

The Search for the Sentence "Too Complex for Plain English"

By George H. Hathaway

Diogenes once searched the ancient world looking for an honest man.¹ But as long and as hard as he searched he never found one. I know how he felt, because I too have been searching—searching the modern legal world looking for an honest to goodness example sentence of legal writing in a legal topic that is "too complex for plain English."

Is there such a sentence? Is there such a topic? Or is the "too complex for plain English" argument simply a long held, deeply cherished myth like Santa Claus, the Easter Bunny, Big Foot and the Tooth Fairy? Or is it something more than a myth, something closer to a fib or little white lie like, a) the check is in the mail; b) believe me, this is going to hurt me more than it's going to hurt you; and c) I'm from the Accounting Department, I'm here to help you.

The "Too Complex" Argument

My search began when I read the following: "Plain English is a false issue. Many problems that need legislative resolution are complex and difficult. To pretend that they are sus-

ceptible to 'plain' statement is as misleading as to assert that such problems are susceptible to simple, easy solutions. We need complex language to state complex problems of law or fact."²

What drew my attention most was the lack of any example sentences to support the "too complex for plain English" argument.

"Is there any point to which you would wish to draw my attention?"

"To the curious incident of the dog in the night-time."

"The dog did nothing in the night-time."

"That was the curious incident," remarked Sherlock Holmes.³

Since then I have heard many lawyers expand the "too complex for plain English" argument to include not only legislative drafting, but also the entire field of legal writing. The argument is always the same—"Well, there are some legal topics that are too complex for plain English." *But* whoever says this *never* gives an example sentence of such a "too complex legal topic."

Definition of Plain English

No legal topic is too complex for plain English. All legal writing can, and should, be written in plain English. My definition of plain English is ten items, five items on sentences (sentence structure) and five items on words (word usage). The items on sentences are 1) short average sentence length; 2) predominant use of active, instead of passive voice verbs; 3) strong, instead of weak, verbs; 4) predominant use of positive, in-

stead of negative, form; and 5) parallel form. The items on words are 1) No obsolete formalisms (e.g., Now Comes); 2) No old English words (e.g., hereby); 3) No redundant phrases (e.g., each and every); 4) No word clusters (e.g., "prior to" for "before"); and 5) No long words for short words (e.g., "utilize" for "use").

Note that plain English includes true legal terms of art such as "res judicata" and "negligence." This is why all legal writing can be written in plain English. However, plain English does *not* include false terms of art such as "Now Comes" and "hereby." This is the crux of the problem. Lawyers who write legalese (i.e., the opposite of the ten items of plain English) try to rationalize their use of the false terms of art such as "Now Comes" and "hereby" by fallaciously arguing that precision and case precedent require the use of "Now Comes" and "hereby."

Examples of Plain English

In the November, 1983 Plain English theme edition of the *Michigan Bar Journal*, we published many specific examples of plain English in many fields of law. In May, 1984 we began the monthly Plain Language column. Every month for the last

"Plain Language" is a regular feature of the **Michigan Bar Journal**, edited by Joseph Kimble for the State Bar Plain English Committee. Assistant editor is George H. Hathaway. Through this column the Committee hopes to promote the use of plain English in the law. Want to contribute a Plain English article? Contact Prof. Kimble at Cooley Law School, P.O. Box 13038, Lansing, MI 48901.



The author, searching for the sentence "too complex for plain English."

five years we have published many specific examples of plain English in every field of law from Administrative Law to Workers Compensation.

Examples "Too Complex for Plain English"

From November, 1983 to the present, I have never seen, nor has anyone ever sent in, an example sentence of a legal topic that was "too complex for plain English." Yet some lawyers still insist some legal topics are "too complex for plain English." Therefore, if you are one of these lawyers, if you still believe some legal topics are "too complex for plain English," I ask that you fill out the survey form that accompanies this article and send it to the indicated address. Alternatively, if you believe no legal topic is too complicated for plain English, I ask that you also fill out the survey. The results of this survey will be discussed in a future Plain Language column article.

Footnotes

1. Diogenes, "I am looking for an honest man.", in Bartlett's Familiar Quotations, from Lives of Eminent Philosophers.
2. F. P. Grad, Legislative Drafting as Legal Problem Solving—Form Follows Function, Drafting Documents in Plain Language, Practising Law Institute, N.Y. 1979.
3. Arthur Conan Doyle, *Silver Blaze*, *Memoirs of Sherlock Holmes*.

To: Plain Language Column Survey
 Michigan Bar Journal
 306 Townsend Street
 Lansing, Michigan 48933-2083

From: _____
(optional)

Please choose and complete one of the four alternatives below:

- I believe some legal topics are too complex for plain English and I submit the following example sentence from one of these topics to support this belief: (Please submit only *one* sentence. Use additional paper if you need more room.)

- I believe some legal topics are too complex for plain English but I'm not able to submit an example sentence from any of these topics.
- I believe no legal topic is too complex for plain English.
- Other _____

Thank you for your time and interest in participating in this survey.

NOTICE
IOLTA Delayed Further

At the request of the Board of Trustees of the Michigan State Bar Foundation, the Michigan Supreme Court has postponed the effective date of the IOLTA provisions contained in MRPC 1.15 until further order of the Court. Additional time is required by the Foundation for obtaining an IRS ruling on the tax consequences of certain client election provisions of the program.

The Court has urged the Foundation to advise it of any rulings obtained from the Internal Revenue Service immediately upon receipt thereof so that implementation can commence at the earliest possible date.

Linda K. Rexer, Executive Director, IOLTA (517) 371-6907