

IMPLEMENTING PLAIN LANGUAGE INTO LEGAL DOCUMENTS:
THE TECHNICAL COMMUNICATOR'S ROLE

by

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ABSTRACT

This thesis discusses the benefits of using plain language in legal documents and the role technical communicators can play to help implement plain language. Although many definitions for plain language exist, it is best described as reader-focused communication that presents information in a manner that makes it easy for a reader to find, understand, and use the information. Plain language facilitates comprehension by using shorter, less complex sentences; active voice; and common words. All these elements aid in processing and understanding information, especially unfamiliar concepts.

Laypeople, unversed in the law, frequently have difficulty understanding traditional legal writing. The complex sentences, wordiness, and redundancy that characterize traditional legal writing often inhibit comprehension and become barriers to understanding. To demonstrate how plain language can improve legal writing, this thesis reviews before-and-after versions of documents that were revised to incorporate plain language as well as common documents that laypeople might encounter. The studies and research discussed in this thesis demonstrate that readers achieve greater comprehension with plain language documents.

Technical communicators, the language experts, can work with legal professionals, the content experts, to help encourage plain language use in legal writing. By emphasizing plain language use in legal formbooks, law school courses, and continuing legal education courses, plain language will become more dominant. Technical communicators can work with governments and law firms to develop and run in-house writing programs. When organizations realize how plain language can benefit them, both economically as well as in improved consumer relations, they will be motivated to adopt plain language into their legal writing.

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CHAPTER ONE: INTRODUCTION TO PLAIN LANGUAGE AND LEGALESE

The writing in legal documents often uses a formal, prescriptive format that does not take into account the audience. Because these documents affect laypeople in their daily lives, the documents should be written so they focus on their audience and communicate with them in an effective manner. When laypeople understand the extent of their rights and responsibilities, they are much more likely to respond and take a more active role in matters that affect them.

Laypeople frequently complain that they cannot understand the documents written to provide information to them. They often find the traditional legal writing in documents such as mortgages, leases, jury instructions, government regulations, statutes, consumer contracts, and agreements confusing and incomprehensible. For example, a layperson may not be familiar with the meaning of words such as “domicile,” “abutting,” or “mitigating” or may experience difficulty reading lengthy sentences containing numerous subordinate clauses. A need exists to make legal documents comprehensible to the very people they seek to serve--laypeople, unfamiliar with the law and the duties the law imposes on them.

Carol Bast, author of the article “Lawyers Should Use Plain Language,” asserts the criticisms legal writing receives about its impenetrability are well founded. These criticisms are especially relevant to “functional documents,” which Bast describes as documents written to be acted upon, such as jury instructions, contracts, and legislation. Bast feels it is paramount that legal documents, especially functional ones, be written in plain language, as “a reader cannot act on a document the reader cannot understand” (32).

Legal writing perpetuates itself. Appellate judges resolve cases by interpreting statutes and case law that is written using traditional legal writing. They repeat the cycle by using the same style of writing to issue their rulings and write their opinions. The judge's decision ends up as case law, used by attorneys on opposing sides who each assert the ruling favors the attorney's client.

If the case proceeds to a jury trial, the laypeople serving on the jury must decide the case by applying the facts, which they obtain from the evidence presented to them during the trial, to the law contained in the jury instructions. Jurors often hear complex jury instructions that they must attempt to understand and upon which they will base their decision. Often, instructions recite a verbose state statute verbatim that contains run-on sentences with numerous subordinate clauses. How jurors interpret a jury instruction in a criminal trial can impact someone's life and determine if the accused person lives or dies. Because of situations like this one, a significant need exists to increase the layperson's comprehension of legal documents directed at the layperson.

My thesis examines how the proponents of plain language can make a stronger, unified, and more concerted effort to encourage the use of plain language in legal documents and how technical communicators can help in this cause. I explore ways technical communicators can show those who produce legal documents that plain language will improve the comprehensibility of their documents for laypeople. Technical communicators possess the necessary abilities and required skills needed for this task. They are expert communicators, who have a thorough understanding of the complexities of language and a talent in working across disciplines. By

applying the solutions offered by plain language to legal writing, technical communicators can help make legal writing become reader-friendly.

In the sections that follow, I define plain language, give its history, state its goals, and describe the characteristics of legalese and traditional legal writing. This background information is important for understanding the comprehension problems that laypeople often face with legal writing and the features plain language possesses that can help resolve these problems.

Definition of Plain Language

Although many definitions exist for plain language, which is also referred to as plain English, no standardized, specific definition exists. Kevin Collins, the author of “The Use of Plain-Language Principles in Texas Litigation Formbooks,” refers to it as “effective communication” (431). Rather than defining plain language, Martin Cutts, who wrote The Plain English Guide, says he prefers to describe it. To him, plain language refers to: “The writing and setting out of essential information in a way that gives a co-operative, motivated person a good chance of understanding the document at first read, and in the same sense that the writer meant it to be understood” (3). Joseph Kimble, who wrote “Answering the Critics of Plain Language,” gets directly to the point with his definition. To him, “Plain language has to do with clear and effective communication – nothing more or less” (4).

Two Web sites devoted to plain language supply additional definitions. The Plain Language.Gov Web site says plain language presents “information in a way that makes it as easy as possible for people to understand.” The banner on the Center for Plain Language, the other Web site, proclaims its mission is to “increase the usefulness and efficiency of government,

legal, and business documents, so that the people who use those documents can quickly and easily find what they need, understand what they find, [and] act on that understanding.”

All these definitions very aptly describe plain language. Using portions of the definitions from Collins and the Center for Plain Language Web site, I would describe plain language as effective communication that allows people to find what they need, understand what they find, and act on that understanding. Foremost, plain language revolves around effective communication that is clear and understandable to its audience. People communicate to share information. For the information to be of value to the person receiving it, the recipient must be able to find, understand, and use the information he or she receives. Plain language helps the information achieve that goal.

Before discussing the goals of plain language and how it can be applied to traditional legal writing, it is important to understand its history and what precipitated the need for plain language.

History of Plain Language

While the specific origin of plain language is unknown, the movement became popular around the 1970s. However, understanding legal texts has been a problem for centuries, as Peter Tiersma, author of “The Plain English Movement,” points out.

Tiersma states in “The Plain English Movement,” that one of the first key struggles pertaining to plain English took place in England. According to Tiersma, William, Duke of Normandy, became king of England after defeating Harold, the Anglo-Saxon king, at the Battle

of Hastings in 1066. However, William and his supporters, who all spoke French, used Latin and French for their legal documents.

As time went on, even though the English population did not speak French, the lawyers in England continued to use it, much to the consternation of the English population. To quell the unhappy situation, the English Parliament passed the Statute of Pleading in 1362. This first plain English law required that all pleas use the “English Tongue.” However, the peculiarities of the language used by the English legal system did not vanish. Instead, the style continued to persist. Legal documents still display many of its unique features.

Our legal system still uses much of the language of the law the colonists imported from England, which includes the unique features. For example, in French, adjectives usually come after the noun they modify. Legal words such as “attorney general,” “fee simple absolute,” and “malice aforethought” reflect that influence (Tiersma, “The Nature of Legal Language”).

As another example, in Law French, the French that the English attorneys used, words ending in “-ee” indicated a person was the recipient or object of an action. This pattern is evident in common legal words such as “assignee,” “detainee,” and “mortgagee.” (Tiersma, “The Nature of Legal Language”). However, when paired with words ending in “-or,” the combination of these suffixes can be confusing, especially to a layperson. For example, an “assignor” assigns an interest in property, while an “assignee” is the person to whom the property is assigned. The same pairing occurs with “lessee” and “lessor” and “mortgagee” and “mortgagor” (Tiersma, “Communicating with Juries” 5-6).

While the quest to make written texts comprehensible continues, it reached a high point in the 1970s. In 1971, the Public Doublespeak Committee, which was formed by the National

Council of Teachers of English, came into existence. A year later, in 1972, President Nixon decreed that the Federal Register should be written in layman's terms (Mazur 205).

A major milestone occurred for plain language when President Carter issued Executive Orders 12,044 and 12,174 in 1978. The intent of these orders was to ensure that people could understand the regulations and comply with them (Mazur 205). These orders required federal regulations to be "as simple and clear as possible" (Tiersma "Plain English Movement"). Although President Reagan rescinded these orders in 1981, the impetus to simplify documents continued (Mazur 205).

President Clinton helped revive the plain language movement, when he issued his 1998 Presidential Memorandum. It required that federal employees use plain language and new regulations be written in clear language by January 1, 1999 (Locke). The U.S. Securities and Exchange Commission enacted its Plain English Amendment on October 1, 1998. This amendment requires that clear language be used in specific sections of prospectuses (Lowry). Federal law requires that many consumer transactions, including the Truth-in-Lending Act, Fair Credit Reporting Act, and the Magnuson-Moss Warranty Act, use clear, understandable language. (Tiersma "Plain English Movement").

The first plain language law was enacted by New York in 1978 (Tiersma "Plain English Movement") and by 1991, eight states had passed plain language statutes (Mazur 205). Since that time, more states have continued to adopt plain language. Washington State Governor Christine Gregoire entered an executive order on March 24, 2005, requiring all state agencies adopt "plain talk" principles. These principles focused on communicating clearly with the intended audience

by using short sentences, logically organized information, and active voice (Washington. Office of the Governor).

Upon taking office, Florida Governor Charlie Crist issued an executive order on January 2, 2007. This order instituted the Plain Language Initiative, which focuses on clear communication between the state government and the public (Florida. Office of the Governor). On May 17, 2007, Oregon Governor Ted Kulongoski signed a bill into law that mandates state agencies use plain language. Written documents must conform to plain language standards whenever possible by using everyday words in a clear, direct manner (Oregon State Legislature).

Today, numerous Web sites exist that help promote the use of plain language. These include the Center for Plain Language and Plain Language.Gov, whose motto is “Improving Communication from the Federal Government to the Public.” State sites also exist, such as Florida’s Plain Language Web site. All these sites encourage the use of plain language in documents used by governments, businesses, and organizations.

Goals of Plain Language

Plain language applies to the entire document, which includes its content, language, and structure as well as its design. It focuses rigorously on the audience as well as the reason for the communication (Balmford).

The purpose of a document is to impart information to its audience that they can use. A plain language document immediately makes its content clear to the audience. They do not have to re-read the document or ponder what an author was attempting to say. In addition, the

audience can immediately find the information they need in a plain language document. No additional time is wasted having to browse through the document for the information.

The design of a plain language document enhances the content of the document, rather than distracts. Its verbal and visually rhetoric work harmoniously with each other to communicate with the reader. Not only is a plain language document easy to read and comprehend, but it is visually attractive as well. Its appearance attracts readers, compelling them not only to begin reading, but to keep reading.

The Center for Plain Language says what is considered plain language for one audience may not be appropriate for another audience. The content of a document needs to be specific for its audience. A plain language document cannot be achieved by following a single guideline or technique. However, the Center for Plain Language provides some primary guidelines to follow that can apply to any audience. These guidelines include writing in reasonably short sentences; preferring active voice; using clear, informative headings; using logical organization; omitting unnecessary words; and having a readable design.

Plain Language.Gov provides an expansive list of federal plain language guidelines. These guidelines fall into four primary categories: audience, organization, writing, and testing. Although its guidelines are more voluminous and are organized somewhat differently than the Center for Plain Language's guidelines, its guidelines encompass the same principles endorsed by the Center for Plain Language that can apply to any audience.

Sentences

Plain Language.Gov says the greatest enemy of clear communication is complexity. It recommends expressing only one idea in a sentence. Sentences containing dependent clauses and exceptions can easily distract readers and make it difficult for them to focus on the main point. Instead, use short sentences to break up complex information.

Smaller units make it easier for readers to process new information. One way readers learn new information is by drawing on old information and making associations and comparisons. This old information is known as long-term memory. In contrast, a reader uses short-term memory to process new information as chunks. However, a reader can only store about seven chunks of information at a time, after which memory lapses occur (Alfred, Oili, and Brusaw 54). A complex sentence with multiple parts requires that a reader spend additional time mentally sorting through and organizing the new information into chunks.

Active Voice

A document written in active voice clearly tells who is responsible for performing an action. The person or thing that is acting is the subject of the sentence. In contrast, in passive voice, the object of the action becomes the subject of a sentence. Plain Language.Gov says passive voice, in which responsibility is obscured, is one of the greatest problems with government documents.

Passive voice may be preferred in some situations. It may be appropriate to project an aura of objectivity, to eliminate an awkward sentence structure, or to provide variety within a paragraph. Sometimes, no need exists to specify who is doing the action in a sentence.

Headings

Informative headings not only give the reader a brief summary of the information in each section. They help reveal a document's organization to readers as well. By glancing at a document's headings, the reader can obtain a brief outline of the document's layout and the sequence of information in which the information is presented.

Plain Language.Gov provides an overview of question, statement, and topic headings. It says question headings are useful for helping readers quickly find specific information that pertains to their questions. Plain language advocates tend to promote the use of question headings over the other heading types. Because question headings seem to anticipate a reader's questions, they often seem less abstract to the reader.

Statement headings, which are comprised of a noun and a verb, are also helpful in guiding a reader through a document. Topic headings, which use a word or short phrase, are considered more formal than question or statement headings.

Organization

A plain language document should group related material together in a logical sequence. Plain Language.Gov recommends organizing the material in response to the specific audience's needs. Put general information first, followed by specialized information and exceptions. This organizational pattern allows the material to address the majority of readers and situations first. Then, put material that applies to separate audiences into separate sections. By organizing the material in this way, the different audiences who use the document do not have to spend time browsing through material that does not apply to them.

Unnecessary Words

Plain Language.Gov points out that wordiness is a big problem in government writing. It recommends that writers carefully consider every word they choose to use. Documents can be shortened drastically by eliminating prepositional phrases, omitting redundant words, and deleting excess modifiers. Using pronouns and active voice also will help eliminate unnecessary words. In addition, words associated with an implied meaning that is generally known to readers can be removed from a document to eliminate excess words.

Design

According to Plain Language.Gov, document design is an important element in developing an effective document. A document that appears cluttered and dense discourages readers from using it. A plain language document uses design elements to emphasize key points for the reader. It uses short sentences and paragraphs to help break up the material visually into manageable sections. Headings, tables, and lists can replace large, nondescript blocks of text and create more white space for the reader.

Characteristics of Legalese and Traditional Legal Writing

Legalese, which is a form of jargon, is defined as the specialized language used by the legal profession (Jones 103). It is important to realize that jargon is an important component of legal language. Every profession uses jargon to varying degrees. However, when extreme forms of jargon predominant a legal text, then it obstructs communication. Sometimes, even legal professionals cannot understand the complex jargon found in some legal writing. If these

professionals encounter comprehension problems with the jargon, it is highly likely that laypeople will, too.

Plain Language.Gov says readers often complain more about jargon than other writing faults. Writers sometimes forget that the terms and phrases they understand may be difficult or meaningless to other readers. Some readers may be novices in a field. Other readers in a particular field may not be familiar with the terms and phrases used by those in a subsection of that field or not have reached the same level of expertise as the writer.

According to Bast, legalese refers to words typically found in legal documents but not used in everyday English. She adds that “terms of art,” however, are not considered legalese. Terms of art are terms that have acquired a meaning that the legal profession generally accepts. By using a term of art, such as “stare decisis,” legal writers eliminate the need to use a lengthy phrase in ordinary English (Bast 31). Terms of art make up a negligible portion of legal documents. Kimble mentions that technical terms and terms of art comprise less than 3% of a document (“Answering the Critics”); Balmford states they make up less than 2%.

Tiersma says legalese collectively refers to the features that differentiate legal language from ordinary language. According to Tiersma, those features include technical vocabulary as well as archaic, formal, and unusual or difficult vocabulary; impersonal and passive constructions; nominalizations; multiple negation; long and complex sentences; and wordiness and redundancy (“The Creation, Structure, and Interpretation of the Legal Text”).

While most people who work in the legal profession generally understand legalese, sometimes the legalese stymies even highly educated judges. In 1969, New Jersey Supreme Court Chief Justice Weintraub confessed during oral argument on a case pertaining to an

insurance policy, “I don’t know what it means. I am stumped” (Tiersma “The Nature of Legal Language”).

Traditional legal writing has been described as wordy, full of overlong sentences, and unnecessarily difficult to absorb (Plain Language.Gov). According to Peter Tiersma, most traditional legal writing encompasses one or more of the following characteristics: lengthy and complex sentences; wordiness and redundancy; conjoined phrases; unusual sentence structure; impersonal constructions; and poor word choices (“The Creation, Structure, and Interpretation of the Legal Text”).

Lengthy and Complex Sentences

Many of the sentences found in traditional legal writing contain an inordinate number of words. Tiersma asserts that one motivating factor for the excessive length may be the urge to include all relevant information for a topic in one unit. Dividing a statement or condition into two separate sentences increases the possibility that one of the statements or conditions contained in the sentences may be interpreted as separate and unrelated.

Including every contingency related to a statement or condition within a single sentence can produce not only a long sentence but a grammatically complex one as well. These sentences often contain numerous subordinate clauses with many conditions and exceptions and additional exceptions within exceptions. Often, traditional legal writing places these conditions and exceptions before the main verb, which separates the subject from the verb and object (Tiersma Legal Language 55-57).

Wordiness and Redundancy

Many legal documents are produced boilerplate from prior documents and forms. Most of the clauses already contained in the boilerplate documents are not deleted; instead, new clauses are added. Legal professionals tend to routinely reuse the wordy boilerplate clauses without thinking how the clause applies to the specific case or revising any of the language found in the clause.

Traditional legal language favors prepositional and other phrases instead of simple adverbs or prepositions. For example, a document may state “at slow speed” instead of “slowly” or use the phrase “until such time as” instead of “until.”

Tiersma says tradition often makes it difficult to eliminate redundancy and wordiness. For example, the words “will” and “testament” in the title “Last Will and Testament” are redundant, as either term will identify the instrument. In addition, the word “last” routinely is used for each will. When a new will is prepared, the first will still carries the title “last” (Tiersma Legal Language 59-60).

Conjoined Phrases

A document produced with traditional legal writing often contains words and phrases joined by the conjunctions “and” and “or.” These conjoined phrases tend to increase the document’s wordiness, as often a single word or phrase will suffice (Tiersma Legal Language 61).

Tiersma points out traditional legal writing tends to use binomial expressions five times as often as in other prose styles. A binomial expression consists of two parallel words joined by a

conjunction, such as “any and all.” In addition, legal writers often reuse the same binomial expressions repeatedly (61).

Legal writers frequently conjoin many word categories, including nouns and verbs. In addition, prepositions, such as, “*in accordance with and subject to* the agreement” are frequently conjoined. Tiersma provides the following example of conjoined verbs from a standard publishing contract: “While this agreement is in effect, the Author shall not, without the prior written consent of the Publisher, *write, edit, print, or publish*, or cause to be *written, edited, printed or published*, any other edition of the Work, whether *revised, supplemented, corrected, enlarged, abridged, or otherwise . . .*” (63).

This sentence unnecessarily repeats groups of words and uses redundant words. For example, it uses both the present and past tense of “write,” “edit,” “print,” and “publish.” Rephrasing this conjoined verb phrase to read “shall not be involved with *writing, editing, printing, or publishing*” eliminates this redundancy.

The sentence includes a group of redundant words, the synonyms, “revised,” “supplemented,” “corrected,” “enlarged,” and “abridged.” In addition, the vague phrase “or otherwise” follows the group of synonyms. While the writer attempted to include a comprehensive list of different types of revisions, the phrase “or otherwise” interjects vagueness into the phrase. To eliminate the unneeded words, the phrase could be revised to read, “any other edition or revision of the Work.”

Unusual Sentence Structure

Legal writers tend to use an unusual sentence structure with many of the clauses used in sentences. According to Tiersma, when both a prepositional phrase and noun phrase follow a verb, the common practice in modern English is to place the noun phrase first. However, legal writers often reverse the order of the phrases and place the prepositional phrase before the noun phrase. In legal texts, adverbials commonly appear before a participle. For example, a typical phrase used in legal writing might read, “herein contained” (Tiersma Legal Language 65).

Legal usage tends to separate the subject and verb as well as insert a lengthy amount of material inside the verb complex. This structure leads to a loss of comprehension. Legal writers tend to override common usage and place dependent clauses next to words that they modify or place the clause between the auxiliary verb and the main verb. For example, a typical clause in a legal text might read, “The defendant, *if dissatisfied with the place of the trial as fixed by the court*, may apply . . .” (Tiersma Legal Language 65-66).

Impersonal Constructions

Legal writers tend to phrase legal texts in an impersonal manner and rely heavily on third-person voice. According to Tiersma, many reasons exist for this practice (Tiersma Legal Language 67-68).

Documents, such as statutes, can pertain to different audiences, each with a different role. While the public must obey the statute, the statute also tells police officers what constitutes acceptable behavior and courts how they should deal with violations. By using third-person

voice, the statute can address all audiences at one time. Third-person voice eliminates the need to create a separate subsection directed at each audience (Tiersma Legal Language 67).

A similar scenario applies to contracts. Using the personal pronouns “I” or “you” in a reciprocal phrase, such as “I promise to pay to you,” creates ambiguity. Preparing separate contracts would circumvent the ambiguity. However, an easier approach is to prepare a single contract in third person that reads, “X promises to pay to Y” (Tiersma Legal Language 68).

Third-person voice gives legal writing sense of objectivity. It emphasizes the institution of law rather than an individual. This approach tends to remove the individual and minimize emotions and biases. Third-person voice also imparts a sign of respect. Attorneys frequently address judges as “your honor” or “the court” instead of “you” (Tiersma Legal Language 68).

Tiersma points out, however, that certain legal documents traditionally use personal pronouns in first or second voice. For example, most wills use first-person voice, such as, “I appoint X to be *my* executor.” Courts occasionally will use “we.” However, rather than use “we” as a personal pronoun, courts use it to refer to an “entire institution throughout time” (Tiersma Legal Language 68). This usage often occurs when a court refers an earlier opinion on a subject (68).

According to Tiersma, the features that constitute legalese almost always pertain to written legal language. While legal professionals often use terms of art when they speak, their speech does not ordinarily contain an excessive amount of legalese (“Creation, Structure, and Interpretation of the Legal Text”). They do, however, tend to use abbreviated, shortened forms of words in their conversation and in informal communications, such as email. For example, legal professionals frequently use “TROs,” “rogs,” and “depos” to refer to temporary restraining orders,

interrogatories, and depositions. Like legalese, this verbal shorthand helps bind the legal professionals together as a group.

Poor Word Choices

Kevin Collins, author of The Use of Plain-Language Principles in Texas Litigation Formbooks, states that bad legal writing also includes poor word choices. Collins groups the poor word choices found in legal writing into six main categories: 1) archaisms, 2) doublets and triplets, 3) formal words, 4) here-and-there words, 5) legalisms and lawyerisms, and 6) nominalizations (432):

Archaisms

Archaisms are outdated words or expressions still used in legal writing. Examples of commonly used archaisms include:

- “Aforementioned”
- “Comes now”
- “Know all men by these presents”
- “Pursuant to”
- “Said” (when used as a synonym for the word “the”)
- “To wit”
- “Witnesseth” (Collins 432)

Doublets and Triplets

Doublets and triplets use synonyms to help amplify legal writing. Examples of doublets and triplets include:

- “Give, devise, and bequeath”
- “Indemnify and hold harmless” (Collins 433-34)

Formal Words

While legal writing traditionally uses formal words, it tends to use these words excessively. For example, the legal profession frequently uses “this honorable court” instead of the simpler phrase “the court” (Collins 434-35). While formal words are not commonly used in ordinary language, they are used to denote authority and present solemnity in legal writing. In addition, they often act as signals to mark the beginning and ending of legal documents. For example, the phrase “comes now the plaintiff” frequently appears at the beginning, while the phrase “wherefore, the plaintiff prays for relief” or the word “respectfully” often appear at the end (Tiersma Legal Language 100-01).

Here-and-There Words

According to Collins, here-and-there words, which are relics from Old and Middle English, often are used to help establish an abbreviation, such as “The Plaintiff, All Because Concise (hereafter ‘ABC’)” or point attention to a truncated name, such as “The Defendant, Prince Charming Company (hereinafter Charming).” However, common practice now lets parentheses suffice for both abbreviations and truncated names. In addition, “hereafter” can mean from this point forward or at a future time. In the case of the word “herein,” the context

determines its meaning; however, it is not always obvious whether “herein” refers to a clause, sentence, paragraph, or entire chapter. Collins asserts it is best to be precise and eliminate any ambiguity by making exact references (435-36).

Legalisms and Lawyerisms

Legal professionals frequently use words and phrases without a substantive purpose, even though an ordinary word or phrase would be sufficient to convey the meaning. For example, they often use:

- “Abutting” instead of “next to”
- “Aforementioned” instead of the specific term
- “On or about” instead of either “on” or “about”
- “Subsequent to” instead of “after”
- “Pursuant to” instead of either “under” or “in accordance with” (Collins 436-37)

Nominalizations

Changing a verb into a noun by adding a suffix such as “-tion,” “-sion,” “-ment,” “-ence,” “-ance,” or “-ity” creates a nominalization. In addition to requiring the use of prepositional phrases and “to be” verbs, which add extra words, nominalizations can make writing abstract. Examples of nominalizations include:

- “Arbitration”
- “Compulsion”
- “Amendment”
- “Dependence”

- “Reliance”
- “Conformity” (Collins 437)

As these poor word choices show, it is important the legal writers carefully consider their choice of words. As with any writing, a writer needs to use the words that will best serve the readers’ needs. Rather than focus on a readability formula that specifies how many words a sentence should contain and how many syllables should comprise each word, the writer should instead concentrate on how easy it is for readers to access and comprehend the information they need.

Many legal concepts by themselves are difficult to grasp. However, adding long, complex sentences and using unfamiliar terminology in legal documents makes it even more difficult for a layperson to understand his or her rights and obligations and comply. Instead of connecting a writer to his or her audience, the dense prose of legalese tends to alienate the audience from the writer.

Because a document written in plain language is reader-focused, its readers do not experience the same comprehension problems as readers of traditional legal documents. Its content, word choices, structure, and design all focus on the reader, which allows the reader to easily understand the message the writer intended to communicate.

The chapters that follow explain in more detail why laypeople experience comprehension problems with legal documents and how technical communicators can help those who write legal documents use plain language to solve those comprehension problems. In Chapter Two, Review of Literature on Plain Language, I examine what other authors have to say about style and plain language, the perceived benefits and disadvantages of plain language, and issues that are unique

to legal writing. Many legal documents that laypeople commonly use contain textual and design elements that make the documents difficult for laypeople to read and understand. In Chapter Three, Methodology, I explain the criteria I used to select and examine these elements that are found in documents that laypeople frequently use. Then, in Chapter Four, Findings from Analysis of Legal Documents, I analyze the documents to ascertain what elements may present comprehension problems. In the conclusion, Chapter Five, I point out some of the perceived difficulties in implementing plain language, discuss the results of studies that have been conducted on plain language, and point out how technical communicators can assist in promoting plain language and encouraging its use.

CHAPTER TWO: REVIEW OF LITERATURE ON PLAIN LANGUAGE

In this literature review I discuss how prior research has demonstrated that plain language can help laypeople understand the writing used in legal documents. The books and articles I selected encompass a time span of approximately 90 years, beginning in 1919, with a large portion of them written in the late 1990s to the present. They reflect a broad range of views from respected authors, such as William Lutz and George Orwell, on effective communication principles, the components of plain language, and the distinctive characteristics of legal writing. Legal writing often covers complex subjects using long, verbose sentences with obscure subjects and passive verbs. The authors I review explore the problems laypeople encounter comprehending legal writing and look at ways that plain language can help remedy these problems.

My literature review focuses on three primary areas: 1) style and plain language, 2) benefits and disadvantages of plain language, and 3) legal writing issues. First, I provide a broad overview of style issues that affect writing. Many of the authors in this section discuss the ongoing comprehension problems that have plagued writing for decades. Then, I look at how the proponents of plain language say it can help remedy these problems. I also examine what plain language's opponents assert. These opponents feel legitimate reasons exist not to use plain language, especially in legal documents. Last, I isolate issues that are unique to legal writing, such as jury instructions and wills. For example, wills have a unique style of writing that must follow their mode of execution.

Style and Plain Language

The first area of my literature review pertains to style and plain language. The authors I discuss in this section focus on effective writing principles and style issues. Before plain language gained a title and became recognized as a movement that promotes clear, easy-to-understand language, efforts were already underway to reform writing practices.

To understand some of the problems with traditional legal writing, it is important to understand how they originated. Tiersma asserts that “to some extent, legal English is indeed a product of its history (“The Nature of Legal Language”). Two of Tiersma’s articles, “The Nature of Legal Language” and “The Plain English Movement,” contain sections that focus on the origins of legal texts.

As mentioned in Chapter One of this thesis, problems with legal texts began in 1066 with the defeat of Harold, England’s Anglo-Saxon king. When Harold’s conqueror, the French-speaking William, Duke of Normandy, ascended the throne, England’s legal documents began to be written in Latin as well as French (“The Plain English Movement”).

Remnants of French and Latin continue to exist in legal texts today. For example, “caveat emptor” (meaning, “let the buyer beware”) is a survivor of many of the Latin sayings and maxims about the law that English lawyers and judges used. The French placement of adjectives after nouns is evident in the term “letters testamentary,” a common probate term. Legal professionals continue to create new words, such as “detainee,” based on the Law French pattern of using “-ee” at the end of words to denote someone receiving an action (“The Nature of Legal Language”).

William Strunk and George Orwell, forerunners of the current plain language movement, stress effective writing principles and endorse a simple, plain style that readers will find easy to comprehend. However, elements such as jargon and double-speak often negate these principles and produce writing that is difficult to understand. Strunk, one of the authors of The Elements of Style, felt writing that was specific and concise and avoided vague, needless words was the most effective way to grab and hold a reader's attention (21, 23). He advocated that writers put their statements in positive form, rather than negative, and use active voice and concrete words to express themselves (18-19, 21). Plain language endorses these same principles. They are as valid today as when Strunk first endorsed them in 1919, the year he privately printed the first edition of The Elements of Style (xiii). Yet, writers continue to violate the same fundamental composition principles that motivated Strunk to write his book.

Approximately 27 years after Strunk's attempt to reform language, George Orwell used his 1946 essay, "Politics and the English Language," to lament what he felt was the decline of English. According to Orwell, English, especially the modern, written form, had acquired "bad habits." He asserted that vagueness and incompetence constituted one of the main characteristics of this decline. While Orwell worried that the persistent misuse of English would cause the bad habits he saw to spread as more people began to imitate them, he also felt ways existed to cure the decline. To remedy the problem, he endorsed using fundamental composition principles, such as active voice and substituting an everyday English equivalent word for jargon or a scientific term.

According to George Hathaway, author of a plain language column in the Michigan Bar Journal, David Mellinkoff is credited with starting the modern plain language movement in the

law. Mellinkoff's 1963 book, The Language of the Law, endorsed using "the common speech, unless there are reasons for a difference" (Hathaway). According to Tiersma, Mellinkoff used his book to point "out the many absurdities of traditional legalese" ("Plain English Movement"). For example, Mellinkoff "smelled legalese" in a 1981 New York law that required consumer agreements use "words with common and everyday meanings." To Mellinkoff, the words "common" and "everyday" were redundant (Martin). Mellinkoff wrote two additional books, Legal Writing: Sense and Nonsense in 1982 and Mellinkoff's Dictionary of American Legal Usage in 1992; together, his books provide the foundation for the movement (Hathaway).

Christopher Lasch took the same approach as Strunk and Orwell. In 1983, Lasch, concerned about the dismal writing abilities of his University of Rochester graduate students, gave them copies of Strunk and White's The Elements of Style and George Orwell's essay, "Politics and the English Language" (Lasch 1). However, despite the book and essay, his students' composition errors continued to persist. To remedy the problem, Lasch decided to publish his own book, Plain Style: A Guide to Written English, a book described as indispensable to writing and a "worthy successor" to The Elements of Style (Lasch 3). Like Strunk and Orwell, Lasch uses his book to advise writers to avoid passive voice, abstract language, and jargon. To Lasch, passive voice is "inert, lifeless, and evasive" (77). He gives jargon similar quantities, saying it kills general conversation and separates a speaker from his or her audience. The audience perceives a speaker who uses unfamiliar jargon as someone who possesses unknown secrets and speaks a different language (79).

The plain language movement stresses the same composition principles that Strunk, Orwell, and Lasch endorsed to produce clear, concise writing that readers can understand. Plain

language targets recurring language problems that can intentionally and unintentionally create comprehension problems. These language problems include excessive use of jargon as well as poor sentence structure and overuse of passive voice.

The book, Beyond Nineteen Eighty-Four: Doublespeak in a Post-Orwellian Age, focuses on doublespeak, a word Dan Jones, author of Technical Writing Style, describes as “a useful umbrella term for any kind of deceptive language” (Jones 132). In “Notes Toward a Definition of Doublespeak,” one of the essays found in Beyond Nineteen Eighty-Four, its author, William Lutz, points out that jargon has legitimate uses, such as when attorneys use it to speak to each other. However, jargon quickly changes to doublespeak when the same words are used to communicate with someone who does not understand the specialized language of the law. When jargon changes to doublespeak, it becomes a language that restricts thoughts rather than expands them (Lutz 4). As society has developed, so have the recurring misuses of language, such as jargon, but on a greater scale.

Lutz states that anyone who uses language should be concerned about whether the statements and facts agree (Lutz xi) and whether language, to use Orwell’s words, “consists largely of euphemism, question-begging and sheer cloudy vagueness” (Orwell “Politics and the English Language”). Orwell also questioned whether language was “designed to make lies sound truthful and murder respectable, and to give an appearance of solidity to pure wind” (“Politics and the English Language”).

Orwell felt writing frequently lacked imagery and precision and habitually contained “dying metaphors,” “operators or verbal false limbs,” “pretentious diction,” and “meaningless words.” He stated writers often did not understand the metaphors they used or used incompatible

metaphors. For example, Orwell stated, “toe the line is sometimes written as tow the line.” According to Orwell, this type of misuse could be eliminated if writers took the time to think about what they were writing (“Politics and the “English Language”).

Orwell stated that “operators or verbal false limbs” eliminated the need for writers to select appropriate verbs and nouns. This type of writing used passive voice, nominalizations, and phrases instead of verbs. By eliminating simple verbs, a writer gave a sentence extra syllables, which the writer then used to project an aura of symmetry. For example, writers used phrases such as “make contact with,” “give grounds for,” and “serve the purpose of” (“Politics and the “English Language”).

Orwell also felt pretentious diction clouded writing. To Orwell, writers used words such as “utilize” or “constitute” to adorn their statements and project “scientific impartiality” to their biased judgments. He felt foreign words and expressions, which writers used to give their writing an image of “culture and elegance,” and a preference for Greek words over Saxon words increased vagueness (“Politics and the “English Language”).

According to Orwell, certain types of writing, particularly art criticism and literary criticism, often used meaningless words, such as “values” and “natural.” In other instances, words may have multiple meanings that cannot be reconciled, such as “democratic,” “progressive,” and “equality” (“Politics and the “English Language”).

Orwell said modern prose tended to be stale and to lack imagination. Rather than select words based on their meaning and invent images to strengthen that meaning, writers tended to use phrases created by other people. While this practice was easier and quicker for the writer, it also caused vagueness (“Politics and the “English Language”).

Lutz asserts that the pervasive misuses of language now taking place would surprise even Orwell (xii) and believes that a good percentage of the misuses of language that Orwell wrote about in his novel Nineteen Eighty-Four and his essay “Politics and the English Language” have already occurred (xii).

Frank D’Angelo, author of another essay in Beyond Nineteen Eighty-Four, “Fiddle-Faddle, Flapdoodle, and Balderdash: Some Thoughts about Jargon,” feels as Lutz does about jargon. D’Angelo describes jargon as a “social disease,” one with far-ranging effects upon society (121). According to D’Angelo, jargon affects almost all professions and occupations; very few of them are immune from it and able to escape its clutches (122). He asserts that legal prose, which he describes as “legalese” once it becomes tainted and contaminated by the effects of jargon, also exhibits symptoms of social decay and disorder (123). Laypeople generally have a difficult time understanding legalese. However, as D’Angelo’s essay points out, the problem extends beyond laypeople. Lawyers and judges are now starting to become concerned that others may misunderstand them and becoming aware that at times they cannot even understand each other (123).

In addition to having no uniformly accepted definition, plain language has no specific rules stating exactly how or to what degree a writer should implement plain language into a document. Thus, it is up to each writer to decide how many, if any, plain language features he or she should include. Some writers reject plain language principles completely, preferring instead to write using passive voice, jargon, and complex sentences. Other writers readily incorporate plain language principles into their documents. They follow plain language guidelines, which encourage writers to focus on their audience and structure their writing so the audience can

easily understand it. The guidelines promote the use of active voice, a simple sentence structure, and first- or second-person voice by using pronouns such as “you” and “we.” They also stress adjusting vocabulary to the audience and eliminating jargon.

According to Dan Jones, author of Technical Writing Style, “A *plain style* is a style that is straightforward and easy to understand” (52). This style uses simpler words, avoids complex sentences, and commonly uses first- or second-person voice (52). These elements all work together to help a writer achieve his or her goal of communicating effectively with the audience. However, if the writer uses unfamiliar or pretentious jargon, it circumvents this goal (126). Plain language focuses on audience and making writing easy for a reader to read and comprehend. Jones questions the repercussions on society when a writer deliberately ignores his or her audience and overwhelms the audience with jargon (129). He reminds his readers that writers need to “remember they are writing for people” and focus on “what the reader needs to know” (11).

Just as Jones stresses the importance of audience, a plain language document focuses foremost on its audience. Martin Cutts focuses on how important it is for a writer to put the reader at the forefront and how this principle is germane to plain language. Cutts, author of The Plain English Guide, defines plain English as “The writing and setting out of essential information in a way that gives a co-operative, motivated person a good chance of understanding the document at first reading, and in the same sense that the writer meant it to be understood” (3). A plain language document uses words that are familiar to its audience, presents the information logically, uses an appealing layout and design, and, most importantly, understands its audience’s needs. No matter how elaborate or sophisticated the writing is in a document or

how high the quality of its illustrations, it is important that the writer focus on the reader and make sure the reader is able to comprehend the information the document contains.

While aids, such as guidelines and readability formulas, are helpful, they alone cannot indicate if a document has successfully conveyed its information clearly to a reader. Martin Cutts sets out guidelines for writers to follow in The Plain English Guide. However, Cutts is careful to emphasize that his guidelines are not inflexible rules. For example, Cutts says, while guidelines encourage an average 15- to 20-word sentence length, no rule specifically prohibits exceeding the recommended word count; while writers should use words their readers will understand, no rule prohibits writers from using technical terms (2). Writers should evaluate each situation according to their audience and use the most effective means available to present the information in a way that will help the audience understand it. Perhaps the audience is one that uses a technical term or expression routinely; maybe adding five more words to a sentence will aid in understanding a concept.

Beth Mazur's article, "Revisiting Plain Language," assesses the progress plain language has made since the concept of assuring "the orderly and clear presentation of complex information" (207) was first introduced. Mazur discusses the origins of plain language, beginning with the original plain language proponent in the United States, Stuart Chase. Chase used his book The Power of Words, published in 1953, to complain about the "gobbledygook" found in texts (205). Mazur refutes many of the current criticisms of plain language, pointing out that plain language is not a one-size-fits-all approach of using simple words and sentences. Like Cutts, Mazur also argues that plain language cannot be reduced to a series of rigid rules (209). Rather, it uses guidelines based on the context and uses the judgment of the writer. Each writer

needs to assess the situation to assure that he or she presents the information to the audience in a straightforward, clear, precise manner appropriate for the audience. For plain language to succeed, Mazur cites suggestions made by Redish, who says plain language's proponents need to begin increasing awareness of the problems caused by traditional documents, understand the cause of the problems, develop and apply solutions to the problems, and teach other people how they can apply the solutions (Redish "The Plain English Movement" 136).

Martin Cutts asserts that not only does misunderstood or half-understood information waste time and money, it also puts people at a disadvantage and oppresses them (2). He promotes the use of plain language, asserting that clear documents can help people receive fair treatment and justice as well as access benefits and services (8). This concept is especially relevant for people who are not native speakers of English. These non-native speakers may be unfamiliar with many of the available services and benefits that native speakers take for granted or may not understand the meaning of a particular law or rule. Using a confusing idiom or slang expression that does not provide a direct word-for-word translation often makes it more difficult for non-native speakers to decipher a document's meaning.

Emily Thrush, author of the article "Plain English? A Study of Plain English Vocabulary and International Audiences," points out, as Mazur did, that plain language cannot take a one-size-fits-all approach. This concept applies both to native speakers of English and non-native speakers. Thrush investigates the special problems non-native speakers encounter with English translations, since many people in the United States use a primary language other than English and a substantial amount of documents are prepared for international audiences (295).

Thrush uses her article to examine whether plain language can be used as an effective strategy for improving the reading comprehension of non-native speakers of English. She asserts writers should localize plain language according to the specific audience and says many of the plain language approaches that successfully work with native speakers cannot be applied to non-native speakers of English (295). One study that Thrush discusses in her article indicates that non-native speakers frequently have trouble understanding phrasal verbs, which are verbs composed of two words, such as “pull up.” Although native speakers may easily understand phrasal verbs, Thrush points out it is often difficult for non-native speakers to determine the meaning of phrasal verbs using a direct translation of the individual words (293). In another study, Thrush examines the plain language recommendation to replace Latin-based words with Anglo-Saxon equivalents. While this recommendation will aid the comprehension of native speakers of English, many speakers of Latin-based romance languages may encounter difficulty understanding the replacement Anglo-Saxon words (292). Both these studies emphasize that a uniform approach cannot be applied to plain language, as each audience and situation is different.

A recent article in The Wall Street Journal, “Plain English Gets Harder in Global Era,” highlights the inherent difficulties involved with assuming non-native speakers of English will understand a document simply because it has been written in plain language. The article’s author, Phred Dvorak, cautions that even though non-native speakers understand English grammar and vocabulary, they may not grasp the writer’s intended meaning. Many of the nuances of English that native speakers of English use, such as slang, metaphors, and the phrasal verbs mentioned by Thrush, can be difficult for non-native speakers to understand. To illustrate his point, Dvorak

says sometimes the word “like” is taken as a preference rather than as a demand. In one case, things were not done on time because the word “like” was interpreted as a preference. For example, the statement, “I’d like some water,” which native speakers of English interpret as a preference, was given the same meaning as the statement, “I’d like it done by the end of next week,” which native speakers interpret as a demand. Writers need to be explicit and watch out for ambiguous words and phrases that may cause confusion.

The Professional Writer: A Guide for Advanced Technical Writing by Gerald Alred, Walter Oliu, and Charles Brusaw, provides a broad range of advice to professional writers. Chunking is one of the topics covered in this book. Chunks are separate units of information, such as steps in a process or items in a bulleted list. When writing a document, a writer needs to remember that a reader can only store about seven chunks of information before the reader’s memory begins to suffer (54). To eliminate the possibility of memory overload, the writer should reclassify the items of information into groups or divide them into subgroups.

Chunking affects all readers, both native speakers of English and non-native speakers. It increases their comprehension by allowing them to easily access and retrieve information. This concept helps reinforce plain language’s recommendation to use short sentences rather than lengthy sentences with numerous subordinate clauses.

Christopher Balmford, author of “Plain Language: Beyond a ‘Movement,’ Repositioning Clear Communication in the Minds of Decision-Makers,” takes a different approach and looks at plain language from the perspective of a brand. In this view, the brand becomes synonymous with an organization’s reputation. Whether the brand is a tangible product or intangible service, the brand identifies the organization and sets it off.

Consumers identify organizations with the benefits they can derive by purchasing the organization's product or service. To establish a brand, the product or service must stand out from its competitors and deliver what the organization promises.

The documents produced by an organization become the organization's brand. An organization that produces understandable documents will gain an advantage over its competitors. A consumer who receives a document with information that he or she can understand and use will return to that organization and encourage other people to use it.

Balmford feels plain language has moved beyond being classified as a trendy movement aimed primarily at consumers. To Balmford, this approach diminishes plain language's acceptance and implementation by organizations. Plain language needs to move to a new level directed at the decision makers in organizations. They should perceive their documents as the voice of their organization's brand. For organizations that produce intangible products, such as law firms, Balmford says it is especially important that their documents project an image that indicates they are interested in how their clients perceive them. Much legislative and judicial writing is incomprehensible to laypeople, seriously weakening the layperson's respect for laws and the legal profession. Balmford says merely eradicating jargon or restructuring a document's sentence structure will not produce a clear legal communication.

Balmford gives yet another definition of plain language, saying that rewriting a document in plain language, "involves rethinking the entire document—its content, language, structure, and design—while rigorously focusing on the audience and the purpose of the communication." He says allowing people to visualize themselves in the situation the law addresses is one way to accomplish this goal. For example, a writer can use personal pronouns, such as "you" and "we,"

to help a reader envision himself or herself in the situation or use question headings to make it appear the writer anticipated the reader's question.

As Balmford asserts, plain language involves the entire document, which also includes its design. Document design contributes to a document's visual rhetoric and is an important feature in motivating someone to read a legal document, especially a layperson who may be easily intimidated by the document's formal style. Janice Redish, author of "What is Information Design?" describes information design as both the overall process of developing a document that is successful and the way information is presented on a page or screen, including the layout, typography, and color. Redish stresses information design's purpose is to create a document that works for its users (163).

The question headings Balmford referred to are one of the components of document design. Wayne Schiess, author of "What Plain English Really Is," includes a list of ten important plain English principles in his article. In addition to word and sentence length, he includes document design components. Among these principles are headings, which Schiess says help to organize a document, as well as typefaces and type sizes (71). Schiess also includes lists of plain English principles from other plain language advocates in his article, including those of Joseph Kimble. In "Writing for Dollars, Writing to Please," Kimble says it is important to pay attention to a document's appearance. The typeface, line length, and amount of white space used will all affect how a reader perceives a document. In addition, he says to use headings liberally; group related ideas together in a logical sequence; use examples, tables, and charts; and use lists at the end of sentences when multiple conditions, consequences, or rules exist (Schiess 73-74). A

visually pleasing, well-designed document will motivate a reader to read the material as well as help the reader easily find the information he or she needs in it.

Colin Wheildon's book, Type & Layout: Are you Communicating or Just Making Pretty Shapes, discusses the results of his extensive empirical research involving reading comprehension and document design. According to Wheildon, design is "part of the business of communication" (27). Good design should encourage reading and hold the reader's interest rather than distract and obstruct it.

Wheildon discusses the design elements that his research shows aid in reading comprehension. His research provides some surprising results by confirming some popular assumptions about design elements and comprehension and disproving others. For example, plain language guidelines recommend using a serif font for body text. Wheildon's research confirms body text in a serif font will improve reading comprehension (48). However, his research challenges the widely held assumption that italic is not as effective as bold print for calling attention to a portion of body text. According to Wheildon's research, italic text does not significantly affect reading comprehension and is more effective than bold print (53).

While Wheildon provides advice on effective document design that aids reading comprehension, Corey Wick gives advice about how best to utilize the core competencies of technical communicators in his article, "Knowledge Management and Leadership Opportunities for Technical Communicators." Wick, states that technical communicators are "*expert communicators*" (524). This attribute puts technical communicators in a unique position to help legal professionals implement plain language into their documents.

Benefits and Disadvantages of Plain Language

The second area of my literature review looks at what plain language's proponents and opponents say are the benefits and disadvantages of using plain language in legal documents. While most of the authors I review support plain language, others dispute plain language's effectiveness and contend that situations exist when it is not appropriate to use plain language. Those who oppose plain language do so to varying degrees. Some vehemently oppose most of its features, while others limit their opposition to a specific aspect of plain language.

Jacqueline Dorney's article, "The Plain English Movement," focuses on federal and state governments' endorsement of plain language. Dorney looks at how governments have incorporated plain language into their documents and encouraged its use. Many state and federal governments and their agencies have passed laws regulating how documents, such as consumer contracts, should be written. For example, the U.S. Securities and Exchange Commission as well as Florida's government have endorsed plain language. Dorney discusses the benefits organizations can derive from implementing plain language, such as increased consumer understanding and a decrease in inquiries asking for clarification. However, she cautions plain language must be implemented carefully, as decreased reading comprehension can occur when text becomes oversimplified and departs from plain language principles (50).

Communications Nova Scotia, a Web site focused on plain language in Canada, provides an example of the benefits a Citibank in New York obtained from plain language. When the Citibank rewrote a promissory note in plain language, it saw a drop in litigation pertaining to the note. It also saw growth in its customer base. According to Communications Nova Scotia, Citibank's understandable loan literature enticed customers to it. Because customers could easily

understand the terms and conditions of the promissory note, the bank attracted their interest and gained their respect.

Another communication from Canada, an article titled “Plain Language for Business Lawyers,” by Cheryl Stephens provides an excerpt from a February 1991 address before The Business Law Section of the Canadian Bar Association. The excerpt outlines the conclusions and recommendations reached by the Joint Committee on Plain Language of the Canadian Bar Association and Canadian Bankers’ Association. The Joint Committee’s final report, *The Decline and Fall of Gobbledygook*, recognized that much of the information in legal, business, and government documents can have important consequences for the people who read them. According to the committee, documents written in plain language can help improve the public’s access to the law and create an informed public. One of the committee’s many recommendations encouraged Canada’s governments to set an example for the private sector by adopting plain language techniques to draft legislation, regulations, and government forms.

The U.S. Government’s Web site, Plain Language.Gov encourages federal government agencies to endorse plain language. According to its banner, Plain Language.Gov is dedicated to “improving communication from the Federal Government to the public.” The site also serves as a repository of helpful information for businesses and organizations in the private sector. Among the resources it provides are before-and-after comparisons of documents revised to use plain language, tips and guidelines, and links to books, articles, and journals.

The Plain Language.Gov site contains many articles that discuss the benefits plain language offers. One article, a December 2006 article by Rachel La Corte, “Washington State Workers Tell It Like it Is,” pertains to the Washington State Department of Revenue. When this

government agency implemented plain language into a letter that it sent to taxpayers, the number of businesses that paid the state's "use tax" tripled over a two-year period.

Another article, "Lending Lingo" written in June 2007, also focuses on plain language's benefits. However, this article focuses on what happens when legal documents do not use plain language. Without the benefit of clear language, one mortgage holder ended up refinancing his conventional mortgage to an adjustable mortgage with "an exploding" interest rate. The complicated legal language found in many mortgages is difficult for native speakers to understand. Non-native speakers with a limited English proficiency become especially vulnerable to ending up with loans containing terms they do not fully understand. They can easily become targets of an unscrupulous lender.

Besides setting forth the basic facts and principles of plain language, the Web site for the Center for Plain Language emphasizes plain language's benefits. These benefits include helping people quickly find what they need, which saves both the writer and reader time and money. Some of the site's most valuable features are links to other plain language resources and recent events and news that also stress plain language's benefits.

One of the articles on the Center for Plain Language site, "Center for Plain Language Symposium Focuses on Research, Identifies Tools for Action," discusses the results of the Center's November 2006 symposium. This symposium focused on how best to promote the benefits of plain language. The attendees brainstormed about new ways to convey information about plain language to a broader, more diverse audience. Some of the ways attendees proposed to accomplish this goal included identifying plain language's benefits for various audiences and

developing case studies of plain language's success as well as publicizing the costs of failed communications, both financial and otherwise.

Another article on the Center for Plain Language site also focused on getting companies to adopt plain language. However, its focus was on compliance. The October 2007 article by Megan Barnett, "S.E.C. Sends Lawyers Back to English Class," discusses the problems the U.S. Securities and Exchange Commission experienced with companies putting their compensation disclosure requirements in plain language. The Commission's feedback concerning the requirement indicated companies needed to put an additional focus on helping readers understand the information and continue thinking about how to organize and present the information to both laypeople and professionals.

The Center for Plain Language's site refers to governmental efforts to use plain language in Florida. One of the noteworthy items is a link to the Web site created by Florida Governor Crist for Florida's Plain Language Initiative. This initiative seeks to make the state's government responsive to its citizens and communicate with them in a clear, easy-to-understand manner. It mandates that each state agency should adopt a plan to implement plain language guidelines and standards. Governor Crist's January 2, 2007, Executive Order implementing the Plain Language Initiative states that all the plans should provide documents that include:

Clear language that is commonly used by the intended audience; only the information needed by the recipient, presented in a logical sequence; short sentences written in the active voice that make it clear who is responsible for what; and layout and design that help the reader understand the meaning on the first try (including adequate white space, bulleted lists, and helpful headings). (4)

The U.S. Securities and Exchange Commission also implemented a plain language directive. Because the Commission realized how important it was that readers be able to comprehend documents that affect them, it implemented a Plain English Amendment on October 1, 1998. This amendment requires public corporations and investment management companies to use clear, readable language in the most critical sections of their prospectuses (Lowry). Rule 33-7183 of this amendment requires the cover pages, summaries, and risk factors of each submitted prospectus be written in plain language (DuBay).

A Plain English Handbook: How to create clear SEC disclosure documents, edited by Nancy Smith, focuses on helping people comply with the U.S. Securities and Exchange Commission's plain language requirement. In addition to providing tips on how to use plain language in a document, the book also includes ways to effectively organize and design documents using five basic design elements used to create a plain language document: hierarchy or distinguishing information levels; typography; layout; graphics; and color (38). One of the more practical aspects of this book are the before-and-after samples of disclosure documents the handbook includes. These samples, from companies that include MBNA American Bank, Premium Cigars International, Ltd., and General Motors Corporation, contain marginal notes showing how applying plain language principles made the documents more clear and concise and easier for readers to understand.

Christopher Cox, chairman of the U.S. Securities and Exchange Commission, used his October 12, 2007, keynote address to the Center for Plain Language Symposium, to discuss the agency's plain language requirement. He noted the verbose writing commonly found in investor

communications wastes investors' time. After unsuccessful attempts to decipher the legal jargon, investors frequently become discouraged and eventually discard the communication.

One of the goals of the agency's plain language requirement is to motivate investors to read the communications they receive, as the information makes those investors more informed and able to make better decisions. In addition to making a document easy for an investor to read, Cox noted that plain language helps an investor discern the truth about a company. Using the Enron scandal as an example, Cox points out that the legalese and jargon commonly found in investor documents not only is difficult to read, but it can be used to disguise wrongdoing. Plain language helps counteract attempts to create cover-ups by opening up companies to public scrutiny, making their transactions more honest and thereby increasing investor confidence.

While plain language advocates discourage the use of legalese and jargon, sometimes other elements they also discourage using, such as passive voice, are looked on favorably. Brady Coleman, author of the article, "In Defense of the Passive Voice in Legal Writing," advocates the use of passive voice in legal writing. He says writers should consider using passive voice for necessity, stylistic effectiveness, and rhetorical strategy. Sometimes passive voice is necessary to avoid creating an awkward sentence that is difficult to understand. Passive voice can also add stylistic effectiveness by helping unify paragraphs and make them more coherent. As a rhetorical strategy, passive voice gives legal rulings objectivity. By disguising the actor in a sentence, the judge helps impart a sense of impartiality and objectivity. Passive voice also helps distract attention. Perhaps an attorney needs to deliberately create ambiguity to distract attention from something unfavorable to the attorney's client (194-99). In response to criticisms such as Coleman's, Joseph Kimble, author of "Answering the Critics of Plain Language," acknowledges

that situations do occur when passive voice is preferable over active voice. However, he asserts that criticisms, such as Coleman's, are non-issues and restates Cutts' assertion that plain language uses "guidelines, not inflexible rules" (66).

Alfred Phillips, author of Lawyers' Language: How and Why Legal Language is Different, opposes some of the features of plain language. His view is similar to David Crump, another proponent of plain language. Crump and Phillips both feel that replacing traditional legal writing with plain language can actually cause confusion. Phillips asserts that any gains in comprehensibility will offset the "precision and internal consistency" (37) of legal writing.

Terrill Pollman uses her Marquette Law Review article "Building a Tower of Babel or Building a Discipline? Talking about Legal Writing," to explore legal jargon and look at its pros and cons and how it functions within the legal community. She asserts that jargon is beneficial, as it provides the legal community with a common language that enhances their communication. She adds that while some people may find jargon confusing, other people see it in terms of prestige within the legal profession (920). Despite the positive aspects of jargon that Pollman advances, she admits that it does cause comprehension problems in legal writing. However, Pollman asserts these problems are negligible and do not outweigh jargon's benefits (892).

Pollman says current legal writing practices tend to place a greater emphasis on rhetoric and audience. This "New Rhetoric" has exerted an influence on the current pedagogy of legal writing, creating a new jargon that others already in the legal profession may not understand (910). However, Pollman asserts this new jargon is beneficial because it arises to fill a need, it helps build an emerging area, and it facilitates a more sophisticated communication level (924).

Her insights into the benefits and drawbacks of using jargon help provide an understanding about why the legal profession continues to use legalese despite the increased use of plain language.

David Crump, yet another opponent of plain language and the author of “Against Plain English: The Case for a Functional Approach to Legal Document Preparation,” echoes many of the same assertions made by Coleman and Phillips. Like Phillips, Crump contends that plain language may disrupt the conventions established by the legal discourse community and ultimately lead to confusion. Crump feels that emphasizing easy comprehension may jeopardize a document’s quality and interfere with its integrity (717). While Crump agrees that a lawyer should prepare jury instructions so laypeople can easily understand them, the possibility of later appeals negates this need. According to Crump, after a jury reaches a verdict, disagreements may take place over the accuracy and completeness of instructions that use plain language. As a result of this possibility, Crump feels that accurate, complete jury instructions should override any concerns about producing easy-to-comprehend instructions (724).

To solve the comprehension problems that traditional legal writing creates, Crump advocates an attorney prepare two types of documents, a preservation document and a persuasion document. The document chosen would depend on the issue. The preservation document would use traditional legal writing and, according to Crump, would not be subject to routine reading or need to persuade anyone. Documents in this category include wills, jury instructions, or affidavits supporting search warrants. Crump feels a preservation document should focus on resolving potential problems unambiguously, rather than how easy it is for someone to read. Crump asserts the other category, persuasion documents, such as a letter to a client about the progress of the client’s case, would not have completeness or precision as its major objectives.

Rather, the persuasion document would use plain language and would be exceedingly clear and understandable (717).

Wayne Schiess, author of “What Plain English Really Is,” feels that an attorney should prepare two types of documents, as Crump suggested. However, Schiess does not refer to the documents as preservation and persuasion documents. Instead, Schiess calls persuasion documents “analytical documents” and preservation documents “drafted documents.” In addition to referring to the documents by different names, Schiess describes them differently. According to Schiess, “lawyers *write* memos, briefs, and letters,” while “they *draft* instruments, agreements, and legislation” (44).

Schiess does not agree with Crump’s strong assertion that some documents should use plain language, while others should not (45). Rather, Schiess says, writers should make their decision on whether to use plain language based on the document and the audience (45). For example, an audience comprised of judges and attorneys will most likely understand the legal jargon contained in a document, while a group of laypeople reading the same document will need the terms defined. The different degrees to which Crump and Schiess advocate using plain language illustrate some of the different perspectives concerning the extent to which legal documents should use plain language.

According to Schiess, “This goal—that the people affected by legal documents actually be able to comprehend them—is at the heart of the plain-English movement” (53). He asserts that legal words are not any more clear or precise than the words used by plain language (59). Because traditional, non-plain English often requires more words, Schiess says it frequently causes things to become even more ambiguous (59). Schiess proposes eliminating ambiguous

words or phrases that result in litigation. He considers these types of words or phrases vague, rather than precise. For example, the phrase “proper circumstances” could be construed in a variety of ways. The quality of vagueness allows the word or phrase to take on different meanings, depending on the context in which the word or phrase is used. Schiess questions the validity of reusing a vague word or phrase that results in litigation to determine its meaning (62).

In “Answering the Critics of Plain Language,” Joseph Kimble refutes recent criticisms of plain language as well as some lingering old ones. Kimble says the legal profession has been the source of many of the old criticisms. These critics allege plain language is inadequate to express a complex idea precisely (52). The new criticisms, which for the most part originate outside the legal profession, assert that plain language does not matter because it has too narrow an approach to communicate and no empirical evidence exists that plain language actually improves comprehension (51).

Kimble begins his rebuttal of the old criticisms by providing his own broad definition of plain language, “Plain language has to do with clear and effective communication—nothing more or less” (“Answering the Critics” 52). Next, Kimble dispels the notion that plain language lacks sophistication, alleging that it is easier to complicate than to simplify (53). He adds that it is easy to take the antiquated language found in many of the formbooks used to compose legal documents and add additional provisions to it (53). In response to the criticism that precision and plain language are incompatible, Kimble says this argument is unconvincing. He says that plain language advocates admit that technical terms with fairly precise meanings and legal terms of art (the legal profession’s equivalent of a technical term) are sometimes necessary and some legal ideas cannot be expressed without using them. However, he says these components of legal

writing comprise only a small segment of legal documents (less than 3% according to one study), which should not curtail using plain language (54). Kimble acknowledges legal writers aim for precision. However, they can use plain language as an ally, rather than an enemy. He points out that plain language helps expose the ambiguities and uncertainties frequently hidden by traditional legal writing (55).

One of the recent criticisms of plain language originates from Robyn Penman of the Communication Research Institute of Australia. Penman argues that plain language will not reduce litigation because law exists to interpret words (Kimble “Answering the Critics” 62). Kimble refutes this statement, pointing out that it ignores the unnecessary litigation produced by poor legal drafting. According to Kimble, litigation frequently results from using jargon; unnecessary doublets, such as “any and all”; using inconsistent terms; not keeping related material together; and including so much detail that inconsistencies become impossible to detect (80). Kimble, like Schiess, notes it is important to distinguish the difference between vagueness and ambiguity. Because of the uncertainty about how terms apply to facts, Kimble asserts that all terms contain some degree of vagueness (78). For example, the term “reasonable person” is vague; it will have different meanings, depending on the context in which it is used. On the other hand, ambiguity is a choice, one that can be prevented and is unintended most of the time (79).

Kimble encourages attorneys to incorporate plain language principles into their document planning process. They should focus on their audience and consider who will read the document, the audience’s reading level and knowledge, and how the document will be used. Kimble points out these steps may add some additional preparation time to the document. However, he feels these extra steps are worthwhile, considering empirical studies demonstrate that plain language

improves comprehension, traditional legal writing does not communicate, and readers prefer plain language (“Answering the Critics” 72-73).

Other authors, such as Peter Tiersma, author of Legal Language, also refute the criticisms of plain language. Unlike Crump and Schiess, who advocate, to varying degrees, incorporating traditional legal writing into specific legal documents, Tiersma maintains that all legal documents should be written so ordinary laypeople will understand them. For example, the Supreme Court requires a person be put on notice about the illegality of an act before punishing that person for the illegal act. Yet, it is unlikely the average layperson fully understands the complex language used in criminal statutes, such as the term “a pattern of racketeering activity” (212).

Tiersma alleges that not just the public, but also the legal profession, benefits by making statutes and other legal documents clearer (Legal Language 213). Since statutes affect the public interest directly by imparting rights and obligations, the public should be able to understand them without the need for an interpreter. Tiersma points out when a client signs a document, such as a will or a contract, even though the client may not understand the ramifications of the document, the client’s intent is considered to govern the document’s meaning (219). To help remedy problems such as these, Tiersma advocates using guidelines and an objective evaluation measure (227). He asserts complexity is what really matters and the focus should be on factors such as levels of embedding, sentence structure, and likelihood the average person will understand the meaning of a word (226). For example, while plain language guidelines advocate using words with fewer syllables, very few laypeople will understand words like “estop,” “seisin,” and “en banc.” However, the average adult will most likely understand words such as “ambulance,”

“automobile,” and “television,” even though they contain three or four syllables (226). As this example illustrates, plain language cannot be reduced to a set of static rules. Rather, it provides guidelines for writers to follow, which are dependent on the audience and situation.

Legal Writing Issues

The last area of my literature review examines the solutions plain language offers to solve the comprehension problems laypeople experience with traditional legal writing. Laypeople often encounter difficulty understanding documents such as government regulations and jury instructions. With their complex sentence structure and abundance of multi-syllable words, these documents are often intimidating to laypeople. In addition, these documents tend to use third-person and passive voice excessively. Together, these elements produce the impression of an abstract document and create distance between the document and the reader.

Janice Redish and Paul Leche, both proponents of plain language, assert that plain language can benefit government regulations and make them more appealing for their audience. Redish, author of the book, How to Write Regulations (and Other Documents) in Clear English, points out the public often uses brochures to explain the meaning of a regulation. However, as Tiersma asserted, Redish says the brochure could be eliminated if the regulation had been written clearly in the first place (4). She also points out the poor organization and writing typically found in regulations often obscures legal inconsistencies and gaps in the regulation (7), a point also made by Kimble and Cox.

To Redish, an effective regulation is the result of a process, rather than a single activity, and the most crucial step in this process involves audience considerations (How to Write

Regulations 2-3). To produce a regulation that focuses on its audience, Redish draws on a fundamental question from the document design process and asks, “How easily can people find and understand the information that they need?” (18). These same elements form the basis for the Center for Plain Language’s mission statement, which reads: “The Center’s mission is to increase the usefulness and efficiency of government, legal, and business documents, so that people who use those documents can quickly and easily: find what they need, understand what they find, [and] act on that understanding.”

To accomplish the mission of plain language, Redish advocates organizing the regulation and making that organizational structure clear to the readers (How to Write Regulations 5). One easy way to organize material is to group it in terms of questions readers may have and to use question headings to visually divide each section (5). Question headings, which both Redish and Balmford endorse, draw on both plain language and document design principles by focusing on the reader and structuring the information so the reader can easily locate the information that he or she needs.

In addition to adjusting the regulation’s vocabulary to fit the audience, Redish recommends addressing the reader as “you” (How to Write Regulations 11). This step helps build scenarios. Unlike a static fact statement, scenarios create action. Scenarios also direct the regulation towards the reader and make it become more personal. Directing writing towards the reader in this manner allows people to visualize and imagine themselves as an active participant, rather than an outside observer, which is the same concept endorsed by Balmford.

Paul Leche, who wrote “Government Regulations and the Plain English Movement,” says plain language is best described as a goal, one in which documents are “written in a clear,

orderly, and comprehensible manner” (21) so people can comprehend them and act on the information. He borrows on Balmford’s concept of brand, saying that people equate regulations that are dense and impenetrable with an uncaring and bureaucratic agency (21). To help regulations project an image of interest and concern for their audience and communicate more effectively with them, Leche suggests they use plain language guidelines. To meet the reader’s needs and speak directly to the reader, he proposes that regulations should use personal pronouns, use active voice and present tense, and organize the text in a question-and-answer format as well as avoid jargon and legalese (22-23).

Because plain language has no clearly defined definition, Leche advocates that plain language should be thought of as guidelines, ones that do not need to be applied literally in every context. (26). This concept is the same one endorsed by Mazur and Tiersma. Each writer should evaluate whether to use plain language based on the purpose of the document and who will read it and should use plain language guidelines as tools.

In his October 12, 2007, keynote address SEC chairman Christopher Cox pointed out the problem with repeatedly using boilerplate language, as is commonly done with government regulations. He asserted that while attorneys hesitate to deviate from the boilerplate language that has proven itself able to withstand the appeal process, each situation is different. In the case of investor documents, Cox stated that what works for one company may not be effective for another company. Boilerplate language fails to take into account the material used by one company may not be relevant for another one. In addition, during the copying-and-pasting process, pertinent information may inadvertently be omitted. Cox asserts that if companies use

plain language and discard boilerplate disclosure when they communicate with investors, they can help avert possible litigation risks.

In addition to government regulations, laypeople frequently have difficulty understanding jury instructions. Often jury instructions recite a verbose state statute verbatim or use a complex legal term that jury members are not likely to understand. Incomprehensible jury instructions become especially problematic when an accused person faces a possible death penalty.

Craig Hemmens, Kathryn Scarborough, and Rolando del Carmen, authors of the article “Grave Doubts About ‘Reasonable Doubt’: Confusion in State and Federal Courts,” examine the confusion that has arisen about using the term “reasonable doubt” in jury instructions. They point out that a good portion of the language that case law and many statutes use to define reasonable doubt comes from an 1850 case. Because many jurisdictions use this same language in their jury instructions, the authors assert that an instruction that uses this language to define reasonable doubt “is couched in archaic and unclear language” (252). The authors point out that most modern juries will not easily understand the nineteenth-century style of writing used to define reasonable doubt (252). Legal language is slow to change because of tradition and fear of possible appeals caused by deviating from language that the legal community has endorsed. Ironically, however, because the archaic language from the 1850 case that many jury instructions use to define reasonable doubt is so outdated, the language has been the source of much litigation.

“Not So Plain English: In Many States, Jury Instructions are Confusing,” an article published in the American Bar Journal, examines the use of plain language in jury instructions. Michael Higgins, the article’s author, says while many people agree that instructions should be

simpler, states have been slow adopting plain language in their jury instructions. He points out that because jury instructions commonly contain the jargon of the legal profession, laypeople cannot easily understand them. Higgins asserts that many problems occur with the definition of the words used in jury instructions. Often the legal definition of the word varies from the familiar definition that jurors know (41). Higgins posits that reform to make jury instructions understandable for laypeople has been slow for many reasons. Rewriting the instructions is a slow, tedious process. A juror's exposure to the legal system is brief, attorneys tend to use legal language because of tradition, and judges fear that changing the instructions could cause an appeal (42). These obstacles have impeded integrating plain language into legal documents.

Lily Whiteman looks at how the legal community is beginning to use plain language to eliminate legalese in its documents. She contends legalese is not preferable to plain language, as some people assert. Her article, "Plain English on Trial," examines plain language's effect on jury instructions and other trial documents. According to Whiteman, most jurors have trouble understanding the complex jury instructions read to them. However, judges hesitate to explain the jury instructions to the jurors for fear of an appeal. In addition, attorneys do not want to deviate from established conventions by using plain language and risk offending traditionalist judges.

In "How to Mangle Court Rules and Jury Instructions," Kimble points out that jury instructions are specifically created for their audience, a jury composed of laypersons, and read out loud to the jury, who then must comprehend them. To facilitate jurors comprehending the instructions, Kimble proposes using a conversational style and making the instructions as clear as

possible to them (52-53). A jury that does not understand and grasp the meaning of what they have been called upon to decide will have a difficult time making a well-informed decision.

One of the causes of reluctance to rewrite jury instructions with plain language is the potential to change their meaning. Kimble says judges, afraid of appeals, often request a statute or court opinion be repeated verbatim in the jury instruction (“How to Mangle” 48-49). Although Kimble acknowledges the potential to change the meaning exists, he says it is minimal and is more than offset by improved comprehension by the jury (46).

Kimble deliberately uses sarcasm in his article, “How to Mangle Court Rules and Jury Instructions,” to spotlight ten writing styles that he feels make jury instructions incomprehensible. For example, he states, “Slavishly follow the exact language of statutes and opinions” (48). Kimble responds to this directive by pointing out this mode of writing continues to proliferate primarily because of fear of changing the meaning (48-49).

To emphasize the absurdity by which strict adherence to the original language is followed, Kimble points out that, because of fear of changing the meaning, the restyled federal criminal rules still contain numerous instances of the phrase “an attorney for the government” as opposed to the much easier to understand phrase “a government attorney.” Kimble asserts that a slight deviation from reciting a statute verbatim, such as this example provides, will not change the legal meaning. Instead, it will make the statute much easier to understand (51).

According to Kimble, one of the biggest hurdles to instituting plain language in legal writing is the lack of competent writing programs in law schools. The traditional assumption is that a person is competent to write simply because he or she graduated from law school.

However, Kimble disputes that assertion. He contends that an attorney's expertise is in substantive law and procedure rather than in clear communication (44).

In both his article, "The Language of Jury Instructions," and his manual, "Communicating with Juries," Peter Tiersma discusses the move to reform jury instructions and offers suggestions on how to accomplish that goal. He says one indication jurors do not understand jury instructions is their tendency to ask judges questions after deliberations begin. Jurors also frequently request dictionaries to help clarify the definition of a word they must consider in their deliberations ("The Language of Jury Instructions"). In his manual, Tiersma provides guidelines to follow when writing jury instructions. One of the most pertinent pieces of advice he proffers is to keep the audience in mind. Communication requires the audience be able to understand the intended communication (1). Tiersma's manual provides guidelines to help accomplish that goal, such as using understandable vocabulary and logical organization, being as concrete as possible, and keeping grammatical constructions simple and straightforward (ii).

Dorothy Easley and James Ward both write about jury instructions. Stressing the importance of an accused person receiving a fair trial, Easley, author of the article, "Plain English' Jury Instructions: Why They're Still Needed and What the Appellate Community Can Do to Help," says the goal of jury instructions is to produce statements of the law that juries will find concise and be able to apply to the case (66). This statement endorses what plain language seeks to accomplish, e.g., that documents be written so readers can understand them. However, jury instructions continue to contain traditional legal writing that laypeople find difficult to understand.

Easley points out that while Florida's trial courts have made some improvements to the wording of jury instructions, appellate courts and attorneys should push harder for additional improvements (66). One way to accomplish this goal is to offer a plain language model that will help break through the resistance many trial courts have to adopting plain language. Complex cases, such as medical malpractice and criminal ones, often bewilder juries. After hearing arduous testimony, jurors must arrive at a verdict using equally complex jury instructions that do little to clarify the disputed issues (67).

Easley asserts that a trial judge's duty is to charge the jury on the law governing the facts of the case so the average layperson can understand (68). To help accomplish this goal, Easley suggests making such simple changes to jury instructions as using active voice, first- or second-person voice, and concrete examples as well as using charts and graphics (68).

According to James Ward, author of the article, "California Adopts 'Plain-English' Civil Jury Instructions," because today's juries have to deal with matters that continue to increase in complexity, jurors need even clearer explanations (300). Easley expressed this same concern about the complexity of cases jurors must decide. Jurors often have trouble understanding the complicated forms of English used in the instructions, which results in failed communication.

Juries frequently have difficulty understanding legal jargon. For example, over half of the jurors who participated in a study could not define the word "speculate." In addition, about a quarter were unable to select the correct answers for "burden of proof," "impeach," "admissible evidence," and "inference" and more than half believed "'preponderance of the evidence' meant a slow, careful pondering of the evidence" (Ward 300).

To remedy the comprehension problems jurors face, a task force undertook a project focused on rewriting California's jury instructions in plain language. Ward participated on the project's task force, composed of judges, attorneys, an academic, and a layperson. This group spent seven years re-writing California's civil jury instructions into plain language so laypeople could understand them (McCord 287-88).

The task force re-wrote the instructions in active voice, avoided using double negatives and legalese, and formatted the instructions so attorneys could easily modify them to use the actual names of the people involved in the lawsuit rather than only the generic terms, "plaintiff" and "defendant." In addition, rather than quoting statutes and cases verbatim, the task force translated the legal concepts from them into plain language equivalents. For example, the task force replaced "circumstantial evidence" with "indirect evidence" and "preponderance of the evidence" with "more likely to be true than not true" (Ward 301). According to Ward, the revised instructions are more coherent for jurors and the resulting feedback on the revisions has been very positive (McCord 288). The task force drafted 800 instructions, including 90 new verdict forms and instructions, which resulted in improved communication with jurors and a 2003 Burton Award for outstanding reform of legal language at a Washington, D.C. presentation (Ward 301).

Ward was a panelist at the March 2005 American Judicature Society Mid-Year meeting. The article "The Plain-English" Jury Instruction Movement: Is 8th Grade Language Better?" edited by David McCord, recaps what transpired during the meeting. In addition to Ward, the article includes excerpts from Peter Tiersma and Joseph Kimble who also served as panelists.

Tiersma used the meeting to recapitulate the goals originally associated with creating standardized jury instructions. When the move to standardize the instructions began in the 1930s, standardization was purported to save time, reduce possible appeals, and improve accuracy. Improved juror comprehension was also included among the advantages (McCord 285).

However, Tiersma alleges standardizing instructions may have caused comprehension to worsen, rather than improve. Sources of the comprehension problem include the archaic, difficult-to-understand legal vocabulary, double negatives, complex syntax, and the prevalent passive voice typically found in standardized jury instructions. When jurors experience difficulty understanding an instruction and turn to the judge for clarification, they frequently find their efforts are in vain. They receive no additional clarification from the judge or the judge recites the instruction to them verbatim because of the possibility of appeal (McCord 286). Tiersma feels jurors who possess only a mediocre understanding of the instruction will be unable to fully comprehend the law meant to guide them in their deliberations (McCord 287).

James Ward, a former trial attorney and now an appellate judge in California, points out that appellate court rulings, the same ones frequently recited verbatim in jury instructions, are not written for a lay audience. He also points out that jury pools have become broader in terms of diversity and many of today's jury pools contain non-native speakers of English (McCord 287). When these jurors, who already have a difficult time understanding English, have to decipher a complex legal concept presented using legal jargon, their comprehension problems increase exponentially.

Joseph Kimble, another panelist at the meeting, provides recommendations for how to revise jury instructions. Citing his involvement with several other jury instruction re-writing

projects, he recommends that a writer experienced with plain language prepare the first draft, after which the substantive experts review it. Kimble also advises to use common words familiar to jury members and common meanings. However, if a legal term is used, he recommends the writer explain the meaning of the term to the lay audience (McCord 289). As proof that plain language jury instructions can improve juror comprehension, Kimble referred to a study on jury instructions conducted by Amiram Elwork, Bruce D. Sales, and James J. Alfini. The study involved testing comprehension rates on two different sets of jury instructions. For one set of instructions, the overall comprehension rate was 51 percent and for the other set it was 65 percent. After the first test, the researchers revised the first set of instructions two times and the second set one time. When the revised instructions were tested again, the overall comprehension rate went up to 80 percent for both the sets (McCord 290).

Carol Bast refers to several pertinent studies conducted on plain language in her article “Lawyers Should Use Plain Language.” The Stratman study identified problems in appellate briefs (34). Another study, the Benson study, analyzed the comprehension rates of law school students and non-lawyers on a range of documents. The law school students did not experience comprehension problems with any of the documents. However, with the exception of a set of plain language jury instructions, laypeople experienced considerably lower comprehension rates than the law school students (36).

The Charrow study is another study Bast discusses in her article. This study analyzed comprehension rates pertaining to jury instructions with traditional legal writing. The study determined that certain grammatical constructions and structures in the jury instructions caused comprehension problems in a group of test subjects. Among the culprits were poor organization,

nominalizations, and numerous subordinate clauses contained within a single sentence. These elements are commonly found in traditional legal writing. After these elements were removed, the Charrows tested the revised plain language instructions on a second group of subjects and noted the subjects had higher comprehension levels. The Charrow study helped bolster plain language by showing that legal documents directed at laypeople should use plain language (35).

Michael Masson and Mary Anne Waldron assert that most of the studies on plain language's affect on legal writing focus on jury instructions. They contend that the results from those studies, which show how legal writing becomes more comprehensible by using simple words, removing redundant words, and defining legal terms, are still being debated (68). Their article, "Comprehension of Legal Contracts by Non-Experts: Effectiveness of Plain Language Redrafting," examines the effect of modifications made to a legal contract using plain language so the contract would be easier to understand. Mason and Waldron point out that while the subjects' comprehension improved from the revisions, removing the legalese did not produce the anticipated effect, as the subjects still experienced difficulty understanding the legal concepts and theories in the contract. They assert that, because legal principles are complex, radical thinking is needed to obtain solutions for improving reader comprehension (78-79).

Reader comprehension is important, especially when it involves legal matters and pertains to non-native speakers who may not yet grasp all the subtle ways the English language is used. The author of Contracts in Plain English, Richard Wincor, asserts that, despite the world increasingly becoming more global, English continues to be the predominant language used in contracts (xi). While this language choice benefits a native speaker of English, Wincor states that a non-native speaker using English as a second language can suffer serious repercussions from

unclear language in a contract (xii). He points out the meanings of words in English can also vary, depending on the time and place in which they are used. While a change in word usage over time is less troublesome, Wincor says when a word has a different meaning between geographical regions, it can cause potential problems in a contract. For example, while the word “bomb” denotes a successful theatrical production in England, it means failure in the United States (26). Making sure that a contract prepared in English uses words and phrases with consistent meanings between geographical regions and that non-native speakers can easily understand them helps eliminate ambiguity and reduce the possibility of misunderstandings. It also makes it easier for laypeople, who are native speakers of English, to understand and comply with the contract.

Wincor examines some of the common words and phrases found in contracts, provides commentary about their usage, and offers suggestions for improvement. For example, he asserts the repetitive phrase, “it is understood and agreed,” which is commonly found in contracts, adds nothing and should not be used. Wincor says every clause used in a contract “is understood and agreed”; otherwise, they would not be included in the contract. Instead, Wincor suggests using a simpler, more concise phrase, such as, “we agree as follows,” at the beginning of the contract (29).

Tiersma brings up an interesting comparison of the legal writing used in contracts and wills. He states legal texts, especially authoritative ones like wills, tend to be created and executed in formal ways. While the text used in contracts can be relatively informal, wills tend to use a formal style of writing that corresponds with the manner in which they are executed. For example, when a testator executes a will, witnesses gather in the room, the testator makes a

formal declaration that it is his will, and acknowledges that he is signing it in the presence of the witnesses. The text of the will corresponds with these formalities (“The Creation, Structure, and Interpretation of the Legal Text”).

Tiersma points out that statutes follow these same formalities. They are usually enacted with a great show of solemnity and according to pre-ordained procedures. Part of the problem with documents that follow these formalities, such as wills and statutes, is that additions and changes to their text has to be made in an equally formal manner. For example, even if the majority of a legislature approves a change to the statute, a clerk cannot delete a sentence simply by crossing it out in the official version. Instead, the legislature needs to follow the same formalities that it used to create the statute. It must enact an entirely new statute and declare the prior statute will be amended by striking out the specified section (“The Creation, Structure, and Interpretation of the Legal Text”). Because of these complexities, much of the archaic writing found in existing statutes cannot be easily revised so laypeople can understand it.

“Is Plain Language Better? A Comparative Readability Study of Court Forms,” an article by Maria Mindlin, examines another type of document laypeople frequently encounter, court forms. Unlike statutes and wills, court forms can be easily revised. Mindlin’s study revealed when lay people use forms furnished by courts, their comprehension levels increase markedly if the forms and accompanying instructions use plain language. Without the aid of an attorney to help interpret these forms, it is especially important that they be easy for laypeople to understand and comprehend. For example, many circuit courts in Florida provide dissolution of marriage forms on their Web sites that laypeople can download and use to file a dissolution of marriage action.

Frances Ranney, author of “Reading, Writing, and Rhetoric: An Inquiry into the Art of Legal Language,” takes a different view of plain language than some of the other authors. Instead of focusing primarily on how to apply the principles of plain language to a legal document, Ranney focuses on bringing together two different areas, the plain language movement and the law and literature movement.

Ranney asserts that plain language uses a positivism approach because it focuses on rating the readability of a document and measuring it according to a predetermined grade level. Conversely, Ranney says the law and literature movement focuses on reading legal texts and the literary features of legal opinions; James Boyd White was instrumental in starting this movement in an attempt to bring humanities into the study of law. Ranney asserts that combining plain language’s focus on a document’s surface textual features with the law and movement’s focus on literary analysis will help make legal documents more understandable to laypeople.

This understanding can be applied rhetorically within the context of productive knowledge. The productive domain of rhetoric, as Ranney says Aristotle construed it, focuses on the intended use of the text by the user. By recognizing and exposing the “art” of legal language, Ranney asserts the processes that produce it become visible as well as teachable. Ranney proposes widening legal literacy’s scope to incorporate judicial texts within the range of readings for non-professionals. She also suggests a writing pedagogy that recognizes the role textual features play in constructing a text’s rhetoric.

Rhetoric, in the law and literature movement, deals with knowledge that is uncertain. Uncertainty is an element that legal argument often uses, according to Ranney. For example, in a case involving harassment, at what point did the action go from being criticism to harassment?

Ranney says because the need to interpret is always present in legal writing, legal language is not flawed, there is no need to defeat its ambiguities, and it can never be considered “plain.”

Both Ranney and Pollman point out legal language is not static. Ranney claims rhetoric’s element of uncertainty is often used in legal argument. Pollman asserts that, over time, the jargon used in legal writing changes too. Therefore, both rhetoric and jargon possess the same characteristic of uncertainty. This uncertainty helps reaffirm why it is best that plain language remain flexible and rely on guidelines rather than on rules.

Despite the change that Pollman says takes place with jargon, one change that has been slow in coming is replacing the legal jargon found in legal formbooks with plain language. Kevin Collins' article, “The Use of Plain-Language Principles in Texas Litigation Formbooks,” looks at the history of plain language, how it can help traditional legal writing, and how well formbooks use plain language. He contends that since attorneys, especially inexperienced ones, obtain many of the forms that they use from formbooks, the formbooks should encourage the use of plain language (453). Collins examines how plain language is used in four popular Texas formbooks. Despite three of the four authors’ assurances that they used plain language in their books, a reading assessment evaluating each of the formbooks found that all but one retained some legalese (450). Collins asserts that because legalese portrays a level of formality that clients and judges traditionally expect from attorneys, progress eliminating it will be slow (452-53).

Many characteristics of legal writing continue to exist, such as redundancy, even though they are no longer useful, because attorneys generally do not want to break from tradition. Richard Wydick’s book, Plain English for Lawyers, looks at the characteristics of legalese and explains why laypeople as well as attorneys often find it confusing. While plain language

emphasizes shorter sentences that are easier to read, Wydick points out that statutes and regulations typically use long sentences in a declaratory style that offers little variety (33). Wydick warns that a word or phrase traditionally used in legal writing does not automatically become superior because of its longevity (19). While Wydick says that the abstract words and passive voice often used in legal writing offer the benefit of flexibility, he advocates using plain language elements, such as concrete words and active voice. These elements should be used so people can understand legal writing and make it more relevant to them (26-27). Wydick states that the law is not abstract. Rather, it involves a world of living, moving people who interact with other people. For example, motor vehicle drivers “collide”; plaintiffs “complain”; judges “decide”; and defendants “pay” (43). Wydick says that too many abstract verbs and passive voice make legal writing become “a lifeless vapor” (44).

One way to encourage legal professionals to break with tradition is to hire writing experts. Lily Whiteman’s article, “Management: Raising the Bar on Legal Writing,” looks at the strategies some law firms have used to cultivate articulate writers. She points out that some law firms have implemented writing tests to ensure that any applicants they hire can write competently.

Other firms have attempted to reform their legal writers. These firms have hired in-house writing experts to provide training programs along with coaching and feedback to supplement the training. The experts also provide publishing and editing advice. Whiteman says these training programs are needed because even though “the law is a profession of language,” many law schools still have not given their writing classes the resources and respect that traditional courses receive. According to Whiteman, many attorneys rank “oral and written

communications” as the primary skill needed to practice law, even ranking it over substantive legal knowledge.

While much research has been done in the field of plain language, much remains to be done. As Beth Mazur points out, the academic and research organizations that were instrumental in the foundation of plain language and bringing it to the public’s attention, need to refocus their efforts and vigorously endorse and contribute to plain language’s cause (210). This need becomes even more important since the American Bar Association’s endorsement of plain language, which states, “. . . the American Bar Association urges agencies to use plain language in writing regulations, as a means of promoting the understanding of legal obligations . . .” (American Bar Association).

One of the first steps in solving a problem is acknowledging it, as the American Bar Association has done by recognizing that legal documents present problems for laypeople. The authors I have reviewed acknowledge, to varying degrees, the continuing problems that laypeople experience comprehending legal documents.

As an example of one of the recent problems laypeople experience with legal writing, a September 19, 2007, *LA Daily News* article, titled “No lesser charge in Spector case,” discussed a problem with the language contained in jury instructions. According to the article, when several jurors in the California murder trial of record producer Phil Spector experienced difficulty distinguishing between “reasonable doubt” and “doubt,” as explained by the jury instructions, one juror requested a clearer explanation of these terms. The judge, concerned about possibly having a hung jury after five months of testimony, responded by requesting the attorneys supply arguments about how to restate the instructions.

As another example, signs pointing out the fine for vehicles going through an intersection after the traffic light turns red recently began appearing along the parkway at numerous intersections around the central Florida area. Each sign reads:

Red Light Running

\$183.50 Fine

F.S. 316.075

Although Florida Statute 316.075 (2007), titled Traffic Control Signal Devices, does not indicate the amount of the fine referenced by the sign, it does provide lengthy descriptions of what the red, yellow, and green colors, which it refers to as “indicators,” on traffic lights mean. Florida Statute 316.075(3)(b)(1) (2007), titled, “Steady yellow indication,” states:

Vehicular traffic facing a steady yellow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.

While most drivers can comprehend the meaning of the sign, many will experience difficulty easily understanding the language of the statute, which is the basis for assessing the fine. In addition, drivers who are not native speakers of English may experience difficulty interpreting the meaning of the phrase, “red light running.”

A further example of potential comprehension problems existed with House Bill 1B passed by the Florida Legislature during its June 2007 special session and signed by Florida Governor Crist. In 2008, Florida voters were scheduled to vote on this important piece of legislation aimed at providing tax relief to the state’s property owners.

This legislation, found on the Web site for the Florida House of Representatives, began with a one-paragraph preamble comprised of a 1,375-word sentence. Most people would find a complex sentence of this size hard to comprehend. Leon Chief Circuit Judge Charles A. Francis found it confusing too. In response to a lawsuit brought by Eric Hersch, the mayor of Weston, Florida, alleging that sections of the legislation would confuse voters, the judge found the legislation confusing and removed it from the ballot. In his September 24, 2007, ruling in Hersch v. Browning, Judge Francis stated:

Try as this Court has, and having considered all memoranda and argument presented to the Court, and having read, reread, examined and studied the ballot summary under review, the Court cannot find that the language is clear, concise, unambiguous, and fair. The language at issue is misleading and confusing, and does not provide fair notice to the voter, educated or otherwise, of the purpose and effect of the proposed amendments to the Florida Constitution. (5)

Many of the recent foreclosure cases provide another example of the problems laypeople have understanding the terms and conditions of the legal documents they sign. During the housing boom that occurred from 2000 through 2006, many homeowners bought a home, enticed by aggressive marketing and the lure of adjustable-rate mortgages with low monthly payments. However, many of these homeowners were naïve about the terms of their mortgages, which imposed a lengthy, significant financial obligation on them. Now, these property owners are experiencing repercussions from the documents they signed. Foreclosure rates have increased drastically and many of these homeowners will likely lose their homes.

These examples show much still needs to be done to make the writing in legal documents understandable to laypeople. It is important that laypeople, such as those who serve on juries, drive motor vehicles, and vote, understand their rights and obligations. Many organizations, while aware of plain language, do not assign it a high priority. They remain content to produce documents using the business practices they have established and feel if the system works, why change it. However, while the existing system may work, it does not work well and is inefficient.

To determine how pervasive legalese is in legal documents used by laypeople, I examined many of the documents laypeople often encounter. The next chapter, Methodology, explains the criteria I used to rate the comprehensibility of these documents.

CHAPTER THREE: METHODOLOGY

The purpose of this chapter is to present the criteria I used to evaluate and rate the elements of legalese found in legal documents used by laypeople. These elements often make it difficult for a layperson to understand and be able to use the information contained in the document. The chapter begins by discussing the plain language guidelines I selected to use in my evaluation. Then, I present the rubrics I developed from the guidelines. I used the rubrics to rate both the text and the design of a document as either effective or poor. This rating was based on how a textual or design element affected the document's comprehensibility.

I begin my document analysis by presenting some before-and-after versions of documents from organizations that have implemented plain language. These examples vividly show the positive impact plain language can make on a document's comprehensibility.

I selected examples of documents that show the effectiveness of plain language in improving the readability of a document. Included in the examples are sections from the Federal Rules of Criminal Procedure and the Federal Rules of Civil Procedure, prospectuses from the U.S. Securities and Exchange Commission, and documents from Florida's Plain Language Initiative Web site. Both the original version and the revised version are shown.

The Federal Rules of Procedure govern how criminal and civil actions are conducted in federal courts. These rules recently underwent extensive revisions to incorporate plain language features. While the Federal Rules of Procedure are more germane to the legal professional than to a layperson, anyone looking at the revisions can immediately discern a tremendous improvement. Gone are the lengthy sentences. In their place are much shorter, easier to understand sentences. The reader no longer needs to sift through unnecessary words and

numerous subordinate clauses to understand the sentence. Each sentence pertains to one idea and contains only the words necessary to convey its meaning.

I also reviewed sections of prospectuses from the U.S. Securities and Exchange Commission. This agency implemented a requirement in 1998 that sections of prospectuses directed at retail investors be written in plain language (Balmford). Like the Federal Rules of Procedure, these examples show how the readability of prospectuses improved when they were revised to incorporate plain language. Laypeople often invest in stocks, bonds, and mutual funds, so requiring sections of the prospectus be written in plain language helps laypeople understand the information and make informed decisions about their financial investments. The examples show how such simple changes as adding bulleted lists and providing more white space will help laypeople find and use the information that they need.

In addition, I reviewed sections of documents displayed on Florida's Plain Language Initiative Web site. Upon taking office in January 2007, Florida Governor Crist instituted Florida's Plain Language Initiative, which focuses on improving communication between the state and its citizens. While these examples are much shorter than the Federal Rules of Procedure and the U.S. Securities and Exchange Commission examples, they are just as valuable. They provide effective examples that show how removing excess words and using active voice make a sentence more clear and concise.

All the changes these organizations made involved having their documents incorporate such plain language elements as using first- and second-person voice, common words, and active voice. Plain language discourages the use of complex sentences, unfamiliar jargon, and the overuse of passive voice. In addition, many of the documents were revised to incorporate

bulleted lists and include more white space, which makes it easier for readers to find, understand, and use the information.

Next, I present my analysis of the writing found in many of the legal documents that laypeople frequently encounter. To ascertain how prevalent traditional legal language is in legal documents, I analyzed a broad range of documents. These documents, which affect laypeople to varying degrees, include excerpts from the Florida Statutes, mortgages, a contract, an agreement, and jury instructions.

Because a layperson may refer to the Florida Statutes for information about homestead exemption, I selected this section from the statutes to determine if a layperson could readily comprehend the information about homestead exemption in the statute. I also selected mortgages, contracts, and agreements to examine because these documents often affect laypeople. By analyzing these documents, I could ascertain how easy it was for a layperson to understand the terms and conditions contained in them. Because jury instructions are a document designed exclusively for laypeople and are critical to someone receiving a fair trial, I included them in the documents I reviewed.

I analyzed these documents for features commonly found in traditional legal writing that inhibit comprehension, such as numerous subordinate clauses. I also examined the documents for any features that aid in comprehension, such as using active voice.

Plain Language Guidelines

Many different versions of plain language guidelines exist from different sources. While they may vary in their approach, they all emphasize making writing easier for readers to

understand. Some plain language guidelines take a bottom-up approach and place a greater focus on the sentence level. These guidelines examine such elements as jargon and passive voice. Other guidelines look at the document top-down and focus on the entire document. They focus on such features as how the document's organization fits the needs of the audience.

Guidelines that take a bottom-up approach often include readability formulas. However, these formulas, while helpful, fail to take into account the context in which readers will use the document. For example, two-syllable words that adhere to the guidelines of a readability formula may contain jargon that is unfamiliar to a reader. The primary guideline to consider when creating a plain language document is an objective one—will its audience be able to easily understand and use the information.

To conduct my analysis, I drew on many of the plain language guidelines from the authors and organizations discussed in my literature review. My main sources came from Plain Language.Gov, the Center for Plain Language, the U.S. Securities and Exchange Commission's A Plain English Handbook, edited by Nancy Smith, and Martin Cutts' The Plain English Guide. I also used the six main categories of poor word choices discussed in Kevin Collins' book, The Use of Plain-Language Principles in Texas Litigation Formbooks.

Guidelines for Analysis

The plain language guidelines I used for my analysis centered on the following elements: lengthy sentences; subordinate clauses and conjoined clauses; subject-verb orientation; cross-references and definitions; negatives; passive voice; third person voice; and poor word choices. These elements are commonly found in traditional legal writing. I also reviewed the documents

for design elements such as use of white space, bulleted lists, headings, bold print, and all capital letters.

I examined the documents I collected to determine which of the elements the documents contained and to what extent. I rated a document as either effective or poor, depending on how prevalent the element was in the document and how it affected the document's readability. If the document contained an ineffective design that impaired a reader's ability to find and use the information contained in the document, I gave the document a poor rating. For example, a document with a poor rating presents a crowded appearance. The document has insufficient white space and lengthy lines of text as well as no headings to help guide the reader. I gave a document a poor rating if its text contained such elements as a complex sentence structure, excessive passive voice, or unfamiliar jargon.

When readers encounter words in a document that are not a part of their everyday vocabulary, it is difficult for the readers to understand the document. An unfamiliar word requires that a reader take time to find out what the word means, attempt to determine its meaning from the context in which the word is used, or ignore the word entirely. A document with an effective rating uses common words that readers understand. Readers do not have to interrupt their reading and spend additional time trying to decipher a word's meaning.

Sentences with a complex structure tend to be lengthy and contain numerous subordinate and conjoined clauses. Often, many ideas are stated in one sentence. The reader must take additional time to sort through and organize all the numerous ideas contained in the sentence. In addition, the clauses often separate the subject and verb, which makes it difficult for the reader to determine the meaning of the sentence. However, an effective document uses sentences that each

contain a single idea. The subject and verb are in close proximity to each other, and subordinate clauses are used sparingly. A reader can read the sentence and immediately understand what it means.

A poor document contains cross-references to documents that are in a separate section or in a separate document. The definitions it refers to are separated from the text in which they are used. These elements disrupt a reader's reading pattern. The reader must spend time locating the cross-referenced document or finding the definition. In contrast, an effective document omits cross-references from the text and includes the definition of a word within the context of the text. Readers do not have to stop reading to search for the cross-referenced document or the definition to a word.

When a document contained words or phrases expressing a negative condition, I rated the document as poor. If a statement is expressed negatively, readers must take time to determine what action is permitted. Conversely, an effective document expresses a positive or affirmative position. Readers immediately know what they are allowed to do. For example, a reader will immediately understand the statement, "You must wear a white shirt." However, the reader will require a longer time to process the statement, "You must not wear a shirt with a color other than white."

A document with a poor rating contains excessive passive voice and third-person voice. These elements remove a reader from the action and make the document abstract. While there are legitimate uses for passive voice, such as to project objectivity and to eliminate an awkward sentence, excessive use of passive voice makes it difficult for the reader to determine who is responsible for performing an action. On the other hand, an effective document uses active voice

and first- or second-person voice. Active voice uses concrete verbs that denote action. The reader can immediately see who is to assume responsibility for performing the action. A document that uses first- or second-person voice addresses the reader directly. Readers can visualize and imagine themselves as an active participant.

While an effective document uses concrete verbs, a document rated as poor contains an abundance of nominalizations. Nominalizations change verbs into nouns, which encourages the use of passive voice. Instead of actively visualizing the action taking place, the reader encounters an abstract, impersonal construction. This approach distances and removes the reader from the action.

A document rated as poor contains poor word choices. These choices include archaic words, such as “to wit”; here-and-there words, such as “herein” and “therein”; and doublets and triplets, such as “give, devise, and bequeath.” The document may also include such other poor word choices as legalisms and lawyerisms, such as “pursuant to,” and use formal words, such as “honorable” in the phrase “this honorable court” (Collins 432-37). Most of these words can be omitted without affecting the meaning of the document. In addition to contributing to the document’s wordiness, a layperson may not understand the meaning of a phrase such as “pursuant to.” In contrast, an effective document uses only words necessary to convey the meaning and common words that a layperson will easily understand.

Although a document’s text may adhere to plain language principles, if the document is visually unappealing, a reader will be deterred from reading the document. The reader will not be motivated to read a document with long lines of text, small margins, and very little white space.

In addition, the reader will have a difficult time finding and using the information contained in the document.

An effective document's design contributes to its visual rhetoric and makes the document appeal to its readers. However, a document rated as poor has an unappealing appearance. For example, a document with a poor rating contains no headings to help guide the reader or to provide a brief summary of the paragraph's contents. An effective document, however, uses headings so readers will be able to quickly determine what each section of the document contains as well as understand the document's organization.

While an effective document uses bulleted lists to set off items in a series so a reader can quickly identify all the components of a set, a poor document lists items that are part of a series within the text of the document's paragraphs. The reader must spend additional time hunting for the information and separating it from the rest of the text.

A poor document uses bold print and all capital letters excessively. Lengthy sections of text that have been formatted in this manner are difficult for readers to read, as the individual features of the letterforms are hard to distinguish. In contrast, an effective document uses bold print sparingly to highlight important sections of the text and refrains from using all capital letters, except for titles or headings.

While an effective document contains generous amounts of white space, a document rated as poor has very little white space. It usually has small margins and lengthy lines of text with no blank lines separating paragraphs or headings. Readers are faced with large blocks of dense text, which makes it difficult to find information easily. In contrast, an effective document contains large margins and blank lines between the paragraphs and headings. The extra white

space from this formatting helps set off the information for readers and makes it easy for them to locate and use the information that they need.

Sentences

Lengthy sentences with excess words and subordinate and conjoined clauses are often difficult to comprehend. In addition, these sentences frequently separate the subject and verb, which makes it difficult to quickly determine the sentence's meaning. A document rated as poor contains these elements.

An effective document, however, uses shorter, less complex sentences. Each sentence expresses only one idea, which helps eliminate excessive subordinate and conjoined clauses. Because the sentences are shorter and do not contain excessive clauses, the subject and verb are closer together. With these unnecessary features omitted from the sentence, the reader can quickly ascertain the sentence's meaning.

Cross-References and Definitions

Sometimes a definition is separated from the text to which it applies, or a document uses cross-references that refer to another section of the document or to a different document. When readers encounter one of these situations, they must stop and locate the definition or cross-reference. I rated a document as poor if it contained a cross-reference or had a definition in a separate location, as these features distract readers and interfere with their reading patterns.

In contrast, an effective document eliminates cross-references and includes definitions to unfamiliar words within the context of the section in which the definition is used. The reader

learns what the unfamiliar word means within its appropriate context and does not have to stop and locate the word's meaning in a separate location.

Negatives

Documents rated as poor contain words or phrases that express a negative condition. When a reader encounters a document that makes negative statements or that contains a series of multiple negatives, the reader must stop and figure out what activity is allowed. In addition, documents that state a negative position often state it using a negative phrase, such as “not certain.” These phrases contain more words than their single-word counterparts, such as “uncertain.”

A sentence that uses positive words or makes an affirmative statement is more effective in communicating with the reader. For example, a sentence that reads, “Only use cash to purchase tickets,” is easier to understand than one that states, “Payment methods other than cash may not be used to purchase tickets.”

Voice

A document may display a preference for passive voice and third-person voice. These elements make the text more abstract and fail to address the reader directly. Passive voice removes the actor from the sentence, which often makes it difficult for the reader to determine what action the reader should take and to what extent. While legitimate reasons exist for using passive voice, a document rated as poor tends to use an excessive amount of passive voice as well as third-person voice.

In contrast, an effective document addresses the reader in first- or second-person voice and uses active voice, when possible. Active voice uses strong, concrete verbs that enable the reader to immediately see who is performing the action. First- or second-person voice involves the reader and makes the reader become part of the action, unlike third person voice, which tends to remove the reader from the text.

Nominalizations

Nominalizations are verbs that have been changed into nouns by adding a suffix, such as “-tion.” For example, adding the suffix “-tion” to the verb “admire,” creates the nominalization “admiration.” A document that frequently uses nominalizations is rated as poor. Nominalizations make the verb become a thing or object rather than serve as a source of action. In addition, nominalizations often make a sentence become abstract, use passive voice, and increase its length.

In contrast, an effective document uses strong action verbs that serve the purpose for which they were intended. In addition to using fewer words, a sentence that omits nominalizations usually uses active voice and is easier for a reader to understand.

Poor Word Choices

Documents assigned a poor rating use poor choices of words. These words, which are commonly found in traditional legal writing, include archaic words or expressions; doublets and triplets; formal words; and legalisms and lawyerisms (Collins 432).

Archaic Words or Expressions

Archaic words and expressions, such as “to wit,” are unfamiliar to laypeople.

Here-and-There Words

Here-and-there words, such as “herein” and “therein,” are relics from Old and Middle English and are not used in everyday language.

Doublets and Triplets

Doublets and triplets, such as “give, devise, and bequeath,” consist of a series of synonyms that are used to amplify a point. However, usually one of the words is sufficient to convey the meaning.

Formal Words

While formal words, such as the word “honorable” in the phrase, “this *honorable* court,” are used to denote respect and solemnity in legal writing, they are not common words in everyday language.

Legalisms and Lawyerisms

Legalisms and lawyerisms, such as “pursuant to,” are unfamiliar words to laypeople. Legalisms and lawyerisms seldom serve a substantive purpose and can usually be replaced with an ordinary word or phrase.

Poor word choices increase a document's wordiness. They can usually be omitted without interfering with the document's meaning. In contrast, an effective document uses common words the reader can understand and omits unnecessary words that do not contribute to the document's meaning.

Table 1 contains the evaluation rubric I used to review the text of the documents

Table 1

Evaluation Rubric for Text

Element	Poor	Effective
Sentences	The document contains lengthy sentences.	The document contains short sentences.
	The sentences in the document contain an excessive amount of subordinate clauses and/or conjoined clauses.	Each sentence expresses only one idea.
	Large sections of text separate the subject and verb in the sentence.	The sentence places the subject and verb close together.
Cross-references and definitions	The document refers to definitions in a separate section of the document.	The document defines an unfamiliar term within the context of the text.
	The document cross-references a separate section or document.	The document does not contain cross-references.
Negatives	The document contains words or phrases expressing a negative position and/or contains a series of multiple negatives.	The document uses words or phrases expressing a positive or affirmative position.
Voice	The document prefers passive voice and third-person voice.	The document uses active voice and first- or second-person voice.
Nominalizations	The document contains verbs that have been changed into nouns by adding suffixes such as “-tion.”	The document uses concrete verbs that denote action.

Element	Poor	Effective
Word choices	<p>The document uses:</p> <ul style="list-style-type: none"> • Archaic words and expressions, such as “to wit” and “said” • Here-and-there words, such as “herein” and “therein” • Doublets and triplets, such as “indemnify and hold harmless” • Formal words, such as “this honorable court” • Legalisms and lawyerisms, such as “pursuant to” and “subsequent to” 	<p>The document uses common words that are familiar to the audience and avoids using unnecessary words.</p>

Document Design

I also included document design elements in my analysis, as a document’s visual rhetoric plays an important role in a reader’s perception and reaction to a document. A document’s text and design must be integrated and work together to convey the document’s message effectively. If a document possesses an uninviting appearance, a reader may be dissuaded from reading further. Poor design choices distract readers and make reading more difficult.

I reviewed the documents I selected to determine if they contained such visual elements as headings, bulleted lists, bold print, all capital letters, and white space.

Headings

Headings provide a short summary of a section's contents as well as reveal the document's organization to the reader. A document rated as poor has no headings, while an effective document uses headings to guide readers and give them a preview of each section's contents.

Bulleted Lists

A document rated as poor will embed items that are part of a series within the text. This approach makes it difficult for a reader to discern the information. However, a document rated as effective, will use bulleted lists to set off items in a series.

Bold Print

Sometimes a document will contain entire sections of text in bold print. While bold print is effective when used properly, a document with a poor rating has large portions of text in bold print. This type of formatting makes the text difficult to read. All the letters appear with thick lines and strokes, which gives them a monotone appearance without any distinguishing characteristics.

In contrast, an effective document uses bold print sparingly. It uses bold print, when needed, to emphasize key sections of text. This formatting makes it easier for readers to find important information easily.

All Capital Letters

A document with a poor rating contains large sections of print in all capitals. This formatting makes the letters appear similar and causes readers to have a difficult time discerning the different letterforms. An effective document, on the other hand, resists placing text in all capital letters. However, it may use all capital letters for titles of headings.

White Space

A document rated as poor has very little white space. It has small margins and no blank lines between paragraphs or headings. Because the text appears to run together, readers often have a difficult time finding information.

In contrast, an effective document uses a generous amount of white space. It has large margins and blank lines between paragraphs and headings. The white space sets off the information and allows readers to quickly locate the information they need.

Table 2 contains the rubric I used to review the visual design of the documents.

Table 2

Evaluation Rubric for Document Design

Element	Poor	Effective
Headings	The document contains no headings to identify the contents of its paragraphs and show the document's organization.	The document uses headings to identify the contents of each paragraph and to reveal the document's organization.
Bulleted lists	The document places items that are part of a series within the text of a paragraph.	The document uses bulleted lists to set off each item in a series.
Bold print	The document places entire paragraphs or sentences in bold print.	The document uses bold print sparingly for titles, headings, or to emphasize limited amounts of body text.
All capital letters	The document uses all capital letters for entire paragraphs, sentences, or multiple words in the body text.	The document does not use all capital letters within the body text; however, it may use all capitals for titles.
White space	The document single spaces all body text and/or leaves no space before or after headings. The document uses small margins.	The document uses white space to separate paragraphs and headings. The document uses large margins.

Chapter Four contains the results of my analysis from the documents I reviewed. The first section of this chapter contains before-and-after comparisons of documents. The documents used for these comparisons originate from organizations that have implemented plain language and show how plain language can make a document easier to understand. The documents in the second section of the chapter are common documents used by laypeople. I use the text and

document design rubrics I developed to rate the documents based on what features the documents possess that either hinder or facilitate comprehension.

CHAPTER FOUR: FINDINGS FROM ANALYSIS OF LEGAL DOCUMENTS

This chapter begins with the Before-and-After Comparisons section, which discusses before-and-after versions of documents supplied by organizations that have implemented plain language into their documents. While it is important to read about how plain language can make a document easier to read and understand, these comparisons demonstrate it. They clearly show the difference plain language can make to a document.

In the second section of this chapter, Document Analysis, I discuss the documents I selected to analyze. These documents show the prevalence of legalese that exists in common documents that a layperson may encounter.

Before-and-After Comparisons

I used before-and-after versions of documents from the Federal Rules of Procedure, the U.S. Securities and Exchange Commission, and Florida's Plain Language Web site to illustrate the effectiveness of plain language. The before versions show sections from the original documents, while the after versions show sections from the revised documents after plain language elements were applied to them.

The original and revised versions of the U.S. Securities and Exchange Commission documents pertain to prospectuses, which are documents that provide information about financial investments to investors. It is important that a layperson who owns stocks, bonds, or mutual funds in a company or who may want to invest in the company understand about the company's securities and the consequences of investing in the company. The U.S. Securities and Exchange

Commission requires that a prospectus use plain language in its cover page, summary, and risk factor sections. These are key sections of the prospectus that an investor needs to understand.

The documents from Florida's Plain Language Web site also pertain to documents a layperson may encounter. They contain examples of language a layperson may find in a typical communication with an organization.

While the excerpts from the U.S. Securities and Exchange Commission and Florida's Plain Language Initiative Web site that I selected to use are relevant to laypeople, it is unlikely a layperson will use the Federal Rules of Procedure. However, the plain language elements used to revise the Federal Rules of Procedure can be applied to other types of documents and will help make the documents easier for laypeople as well as legal professionals to comprehend. For example, any document can benefit from using active voice and adding headings and bulleted lists.

Federal Rules of Procedure

Legal professionals who use the Criminal and Civil Federal Rules of Procedure will find the revised rules much easier to understand and use. The examples in this section show how revising the rules to incorporate plain language helped remove legalese, reduce wordiness, and eliminate complex sentences. The revised rules provide greater clarity and are more reader-friendly.

Joseph Kimble, the author of many articles on plain language, participated in the revision process for the criminal rules. Later, he participated on the Advisory Committee to restyle the Federal Civil Rules of Procedure and served as the legal-writing expert in charge of drafting.

Example: Federal Rule of Criminal Procedure

Kimble provides excerpts from the original criminal procedure rules as well as the revised ones in his article, “How to Mangle Court Rules and Jury Instructions.” Table 3 illustrates the impact of the restyling on an excerpt from the Federal Rule of Criminal Procedure 5(c) (old version), which became Rule 5.1(d) in the restyled version (Kimble “Mangle” 46).

Table 3

Revision Comparisons of Federal Rule of Criminal Procedure Text

Original Text	Revised Text
in the absence of such consent by the defendant	if the defendant does not consent

As this simple example shows, sometimes minor changes to a document’s wording can impact its comprehensibility. The revised text eliminates the preposition string “in the absence of” and deletes the archaic legalism “such.” Neither of these elements is necessary to understand the meaning of the phrase.

Example: Federal Rule of Civil Procedure

The Federal Rulemaking section of the U.S. Court’s site contains a Preliminary Draft of the Proposed Style Revision of the Federal Rules of Civil Procedure; the revisions to the rewritten civil rules became effective on December 1, 2007. The Preliminary Draft compares the original and revised versions of the rules, which makes it easy to immediately see the impact of the revisions.

Table 4 compares the changes made to an excerpt from Rule 5, titled “Serving and Filing Pleadings and Other Papers” (17).

Table 4

Revision Comparisons for Rule 5 of the Federal Rules of Civil Procedure

Original Version	Revised Version
<p>Rule 5. Serving and Filing Pleadings and Other Papers</p>	<p>Rule 5. Serving and Filing Pleadings and Other Papers</p>
<p>(a) Service: When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.</p>	<p>(a) Service: When Required.</p> <p>(1) <i>In General.</i> Unless these rules provide otherwise, each of the following papers must be served on every party:</p> <ul style="list-style-type: none"> (A) an order stating that service is required; (B) a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants; (C) a discovery paper required to be served on a party, unless the court orders otherwise; (D) a written motion, except one that may be heard ex parte; and (E) a written notice, appearance, demand, or offer of judgment, or any similar paper. <p>(2) <i>If a Party Fails to Appear.</i> No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.</p>

The most striking portion of this revision is the layout. Unlike the visually-cluttered original version, the revised version contains an abundance of white space. Informative headings clearly identify each section in the revised version, which makes it easy for a reader to find the information that he or she needs. Instead of centering the main heading over the text, the revised version left justifies the heading and indents the title. For consistency, the text underneath the heading also appears in a left justified format, with each subsection level indented to correspond with its hierarchical position.

The revised rule follows a general-to-specific pattern. It begins by informing the reader that papers must be served on the other party and then lists the specific papers. The original version listed the series of specific papers in one long, verbose paragraph. The revised version lists each paper in a separate subparagraph. This formatting generates white space and sets off each item.

While the list of specific papers separated the subject and main verb in the original version, the subject and main verb appear close together in the first sentence of the revised rule. The revised version eliminates phrases containing exceptions, such as “other than one which may be heard ex parte.” These phrases were interposed sporadically within the text and interfered with the flow of information.

The subordinate clause, “except that pleadings asserting new or additional claims for relief against them,” originally separated the subject and verb in the second sentence. Now, the clause appears as a separate sentence in the revised version.

Everyday words have replaced the complex words and wordy phrases that dominated the original version. For example, instead of using “subsequent to,” the revised version uses “after.” The word “under” replaces the phrase “in the manner provided for service of summons.”

The revisions in this example show how plain language can improve the readability of a document. The revisions eliminated excessive wordiness and numerous subordinate phrases that separated the subject and verb. In addition, the revisions improved the document’s appearance.

U.S. Security and Exchange Commission

The U.S. Securities and Exchange Commission’s A Plain English Handbook: How to Create Clear SEC Disclosure Documents, edited by Nancy Smith, provides before-and-after examples from prospectuses that were revised to incorporate plain language. These examples originate from prospectuses furnished by participants in the plain English pilot program with the Division of Corporation’s Finance section (69).

In addition to demonstrating verbally how plain language can improve a document’s readability, the examples also show it visually. The dense blocks of text have been eliminated. The shorter line lengths in the revised documents and increased space between paragraphs give the documents a generous amount of white space. Many of the revised documents use bullets to list information, so the information is immediately discernable to readers. These revisions make the documents much less crowded and make it easier for readers to find and read the information. From the annotated examples shown in the U.S. Securities and Exchange Commission’s handbook, I selected two examples, the cover page of a MBNA America Bank, National Association Core Prospectus and a General Motors Corporation summary page.

Example: MBNA America Bank, National Association Core Prospectus Cover Page

Appendix A contains both the original and revised versions of the cover page of an MBNA America Bank, National Association core prospectus (A Plain English Handbook 70-71).

As this example illustrates, when plain language features are applied to a document, a difficult-to-read document becomes a much easier-to-comprehend one.

Table 5 contains a summary of the primary revisions.

Table 5

Revision Comparisons of MBNA Core Prospectus Cover Page

Element	Original Version	Revised Version
Words	Contains abstract terms and legal jargon throughout text	Replaces abstract terms and legalese with clear, everyday language
	Scatters defined terms throughout text	Eliminates defined terms
	Capitalizes common terms	Presents common terms in lowercase
Sentences	Contains long sentences, some in excess of 60 words	Groups related information and places it in bulleted lists; also uses shorter sentences
Paragraphs	Contains lengthy paragraphs	Eliminates block-like paragraphs
Voice	Uses passive voice excessively	Uses active voice
Headings	None	Uses headings to identify three main categories of information
Lists	None	Uses bulleted lists to set off and enumerate information
Format	Contains long lines of text extending across page	Uses short line lengths
	Uses sans serif font	Uses serif font
	Uses a bold face, centered, all capital letter format to emphasize risk factors; no formatting used to distinguish remaining text	Uses a ragged-right margin; places risk factors in a textbox on left side of page; uses bulleted lists under category titles

The original cover page uses an excessive number of lengthy sentences. One of the sentences contains over 40 words, another contains over 50 words, and yet another contains over 60 words. In addition, the excessive amount of passive voice in the cover page adds to the sentence length.

The revised version breaks up long sentences into shorter ones and organizes the information into three main categories of bulleted lists. For example, bulleted lists that group related information together replace a 67-word sentence used in the original version. With the exception of one 31-word sentence, none of the six sentences or the ten bulleted lists in the revised version exceeds 23 words.

The original version presents the information in a monotone manner. For example, long lines of text with full justification extend across the page in block-like paragraphs. Only the three paragraphs pertaining to risk factors deviate from this format. These paragraphs, which appear in the lower one-third of the original document, use center justification, all capital letters, and bold print.

In the revised version, shorter lines of text organized into the three main categories have replaced the long lines of dense text found in the original version. Although plain language guidelines discourage against using cross-references, the revised page includes a cross-reference to risk factors. However, it places the reference in a text box along with three sentences that summarize the factors. This revision is effective, as it makes it easier for readers to find and use the information. The textbox calls attention to the information, and the summary provides a brief overview of the factors.

No headings are used to guide the reader and separate and distinguish the pieces of information in the original document. In contrast, the text on the revised page proceeds in a logical order, with the information organized according to the title of each category above the bulleted lists.

With its long, wordy paragraphs, the original page presents a dense appearance. In contrast, the revised page contains a generous amount of white space. The white space not only makes the page visually appealing, but also makes it easier to find pertinent information.

The original document uses a hard-to-read sans serif typeface. The revised document uses a serif typeface with left justified text. Instead of using an all-capital letter, bold print, centered format, the text in the revised document appears in a textbox, with a lowercase, ragged right margin format and no bold print.

The revised document incorporates many of the design principles endorsed by Colin Wheildon, author of Type & Layout: Are you communicating or just making pretty shapes. He asserts that maximum reading comprehension comes from providing the best reading environment possible, one that helps the reader get the message and that does not interrupt or distract (22-23). His studies reveal that serif text is easier for readers to comprehend; in fact, readers are five times as likely to have good comprehension from a serif body type as opposed to sans serif (48). Using an all-capital-letter format also interferes with reading comprehension. The capitalized letters visually appear as a solid rectangle, which makes it difficult for readers to recognize the words (62). The revised version incorporating the design principles espoused by Wheildon allows the readers to achieve maximum reading comprehension.

Subordinate clauses and legalese are prevalent throughout the original cover page. For example, one of the sentences on the original page reads, “Potential investors should consider, among other things, the information set forth in ‘Risk Factors’ beginning on page 19 herein” (70). The revised text reads, “Consider carefully the risk factors beginning on page 10 in this prospectus” (71). (The page-number reference to the risk factors varies between the original and revised examples, possibly because of the extensive revisions.) The revised page eliminates the subordinate clauses and legalese and uses active voice in an easy-to-understand, everyday language. In the revised version, the subordinate clause, “among other things,” has been deleted. Also removed were “set forth” and “herein.” Instead of using third-person voice to address the reader, the revised version engages the reader by speaking to the reader directly.

Example: General Motors Corporation Summary Page

Appendix B contains both the original and revised versions of a summary page from General Motors Corporation (A Plain English Handbook 74-75). Table 6 highlights the main revisions made to the summary page.

Table 6

Revision Comparisons of General Motors Corporation Summary

Element	Original Version	Revised Version
Words	Contains vague words, technical terms, and legal jargon	Uses understandable, everyday language
	Makes cross-references to definitions	Eliminates defined terms; meanings clear from context
	Uses parenthetical phrases	Eliminates parenthetical phrases
Voice	Contains numerous instances of passive voice	Uses active voice
Lists	Uses lowercase Roman numerals	Replaces lowercase Roman numerals with numbers
Format	Bases organization on the mechanics of the transaction	Uses audience's perspective for organization

The original summary bases its organization around the sequence and details of the transactions taking place, rather than around what the audience needs to know. The summary in the original version begins by describing the company, Raytheon, telling when it completed its acquisition and when it expects to complete its merger. In contrast, the revised version immediately tells the reader the purpose of the communication and how it involves the reader.

The remainder of the revised summary continues its emphasis on the shareholder, with the information organized from the shareholder's perspective. The personal pronouns interjected throughout the summary and the use of active voice keep the shareholder engaged and help maintain the summary's relationship with the audience (74-75).

Instead of maintaining a continuous flow, the original summary interrupts and distracts the shareholder by using parenthetical phrases and making numerous cross-references to other materials. For example, it states, “see ‘Background—Distribution Ratio” or “as defined under “Background—The Distribution Ratio” (74). In contrast, the revised summary makes meanings clear within the main body of the document, which eliminates the need for a cross-reference.

The revised summary replaces the legalese found in the original version with clear, direct language. For example, it explicitly states, “We call the merged company ‘New Raytheon” (75). Everyday terms that are familiar to the average layperson have replaced terms such as “pursuant to the terms and conditions set forth” and “effected largely pursuant to transactions” (75). Readers of the revised summary do not have to reread the text and spend time contemplating what a term or phrase means. They can understand the text after reading it the first time.

Florida’s Plain Language Web Site

The next set of examples are before-and-after sections from two separate government documents obtained from Florida Governor Crist’s Plain Language Web site. The first example I selected pertains to a payment request and the second one refers to a report summary. According to the Web site, the original text in the examples has been revised to use clearer language that speaks “with,” rather than “at” the audience.

Example: Payment Request

The first example from the Plain Language Web site contains an excerpt from a document about a payment request. Table 7 compares the original text and the revised text.

Table 7

Revision Comparisons of Payment Request Text

Original Text	Revised Text
The payment method you select will be in effect for all of your cases that are enforced by the Department and this authorization will remain in force until you submit another Payment Option Select and Enrollment form to change your payment method, or you terminate services with the Department.	We will use your choice for all payments we send you.

The revised text eliminates the excessive wordiness found in the original version and uses only essential words. The revised version replaces the original version's passive voice with active voice and speaks directly to the reader.

Example: Reference to Report Summary

The next example comes from a document that refers to a report summary. Table 8 contains the original and revised versions.

Table 8

Revision Comparisons of Reference to Report Summary Text

Original Text	Revised Text
The following summary is intended only to highlight certain information contained elsewhere in this report.	This summary highlights information contained in the report.

The original sentence uses passive voice and contains unneeded words. In addition to eliminating the passive voice, the revised sentence removes the redundant words, “following,” “certain,” and “elsewhere.” The revision also eliminates the unneeded phrase, “is intended only,” a phrase that contributed to the sentence’s wordiness. All these extra words detracted from, rather than added to, the sentence’s meaning. The revised sentence retains its original meaning but is much shorter and easier to read and understand.

Document Analysis

This section contains examples from sections of the Florida Statutes, mortgages, a contract, an agreement, and jury instructions. These are all documents that laypeople frequently encounter. I analyzed these documents for features that aid comprehension, such as the use of active voice, and features that inhibit comprehension, such as excessive use of passive voice. My findings discuss what features the document contains and how these features affect the comprehensibility of the document.

I reviewed two paragraphs from the Florida Statutes pertaining to homestead exemption, which is a subject that affects anyone who owns real property in Florida. I also reviewed two mortgages recorded in the public records of Orange County, Florida. Like homestead exemption, mortgages have important financial consequences, which makes it important that laypeople understand the information contained in their mortgage

In addition, I also included a contract and an agreement in the documents I selected to review. Contracts and agreements are prevalent in many of the purchases and obligations that consumers make, such as cell phone contracts and lease agreements. I included jury instructions

too, as they are a common legal document that laypeople encounter, one that can have important consequences to anyone involved in a lawsuit.

Florida Statutes

Statutes set forth our rights and obligations on such matters as property rights and the rules we must follow when driving. These same statutes, which influence and regulate many facets of our daily activities, also contain an immense amount of legal jargon.

Section 222.17 of the 2007 Florida Statutes states what a person needs to do to prove that he or she is entitled to receive homestead exemption. However, the paragraphs in the statute are lengthy and contain numerous subordinate clauses. Because this statute contains many features that make it difficult to understand, I gave it a poor rating.

Much of the language used in this statute, including the title of the statute's heading, may not be familiar to a layperson. While headings serve a useful purpose by identifying the text that follows, the heading for this statute uses words that will be unfamiliar to the average layperson. The heading for this statute reads, "Manifesting and Evidencing Domicile in Florida." However, the phrase, "manifesting and evidencing domicile," confuses more than it informs.

Example: Fla. Stat. § 222.17(1) (2007)

Paragraph (1) of this statute also contains language a layperson may not understand. This paragraph reads as follows:

- (1) Any person who shall have established a domicile in this state may manifest and evidence the same by filing in the office of the clerk of the circuit court for the county in which the said person shall reside, a sworn statement showing that

he or she resides in and maintains a place of abode in that county which he or she recognizes and intends to maintain as his or her permanent home.

The word “domicile” commonly refers to the place a person physically lives and intends to make his or her primary, permanent home; this paragraph refers to how a person proves that fact. However, the complex sentence structure and legalese found in this paragraph make it difficult to ascertain its meaning quickly. Using common words is one way to improve this sentence so laypeople can understand it. Martin Cutts, author of The Plain English Guide, suggests replacing words such as “dwelling” and “domicile,” which he classifies as “official terms,” with “home” or “property,” words he labels as “plainer alternatives” (28).

Example: Fla. Stat. § 222.17(4) (2007)

Paragraph (4) of this statute contains lengthy sentences typically found in legalese. This paragraph, which is shown in its entirety in Appendix C, consists of three sentences. The first sentence contains 261 words, the second contains 55 words, and the last contains 46 words. Subordinate phrases comprise much of the 261-word sentence. For example, one phrase reads:

. . . which independently of the actual intention of such person respecting his or her domicile might be taken to indicate that such person is or may intend to be or become domiciled in the State of Florida, . . .

To improve comprehension, phrases such as the one in this example, could be divided into separate sentences or put into bulleted lists. This revision would not only help the layperson understand this section, but also would make it easier for legal professionals to understand it as well.

The verbose 261-word sentence uses numerous archaisms. For example, it says, “said sworn statement,” rather than simply stating, “the sworn statement.” In addition, it uses the word “such” nine times to modify the words “person,” “state,” and “acts.” Extra words like these ones make it difficult for a person to find, understand, and use the information.

Mortgages

For most people, a mortgage constitutes a tremendous financial commitment. Therefore, it is important that the person signing the mortgage understand the obligation that he or she is assuming. Yet, the typical mortgage signed by a layperson often contains much legalese, which makes it difficult for a layperson to comprehend the mortgage’s terms and conditions.

Two mortgages recently recorded in Orange County, Florida, show how abundant legalese is in mortgages. One mortgage involves a week in a timeshare and the other pertains to a single-family house. These mortgages show that the dollar amount of the mortgage does not affect the amount of legalese a mortgage contains.

Both mortgages present a cluttered, dense appearance. Despite the numbered paragraphs with descriptive headings that each mortgage contains, the long lines of text stretching across the page and small font size detract from their visual rhetoric. Besides their overall appearance, the mortgages have numerous other features that give them a poor rating.

Example: Single-family House Mortgage

Appendix D contains pages 1, 3, and 11 from the first mortgage that I examined. This \$456,000 mortgage for a single-family house was recorded on May 16, 2007, in Official Records Book 9262, Page 385.

The first page of the mortgage begins by stating:

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20, and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

Two pages of definitions for 17 words used in this 14-page mortgage immediately follow this statement.

Martin Cutts asserts that a document's cross-references should be kept to a minimum (9). A Plain English Handbook recommends defining a term within the context of the document, rather than using a glossary or using a defined term as a way to explain the information (65). A defined term is the definition of a word or term used in the document; it is often placed in a list with other defined terms. For example, in the list of defined terms on page 1 of the mortgage, paragraph (F) states:

“Property” means the property that is described below under the heading
“Transfer of Rights in the Property.”

Defining terms in this manner is an ineffective way to organize a document. The reader must hunt for the term's meaning within the text of the document. Because the mortgage does not indicate the location of the heading, “Transfer of Rights in the Property,” the reader must spend additional time browsing through the mortgage to locate this heading before the reader can begin searching for the term. In addition, if the reader uses the two-page list of terms at the beginning of the mortgage to find a term, because the terms are not alphabetized, the reader must spend additional time scanning the list to find the term.

The term “Property,” which is defined in paragraph (F) on page 1, is defined again within the text of the preamble paragraph that begins “TOGETHER WITH” on page 3. Because the term is defined within the context of the text on page 3, it negates the need to include the term in the list of defined terms on page 1. In addition, the term’s definition in paragraph (F) on page 1 serves as a location reference for the term, rather than as a definition.

The Plain English Handbook says, while defining terms at the beginning of a document is easier for the writer, this practice creates a roadblock for the reader. Many readers will be discouraged from reading a document because they are overwhelmed by a vast list of terms. In addition, readers must constantly refer back to the list to understand the meaning of an unfamiliar term (13).

To eliminate the need for defined terms and cross-references in the mortgage, the term’s meaning should be stated at the point where the term is first used within the text of the mortgage. For example, the mortgage defines the term “Interest in the Property” in the same paragraph where the term is used, which is an effective feature. The first two sections of paragraph 18 of the mortgage, in which the term is defined and then used, read as follows:

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, “Interest in the Property” means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

While a blank line separates each bold print term in the list of terms, no blank lines separate any of the numbered paragraphs on pages 4 through 11 or the Planned Unit Developer Rider, which comprises the last two pages of the mortgage; page 11 of the mortgage in Appendix D is representative of this crowded format. The lack of white space makes the paragraphs appear crowded on the page and contributes to the mortgage's dense appearance. Using a two-column format and inserting a blank line between each alpha-numeric paragraph would make the document easier to read and help set off each paragraph.

The mortgage's three major headings, "Definitions," found on page 1; "Transfer of Rights in the Property," found on page 3; and "Uniform Covenants," also found on page 3, use all capital letters to set them off from the body text. This approach conflicts, however, with the three paragraphs in the preamble section on page 3 of the mortgage that precede the numbered paragraphs, because no discernable hierarchy appears to exist between the headings and the preamble paragraphs.

Each preamble paragraph begins by capitalizing all the letters of the first two or three words. For example, the last of these paragraphs begins, "THIS SECURITY INSTRUMENT combines . . ." While this capitalization technique appears to offer no benefit other than to

emphasize the preamble paragraphs, many legal documents traditionally use it. The timeshare mortgage I examined also used this formatting.

In addition to using bold print to set off the headings for the numbered paragraphs, the mortgage uses bold print to emphasize all the text in three of its numbered paragraphs, paragraphs 10(a) and (b) on page 7 and paragraph 22 on page 11 of the mortgage; Appendix D contains page 11. This formatting makes the text difficult to read and contributes even further to the mortgage's dense appearance.

Many of the mortgage's paragraphs contain enumerated lists buried within paragraphs. For example, paragraph 22 on page 11 of the mortgage contains a series of items. Using a vertical list to present this material, as both A Plain English Handbook and Collins recommend, would set off the information and make it easier to comprehend.

The paragraphs in the next two examples illustrate the abundance of legalese the mortgage contains. In the first example, Appendix D contains the preamble paragraphs found on page 3 of the mortgage. One of these paragraphs reads as follows:

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record.

The word "hereby" could easily be eliminated and not affect the paragraph's meaning. The phrase, "the Property is unencumbered, except for encumbrances of record," could be reworded to read, "the only encumbrances on the Property are those of record."

The second example, paragraph 25, Jury Trial Waiver, found on page 11 of the mortgage in Appendix D, reads as follows:

The Borrower hereby waives any right to a trial by jury in any action, proceeding, claim, or counterclaim, whether in contract or tort, at law or in equity, arising out of or in any way related to this Security Instrument or the Note.

This paragraph could be revised to read:

The Borrower waives any right to a jury trial in any action or proceeding connected with this Security Instrument or the Note.

The revised sentence shortens the phrase “trial by jury” to “jury trial.” The revision eliminates the words “claim or counterclaim,” since a claim or counterclaim would be part of an action or proceeding; the same concept holds true for the subordinate phrase, “whether in contract or tort, at law or in equity.” The phrase “connected with” replaces the more verbose phrase “arising out of or in any way related to.”

Example: Timeshare Mortgage

Despite its one-page size, the second mortgage I examined also contains plenty of legalese. Appendix E contains this \$13,955 mortgage for a timeshare week, which was recorded on December 20, 2007, in Official Records Book 9541, Page 628.

To shorten the names of the parties involved in the transaction, the mortgage uses the parenthetical phrase, “(hereinafter ‘Borrower’)” in the first paragraph. However, parenthesis alone can suffice for truncated names, which eliminates the need to include the word “hereafter” within the parenthesis (Collins 435-36).

The preamble paragraph below exemplifies some of the other legalese contained in the mortgage:

WHEREAS, Borrower is indebted to Lender in the principal sum of \$13,955.00, which indebtedness is evidenced by Borrower's Note of even date herewith (herein "Note"), providing for monthly installments of principal and interest, with the balance of indebtedness, if not sooner paid, due and payable on November 20, 2017.

Revising the paragraph to remove the archaic phrases would make it easier to understand. For example, an exact date could replace the phrase "of even date herewith." Wydick recommends using a specific reference when precision is important (30). Simply switching the order of the words in the phrase "if not sooner paid" to "if not paid sooner" gives it the aura of ordinary conversation.

The mortgage continues to use here-and-there words throughout the text. The following preamble paragraph in the mortgage, which is actually one long sentence, contains multiple examples of here-and-there words:

TOGETHER with all the improvements now or *hereafter* erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or *hereafter* attached to the property, and all insurance policies and proceeds *therefrom*, and all condemnation awards and funds, all of which, including all replacements and additions *thereto*, and all proceeds *therefore*, shall be deemed to be and remain part of the property covered by this Mortgage; and all of the foregoing, together with *said* property are *herein* referred to as the "Property".

Within this one paragraph, the words “hereafter,” “therefrom,” “therefore,” “thereto,” and “herein” are prevalent. Besides these here-and-there words, the paragraph contains other excess words, such as “said.”

The paragraph’s passive voice and organization also makes it difficult to comprehend. A lengthy subordinate clause, which contains additional subordinate clauses, precedes the subject and verb. Rewriting the paragraph to eliminate the unneeded words and passive voice, moving the subject and verb to the beginning, and structuring the paragraph to list the items defined as property in a bulleted list would improve the paragraph’s comprehensibility.

In addition to placing one lengthy sentence of a paragraph in all capitals, the mortgage uses all capitals and bold print in paragraph 3, Waiver of Jury Trial. This format presents a block-like appearance and makes the long lines of text more difficult to read. Like the mortgage for a single-family house, the timeshare mortgage uses bold face headings and numbers the paragraphs that follow the introductory paragraphs. However, the timeshare mortgage underlines the headings. This formatting is unnecessary and gives the page an even more cluttered appearance.

Contracts and Agreements

Laypeople enter into many types of contracts and agreements. They may sign a contract or an agreement to purchase a house, rent an apartment, purchase a motor vehicle, or procure credit. A layperson should understand the terms of the contract or agreement that affects him or her. While the language in contracts and agreements tends to be more understandable than in the past, portions of these documents still can be difficult for a layperson to understand.

Example: Florida Association of Realtors Real Estate Contract (FAR-9)

Appendix F contains page 2 from the May 1, 2007, version of the Florida Association of Realtors Real Estate Contract (FAR-9). Some sections of this contract have language that would not be readily understood by its intended audience of laypeople. For example, a sentence on page 2, lines 88 through 92, reads as follows:

If there are completed improvements on the Property by January 1 of the year of the Closing Date, which improvements were not in existence on January 1 of the prior year, taxes shall be prorated based on the prior year's millage and at an equitable assessment to be agreed upon by the parties prior to Closing Date, failing which, request will be made to the County Property Appraiser for an informal assessment taking into consideration available exemptions (Colson-Miller).

This lengthy sentence contains several subordinate clauses that interrupt the main idea. This is an ineffective way to present the information. These clauses separate the subject and verb and divert the reader's attention.

In addition, this sentence is written in passive voice. While passive voice has legitimate uses, in the context of this sentence, passive voice is ineffective. For example, the contract states that a request for an informal assessment will be made to the County Property Appraiser. However, this statement does not tell the reader who will make the request.

The contract fails to make effective use of white space. Readers must navigate through the long lines of dense single-spaced text. However, the contract uses other effective design features, such as headings and numbering. Centered headings in bold print separate each major

section, which makes it easy for readers to locate a topic. In addition, to numbering each line of text in the contract, each paragraph subheading is numbered and titled to identify the contents of the paragraph. Readers can use these aids to quickly locate or refer to a section of text.

Example: Dish Network Agreement

Consumer contracts and agreements exist for many goods and services, such as lawn services, cable and satellite providers, and cell phones. These documents tend to contain rambling sentences and use archaic words that hinder their readability and make them difficult for a layperson to comprehend.

Appendix G contains page 2 from a Dish Network agreement. Many of the sentences in this agreement contain legalisms and the grammatically complex sentence structure commonly found in consumer contracts and agreements. These features make it a poor document. For example, the Term Agreement and Cancellation Fee paragraph on page 2 of the Dish Network agreement contains the following sentence:

In the event that at any time you otherwise owe more than one cancellation fee with respect to the same minimum programming package pursuant to this Agreement and any other agreement(s) between you and DISH Network, you agree that the terms and conditions applicable to the cancellation fee with respect to such minimum programming for which the greatest amount is then owing to DISH Network shall be controlling.

Plain language principles can be applied to this sentence to make it more coherent and easier to read. The sentence could be revised to read as follows:

If you owe more than one cancellation fee for a minimum programming package under any agreement between you and DISH Network, you agree the terms and conditions that apply to the cancellation fee for the minimum programming with the highest amount then owing to DISH Network will control.

The revised version includes many changes that make the sentence easier to understand. It eliminates the duplicate references to “this Agreement” and “any other agreement(s)” by referring to the agreements inclusively as “any agreement.”

The revised version eliminates unnecessary words, such as “otherwise.” It replaces the abstract nominalization, “applicable,” with the concrete, active verb, “apply.” Other word substitutions made to the agreement include using:

- “If” for “in the event”
- “Under” for “pursuant to”
- “The minimum” for “such minimum”
- “Will control” for “shall be controlling”

All these revisions make the sentence more comprehensible to consumers. It is important that consumers understand their rights and responsibilities under a contract. Consumers are obligated by all the terms in the contract that they sign, such as the term that applies to cancellation fees in this example.

Jury Instructions

Jury pools are extensive. They include people from different educational levels, backgrounds, and occupations. So a defendant can receive a fair trial, it is important that jurors

understand the jury instructions that will guide them in their deliberations. Many states, such as California, have rewritten their civil and criminal jury instructions to make them easier for jurors to understand.

Overall, most jurors will find Florida's jury instructions comprehensible. Changes continue to occur to them, both to reflect changes to laws and to make the instructions easier for jurors to understand. For example, the Florida Supreme Court entered an order on October 14, 2004, that approved the recommendations made by the Supreme Court Committee on Florida's Standard Jury Instructions in Civil Cases. One of these recommendations pertained to changing the wording of Florida Civil Jury Instruction 1.3(a) on deposition testimony so it tracked "the plain language" used in subsection 1.3(b) and made the structure and content of these two subsections similar (Florida Standard Jury Instructions in Civil Cases 2).

Despite the progress integrating plain language into jury instructions by states such as Florida and California, many states still use instructions that many jurors will find confusing. Peter Tiersma states in his article, "The Language of Jury Instructions," that New York is among the states with jury instructions "that are anything but plain." Two examples from the New York State Unified Court System Criminal Jury Instructions illustrate the wordiness and complex structure of the instructions. Features, such as these ones, give both the instructions in these examples a poor rating.

Example: New York Jury Instruction – Leaving Scene of an Incident Without Reporting

Appendix H contains the first page of a New York jury instruction titled Leaving Scene of an Incident Without Reporting (Traffic Infraction) (Property Damages) Vehicle & Traffic Law § 600(1)(a). The second paragraph of this instruction reads:

Under our law, any person operating a motor vehicle who knows or has cause to know that damage has been caused to the real property or to the personal property, not including animals, of another, due to an incident involving the motor vehicle operated by such person shall, before leaving the place where the damage occurred, stop, exhibit his or her license [and insurance identification card for such vehicle, when such card is required], and give his or her name, residence, including street and number, insurance carrier and insurance identification information including but not limited to the number and effective dates of said individual's insurance policy, and license number to the party sustaining the damage, or in case the person sustaining the damage is not present at the place where the damage occurred then he or she shall report the same as soon as physically able to the nearest police station, or judicial officer.

The numerous subordinate clauses contained throughout this paragraph make it difficult to follow the meaning of the paragraph. For example, the instruction interjects phrases such as: “not including animals,” “before leaving the place where the damage occurred,” and “including street and number.” These phrases interrupt and slow processing the information that this detailed instruction contains.

This instruction could be rewritten into three separate paragraphs: one involving the requirement to stop when damage occurs from an incident, another listing the information to be produced, and the last discussing pertaining to reporting the incident when the person sustaining the damage is not present. By organizing the text to group related information together, the instruction becomes easier to follow and understand. The text below suggests a possible revision:

Under New York law, any person driving a motor vehicle whose vehicle is involved in an incident that the driver knows or has reason to know has damaged another person's property, not including animals, must stop at the incident scene. The driver must show his or her license at the scene to the person whose property was damaged. [If required, the driver will produce his or her insurance identification card for the vehicle.]

In addition, the driver will give the following information at the scene to the person whose property was damaged:

- Name
- Complete address
- License number
- Name of insurance carrier
- Insurance identification information, including but not limited to, the policy number and effective dates of the insurance policy

If the person who received the damage is not present where the incident occurred, then the driver must report the incident to the nearest police station or judicial officer as soon as possible.

Example: New York Jury Instruction – Evidence

Appendix I contains a New York jury instruction, titled Evidence. The last four paragraphs of this instruction read as follows:

Testimony which was stricken from the record or to which an objection was sustained must be disregarded by you.

Exhibits that were received in evidence are available, upon your request, for your inspection and consideration.

Exhibits that were just seen during the trial, or marked for identification but not received in evidence, are not evidence, and are thus not available for your inspection and consideration.

But, testimony based on exhibits that were not received in evidence may be considered by you. It is just that the exhibit itself is not available for your inspection and consideration.

The illogical order of these four paragraphs makes it confusing for jurors to keep track of the conditions that pertain to evidence. The two paragraphs about exhibits appear between the paragraphs pertaining to testimony. In addition, this instruction uses passive voice and nominalizations. These elements give the instruction an abstract quality and remove its focus on the audience of jurors.

The third paragraph expresses a negative position. It tells jurors the exhibits they should not consider. This wording requires jurors spend additional time processing the information in this paragraph to determine what exhibits they should consider.

The instruction could be reworded to group related material together, use active voice with concrete verbs, and state a positive position instead of a negative one. The revised instruction would involve the juror and make the instruction become more pertinent.

Legalese and Plain Language

As these examples illustrate, legalese continues to persist in legal writing. While the contract, agreement, and jury instructions did not contain the same amount or intensity of legalese as the statutes and mortgages, they still had many lengthy sentences that used a complex structure that is typical of legalese. Subordinate clauses and passive voice were found in abundance in these examples. They often used prepositional phrases when a shortened word would suffice to convey the meaning, separated subjects and verbs, and relied heavily on here-and-there words. Because white space was at a premium in most of the examples, the documents visually appeared as a page of uninviting, dense text.

These documents could be improved by using plain language principles and taking a subjective approach. Plain language legislation, such as Washington State's Plain Talk Principles or Florida's Plain Language Initiative, tends to use either an objective standard or a subjective standard. The objective standard follows a more prescriptive approach and uses tests such as the Flesch test, which measures sentence length. The subjective standard, however, is less concerned about measuring sentence length. Instead, it uses clear communication as its guide (Bast 32). Legal writers who follow a subjective standard and structure the document so it fits the reader's needs will be less likely to include voluminous amounts of legalese in their documents.

The next chapter, the conclusion, discusses ways to encourage the use of plain language in legal documents so the documents fit the readers' needs. In addition to discussing the obstacles plain language still faces as well as the progress plain language has made, the chapter examines the ways technical communicators can help implement plain language into legal documents used by laypeople.

CHAPTER FIVE: CONCLUSION

As the documents in Chapter Four, the analysis section, illustrate, varying degrees of legalese continue to be used in all types of legal documents. This use continues, despite the comprehensibility benefits that plain language offers. This concluding chapter spotlights the comprehensibility benefits that plain language offers and discusses how technical communicators can help promote plain language.

The chapter begins by looking at the difficulties of reforming traditional legal writing and examining why legalese continues to persist. Next, the chapter discusses the plain language studies that have taken place. These studies show plain language is effective in improving comprehension. The chapter concludes by discussing the role of technical communicators in facilitating plain language usage.

Reform Difficulties

Established practices tend to change slowly. However, language is not static. Because of changing practices, some words eventually become obsolete and new ones appear. For example, “ye” and “thee” are no longer used. “Ms.” is now routinely used in the salutation of a business letter addressed to a female instead of “Miss” or “Mrs.”

The quest to integrate plain language into legal documents continues to be an ongoing process, complete with high and low points. For example, while the U.S. Securities and Exchange Commission reported successes with its plain language requirement, it also experienced compliance problems. An October 9, 2007, article on the Center for Plain Language

Web site, “S.E.C. Sends Lawyers Back to English Class,” reports on the outcome of the compensation disclosure requirements the agency initiated in November 2006.

According to the article’s author, Megan Barnett, after reviewing how well 350 public companies complied with the requirement to provide information in plain language that told how and what they paid their officers, the agency deduced the companies had failed to speak plain language. More specifically, it directed its report to the corporate attorneys who wrote the regulatory filings. Among the agency’s recommendations was the reminder that “The focus should be on helping the reader understand the basis and the context for granting different types and amounts of executive compensation.” While the U.S. Securities and Exchange Commission did not obtain the level of plain language compliance it sought, Barnett asserts the agency will “keep driving home its message” until companies begin responding.

Some of the reluctance to adopt plain language stems from criticisms and misconceptions. For example, some opponents assert plain language is shortened, “dumbed-down” text. Mazur refutes that criticism, saying simple does not mean simplistic. To the contrary, she says it means the text is straightforward and clear (Mazur 207). Kimble asserts, “It is much harder to simplify than to complicate.” He says that it is easier to use existing text from a formbook than to take the time to revise it into plain language (“Answering the Critics”).

In response to the criticism that plain language does not take into account visual design, Mazur responds that visual design is an integral part of plain language. She adds that many plain language references discuss visual design. Generous white space, informative headings, and bulleted lists are all components of plain language (Mazur 207).

A common criticism is that plain language uses readability formulas that have questionable validity. Mazur points out that plain language proponents argue against readability formulas. She states that no formula can take the context of the document into account (Mazur 208). Each audience and situation is different.

Another criticism focuses on testing. Opponents assert plain language documents are tested at the end of the design process and sometimes no testing occurs. Mazur counters this criticism by responding that while testing is desirable, it is not practical at every stage of the development process (Mazur 208).

Other criticisms assert that plain language is not backed up by sufficient research to prove its effectiveness and that actual practice does not seem to follow the plain language guidelines. While plain language does not have the extensive empirical research as many other fields and a large portion of plain language resources do not cite research, the research that has been done shows plain language is effective.

Kimble adds that while evidence shows plain language does improve comprehension, no study can measure motivation. He questions how many readers do not even try to understand a traditional mortgage because they can tell just by glancing at it “that they don’t stand a chance” (“Answering the Critics”).

Criteria such as cost, standardization, and deadlines sometimes affect proposed guidelines. Plain language documents must sometimes deviate from their guidelines and adapt to the context in which they are produced. Guidelines are useful tools, but not inviolate rules (Mazur 209). Depending on the document’s intended audience and how it will use the document, guidelines may need to vary (Kimble “Answering the Critics”).

Kimble responds to criticisms that plain language is not precise. He says that plain language helps to achieve precision, not obstruct it. Plain language helps expose the ambiguities often found in traditional legal writing as well as unnecessary detail, such as superfluous words and redundant phrases (“Answering the Critics”).

Why Legalese Persists

Why does legalese continue to be used, when even legal professionals sometimes experience difficulty understanding it? Legalese persists for many reasons. People typically associate legalese with legal documents. Legalese gives these documents a distinctive aura and sets them apart from other types of documents (Tiersma “The Nature of Legal Language”). Because the formal aspect of legalese seems to connote a level of respect, some people worry that a document written in ordinary language will not be taken as seriously (Collins 452).

Changing a legalese document into a plain language document is a time-consuming and expensive task. Many people feel it is not cost-effective. While legalese is not a perfect way to communicate, it works relatively well within the legal community. As long as legalese serves its purpose, many legal professionals feel there is no need to discard it. A fear exists that the intended meaning will be lost if a traditional legal document is translated into plain language. In addition, many legal professionals feel that changing language that has been carefully scrutinized by judges invites the possibility of an appeal (Higgins 42-43).

Many attorneys depend on forms and form books with traditional legal language to give them the correct wording for the documents they need to prepare (Collins 452). Under pressure to achieve as many billable hours as possible and produce a tangible product for their clients,

they rely heavily on time-tested boilerplate language to produce documents as expeditiously as possible.

Inexperienced attorneys who are just entering the legal profession are loath to criticize the style of writing of established legal professionals. They want to conform to accepted practices and become a member of the group rather than challenge the status quo and risk becoming an outcast. Higgins asserts that jurors, too, are reluctant to criticize. When they encounter legalese in jury instructions, they remain silent. They fear appearing ignorant and losing face in front of their fellow jurors (42).

Plain Language Studies and Feedback

One of the complaints about plain language is that studies pertaining to its effectiveness are sparse. However, the studies that have been performed overwhelmingly show it can improve readers' comprehension. These studies confirm that plain language is an effective way to communicate.

Bast's article, "Lawyers Should Use Plain Language," discusses three studies, Charrow, Stratman, and Benson, as well as a U.S. Supreme Court case that challenged the antiquated language used to define the term "reasonable doubt" in jury instructions. Bast asserts these studies and the case all "show how important the use of plain language is" (37).

Charrow Study

Robert Charrow and Veda Charrow conducted "the first empirical, objective linguistic study of the comprehensibility of . . . standard jury instructions" (qtd. in Charrow and Charrow

1306). This study focused on how rewritten plain language jury instructions impacted juror comprehension (Bast 34-35).

The Charrow team began their study with three hypotheses:

1. Standard jury instructions—when viewed as discourse—are not well understood by the average juror;
2. Certain linguistic constructions are largely responsible for this hypothesized incomprehensibility; and
3. If the problematic constructions are appropriately altered, comprehension should dramatically improve, notwithstanding the “legal complexity” of any given instruction (qtd. in Charrow and Charrow 1311).

The Charrows’ study involved 14 standard civil jury instructions used in California and two groups of subjects who paraphrased the instructions they heard from a tape recording (Tiersma “The Language of Jury Instructions”). The responses from the first group in the experiment were analyzed to identify “problematic constructions.” The analysis “revealed the existence of numerous grammatical constructions, phrases, and words that appear both to typify legal language and to affect jurors’ comprehension adversely.” After the instructions had been rewritten in plain language to eliminate the problem constructions, the second group listened to the instructions (qtd. in Charrow and Charrow 1311).

When the Charrows compared the results from the groups, they “isolate[d] specific linguistic features of jury instructions – and of legalese in general – that interfere with the layperson’s understanding of legal language” (qtd. in Charrow and Charrow 1311). The Charrows noted that “nominalizations, use of the vague prepositional phrase ‘as to,’ misplaced

phrases, lexical items (replaced with simpler synonyms in the rewritten instructions), multiple negatives, passive voice in subordinate clauses, poor organization, and numerous subordinate clauses within one sentence” were among the linguistic features that caused the comprehension problems (qtd. in Charrow and Charrow 1336-40). These features make a sentence unnecessarily complex and interrupt the reader’s reading pattern.

The majority of the text the Charrows’ study identified as causing comprehension problems contained the same elements that have been the focus of plain language guidelines (Bast 35). For example, the study noted that numerous subordinate clauses within a sentence caused comprehension problems. Plain language guidelines discourage overusing subordinate clauses. Instead, the guidelines recommend expressing only one idea in a sentence and using short sentences to break up complex information. The Charrows’ study concluded that it was not the instructions’ legal complexity that caused the problems but, instead, the grammatical constructions and discourse structures (qtd. in Charrow and Charrow 1359).

Amiram Elwork, Bruce Sales, and James Alfini performed a study that expanded the Charrows’ research. One of the complaints about the Charrows’ study was the subjects had not actually participated in a real trial; they had not watched the trial, heard the attorneys’ arguments, or participated in the deliberation process (Tiersma “The Language of Jury Instructions”).

To quell the criticism that these added benefits increased juror comprehension and compensated for inadequate instructions, the Elwork research team gave the subjects a video tape of an actual criminal trial to watch. The mock jurors then received either a set of original jury instructions or instructions rewritten to incorporate plain language principles. When the jurors were questioned about the legal points made in the instructions, the group with the original

instructions responded correctly an average of 40 percent of the time. However, 78 percent of the jurors with the revised instructions responded correctly (Tiersma “The Language of Jury Instructions”).

The Charrows’ study showed the importance of using plain language in legal documents directed at laypeople. When jurors do not understand jury instructions, it hampers their deliberation process and interferes with them rendering a fair verdict.

Stratman Study

James Stratman’s article “Teaching Lawyers to Revise for the Real World: A Role for Reader Protocols” discusses a study he conducted about appellate briefs that helped confirm the benefits of plain language (Bast 34-36). Stratman used “concurrent reader protocols” in which appellate judges thought out loud while they read appellate briefs (qtd. in Stratman 46).

The Stratman study highlighted several noteworthy problems with appellate briefs. First, the study found when a brief was incomplete and failed to supply information about a case’s procedural history, it slowed the reader. Second, the study noted that judges drew “erroneous inferences” when a brief had contradictions, was ambiguous, failed to make a crucial point, and included “ill-constructed” arguments. While eventually the judges figured out the arguments made in the briefs, the errors decreased the credibility of those making the arguments. Third, when too much information was given at once, especially when portions of it were not relevant, reading became more difficult (qtd. in Stratman 49). Plain language principles will avert problems such as these ones.

Benson Study

The third study mentioned in Bast's article was conducted by Robert W. Benson, author of "The End of Legalese: The Game is Over" (Bast 34-35). The 90 law school students and 100 non-lawyers who participated in Benson's study reviewed a range of documents containing legal language (qtd. in Benson 540-42). Similar to a microcosm of society, the group of study participants represented a broad range of educational levels that ranged from graduate level to high school. Ten of the 100 non-lawyers only had a high school education (543-44).

To conduct the study, Benson used a cloze procedure. In a cloze procedure, study participants supply a response to blanks in the material. Blanks occur at "every nth (usually every fifth) word," and the score represents the percentage of blanks the study participants fill in correctly (qtd. in Benson 538-39). Benson selected this procedure because it was inexpensive and easy to administer. It tests the materials rather than the questions or the bias of the examiner (537-38).

Table 9 provides a comparison of the different types of documents tested in the Benson study with the comprehension results of the law school students, non-lawyers, and high school graduates (qtd. in Benson 543-544).

Table 9

Benson Study: Comparison of Responses - Law School Students, Non-Lawyers, and High School Graduates

Document	Results	Group
Plain English jury instruction	A or A+	All three groups
Two standard California jury instructions	A+	Law school students
	C	Non-lawyers
“Widely used” surgery consent form	B+	Law school students
	C	Non-lawyers
	D	High school graduates
Provision of the federal Ethic in Government Act of 1978	A	Law school students
	D	Non-lawyers
	F	High school graduates
A <i>Los Angeles Times</i> article	A	Law school students
	C	Non-lawyers
	D	High school graduates
Ecology text “from a sixth grade reading textbook used in the Los Angeles City schools”	A	Law school students
	B+	Non-lawyers
	C	High school graduates

As the Benson study results show, none of the groups had any problems understanding the plain language jury instructions. Law school students easily understood all the documents. However, the non-lawyer group encountered difficulty comprehending the standard jury instructions, surgery consent form, ethic statute, and newspaper article.

When someone does not understand a statute or newspaper article, it may present an inconvenience. In contrast, when someone does not understand a standard jury instruction or a surgery consent form, it may possibly impact someone's life.

Victor v. Nebraska

Bast's article highlights the 1994 U.S. Supreme Court case, Victor v. Nebraska, 511 U.S. 1 (1994), which the Court combined with another case, Sandoval v. California, 511 U.S. 1 (1994). Both cases challenged the definition of "reasonable doubt" that Nebraska and California used in their standardized jury instructions (Bast 36). However, the U.S. Supreme Court held the jury instructions in both cases, although imperfect, were adequate and did not violate the due process standard (Hemmens, Scarborough, and Carmen 232).

Much of the challenged language used in the California and Nebraska jury instructions came from an 1850 case, Commonwealth v. Webster, 59 Mass. 295 (1850), written by Chief Justice Shaw of the Massachusetts Supreme Court. Many current definitions of the term "reasonable doubt," including the challenged definitions, originate from Justice Shaw's opinion (Hemmens, Scarborough, and Carmen 235). The language in the challenged California jury instruction reads as follows:

Reasonable doubt is defined as follows: It is *not a mere possible doubt*; because everything relating to human affairs, and *depending on moral evidence*, is open to some possible or imaginary doubt. It is the state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in

that condition that they cannot say they feel an abiding conviction, *to a moral certainty*, of the truth of the charge (emphasis added) (Victor 1244).

Justice Kennedy of the U.S. Supreme Court wrote in his Victor opinion, “It was commendable for Chief Justice Shaw to pen an instruction that survived more than a century, but, as the Court makes clear, what once made sense to jurors has long since become archaic. In fact, some of the phrases here in question confuse far more than they clarify” (1251).

In the seventeenth century, the concept of “moral certainty” was described as “so certain as not to admit of any reasonable doubt” (qtd. in Shapiro 8). By the late eighteenth century, the term “reasonable doubt” began to be used. “Moral certainty,” a term often used in jury instructions, was equated with “reasonable doubt.” If a person did not possess a moral certainty of guilt, then a reasonable doubt was established (Hemmens, Scarborough, and Carmen 234).

The Sandoval case objected to the terms “moral certainty” and “moral evidence.” The U.S. Supreme Court shared Sandoval’s concern that the term “moral certainty” might be understood in today’s society to mean less than reasonable doubt, and that the term “moral certainty” indicated probability, which was an inappropriate method for quantifying reasonable doubt. However, the Court ruled against Sandoval, as it felt the jurors understood “moral certainty” in its appropriate context, based on the totality of the instructions (Hemmens, Scarborough, and Carmen 238).

While the Court rejected Sandoval’s objection to using “moral certainty” and “moral evidence” and did not feel using these terms would be likely to confuse jurors, it did feel the terms were outdated (Hemmens, Scarborough, and Carmen 238). The Court stated, “As modern

dictionary definitions of moral certainty attest, the common meaning of the phrase has changed since it was used in the *Webster* instruction” (Victor 1248).

The jury charge in the Victor case revolved around two lines of cases, ones that included Justice Shaw’s instructions from the Webster case and ones that used other phrases, such as “actual doubt” and “doubt which would cause a reasonable person to hesitate to act” (Hemmens, Scarborough, and Carmen 236). Justice Blackmun, who dissented from the majority opinion, felt that the language in Victor “was not only misleading,” but it also failed to explain the appropriate burden of proof required for a conviction (Hemmens, Scarborough, and Carmen 237).

In his concurring opinion, Justice Kennedy expressed discomfort with the term “moral evidence,” as used in the Sandoval instructions, stating, “the words will do nothing but baffle” (Victor 1251). Justice Ginsburg, who also concurred, had reservations about the term “moral certainty” (Hemmens, Scarborough, and Carmen 237). In addition, she favored the definition of reasonable doubt proposed by the Federal Judicial Center and characterized the Center’s definition as “clear, straightforward, and accurate” (Victor 1253). In addition, she asserted if courts used the Center’s definition, they could eliminate the confusion that resulted from using an outdated definition of reasonable doubt or not defining the term at all, as some states have done (Hemmens, Scarborough, and Carmen 250).

The Federal Judicial Center’s definition of reasonable doubt reads as follows:

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant’s guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that

overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

According to Hemmens, Scarborough, and Carmen, the Center's instruction uses terminology laypeople will understand. It avoids imprecise phrases like "moral certainty," a concept almost never mentioned today by attorneys or laypeople, and vague definitions such as "a doubt that is reasonable." In addition, it reduces ambiguity and clearly shows the meaning of reasonable doubt. While Hemmens, et al. admit this definition does not achieve precision, they say the meaning of reasonable doubt becomes less imprecise with this instruction and the instruction is no longer comprised of archaic language (250-52).

Both the Victor and Sandoval cases illustrate how language needs to change so it fits the needs of readers. Jury instructions should not use archaic language that jurors will find confusing and have a difficult time understanding. It is important that jurors use instructions with relevant, everyday language. They need to have a clear understanding of the law that pertains to the case so they can render a fair verdict. According to Bast, on May 31, 1977, the Florida Supreme Court ordered that the Florida Standard Jury Instructions in Criminal Cases be modified so they would be "more understandable by citizen jurors" (36).

Mindlin Study

Maria Mindlin, author of “Is Plain Language Better? A Comparative Readability Study of Court Forms,” conducted the first quantitative readability study on plain language court forms in the United States. The study, performed by Mindlin’s company, which designs and tests plain language forms, focused on the use of pro se forms in California. These forms are used by people not represented by an attorney. Mindlin’s study showed the plain language forms resulted in a significant improvement in comprehension (55-56).

The February 2005 study analyzed a proof of personal service form (proof of service) used for civil harassment cases, and a subpoena and proof of service form (subpoena) used in criminal and juvenile cases. Academic researchers, a field-test expert, a statistician, and linguists all helped design the study.

The 60 participants who volunteered to participate in the study all responded to the study’s questionnaire. Because all the participants responded, nonresponse bias was eliminated (Mindlin 55-57). Nonresponse bias occurs “if there is a difference between the preferences of these nonrespondents and those of the responders on whom estimates are based” (Pearl and Fairley 553). When participants fail to respond to a survey or questionnaire, they cannot contribute to the survey or questionnaire’s estimate of population preferences (553).

Mindlin reports that overall, the average comprehensibility scores for the proof of service were 81% for the plain language document and 61% for the original document. The subpoena’s scores averaged 95% for the plain language version and 65% for the original (61). In addition to being easier to read and comprehend, the revised forms have an additional benefit. Because

consumers will need less support to understand the forms, Mindlin feels courts will see an economic benefit from a drop in the number of people needing assistance (55).

Other Feedback

Many organizations, both federal and private, have found plain language beneficial. Citibank in New York saw the plain language movement as an opportunity to improve its consumer relations and decided to revise a promissory note into plain language in 1973 (Mazur 205). This decision proved worthwhile for Citibank. In addition to the prestige Citibank received from this endeavor, lawsuits pertaining to the note decreased and its customer base expanded (Communications Nova Scotia).

Kimble reports on a 1991 project, "Writing for Real People," that pertained to a form letter that the U.S. Department of Veteran Affairs revised to incorporate plain language. Letter writers in the agency's Mississippi and Arkansas regional offices received training on how to write in plain language. As part of the training, they revised some of the agency's form letters. To make sure the revisions were effective, the writers tested the letters through focus groups and through cued-response protocol tests. During the protocol tests, veterans read the letters out loud and then attempted to paraphrase them. Based on the feedback from the focus groups and protocol, the letters underwent further revisions ("Writing for Dollars, Writing to Please").

To ascertain the effectiveness of the revised letters, the agency asked five benefits counselors in its Mississippi office how many phone calls they had received about the original form letter and the revised one within a one-year period. Although the counselors had not maintained a log, they estimated they had sent out 750 old letters and received 1,128 calls. In

contrast, 710 new letters were sent out and 192 calls were received. The Veteran Affairs project coordinator estimated if the revised letter was adopted at all of the agency's national offices, the cost savings would exceed \$40,000 a year (Kimble "Writing for Dollars, Writing to Please").

A December 9, 2006, article, "Washington State Workers Tell it Like it Is" posted on the Plain Language.Gov Web site, states rewriting a letter into plain language gave the Washington State Department of Revenue a tremendous revenue boost. Rachel La Corte, the article's author, reports the agency received an extra \$800,000 after it sent out a letter to businesses telling them about the state's "use tax" and their obligation to pay it. Until that time, many businesses had not complied with the state's laws and had ignored the tax. State officials found when citizens knew what the government asked of them, the chance they will comply increased.

Arthur Cutts, author of The Plain English Guide, says some of the most convincing evidence about the effectiveness of plain language is that no company issuing an insurance policy, pension contract, or bank guarantee in plain language has decided later to revert to the more traditional legalese writing style (8).

Recommendations

The exploding foreclosure rate provides proof of how important it is that legal documents be written so they are understandable, both to legal professionals and to laypeople. A May 2007 article titled "Lending Lingo" highlights a typical situation that many mortgage holders suddenly find themselves facing. One mortgage holder thought he was refinancing a 30-year conventional mortgage at a fixed rate. However, after signing the documents, he discovered he had obligated

himself to a high-interest adjustable rate mortgage that required he pay twice what he anticipated.

The article's authors obtained a basic contract for a traditional 30-year mortgage. An excerpt from one of the contract's clauses reads as follows

Lender may, at lender's option, without giving notice to or obtaining the consent of borrower, borrower's successors or assigns of or any junior lien holder or guarantors ...

When the authors could not figure out the meaning of the clause, they took the contract to two experts for interpretation. The authors asked Thomas Perez and Elijah Cummings, both attorneys, to explain the clause's meaning. Thomas Perez, the Maryland Department of Labor, Licensing and Regulation Secretary, is in charge of Maryland's mortgage laws and Elijah Cummings is a congressional representative from Maryland.

Both men had to ponder the clause for a while before they could explain what it meant. Cummings commented, "The average person wouldn't have a clue [what the clause meant]." He added, "We need to simplify these documents as best we can." Both Cummings and Perez agreed when people do not understand the terms of the loan agreements that they sign, it is easy for them to become a target of unscrupulous lenders ("Lending Lingo").

Non-native speakers of English are especially susceptible to becoming victims. Perez said he felt "complicated language" was the primary reason why Tisha Thompson, an ABC2 News investigator in Maryland, found that Maryland Latinos were three times more likely to have a high-risk loan than their white, non-Hispanic neighbors. Perez added, "I don't think I have

limited English proficiency and I had a heck of a lot of trouble interpreting this [the contract clause]” (“Lending Lingo”).

As an additional example of the need to use plain language in legal writing, the 9th U.S. Circuit Court of Appeals issued a 1998 ruling against the Immigration and Naturalization Service. Because the Immigration and Naturalization Service’s deportation notices were so difficult to read, the court found they violated the due process rights of aliens. The court required the Immigration and Naturalization Service revise its forms to “simply and plainly communicate” the information (Whiteman “Management”).

While legal documents all tend to contain different amounts of legalese, statutes have a greater propensity for legalese than most legal writing. However, Tiersma writes in “The Plain English Movement” that it is unrealistic to require all statutes be written so laypeople can understand them. According to Tiersma, many statutes are not directed at the general public. Rather, the statutes are “addressed to a subcommunity of experts.” These statutes pertain to subjects such as civil procedure and evidence, public utilities, and the structure of the government and the military. The experts associated with these fields refer to these statutes in the course of performing their job duties and understand the specialized language in the statutes.

Conversely, Tiersma asserts laypeople should be able to readily understand statutes that pertain to them, such as employment, landlord-tenant relations, and consumer protection. Tiersma says a layperson should not have to hire an attorney to explain the legalese in the lease the layperson is about to sign or the consumer contract for the refrigerator the layperson wants to buy on credit (“The Plain English Movement”).

Technical Communicator's Role

Tiersma says legal writing has improved tremendously over the past 20 or 30 years, but “there remains much room for improvement” (“The Plain English Movement”). As Tiersma pointed out earlier, the task to revise authoritative documents, such as existing statutes, is a complicated process. However, technical communicators can work with the members of legislatures to help write new ones that will be easier for laypeople to understand and follow. Technical communicators possess the competencies needed to help the writers of legal documents, such as statutes, become more proficient in their writing and learn the principles of plain language.

Technical communicators are expert communicators who understand the complexities of communication and language and have a talent working across different departments and disciplines. They understand knowledge cannot be acquired without learning and that knowledge should be presented in a manner that makes it quick and easy to learn. Wick asserts this principle pertains to almost every activity a technical communicator undertakes (Wick 524-25).

Technical communicators possess the training, education, and experience necessary to enhance the flow of knowledge and increase learning. They recognize the social nature of language and understand how different assumptions and beliefs lead to diverse ways of knowing, communicating, and understanding (Wick 525). Technical communicators know how to present complex material in a way that readers with different levels of experience will understand. For example, they realize the importance of organizing information in a general-to-specific pattern and explaining unfamiliar terms. However, they also know that writing needs to be structured

according to the level of the audience. A document written for a layperson will be much different than an attorney's communication with another attorney or a judge.

Because technical communicators are used to working with subject matter experts in different disciplines, they possess a broad knowledge base and have a variety of styles for working with subject matter experts and eliciting knowledge from the experts. Technical communicators can use these assets to assist with the flow of knowledge in the many areas and subjects that the law covers.

All these attributes make technical communicators ideal to pair with legal professionals. In this relationship, the legal professional functions as the content expert, while the technical communicator assumes the language expert role.

In the role of the language expert, technical communicators can use plain language to improve the readability of legal documents. For example, technical communicators can work with the content experts in state legislative drafting offices to help draft and review proposed legislation. Technical communicators can play an instrumental role in shortening the lengthy sentences and eliminating the numerous subordinate clauses that are the trademark of many statutes. The local and federal levels of government can also hire technical communicators to improve the quality of the writing in their legal documents.

Technical communicators can also work with legal professionals to revise legal formbooks so the formbooks incorporate plain language elements such as active voice, understandable vocabulary, and a clear organizational pattern. Forms serve as a template for many of the legal documents that legal professionals produce. Yet, many of the forms contain varying amounts of legalese. While three of the four Texas formbooks Kevin Collins reviewed

were marketed as plain language books, his study determined that only one of the formbooks contained no legalese (453). Technical communicators can work with legal professionals and formbook publishers to ensure the forms and formbooks are free of legalese.

Collins says a slow trend towards plain language exists. He suggests ALWD, the Association of Legal Writing Directors, can become more involved with formbooks and help promote this trend by establishing a “plain-language stamp of approval” (453). According to the Web site for ALWD, a 200-plus member organization that represents more than 150 law schools, ALWD is “a non-profit professional association of directors of legal reasoning, research, writing, analysis, and advocacy programs from law schools throughout the United States, Canada and Australia.”

Under the arrangement Collins proposes, ALWD would supply third-party credibility to the assertions made by publishers that their books are written in plain language. ALWD would evaluate formbooks using the Plain English and Exoteric Readability (PEER) review rubric, establish a minimum target score, and determine if a formbook was plain language compliant (453).

According to Collins, the PEER rubric was specifically developed to evaluate legal writing. Using the PEER review approach, legal forms could be evaluated for plain language principles and readability. A PEER review accesses the Flesch Readability Ease Scale and the following plain language principles: use of legalisms, double and triple negatives, excessive cross-references, over-defined terms, doublets and triplets, archaism, nominalizations, and poor document design as well as average sentence length (446).

The PEER review formula is as follows: Flesch Scale + average sentence length + passive sentence % + Σ (traditional legal writing). The lower the score a document receives on the PEER, the easier the legal writing is to comprehend (Collins 446).

A PEER review consists of five steps:

- First, it uses a program such as Microsoft Word to provide a readability score and grade-level statistics.
- Second, it adds the average number of words per sentence generated from the program.
- Third, the percentage of passive sentences is included in the equation.
- Fourth, it counts the number of archaisms, Latin phrases, nominalizations, legalisms, and doublets and triplets contained in the form.
- Fifth, it assesses the overall document design. While this step of the assessment is somewhat subjective, the PEER adds points to the score if the form does not use headings, overuses capital letters, or does not enumerate sections.

The scores from the five steps are then calculated to provide an overall PEER review score (Collins 447-48).

Collins says because the PEER approach is formulaic, it could be performed either manually or with the use of a computer (446). Collins admits some elements that promote readability, such as organization, cannot be measured mathematically. However, for those elements of writing that can be evaluated mathematically, such as average sentence length, the PEER will work well (445).

In an unpublished Web survey of Texas litigators that Collins conducted, he noted that over two-thirds of the attorneys who responded to his survey said they relied on the sample

documents found in commercial formbooks. Collins noted that over half of the attorneys responding reported they had less than seven years of legal experience (451-52). Because many legal professionals, especially inexperienced ones, use formbooks as the basis for many of their documents, revising the formbooks to incorporate plain language would help integrate plain language into more legal documents. In addition to improving the quality of formbooks by incorporating plain language into them and providing them with a plain language compliance standard, a collaboration between the ALWD and the formbook publishers would focus attention on the plain language movement (453).

Another way to promote plain language and improve the readability of legal documents is for law schools to offer courses in plain language writing (Stephens). Placing a strong emphasis on plain language in the classroom will introduce plain language to people new to the legal profession. When plain language becomes an important part of their training, they will be more prone to use plain language on a routine basis.

Offering continuing legal education (CLE) courses in plain language writing would also benefit the cause of plain language (Stephens). States require attorneys acquire a specified number of CLE credit hours within a given time period. For example, according to the Member Services section of The Florida Bar's Web site, Rule 6-10 of the Rules Regulating The Florida Bar requires that an attorney authorized to practice law in Florida complete 30 hours of CLE courses over a three-year period. CLE courses offered on plain language would help established legal professionals improve their legal writing and make it more understandable to the other people who will read it.

Technical communicators can work with educators and professionals in the legal field to help emphasize plain language in the classroom and in CLE courses. For educational institutions that do not yet focus on plain language, technical communicators can work with the educators and legal professionals to develop a curriculum.

The Chicago law firm of Connelly, Sheehan and Moran realized the importance of good writing skills. The firm, which opened in 1990, discovered that although many of the attorneys it hired were proficient in understanding the law, the attorneys could not produce insightful, clear legal papers. To ensure the new attorneys the firm hired could write well, the Connelly firm developed a writing test in 1993 that job applicants were required to pass. The timed test requires that applicants prepare an organized, concise analysis of a realistic legal issue. The test guarantees that all newly-hired attorneys can write effective analyses independently and quickly (Whiteman “Management”).

Many established law firms have also begun to realize the great importance writing plays in the legal profession. These firms have undertaken the task of reforming their legal writers. Some firms initiate in-house writing programs run by writing professionals. These programs usually consist of the following elements: group writing classes, followed by individual expert coaching; confidential writing critiques; and participation by all members of the firm, including senior members (Whiteman “Management”).

Other law firms have hired permanent in-house writing experts, such as journalists or communication experts. According to Karen Larsen, the in-house editor at Miller, Nash, Wiener, Hager & Carlsen, the largest law firm in Oregon, writing experts offer “an unencumbered view of the writing itself” (Whiteman “Management”). Writing experts, such as technical

communicators, can look at a document from an entirely different perspective than the legal professional. Rather than focus on legal aspects, the technical communicator focuses on the reader and examines how well the document conveys its intended message to the reader. For example, the technical communicator makes sure the document uses language that is appropriate for the audience, groups related information together, and presents the information in a logical order that the audience can follow.

In contrast, the legal professional focuses on the legal elements that his or her writing must include. For example, a brief will include references to case law that supports the attorney's position. Legal professionals focus on writing that presents a convincing argument on behalf of their client, analyzes a legal issue, or states facts in a document such as a will or contract.

Law firms realize law depends upon language and the ability to communicate, verbally as well as orally. To communicate effectively, legal documents need to be organized in a concise, clear manner. If the legal writer clutters a document with elements such as excess wordiness and subordinate clauses, these elements impair a reader's reading pattern. The reader must spend additional time attending to the reading process, which decreases comprehension. In contrast, readers of plain language documents have increased comprehension and more time to devote to the text's message.

Promoting Plain Language

For plain language to succeed in its quest to be more prevalent in legal writing, legal professionals need to be convinced that it adds value. One way to help put it at the forefront and to emphasize its importance is to conduct additional empirical studies. More studies like the ones

Bast discussed in her article need to be performed to assess plain language's effectiveness and verify its claims.

The Center for Plain Language's November 2006 symposium focused on plain language research and the tools to put the research into action. The Center stressed the value of outreach and how to articulate plain language research so it reached new audiences in a powerful and persuasive manner. Possible ways symposium attendees proposed to achieve this goal included identifying the real benefits plain language offers to various audiences, creating a business case pertaining to integrating clear language and design together, and developing case studies about success stories with plain language.

Despite the slight set-back the U.S. Security and Exchange Commission experienced with plain language compliance, the push to broaden plain language's use in federal government documents continues. The Plain Language in Government Communications Act of 2007 was introduced by Daniel Akaka, a U.S. senator from Hawaii, on November 1, 2007. If passed, this bill will require the federal government follow the best practices of plain language writing. Forms for federal taxes, veterans' benefits, Medicare and Social Security, federal college aid, and other federal government programs considered crucial would have to be written in clear, understandable language.

As more states pass legislation requiring plain language be used and more federal agencies mandate its use, many legal writers will be forced to use it in their documents. However, a more reasonable incentive for organizations to adopt plain language is to put a focus on the economic and social benefits it can deliver. This concept allies with the ways to promote plain language discussed at the Center for Plain Language's recent symposium.

Balmford proposes another way to promote plain language—as a brand. He says brand is an intangible commodity that greatly influences a consumer’s decision to transact business. The brand forms the essence of an organization, and the organization expresses its reputation through its brand. Balmford asserts the organization should take the voice of its brand seriously and treat it with the same intensity as the organization does its visual identity and its customer service.

In essence, the documents a firm produces form the “voice of its brand.” The firm distinguishes itself and sets itself apart because of the clarity of the writing in the documents it produces. For example, the Chicago law firm that Whiteman mentioned in her article “Management: Raising the Bar on Legal Writing” built the writing expertise of its attorneys to such a high level that it is “now known for its skilled writing.”

Balmford says the voice of the brand is vital, especially for organizations that rely heavily on the documents they produce, such as the legal profession. He asserts what matters is how easily the person for whom the document was written can use it to make decisions about the person’s business and life. He says the document matters to the reader. When the reader reads the document, it can either be a “brand damaging, or brand enhancing, moment.” These moments determine if the person will be satisfied with the document, return for future business, and refer other people to the organization.

Mazur’s article lists some suggestions from Redish on ways to make plain language succeed. Among Redish’s suggestions are:

- Increase awareness of the problems that traditional documents cause
- Understand what causes the problems
- Develop ways to solve the problems

- Apply the solutions
- Teach others how to apply the solutions (Redish “The Plain English Movement” 136)

Mazur advocates that plain language’s proponents should stay current with plain language developments, contribute to plain language’s cause, and help other people interested in plain language learn about it and its benefits (210).

As more people learn about plain language, they will exert peer pressure on others to use it. In mid-January 2008, Plain Language.Gov updated its Web site to reflect that PLAIN, the Plain Language Action and Information Network, was now developing and maintaining the site’s contents. PLAIN is the new name for the group of federal employees helping to spearhead efforts within the U.S. Government to promote plain language. This group, which formed in 1995 to increase the use of plain language, is one of the leading advocates of plain language. As more employees within organizations see the benefits of adopting plain language, they will help lead efforts that encourage the organizations they work for to use plain language. In addition, consumers will also exert pressure on organizations to use plain language and adopt it as the voice of their organization’s brand.

The initial research conducted on plain language helped propel plain language into the public spotlight. While the existing research on plain language shows it is effective, additional research needs to be performed. This updated research will once again place plain language in the public spotlight. In addition, the additional research will help quell criticisms that plain language does not possess enough empirical research to validate its effectiveness. Additional studies will provide enhanced credibility to plain language’s claims of effectiveness. As was discussed at the Center for Plain Language’s November 2006 symposium, outreach programs

can help put the research into action and give plain language the drive it needs to reach new audiences. The more research and success stories that validate the effectiveness of plain language, the more incentive new groups of people and organizations will have to adopt plain language.

Above all, plain language should be promoted as the best way to achieve effective communication. According to Bast, if the writer's purpose is to communicate, the reader should not have to suffer trying to understand what he or she is reading (37). Whether the writer of a legal document is writing to a layperson or to an attorney or judge, a lengthy sentence containing numerous subordinate clauses and exceptions will be difficult for any reader to comprehend. Readers have a difficult time reading and processing unfamiliar vocabulary and information-laden sentences, especially sentences that contain numerous subordinate clauses with a complex sentence structure.

Documents that use everyday vocabulary help readers process complex information with unfamiliar concepts. Short sentences, each with its own idea, are more efficient at conveying the information to the reader. Using plain language to write a document allows the reader to read the document once to understand its meaning. The reader does not need to spend additional time re-reading a sentence that uses unfamiliar words or that contains numerous subordinate clauses. A sentence that has its subject and verb separated by a sequence of subordinate clauses often has to be re-read to figure out its meaning. These problems are eliminated when plain language is used in a document, as the reader immediately understands what he or she has read.

Plain language will help communicate to laypeople their rights and obligations under a constitution, the opinions expressed by a court, the regulations contained in a statute, and the

promises agreed to in a contract (Tiersma “Legal Language”). Plain language enables laypeople who use these documents to quickly and easily find the information they need, understand what they have read, and act on what they understand (Center for Plain Language). As Bast asserts, “. . . using plain language makes good sense” (37).

**APPENDIX A:
MBNA BANK CORE PROSPECTUS COVER PAGE**

Before

MBNA cover page, core prospectus

Fully-justified text and lengthy paragraphs give page a dense, block-like appearance.

Abstract terms and legal jargon prevalent

A lot of passive voice, adding to sentence length

Eliminate defined terms from the cover page.

Long sentence—60+ words

Why capitalize these common terms?

Long sentence—50+ words

Many long sentences—40+ words

Centered text and all capital letters are hard to read.

Legends are in legalese.

Legalistic tone—does Item 501 require all this information?

All information is presented the same way: What does this page focus my attention on?

Sans serif font is hard to read.

Text runs in long lines across the page.

PROSPECTUS
MBNA Master Credit Card Trust II
Asset Backed Certificates
MBNA America Bank, National Association
Seller and Servicer

The Asset Backed Certificates (collectively, the "Certificates") described herein may be sold from time to time in one or more series (each, a "Series") in amounts, at prices and on terms to be determined at the time of sale and to be set forth in a supplement to this Prospectus (a "Prospectus Supplement"). The Certificates of each Series will represent an undivided interest in MBNA Master Credit Card Trust II (the "Trust"). The Trust has been formed pursuant to a pooling and servicing agreement between MBNA America Bank, National Association ("MBNA"), as seller and servicer, and The Bank of New York, as trustee. The property of the Trust will include receivables (the "Receivables") generated from time to time in a portfolio of consumer revolving credit card accounts (the "Accounts"), all monies due in payment of the Receivables and certain other property, as more fully described herein and, with respect to any Series, in the related Prospectus Supplement. MBNA initially will own the remaining undivided interest in the Trust not represented by the Certificates issued by the Trust and will service the Receivables.

Each Series will consist of one or more classes of Certificates (each, a "Class"), one or more of which may be fixed rate Certificates, floating rate Certificates or other type of Certificates, as specified in the related Prospectus Supplement. Each Certificate will represent an undivided interest in the Trust and the interest of the Certificateholders of each Class or Series will include the right to receive a varying percentage of each month's collections with respect to the Receivables of the Trust at the times, in the manner and to the extent described herein and, with respect to any Series offered hereby, in the related Prospectus Supplement. Interest and principal payments with respect to each Series offered hereby will be made as specified in the related Prospectus Supplement. One or more Classes of a Series offered hereby may be entitled to the benefits of a cash collateral account or guaranty, a collateral interest, a letter of credit, a surety bond, an insurance policy or other form of enhancement as specified in the Prospectus Supplement relating to such Series. In addition, any Series offered hereby may include one or more Classes which are subordinated in right and priority to payment of principal of, and/or interest on, one or more other Classes of such Series or another Series, in each case to the extent described in the related Prospectus Supplement. Each Series of Certificates or Class thereof offered hereby will be rated in one of the four highest rating categories by at least one nationally recognized rating organization.

While the specific terms of any Series in respect of which this Prospectus is being delivered will be described in the related Prospectus Supplement, the terms of such Series will not be subject to prior review by, or consent of, the Certificateholders of any previously issued Series.

Potential investors should consider, among other things, the information set forth in "Risk Factors" beginning on page 19 herein.

THE CERTIFICATES WILL REPRESENT INTERESTS IN THE TRUST ONLY AND WILL NOT REPRESENT INTERESTS IN OR OBLIGATIONS OF MBNA AMERICA BANK, NATIONAL ASSOCIATION OR ANY AFFILIATE THEREOF. A CERTIFICATE IS NOT A DEPOSIT AND NEITHER THE CERTIFICATES NOR THE UNDERLYING ACCOUNTS OR RECEIVABLES ARE INSURED OR GUARANTEED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

Certificates may be sold by MBNA directly to purchasers, through agents designated from time to time, through underwriting syndicates led by one or more managing underwriters or through one or more underwriters acting alone. If underwriters or agents are involved in the offering of the Certificates of any Series offered hereby, the name of the managing underwriter or underwriters or agents will be set forth in the related Prospectus Supplement. If an underwriter, agent or dealer is involved in the offering of the Certificates of any Series offered hereby, the underwriter's discount, agent's commission or dealer's purchase price will be set forth in, or may be calculated from, the related Prospectus Supplement, and the net proceeds to MBNA from such offering will be the public offering price of such Certificates less such discount in the case of an underwriter, the purchase price of such Certificates less such commission in the case of an agent or the purchase price of such Certificates in the case of a dealer, and less, in each case, the other expenses of MBNA associated with the issuance and distribution of such Certificates. See "Plan of Distribution."

This Prospectus may not be used to consummate sales of any Series of Certificates unless accompanied by the related Prospectus Supplement.

The date of this Prospectus is September 2, 1997.

MBNA cover page, core prospectus

After

Prospectus

MBNA Master Credit Card Trust II
Issuer

MBNA America Bank, National Association
Seller and Servicer

Asset Backed Certificates

Consider carefully the risk factors beginning on page 10 in this prospectus.

A certificate is not a deposit and neither the certificates nor the underlying accounts or receivables are insured or guaranteed by the Federal Deposit Insurance Corporation or any other governmental agency.

The certificates will represent interests in the trust only and will not represent interests in or obligations of MBNA or any MBNA affiliate.

This prospectus may be used to offer and sell any series of certificates only if accompanied by the prospectus supplement for that series.

The Trust—

- may periodically issue asset backed certificates in one or more series with one or more classes; and
- will own—
 - receivables in a portfolio of consumer revolving credit card accounts;
 - payments due on those receivables; and
 - other property described in this prospectus and in the accompanying prospectus supplement.

The Certificates—

- will represent interests in the trust and will be paid only from the trust assets;
- offered with this prospectus will be rated in one of the four highest rating categories by at least one nationally recognized rating organization;
- may have one or more forms of enhancement; and
- will be issued as part of a designated series which may include one or more classes of certificates and enhancement.

The Certificateholders—

- will receive interest and principal payments from a varying percentage of credit card account collections.

Neither the SEC nor any state securities commission has approved these certificates or determined that this prospectus is accurate or complete. Any representation to the contrary is a criminal offense.

February 27, 1998

Ample white space surrounds key information and makes page visually inviting.

Page layout highlights cross reference to risk factors.

Clear sentences are in active voice with concrete, everyday language.

No lengthy, block-like paragraphs

Information presented in three main categories:

- the trust
- the certificates
- the certificateholders

No defined terms

Common terms, like *classes*, are not capitalized.

Long sentences are put into bullet lists.

Left justified text and shorter line lengths are easy to read.

Serif typeface is easier to read than sans serif.

Legends in plain English and lowercase are easier to read than all capital letters.

**APPENDIX B:
GENERAL MOTORS CORPORATION SUMMARY PAGE**

Before

General Motors Corporation, summary

Legalese and technical terms, like *pursuant to the terms and conditions set forth*, and *effected largely pursuant to transactions*, etc.

Cross reference to definition disrupts flow of information; meanings of terms in summary must be clear from context.

Terms like *certain* and *appropriate* are vague, not concrete.

Passive voice—who is completing these transactions?

Parenthetical phrases are legalistic and disrupt flow of information.

Little "i"s are legalistic; bulleted list would be easier to read.

Organization of information driven by mechanics of transactions rather than by information shareholders need to make a decision.

Transactions' effect on shareholders not discussed until column two.

Is detail about GM amending its certificate of incorporation necessary for the summary?

RAYTHEON

Raytheon is an international, high technology company which operates in four businesses: commercial and defense, engineering and construction, aircraft and major appliances. On July 11, 1997, Raytheon completed its acquisition of the business of Texas Instruments Defense. Immediately after the completion of the Hughes Transactions, Raytheon will merge with Hughes Defense.

For additional information regarding the business of Raytheon, see "Overview of Raytheon Business."

THE HUGHES TRANSACTIONS

Description of the Hughes Transactions

The Hughes Transactions will be completed through two principal steps:

- (1) the Hughes Reorganization (consisting of several transactions which prepare Hughes Defense for the spin-off from General Motors, separate the businesses of Hughes Defense, Delco and Hughes Telecom and effect the transfer of Delco to General Motors); and
- (2) the Spin-Off Merger (a merger transaction which effects the spin-off of Hughes Defense and the recapitalization and conversion of GM Class H Common Stock into New GM Class H Common Stock).

Step 1: The Hughes Reorganization. Pursuant to the Hughes Reorganization, among other things, (i) certain assets and liabilities will be transferred among Hughes Defense, Delco and Hughes Telecom so that each entity will have the appropriate assets and liabilities for its business; (ii) Hughes Telecom will be separated from Hughes Defense (which we refer to as the "Hughes Telecom Spin-Off"); (iii) Delco will be transferred from Hughes Electronics to General Motors; and (iv) Hughes Defense will recapitalize its capital stock into Class A Common Stock and Class B Common Stock. The Hughes Reorganization will be effected largely pursuant to transactions described in the Master Separation Agreement and the agreements contemplated by that agreement. See "Description of the Hughes Transactions—General—Hughes Reorganization" and "Separation and Transition Arrangements."

Step 2: The Spin-Off Merger. Pursuant to the terms and conditions set forth in the Spin-Off Merger Agreement, a wholly owned subsidiary of General Motors formed in order to effect the Spin-Off Merger will merge with General Motors. General Motors will be the surviving corporation of the Spin-Off Merger. See "Description of the Hughes Transactions—General—Spin-Off Merger" and "—Spin-Off Merger Agreement."

As a result of the Spin-Off Merger, the following will occur:

- each outstanding share of GM Class H Common Stock will be recapitalized and converted automatically into one share of New GM Class H Common Stock and each GM Class H Common Stockholder will receive a distribution of the Per Share Class H Distribution (as defined under "Background—The Distribution Ratio") of Class A Common Stock;
- each outstanding share of GM \$1½ Common Stock will remain outstanding and each GM \$1½ Common Stockholder will receive a distribution of the Per Share \$1½ Distribution (as defined under "Background—The Distribution Ratio") of Class A Common Stock; and
- the GM Certificate of Incorporation will be amended to delete provisions relating to the GM Class H Common Stock (including the provisions that require GM Class H Common Stock to be recapitalized into GM \$1½ Common Stock at a 120% exchange ratio under certain circumstances) and to add provisions setting forth the terms of the New GM Class H Common Stock.

For additional information regarding the Hughes Transactions, see "Description of the Hughes Transactions—General."

For a description of the methodology used to determine the allocation of Class A Common Stock between the two classes of GM common stockholders and a description of the post-closing payment to be made between Delco and Hughes Telecom, see "Background—Distribution Ratio."

Class H Common Stock outstanding to date. For most calculations, we use the Class H Fraction, we have used the Class H Fraction as of September 30, 1997 (approximately 25.6%).

INTRODUCTION TO THE HUGHES TRANSACTIONS

THE HUGHES TRANSACTIONS

We are proposing three related transactions to enhance the value of the businesses operated by our Hughes Electronics subsidiary. We need your consent in order to accomplish these "Hughes Transactions."

(1) Hughes Defense

We propose to spin off the defense electronics business of Hughes Electronics to our common stockholders. We call this business "Hughes Defense." Immediately after the spin-off, Hughes Defense will merge with Raytheon Company. Based on the Recent Raytheon Stock Price, these transactions have an indicated value of approximately \$9.5 billion.

The merged company will be the nation's third largest defense company and one of the largest providers of defense electronics in the world. The merger should enable it to compete more effectively in the U.S. defense industry, where significant consolidation has been occurring. We call the merged company "New Raytheon."

GM common stockholders will receive all of the Class A Common Stock of Hughes Defense, representing approximately 30% of the common stock of New Raytheon after the merger. This stock has an indicated value of approxi-

mately \$5.2 billion based on the Recent Raytheon Stock Price. Approximately 58.7% of the Class A Common Stock would be distributed to GM Class H Common Stockholders and approximately 41.3% would be distributed to GM Class A Common Stockholders based on the Recent Raytheon Stock Price.

Hughes Defense will be permitted to have approximately \$4.3 billion of debt when it is spun off. Substantially all of the proceeds of this debt will be made available as new capital for Hughes Telecom. The obligation to repay this debt, however, will remain with New Raytheon (in which GM's common stockholders will have an approximately 30% equity interest).

The indicated transaction value of approximately \$9.5 billion consists of the sum of (1) the value of the Class A Common Stock to be distributed to GM's common stockholders and (2) the amount of debt that Hughes Defense is permitted to have at the time of the spin-off. We believe that this amount represents a substantial premium to the enterprise value of Hughes Defense under its current ownership structure.

(2) Delco Electronics

We propose to transfer Delco Electronics, our automotive electronics business, from Hughes

3 CHAPTER 1: INTRODUCTION

Information organized from shareholders' perspectives—how transactions affect them addressed first.

Active voice helps shareholders follow the steps involved in the transaction more easily.

Summary is free of defined terms.

Concrete, everyday language replaces legalese like *pursuant to the terms and conditions set forth and effected largely pursuant to transactions*, etc.

Numbers are more reader-friendly than little "i"s.

Easy to read two-column format with left justified margins.

Personal pronouns, although not required, help engage shareholders' attention.

**APPENDIX C:
FLA. STAT. § 222.17(4) (2007)**

(4) Any person who shall have been or who shall be domiciled in a state other than the State of Florida, and who has or who may have a place of abode within the State of Florida, or who has or may do or perform other acts within the State of Florida, which independently of the actual intention of such person respecting his or her domicile might be taken to indicate that such person is or may intend to be or become domiciled in the State of Florida, and if such person desires to maintain or continue his or her domicile in such state other than the State of Florida, the person may manifest and evidence his or her permanent domicile and intention to permanently maintain and continue his or her domicile in such state other than the State of Florida, by filing in the office of the clerk of the circuit court in any county in the State of Florida in which the person may have a place of abode or in which the person may have done or performed such acts which independently may indicate that he or she is or may intend to be or become domiciled in the State of Florida, a sworn statement that the person's domicile is in such state other than the State of Florida, as the case may be, naming such state where he or she is domiciled and stating that he or she intends to permanently continue and maintain his or her domicile in such other state so named in said sworn statement. Such sworn statement shall also contain a declaration that the person making the same is at the time of the making of such statement a bona fide resident of such state other than the State of Florida, and shall set forth therein his or her place of abode within the State of Florida, if any. Such sworn statement may contain such other and further facts with reference to any acts done or performed by such person which such person desires or intends not to be construed as evidencing any intention to establish his or her domicile within the State of Florida.

**APPENDIX D:
SINGLE-FAMILY HOUSE MORTGAGE**



PREPARED BY:

Name: **Chris Moody**

Address: **Resource Mortgage
4429 Bonney Road, Suite 200
Virginia Beach, VA 23462**

Return to: **Resource Mortgage
4429 Bonney Road
Suite 200
Virginia Beach, VA 23462**

*Westchase Title
10921 Countryway
Tampa, FL
33624*

**INSTR 20070318534
OR BK 09262 PG 0385 PGS=14
MARTHA O. HAYNIE, COMPTROLLER
ORANGE COUNTY, FL
05/16/2007 02:21:36 PM
MTG DOC TAX 1,596.00
INTANG TAX 912.00
REC FEE 120.50**

20070239

[Space Above This Line For Recording Data]

MORTGAGE

MIN: 1001147-0000032861-3

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated **April 26, 2007**, together with all Riders to this document.

(B) "Borrower" is **ROBERT B. SMITH
and ADRIA M. SMITH, HUSBAND AND WIFE**

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the mortgagee under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is **Resource Bank**
Lender is a **A Virginia Corporation** organized and existing under
the laws of **The State of Virginia** Lender's address is
P.O. Box 61009, Dept. 777, Virginia Beach, VA 23466

(E) "Note" means the promissory note signed by Borrower and dated **April 26, 2007**. The Note states that Borrower owes Lender **Four Hundred Fifty Six Thousand and no/100** Dollars (U.S. **\$456,000.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **June 01, 2037**

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

FLORIDA—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3010 1/01

ITEM 9875L1 (0604)—MERS
7100032861

(Page 1 of 12 pages)

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To Order Call 1-800-968-5775

*RBA
Qm.A.*

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the

County of **Orange**
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

Lot 78, Lake Sheen Reserve-Phase 1, according to map or plat thereof as recorded in Plat Book 48, Page 43-46 of the Public Records of Orange County, Florida.

which currently has the address of

ORLANDO
[City]

, Florida

9873 NOKAY DRIVE
[Street]

32836
[Zip Code]

("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

FLORIDA—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

ITEM 9875L3 (0604)—MERS
7100032861

(Page 3 of 12 pages)

RBA
cmn

Form 3010 1/01
GreatDocs™
To Order Call: 1-800-958-5775

Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Attorneys' Fees. As used in this Security Instrument and the Note, attorneys' fees shall include those awarded by an appellate court and any attorneys' fees incurred in a bankruptcy proceeding.

25. Jury Trial Waiver. The Borrower hereby waives any right to a trial by jury in any action, proceeding, claim, or counterclaim, whether in contract or tort, at law or in equity, arising out of or in any way related to this Security Instrument or the Note.

Handwritten initials: RBA and QMA

**APPENDIX E:
TIMESHARE MORTGAGE**

SW



THIS SHORT FORM MORTGAGE is made on November 18, 2007 between NANWEI DU, A SINGLE WOMAN & YAN JIANG, A SINGLE WOMAN

INSTR 20070818314 BK 09541 PG 0628 PGS=1
MARTHA O. HAYNIE, COMPTROLLER
ORANGE COUNTY, FL
12/20/2007 12:17:07 PM
MTG DOC TAX 49.00
INTANG TAX 27.91
REC FEE 10.00
LAST PAGE

whose post office address for tax purposes is Post Office Box 22051, Lake Buena Vista, Florida 32830-2051 (hereinafter "Borrower"), and Mortgage Electronic Registration Systems, Inc., a Delaware corporation, whose post office address is Post Office Box 2026, Flint, Michigan 48501-2026 (hereinafter "MERS"), as nominee for and for the benefit of SVO Vistana Villages, Inc., a Florida corporation, whose address is Post Office Box 22197, Lake Buena Vista, Florida 32830, its successors and assigns (hereinafter "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of \$ 13,955.00, which indebtedness is evidenced by Borrower's Note of even date herewith (herein "Note"), providing for monthly installments of principal and interest, with the balance of indebtedness, if not sooner paid, due and payable on November 20, 2017.

Space above reserved for recording information

TO SECURE to Lender (a) the repayment of the indebtedness evidenced by the Note, with interest thereon, the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage, and the performance of the covenants and agreements of Borrower herein contained, and (b) the repayment of any future advances, with interest thereon, made to Borrower by Lender pursuant to this Mortgage (herein "Future Advances"), Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS the following described property located in the County of Orange, State of Florida:

Unit Week 12 in Unit 09408, an Annual Unit Week,
Unit Week -- in Unit ----, an ----- Unit Week

Bella Florida CONDOMINIUM, together with all appurtenances thereto, according and subject to the Declaration of Condominium of Bella Florida Condominium, as recorded in Official Records Book 6222, Page 1987, Public Records of Orange County, Florida, and all amendments thereof and supplements thereto, if any ("Declaration"), subject to taxes for the current year and subsequent years, and all other matters of record.

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, any water stock, and all fixtures now or hereafter attached to the property, and all insurance policies and proceeds therefrom, and all condemnation awards and funds, all of which, including all replacements and additions thereto, and all proceeds therefrom, shall be deemed to be and remain part of the property covered by this Mortgage; and all of the foregoing, together with said property are herein referred to as the "Property".

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to taxes for the current year and subsequent years, and all other matters of record.

Borrower and Lender covenant and agree as follows:

1. **Master Mortgage Incorporated Herein.** This instrument is a short form mortgage which incorporates by reference as if fully set forth herein each and every one of the terms, provisions, covenants and conditions as are more fully set forth in that certain Bella Florida Condominium Declaration of Master Mortgage Terms and Covenants (MERS) recorded December 12, 2000 in Official Records Book 6149, Page 401, of the Public Records of Orange County, Florida (the "Master Mortgage"), which Master Mortgage and this Short Form Mortgage shall be together referred to herein as the "Mortgage". BORROWER HEREBY ACKNOWLEDGES THAT BORROWER HAS BEEN PROVIDED A COMPLETE COPY OF THE MASTER MORTGAGE AT OR PRIOR TO THE TIME OF THE EXECUTION OF THIS SHORT FORM MORTGAGE AND THAT BORROWER HAS EXECUTED AND DELIVERED THIS SHORT FORM MORTGAGE WITH THE KNOWLEDGE AND UNDERSTANDING THAT EACH AND EVERY TERM, PROVISION, CONDITION AND COVENANT SET FORTH IN THE MASTER MORTGAGE IS AND SHALL BE A PART OF THIS MORTGAGE, IT BEING THE EXPRESS INTENTION OF BORROWER AND LENDER THAT THIS SHORT FORM MORTGAGE AND THE MASTER MORTGAGE BE CONSTRUED TOGETHER AS A SINGLE DOCUMENT, THE MORTGAGE, AND SHALL BE TOGETHER BINDING UPON AND INURE TO THE BENEFIT OF BORROWER AND LENDER.

ND Y.J.
(Borrower's Initials) (Borrower's Initials) (Borrower's Initials) (Borrower's Initials)

2. **Acknowledgment of Restrictions on Transfer.** Borrower hereby expressly acknowledges that, as more particularly set forth in Paragraph 18 of the Master Mortgage, it shall be a default under this Mortgage if the interest of Borrower in the Property is conveyed, sold or transferred other than as permitted under Paragraph 18 of the Master Mortgage.

3. **WAIVER OF JURY TRIAL.** BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE OR THE NOTE SECURED HEREBY, OR IN ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER IN MAKING THE LOAN SECURED BY THIS MORTGAGE.

4. **Entire Agreement.** The Note, this Short Form Mortgage and the Master Mortgage referenced herein contain the entire agreement between the parties regarding this transaction. Any prior agreements, whether oral or written, are superseded by the Note, this Short Form Mortgage and the Master Mortgage.

IN WITNESS WHEREOF, Borrower has executed this Short Form Mortgage on the day and year first written above.

Borrower [Signature] Borrower [Signature]
Print Name: NANWEI DU Print Name: YAN JIANG

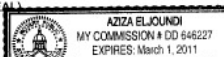
Borrower _____ Borrower _____
Print Name: _____ Print Name: _____

State of Florida
County of ORANGE

This Mortgage was acknowledged before me on November 18, 2007 by NANWEI DU, A SINGLE WOMAN & YAN JIANG, A SINGLE WOMAN who is/are personally known to me or who has/have produced ID/passport as identification.

This document prepared by:
Heather Brandow
Vacation Title Services, Inc.
8801 Vistana Centre Drive
Orlando, Florida 32821
Return to:
Ticor Title Insurance Company of Florida
Ancillary Services Division
489 State Road 436, Suite #115
Casselberry, Florida 32707

Notary Public's
Signature: [Signature]
Print Name: _____
Notary Public, State of _____
Commission No.: _____
My Commission Expires: _____
(SEAL)



MIN 1000580000030651

VVIDA031 (Rev. 12-05-06)

**APPENDIX F:
REAL ESTATE CONTRACT**

55 **5. CLOSING PROCEDURE; COSTS:** Closing will take place in the county where the Property is located and may be conducted
56 by mail or electronic means. If title insurance insures **Buyer** for title defects arising between the title binder effective date and
57 recording of **Buyer's** deed, closing agent will disburse at closing the net sale proceeds to **Seller** and brokerage fees to Broker as
58 per Paragraph 19. In addition to other expenses provided in this Contract, **Seller** and **Buyer** will pay the costs indicated below.

59 **(a) Seller Costs:**
60 Taxes and surtaxes on the deed
61 Recording fees for documents needed to cure title
62 Other: _____

63 **Seller** will pay up to \$ _____ or _____% (1.5% if left blank) of the purchase price for repairs to warranted items ("**Repair**
64 **Limit**";) and up to \$ _____ or _____% (1.5% if left blank) of the purchase price for wood-destroying organism treatment
65 and repairs ("**WDO Repair Limit**";) and up to \$ _____ or _____% (1.5% if left blank) of the purchase price for costs
66 associated with closing out open permits and obtaining required permits for unpermitted existing improvements ("**Permit Limit**").

67 **(b) Buyer Costs:**
68 Taxes and recording fees on notes and mortgages
69 Recording fees on the deed and financing statements
70 Loan expenses
71 Lender's title policy
72 Inspections
73 Survey
74 Flood insurance, homeowner insurance, hazard insurance
75 Other: _____

76 **(c) Title Evidence and Insurance:** Check (1) or (2):
77 (1) The title evidence will be a Paragraph 10(a)(1) owner's title insurance commitment. **Seller** will select the title
78 agent and will pay for the owner's title policy, search, examination and related charges or **Buyer** will select the title
79 agent and pay for the owner's title policy, search, examination and related charges or **Buyer** will select the title agent
80 and **Seller** will pay for the owner's title policy, search, examination and related charges.
81 (2) **Seller** will provide an abstract as specified in Paragraph 10(a)(2) as title evidence. **Seller** **Buyer** will pay for the
82 owner's title policy and select the title agent. **Seller** will pay fees for title searches prior to closing, including tax search and
83 lien search fees, and **Buyer** will pay fees for title searches after closing (if any), title examination fees and closing fees.

84 **(d) Prorations:** The following items will be made current (if applicable) and prorated as of the day before Closing Date: real
85 estate taxes, interest, bonds, assessments, association fees, insurance, rents and other current expenses and revenues of
86 the Property. If taxes and assessments for the current year cannot be determined, taxes shall be prorated on the basis of
87 taxes for the preceding year as of the day before Closing Date and shall be computed and readjusted when the current taxes
88 are determined with adjustment for exemptions and improvements. If there are completed improvements on the Property by
89 January 1 of the year of the Closing Date, which improvements were not in existence on January 1 of the prior year, taxes
90 shall be prorated based on the prior year's millage and at an equitable assessment to be agreed upon by the parties prior to
91 Closing Date, failing which, request will be made to the County Property Appraiser for an informal assessment taking into
92 consideration available exemptions. If the County Property Appraiser is unable or unwilling to perform an informal
93 assessment prior to Closing Date, **Buyer** and **Seller** will split the cost of a private appraiser to perform an assessment prior
94 to Closing Date. Nothing in this paragraph shall act to extend the Closing Date. This provision shall survive closing.

95 **(e) Special Assessment by Public Body:** Regarding special assessments imposed by a public body, **Seller** will pay (i)
96 the full amount of liens that are certified, confirmed and ratified before closing and (ii) the amount of the last estimate of the
97 assessment if an improvement is substantially completed as of Effective Date but has not resulted in a lien before closing,
98 and **Buyer** will pay all other amounts. If special assessments may be paid in installments **Buyer** **Seller** (if left blank,
99 **Buyer**) shall pay installments due after closing. If **Seller** is checked, **Seller** will pay the assessment in full prior to or at the
00 time of closing. Public body does not include a Homeowner Association or Condominium Association.

01 **(f) Tax Withholding:** **Buyer** and **Seller** will comply with the Foreign Investment in Real Property Tax Act, which may require
02 **Seller** to provide additional cash at closing if **Seller** is a "foreign person" as defined by federal law.

03 **(g) Home Warranty:** **Buyer** **Seller** **N/A** will pay for a home warranty plan issued by _____ at a cost
04 not to exceed \$ _____. A home warranty plan provides for repair or replacement of many of a home's mechanical
05 systems and major built-in appliances in the event of breakdown due to normal wear and tear during the agreement period.

06 **PROPERTY CONDITION**

07 **6. INSPECTION PERIODS:** **Buyer** will complete the inspections referenced in Paragraphs 7 and 8(a)(2) by _____,
08 _____ (the earlier of 10 days after the Effective Date or 5 days prior to Closing Date if left blank) ("**Inspection Period**";)
09 the wood-destroying organism inspection by _____, _____ (at least 5 days prior to closing, if left blank); and the
10 walk-through inspection on the day before Closing Date or any other time agreeable to the parties; and the survey referenced in
11 Paragraph 10(c) by _____, _____ (at least 5 days prior to closing if left blank).

12 **Buyer** (_____) (_____) and **Seller** (_____) (_____) acknowledge receipt of a copy of this page, which is Page 2 of 8 Pages.

**APPENDIX G:
DISH NETWORK AGREEMENT**

month (in the case of a model VIP622 DVR, VIP222, or VIP211 Receiver) or \$5 per month (in all other cases) will be charged to your account for each Receiver added or exchanged under this promotion beyond the first other than where such Receiver either: (i) constitutes the first leased receiver activated on your account or (ii) is being exchanged for the first leased receiver activated on your account, in which event the equipment rental fee for such receiver will be included in the promotional base package price; **DISH Network DVR Service Fee:** A non-refundable \$5.98 per month DISH Network DVR service fee will be charged to your account for each model 510, 522, 625 or VIP622 DVR receiver. This fee will not apply with respect to one such receiver if you subscribe to DishDVR Advantage and will be waived if you subscribe to America's "Everything" Pak; **Additional Outlet Programming Access Fee:** A \$5 per month additional outlet programming access fee will be charged to your account for each dual tuner receiver (models 322, 522, 625, VIP222, and VIP622 DVR). This fee will be waived on a monthly basis for each such receiver that DISH Network confirms has been continuously connected to your same land-based phone line. DISH Network's confirmation process shall be the sole method utilized to determine if your additional outlet programming access fee(s) will be waived; **HD Enabling Fee:** A non-refundable \$6 per month HD enabling fee will be charged to your account if any model 411, VIP211, VIP222, or VIP622 DVR receiver is activated. This fee will be waived on a monthly basis if you subscribe to DishHD programming (currently priced at \$20 per month in conjunction with an eligible America's Top programming package) or HD Pak (only available for residents of Alaska or Hawaii and currently priced at \$9.99). The installation fee and the upgrade charge(s) are not deposits and are non-refundable. State and local taxes, or reimbursement charges for gross earnings taxes imposed on satellite providers for transmission of programming in some states, may apply. Other fees may apply as set forth in the Residential Customer Agreement. Different or other payment options may be applicable where billing is provided through a billing agent.

Term Agreement and Cancellation Fee. You agree to purchase DishFAMILY, America's Top 100, DishLATINO, or Great Wall TV Package, as your minimum subscription level for 18 months from the date of initial activation of any of the Receivers provided to you under this promotion ("18-Month Term"). If after activation, but before the end of the 18-Month Term, you elect to terminate this Agreement or downgrade your programming below the required minimum programming package of DishFAMILY, America's Top 100, DishLATINO, or Great Wall TV Package, or your service is disconnected for any reason, and all programming and other fees and charges for the 18-Month Term have not been paid in full as of such termination, downgrade, or disconnection, you agree to pay, and we will automatically charge, a **cancellation fee** equal to \$13.33 multiplied by the number of months remaining in the 18-Month Term to your DISH Network account or your Credit Card as defined below, at our option. In the event that at any time during the 18-Month Term you are eligible to participate and participate in the "DISH Pause Program" or any other program pursuant to which your DISH Network service may be temporarily suspended, you agree that the 18-Month Term shall automatically resume immediately following such suspension and that the last day of such 18-Month Term shall be extended for the number of days by which your DISH Network service was suspended. DISH Network shall determine eligibility for any such promotion in its sole discretion and reserves the right to deny eligibility for any reason. In the event that at any time you otherwise owe more than one cancellation fee with respect to the same minimum programming package pursuant to this Agreement and any other agreement(s) between you and DISH Network, you agree that the terms and conditions applicable to the **cancellation fee** with respect to such minimum programming for which the greatest amount is then owing to DISH Network shall be controlling.

Unreturned Equipment Charges. The satellite receivers, smart cards, and remote controls provided by DISH Network pursuant to this Agreement are the property of DISH Network at all times and must be returned to DISH Network if you elect to terminate this Agreement or downgrade your programming below the required minimum programming package of DishFAMILY, America's Top 100, DishLATINO, or Great Wall TV Package, or your service is otherwise disconnected for any reason at any time. Immediately following such termination, downgrade, or disconnection, you agree to call DISH Network at 1-888-220-3474 to receive a return authorization number and delivery instructions for the return of all such satellite receivers, smart cards, and remote controls. WITHIN 15 DAYS OF SUCH TERMINATION, DOWNGRADE, OR DISCONNECTION, YOU AGREE TO RETURN ALL SUCH SATELLITE RECEIVERS, SMART CARDS, AND REMOTE CONTROLS IN GOOD OPERATING CONDITION, NORMAL WEAR AND TEAR EXCEPTED, TO DISH NETWORK. The low noise block converters with integrated feeds (if any) and switches (if any) provided by DISH Network under this promotion shall be treated as if they were selected by you under your original promotion agreement with DISH Network for all purposes related to their ownership and shall be subject to the return requirements (if any) set forth therein with respect to such equipment. You are responsible for and shall bear all costs and expenses to return such satellite receivers, smart cards, and remote controls. If you fail to return the satellite receivers, smart cards, and remote controls as set forth herein you agree to pay, and we will automatically charge to your DISH Network account or your Credit Card (as defined below), at our option, an unreturned equipment charge for each item (i.e., per each corresponding receiver, smart card, and remote control set) not returned in full as follows (in each case and collectively, the "Unreturned Equipment Charge"): Model VIP622 DVR receiver \$400; Model 522 or 625 receiver \$300; Model VIP222, VIP211, 411, 322, or 510 receiver \$200; Model 301 or 311 receiver \$100.

Collection of Fees/Credit Card Authorization. You hereby authorize DISH Network to charge, and/or place a hold with respect to, any and all cancellation fee(s) and unreturned equipment fee(s) owing under this Agreement (collectively, the "Authorized Amounts"), to your credit card or debit/check card that you initially provided to DISH Network and/or to any other credit card or debit/check card of yours that you provide to make payments to DISH Network (the "Credit Card"), authorize the issuer of the Credit Card to pay the Authorized Amounts without DISH Network submitting a signed receipt, and agree that this Agreement is to be accepted as such authorization. You authorize DISH Network to continue to attempt to charge, and/or place holds with respect to, the Authorized Amounts, or any portion thereof, to the Credit Card until such amounts are paid in full. You acknowledge and agree that DISH Network shall have no liability whatsoever for any non-sufficient funds, rejected debit, or other charges incurred by you as a result of such attempts to charge, and/or place holds on, the Credit Card. Payment of a cancellation fee shall not relieve you of your obligation to pay all unpaid charges on your account. In the event that you are enrolled or later enroll in DISH Network's AutoPay ("AutoPay") or Electronic Funds Transfer ("EFT") payment programs, you agree that the Authorized Amounts and any and all monthly programming, pay-per-view, and other similar and related charges and other amounts owing under this Agreement or the Residential Customer Agreement may be charged to the credit card, debit/check card or account provided by you to DISH Network pursuant to such AutoPay or EFT program.

Billing Agents. We may enter into relationships with third parties to provide billing and other services on our behalf in which case the terms and conditions of this Agreement shall apply to such third parties as applicable under the circumstances.

Translation. In the event of any conflict or inconsistency between the English-language version of this Agreement and a translation of this Agreement into any other language, the English-language version shall be controlling.

**APPENDIX H:
NEW YORK JURY INSTRUCTION – LEAVING ACCIDENT SCENE**

LEAVING SCENE OF AN INCIDENT WITHOUT REPORTING
(Traffic Infraction)
(Property Damage)
VEHICLE & TRAFFIC LAW § 600(1)(a)
(Committed on or after July 24, 1986)

The _____ count is Leaving the Scene of an Incident Without Reporting.

Under our law, any person operating a motor vehicle who knows or has cause to know¹ that damage has been caused to the real property or to the personal property, not including animals, of another, due to an incident involving the motor vehicle operated by such person shall, before leaving the place where the damage occurred, stop, exhibit his or her license [and insurance identification card for such vehicle, when such card is required],² and give his or her name, residence, including street and number, insurance carrier and insurance identification information including but not limited to the number and effective dates of said individual's insurance policy, and license number to the party sustaining the damage, or in case the person sustaining the damage is not present at the place where the damage occurred then he or she shall report the same as soon as physically able to the nearest police station, or judicial officer.

The term "motor vehicle" used in this definition has its own special meaning in our law. I will now give you the meaning of that term.

MOTOR VEHICLE means every vehicle operated or driven upon a public highway which is propelled by any power other than

¹ The statute reads: "who, knowing or having cause to know. . . ." VTL § 600(1)(a). To correct a grammatical error in the statute, the instruction instead reads "who knows or has cause to know."

² The statute continues with the words "pursuant to articles six and eight of this chapter." Articles 6 and 8 of the Vehicle and Traffic Law pertain to the insurance requirements for motor vehicles, and should be explained separately if such requirements are in issue.

**APPENDIX I:
NEW YORK JURY INSTRUCTION – EVIDENCE**

Evidence

When you judge the facts you are to consider only the evidence.

The evidence in the case includes:

the testimony of the witnesses,

the exhibits that were received in evidence, [and]

[the stipulation(s) by the parties. (A stipulation is information the parties agree to present to the jury as evidence, without calling a witness to testify.)]

Testimony which was stricken from the record or to which an objection was sustained must be disregarded by you.

Exhibits that were received in evidence are available, upon your request, for your inspection and consideration.

Exhibits that were just seen during the trial, or marked for identification but not received in evidence, are not evidence, and are thus not available for your inspection and consideration.

But, testimony based on exhibits that were not received in evidence may be considered by you. It is just that the exhibit itself is not available for your inspection and consideration.

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