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Legal Writing for the Reader

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Legal Writing for Lawyers

- Legal writers aim for precision with little regard for whether the writing was clear or concise.
- “Traditional” legal writing is notorious for unnecessarily complex words, legal jargon, and convoluted sentences that can obscure meaning, prevent understanding and create ambiguity.
- In contrast, clarity, conciseness, and precision are the hallmarks of writing excellence.



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The Plain Language Movement

“We should not speak so it is possible for the audience to understand us, but so that it is impossible for them to misunderstand us.”

Quintilian, 1st Century

(In other words, it started a long time ago!)



Modern Developments

- In recent decades, governments around the world, most notably the United Kingdom, have promoted the use of plain language, focusing on cost savings and efficiency benefits.
- In 1998, U.S. President Bill Clinton issued a Presidential Memorandum regarding and requiring plain language in U.S. government writing.
- On October 13, 2010, President Barack Obama signed the Plain Writing Act of 2010 that embraces plain language principles and requires US federal agencies to use “clear Government communication that the public can understand and use.”



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“The language of the law must not be foreign to the ears of those who are to obey it.”

Judge Learned Hand



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2020 Access for All: Plain Language is a Civil Right



October 13-15, 2020 / online

<https://www.accessforallconference.com/>



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PLAIN LANGUAGE AND OUR RESPONSIBILITY TO ENSURE ACCESS FOR ALL

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

Note that as long as you are in the polling station, or in a queue outside, before 10:00pm you will be entitled to apply for a ballot paper



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USING PLAIN LANGUAGE TO PROTECT THE RIGHTS OF VULNERABLE POPULATIONS

Not every vulnerable population experiences the same barriers. We must consider all vulnerabilities and look for the most appropriate plain language tools and techniques. Learn about different populations and the different projects that can help protect their rights.





What is Plain Language?

A communication is in plain language if its wording, structure and design are so clear that the intended audience can easily find what they need, understand what they find, and use that information.

— International Plain Language Federation



Plain Language:

- Avoids verbosity, pretentious language, and tortuous sentence structures;
- Includes and presents complex information in a clear and orderly way; and
- Is direct, easy to read and looks like it's meant to be read.



Plain Language is NOT:

Dumbed down:

- when done right, plain language can be more precise;
- it leaves less room for ambiguity and confusion, and
- it contains the information needed.



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Plain Language is NOT:

Patronizing to readers:

a legal document in plain language empowers readers because it requires no translation.



Plain Language is NOT:

Pertinent only to non-lawyers:

studies show judges and lawyers prefer plain language along with non-lawyers and find it more persuasive.



Benefits of Plain Language

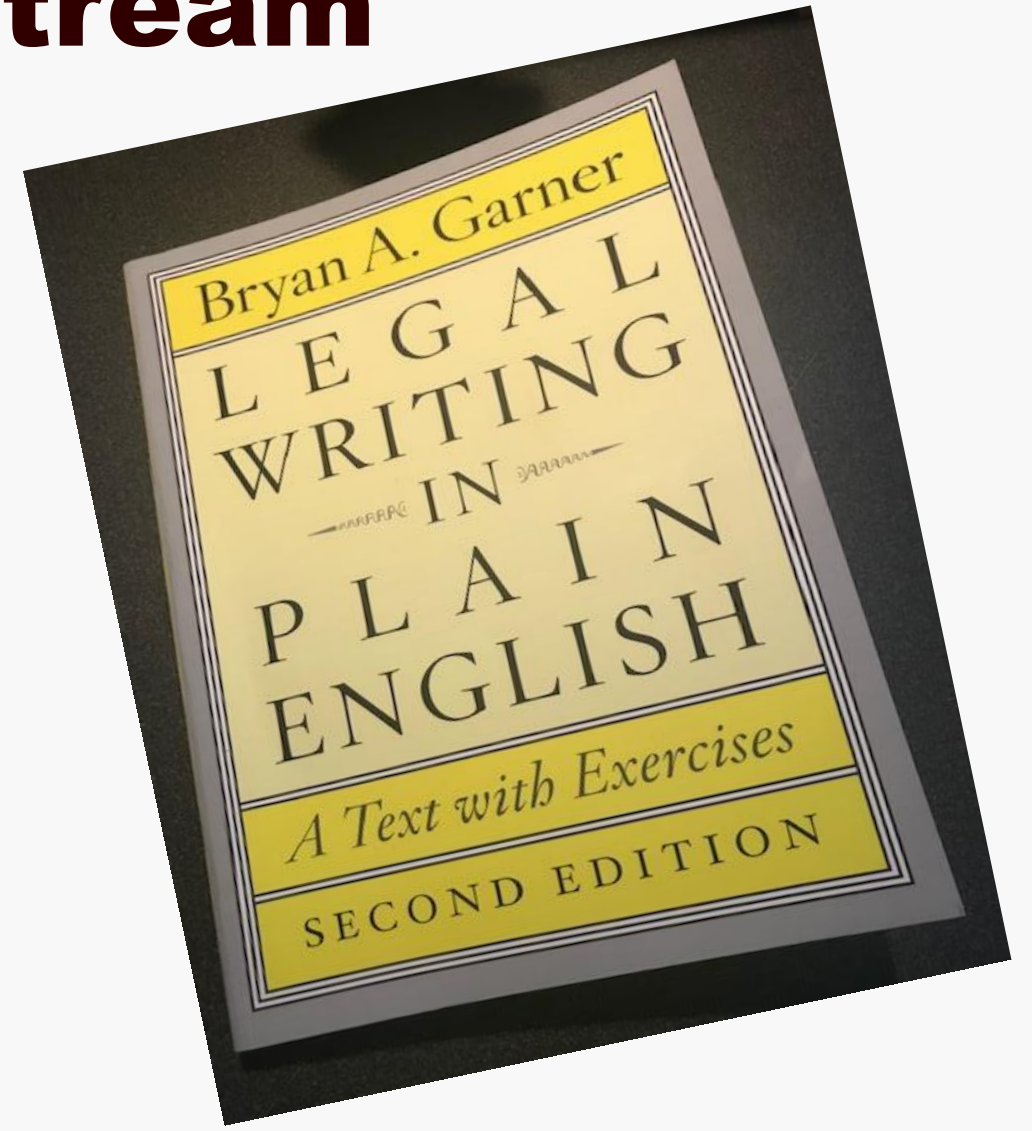
- Increased autonomy for individuals
 - People are empowered when they can find, understand and use information on their own.
- Better access to justice
 - Plain language allows people to understand what's being said to them and about them, and done to them, in the justice system.
- Trust between professionals and their clients
 - Complex jargon and obscure terms irritate clients, who want to understand the advice they are given.
- Savings of costs and time
 - Estimates of waste due to complexity are in the billions



Plain Language (English) in the Legal Mainstream

Finally, a word about “plain English.”... You achieve plain English when you use the simplest, most straightforward way of expressing an idea. You can still choose interesting words. But you’ll avoid fancy ones that have everyday replacements meaning precisely the same thing.

~Legal Writing in Plain English, p. xiv





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Reader-Centered Legal Writing - Overview

1. Know your audience
2. Understand the issues and context
3. Have a clear purpose for the writing
4. Target the content
5. Set a framework
6. Write for understanding
7. Design for readability
8. Send material the right way and timely
9. Seek and use reader feedback



Reader-Centered Legal Writing – Know your audience

The audience for legal writing varies widely:

- Legal colleagues
- Opposing Counsel
- Judges
- Mediators
- Regulators
- Parties dealing with your client
- Technical and business professionals
- The public, including diverse situations and experiences
- Organizational clients, also with diverse skills, knowledge and experience
- Elected officials



Reader-Centered Legal Writing – Know your audience

- Remember to write for your audience (*and not for yourself*).
- Consider all who may need to be included in the audience.
- Understand how and when your readers will consume the material.
- Look at the material from the readers' perspective and remove common barriers; orient toward the knowledge, attention and skill of your readers.
- Watch for unintended “triggers” that may interfere with one or more readers' acceptance and attention to the material.



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Reader-Centered Legal Writing – Know your audience

What do we know about most of our readers?

- ❖ They are busy, and so have limited time, attention and patience.
- ❖ They are more likely to read material that is clear, concise and focused on an issue they understand matters to them .
- ❖ They will notice tonal, cultural or political disconnects or factual premises they consider inaccurate (and these can discredit the material).



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Reader-Centered Legal Writing – Know the Issues

- Understand your client’s situation and ask questions.
- Know the legal issues and keep them clearly in view.
- Research using a wide range of resources.
- Develop an analytical framework and adjust it as needed.
- Evaluate risks and consequences for the uncertainties.



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Reader-Centered Legal Writing – Know the issues

“If the writer doesn’t understand the subject, the reader won’t, either.”

— Rita Rubin, *USA Today*, speaking at NIH (2007)





Reader-Centered Legal Writing – Have a clear purpose

Like the audience, the purpose for a writing may vary widely:

- Inform a client
- Explain an action
- Persuade a decisionmaker
- Disclose information
- State a demand
- Represent a position
- Establish regulatory procedures
- State a legal requirement
- Explain a process
- Elicit information
- Educate



Reader-Centered Legal Writing

– Have a clear purpose

- Have the purpose of the writing squarely in mind.
- Consider whether the groundwork has been laid for the writing to accomplish its intended purpose.
- Consider what other purposes the readers may interpret or use the material for (these could be desirable or undesirable).
- If the purpose of the writing shifts, reevaluate the choices in content, organization, writing and presentation in light of the modified purpose.



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Reader-Centered Legal Writing – Target the content

- Can readers tell at a glance what the material is for?
 - Make the purpose and usefulness of the material immediately obvious.

- What do the readers want and need to know?
 - In choosing what to include, be guided by the readers' interests, knowledge and needs. Consider beginning with a summary or “bottom line.”

- Is the content politically and culturally appropriate?
 - Show awareness of and respect for divergent views and diversity among readers.



Reader-Centered Legal Writing – Target the content (cont.)

- Repeat new concepts and summarize the most important points.
 - Repetition helps ensure the key points are understood and remembered.

- Is the content accurate and up to date?
 - Check the facts, the law and involve subject matter experts as needed.

- How much information should you include?
 - Limit the information to an amount that is reasonable and leave out details that only distract. Provide resources and options for more in-depth information.



Reader-Centered Legal Writing – Set a framework

- ❑ Pace readers by grouping material in meaningful “chunks.”
 - Divide the text in ways that will make sense to readers and keep each section reasonable in size to help readers absorb the information.

- ❑ Put the information in an order that works well for readers.
 - Topics should build in a natural way, giving readers the background and context they need to understand new information.

- ❑ Use plenty of headings and subheadings.
 - These signal what’s next and help readers frame the information. Break up text and lists of bulleted or numbered items into subgroupings for ease of reading.



Reader-Centered Legal Writing – Set a framework (cont.)

- Make headings specific and informative.
 - To reinforce main points and help readers skim, compose text for headings that is meaningful and explicit.

- Help orient readers with navigational tools.
 - Use page numbers, headers and footers, table of contents, an index and explanations in the text as appropriate for the material.



Reader-Centered Legal Writing – Write for understanding

- Strike the right professional tone and level of formality – natural but not chatty.
 - Readers discount material that does not “fit” the circumstances.
- Avoid pompous, strident or “cute” turns of phrase or language and avoid sexist or other insensitive language.
 - These can be highly inappropriate and generally don’t wear well. They also distract the reader from the real content.
- Generally, use active voice rather than passive voice.



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Reader-Centered Legal Writing – Write for understanding (cont.)

Active Voice:

The subject of the sentence performs the action:

Owners post signs.

(In active voice, the subject (owners) perform the action (verb) to or on the object of the action – so the *subject is active!*)



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Reader-Centered Legal Writing – Write for understanding (cont.)

Active Voice:

- States a simple, direct and logical flow from a subject that is performing the action to the object of that action.
- Direct flow is easier to understand -- it encourages the reader to keep reading.
- Tends to avoid vagueness by stating the facts directly.
- Generally slightly shorter than the alternative passive voice.



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Reader-Centered Legal Writing – Write for understanding (cont.)

Passive Voice:

The subject of the sentence does not perform the action:

Signs are posted by owners.

(In passive voice, the object (signs) turns into the subject – so the *subject* isn't doing anything -- it's *passive*!)



Reader-Centered Legal Writing – Write for understanding (cont.)

Passive Voice is generally less effective:

- It reduces the active emphasis on the real actor and can be unclear.
- This makes the reader wait for the end to find out who is doing the action.
- Generally passive voice is longer than the active voice version.
- Sometimes it is used to avoid direct assignment of responsibility (mistakes were made) or to de-emphasize the identity of the actor (cars are driven).



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Active vs Passive Voice

The
Active
and
Passive
Voice
Rap



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More on Using Active Voice:

- **The Active and Passive Voice Rap** (2:59 min. video):
<https://www.youtube.com/watch?v=sdjJQCbO8nU>
- **Passive Voice Song** (1:38 min. video):
<https://www.youtube.com/watch?v=ARaEpSAD-ng>
- **Active Voice and Passive Voice** (4:17 min. video):
<https://www.youtube.com/watch?v=AQNvhUrAn7o>
- **Active vs Passive Voice in Writing** (12:50 min. video):
<https://youtu.be/t6LhxFrxF-g>
- **How to Eliminate Passive Voice From Your Writing** (8:56 min. video):
<https://youtu.be/abyHVVUIT-4>



Reader-Centered Legal Writing – Write for understanding (cont.)

- ❑ Make sentences simple and varied in length and avoid long sentences.
 - Don't pack too much into one sentence and avoid stringing multiple clauses together.
- ❑ Be direct, specific and concrete.
 - Readable sentences are simple, affirmative and declarative.
- ❑ Write in the positive: “only ... if” instead of “not ... unless”
- ❑ Give context first and incorporate definitions into the text.
 - This reduces effort for readers and increases understanding.



Reader-Centered Legal Writing – Write for understanding (cont.)

SEC Plain English Handbook (p. 18)

For example, compare this common sentence found in prospectuses:

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR MAKE ANY REPRESENTATION OTHER THAN THOSE CONTAINED OR INCORPORATED BY REFERENCE IN THIS JOINT PROXY STATEMENT/PROSPECTUS, AND, IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATION MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED.



Reader-Centered Legal Writing – Write for understanding (cont.)

SEC Plain English Handbook (p. 18, cont.)

...To this possible plain English rewrite:

You should rely only on the information contained in this document or that we have referred you to. We have not authorized anyone to provide you with information that is different.

The plain English rewrite uses everyday words, short sentences, active voice, regular print, and personal pronouns that speak directly to the reader.



Reader-Centered Legal Writing – Write for understanding (cont.)

- ❑ Create cohesion by making strong, logical connections among your sentences and paragraphs.
 - Develop ideas in a logical progression that makes the connection between ideas explicit. Reuse key words and phrases to reinforce learning and establish continuity.
- ❑ Give context first and incorporate definitions into the text.
 - This reduces effort for readers and increases understanding.
- ❑ Use technical terms only when readers need to know them.
 - It takes extra effort for readers to learn and remember new terms and acronyms. Use common words where they suffice for the content.



Reader-Centered Legal Writing – Write for understanding (cont.)

Find hidden verbs

Does the sentence use any form of the verbs “to be,” “to have,” or another weak verb, with a noun that could be turned into a strong verb? In these sentences, the strong verb lies hidden in a nominalization, a noun derived from a verb that usually ends in *-tion*.

Find the noun and try to make it the main verb of the sentence. As you change nouns to verbs, your writing becomes more vigorous and less abstract.

before:

We made an **application**...

We made a **determination**...

We will make a **distribution**...

We will provide **information**...

after:

We **applied**...

We **determined**...

We will **distribute**...

We will **inform**...



Reader-Centered Legal Writing – Write for understanding (cont.)

- ❑ Avoid redundancies and unnecessary sentences and words.
 - Learn to delete surplusage. Many legal phrases are internally redundant.
- ❑ Use short, compact paragraphs.
 - Each paragraph should deal with a single, unified topic. Lengthy, complex or technical discussions should be presented in a series of paragraphs.
- ❑ Use tables to increase clarity.
 - Tables often convey information more quickly and clearly than text.
- ❑ Proofread one more time than you think necessary.
 - Read out loud, read each line backwards, or read the whole document from back to front. Set it aside and give yourself a break before final proofing.



Reader-Centered Legal Writing

– Design for readability

- Be consistent; establish a set of styles (font size and type, indentation format, header and footer style, method of emphasis) for the material and then stick with it.

- Avoid right justification.
 - Justifying the right margin (making it flush or boxed) causes irregular spacing between words and decreases readability.

- Use a *serif* font for extensive text and a *sans serif* font for headings.
 - Serif fonts without unusual or ornate features are easiest to read.



Reader-Centered Legal Writing – Design for readability (cont.)

Serif font examples:

- Times New Roman
- Baskerville Old Face
- Bell MT
- Garamond
- Bookman Old Style
- Constantia

Sans serif font examples:

- Arial
- Lucida Sans
- Century Gothic
- **Comic Sans**
- Calibri
- Publico (this font)



Reader-Centered Legal Writing – Design for readability (cont.)

- ❑ Don't use all capitals and instead use italics or bold, dots or lines in the margin, or a box or shading, to highlight important information.
 - ALL CAPS reading is difficult for the eye because normal visual cues are missing and should be avoided except in brief headings.
- ❑ Use white space to open up the document and make it easier to read.
- ❑ Use footnotes or endnotes for references in order to increase readability, rather than placing references in the text.
 - Place material that has substantive significance in the text, however.



Reader-Centered Legal Writing

– Send the right way and timely

- For materials to be distributed, consider whether to provide *digital or hard copies, or both*.
 - Although distribution in digital form only reduces paper consumption, many readers find hard copy materials more readable and easier to use and remember the content better after reading from a hard copy.
- For electronic transmittals, including the summary or “bottom line” in the transmittal enables readers to access the key information more readily.
- Hard copy materials segregated in a special “confidential legal” folder help protect and highlight those materials.



Reader-Centered Legal Writing

– Send the right way and timely

- Indexing and archiving* of confidential legal materials provided to clients reduces the risk that materials are missed or lost.
- Providing materials “just in time”* – when they are needed but not long before – generally allows readers to focus appropriately on the material.
- For formal agenda materials, regulations and other formal materials, *updated forms and procedures* can incorporate reader-centric or plain language concepts on a broader scale.



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Reader-Centered Legal Writing

– Seek and use reader feedback

Regular surveying and inquiries with groups or individual readers and users of legal materials provide valuable ideas for improving readability and reader-centered written materials.

Sometimes minor edits make a significant difference in the ease of reading, comprehension or access to materials for some readers. For example, highlighting the “bottom line” in an email makes it stand out so it is more obvious and apparent to the reader.



*Making the simple complicated is commonplace;
making the complicated simple, awesomely simple,
that's creativity.*

— Charles Mingus.



Clarity

- Clarity is the largest international plain language association
- Clarity's focus is promoting plain legal language and legal design
- Clarity:
 - Sponsors events,
 - Publishes journals and other content, and
 - Advocates for the use of plain legal language
- <https://www.clarity-international.org/>



Michigan Bar Publications & Website Advisory Committee, Plain-English Subcommittee:

- Produces a Plain Language column monthly in the Michigan Bar Journal
- Articles starting in May 1984 published online at <https://www.michbar.org/generalinfo/plainenglish/home>



Plain Language Resources (1 of 5)

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- Clinton, William Jefferson, Civil Justice Reform, Executive Order 12988, February 5, 1996, Federal Register, Vol. 61, No. 26, February 7, 1996, pgs. 4729 – 4734 [FR Doc. 96-2755]
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- Gore, Al, Plain Language Initiative Announcement, speech on June 1, 1998 at the National Small Business Week Awards, <https://plainlanguage.gov/examples/awards/gore-speech/>



Plain Language Resources (2 of 5)

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Plain Language Resources (3 of 5)

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- Office of Investor Education and Assistance, A Plain English Handbook: How to create clear SEC disclosure documents, August, 1998 www.sec.gov/pdf/handbook.pdf
- Federal Plain Language Guidelines, March 2011, Revision 1, May 2011. <https://plainlanguage.gov/media/FederalPLGuidelines.pdf>
- plainlanguage.gov (Plain Language Action and Information Network website)



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- A Plain-Language Checklist for Reviewing Your Document, 2013, www.nih.gov/plainlanguage/gettingstarted
- Department of Health and Human Services Centers for Medicare & Medicaid Services, Toolkit for Making Written Material Clear and Effective, <https://www.cms.gov/Outreach-and-Education/Outreach/WrittenMaterialsToolkit/>



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