Practising Market Researcher) status. That means that I bring extensive research expertise and a sound knowledge of research techniques and standards to the readability field.

In this article, I explain that there are different types of readability research, and I describe how to conduct each type. I argue that the term 'readability test' should be reserved for a particular style of readability research. A lot of what people in the plain-language world call 'document testing' is better thought of as 'document trialling' or 'diagnostic research'. The distinctions are important.

The article will be of most use to plain-language writers and designers who want to learn the best way to conduct this kind of research. Organisations considering outsourcing readability research may also find it useful.

What is readability research?

The best way to define readability research is to explain what it is used for.

The most common form of readability research is the 'readability test'—also known as user testing, protocol testing, or document testing. Readability research reveals whether a

document's target market can use the document as it is intended to be used. Following Ginny Redish, 'using' in this context means being able to find information, understand that information, and apply it.¹

Types of readability research

The right way to conduct readability research will depend on your reasons for conducting the research. The four main types of readability research are:

1. Usage behaviour. To learn how people actually use certain documents.
2. Diagnosis. To understand the problems that users face with current documents.
3. Feedback. To gain feedback on drafts of your work.
4. Evidence. To provide evidence that one document version is easier to read or use than another.

How to conduct readability research

The two main forms of research are qualitative and quantitative research.

- Use qualitative research to learn about or understand something
- Use quantitative research to measure or evaluate

Qualitative research

The two main types of qualitative research are:

- Unstructured interviews about how people think or feel
- Observation, to reveal how people actually behave.

In qualitative research, the interview questions can vary from interview to interview, as the researcher adapts them to the person being interviewed. The interviewer may also change the order of questions at each interview.

Readability research which adapts question wording and order to the participant's level of understanding is, by its very nature, a qualitative interview.

Writers and designers who 'try out' drafts of their document on a small sample of potential readers are using the qualitative research method.

The results of qualitative research should be described in words, not numbers. Use words such as 'the cluttered design made the information hard to find'. 'Users found the section on liability but did not understand it'. It's okay to use words like 'most' or 'few', as in 'most people interviewed could not find the . . .'

Quantitative research

If you want numeric output, such as, '80% of the target market found the right answer within 45 seconds . . .' use quantitative research methods.

The three main types of quantitative research are

- Face-to-face interviews
- Phone interviews
- Any kind of 'self-completion' methodology online or offline.

If you want to quote a 'score', such as '8 out of 10' readers or '65% of readers' then you must conduct the research using quantitative methods.

For quantitative research, the researcher must use a formal questionnaire—by that, I mean a prepared list of questions, possibly with some likely ('precoded') answers.

This questionnaire must be administered exactly the same way with every participant. The wording for the questions and the order of the questions must be the same for every participant—regardless what the participant understands or fails to understand.

Quantitative data can be reported:

- Numerically, as in '7 out of the 20 people we interviewed'; or

- As a percentage, as in '75% of the sample'.

Reporting results as a percentage implies that you are confident that you can generalise the results of your sample to the whole population. So you should use percentages to describe your results only if:

- You have collected quantitative data; and
- You believe your participants reflect the relevant population—which I discuss below.

Sampling: the two key issues

Is your sample skewed?

Many people mistakenly think that choosing the right sample is about choosing the size of the sample. In fact, your first question about a sample should be about its skew. A skewed sample can give misleading results.

One way to prevent skews in your sample is to be careful who you recruit for your interviews—for example, not students and not colleagues.

Sample size is relevant here—in general, the smaller the sample, the more likely it is that the sample will be skewed.

Do you have the right sample for what you want to do with it?

Whether you have the right sample depends on what you are planning to do with the information. If you are planning to use the data quantitatively, you will need a larger sample. The table at the top of page 18 explains this:

Qualitative research sample sizes

Practitioners vary in their preferred sample sizes for qualitative research—though fewer than 15 in a sample would usually be considered too small.² The decision about the sample size comes down to practicality and the number of 'types' of reader you want to interview. Here are some fairly common samples:

Qualitative research sample types	Recommended size
Basic sample	15
Sample with 2 sub-groups, such as heavy users and light users	8 per subgroup (16 in total)
Sample with 3 sub-groups, such as heavy, medium, and light users	6 per subgroup (18 in total)

How to choose which research method to use

Use quantitative research methods if you want to report your results numerically

Your objective	The method to use	What this means
Use the right method for your objective		
If your main objective is to provide numeric data, . . .	then you should use quantitative methods.	Use a formal questionnaire, consistent for all participants. Use a sample size of at least 30 people. Report your results in numeric or percentage form.
If your objective is to learn why people do not understand something, or to test out different ideas with the people you interview, . . .	then you should use qualitative methods.	Prepare a list of questions but adapt it in the interview if you need to. Samples of 10 to 20 are common Report your results using word descriptions, not numbers.
If you are using feedback as part of an iterative design to help you in your work, . . .	then you should use qualitative methods.	

Use qualitative research if you have not conducted tests on this document before

How much you know already	The method to use	What this means
Qualitative research is the best way to start		
If this is the first time you have tested this document, . . .	then you should use qualitative methods.	You may find that people do not understand the document because they do not understand the product or service—or for some other reason. If you conduct quantitative research only, you may not discover this.

In some cases, you can use samples as small as 5, but . . .

As described by Ginny Redish,³ and Jakob Nielsen⁴ writers and designers can gain highly valuable feedback from potential users of the document or website if they conduct their testing or research with samples as small as 5, but there are certain conditions that must be met first.

Testing with samples of 5 or so is appropriate for iterative designs. That is, you start with a small sample of about 5 people. After interviewing them, you go back to your document and apply what you have learned. Then you test your redraft with another 5 people—and so on.

This iterative form of feedback is very useful when you are conducting the research to spot navigational or comprehension problems. The logic is that if 1 or 2 people out of 5 face a problem with your document or site, then you need to fix it before going any further, and then you test again to see if your 'fix' solved the problem.

While these small samples are great for problem identification, they are not suitable for evaluation. If you are evaluating one document against either a benchmark or another document, then you need a larger sample so that you can quote the results in percentage terms. Larger samples are also necessary if there is quite a high degree of variation among users, or if problems are likely to be encountered only by a specialist sub group of your sample.

Quantitative research sample sizes

Although sample size for qualitative studies comes down to pragmatics, sample size for quantitative studies—such as those which compare one document against another—is about how representative the sample is of the population that it purports to describe.

Statistically, the larger the sample, the more likely it is that it represents the population—so the more confident you can be that the results from your sample of people would occur from any sample drawn from that population. Statisticians have shown that for a sample to be representative, it needs to contain 30 or more people. Professional researchers therefore insist that samples for quantitative research should be at least 30.

If you want to claim that one document is superior to another, then you need to be able to back up your claim by showing that the difference between the scores for each document is statistically significant. It may surprise many people that, for the purpose of statistics, for results from a sample of 30 people:

- There is no significant difference between a score of 70% and a score of 50%; and
- For this difference to be statistically significant, the scores would need to be 74% and 50%. This would give 95% confidence that this was a real difference.

Yet people conducting readability testing with sample sizes of about 10 people often quote results in percentages.

So, the ideal quantitative sample is 30 people or more. However, if your budget restricts you to a small sample, what should you do?

In your report, it is good practice to state the sample size you have used, particularly if you quote percentages.

In some forms of quantitative research, sample sizes need to be much larger—for example for large-scale comprehension and engagement studies.

What to call readability research

In the market and social research and scientific communities, the word ‘testing’ means measurement. The phrase ‘test conditions’ captures the purity of measurement expected of tests. So professional researchers would expect that something described as a ‘read-

If your only option for quantitative testing is to use samples less than 30

- Make it very clear in the report that the sample is ‘indicative only’.
- Quote numbers, not percentages
- Only take note of large differences:
- For example, on a sample size of 10, a shift from 7 people finding something easily in one version of a document to 9 people finding the same thing in another version could be caused by chance. The difference is too small to be statistically significant—so you should consider it to be ‘probably the same’.
- If the difference is larger—say from 3 to 9—and you can be certain that your sample is not skewed in any way, then you can feel more confident that your result is more than a chance and is ‘really’ due to the differences between the 2 versions of the document.

ability test’ would be a form of measurement, and therefore based on quantitative data.

People working in plain language and usability have used the word ‘test’ in other, different, ways—for example:

1. Evaluation of a document, usually in comparison of an improved document versus its original. If the ‘test’ used quantitative methods to evaluate the two document, then the word ‘test’ is the right word. However, if the document was evaluated qualitatively with a small sample, then the word ‘test’ could be misleading.
2. Feedback as part of iterative design is often called ‘usability testing’.

For a professional researcher, the word ‘test’ here is problematic as it implies that quantitative data have been collected according to accepted statistical standards. To avoid ambiguity, use the word ‘test’—and related words like ‘testing’—only for quantitative data. You will be clearer—plainer—if you describe qualitative readability research as ‘trials’ or ‘diagnostic feedback’.

Who to interview as part of your research

You should interview users of the document or website, whoever you are writing for—that of course, sounds obvious. The trick is in how you define these users. The best sample is one which is broadly representative of users, or intended users, of the document or website.

If there is a skew in the sample, then it should be towards people who have lower levels of ability with the document or language, or who have had less education. However, some people with higher education levels sometimes make more comprehension mistakes than people with less education—this is because they presume what the document will say, rather than reading it to find out what it really says.

In general:

- Avoid interviewing experts, unless they are only part of the sample, because their higher levels of knowledge may affect their approach to the document.
- Avoid interviewing light users who will spend most of the time coming to grips with the product or service the document relates to—unless light users are your target market.

Should you include people from CALD (Culturally and Linguistically Diverse) communities, in your sample?

If your target market is people from a variety of language groups, then, yes, you should. It’s best to do it this way:

- First assess how well native speakers understand a document written in their language.
- If native language speakers misunderstand it, then you can be reasonably sure that second-language learners will as well.
- If native language speakers understand it, and you have a significant CALD target market, then test the document with this

audience—in whatever language they are likely to see it in.

Who should conduct the interview?

Should the document designer or writer conduct the interviews, or should this be outsourced to specialists, such as researchers?

Broadly speaking, the issues here are:

- **Learning.** If the aim of the interview is for the designer or writer to ‘learn how people think’ or to watch people use a draft document, then it makes sense for the designer or writer to be the interviewer or co-interviewer. One thing to be careful of is not to pretend that you are not the writer. Be truthful.
- **Objectivity, real or apparent.** Interviewers must not at any time betray their own thoughts and feelings about the document to the person they are interviewing. If you are the designer or writer, then you must not be defensive about your work or critical of an original version of the document. You must not teach a reader why he or she ‘should have’ understood something. You must report all your results, even if they are critical of your own work. If you can’t do all that, outsource.
- **Budget.** Budget is one of the main reasons people conduct their own interviews. However, lack of budget should never be the sole reason why a designer or writer conducts his or her own interviews. Never compromise objectivity. If you expect to test, then make sure that you budget for it at the beginning. Get a quote from someone who is independent before submitting your own quote.
- **Briefing.** If you outsource, make sure that you brief the researchers very carefully about the kind of output you are expecting. You may require specific feedback—on headings, or the use of boxes, or the way you define unfamiliar terms. The researcher needs to know how much detail you expect. The researcher will also need to know whether you need qualitative or quantitative output.

How to interview

Avoid doing readability research in groups

The traditional market research ‘focus group’ is the wrong method for this kind of work.⁵

The main reasons for this are:

- In groups, participants influence each other.
- People in groups work best if they bond. In many cases, groups bond by expressing attitudes towards things. Often, the attitude expressed is towards the product or service responsible for the document you are testing. Therefore, the group talks about their attitudes to the product or service, not about the document.
- The first person to find something usually tells the others. This makes it impossible to gauge how easily things are to find.
- Once someone in the group understands something, he or she might explain it to the others. This makes it impossible to gauge how well the others understood the document.

The best alternative is to conduct all interviews individually. You can, of course, recruit a group of people to attend at the same time, if all they are going to do is a self-completion questionnaire or be interviewed by themselves. It's best to call this 'individual interviews conducted in a group setting'.

Observation and interviewing

Depending on your objectives, try to watch how people read or use the document or website. In this part of the interview, don't speak; just watch and record what the person does.

The skills needed for interviewing

Regardless of the type of readability research conducted, interviewers need

- Apparent objectivity, as described above
- The ability to build rapport with people, and make them feel comfortable in a strange situation
- Patience
- Curiosity—curiosity will help you explore why people use documents in unexpected ways

Conclusion

There are four different types of readability research: research into usage behaviour, diagnosis of problems with existing documents, feedback on drafts, and evidence that one

document is better than another. The first three of these are best conducted using qualitative research methods. The last one needs to be conducted quantitatively.

Qualitative research uses flexible interviewing and small samples as a diagnostic tool to help designers and writers work out how best to write or design the document. Call this type of interviewing 'qualitative readability research', 'diagnostic research', or 'document trialling', rather than testing.

Quantitative research uses the same question wording and order with every participant and is best conducted with samples of at least 30. Results can be expressed in percentages. It is reasonable to call such a study a 'test'.

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Endnotes

- ¹ <http://www.redish.net>
- ² The US "Federal Plain language Guidelines" suggest sample sizes of 6–9 for protocol testing. <http://www.plainlanguage.gov/howto/guidelines/reader-friendly.cfm>
- ³ <http://www.redish.net>
- ⁴ <http://www.useit.com>
- ⁵ Debra Isabel Huron made the same point in her Clarity article 'Testing plain language texts with adult learners', Clarity 51, May 2004.

Five tips on writing to a judge

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Numerous books and articles have been written on this topic. As a teacher of legal writing, I've read many of those books and articles. As a clerk who has written for six different federal judges, however, I have my own pretty good idea of what a judge expects of a brief or memorandum. So, here are my top five tips, in descending order of importance.

Tell the Truth

Credibility is the most important asset an advocate can possess. Once lost, it is not easily regained. Deliberate deception is rare, but it decimates the reputation of the deceiver. More common are inadvertent misstatements or omissions, but their impact is only slightly less devastating.

Misstatements of law frequently result from failure to read an entire opinion or to put a statutory provision in the appropriate context. Counsel will write, "The court held . . ." and insert a quotation from an early page of an opinion—or, even worse, from a headnote or editorial summary—without reading on to learn that the court actually held something quite different. Or, reading from a computer screen, the writer will paraphrase or quote language, attributing it to the court without realizing that what appeared on the screen was a dissenting opinion, not the opinion of the court. Carefully and thoroughly read, analyze, and update every authority you cite.

Material facts that are adverse to the client's position must be included in documents filed with a court. The court is going to learn those facts eventually, so you need to acknowledge them, address their impact on the legal issues, and protect your credibility. Although you must include adverse facts, you need not emphasize them.¹

Finally, be honest with the court about the strengths and weaknesses of your client's case. Make concessions that do not harm your client's interests, admit to the court when you are asking it to change or advance the law, and acknowledge valid points made by the other side to the extent possible. Often, counsel can agree that a particular statement of the law is accurate, which is helpful to the court, without agreeing on its application to the facts of the case before the court.

Cite the Right Law

Whenever binding precedent is available, start there. A court is primarily interested in opinions of the courts with appellate jurisdiction over it. As one former judge often said, "I don't care what the Ninth Circuit says, counsel; it's the Sixth Circuit that delights in reversing my judgments." Tell just enough about each precedent you cite that the court understands its facts, result, and relevance to the case at hand. When describing a statute or rule, quote only the pertinent parts, but paraphrase the remainder so the court understands the overall context.

Avoid string citations that waste your space and the court's time. If more than one authority makes a particular point, indicate that fact in text; then begin your citation with an appropriate signal: "Kentucky law on this topic is well established. *See, e.g., X v. Y, . . .*"

Perhaps most importantly, always update every authority you cite. My favorite memorandum in response to a motion had one line: "The statute upon which defendant relies was repealed by the Kentucky legislature years ago."

Organize Issues for Maximum Impact

As a general rule, when you have multiple issues to address, order them from strongest to weakest and eliminate any that are unlikely to achieve the desired result. This general rule has three exceptions, however:

1. when the argument depends on a logical progression of issues, mirror that progression in your document—discussion of why your client's conduct should not be considered a breach of contract should follow, not precede, any issues regarding the formation of that contract;
2. when both threshold and substantive issues must be addressed, put the threshold ones first, regardless of their

relative weight—a response to a motion to dismiss for both lack of personal jurisdiction over the defendant and failure to state a claim should convince the court that it has jurisdiction before moving on to the sufficiency of the complaint; and

3. when your strongest argument is likely to result in a remedy your client does not want, argue for the preferred remedy first—after a criminal trial, you may have some fairly strong arguments for a new trial, but because your client really wants a judgment of acquittal, argue for that result before you argue for the new trial.

When applying the rule and its exceptions to subissues within a larger issue, a fourth exception applies: when you must satisfy a conjunctive multi-part test, discuss the parts in order. In attempting to have a case certified as a class action, you would, therefore, first discuss the four prerequisites for certification in the order in which they appear in the rule. On turning to the type of class, however, you could either revert to the general rule and put your strongest argument first, or apply the third exception and argue first for the type of class you would prefer.

Make it Perfect

Advocates might be surprised at the negative impact spelling, typographical, punctuation, and word choice errors have on a court's impression of their competence. A federal circuit court judge once wrote that while reading a brief peppered with mechanical errors, the judge may experience "a gnawing feeling on occasion that the obviousness of the uncorrected errors indicates that the brief, having not been read for these errors, may be equally unreliable in its substantive reasoning or its analysis of authorities."² So, proofread, edit, and correct until your documents are as perfect as you can make them.

Follow the Court Rules

Rules are the advocate's friend; they mandate certain content and form, so you need not agonize over those aspects of the written document. Read them and follow them to the letter. You may not get past the clerk's office if your document does not follow the rules. One attorney tried to file a motion without a supporting memorandum, which was required by local rule. When the clerk informed

the attorney of the rule, the attorney handwrote the word "motion" over what had been the title of the document and the word "memorandum" over what had been the one-sentence request for court action. The clerk then accepted the document, but the court was not impressed.

An attorney can even be sanctioned, if the rule violation is egregious.³ Should your attempts to write in plain English ever conflict with any rule or preference of the recipient of your document, follow the rule. You can always advocate for a rule change later.

Remember that, despite the time and attention devoted to the federal rules back in law school, they are not the only rules you must follow. Local courts frequently have rules; specialized courts have their own sets of rules; and individual judges may also have rules and procedures for you to find, learn, and follow. A phone call to the clerk's office of the court to which you are writing will usually yield you copies of, or at least references to, all the applicable rules.

As a busy practitioner, you may not have time to read whole books on the topic of improving your writing. However, by following these five tips, you may improve your ability to persuade a court to rule in your client's favor.

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Endnotes

- ¹ Many valid techniques may be used to minimize the impact of adverse facts, but that is a topic for some future article.
- ² Wilbur F. Pell, *Read Before Signing*, 60 A.B.A.J. 977 (1980).
- ³ See, e.g., *Ernst Haas Studio, Inc. v. Palm Press, Inc.*, 164 F.3d 110, 113 (2d. Cir. 1999)(sanctioning counsel for failing to comply with Fed. R. App. P. 28).

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The research basis of plain language techniques: Implications for establishing standards

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Abstract

This paper discusses three issues. First, we discuss the need for a commonly accepted definition of plain language. Second, we discuss some of the research into sentence-level plain language techniques, and the implications of that research for a technique-based standard of plain language. Finally, we discuss means of testing documents, and advocate a testing-based approach to standards.

Introduction

In our previous paper, presented in Amsterdam in 2007 and printed in *Clarity* 59, we discussed, among other topics, technique-based standards compared to process-based standards for plain language. So when Neil James asked a group of Clarity, Center, and Plain International folks which topic each group wanted to discuss, we volunteered for that one. And I will get around to addressing that topic later in this paper. But when I sat down to start working on this presentation, I realized that we are missing a very critical step that should occur early in our discussions, and I'd like to talk a bit about that first—the definition of plain language.

A short story

Once upon a time, a long, long time ago when I still practiced the profession I trained for—

archeology—I attended a small conference in Oklahoma. It involved only Oklahoma and Kansas archeologists, and it covered only one topic—Kay County chert. Kay County chert is a specific type of stone that was used over a long time and a broad area in Kansas and Oklahoma to make knives, arrow points, and other tools. Because it came originally from a relatively small area, its distribution over time and place could tell us about which groups traded with or were related to what other groups—topics near and dear to archeologists' hearts. So, after 25 years or so of research on this material, the archeologists in the area decided to get together at a conference to focus on just this one important material.

Well of course archeologists love artifacts, and many people brought along samples of their Kay County chert artifacts. And we discovered something truly terrible. The Kay County chert discussed in research from Kansas was not the same material as the Kay County chert discussed in the research from Oklahoma. All those years of research and they weren't even talking about the same thing! All that research that, all of a sudden, was worthless.

Defining plain language

I'm concerned that we are going down a similar road. When I stand up here and advocate on behalf of the Center for Plain Language that we should develop standards for plain language based on how well the language works, I'm basing that on my definition. If your readers can find the material they need, understand it the first time they read it, and use that information to perform their task (or the task you want them to perform), it's plain language. This is the definition used in the bill passed by the U.S. House of Representatives in 2007, and the one many of us in the United States have used for some time now.

But I realize your definition of plain language may not be the same thing. If you define plain language as documents with an average word

length of 20 words or fewer, at least 70% of verbs in active voice, paragraphs of no more than 10 lines, lots of white space, and so on, we are talking past each other and we have no common definition on which we can build consensus on anything—not international standards, not certification, not research goals. And maybe there are other definitions out there that I haven't even considered.

It seems that the different views of what standards should be derive at least in part from different definitions of plain language. If everyone were to accept the outcome-based definition the Center uses (and we didn't originate it), it would be logical to accept standards that are also based on outcomes. On the other hand, if you use a definition based on specific plain language guidelines, then basing standards on the presence and degree of specific techniques makes perfectly good sense.

And so, I think that before we proceed much further with our work, we need to agree on how we are going to define plain language. If we can't agree on that, we may as well break now and go visit the wonderful Museo Nacional de Antropología.

Having gotten this topic off my chest, I will now move on to the assigned topic of this paper, techniques and testing. Obviously, you'll all have to accept, for purposes of this paper, my outcome-based definition of plain language.

So, how about those techniques?

In our last paper, we addressed several word-level techniques and the research that relates to them. This year we'll address some sentence-level issues and the implications of related research on the question of using techniques as a basis for plain language standards.

Over the past few decades, plain language advocates have developed a variety of techniques that are intended to capture best practices. These techniques have become our commonplaces, and we assume they work. But sometimes there is a gap between what we assume and what actually works for readers.¹ To test our assumptions about what works, let's take a look at a few of these techniques and consider whether they have any empirical support.

Here are four common techniques. We'll explore each in turn and see if the research is out there to support using them.

Technique #1: Use simple sentences.

Studies of syntactic complexity have shown that complex sentence structures can be demanding for readers. Dense and convoluted sentence structures can be more difficult for readers than decoding low-frequency words.⁴ Dense syntax tends to make it harder for readers to construct the meaning of the text.^{8,2,5} In fact, syntactically complex sentences can make good readers look like poor readers, slowing down their reading speed.^{1,3} Information designers can conclude that they should strive for a simple subject-verb-object (SV0) order when composing English sentences (and for other languages that use this basic word order).

Comment: Good idea? You bet.

Technique #2: Keep clauses short.

Research on clause length indicates that readers may have trouble keeping track of what is going on when sentences are composed with long clauses.² As sentence length increases, text difficulty increases.^{2,8,3} Research shows a correlation among three text features on reading speed and comprehension: (1) the number of words per sentence, (2) the number of propositions per sentence, and (3) the proportion of syntactically unpredictable words.⁵ The higher the three numbers, the worse readers performed, with poorer readers hurt significantly more than good readers.

Comment: So far, still doing well.

Technique #3: Avoid long sentences.

We might conclude that a plain sentence is always a short one. But a simple sentence does not necessarily mean a short one. The truism to always avoid long sentences is one of those techniques we need to reconsider.

Research shows that it's not the length of the sentence that matters, but its syntax and structure. Clear syntax helps readers to parse the text more quickly and hold in working memory the words of the sentence in their appropriate groupings while they process the meaning of the sentence.^{4,5 p. 165} In this way, clear syntax reduces the burden on working memory. Moreover, good syntactic cues can help readers recall what the text says.⁶

Studies in psycholinguistics of English sentences tell us that an important signal of good syntax is the distance between the subject and the verb; essentially, the shorter distance the better. We

can think of a sentence as a kind of tree, with subject and verb of the main clause as the trunk from which the remaining content branches out. When we separate the subject and the verb with clauses, lists, or enumerated sequences (called center embedding or left branching because the information is embedded between subject and verb or branches out to the left side of the trunk (that is the verb)), we place unnecessary demands on readers' short-term memories. The effect? We worsen readers' recall, and require them to exert more mental effort.^{7,8,3,9,10,6} Readers of English find it easier to recall the content when clauses are added to the ends of sentences (right-branching) rather than in the middle.

Roy Clark¹¹ from the Poynter Institute offers an example from the world of newspaper writing. He asks us to consider the lead to this New York Times story about the downfall of an important political figure:

Gov. Eliot Spitzer, whose rise to political power as a fierce enforcer of ethics in public life was undone by revelations of his own involvement with prostitutes, resigned on Wednesday, becoming the first New York governor to leave office amid scandal in nearly a century.

That puts 24 words between the subject and verb. To achieve a new pattern, he offers this rewrite:

Gov. Eliot Spitzer resigned on Wednesday, becoming the first New York governor in nearly a century to leave office amid scandal. Having risen to power as a fierce enforcer of ethics in public life, Spitzer was undone by revelations of his own involvement with prostitutes.

Here's an example from Bryan Garner.^{12 p. 104} Consider this left-branching little nightmare of a 159-word sentence.

If at any time the Federal Energy Regulatory Commission should disallow the inclusion in its jurisdictional cost of gas, cost of service, or rate base at any portion of the cost incurred because of this gas purchase or the full amount of an costs incurred by Buyer for any field services or facilities with respect to any well subject hereto, whether arising from any term or provision in this Agreement or otherwise, including but not limited to price and price adjustments, the prices provided for

herein, then Seller agrees that the price will be reduced to the maximum price for gas hereunder which the Federal Energy Regulatory Commission will allow Buyer to include in its jurisdictional cost of gas, cost of service, or rate base and Seller shall promptly refund with interest all prior payments for gas purchased hereunder which exceed the amount Buyer is permitted to include in said cost of gas cost of service, or rate base.

Implications. Writers of English can streamline their prose by keeping left branching sentences to a minimum. But putting the verb at the end of a sentence is not a completely dumb thing to do—good writers do it all the time when they want to create suspense. Syntactic variety can help to keep the reader's interest, so every sentence need not be short, nor right branching. But every sentence does need to be clear.

Comment: In sum, our mantra to write short sentences should be tempered with "we also need to learn how to write good long sentences." Our current techniques for sentence length seem to advocate a "one-sentence pattern fits all contexts" approach and can result in a boring monotone. So in the case of sentence length, we are not quite doing so well in terms of what research actually shows us.

Technique #4: Avoid more than 7 items in a list.

Many professional writers believe they should adhere to the maxim, "use no more than 7 items" in a list. The practice of presenting lists with no more than 7 items has been justified by linking it to research in cognitive psychology. In particular, writers rely on George Miller's classic 1956 paper, "The Magical Number Seven, Plus or Minus Two".¹³ In this famous analysis of research on human short-term memory, George Miller, a psychologist from the Massachusetts Institute of Technology, noted that, when people were asked to remember random letters, they could remember about 7. However, when they were asked to remember random words, they could remember about 5. What was surprising was that these 5 words consisted of 25 or 30 letters.

Why were people able to remember so many more letters when they were combined in words than when they were separated? Miller's classic insight was that the unit of

short-term memory is the chunk, a pattern stored in long-term memory. Thus, the letter p, by itself, is a chunk and the word peach is also a chunk. But the same letters arranged backward as “hcaep” are not a chunk because they don’t form a familiar pattern stored in long-term memory. The fact that we can hold 7 unrelated letters or numbers (for example, a phone number) or 5 unrelated words in memory led Miller to his principle that we can remember 7 plus or minus 2 chunks in short-term memory.

Notice that Miller was talking about short-term memory. In short-term memory studies, the items are presented one at a time, either visually or auditorily, and then they are taken away. The participant is asked to remember them after they are gone from sight or hearing. We can see then that Miller’s principle does not apply if the items remain in view.

If we view 7 plus or minus 2 items formatted as a list on a sheet of paper or on a screen, we do not rely on short-term memory to interpret or remember them. Instead, we interpret the printed items in the list using our long-term memory and will be successful in doing so as long as the words on the list are familiar. Lists on paper or onscreen serve as a kind of external memory (like a shopping list to remind us of important items). We can see then that using lists with a certain number of items has nothing to do with imposing on our readers’ short-term memory limitations. Thus, interpreting Miller’s principle to mean that one should have no more than 7 items in a printed list or 7 bullets on a PowerPoint slide is simply wrong.

Comment: Here’s an example in which guidelines proposed to the professional writing community were based on an inappropriate interpretation of the research. If plain language advocates follow this maxim under the assumption that it is research-based, they are wrong. What we need as plain language advocates is an understanding of the empirical research that bears on the topics we care about and apply those findings appropriately, given our context and our readers.¹⁴

Implications of the research for standards

These few examples of the research basis for specific plain language techniques illustrate the problems with our current commonly-accepted assumptions about some of those techniques. Any technique used to build a

standard must have a sound research basis. Even though we may believe there is still good cause to recommend short sentences or any other popular technique that is not supported by research, we cannot use them as the foundation of standards. We must defer any attempt to construct technique-based standards until research gives us more answers. Even then, we will find that some of the techniques we hold most dear are not supported, and we will have to abandon them in constructing standards.

Cross-cultural considerations

We also must consider whether we want to develop a standard that works cross-culturally, or whether we are writing a standard only for English-language documents. Certainly, our colleagues in Sweden, Portugal, and several Spanish-speaking countries would like to see a truly international standard for plain language. While many of the same techniques we favor may work in those languages, the research base is far less extensive and, in some languages, non-existent. We would need research demonstrating the effectiveness of techniques of plain language in each language to which we wanted to apply the standard, and this is simply not practical for us to do.

And what about languages further removed from English? I spoke with several native speakers of Mandarin, and asked them to tell me what linguistic features they would use to make sure their writing was clear, especially when writing to non-experts. With one exception, none of them had given any thought to the issue, although they admitted that they knew clear writing when they saw it. When pressed, they came up with one technique that contributed to clarity in their language—keeping material short.

One informant was able to discuss what we consider plain language techniques. Professor Xiang Duansi, President of Guangdong Foreign Languages University and an expert in English as well as Chinese, commented extensively to me. Apparently, while techniques such as using pronouns, avoiding abbreviations, and using lists are recognized as a way to make writing clear to the average reader, this has not been a subject of study. There would be little research to evaluate the effectiveness of specific techniques. He had one interesting comment—in Chinese, if you can express complex ideas using short words, you

are considered an excellent writer. I need him to talk to all the English writers who think that using big words makes them look smart.

In sum, using a technique-based standard would require us to know far more about existing research than we know, plus far more research on open issues, plus even more research on techniques in languages other than English. The more I know about our current knowledge of the basis for and the reliability of techniques, the more I see a technique-based standard fading into the distance, rather than coming closer.

A procedural standard

So what do we recommend? As I noted earlier, the most popular definition of plain language in the US is that a communication is in plain language if the people who are the audience for that communication can quickly and easily

- find what they need
- understand what they find
- act appropriately on that understanding

This is an outcome-based definition; it stresses the audience's ability to use a communication. While we say that specific techniques may help a writer achieve the goal of plain language, the techniques in themselves do not guarantee that a document can be used effectively. Indeed, depending on the audience, one can write a document that uses few of the popular techniques and yet meets the terms of the definition above, or one that uses all the techniques and is still hard to use.

It will come as no surprise that the Center recommends a standard that is outcome based, to reflect the nature of our definition of plain language. Our bottom line is that you cannot assert your document is plain language unless you have shown that your intended readers can use the document in the way you intended. The most obvious way to do that is to test your document.

Testing documents

Types of testing

Much of the resistance to testing comes from the perception that testing costs a lot and takes a lot of time. This is not necessarily true. You can do either qualitative (What do people think about it?) or quantitative (Do the numbers show that this is a success or failure?) testing.

- Protocol testing and focus groups produce qualitative data.
- Control groups produce quantitative data.

Focus groups are conducted with a small group of people (usually 8–12). They are valuable for gathering information about how people feel about a document. Participants will tell you if they like or dislike something. They will tell you if they understand what you are doing. And they may even tell you a better way to do something.

While focus groups are valuable in some situations, they are not usually an effective way to test the usability of a document, or to learn how well an individual really understands what you have written.

Protocol Testing involves real readers engaging with real documents. There are generally 2 ways to conduct protocol testing. The first involves asking your readers to think aloud as they read the document. In this case, you are simply an observer who makes notes about areas of the text that trouble readers. A second type of testing involves a one-on-one interview with readers, generally 6 to 9. The aim of the interview is to get a sense of what readers think the document means. Here, you ask each reader to read the text until they reach to a specific cue (usually a dot identifying a stopping point). Each time the reader reaches a cue, you ask them for an explanation of what that section means. If the reader interprets the section correctly, you have written it clearly.

At the end of the document, ask additional questions, such as—

- What would you do if you got this document?
- Do you think the writer was trying to help you?
- Do you think your friends would understand this document?

This last question is important because sometimes people are more comfortable telling you what they think others might find confusing, rather than admitting that they don't understand something themselves.

You should use a different type of protocol testing when evaluating long documents, like booklets and regulations. Not only do you test for comprehension, but you also make notes

about the way the reader uses the document. For instance you would note how often a reader has to flip from page to page to find references.

The goal of protocol testing is to ensure that your readers understand your document, and therefore won't have to call you for an explanation. Although this technique is very valuable, it probably isn't worth the time to test documents that go to only one or a very few people.

Controlled Studies produce quantitative data on how well the general public uses the final document you've produced. Quantitative data can be acquired through surveys, interviews, or user tests. Sometimes you will want a comparison group (the control); other times not. When you want a comparison, you will need to set a benchmark against which you'll test a new version. This could be a "before" version, or it could be a new draft. The idea is to identify how much better the "after" is and how it meets or does not meet your intended goals for quality. You will need information about the use of your "before" versions, and you will need to define what you will consider a success. For instance:

- You currently get 120 calls a week asking you about your program. You want to get at least 200 calls.

- Every time you send out your letter asking for updated information from your customers, you get about 100 calls asking for clarification for each 1,500 letters you send. You want to reduce that to 15 calls.
- When you send out a request for payment, you get a response rate of 50% within the first 30 days. You want to increase that to 80%.
- Typically, 50% of the application forms you receive contain errors. You want to reduce the error rate to 20%.

In many cases, you will already have data about your "before" documents. In other cases, you may have to collect that data as part of your testing project.

You should use control studies after your qualitative testing is completed and you believe you have the best possible document. That's because control testing will tell you if the new document is a success, but it won't tell you why it is or isn't a success.

When to use what tool

Like any good tool, focus groups, protocol tests, and control studies are most successful when used for their intended purpose. The chart below shows the best times to use different methods of testing documents.

Testing Method	When to Use It	What You will Get
Protocol Test/ Usability Testing (qualitative)	After completing a final draft of your document	<ul style="list-style-type: none"> • Specific information about what the readers think your document means. • Information about what they will do with the document when they receive it. • Observations about how they read your document and how well they can follow the format. • A basis to revise the document.
Focus Groups (qualitative)	Before rewriting an old, usually lengthy, document	<ul style="list-style-type: none"> • Information about how readers feel about the old document; what they like and don't like. • What information they need that they don't have. • A basis to revise the document.
	After rewriting to compare the format of different versions of a document	<ul style="list-style-type: none"> • Information about which versions users prefer.
Control Group (quantitative)	After protocol testing and revising a document or during a pilot	<ul style="list-style-type: none"> • Data about how many people did what you wanted. • A comparison between the old document and the new document. • A comparison of 2 different versions of the same document. • Information about whether your revision was successful.

Testing as the basis for a standard

There are several advantages of using a process that involves testing documents as the basis for a plain language standard:

It does not depend on particular linguistic characteristics that would have to be identified and tested for each language to which we wanted to apply a standard.

It ties directly back to the definition of plain language as a document that your audience can use.

It supports our efforts to spread plain language by demonstrating that plain language improves an organization's bottom line.

It applies to any language.

Summary and next steps

We've discussed three issues:

1. The need to adopt a common definition of plain language before we proceed much further with this effort
2. Some of the problems we see in adopting a technique-based standard for plain language.
3. The advantages of a testing-based standard.

The Center believes that any international standard of plain language cannot be based on a set of specific linguistic techniques. Rather, it must be based on a standard for good process. We believe this process must include testing or some other procedure that demonstrates that a document works for its intended purpose. We recognize there is resistance to testing, based on concerns about the time and money it requires. But to paraphrase what we said in our last paper, we believe it's more realistic to think we can get organizations to test their documents than it is to think we can get a group of plain-language practitioners to agree on detailed, specific, meaningfully measurable techniques, and to conduct the research needed to demonstrate that we have chosen the right techniques for English and for any other language to which we want to apply our standard.

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Karen Schriver, Ph.D. is President of KSA Communication Design and Research, a consultancy located in Pittsburgh, Pennsylvania (USA). She is a former professor of rhetoric and information design at Carnegie Mellon University, where she co-directed the graduate programs in professional writing. Her book, *Dynamics in Document Design: Creating Texts for Readers*—now in its 9th printing—is regarded as an essential work in the field. Karen redesigns websites, instruction guides, educational materials, technical reports, marketing collateral, and forms. Winner of ten national awards for information design, her clients include Apple, IBM, Mitsubishi, ATT, Sprint, Hoffman-LaRoche, Fujitsu, Microsoft, and Sony.



Dr. Cheek is an anthropologist by training, earning a PhD by the University of Arizona in 1974. She worked for the US Federal government from 1980 until early 2007. Most of her Federal career focused on writing and implementing regulations. She spent four years as the chief plain language expert on Vice President Gore's National Partnership for Reinventing Government. She was the chair of the interagency plain language advocacy group, PLAIN, since it was founded in 1995 until she retired from the government. She also administered the group's website, www.plainlanguage.gov. She served for five years as an Executive Assistant to the Administrator of the Federal Aviation Administration, focusing on plain language projects and serving on the Web Council. She is the Chair of the board of the Center for Plain Language and the Director of Plain Language Programs for NOVAD Consulting and R3I Consulting, DC-area consulting firms.



Melodee Mercer is best known as Plain Language Instructor for the Department of Veterans Affairs (VA). She trained over 7,000 employees to write in plain language as senior instructor for the VA's Reader-Focused Writing course. She worked for the White House in Vice President Gore's National Partnership for Reinventing Government office and helped draft the Presidential Memorandum stating that all new government documents must be written in plain language.



Melodee was the keynote speaker at New Zealand's first Plain Language Conference in Wellington, NZ in 2006

and since then has been training their coordinator—long distance—in document testing techniques. She is piloting a mentoring program between New Zealand and US government agencies.

Melodee is a founding member and a board member of the Center for Plain Language. She co-hosted the internet radio show, *MyTechnologyLawyer*, featuring the Center for Plain Language. She was the editor of *Simply Plain*—the Center for Plain Language’s quarterly newsletter, until it was replaced by the Center’s blog. She helped develop the Center’s Demand to Understand Campaign and website and used her acting and producing skills to produce three public service announcements for the campaign. She produced the Center’s first Plain Language Awards ceremony held at the National Press Club in April 2010.

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Drafting notes 2

In Drafting notes 1 (on page 4), I looked at an ambiguity in the sentence:

Too many police can’t shoot straight or take bribes.

Another ambiguity arises if the writer meant

Too many police can’t ... take bribes.

There is an understandable inclination for the reader to assume that if someone “can’t do A or B” *can’t* is used in the same sense for both A and B. And this inclination is reflected in the advice that the same word should not be used in different senses, especially in a formal legal document. So this wording suggests that some police are incapable of taking bribes rather than that they are unwilling to do so.

You might say that this is not ambiguous because “can’t” can only mean “is incapable of”. But if that were so, the sentence wouldn’t have been funny.

Two drafting examples from the proposed new Federal Rules of Evidence

Professor Joseph Kimble

Thomas M. Cooley Law School USA

Editor's note: We are reprinting, with a few changes, two of four articles published in the August-November 2009 "Plain Language" column in the Michigan Bar Journal. Most of the columns for the last 20 years are available at www.michbar.org/generalinfo/plainenglish/columns.cfm.

There's a new milestone on the long road to better legal writing. On June 14, the Standing Committee on Rules of Practice and Procedure approved the final version of the "restyled" Federal Rules of Evidence. As drafting consultant, I began redrafting the rules in mid-2006, working with the Advisory Committee on Evidence Rules, which reports to the Standing Committee.

The goal has been to make the rules clearer, more consistent, and more readable—all without changing their meaning. No small assignment, and as you can imagine, the Advisory Committee scrutinized every word, looking for possible substantive change. The careful, systematic process is summarized by Judge Robert Hinkle, Chair of the Advisory Committee, in a report that's available at www.uscourts.gov/RulesAndPolicies/rules/Reports/EV05-2010.pdf, pages 2–6. The report also includes a side-by-side version of the current and restyled rules.

Now, the process is not yet complete. The final version must still be approved by the Judicial Conference of the United States, the Supreme Court, and Congress. The track record, though, is good: this is the fourth set of federal rules to be restyled. The Rules of Appellate Procedure took effect in 1998, the Rules of Criminal Procedure in 2002, and the Rules of Civil Procedure in 2007. The new Evidence Rules are scheduled to take effect in December 2011.

During the comment period for the civil rules, I wrote two Plain Language columns (December 2004 and January 2005) showing side-by-side

examples of several old and new rules. This time, I'll do something a little different. I'll look in detail at two rules and try to describe some of their drafting deficiencies. Then I'll offer the proposed new rules and, as I did with the earlier columns, ask you to be the judge.

Nobody would claim that the restyled rules are perfect; on a project like this, you can always find pieces that could have been improved. Naturally, though, I do think that the new rules are far better. See what you think.

Current Rule 609(a)–(b)

Impeachment by Evidence of Conviction of Crime

(a) General Rule. For the purpose of¹ attacking the character for truthfulness of a witness,²

(1)³ evidence that a witness other than an accused has been convicted of a crime shall⁴ be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of⁵ one year⁶ under the law under which the witness was convicted,⁷ and evidence that an accused has been convicted of such⁸ a crime⁹ shall be admitted if the court determines that¹⁰ the probative value of admitting this evidence outweighs its prejudicial effect to the accused,¹¹ and

(2) evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment, if it readily¹² can be determined that¹³ establishing the elements of the crime required proof or admission¹⁴ of an act of dishonesty¹⁵ or false statement by the witness.¹⁶

(b) Time Limit.¹⁷ Evidence of a conviction under this rule¹⁸ is not admissible if a period of¹⁹ more than²⁰ ten years has elapsed since the date of²¹ the conviction or of the release of the witness²² from the

confinement imposed for that conviction,²³ whichever is the later date, unless²⁴ the court determines, in the interests of justice, that²⁵ the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.²⁶ However,²⁷ evidence of a conviction more than 10²⁸ years old as calculated herein,²⁹ is not admissible unless³⁰ the proponent gives to the adverse party sufficient advance³¹ written notice of intent to use such evidence³² to provide the adverse party with a fair opportunity to contest the use of such evidence.³³

Drafting Deficiencies

1. *For the purpose of* is a multiword preposition. Make it *To attack*.
2. An unnecessary prepositional phrase. Make it *a witness's character*.
3. Two structural points. (1) Without digging, it's hard to tell what the point of distinction is between this first paragraph and the second one; the restyled rule makes that clear at the beginning of each paragraph. (2) This dense first paragraph contains two possibilities that should be broken down.
4. *Shall* has become inherently ambiguous (among other disadvantages). The restyled rules use *must* for required actions.
5. A stuffy way of saying *for more than*.
6. Note the miscue: *in excess of one year* modifies *imprisonment* but not *death*. To avoid the miscue, insert *by* before *imprisonment*.
7. Arguably, it's obvious what law we're talking about. But the restyled rule at least shortens this clumsy phrasing to *in the convicting jurisdiction*.
8. A lot hangs on the word *such*. It avoids repetition, but it would be easy to blow past.
9. Note the repetition of *evidence that . . . has been convicted of . . . a crime* from the first part of this paragraph.
10. There's no such *the court determines that* in, for instance, Rule 403. The restyled rule omits it.
11. An unnecessary prepositional phrase. Of course we're talking about the effect on the accused. Strike *to the accused*.
12. The adverb should normally split the verb phrase. Whether to put it after the first or second of two auxiliary verbs can be tricky, but I'd say *readily* belongs after *be*.
13. Here, the *can be determined that* language needs to stay in order to keep the idea of "readily." But why is it passive?
14. Prefer the *-ing* forms—*proving* and *admitting*—to the nouns with *of*.
15. Another unnecessary prepositional phrase. Make it *a dishonest act*.
16. The language beginning with *proof* is a syntactic muddle. We're talking about the witness's admitting something, but not the witness's proving something.
17. Not an informative heading. The restyled heading makes it immediately clear when this part applies.
18. Of course we're talking about a conviction under this rule. Strike *under this rule*.
19. Strike *a period of*.
20. Note the inconsistency with *in excess of* in (a)(1).
21. Strike *the date of*.
22. Make it *the witness's conviction or release*.
23. To this point, the sentence uses nine prepositional phrases. The restyled rule uses three.
24. Note the double negative: *is not admissible . . . unless*. Make it *is admissible only if*.
25. Again, strike *the court determines . . . that*, along with *in the interests of justice*. The latter is a needless intensifier anyway.
26. This is a 72-word sentence.
27. Start sentences with *But*, not *However*. What's more, this sentence actually contains a second condition to using the evidence. The rule should be structured to show that the evidence is allowed only if two conditions are met.
28. The previous sentence spells out *ten*.
29. Strike *as calculated herein*. Also, the comma needs a paired comma after *old*.

30. Another double negative.
31. Isn't notice always in advance? At any rate, here it certainly has to be.
32. Try a pronoun—*it*—instead of *such evidence*.
33. Try another pronoun—*its*—as in *its use*.

Now for the proposed new rule. Most of the changes are explained by my comments on the current rule. I'll just make three salient points. First, the current rule contains 262 words; the new one contains 213, or 19 percent fewer. Second, the new rule is structured in a way that reflects the content much more clearly. Third, the new rule improves the formatting with progressive indents for the subparts and hanging indents (aligned on the left) within each subpart.

Restyled Rule 609(a)–(b)

Impeachment by Evidence of a Criminal Conviction

- (a) In General.** The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:
- (1)** for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:
 - (A)** must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and
 - (B)** must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and
 - (2)** for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving—or the witness's admitting—a dishonest act or false statement.
- (b) Limit on Using the Evidence After 10 Years.** This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from

confinement for it, whichever is later. Evidence of the conviction is admissible only if:

- (1)** its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and
- (2)** the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

[End of first article]

In the introductory essay to his book *Garner on Language and Writing*, Bryan Garner offers a sobering indictment: "a supermajority of lawyers—even law professors—grossly overestimate their writing skills, and underestimate the importance of those skills." That's the view of the preeminent authority on the subject. And what he says goes double for the category of legal writing that we call drafting—statutes, rules, contracts, wills, and the like.

So why has most legal drafting been so bad for so long? I posed that same question in the October 2007 Plain Language column and offered five reasons: (1) law schools have by and large failed to teach drafting; (2) most lawyers don't fill the void through self-education, but rather tend to just copy the lumbering old forms; (3) young lawyers may have to "learn" drafting at the hands of older lawyers who never learned the skill themselves but who think their expertise in a particular field makes them adept drafters; (4) lawyers typically believe they should draft for judges rather than front-end users like clients, the public, and administrators; and (5) transactional lawyers seem more indifferent to the skill of drafting than litigators are to the skill of analytical and persuasive writing.

Let me add another reason, a cousin to #2: with rare exceptions, the apparent models that law students and lawyers have to work with are poorly drafted. Think of the Uniform Commercial Code, the United States Code, the Code of Federal Regulations, the Federal Rules of Civil Procedure until late 2007, most state statutes and regulations and court rules, most model jury instructions,

municipal ordinances by the tens of thousands—the entire bunch. So pervasive is the old style of drafting that, unless we’ve somehow seen the light, we can’t help but regard it as perfectly normal and good, and we can’t help but internalize it.

But a remarkable thing happened in the early 1990s: the Standing Committee on (Federal) Rules of Practice and Procedure saw the light. The Committee recognized that the federal court rules were in a bad way, and it undertook the daunting task of “restyling” them set by set. It created a Style Subcommittee, which enlisted the help of a drafting consultant (first Bryan Garner, then me). The consultant prepared the drafts; they were meticulously reviewed by the Style Subcommittee and by the Advisory Committee for each set of rules; they were approved by the Supreme Court; and we now have new Federal Rules of Appellate Procedure (1998), Criminal Procedure (2002), and Civil Procedure (2007), and proposed new Federal Rules of Evidence.

I think it’s fair to say that the appellate, criminal, and civil restylings have been remarkably successful. Everyone seems to agree that the new rules are much clearer and more consistent, and since they took effect, only a few corrections have been needed—out of three complete rewrites. Still, during the public-comment periods, we heard from some quarters that “mere” restyling was not worth the effort or that restyling was a solution in search of a problem or that some other such objection loomed large. Never mind that the old rules were riddled with inconsistencies, ambiguities, disorganization, poor formatting, clumps of unbroken text, uninformative headings, unwieldy sentences, verbosity, repetition, abstractitis, unnecessary cross-references, multiple negatives, inflated diction, and legalese. (For dozens of examples, see the August–December 2007 columns.) Never mind that the old rules were a professional embarrassment. Never mind that those who would dismiss the restylings as unneeded must (as most lawyers do) have little regard for good drafting—or ease of reading. Never mind that they’d be willing to consign us to the old models forever.

So now the evidence rules have been restyled. Last month, I offered an example—a current rule with detailed comments, followed by the

restyled rule. I’ll do the same this month. Try to put yourself in the place of a law student reading the current rule for the first time. And remember that just about all the evidence rules—certainly those of any length—can be given the same treatment.

The restyled version, besides fixing 30-odd drafting deficiencies, uses 41 fewer words, breaks the rule down into subdivisions, and converts four long sentences to six that are shorter by almost half.

Current Rule 612 Writing Used to Refresh Memory¹

Except as otherwise provided in criminal proceedings by section 3500 of title 18, United States Code,² if a witness uses a writing to refresh memory for the purpose of³ testifying, either—⁴

(1) while testifying, or

(2) before testifying, if the court in its discretion⁵ determines⁶ it⁷ is necessary in the interests of justice,

an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon⁸ and to introduce in evidence those portions⁹ which¹⁰ relate to the testimony of the witness.¹¹ If it is claimed¹² that the writing contains matters¹³ not related to the subject matter of the testimony¹⁴ the court shall¹⁵ examine the writing in camera, excise¹⁶ any portions not so related,¹⁷ and order delivery of¹⁸ the remainder¹⁹ to the party entitled thereto.²⁰ Any portion withheld²¹ over objections²² shall be preserved and made available to the appellate court in the event of an appeal.²³ If a writing is not produced or delivered pursuant to²⁴ order²⁵ under this rule,²⁶ the court²⁷ shall make any order justice requires,²⁸ except that in criminal cases when the prosecution elects not to²⁹ comply, the order shall be one striking the testimony or, if the court in its discretion³⁰ determines that the interests of justice so require, declaring a mistrial.³¹

Drafting Deficiencies

1. Whose memory? Also, just glance at the rule. How discouraging is it to see such a stretch of unbroken text?

2. Wordy phrasing with a clunky citation. Note the three prepositional phrases. The restyled rule uses one.
3. *For the purpose of* is a multiword preposition. It should usually be replaced with *to*. Here it isn't needed at all. The purpose is clear from what follows.
4. Why use a dash, rather than a colon, to introduce a vertical list? What's more, the list appears mid-sentence—not the best practice. Some drafting experts allow it, but our guidelines for federal rules require that lists be placed at the end of the sentence. See Bryan A. Garner, *Guidelines for Drafting and Editing Court Rules* 3.3(B) (Admin. Office U.S. Courts 1996).
5. Strike *in its discretion*. It's as useless as can be.
6. Add *that* after *determines*. Most verbs need *that* to smoothly introduce a following clause.
7. A classic. What does *it* refer to? What's the antecedent? Actually, the reference is forward, but not to any identifiable noun. *It* refers loosely to what a party is entitled to.
8. Legalese.
9. As a rule, draft in the singular to avoid ambiguity. What if the adverse party wants to introduce just one portion? Sure, the plural probably covers that here, but other contexts might not be as clear. And by convention the singular includes the plural.
10. Use *that* when the relative pronoun introduces a restrictive clause, one that's essential to the basic meaning.
11. An unnecessary prepositional phrase. Make it *the witness's testimony*.
12. Why is this passive? Quick—who is claiming?
13. Is one matter enough? See note 9.
14. A lot of words for *unrelated matter*. We know that *unrelated* means unrelated to the testimony. Also, put a comma after *testimony*, which ends the long subordinate clause. Punctuation 101.
15. Make it *must*. Likewise in the next use (after *objections*) and the last use (after *the order*). And good riddance to the inherently ambiguous *shall*.
16. How about *delete* ?
17. How about *unrelated portion* ?
18. Even the passive voice—*be delivered*—is preferable to the nouner, the noun *delivery* with *of*. Better a verb than an abstract noun. See the February 2007 column.
19. How about *rest*?
20. Legalese.
21. Withheld by whom? See the miscue? Withheld by the judge or by whoever produces the writing? Using the same term as in the previous sentence—*excise[d]* or *delete[d]*—would make the meaning immediately clear. Consistency is the cardinal rule of drafting.
22. Is one objection enough?
23. A lot of words for *must be preserved for the record*.
24. Legalese.
25. Another miscue: *pursuant to order* modifies *delivered*, but not *produced*. Make it *is not produced or is not delivered as ordered*.
26. Strike *under this rule* as entirely obvious.
27. Should this be *may*? That's the kind of trouble *shall* causes.
28. Insert a period and start a new sentence with *But*. That breaks up a 60-word sentence.
29. How about *does not*?
30. Again, strike *in its discretion*.
31. Everything beginning with *the order* is indirect and rather clumsy. It should simply say that “the court must do X or Y.”

Restyled Rule 612

Writing Used to Refresh a Witness's Memory¹

- (a) **Scope.** This rule gives an adverse party certain options when a witness uses a writing to refresh memory:
- (1) while testifying; or
 - (2) before testifying, if the court decides that justice requires a party to have those options.
- (b) **Adverse Party's Options; Deleting Unrelated Matter.** Unless 18 U.S.C. § 3500 provides otherwise in a criminal case, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony. If the producing party claims that the writing includes unrelated matter, the court must examine the writing in camera, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.
- (c) **Failure to Produce or Deliver.** If a writing is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike the witness's testimony or—if justice so requires—declare a mistrial.

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Member news

Hong Kong Clarity members

Hong Kong Clarity members held their second breakfast meeting for 2010 on 9 July at the offices of the Department of Justice. Members discussed topics for the proposed series of articles relating to legal writing and were updated on the new document design of Hong Kong legislation implemented in July. Further breakfast meetings are proposed. Anyone interested in attending should contact Eamonn Moran at eamonnmoran@doj.gov.hk.

London breakfast

The next Clarity breakfast in London will be on Thursday, 30 September. Daphne Perry will demonstrate the StyleWriter plain English software mentioned at previous meetings, and describe how one law firm has been using it. The breakfast will be in the City Marketing Suite at the Guildhall (entrance G on the map at www.clarity-international.net/Conferences/conferences.htm, thanks to Clarity member Paul Double. As usual, there is no charge and guests are welcome, though we do ask non-members to join Clarity if they come a second time. Please email Daphne Perry to reserve a place and for information about future meetings:

daphne.perry@dentonwildesapte.com.

Multilayering in plain language texts

George Clark

Plain language consultant Scotland

Some plain language materials deal with huge topics for huge audiences¹. These materials have to be multi-layered. On the surface they are simple and limited to the basic ideas but underneath they have to point to the complexity of the issues and to some of the more subtle points. In these situations you can think of the material having a 'core' with 'extensions'. The 'core' is aimed at the less sophisticated end of the audience and the 'extensions' at the more sophisticated end.

I have found a lot of material describing how to prepare text and layouts for the core messages but not much about handling extensions. Here are a couple of techniques that I have found useful.

Cute phrasing

What passes for a very ordinary phrase to someone without much experience or knowledge can stimulate a wide range of thoughts in someone who is already familiar with the topic. Consider the following paragraph from a plain language guide to the Millennium Development Goals:

<<One of the central challenges for the future is to help poor people to work more efficiently and to be better paid for their work. This links to broader ideas about fairness in how wealth is created and distributed.>>

Text Boxes

You can use text boxes for different purposes and you can design them to look different on a printed page or web site.

We need outside help for analysing and for a better understanding of our situation and experience, but not for telling us what we should do.

Bhoomi Sena Movement
(India) 1977

Explanatory Boxes

Sometimes you cannot avoid using a jargon word. But its meaning has to be explained to at least some of the readers. You can give the explanation in a text box where readers who do not need it can ignore it.

Quote Boxes (supportive)

I think of these as 'sound bites' from the experts and authority figures. They can either be extracts from the accompanying text or supplements to it. The idea is to 'catch' the main idea in as few words as possible. If the quotes are poetic and/or humorous then so much the better. It is sometimes difficult to find quotes that are not riddled with bureaucratic verbosity and jargon. Usually some of the padding can be dropped and replaced by three dots (. . . ellipsis)

The first sentence highlights hot topics for discussion amongst ordinary people. It also captures the essence of what the International Labour Organisation (ILO) calls 'Decent Work'. A massive amount of material exists on this topic for those who want to dig into it.

The second sentence opens the door to the whole of economics (onward from Adam Smith's 'The Wealth of Nations') and through the word 'fairness' to the whole of moral philosophy and thus options for political paradigms.

Quote Boxes (contrary and/or philosophical)

Most of my plain language writing remains true to the tone and spirit of an original document which may be partisan and one sided. Sometimes the main text is glossing over some stark reality or missing some of the options that exist. In such cases I use striking, independent quotes to help the reader take a wider view of the situation. I am happy to report that none of my employers have so far objected to this approach!

Quote Boxes (voices of the poor)

If you can find a quote from an 'ordinary' person which serves any of the above purposes then use it.

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George Clark was active for many years in formal education in the UK, Jamaica, Zambia, Sudan, Belize and Lesotho. In more recent times he has been promoting informal education through producing plain language versions of government poverty reduction policies—mainly in Tanzania (see http://www.hakikazi.org/plain_language.htm). He now lives in semi-retirement in Scotland and does most of his work via the internet.



Endnote

¹ eg UN system publications for global distribution

Drafting notes 3

In speech, ambiguity is often resolved automatically and unconsciously by the pattern of stresses, or by pauses. Say to yourself

John could only see his wife from the doorway

several times, each time stressing a different word, and see how it changes the meaning.

Because this technique is unconscious, the problem is often overlooked in written text. Then both writer and reader will "hear" in their mind's ear only the stress pattern that the context or their own habits of thought suggest. If these give rise to different meanings they will misunderstand each other.

What can we do about it?

The pause technique can sometimes be reflected by punctuation, as with the comma after "stresses" in the first sentence of this note. But this should be used carefully: it may lead to over-punctuation; and it will sometimes be too subtle.

Stress can be shown by bold or italic type, or by underlining, as long as these devices aren't being used to flag something else.

The wording can be changed. For example:

John could see only his wife from the doorway.

Message from the President

Continuing a theme of change—moving on to the website

This “message” builds on the changes at Clarity outlined in the previous

Message from the President—which also reflected on changes in the plain-language world. The changes outlined at Clarity were the new online membership management system and the beginning of formal discussions about incorporating Clarity.

Now Clarity needs to do more and it needs to do it faster. It needs to provide more plain-language resources that encourage people to join Clarity and it needs to engage members to be more involved. The keys to achieving this are:

- providing a more engaging and dynamic website—which more people can be involved in developing and maintaining; and
- attracting more visitors to the site through social networking and search engine optimisation.

With our new online system for “joining and renewing” and for “membership management” operating successfully, our website can help us to efficiently expand our membership. This will enable us to better deliver the benefits of clear legal communication everywhere. It will also enable us to further improve and expand our Journal. Remember, 100% of your dues—and thanks to donations, a fair bit more besides—goes into designing, printing, and posting the journal.

With the aim of improving the website and expanding the membership, the Committee has approved 3 new web-related roles:

- A membership manager—managing a recruitment program, managing the online membership system and enabling (and monitoring) members who pay a higher membership fee to list on the website and describe themselves and their services etc. This position will report to the president.



- A “librarian”—maintaining and expanding an online library of plain-language references and links etc with a focus on material relevant to lawyers. This position will report to the website manager.
- A blog and social networking editor and coordinator—this may expand into 2 or more roles. The position(s) will report to the editor.

Please let me know if you are interested in playing any of, or part of, these roles—feel free to “role share” with someone else. The possibilities are expanded on below.

Clarity’s blog

The plan for Clarity’s blog is that one person would manage a small team of people each responsible for producing one blog post a month. The team members could either post themselves or invite guests to post. The manager would review and edit all posts and would monitor and filter all comments on all posts.

In this way:

- Clarity can send a range of messages in different voices;
- Clarity can generate ongoing discussions—similar to the way PLAIN’s Forum does so successfully (but with a focus on legal matters), see <http://plainlanguagenetwork.org/networkindex.html>.
- experienced drafters can lead online “how to” discussions or demonstration rewrites of legal text—similar to the “master classes” held at some of Clarity’s conferences;
- people searching relevant terms can find the posts in the archive on our site, and we can refer people to them; and
- we make our site more active, which is likely to help it achieve higher rankings on search engines.

Clarity’s Tweets

The plan for Clarity’s tweets is that one person would manage our tweeting. They would invite suggestions for topics and draft tweets that aimed to alert Clarity’s followers:

- to relevant articles, events, blog posts etc; and
- to developments on the Clarity site.

Social networking sites

The plan for social networking is that the social networking manager prepares a proposal for the Committee to consider about Clarity forming social networking groups, for example on LinkedIn and Facebook.

Clarity's library

The "librarian" would be responsible for expanding, organising, and cataloguing the range of reference material, articles, links etc on our site.

Membership manager

The plan for the membership manager is that they would:

- develop recruitment materials that all of us—but especially Clarity's international representatives—can use to attract new members;
- manage our online membership management system; and
- explore how best to enable Clarity to—just as it earns revenue from advertising in our journal—earn revenue from advertising on our site.

We would limit advertising to plain-language related activities—for example:

- a law firm with a plain-language approach to advice and contracts etc;
- an author promoting a plain-language book; or
- a plain-language practitioner seeking clients.

Advertising space would probably be on dedicated pages visible only to people seeking it. All advertising material would be filtered etc by the membership manager.

Technology needs

All these plans are likely to require Clarity to change the technology on which its site runs. The existing site uses outdated technology that requires anyone working on the site to have a package of software and some experience to use. If we are to encourage people to become involved in Clarity's site, then:

- we need to move away from a model that requires anyone involved in maintaining

the site to have the relevant software and skills; and

- we need to move towards a "Cloud computing" or "Software as a Service" model in which learning how to use the technology is intuitive.

To that end, Clarity has prepared a draft new site using Google's free website development technology. You can see the draft site here <http://sites.google.com/site/legalclarity/what-we-do>. As I see it, moving to the new technology and a new website will help because:

- the design is much fresher—we could adopt a modern logo at the same time;
- the new technology is simpler to use and enables us to create interesting roles with which to engage new people (without requiring them to acquire the software required to manage the new site, then learn how to use it); and
- the greater versatility of the site would enable us to have a more dynamic and interactive site.

I expect the proposed new site will be a stepping stone between our current site and a bigger, redesigned site. But to begin that process we need to engage more people in the site and to do more on the site.

Nominations for president

On 31 December 2010, the one year extension to my 3 year term as president ends. Therefore—as is now the convention at Clarity—this issue of the journal is the one in which the president of the day calls for nominations for the next president. I am happy to step aside if someone the Committee approves of would like the role. Equally, if the Committee approves, I am happy to sign-up for another one year term.

To date, encouraging people to be actively involved in Clarity has been frustrating. This creates issues with succession planning. I am hoping that the new roles outlined above encourage a new group of people to step up and help Clarity. The simple truth is that Mark Adler, Peter Butt, Joe Kimble and Cindy Hurst have all done much more than their share.

Please email me at christopher.balmford@cleardocs.com if you would like to contribute, to play any of the web-related roles outlined above, or to nominate to be considered by the Committee for the position of president.

Clarity by-laws

The process of appointing office holders is likely to become more formal. As I mentioned in the previous issue of Clarity, the Committee is working on a draft set of by-laws and is considering the possibility of incorporating Clarity.

I expect the Committee will have settled a draft set of by-laws and some more details about those considerations by the next issue of Clarity. But it may end up being the issue after that. These things take time—and people have only so much time available. At any rate, discussions continue. The Committee looks forward to the members' review of those plans.

Our 4th international Conference—Lisbon, Portugal 12–14 October 2010

Clarity's 4th international conference is on in Lisbon, Portugal in October this year. All sessions will have simultaneous translation in English and Portuguese.

For more information on the conference see <http://www.clarity2010.com/home.html>

Membership renewal

Do please renew your Clarity membership at <http://www.clarity.shuttlepod.org/>.

If Clarity already has your email address, then your password = clarity. So you can log in, change your password, and renew your membership, etc. While you're there, maybe sign someone else up as a gift, or send them the link so they can sign up.

Do come to Lisbon.

Christopher Balmford

President of Clarity

Coming conferences

12–14 October 2010, Lisbon

Clarity, *Clarity2010*

www.clarity2010.com/home.html.

9–11 June 2011, Stockholm

Plain Language Association

INternational: *Establishing the Framework for Plain Language*

www.sprakkonsulterna.se/plain2011.

2–4 February 2011, Hyderabad, India

Commonwealth Association of Legislative Counsel (CALC) conference: *Legislative Drafting: A Developing Discipline*

www.opc.gov.au/CALC/conferences.htm

Clarity

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May 2010

Journal of the
international association
promoting plain legal language

Editor in chief:
Julie Clement

Editor's Note

Dear Members:

In Clarity 63, Mark Adler contributed three "Drafting Notes." You'll find them on pages 4, 33, and 41. On receiving the journal, Mark contacted me with the following note and request:

I see from my copy of the journal (just arrived) that some essential formatting was lost from the *Drafting Notes*, making parts of them difficult to follow or misleading. Perhaps the easiest and most effective way to put this right would be to include the notes as a separate document (which I'm attaching) when you send out the pdf version, if you wouldn't mind.

I apologize for any inadvertent change to the substance of these submissions, and we are happy to comply with Mark's request. So included as part of the pdf version of Clarity 63—in the pages that follow—you'll find Mark's Drafting Notes, in their original format.

I am awaiting the final submissions for Clarity 64, which will include the international working group's papers on standards. These drafts are sure to inspire spirited discussion, at the PLAIN conference in Stockholm this year, and well beyond that conference. And Sandra Fisher-Martins and Martin Cutts are putting together a selection of papers from the Clarity2010 Lisbon conference for Clarity 65.

I hope the new year is bringing you health and happiness so far!

Warm regards,

Julie Clement, editor in chief

Drafting notes 1

A newspaper cutting recently quoted on BBC radio's *News Quiz* read:

Too many police can't shoot straight or take bribes.

This is a common form of syntactic ambiguity — ambiguity arising from sentence structure. It is caused by the writer's failure to show whether "can't" governs just "shoot straight" or both "shoot straight" and "take bribes". Is the writer complaining that some police take bribes or that they *can't* take bribes? This structure will cause problems where both alternatives are possible.

So how can writers show what they mean? Mathematicians' formulae use brackets, writing something like

(A) Too many police ([can't shoot straight] or [take bribes]).

(B) Too many police can't (shoot straight or take bribes).

Here are some other possibilities:

(A) Too many police either can't shoot straight or take bribes.

(B) Too many police can't either shoot straight or take bribes.

(A) Too many police take bribes or can't shoot straight.

(A) Too many police can't shoot straight or do take bribes.

(A) Too many police can't shoot straight, or take bribes.

(A) Too many police:

can't shoot straight or

take bribes.

(B) Too many police can't:

shoot straight; or

take bribes.

Drafting notes 2

In *Drafting notes 1* I looked at an ambiguity in the sentence:

Too many police can't shoot straight or take bribes.

Another ambiguity arises if the writer meant

Too many police can't ... take bribes.

There is an understandable inclination for the reader to assume that if someone "can't do A or B" *can't* is used in the same sense for both A and B. And this inclination is reflected in the advice that the same word should not be used in different senses, especially in a formal legal document. So this wording suggests that some police are incapable of taking bribes rather than that they are unwilling to do so.

You *might* say that this is not ambiguous because "can't" can *only* mean "is incapable of". But if that were so the sentence wouldn't have been funny.

Drafting notes 3

In speech, ambiguity is often resolved automatically and unconsciously by the pattern of stresses, or by pauses. Say to yourself

John could only see his wife from the doorway

several times, each time stressing a different word, and see how it changes the meaning.

Because this technique is unconscious, the problem is often overlooked in written text. Then both writer and reader will “hear” in their mind’s ear only the stress pattern that the context or their own habits of thought suggest. If these give rise to different meanings they will misunderstand each other.

What can we do about it?

- The pause technique can sometimes be reflected by punctuation, as with the comma after “stresses” in the first sentence of this note. But this should be used carefully: it may lead to over-punctuation; and it will sometimes be too subtle.
- Stress can be shown by bold or italic type, or by underlining, as long as these devices aren’t being used to flag something else.
- The wording can be changed. For example:

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