

Resolutions

By George Hathaway and Karen Willard

The English-speaking international legal-writing community, composed of representatives from the United States, Canada, England, and Australia, is presently trying to define the term "plain English." Janice Redish, a former Director of the Document Design Center of the American Institutes for Research in Washington, D.C., defines the term as follows:

We have always defined plain English and document design, not as a single set of style guidelines, but as a process that results in a document that works for its users. Plain English has always meant a process of planning that includes understanding:

- what all the interested groups within the organization want to achieve
- who all the users are (inside and outside the organization)
- what tasks users need to accomplish
- how different people are going to use the document(s)
- how the document fits into the system

Plain English has always meant developing documents that meet the needs of the users, deciding what type of document is appropriate for the users and the situation, selecting guidelines for organization, style, layout, and graphics that are appropriate to the users and the situation, and testing iteratively with users, revising with users until we know that we have made good choices.

This definition includes so-called text-based, reader-oriented, and collaborative

"Plain Language" is a regular feature of the **Michigan Bar Journal**, edited by Joseph Kimble for the State Bar's Plain English Committee. The assistant editor is George Hathaway, chair of the Committee. The Committee seeks to improve the clarity of legal writing and the public opinion of lawyers by eliminating legalese. Want to contribute a plain English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901.

approaches. A text-based approach concentrates on what is on the page—words and sentences, and their organization and design. A reader-oriented approach tests the document by asking readers about their understanding and impression of the text. A collaborative approach lets readers help write the text.

This definition and its approaches may be useful for a legal-writing consultant in developing a major document for a client. But for many individual documents, you will never get the attention of a practicing lawyer, legal assistant, or legal secretary if you ask them to use "a process that results in a document that works for its users." To

persuade legal personnel to routinely write in a "clear, user-friendly" way, you must offer "clear, user-friendly" advice, with some concrete examples.

That's why our committee has defined basic legalese as the *unnecessary* words that lawyers use that are *different* from the words the general public uses: 1) formalisms such as *Now Comes*, 2) archaic words such as *hereby*, 3) redundancies such as *any and all*, and 4) Latin words such as *per curiam* that are not terms of art. Eliminating legalese is an important, liberating *first step* toward clearer and more acceptable legal writing.

To make any progress, you must apply the definition of legalese to specific legal

Categories	Specific Types of Documents	Written By
Laws	1. resolutions	Legislative Service Bureau: Legislative Research Division
	2. statutes	Legislative Service Bureau: Legal Division
	3. executive orders	Governor's Executive Office: Legal Division
	4. rules	Legislative Service Bureau: Legal Editing Division
	5. jury instructions	Michigan Supreme Court Committee on Standard Civil Jury Instructions
	6. judicial opinions	Michigan Supreme Court and Court of Appeals
Lawsuits	7. complaints, answers, motions, orders	Michigan Trial Lawyers Association and Michigan Defense Trial Counsel
	8. briefs	
	9. affidavits	Michigan Association of Legal Support Professionals
Contracts	10. consumer finance contracts	banks
	11. insurance contracts	insurance companies
	12. construction, goods, services, and employment contracts	Michigan Association of Home Builders, Michigan Automotive Dealers Association, United Auto Workers, and others
	13. investment contracts	investment firms
Real Estate	14. listing and purchase agreements	Michigan Association of Realtors: 50 local boards and 3,000 companies
	15. deeds and easements	members of Real Property Law Section of State Bar
	16. leases	
	17. land contracts	First American Title Insurance Company
	18. notes and mortgages	Federal National Mortgage Association
Estate Planning	19. durable powers of attorney	banks and members of Estate Planning Section of State Bar
	20. wills and trusts	

Figure 1

documents. That is why we have categorized legal writing as shown below.

Legal Writing

In our analysis of legal writing in Michigan, we have separated legal writing into five categories (laws, lawsuits, contracts, real estate, and estate planning) and 20 specific types of documents, as shown in the table on the previous page.

We are now going to ask readers to comment informally on some of these documents. (We are not aiming for scientific accuracy.) We will start with the first category, laws, which consists of legislative resolutions and statutes, executive orders and administrative rules, and jury instructions and judicial opinions. We begin with the shortest and easiest document—resolutions. We will first determine a) what the writer wants to achieve, b) who the readers are, and c) how the reader will use the writing. We will then ask the readers 1) for their understanding of the document, 2) for their impression of the way the document is written, and 3) whether they would prefer a legalese or non-legalese version.

Resolutions

Resolutions are passed by the house and senate to honor a particular person or event, or to express a position on an issue. Resolutions use a standard format that includes the archaic *Whereas*.

The archaic *Whereas* is high-profile legalese. The question then becomes, Why doesn't the Legislature eliminate *Whereas* from resolutions? The reason given is that the resolutions are written for the legislators' constituents, and the constituents are supposedly impressed by the flowery language. This, however, appears inconsistent. People criticize lawyers every day for using legalese, but do these same people want the legalese in a resolution? Furthermore, if you eliminate high-profile legalese such as *Whereas* from resolutions, do you then have a better chance of eliminating legalese from other legal documents? To answer these questions, we first determined:

- What does the writer of the resolution want to achieve?—To recognize achievement by an individual or group, or to send a message to another unit of government.
- Who are the readers?—The people who receive the resolutions, and the general public as well, because many of these resolutions are framed and hung on walls.
- How will the readers use the resolution?—The people who receive the reso-

Senate Resolution No. 99.

A resolution honoring Kyle Gibbs.

Whereas, It is a privilege to congratulate Kyle David Gibbs for achieving the rank of Eagle Scout. This accomplishment marks Kyle as a young man who has set high goals for himself and has worked hard to reach them. We are pleased to have this opportunity to acknowledge his efforts and to thank him for his service to his community and our state; and

Whereas, Kyle Gibbs is a sophomore at New Lothrop High School where he is an excellent student and a member of the band and the baseball team. He has been in scouts for several years, enjoying camping experiences, earning a number of badges for his mastery of assignments and demonstrating his leadership within Troop 123. For his Eagle Scout project, he chose to make fifty handicap parking signs for use during the Blueberry Festival in Montrose. The signs, constructed according to legal specifications, are portable and will be used year after year in order to ensure that handicapped visitors or tourists will be able to participate more easily and enjoy festival activities; and

Whereas, For a sixteen-year-old to complete such a task means that this outstanding young man volunteered many hours which might have otherwise been dedicated to sports or hobbies like collecting comic books. Kyle Gibbs unselfishly sacrificed personal leisure time to make a contribution to his community. He is indeed worthy of special recognition and the prestigious Eagle Scout Badge; now, therefore, be it

Resolved by the Senate, That a unanimous accolade of praise and tribute be accorded Kyle David Gibbs as he is awarded Eagle Scout rank on May 7, 1995; and be it further

Resolved, That a copy of this resolution be transmitted to Kyle as evidence of our esteem.

lution will often display it as a recognition of achievement, or the general public will read it to learn what position the Legislature is taking on a particular issue.

We then asked ten members of the general public about the resolution shown in Figure 1:

- 1) Can you understand the following resolution? (We did not test comprehension on before-and-after versions.)
- 2) What is your impression of the way the resolution is written?
- 3) Would you prefer the resolution with *Whereas* or without *Whereas*?

All ten replied that they could understand the resolution, but only four said that the resolution was written in a satisfactory way. Nine preferred the resolution without *Whereas*. The one who preferred the resolution with *Whereas* did so because it sounded more official. The other nine commented as follows:

- It is easier to read if the *whereas* is eliminated. . . I feel like I have to catch my breath before each *whereas*.
- Be user-friendly. . . go without *whereas* and *be it resolved*.
- The *whereas* adds nothing.
- Not personalized. . . language is too stiff and formal. . . The language of Shakespeare is not used in today's society. As written, I imagined a town crier ringing his bell as he read the proclamation. Without the legalese, the resolution is focusing on the individual or event being recognized.

- The use of *whereas* is often a clue that superfluous information, complexity, and awkward phrases will follow in an attempt to bolster credibility or influence.

Reality

Last year, state Representative Karen Willard took a straw poll of constituents in her district as to whether they preferred the plain language or the traditional form of resolutions. People overwhelmingly replied that resolutions should be easy to read and understand. However, when she introduced a resolution written in plain English (with no *Whereas*), the resolution was blocked on the house floor and never passed. This was a resolution (urging military-base commissaries to be open to all disabled veterans, not just those with 100% disabilities) that had passed out of committee unanimously with bipartisan support.

George Hathaway is a Senior Real Estate Attorney at the Detroit Edison Company and the chair of the Plain English Committee of the State Bar of Michigan.

*Karen Willard is a member of the Michigan House of Representatives (82nd District), a former legal writing instructor for the University of Detroit School of Law, and a leader of a movement within the Michigan Legislature to remove legalese such as *Whereas* from resolutions and other legislative documents.*

NOTICE AGENCY VACANCIES

THE STATE BAR Board of Commissioners is seeking names of persons interested in filling the following agency vacancies:

Institute of Continuing Legal Education—One vacancy for a four-year term beginning October 1, 1995. *Role of Committee Member:* To assist with the development and approve Institute education policies; formulate and promulgate necessary rules and regulations for the administration and coordination of the Institute's work; review and approve the Institute's annual budget and the activities contemplated in support of the budget; generally and whenever possible, promote the activities of the Institute. The Institute meets three times a year—usually in February, June and October.

Michigan Indian Legal Services Board of Trustees—Two vacancies for three-year terms beginning October 1, 1995. Applicants must be American Indians. The Board sets policy for a four-person (three-attorney) staff that provides services statewide. The Board hires an executive director. The Board is responsible for operating the corporation in compliance with applicable law. Board members should have an understanding and appreciation for the unique legal problems faced by American Indians. Board members are responsible for setting priorities for the allocation of the scarce resources of the program. The Board is accountable to its funding sources. The Board meets on Saturdays, at least quarterly, in Traverse City.

Deadline for Responses is AUGUST 11, 1995.

Applications received after the deadline indicated will not be considered. Those applying for an agency appointment should submit a résumé and a letter outlining background and nature of interest in the position. While we cannot acknowledge receipt of applications or provide individual notices to all applicants of the action ultimately taken, the appointments made by the Board will be published in the *Bar Journal*.

Interested persons should write:

**J. Thomas Lenga, Chairperson, Commissioner Nominating Committee
c/o State Bar of Michigan, The Michael Franck Building
306 Townsend Street, Lansing, MI 48933-2083**

NOTICE

The Chief Judge of the Court of Appeals announces the opening of a second District Clerk's Office in Southfield. The office is located in the American Center Building, 27777 Franklin Road, Suite 645, (810) 353-6763. The Assistant Clerk in charge of that office is John Lowe.

Open files for Oakland, Macomb, Genesee and Shiawassee counties will be housed in that office. However, filings may be made at the Southfield location for any district.

The Court of Appeals district offices are as follows:

**DISTRICT I 900 First Federal Bldg.
1001 Woodward Ave. DETROIT 48226**

Counties: Wayne, Recorder's Court, Lenawee, Monroe

**DISTRICT II 645 American Center Bldg.
27777 Franklin Road SOUTHFIELD 48034**

Counties: Oakland, Macomb, Genesee, Shiawassee

DISTRICT III 350 Ottawa N.W. GRAND RAPIDS 49503

Counties: Berrien, Cass, St. Joseph, Branch, Hillsdale, Washtenaw, Livingston, Jackson, Calhoun, Kalamazoo, Van Buren, Allegan, Barry, Kent, Ottawa and Muskegon

**DISTRICT IV 109 W. Michigan Ave. LANSING 48933
P.O. Box 30022 48909**

Counties: Balance of the State

Within the next two months all open files will be located in the districts as indicated above.

Conclusion

Government should communicate with its citizens in clear language, not in language that has been criticized by every English teacher and writing instructor from third grade through law school. Legal-writing books and instructors teach lawyers to eliminate the archaic *Whereas*. Furthermore, the general public prefers resolutions without the word *Whereas*. Yet the writers of resolutions refuse to eliminate it. And if the writers refuse to eliminate just one word, no wonder it is so hard to persuade lawyers to improve the clarity of legal writing.¹

In the future we suggest the following user-friendly format for resolutions:

[Statements concerning the honoree.]

Therefore, the Senate/House resolves to unanimously honor _____ for _____, and to send _____ a copy of this resolution. ■

Footnote

1. A second example is the phrase *You are hereby commanded*, which was recently read on TV from a federal subpoena concerning the recent bombing in Oklahoma City. The phrase *you are hereby commanded* sounds as though it was issued from the Star Chamber. A clear, direct *You are ordered* is much more appropriate. Another example is the *Yea/Nay* voting designation of the U.S. Congress. Why not a clear, direct *Yes or No*?

At the ABA's annual meeting this summer, the Committee on Communication Skills will present a program on plain language. The title is "Clear Writing Pays: The Benefits for Lawyers and Clients." The speakers will include three persons who have written "Plain Language" columns: Kenneth Gluckman (Chrysler Corporation, Highland Park), Bryan Garner (LawProse, Dallas), and Christopher Balmford (Phillips Fox, Melbourne, Australia). The other two speakers will be Duncan MacDonald (Citibank, New York) and the Honorable Judith S. Kaye (Chief Judge, State of New York Court of Appeals).

The program is scheduled for August 6, from 9:00 to 12:00, at the Park Hyatt in Chicago. If you plan to attend the meeting, we hope you will stop by.

—Joe Kimble