

**Writing for Dollars,
Writing to Please**

**Writing for Dollars,
Writing to Please**

**The Case for Plain Language
in Business, Government, and Law**

Joseph Kimble

CAROLINA ACADEMIC PRESS
Durham, North Carolina

Copyright © 2012 by Joseph Kimble
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Kimble, Joseph.

Writing for dollars, writing to please: the case for plain
language in business, government, and law / Joseph Kimble.
p. cm.

Includes bibliographical references and index.

ISBN: 978-1-61163-191-3 (alk. paper)

1. Law—United States—Language. 2. Law—United States—
Terminology. 3. Legal composition. 4. Government report
writing—United States. I. Title.

KF250.K535 2012

340'.14—dc23

2012013645

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

*For two boys named Axel and Jet Pierce —
and their G-Ma MaryAnn*

CONTENTS

Preface	xiii
Part One: A Personal Story	1
Part Two: The Elements of Plain Language	5
Part Three: Answering the Critics (by Dispelling the Myths)	11
1. Plain language is not anti-literary, anti-intellectual, unsophisticated, drab, ugly, bland, babyish, or base	11
2. The idea of plain language is not too vague to be useful	14
3. Plain language is not “text-based” rather than “reader-based”; it has always been concerned with whether the text works for readers and has long advocated testing on readers	16
4. Plain language involves much more than just simple words and short sentences	20
5. Regardless of what readers may expect in legal and official documents, they certainly prefer plain language	23
6. There is time to write in plain language — or at least to make a serious start	25
7. The push for plain language will not result in less work and less prestige for lawyers; it could even produce more work, and it will surely improve their image	28
8. Proponents do not imagine that plain language will be intelligible to everyone; they do expect writers to make documents intelligible to the greatest possible number of intended readers	31

9. Plain language is not subverted by the need to use technical terms 35
10. Plain language is not imprecise; in fact, it's more precise than traditional legal and official style 37

Part Four: Some Historical Highlights **45**

Publications

1. U.S.: David Mellinkoff's Book *The Language of the Law* 47
2. U.S.: Richard Wydick's Book *Plain English for Lawyers* 47
3. U.S.: "Plain Language" Column in the *Michigan Bar Journal* 48
4. U.S.: Rudolf Flesch's Works and Readability Formulas 49
5. UK: Ernest Gowers's Book *The Complete Plain Words* 51
6. UK: Renton Committee Report on Legislation 52
7. Australia: Michèle Asprey's Book *Plain Language for Lawyers* 53

Laws and Rules

8. U.S.: New York's Plain-English Law — and Other State Statutes That Followed 54
9. U.S.: Securities and Exchange Commission's Plain-English Rules and *Plain English Handbook* 56
10. U.S.: Plain Writing Act of 2010 57
11. European Union: Unfair Contract Terms Directive 59
12. South Africa: Constitution 60
13. South Africa: Consumer Protection Act 62

Projects and Activities

14. U.S.: Citibank's Loan Note 64

15. U.S.: Redrafting of Federal Court Rules	64
16. Canada: Reports on Access to the Law and Events That Followed	66
17. Canada: Training in Provincial Securities Commissions and the Rewriting of Investment-Industry Rules	68
18. UK: Government-Wide Review of Forms	69
19. UK: Tax-Law Revision	70
20. Norway: Civil-Service Project	71
21. Australia: NRMA's Car-Insurance Policy	72
22. Australia: Progress in Major Law Firms	73
23. Australia: Format of Legislation	75
24. New Zealand: WriteMark and Plain English Power	76

Organizations

25. U.S.: Document Design Center at the American Institutes for Research	78
26. U.S.: Federal-Employee PLAIN Group and the Clinton-Gore Initiatives	80
27. U.S.: Center for Plain Language	81
28. Canada: Plain Language Association International	82
29. Canada: Canadian Legal Information Centre and Its Plain Language Centre	83
30. Canada: Alberta Law Reform Institute	85
31. Canada: Plain Language Service at the Canadian Public Health Association	86
32. UK: Clarity — The International Association Promoting Plain Legal Language	87
33. UK: Plain English Campaign and Plain Language Commission	88
34. European Union: Fight the Fog and the Clear Writing Campaign	91

35. Nordic Countries: Language Councils	92
36. Sweden: Division for Legal and Linguistic Draft Revision, and the Plain Swedish Group	96
37. Australia: Law Reform Commission of Victoria	97
38. Australia: Centre for Plain Legal Language	99
39. New Zealand: Law Commission and the Parliamentary Counsel Office	100
40. Commonwealth Countries: Commonwealth Association of Legislative Counsel	101

Part Five: The Extraordinary Benefits **103**

Saving Time and Money

1. U.S.: Federal Communications Commission — Regulations	107
2. U.S.: Veterans Benefits Administration — Form Letters	108
3. U.S.: Veterans Benefits Administration — Form Letters	111
4. U.S.: Naval Officers — Business Memos	112
5. U.S.: State of Washington — Consumer Documents	113
6. U.S.: Arizona Department of Revenue — Form Letters	116
7. U.S.: Los Angeles County — Consumer Documents and Phone Messages	117
8. Canada: Alberta Agriculture, Food, and Rural Development — Forms	118
9. UK: British Government — Forms	119
10. UK: Royal Mail — Form	121
11. Sweden: Agency for Higher Education Services— Online Forms and E-Mail	121
12. New Zealand: Ministry of Internal Affairs — Form	123

13. Australia: Victorian Government — Legal Form	124
14. Australia: Family Court of Australia — Divorce Forms	124
15. U.S.: Cleveland Clinic — Billing Statements	125
16. U.S.: Allen-Bradley Company — Computer Manuals	125
17. U.S.: General Electric Company — Software Manuals	127
18. U.S.: Sabre Travel Information Company — Software Booklet.....	127
19. U.S.: Federal Express — Operations Manuals	128
20. U.S.: Key Bank — Call-Center Manual	129
21. Canada: Banking Industry — Communications Among Employees	129
22. U.S.: Homebuyers — Good-Faith Estimates	130
23. U.S.: General Public — Payday Loans	132

Pleasing and Persuading Readers

24. U.S.: Judges and Lawyers — Various Legal Passages	135
25. U.S.: Appellate Judges and Law Clerks — Appellate Briefs	137
26. U.S.: Lawyers — Judicial Opinions	139
27. U.S.: Judges — Lawsuit Papers	141
28. U.S.: General Public — Various Legal Passages	143
29. U.S.: General Public — Government Regulations	144
30. U.S.: General Public — Statute	145
31. U.S.: General Public — Jury Instructions	145
32. U.S.: General Public — Jury Instructions	146
33. U.S.: General Public — Jury Instructions	148
34. U.S.: General Public — Court Forms	148

35. U.S.: General Public — Class-Action Notices	149
36. U.S.: Law Students and State-Agency Employees — Contract	151
37. South Africa: Lawyers and the General Public — Various Legal Documents	153
38. Australia: Lawyers — Legislation	154
39. U.S.: General Public — Tax Forms	154
40. U.S.: General Public — Ballot Instructions	155
41. U.S.: Naval Officers — Business Memos	157
42. U.S.: Army Officers — Business Memos	158
43. Australia: Insurance Companies — Office Manual	159
44. U.S.: General Public — Medical-Consent Forms	159
45. U.S.: General Public — Medical Pamphlet.....	160
46. U.S.: General Public — Medication Warning Labels	161
47. Canada: General Public — Patient- Information Booklet.....	162
48. U.S.: Investors — 10-K Filings	163
49. U.S.: Investors — Annual Reports	165
50. UK: Institution of Chemical Engineers — Technical Literature	166

PREFACE

These pages round out a large part of a life's work — as a teacher, speaker, and writer — campaigning for plain legal language. As noted in part 1, I've concentrated over the years on the writing guidelines that provide a route to clarity and simplicity, the false criticisms that stand in the way, and the mounting evidence that plain language pays off — considerably — in the end. In a sense, this book is a second edition of previous writings on those subjects. The title itself is the title of an article in volume 6 of *The Scribes Journal of Legal Writing*, and the title of part 3 comes from an article in volume 5 of the *Journal*. Parts of those two articles, and other articles as well, are incorporated in this second edition.

But the book is still new. I've reworked, rearranged, and updated much of the previous material. I've also added to it. Part 3 expands on the myths and realities. Part 4 is entirely new (and was quite an undertaking). Part 5 doubles the number of empirical studies that I reported on in earlier articles. In any case, I hope readers will like having this information all in one place.

Now, a few miscellaneous points:

- There is no index. This is not a book in which you'll be looking up topics and names. The detailed table of contents, the extensive headings and subheadings, and the occasional introductory notes should provide plenty of orientation.
- The references generally follow legal-citation form. Thus, in "64 Clarity 5," for example, the first number is the volume, and the second is the page. The abbreviation "J." stands for "Journal," "B.J." is "Bar Journal," and "L. Rev." is "Law Review." Other abbreviations in periodicals should be fairly obvious,

even to nonlegal readers. I did spell out some words that I thought might not be.

- Internet citations, URLs, are always a challenge. Besides being ugly, they come and go. But they were all last accessed in March 2012, and I printed off copies of all the shorter ones.
- Perhaps the two journals cited most often are *Clarity* and the *Michigan Bar Journal* (which publishes the “Plain Language” column). You can find most of those articles by running a Google search for “Clarity International” or “Plain Language Column.” I’ve also added “available at” URLs to many of the citations, especially when it might not be obvious where to find an electronic version if there is one.
- I have copies of everything cited in the footnotes. If you need an item and can’t get it, I’ll try to send it to you on request (unless it’s a book).
- As a small concession to international preferences, I used periods with “U.S.” but not “UK” or “EU.”
- The book is not flooded with before-and-after examples. Short ones appear in appropriate places, and you can find longer ones to your heart’s content through the references — like those on page 5, note 1. There’s little justification these days for professing ignorance about what plain language looks like or for claiming that it can’t be done.



Four Thomas Cooley Law School graduates — Robert Webb, Kelly Stewart, Thomas Myers, and Rachel Glogowski — each spent loads of time helping with different aspects of this book. Their work was superb, and I’m heavily in their debt.

I owe others as well. Three readers — Annetta Cheek, Martin Cutts, and David Schultz — reviewed the entire

manuscript and had valuable comments on page after page. Others read and greatly improved parts of the book: Joseph Spaniol, Robert Eagleson, Michèle Asprey, Ginny Redish, Karen Schriver, and Mark Cooney. Matthew Butterick offered many suggestions that sharpened the typography. And Karen Magnuson did her usual peerless job of copyediting. To all these friends and colleagues, my heartfelt thank-you for your contributions.

Finally, a word of thanks to Cindy Hurst, my assistant for more than 25 years. She keeps the work on track — with greater equanimity than I deserve.

