

What Plain Language Is Not

By Joseph Kimble

In my book Writing for Dollars, Writing to Please: The Case for Plain Language in Business, Government, and Law, *I devote Part Three to ten false criticisms of plain language. The short excerpt below addresses the first of those ten.* —JK

In the mind of anyone who cares to review the evidence and literature, the myths about plain language should have long since been obliterated. For at least 50 years, one expert after another has debunked them.¹ But they are stubborn and pernicious. They keep spooking us, dissuading us, fooling us, and providing us with an excuse for clinging to legalese and officialese. So let's try again to put them to rest. No need for stakes through the heart. These are mere apparitions, chimeras, hobgoblins. Know the truth, and fear not.

Plain language is not anti-literary, anti-intellectual, unsophisticated, drab, ugly, bland, babyish, or base.

This charge of debasing the language is loaded with irony. If anything is anti-literary,

drab, and ugly, it's traditional legal and official writing—those bastions of inflation and obscurity.

Take legal writing, which has been ridiculed and criticized for centuries.² David Mellinkoff describes it as wordy, unclear, pompous, and dull.³ John Lindsey says that law books are “the largest body of poorly written literature ever created by the human race.”⁴ Bryan Garner agrees: “[W]e [lawyers] have a history of wretched writing, a history that reinforces itself every time we open the law books.”⁵

The heritage of plain English is just the opposite. As Garner explains: “It is the language of the King James Version of the Bible, and it has a long literary tradition in the so-called Attic style of writing.”⁶ Plain English is the style of Abraham Lincoln, and Walt Whitman, and Mark Twain, and Justice Holmes, and George Orwell, and Winston Churchill, and E. B. White. Plain words are eternally fresh and fit. More than that, they are capable of great power and dignity: “And God said, Let there be light: and there was light. And God saw the light, that it was good.”⁷ Or Shakespeare: “[A]nd, when he shall die/ Take him and cut him out in little stars/ And he will make the face of heaven so fine/ That all the world will be in love with night/ And pay no worship to the garish sun.”⁸ Or Thoreau: “If you have built castles in the air, your work need not be lost; that is

where they should be. Now put the foundations under them.”⁹

Why would we ever think that a profusion of fancy-sounding words in any way equates with wit, wisdom, depth, vitality, importance, usefulness, or reliability? How can we be so blind or indifferent to the manifold failings of legal and official style—in all their clotted, confounding verbosity?

It's true that the term *plain language* is open to at least three misinterpretations. It may suggest something that's colorless, that concentrates only on vocabulary, and that's facile.

But it need not be colorless; it can be lively and expressive in the right context, such as a persuasive legal brief. And in every context, plain language can be elegant in its clarity and simplicity. After all, most legal and official documents are not read for pleasure: nobody expects rhetorical flourishes or stylistic flair in a contract; nobody curls up with a Medicare brochure. Readers just want to get the message, without travail.

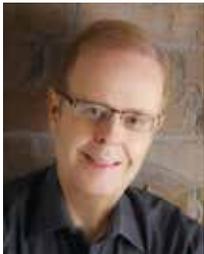
As for achieving it, that's never easy. Anyone can complicate matters; it's much harder to simplify without oversimplifying, and only the best minds and best writers can hit that mark. In fact, writing simply and directly only *looks* easy. It takes skill and sweat and fair time to do the job. Or in Jacques Barzun's memorable line: “Simple

[W]riting simply and directly only *looks* easy. It takes skill and sweat and fair time to do the job.

“Plain Language” is a regular feature of the *Michigan Bar Journal*, edited by Joseph Kimble for the Plain English Subcommittee of the Publications and Website Advisory Committee. To contribute an article, contact Prof. Kimble at Western Michigan University Cooley Law School, P.O. Box 13038, Lansing, MI 48901, or at kimblej@cooley.edu. For an index of past columns, visit <http://www.michbar.org/generalinfo/plainenglish/>.

English is no one's mother tongue. It has to be worked for."¹⁰

We are too far down the road to swap the term *plain language* for something else. A strong, extensive body of supporting literature has developed around it. More than any other term, such as *clear communication*, it signifies a new attitude and a fundamental change from past practices. It strikes a chord with the public. And once again, it can claim a glorious literary heritage. ■



Joseph Kimble taught legal writing for 30 years at Western Michigan University Cooley Law School. He is the author of Lifting the Fog of Legalese: Essays on Plain Language and Writing for Dollars,

Writing to Please: The Case for Plain Language in Business, Government, and Law. He is also senior editor of The Scribes Journal of Legal Writing, the past president of the international organization Clarity, and the drafting consultant on all federal court rules. He led the work of redrafting the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

ENDNOTES

1. See, e.g., Asprey, *Plain Language for Lawyers* (4th ed) (Federation Press, 2010), pp 12–15; Law Reform Comm'n of Victoria, *Plain English and the Law* (1987), pp 45–62; Mellinkoff, *The Language of the Law* (Little, Brown & Co, 1963), pp 285–454; Benson, *The End of Legalese: The Game Is Over*, 13 NYU Rev L & Social Change 519, 558–567 (1984–1985); Schiess, *What Plain English Really Is*, 9 Scribes J Legal Writing 43, 51–71 (2003–2004).
2. See Kimble, *Lifting the Fog of Legalese: Essays on Plain Language* (Carolina Academic Press, 2006), appendix 1 (quoting a “litany of complaints” going back to King Edward VI in the 16th century).
3. *Language of the Law*, p 24.
4. Lindsey, *The Legal Writing Malady: Causes and Cures*, New York Law Journal (December 12, 1990), p 2.
5. Garner, *The Elements of Legal Style* (2d ed) (Oxford Univ Press, 2002), p 2.
6. Garner, *Garner's Dictionary of Legal Usage* (3d ed) (Oxford Univ Press, 2011), p 680.
7. Gen. 1:3–4 KJV.
8. Romeo and Juliet, act III, sc 2.
9. Thoreau, *Walden; or, Life in the Woods* (Ticknor & Fields, 1854), ch 18.
10. Barzun, *Teacher in America* (Little, Brown & Co, 1945), p 48.



MONEY JUDGMENT INTEREST RATE

MCL 600.6013 governs how to calculate the interest on a money judgment in a Michigan state court. Interest is calculated at six-month intervals on January and July of each year, from when the complaint was filed, and is compounded annually.

For a complaint filed after December 31, 1986, the rate as of July 1, 2015 is 2.468 percent. This rate includes the statutory 1 percent.

But a different rule applies for a complaint filed after June 30, 2002 that is based on a written instrument with its own specified interest rate. The rate is the lesser of:

- (1) 13 percent a year, compounded annually; or
- (2) the specified rate, if it is fixed—or if it is variable, the variable rate when the complaint was filed if that rate was legal.

For past rates, see <http://courts.mi.gov/Administration/SCAO/Resources/Documents/other/interest.pdf>.

As the application of MCL 600.6013 varies depending on the circumstances, you should review the statute carefully.

TREAT YOURSELF

Complimentary upgrade – on us.



Make the most of your next trip with a complimentary upgrade when you use coupon # **UUGA037**.

Plus, always receive up to **25% off** with **AWD # A601500**. Reserve today at avis.com/sbm or call **1-800-331-1212**.



PREFERRED PARTNER



Terms and Conditions: Offer valid for a one time, one car group upgrade on an intermediate (group C) through a full-size four-door (group E) car. Maximum upgrade to premium (group G), excluding intermediate SUV (group F). Offer valid on daily, weekend, weekly and monthly rates only. The upgraded car is subject to vehicle availability at the time of rental and may not be available on some rates at some times. Valid at participating Avis locations in the contiguous U.S. and Canada. The savings of up to 25% applies to the time-and-mileage charges only of the rental. Mention AWD # A601500 to receive this discount. One coupon per rental. A 24-hour advance reservation is required. May not be used in conjunction with any other coupon, promotion or offer. Upgrade will be applied at vehicle pick-up time. Renter must meet Avis age, driver and credit requirements. Minimum age may vary by location. An additional daily surcharge may apply for renters under 25 years old. Fuel charges are extra. **Rental must begin by December 31, 2015.**
©2015 Avis Rent A Car System, LLC