

The Politics and Power of Plain Language

By Jane M. Siegel

This month and next month, the column spotlights two organizations that should interest—and I hope entice—all you loyal readers and believers. —JK

It's October 13, 2010. I'm in Lisbon, and I'm feeling pretty cool. I'm sitting in an auditorium and listening to a Portuguese lawyer talk about plain language: plain English to me, plain Portuguese to him. I'm wearing a headset, so I hear a simultaneous English translation; I imagine that I'm a diplomat at the United Nations. Suddenly there's a flurry of activity at the panel's table on stage. An American woman, Dr. Annetta Cheek, walks quickly to the podium. I take off my headset just as she announces in English, "He's signed it. President Obama has signed the Plain Writing Act of 2010." Everyone applauds; people are very excited.

But I don't get it. What's the big deal about this Plain Writing Act? Isn't it just a codification of the obvious? In the United States, we've already rewritten our federal rules of civil, criminal, and appellate procedure into plain—or much plainer—language. And now the rules of evidence have gone to the United States Supreme Court for approval.¹ We've been teaching plain writing in law schools

for years. And most lawyers know that plain English is better writing style (don't they?). Studies show that judges prefer reading it in briefs. In fact, the most recent published study found that judges prefer even an "informal" style of plain language.²

Strunk and White wrote their little book, *The Elements of Style*, in 1959. And Dick Wydick wrote his little book, *Plain English for Lawyers*, in 1979. Surely, by now we recognize the wisdom of writing in plain English ("Avoid fancy words," Strunk & White; "Do not use lawyerisms," Wydick).

So what's the big deal with the Plain Writing Act of 2010? (Do you know what it says? I didn't.) In Lisbon, I realized that I take plain language for granted, and I bet that you do too.

Americans are often guilty of taking what we have for granted: you know, freedom, justice, civil rights. I'm as guilty as the rest. But seeing the excitement of lawyers from Portugal, Spain, Sweden, and Australia about our new plain-language law gave me a slap upside the head.

The conference I attended was the Clarity conference on plain language. Clarity is an international organization of lawyers and other plain-language professionals who promote the use of plain language in government and law around the globe.

Until I went to Lisbon, I missed the big deal about plain language. Our Portuguese colleagues, however, showed me: plain language is a human right. Writing in clear, understandable language is necessary for a democracy to function. People have the right to understand their government's laws, to understand the documents they sign, and to understand their rights and responsibilities under the law. As lawyers, we swear to uphold the U.S. Constitution, which guarantees freedom and justice for all. But there is no freedom or justice when the language

of law and government is incomprehensible to a country's citizens.

Lisbon is one of two major cities in Portugal; the other is Porto, in the north. Portugal's urban population is, for the most part, literate. But Portugal remains a rural society, and many of its citizens remain, even in the twenty-first century, functionally illiterate.

Sandra Fisher-Martins is the founder of Português Claro, the first plain-Portuguese training and consulting firm. Sandra told me that 11 percent of Portugal's people can't read at all. Of the 89 percent who can read, half of those are at level one on the literacy scale, which means that their skills are very poor. They can put letters together to read words, but they can have trouble reading instructions to determine the right amount of medicine to give to their children. Thirty percent of literate Portuguese can get by if documents are not too complex. Fifteen percent can deal with the demands of everyday life, but nothing more. And only 5 percent of the 89 percent who are "literate" are truly able to deal with complex documents.³

Think about the necessity of plain language when so many of your country's people cannot read and write. How can people be bound by laws they do not understand? How can they be free to buy, borrow, sell, loan, or bequeath if they do not understand those documents? And how can they participate fully in a democracy?

During the Clarity conference, the Portuguese government launched an important plain-language initiative: plain-language summaries, in Portuguese and English, of all new legislation. Another initiative, "Simples em Português," to simplify language used by the public sector, was developed by the government working with Português Claro; it's now on hold because of budget cuts.

Countries with very high literacy rates recognize the power of plain language too.

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Sweden, for example, has a literacy rate of 99 percent.⁴ In Sweden, students can get a college or post-graduate degree in plain-language studies. That's how important Swedes think it is.

Even little Estonia gets it. Estonia is a leader in e-gov technology. Estonians can pay traffic fines, file taxes, and sign international contracts online. The growth of democracy and the Web has spurred even underdeveloped countries to "unlock information and make it accessible to ordinary citizens."⁵ You can't do this, though, if the information isn't written in plain language.

Here in the U.S., people like Dr. Cheek, the director of the Center for Plain Language, and Professor Joe Kimble, the longtime editor of this column and past president of Clarity, have been pushing for plain language in government for years. The Plain Writing Act of 2010 is a culmination of those efforts and efforts by many others. The Act requires federal agencies to write all new publications, forms, and public documents in plain language. The Act defines plain writing as writing that is "clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience."⁶ The Act covers letters, forms, notices, and instructions that are directed to the public, whether paper or electronic.

And the Act has teeth. Within six months of October 13, 2010, the day Obama signed the Act, the Office of Management and Budget must provide guidance to agencies on how to implement it. Within nine months, each agency must publish, on a new plain-writing section of its website, a plan for compliance. Within just one year, each agency must comply, by using plain writing for every covered document. And within 18 months, each agency must issue its first annual report on compliance.

So the Plain Writing Act of 2010 is a big deal (even though it doesn't cover federal regulations—yet). Using plain language in government is now more than mere stylistic preference; at least in the federal government, it's now law.

Using plain language should be more than preference for lawyers as well. Let's make it a legal reader's right. Our clients have the right to understand our letters without parsing our sentences. They have a right

to clear and concise documents that don't require a legal dictionary to decode. And our judges have the right to persuasive filings that don't bore, obfuscate, or repeat, repeat, repeat.

The bottom line: If we truly believe in justice and freedom for all—those things that we love about this country and wish to share with the world—then we'll use plain language. Right now, and in everything we write. Not just because it's better style, but because it is the right thing to do: a human right.

Because of Lisbon, I now know what the big deal is about plain language. All those arguments we've been wrapped up in for so long—it's not lawyerlike, it's dumbing down, it's not precise and accurate, etc., etc.—are just bumps, minor distractions. They're nothing, really. The big deal about plain language—the big reason for plain language? It's democracy. And that's been a very big deal to Americans, and especially American lawyers, since, oh, about 1776.

So join Clarity. Just Google "Clarity association," or go to clarity-international.net. Here in the U.S., join the Center for Plain Language: centerforplainlanguage.org. Support plain language in state government (how many times have you voted "no" on a Michigan ballot proposal because "no" really meant "yes"?). And remember to follow the

call of the Plain Writing Act of 2010 in your own work. Every day, and in every way. ■

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FOOTNOTES

1. See Kimble, *Drafting examples from the new Federal Rules of Evidence*, 88 Mich B.J. 52 (August), 46 (September), 54 (October), 50 (November) (2009).
2. Flammer, *Persuading judges: An empirical analysis of writing style, persuasion, and the use of plain English*, 16 J Legal Writing Inst, 183, 205–211 (2010).
3. Data provided by Sandra Fisher-Martins; she presented this information in Brussels in September 2010. The data is originally from a 1996 study by the International Adult Literacy Survey; the study will be updated in 2011, but Sandra does not expect significant change.
4. Human Development Report 2009, *Overcoming Barriers: Human Mobility and Development*, at 171 <http://www.hdr.undp.org/en/media/HDR_2009_EN_Complete.pdf>. All websites cited in this article were accessed January 12, 2011.
5. Margolis, *Your Pass to Good Government*, Newsweek, August 23 & 30, 2010, at 50.
6. Center for Plain Language, *Plain Writing Laws, Plain Writing Act of 2010* <<http://www.centerforplainlanguage.org/plain-writing-laws/plain-writing-act-of-2010/>>.