

## Plain-Language Stumble

### To the Editor:

The Plain Language column is a delight, but in March you stumbled with Matthew Salzwedel's slipshod article.<sup>1</sup> Consider it, with my paragraph numbering:

¶1 Mr. Salzwedel's lead sentence cites an article unrelated to plain English and concludes that "the *article ignored* [read *author did not discuss*]" plain English as a cost saver. "*Ignore* usually implies... an intention to disregard..."<sup>2</sup>

¶1 Mr. Salzwedel says that plain English is "*the most important* [read *a*]" way attorneys can save money.... Is that overblown writing or Mr. Salzwedel's idiosyncratic view?

¶2 Mr. Salzwedel claims: "Most attorneys don't believe that writing style matters." If this were so, (1) our *Bar Journal* would not have a regular column on plain language and (2) West and CCH—for-profit law book publishers—would not have vended nearly a dozen of Bryan Garner's works on legal writing style.

¶3 Mr. Salzwedel says, "Garner gives a useful...definition" of plain English. Garner has described plain English, but he has yet to attempt a definition.<sup>3</sup>

¶10 Mr. Salzwedel, under a heading titled "Bad Legal Writing *Can Be Fixed* [read *can be costly*]" iterates in consecutive paragraphs, "Telling the truth about the cost of bad legal writing....," but says nothing about fixing it.

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¶10 Mr. Salzwedel seems to assert that attorneys waste time "rewriting poorly written first drafts...." Perhaps he meant it; his article reads like an unedited first draft.

Mr. Salzwedel describes his endnotes as footnotes. Nitpicking? Perhaps, but one who parades as a writing guru should eliminate the nits before publishing.

Mr. Salzwedel's up-style headings—initial capitalization of most words—are old-fashioned and have been abandoned by most professional writers. Garner condemns them as "visual hiccups."<sup>4</sup>

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sure that *most*  
attorneys believe  
that style matters.

The major problem with the article is that Mr. Salzwedel has nothing to say, violating Garner's primary rule:

§ 1. Have something to say...<sup>5</sup>

His article could be better stated in a brief sentence—"Bad legal writing often is costly"—a truism not worth two pages of a professional journal. The best use of the Salzwedel article would be as an example of things to avoid in legal writing.

You are a plain-English icon, Professor Kimble. "Say it ain't so, Joe."<sup>6</sup> Tell me that you were out of town when the *March Journal's* deadline came and your staff, desperate to meet it, submitted Mr. Salzwedel's rubbish.

**Philip A. Gillis**  
**Harrison Township**

### ENDNOTES

1. See Salzwedel, *Face it—Bad legal writing wastes money*, 92 Mich B J 52 (March 2013), available at <<http://www.michbar.org/journal/pdf/pdf4article2176.pdf>> [accessed May 8, 2013].

2. *Webster's Dictionary of Synonyms* (1984), p. 559 (discriminating neglect, ignore, and similar words).

3. Compare with Justice Stewart's *bon mot* in *Jacobellis v. Ohio*, 378 US 184, 197; 84 S Ct 1676; 12 L Ed 2d 793 (1984), where the justice declined an attempt to define obscenity, stating only that: "I know it when I see it."

4. See Garner, *Legal Writing in Plain English: A Text with Exercises* (Chicago: The University of Chicago Press, 2001), pp. 126–127; see also Garner, *Garner's Modern American Usage* (3d ed) (New York: Oxford University Press, 2009), p. 132.

5. See *Legal Writing in Plain English*, n. 4 *supra* at 3.

6. Attributed to a Chicago urchin addressing his hero, Shoeless Joe Jackson, who had just been implicated in the 1919 World Series betting scandal.

## Response to Philip A. Gillis

Before we briefly respond to Mr. Gillis's letter, we'd like to thank him for being a fan of the Plain Language column and to compliment him on his eye for detail. He's obviously a careful reader. Some of his criticisms have merit, but some we respectfully disagree with.

¶1 The first sentence of the column cited an article about how lawyers waste money. The point of citing the article was that it didn't mention writing in plain English as a way to save money. So the first sentence set up the thrust of the column. As for the word *ignored*, the *Oxford English Dictionary's* first definition is to "refuse to take notice of or acknowledge."<sup>1</sup> But yes, *overlooked* or *didn't discuss* would have been more accurate.

¶1 Whether writing in plain English is "the most important" way lawyers can save money is the author's opinion. The column gave evidence supporting that opinion.

¶2 We're delighted to think that many people read this column and books about legal writing. But we're not so sure that *most* attorneys believe that style matters. It would be interesting, for example, to survey how many complaints begin with *Now comes the plaintiff*. (See the January column.) Or consider this observation from Bryan Garner, whom Mr. Gillis cites several times: "For law-firm associates, their senior

lawyers too often decry any emphasis on writing style ('I'm just concerned with the substance of it! I leave style to others!').<sup>2</sup> At any rate, Mr. Gillis hasn't made his case for implying that the author is wrong.

¶3 Garner's explication of plain English might better have been called a "description," not a "definition" in the technical sense, but in context we doubt that readers could have been confused. Note that in the *Oxford English Dictionary* (again), one definition of the word *define* is to "make up or establish the character or essence of."<sup>3</sup>

¶10 In fact, the last section does suggest how to fix the problem: learn how to write in plain English. Get the "right tools," engage in "disciplined practice," and consider the effort "an investment in happy clients and the bottom line." The point of the column was to identify a costly problem, not to detail how to fix it.

Mr. Gillis says that he is perhaps nitpicking to mention that the column used the word *footnotes*, when the *Bar Journal* actually uses endnotes. We're content to let that characterization stand.

As for using up-style capital letters in headings, we of course deferred to *Bar Journal* style on that.

Mr. Gillis calls the column "rubbish," "slipshod," and an example of "things to avoid in legal writing." We'll let readers decide whether these assertions are—to use Mr. Gillis's description—"overblown." Or overheated.

Onward and upward.

**Matthew Salzwedel**  
**Joseph Kimble**

## ENDNOTES

1. Oxford Dictionaries <[http://oxforddictionaries.com/us/definition/american\\_english/ignore](http://oxforddictionaries.com/us/definition/american_english/ignore)>. All websites cited in this letter were accessed May 15, 2013.
2. Garner, *Why lawyers can't write*, ABAJ (March 2013), available at <[http://www.abajournal.com/magazine/article/why\\_lawyers\\_cant\\_write/](http://www.abajournal.com/magazine/article/why_lawyers_cant_write/)>.
3. Oxford Dictionaries <<http://oxforddictionaries.com/definition/english/define>>.

## Goodman: Good Man

### To the Editor:

I enjoy Carrie Sharlow's columns about Michigan lawyers' histories. Her article on Ernest Goodman in the May *Bar Journal* was of particular interest. I clerked in the Goodman firm in the late 1960s. It was a pioneering liberal-left, public-interest firm that dissolved after its 50th anniversary in the

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late 1990s. Ernie and the firm left an indelible legacy. On so many issues, even the far right now concedes much of what Ernie fought for. You have to go way, way to the right to find anyone who would oppose the dismantling of racial barriers. Thanks to Judge Avern Cohn for suggesting the article.

**Bob Roether**  
**Dearborn Heights**

## Upon Further Examination

### To the Editor:

Kudos to Jon R. Muth on his article "Direct Examination: A Forgotten Art" (May 2013 *Michigan Bar Journal*). His 10 suggestions are the hallmark of a masterful trial lawyer and are all on point, particularly numbers 3, 4, 8, 9, and 10. Effective direct examination is conversational and it is the same for cross-examination. The dialogue between the examiner and the witness should be so conversational that not even a trained ear can discern that it is cross-examination. This article should be re-read by all trial lawyers.

**James A. Johnson**  
**Southfield**