

Face It—Bad Legal Writing Wastes Money

By Matthew Salzwedel

A recent article on FindLaw.com called “Five Ways Attorneys Waste Money” claimed that attorneys can cut clients’ costs by avoiding needless motions, staffing cases leanly, focusing on the important issues, avoiding petty spats with the opposition, and being smart about when to settle.¹ But the article ignored the most important way attorneys can save money for their firms and clients: by learning how to write in plain English.

Most attorneys don’t believe that writing style matters. They might concede that writing in plain English can be aesthetically pleasing to the reader; but they also say that it’s not worth the time to learn how to do it because there’s no evidence that writing in plain English saves time or money. But these attorneys ignore what legal-writing experts have taught—and what the empirical evidence has shown—for more than 50 years: that plain English saves time and money by increasing the ability of readers to understand and retain what they have read.

Plain English Not a Newfangled Idea

What does it mean to write in plain English? In *Legal Writing in Plain Eng-*

lish, Bryan Garner gives a useful—albeit abstract—definition:

[Plain English] certainly shouldn’t connote drab and dreary language. Actually, plain English is typically quite interesting to read. It’s robust and direct—the opposite of gaudy, pretentious language. 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.²

To see how plain English enhances readability, consider this before-and-after example taken from the SEC’s *Plain English Handbook*:

- *Before*: “This Summary does not purport to be complete and is qualified in its entirety by the more detailed information contained in the Proxy Statement and the Appendices hereto, all of which should be carefully reviewed.”³
- *After*: “Because this is a summary, it does not contain all the information that may be important to you. You should read the entire proxy statement and its appendices carefully before you decide how to vote.”⁴

A small minority of legal scholars and judges began to advocate legal writing in plain English in the mid-nineteenth and early twentieth centuries. But legal writing in plain English gained traction in the U.S. in 1963, when David Mellinkoff published *The Language of the Law*.⁵ As Professor Joseph Kimble points out in *Writing for Dollars, Writing to Please*, Mellinkoff argued that “the principle of simplicity would dictate that the language used by lawyers agree with the common speech, unless there are reasons for a difference.”⁶ In staking this

heresy, Mellinkoff debunked the claim that legal precision requires obscure, dense prose, calling that claim “spurious.”⁷

Since Mellinkoff’s *The Language of the Law*, other legal-writing experts have continued to push for legal writing in plain English. In the U.S., for example, there was Richard Wydick’s *Plain English for Lawyers* (1979); Bryan Garner’s *The Elements of Legal Style* (1991) and *Legal Writing in Plain English* (2001); and Kimble’s *Lifting the Fog of Legalese: Essays on Plain Language* (2006). In the U.K., in 1983, solicitor John Walton founded Clarity, a group of barristers and solicitors who were also “opposed to archaic, over-complicated legal language.”⁸ And in Australia, in 1990, Michèle Asprey—a commercial attorney at one of Australia’s largest law firms—published *Plain Language for Lawyers*, which Kimble calls “the single most comprehensive book on the subject.”⁹

Left largely unchallenged, these plain-English texts and groups established the standard for good legal writing.

Many Studies Show Benefits

Besides its aesthetic virtues, legal writing in plain English gained additional momentum when people started realizing that it had real-world effects.

In *Writing for Dollars, Writing to Please*, Kimble cites 50 studies and reports—both inside and outside the law—showing that plain English saves time and money for writers and readers alike. Here are some highlights:

- Multiple studies asked potential legal clients, judges, and lawyers to rate two versions of a legal document. One document was written in legalese and the other in plain English. Without exception, the participants overwhelmingly

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rated the plain-English versions higher than their legalese-riddled alternatives.

- In 1989 and 1991, the U.S. Navy asked its officers to read a memorandum written in either plain English or bureaucratese, and then tested their ability to understand and retain what they had read. The Navy concluded that it would save at least “\$27 to \$37 million worth of time each year if its officers routinely read plain writing,” and \$250 to \$350 million a year if all naval personnel read plain-English documents.¹⁰
- In the mid-1980s, the Law Reform Commission of Victoria (Australia) redesigned and rewrote a court summons written in archaic language. By using the new summons, the government of Victoria was able to reassign 26 staff members, saving it the equivalent of Aus\$400,000 a year in staff salaries.¹¹
- In 2008, the Cleveland Clinic simplified its patient-billing statement. After the clinic introduced the new statement, it “recovered an additional \$1 million a month...thanks to an 80% increase in patient payments.”¹²

Bad Legal Writing Can Be Fixed

Telling the truth about the cost of bad legal writing sometimes reveals an ugly reality. Whether it's time attorneys waste rewriting poorly written first drafts, fielding client phone calls or e-mails asking that a legal document be translated into common terms, or briefing and filing unnecessary motions to extend word-count limitations, the hard and opportunity costs of bad legal writing deplete somebody's pocketbook. Clients pay if their attorneys bill them for

this wasted time; attorneys foot the bill if they write it off.

But telling the truth about the cost of bad legal writing makes it possible to correct the problem. And with the right tools and disciplined practice it is possible to write in plain English. So even if you hate to write, consider learning how to write in plain English an investment in happy clients and an improved bottom line. ■

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FOOTNOTES

1. FindLaw.com, *Five Ways Attorneys Waste Money* <<http://practice.findlaw.com/financing-a-law-firm/five-ways-attorneys-waste-money.html>>. All websites cited in this article were accessed February 12, 2013.
2. Garner, *Legal Writing in Plain English: A Text with Exercises* (Chicago: The University of Chicago Press, 2001), p. xiv.
3. Office of Investor Education and Assistance, *A Plain English Handbook: How to create clear SEC disclosure documents* (Washington, DC: United States Securities and Exchange Commission, 2013), available at <<http://www.sec.gov/pdf/handbook.pdf>>.
4. *Id.*
5. See Mellinkoff, *The Language of the Law* (Boston: Little, Brown & Co., 1963).
6. Kimble, *Writing for Dollars, Writing to Please* (Durham: Carolina Academic Press, 2012), p. 47.
7. Mellinkoff, n. 5 *supra* at 454.
8. Kimble, n. 6 *supra* at 87 (quoting John Walton, *The Founding of Clarity*, 54 *Clarity* 4, 5 (November 2005)).
9. Kimble, n. 6 *supra* at 54.
10. *Id.* at 112.
11. *Id.* at 124.
12. *Id.* at 125.

Another Contest

Below is a sentence from the old (before December 2007) Federal Rules of Civil Procedure. Notice the slew of unnecessary prepositional phrases:

The subdivision does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provision of any other rule.

I'll send a copy of *Writing for Dollars, Writing to Please: The Case for Plain Language in Business, Government, and Law* to the first two persons who send me an A revision. Send an e-mail to kimblej@cooley.edu. The deadline is March 27. And I have to be the sole judge of the winners.

No fair peeking at the current federal rules before you send your entry.

—JK