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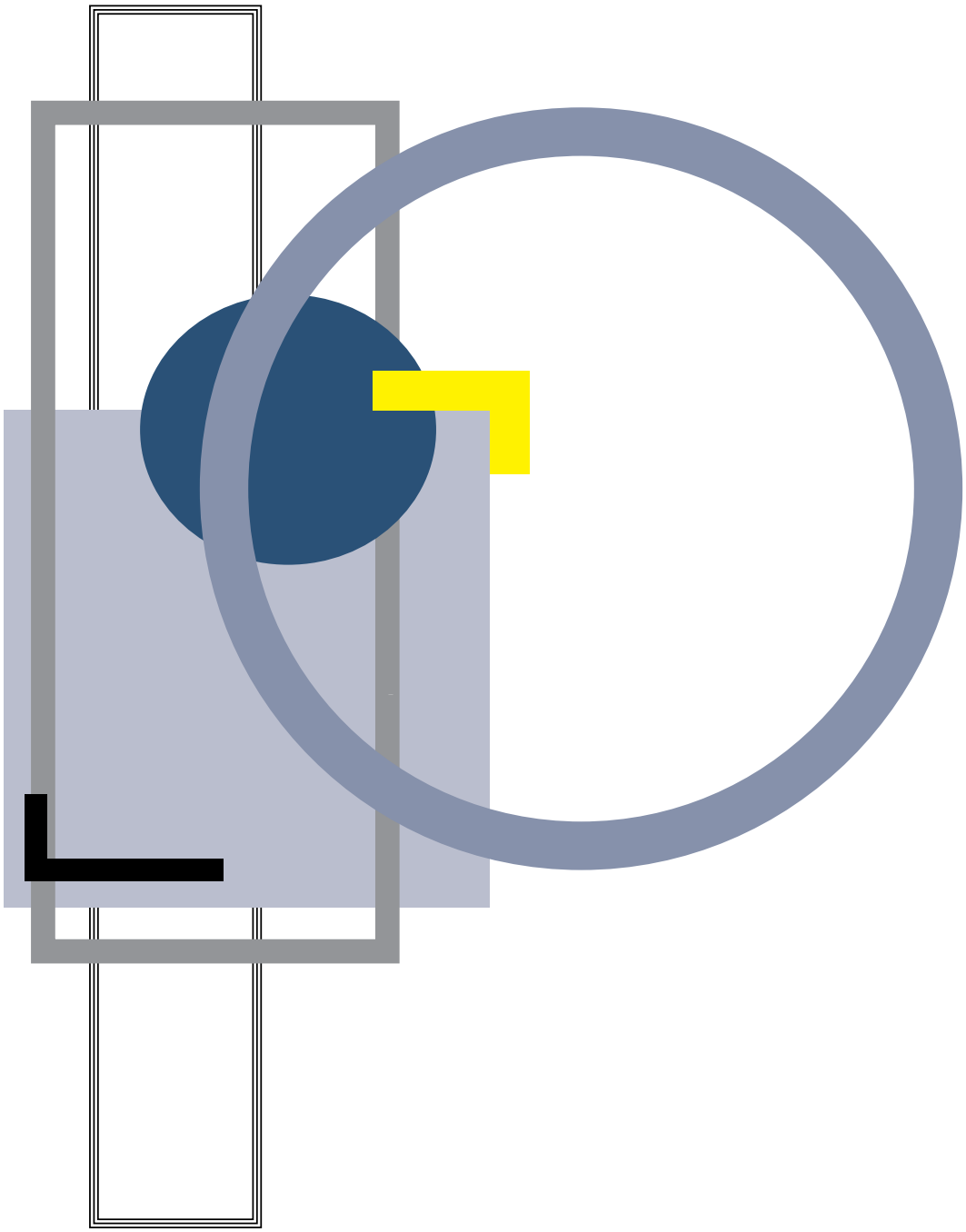

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Submissions We encourage you to submit articles to be considered for publication in Clarity. Send submissions directly to editor in chief Thomas Myers. Please limit submissions to approximately 1,500 or 3,000 words.

In this issue

Access to justice. What does it mean to you? Or maybe the better question is, What does it mean to *not* you?

What does access to justice mean to the millions of tenants who live just 15 miles east of you? Many of them lost their jobs after the pandemic, and landlords are threatening to evict. They feel helpless and hopeless. And even if they knew their rights, they have no idea how to protect them. And if you're being honest with yourself, you don't either. After all, the process is a puzzle, and the statutory language is dense (at best).

What does access to justice mean to the single mom who lives two houses away? You know, the divorced woman with the red car who was a victim of domestic violence and didn't know what to do about it. Her car has had a cracked windshield for more than two years and is older than her son. Speaking of the son, rumor has it, he has been in the juvenile court system since the divorce. All he seems to do is mope around. He seems sad and depressed all the time. In fact, you've never once seen him smile. What are their names again?

So again I ask, What does "access to justice" mean? Seriously — think about it. Stop reading, silence your phone and other life distractions, and take five minutes to think about the answer to this important question.

. . .

Some words that came to mind for me: Fairness. Equality. Fundamental. Dignity. Humanity. Access to justice is not a political position (or at least, it shouldn't be). It's not leverage. It's not selfish. It's not self-promoting. It's not a cute idea that just seems like the right thing to do. However you define it, access to justice is incredibly important, perhaps more important now than ever.

Issues 81 and 82 of The Clarity Journal share this important theme. I sent out the call for papers for what was supposed to be Issue 81 only. And I was overwhelmed by the response. The number of excellent articles led to carrying the theme through two issues of the Journal.

In another first, we are publishing several articles in both English and in the authors' native language. For the first time, I'm delighted to say that The Clarity Journal includes articles in French, Spanish, Polish, and Hungarian.

The two issues include 19 articles, and 9 of them are in two languages. A short introduction isn't enough, so I urge you to read every one to get a full flavor of the life-changing work that you and your plain-language colleagues are doing every day, the progress we have made, and the work still to be done.

Finally, the issues are an introduction to Clarity's upcoming 2020 conference Access for All: Plain language is a civil right. The 2020 conference began as a traditional in-person conference to be held at the historic Watergate Hotel in Washington, D.C., in late September and early October 2020. Then came the pandemic, and everything changed.

The conference is now in two parts (October 2020 and May 2021) and is co-hosted (for the first time) by all three major international plain-language organizations: Clarity, the Center for Plain Language, and PLAIN. I'm thrilled about this collaboration and how the three groups can work together to improve communication.

The October part of the conference will be three half days. You'll see some of these authors, and many others, as we share more about the ways plain language changes lives throughout the world. The conference begins on (you guessed it) International Plain Language Day. October 13 is also the 10-year anniversary that former U.S. President Barack Obama signed the Plain Writing Act.

I'm looking forward to the conference — and seeing you.

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Plain language: It's about access to justice

Paul Aterman

Paul Aterman is the Chairperson of Canada's Social Security Tribunal. He leads the Tribunal's pivot to becoming a client-centred justice service. Plain language is one of the tools we are using, so that Canadians who appeal a denial of benefits can participate meaningfully in their own cases.

Using plain language shows respect for the reader. At the Social Security Tribunal (SST), our readers are Canadians accessing our appeal system. Overly complex, legalistic language is a barrier to accessing the justice service we provide. If our appellants can't understand our process or the decision that was made in their case, then they can't participate meaningfully in their own appeals. This article explains how we are using plain language at the SST to improve access to justice.

Why does plain language matter to us?

The Tribunal decides whether Canadians are entitled to Employment Insurance benefits, a Canada Pension Plan disability pension, or Old Age Security benefits. These benefits are the bedrock of our federal social welfare system—universal programs that protect people's economic security. We give Canadians recourse to justice in matters that affect their ability to access the basic necessities of life. While the dollar value of disputes may not be high, it often makes the difference between life in poverty and life with dignity.

Over 90% of people who bring cases to the Tribunal are underrepresented. That means they represent themselves, or they have a family member or friend represent them. While our appellants reflect the cultural and socio-economic diversity of Canada, many of them are the most vulnerable Canadians, including people with disabilities, seniors and those who are unemployed. Some of our appellants do not have secondary or post-secondary education. Some of our appellants do not speak English or French as their first language. Many of our appellants are also under considerable stress. All of these factors impact reading comprehension.

The Tribunal is a justice organization. We hold hearings, and we apply Canada's laws to the circumstances of each person's case. But we are also a service organization. We have a legal and an ethical duty to make sure that the people who bring their cases to the Tribunal have access to a process and decision in their case that is simple, quick, and fair. Appellants have a right to understand how the Tribunal works. They have a right to a clear explanation of our appeal process. They have a right to understand decisions that are going to affect their lives.

What are we doing to introduce plain language at the Tribunal?

The laws that we have to apply are very complex. Our stakeholders criticized the SST for being too formal and legalistic. We knew that our process was not meeting the needs of the people who appeal. So in 2018, we started an overhaul of every aspect of the appeal process. The goal is to design a user-first system and a client-centric approach to justice. Adopting plain language was a key part of this transformation.

In 2019, we started to overhaul how we communicate with appellants at all points of our appeal process. Our approach is based on findings from a plain language

expert who conducted a readability assessment for the Tribunal. The expert found that the Tribunal should be aiming at a Grade 8 reading level score in its forms and letters, and a Grade 9 level in its decisions. These scores are based on an analysis of our appellant demographic. They take into account several factors, including that French or English may not be an appellants' first language and that appellants may be under considerable stress. They also reflect the fact that decisions are more complex than forms or letters.

How are we using plain language at every step of the appeal process?

Tribunal staff are redesigning all of our correspondence so that it is clear, concise, and designed for readability. This includes our forms, letters and web content. Working with a plain language expert who trained Tribunal staff this past summer, we've redesigned a number of letters already. This is a large project and we will not be finished until 2021. We have also improved our forms. Our new forms are shorter, clearer and use simpler vocabulary. Initial results show that these new forms prompt fewer questions from appellants. The forms come back to us with fewer mistakes or gaps than before. This speeds up the appeal process for appellants.

We are also improving how we communicate with appellants in person, and over the phone. Tribunal staff were trained this past summer on delivering clear messages and making sure those messages are understood.

Our appeals are decided by Tribunal members. They hold hearings and write appeal decisions. Since the laws we administer are very technical, we need to make sure that appeal decisions are clear and easy to understand. In 2018, we started simplifying decisions by changing their structure. We now use what is called a "point first" approach to decision writing. On average, the length of decisions has dropped by 25%.

Now our decision-makers are being trained to write decisions in plain language. The goal is to cut out unnecessary information, complex language and legalese. We've started a plain language training program for all our Tribunal members. We are being helped by two retired judges from the Supreme Court of Canada. Early results show gradual but clear progress in plain language decision writing by members. Readability is improving and we're moving towards a lower reading grade level.

Our legal services team is also working to develop plain language case summaries to post on our website. This will give appellants access to a body of plain language caselaw that may be helpful as they prepare their appeals.

How can we be sure that what we are doing is actually working?

The SST is accountable to Canadians for its work. We need to demonstrate that our effort is paying off by delivering a more accessible justice service to Canadians. To that end, we are systematically monitoring the grade reading level in our decisions and correspondence to see if we are on track to make them simpler. We also need to test our changes directly with those who use our services. To do this, we'll be engaging with stakeholder communities soon. We hope to identify where we've made gains, but also where we are still falling short and what can be done to get us to our goal of improving access to justice for appellants.

Plain language is about access to justice. For us at the SST, that means changing how we communicate with appellants. We are working to make plain language our language.

Le langage clair et simple : Une question d'accès à la justice

Paul Aterman

Paul Aterman est le président du Tribunal de la sécurité sociale du Canada. Il mène la transition du Tribunal vers un service de justice qui est axé sur la clientèle. Le langage clair et simple est un des outils que nous utilisons pour que les Canadiens et Canadiennes qui portent en appel le rejet de leur demande de prestations puissent participer de façon significative à leur propre cause.

L'usage d'un langage clair et simple est une marque de respect envers le lectorat. Au Tribunal de la sécurité sociale (TSS), notre lectorat est la population canadienne qui utilise notre système d'appel. Un langage juridique trop complexe constitue un obstacle à l'accès au service de justice que nous offrons. Si des personnes comme nos appelants et appelantes ne peuvent pas comprendre notre procédure ou la décision qui a été rendue dans leur dossier, alors elles ne peuvent pas participer de façon significative à leur propre appel. Le présent article explique comment nous utilisons le langage clair et simple au TSS pour faciliter l'accès à la justice.

Pourquoi le langage clair et simple est-il important pour nous?

Le TSS décide si des Canadiens et Canadiennes ont droit aux prestations d'assurance-emploi, à la pension d'invalidité du Régime de pensions du Canada ou aux prestations de la Sécurité de la vieillesse. Ces prestations forment les assises de notre système fédéral d'aide sociale — des programmes universels qui assurent la sécurité économique des gens. Nous donnons à la population canadienne la possibilité de recourir à la justice dans des affaires qui touchent leur capacité de subvenir à leurs besoins fondamentaux. Si la valeur en argent des litiges n'est peut-être pas élevée, elle change souvent la donne lorsqu'il est question de vivre dans la pauvreté ou de vivre avec dignité.

Plus de 90 % des personnes qui portent une cause en appel au TSS ne sont pas suffisamment représentées. En d'autres mots, elles se représentent seules ou elles sont représentées par une personne de leur entourage. Bien que nos appelants et appelantes reflètent la diversité culturelle et socioéconomique du Canada, bon nombre sont parmi les membres les plus vulnérables de la population canadienne, y compris les personnes ayant une incapacité, les personnes âgées et les personnes sans emploi. Certaines de ces personnes n'ont pas fait d'études secondaires ou postsecondaires. Pour certaines, leur première langue n'est ni le français ni l'anglais. Beaucoup subissent aussi un stress considérable. Tous ces facteurs nuisent à la compréhension de textes écrits.

Le TSS est un organisme juridique. Nous tenons des audiences et nous appliquons les lois canadiennes selon les circonstances propres à la cause de chaque personne. Mais nous sommes aussi un organisme de service. Nous avons une obligation légale et éthique de voir à ce que les gens qui portent leur affaire devant le TSS aient accès à une procédure et à une décision qui sont simples, rapides et justes. Les appelants et appelantes ont le droit de comprendre comment le TSS fonctionne. Ces personnes ont le droit d'avoir une explication claire concernant notre procédure d'appel. Elles ont le droit de comprendre les décisions qui auront une incidence sur leur vie.

Que faisons-nous pour implanter le langage clair et simple au TSS?

Les lois que nous devons appliquer sont très complexes. Les parties intervenantes ont reproché au TSS d'être trop formel et légaliste. Nous savions que notre procédure ne répondait pas aux besoins des gens qui font appel au TSS. Ainsi, en 2018, nous avons entamé une révision de tous les aspects de la procédure d'appel. Le but est d'élaborer un système qui donne la priorité aux usagers et usagères ainsi qu'une approche juridique qui est axée sur la clientèle. L'adoption du langage clair et simple était un élément clé de cette transformation.

En 2019, nous avons commencé à revoir la façon dont nous communiquons avec les parties appelantes à toutes les étapes de notre procédure d'appel. Notre approche repose sur les conclusions d'une spécialiste du langage clair qui a mené une évaluation de la lisibilité pour le TSS. La spécialiste a conclu que le TSS doit viser un niveau de lecture qui correspond à une 8e année dans ses formulaires et ses lettres et un niveau qui correspond à une 9e année pour ses décisions. Ces chiffres sont fondés sur une analyse des caractéristiques sociodémographiques de nos appelants et appelantes. Plusieurs facteurs sont pris en compte, dont le fait que le français ou l'anglais n'est pas nécessairement la première langue des parties appelantes et la possibilité qu'elles subissent un stress considérable. Les niveaux de lecture reflètent aussi le fait que les décisions sont des textes plus complexes que les formulaires et les lettres.

Comment utilisons-nous le langage clair et simple à chaque étape de la procédure d'appel?

Le personnel du TSS est en train de revoir tous nos modèles de correspondance pour adopter un style clair et concis qui favorise la lisibilité. Cette refonte concerne nos formulaires, nos lettres et notre contenu Web. Avec l'aide d'une spécialiste du langage clair qui a donné de la formation au personnel du TSS l'été dernier, nous avons déjà retravaillé un certain nombre de lettres. Il s'agit d'un gros projet qui ne se terminera pas avant 2021. Nous avons également amélioré nos formulaires. Nos nouveaux formulaires sont plus courts, plus clairs et on y trouve un vocabulaire plus simple. Nos résultats initiaux montrent que les nouveaux formulaires diminuent le nombre de questions posées par les parties appelantes. Les formulaires qu'on nous envoie contiennent moins d'erreurs ou d'omissions qu'avant. La procédure d'appel se déroule donc plus rapidement pour les appelants et appelantes.

Nous améliorons également la façon dont nous communiquons avec les parties appelantes en personne et au téléphone. Le personnel du TSS a reçu une formation l'été dernier pour savoir comment transmettre des messages clairs et s'assurer que les messages sont bien compris.

Nos appels sont tranchés par les membres du TSS. Les membres tiennent les audiences et rédigent les décisions des appels. Comme les lois que nous appliquons sont très spécialisées, nous devons nous assurer que les décisions sont claires et faciles à comprendre. En 2018, nous avons commencé à les simplifier en modifiant la structure du texte. Nous utilisons maintenant une technique de rédaction où on présente d'abord les conclusions. La longueur des décisions a diminué en moyenne de 25 %.

Actuellement, les personnes qui rendent les décisions du TSS suivent une formation pour apprendre à rédiger leurs décisions dans un langage clair et simple. Le but est d'éliminer les renseignements superflus, le langage complexe

et le jargon juridique. Nous avons mis sur pied un programme de formation sur le langage clair et simple pour les membres du TSS. Deux juges de la Cour suprême du Canada à la retraite nous prêtent main-forte. Nos résultats préliminaires montrent un progrès graduel mais net vers la rédaction de décisions en langage clair et simple. La lisibilité gagne du terrain et nous cheminons vers un niveau de lecture moins élevé.

Notre équipe des services juridiques élabore également des résumés de nos causes en langage clair et simple qui seront publiés sur notre site Web. Ainsi, les personnes qui préparent leur appel auront accès à un corpus de jurisprudence en langage clair et simple qu'elles trouveront peut-être utile.

Comment savoir si ce que nous faisons fonctionne vraiment?

Le TSS doit rendre compte de son travail à la population canadienne. Nous devons démontrer que nos efforts portent fruit en offrant à la population canadienne un service de justice qui est plus accessible. Pour ce faire, nous surveillons rigoureusement le résultat de nos décisions et de notre correspondance sur l'échelle des niveaux de lecture de façon à voir si nous sommes bien sur la voie de la simplicité. Il nous faut également tester l'effet de nos changements directement auprès des personnes qui utilisent nos services. Pour ce faire, nous approcherons bientôt des groupes de parties intervenantes. Nous cherchons à savoir où nous avons fait des avancées, mais aussi où nous avons encore des améliorations à apporter et ce que nous pouvons faire pour atteindre notre but, soit améliorer l'accès à la justice pour les appelants et appelantes.

Le langage clair et simple est une question d'accès à la justice. Pour nous, au TSS, cela veut dire changer notre façon de communiquer avec les appelants et les appelantes. Ainsi, nous sommes en train d'adopter un nouveau langage, le langage clair et simple.

Writing revolution: We need you!

Having spent 20 years as a UK solicitor, **Jenny Gracie** now works in France as a court-approved translator and associate research fellow of the French institute of advanced legal studies ('IHEJ'). Passionate about clear legal writing since Clarity's 2005 conference, Jenny also edits French and English contracts to make them as clear as possible.

Jenny Gracie

With thanks for the input of my good friend and French lawyer, Me. Ngo-Folliot (avocat).

'Access to justice' is becoming increasingly popular. But what does it mean? And, having decided on its definition, how can it be achieved?

Starting with the meaning of words, the notion of 'justice' includes:

- legal **documents** (legislation, contracts and legal decisions);
- legal **services** (legal advice and representation; legal software, etc.);
- legal **procedures** (before courts, arbitrators and bodies with the power to enforce rights and impose sanctions);
- legal **information** on the above.

Justice can be 'accessed' in many ways:

- visually (graphic design);
- verbally (judges + legal advisers and representatives);
- virtually (online);
- physically (courts + offices of legal advisers and representatives);
- intellectually (legal concepts).

Therefore, there are multiple combinations of meaning for the simple expression 'access to justice'. People may think that they are talking about the same thing, but find they are not. Yet to modernise the access, *all* types need to be improved.

	Types of 'justice':			
	Legal Documents (contracts, judgments, written opinions, legislation)	**Legal Services**	**Legal Procedures**	**Legal Information**
Type of 'access':				
Visual	✓	✓	✓	✓
Virtual	✓	✓	✓	✓
Verbal	✓	✓	✓	✓
Physical	✓	✓	✓	✓
Intellectual	**X**	✓	✓	✓

From seminars and workshops that I have attended in the UK, France, Germany, Brussels and Canada, the same flaw has emerged. Despite much talk, intellectual access to *legal documents themselves* is not being sufficiently addressed:

Why is little or no effort being made to improve the way that legal documents themselves are written? From letters of advice, contracts and judgments to legislation?

I suggest that in part this is because mastering legal concepts and incorporating them into documents goes to the heart of a lawyer's work. Legal practitioners provide legal opinions,draw up contracts and documents for court; judges render written judgments; legislators draft legislation; academics write legal text books. And most lawyers *do not see any need* to change the way they write. To them, legal writing is taboo: the legal style that lawyers have used for centuries should not be questioned FULL STOP (or PERIOD, for American readers).

Take, for example the UK's 1996 Tax Law Rewrite Project. Its aim was to make "... the UK's direct tax legislation clearer and easier to use." (as explained in the *Ipsos MORI Research Report (Number 104)*, published by HM Revenue and Customs in June 2011). At page 20, are views on the original (not rewritten) Income and Corporation Taxes Act of 1988 (ICTA):

> "*Lawyers and barristers were also likely to favour the language in ICTA; whilst they recognised that it was complex it was this very complexity that appealed to them. To an extent, they felt that the language used in ICTA befitted their profession and expertise; they recognised that it was largely inaccessible to others but* ***this made them feel specialist*** *[writer's emphasis] in what they did*" (see page 20 of the Report).

Shocking! If a reader cannot understand the contract, judgment or legislation that applies to him or her, it does not matter?!

So much for human rights then - and the fact that ignorance of the law is no defence!

However, being taboo is not the only reason for a lack of widespread improvement in legal drafting.

In 2012, the former Minister for Justice, Ms Taubira supported the modernisation of French justice with a project called 'J21'. This included the rewrite of French civil law [Code Civil]. However, Ms Taubira expressly stated that its full restyling could take as long as 10 years - and that was not a reasonable 'risk':

> *"The wait for the reform of 300 sections of French civil law could last some ten years. That is a risk that I do not believe is a reasonable one to take."*

Contrast this approach to Professor Joe Kimble's award-winning law reform work with the U.S Judicial Conference Advisory Committee. Here is one example of the Committee's rewrite of the Federal Rules of Evidence:

Rule 104, Preliminary Questions

> Before
>
> (c) **Hearing of jury.**
>
> Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be

so conducted when the interests of justice require, or when an accused is a witness and so requests.

[47 words]

After

(c) **Conducting a Hearing So That the Jury Cannot Hear It.**

The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:

(1) the hearing involves the admissibility of a confession;

(2) a defendant in a criminal case is a witness and so requests; or

(3) justice so requires.

[52 words]

As Professor Kimble explained at the 2013 PLAIN Conference in Vancouver, the rewritten version of these Federal Rules was **14% shorter** than the original version. So when countries, like France, do not do this work, people (including lawyers) are spending longer reading legislation than necessary.

Therefore, time is being wasted, as I write, due to this kind of work not being done. Who is paying for that lost time? In the European Union, multiply lost time by 23 – the number of languages that one piece of legislation is translated into.

Professor Kimble also mentioned that the work of this Advisory Committee involved much negotiation. Compromises were unavoidable due to the Committee's members representing different interests.

Public consultations were also required. All this took time. The U.S. Judicial Conference Advisory Committee's work **spanned 10 years**, restyling both the Federal Rules on Evidence and Civil Procedure.

Teamwork was therefore key. Judges worked alongside law professors, legal practitioners and civil servants.

Maybe lawyers do not like other professionals to be involved in their craft of words? I suggest this because of what I have seen in Europe.

For it is not lawyers, but the EU Commission's Directorate-General for Translation that is responsible for the EU's clear writing campaign. With annual an annual award ceremony. But trying to get translators to change the writing of lawyers comes at too late a stage. The original text has been written.

I suggest that this is on reason why lawyers are not engaging in the clear writing project in the EU. They are all too happy to say that clear writing is for translators and other departments, not for them. The drafting procedures and multi-country negotiations, they say, are too complex to be clear.

Therefore, despite the clear writing initiative put in place by the European Commission 10 year ago, the drafting of agreements and legislation in the EU has not improved. For Lawyers have not changed their writing.

Just look at the latest *Inter-institutional agreement on better law-making* of 13 April 2016. Take paragraph 2 of the preamble as an example:

> *"The three Institutions recognise their joint responsibility in delivering high-quality Union legislation and in ensuring that such legislation focuses on areas where it has the greatest added value for European citizens, is as efficient and effective as possible in delivering the common policy objectives of the Union, is as simple and as clear as possible, avoids overregulation and administrative burdens for citizens, administrations and businesses, especially small and medium-sized enterprises ("SMEs"), and is designed with a view to facilitating its transposition and practical application and to strengthening the competitiveness and sustainability of the Union economy."*

Wow! That is some way of acknowledging the need to be clear! Excuse my sarcasm, which I realise is the lowest form of wit - but is too hard to retain after many years of frustration… and Brexit. For this lack of clear communication contributed to a lack of trust in the EU by the Brits: lack of transparency = lack of democracy.

Emily O'Reilly, the European Ombudsman speaking at a Clarity Breakfast in London on 15 May 2014, referred to the "*satanic altar of Eurospeak*". The example that she gave was 'comitology', that relates to "*a complex set of procedures for the passing of technical amendments*". Who would have guessed? No one, and that was her point. For it was a term made-up by Euro-parliamentarians. Ms O'Reilly was explaining about trust in government being undermined by poor communication.

Trust in a law firm or any business is similarly undermined by lack of clarity. If you are good, why don't you show it? Rather than hide quality under jargon…

Maybe the time finally come for a writing revolution?

As well as a need to protect human rights, legal writing needs to be more suitable for the new digitalised age.

Research of Professor Anne Mangen and two PhD students of the University of Stravanger in 2013 reveals:

> *"The results of this study indicate that reading linear narrative and expository texts on a computer screen leads to poorer reading comprehension than reading the same texts on paper".*

And why leave a layer of complexity in legal text that *serves no legal purpose*?

For example, in a court order: 'Pay £x forthwith'. I cannot count the number of times I had to translate 'forthwith' for British clients during my 20 years in practice! When 'immediately' would have sufficed - and is easier for non-native speakers and translators to understand.

Surely lawyers have a duty to make their legal writing as clear *as possible*? For it is lawyers who can best identify the unnecessary layers of complexity, to then remove them.

Therefore, for a writing revolution, we need you! Every clarity enthusiast has a role to play: linguists, translators, graphic designers, IT professionals and lawyers! Working together.

Révolution de l'écriture : Nous avons besoin de vous !

Après avoir exercé 20 ans comme avocate britannique, **Jenny Gracie** travaille en France en tant qu'expert près la Cour d'appel et chercheur associée à l'Institut des Hautes Etudes Juridiques (IHEJ). Passionnée d'écriture juridique claire depuis la conférence Clarity 2005, Jenny réécrit également des contrats français et anglais pour les rendre le plus intelligibles possible.

Jennie Gracie

avec tous mes remerciements pour la relecture par mon amie et avocate française, Me. Ngo-Folliot

« L'accès à la justice » devient de plus en plus populaire. Mais que cela signifie-t-il ? Et après avoir défini ce concept, comment y parvenir ?

Commençons par le sens des mots. La notion de justice recouvre des :

- **documents** juridiques : avis, législation, décrets, contrats, décisions juridiques
- **services** juridiques (conseils, rédaction et représentations juridiques ; logiciels juridiques, etc.);
- **procédures** judiciaires (devant juridictions, arbitres et organismes ayant le pouvoir de faire respecter les droits et de sanctionner) ;
- **informations** juridiques sur ce qui précède.

Il est possible d'accéder à la justice de plusieurs façons :

- visuellement (conception graphique) ;
- verbalement (juges + conseillers et représentants juridiques) ;
- virtuellement (en ligne) ;
- physiquement (cours + bureaux des conseillers et représentants juridiques) ;
- intellectuellement (concepts juridiques).

Il y a donc de multiples significations pour la simple expression « accès à la justice ». On peut penser qu'ils parlent de la même chose, mais découvrir qu'il n'en est rien. Pour moderniser cet accès, tous les moyens doivent être améliorés.

Des séminaires et groupes de travail auxquels j'ai participé au Royaume-Uni, en France, en Allemagne, à Bruxelles et au Canada, émergent la même faille. Malgré

	Type de «justice» :			
	Documents juridiques (avis, contrats, législation, décisions)	**Services juridiques**	**Procédures juridiques**	**Informations juridiques**
Type «d'accès» :				
Visuel	✓	✓	✓	✓
Virtuel	✓	✓	✓	✓
Verbal	✓	✓	✓	✓
Physique	✓	✓	✓	✓
Intellectuel	**X**	✓	✓	✓

les nombreuses discussions, l'accès intellectuel aux documents juridiques eux-mêmes n'est pas suffisamment pris en compte :

Pourquoi pas ou peu d'efforts sont-ils faits pour améliorer la façon dont les documents légaux eux-mêmes sont écrits ? Consultations, contrats, jugements, législation…

Je pense que cela s'explique en partie par le fait que la maîtrise des concepts juridiques et leur intégration dans les documents sont au cœur du travail d'un juriste. Les praticiens du droit donnent des avis juridique, rédigent des contrats et les actes juridiques. Les juges rendent des décisions écrites ; les législateurs rédigent des projets de loi ; les universitaires rédigent des ouvrages. Et la plupart des avocats ne voient en aucun cas la nécessité de changer leur façon d'écrire. Pour eux, l'écriture juridique est taboue : le style juridique utilisé par les avocats depuis des siècles ne doit pas être remis en question POINT FINAL.

Prenez, par exemple, le projet britannique de réécriture de la législation fiscale de 1996. Son objectif était de rendre « … la loi britannique sur la taxation directe plus claire et plus facile à utiliser » (comme expliqué dans *le rapport de recherche Ipsos MORI (Numéro 104)*, publié par l'administration fiscale et douanière du Royaume-Uni [HM Revenue and Customs ou HMRC]. A la page 20 de ce rapport, figurent des avis sur l'original (non réécrit) de la loi de 1988 sur l'impôt sur le revenu [Income and Corporation Taxes Act of 1988 ou ICTA] :

> *« Les avocats et juristes étaient également susceptibles de favoriser le langage dans l'ICTA ; s'ils reconnaissaient qu'il était complexe, c'est cette même complexité qui les séduisait. Dans une certaine mesure, ils estiment que le langage utilisé dans l'ICTA convient à leur profession et à leur expertise ; ils reconnaissent qu'il est largement inaccessible aux autres personnes,* ***mais cela leur donne le sentiment d'être des spécialistes*** *[emphase de l'auteur] dans leur domaine. »*

C'est choquant ! Si un lecteur ne peut pas comprendre un contrat, un jugement ou une loi qui le concerne, cela n'est-il pas important ?!

Que dire alors des droits de l'homme et du fait que l'ignorance de la loi ne lui permet pas une défense !

Le fait de considérer la rédaction juridique comme tabou n'est pas la seule raison de l'absence de progrès dans ce domaine.

En 2012, l'ancienne Ministre de la justice, Mme Taubira, a soutenu la modernisation de la justice française avec un projet appelé « J21 ». Ce projet comprenait la réécriture du Code civil français. Toutefois, Mme Taubira a expressément déclaré que sa refonte complète pourrait prendre jusqu'à 10 ans - et que cela n'était pas un « risque » raisonnable :

> *« Attendre un projet de loi qui réforme 300 articles du Code civil pourrait prendre une dizaine d'années. C'est un risque que je ne crois pas raisonnable de courir. »*

Comparez cette approche avec le travail primé du Professeur Joe Kimble sur la réforme du droit avec le Comité consultatif judiciaire américain [U.S Judicial Conference Advisory Committee]. Voici un exemple de réécriture par le Comité sur le régime fédéral de la preuve :

Règle 104, Questions préliminaires

> Avant
>
> (c) **L'audition par le jury**
>
> Les auditions sur la recevabilité des aveux se déroulent dans tous les cas en dehors de l'audition par le jury. Les auditions sur d'autres questions

préliminaires sont menées lorsque l'intérêt de la justice l'exige, ou lorsqu'un accusé est un témoin et le demande.

[47 mots]

Après

(c) **Conduire une audience de manière à ce que le jury ne puisse pas l'entendre.**

Le tribunal doit conduire toute audience sur une question préliminaire de sorte que le jury ne puisse pas l'entendre si :

l'audience implique la recevabilité d'un aveu ;

un défendeur dans une affaire pénale est un témoin et en fait la demande ; ou la justice l'exige.

[61 mots]

Comme l'a expliqué le professeur Kimble lors de la conférence PLAIN 2013 à Vancouver, la version réécrite de ces règles fédérales était 14 % plus courte que la version originale. Ainsi, lorsque des pays, comme la France, ne font pas ce travail, les justiciables (tout comme les juristes) passent plus de temps que nécessaire à lire la législation.

Par conséquent, alors que j'écris ces lignes, du temps est perdu parce que ce travail n'est pas fait. Qui paie pour ce temps perdu ? Dans l'Union européenne, il faut multiplier le temps perdu par 23 - le nombre de langues dans lesquelles un texte législatif est traduit.

Le professeur Kimble a également précisé que le travail de ce Comité consultatif impliquait de nombreuses négociations. Des compromis étaient inévitables car les membres du comité représentaient des intérêts différents.

Des consultations publiques ont également été nécessaires. Tout cela a pris du temps. Le travail du Comité consultatif judiciaire américain s'est étalé sur 10 ans, en remodelant à la fois les règles fédérales sur les preuves et la procédure civile.

Le travail d'équipe était donc clé. Les juges ont travaillé aux côtés des professeurs de droit, des juristes et des fonctionnaires.

Peut-être que les avocats n'aiment pas que d'autres professionnels s'immiscent dans leur art des mots ? Je le pense, à cause de ce que j'ai vu en Europe.

Car ce ne sont pas les juristes, mais la Direction générale de la traduction de la Commission européenne qui est responsable de la campagne de rédaction claire de l'UE. Avec une cérémonie annuelle de remise des prix. Mais essayer d'amener des traducteurs à modifier la rédaction des juristes arrive à un stade trop tardif. Le texte original a déjà été rédigé.

Je suggère que c'est une des raisons pour laquelle les avocats ne s'engagent pas dans le projet d'écriture claire dans l'UE. Ils sont trop heureux de dire que la rédaction claire est destinée aux traducteurs et aux autres services, pas à eux. Les procédures de rédaction et les négociations multinationales sont trop complexes, disent-t-ils, pour être claires.

Par conséquent, malgré l'initiative de rédaction claire mise en place par la Commission européenne il y a 10 ans, la rédaction des accords et de la législation dans l'UE ne s'est pas améliorée. Car les avocats n'ont pas changé leur rédaction.

Regardez simplement le dernier *Accord interinstitutionnel Mieux légiférer* du 13 avril 2016.

Prenez le paragraphe 2 du préambule comme exemple :

> *« Les trois institutions reconnaissent qu'elles ont conjointement la responsabilité d'élaborer une législation de l'Union de haute qualité et de veiller à ce que ladite législation se concentre sur les domaines où sa valeur ajoutée est la plus importante pour les citoyens européens, à ce qu'elle soit aussi efficace et effective que possible pour atteindre les objectifs stratégiques communs de l'Union, à ce qu'elle soit aussi simple et claire que possible, à ce qu'elle évite la réglementation excessive et les lourdeurs administratives pour les citoyens, les administrations et les entreprises, en particulier les petites et moyennes entreprises (PME), et à ce qu'elle soit conçue de manière à faciliter sa transposition et son application pratique ainsi qu'à renforcer la compétitivité et la viabilité de l'économie de l'Union. »*

Ouah ! C'est une façon de reconnaître la nécessité d'être clair ! Excusez mon sarcasme, dont je sais qu'il est la forme la plus basse de l'humour - mais il est trop difficile de se retenir après de nombreuses années de frustration… et le Brexit. Car ce manque de communication claire a contribué à un manque de confiance des Britanniques dans l'UE : manque de transparence = manque de démocratie.

Emily O'Reilly, Médiateur européen, s'exprimant lors d'un petit-déjeuner sur la clarté à Londres le 15 mai 2014, a fait référence à « l'autel satanique de l'Eurospeak ». L'exemple qu'elle a donné est la « comitologie », qui concerne « un ensemble complexe de procédures pour l'adoption d'amendements techniques ». Qui aurait pu le deviner ? Personne - c'était bien ce qu'elle voulait démontrer. Car, ce terme a été inventé par des euro-parlementaires. Mme O›Reilly expliquait que la confiance dans le gouvernement était minée par une mauvaise communication.

La confiance dans un cabinet juridique ou dans une entreprise est également minée par le manque de clarté. Si vous êtes bon, pourquoi ne pas le montrer ? Plutôt que de cacher la qualité sous le jargon…

Peut-être le temps est-il enfin venu pour une révolution de l'écriture ?

Outre la nécessité de protéger les droits de l'homme, l'écriture juridique doit être mieux adaptée à la nouvelle ère numérique.

Les recherches du Professeur Anne Mangen et de deux doctorants de l'Université de Stravanger en 2013 révèlent :

« Les résultats de cette étude indiquent que la lecture de textes narratifs et informatifs sur un écran d'ordinateur entraîne une moins bonne compréhension de la lecture que la lecture de ces mêmes textes sur papier. »

Et pourquoi laisser une couche de complexité dans un texte juridique qui ne sert aucun objectif juridique ?

Par exemple, dans une ordonnance du tribunal: « Payer x € toutes affaires cessantes ». Je ne peux pas compter le nombre de fois où j'ai dû traduire «toutes affaires cessantes» pour des clients britanniques au cours de mes 20 années de pratique ! Alors que «immédiatement» aurait suffi - et est plus facile à comprendre pour les locuteurs et traducteurs dont ce n'est pas la langue natale.

Les avocats n'ont-ils pas le devoir de rendre leurs écrits juridiques aussi clairs *que possible* ? Car ce sont les avocats qui peuvent le mieux identifier les couches de complexité *inutiles,* afin de les éliminer.

C'est pourquoi, pour une révolution de l'écriture, nous avons besoin de vous ! Tous les passionnés de clarté ont un rôle à jouer : linguistes, traducteurs, graphistes, professionnels de l'informatique et juristes ! Travaillons tous ensemble.

Notes from the road: Plain language editing of a court form

Diana B. Glick is an attorney with the Judicial Council of California. She develops document assembly programs for self-represented litigants and supports efforts around the automation, plain language editing and translation of court forms. Diana also teaches Legal Spanish and Access to Justice classes at the UC Davis School of Law.

Diana B. Glick

This is not a success story. I cannot yet crow over "before" and "after" images of our redesigned court form. As of the date of this submission, we have been working on this form for two years and have not yet circulated our revisions for public comment. Our journey is still ongoing but has already been the source of many lessons learned, the most important of which is this: **all roads lead to plain language**. Plain language is the beginning and the end, the alpha and the omega of our efforts. It is a threshold requirement for making the form truly accessible to users and consumers and is a step to which we return again and again in our efforts to improve our forms.

It all started with a simple proposition: Let's take that court form we have that allows court users with disabilities to request accommodations to access the court and make it available in multiple languages. Before we send it out for translation, though, we should probably try to clarify and clean up the language a bit—that always helps produce a better translation. At this point in the journey, I still thought that plain language editing was a "one and done" activity; an important step in the process but just a step. We would "plain language" it and then we would be off to the translators!

We had a round of plain language editing conducted by an expert and the form looked much improved—cleaner and clearer. But then we asked ourselves: plain language for whom? (Yes, we used the word "whom"—clearly, we have much to learn around here!) This form is used by ADA Coordinators in California courthouses every day to plan and procure accommodations for court users with disabilities. What do court staff think about this form? How do they use it? Is it working for them? How can it better serve their needs? We spent several months developing and distributing surveys and held a webinar and multiple focus group meetings to test new language. Unsurprisingly, the form underwent significant additional editing based on feedback from our form consumers.

And let's not forget the form users! This form is intended for use by members of the public who need an accommodation for a disability to access the court. California Rules of Court, rule 1.100 sets out a clear process for requesting accommodations, and our form was and is in compliance with this rule of court, but how usable and accessible was it for the public? Do they know this form exists? How do they currently access it when they need to request an accommodation? Do they understand the language on the form? Are they finding it on line or filling it out in person with assistance at court?

In addition, the state of California has expressed a goal of producing web content that meets the WCAG 2.0 standards for accessibility[1]—how is the form working on that front? Six months later, we had answers to all of these questions and more as a result of testing conducted on both the substantive language and the web accessibility features of the form by the Center for Accessible Technology. Needless to say, there was more work to be done!

1 In 2017, the Governor signed Assembly Bill 434 (Ch. 780, Stats. 2017), which requires specified state agencies and entities to certify their compliance with WCAG 2.0, AA, by July 1, 2019. Other state entities not required to certify compliance may avail themselves of support from the California Department of Technology, which publishes standards and guidance at https://webstandards.ca.gov/

What started as a great but limited idea—let's make an important court form available in additional languages—has evolved into a wholesale examination of the form, including an evaluation of its substantive language, readability and usability. We are now working towards full accessibility of this form in both its electronic and paper forms, for court users with disabilities,[2] for court users who are limited English proficient,[3] and for our court employees who receive and process the form.

Plain language detour and ditches

As this effort unfolded, we realized that plain language was a prerequisite for making the form accessible in every dimension. If the wording is not clear in English, it doesn't stand a chance of clarity in Traditional Chinese. If the question on the page doesn't make sense, no amount of screen reader compatibility and proper tagging will help the user understand it. At each stage of the journey, plain language editing has come into play, and we have learned several lessons along the way, including:

Plain language doesn't necessarily mean fewer words

The current form is a single page. The proposed revisions have pushed it to two pages. In addition, we have developed a three-page information sheet that will accompany the form and provide explicit instructions on how to fill it out and deliver it to the court. More words can be overwhelming to the reader, and in some courts, a two-page form creates challenges with electronic processing and storage. Many court processes are still paper-based. We have had to grapple with the trade-offs between brevity and clarity; between the desire to explain terminology and create a visually attractive form, and the added complications of two-sided or two-page forms.

Collaborative work takes time

What was envisioned as a quick revision and translation project has become a multi-year effort involving testing and feedback from multiple constituent groups. Some of the best revisions of this form have come out of the process of receiving ego-crushing feedback, proposing an alternative, and then getting feedback on the proposed alternative (lather, rinse, repeat). I have come to rely heavily on reactions to my repeated attempts, and on the wisdom of the various groups providing feedback. Each round of field testing with users and consumers garnered additional comments and suggestions. Each round of revisions was done by committee. The process has taken much longer than anyone anticipated, and has required collaboration, financial support and champions to keep the project moving forward.

Plain language is in the eye of the beholder

We think of our constituents as being divided into two major groups: form users and form consumers. Form *users* are court users (jurors, litigants, witnesses) who require an accommodation in order to access the court. Form *consumers* are the ADA Coordinators and judicial officers who receive, process and fulfill the requests for accommodation from the public. While everyone benefits from plain language and a readable form, what constitutes "plain" can vary between these groups. The courts have the added concern of making sure the form remains in compliance with the law and ensuring that judicial officers can also access information on the

2 It is estimated that California is home to over four million residents who have some form of disability. http://www.disabilitystatistics.org/StatusReports/2017-PDF/2017-StatusReport_CA.pdf?CFID=21370367&CFTOKEN=658a67e258fff968-B9C64A4C-920A-0FC3-2064BF30490DDE04

3 California is the most linguistically diverse state in the nation, with over 200 different languages spoken and nearly seven million Californians reporting that they speak English "less than very well." https://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html

form, as needed. To achieve access and do justice to this process, we need to make sure that the form meets the needs of both groups.

Where else might the road lead us?

Our immediate goal is web accessibility at a "AA" conformance level, including appropriate levels of readability and usability. However, there are additional dimensions of access to consider. For example, we might want to consider making information about the process and the form available in American Sign Language by developing a script to explain how to request an accommodation in court, and having the script interpreted into American Sign Language on video, with captioning in English and other languages as appropriate. Depending on language trends we observe among our court users, we could also consider the needs of those who communicate using other types of signed languages, such as British Sign Language or Chinese Sign Language.

In addition, we could explore whether it would be useful to the public for this court form to be transcribed into Braille and, if so, how we would obtain a transcription and make Braille versions of the form and information sheet available to the public.

Will our journey ever end?

If all goes as planned, the current round of revisions to the form, including conversion to plain language format, plain language editing, increased font size, new icons, and the addition of an information sheet will circulate for public comment during Spring 2020. The web accessibility work will be finalized once we have agreement on the substantive language and look of the form. We are aiming for approval of a redesigned form by the Judicial Council in Fall 2020 for implementation on January 1, 2021. We're not there yet, but we are well on our way!

Access to justice through clarity of legal language

Cristina Carretero González
and Julio Carlos Fuentes Gómez

Cristina Carretero González, Clarity's representative in Spain. PhD in Law. Associate Professor of Procedural Law and of Legal writing and speaking for jurists at the Universidad Pontificia Comillas-ICADE

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I. The premise of the concept of clear legal language as a tool for access to jurisdiction

We understand clear legal language as the language of Law expressed in such a way that the addressee can understand it without difficulty.

Let's analyze:

- First, "the language of Law" is a special language, which deals with legal issues and therefore constitutes a kind of technical language of legal science, a terminology of its own, a vocabulary of its own endowed with precision that avoids ambiguity and vagueness.

- Second, we say "expressed in such a way that the addressee can understand it without difficulty". In this way, we have to mention two types of addressees that are those related to the Law, the laymen in Law and the non-laymen, such as jurists and people related to Justice who understand the Law.

Consequently, legal language must be clear to any recipient, but the way to make it clear has two types of register or expression, depending on who it is addressed to.

We can't ignore that clarity has to do with forms of expression: between professionals and between non-professionals. And its expression is different in each case: in the first, it is technical clarity, and in the second, it is non-technical clarity.

On the other hand, we must know well what we are asking for and in what area, and, in this sense, what we are asking here is the implementation of mechanisms that allow legal language to be used clearly, so that, with correct delimitation, it becomes a public policy objective in the different countries.

Who are writing these lines are jurists and specialists in legal language; we must work with the Law and we try to do so as clearly as possible. As such, we know that in order to speak or write about matters relating to the Law, if the communication takes place between jurists, we must do so in a technical and correct manner, that is to say, clearly. That clarity of legal language used when speaking or writing for lawyers is different from that which we must use when doing so with non-lawyers.

Julio Carlos Fuentes Gómez, Civil Administrator of the State. PhD student in Procedural Law at ICADE, Universidad Pontificia Comillas

In order to be clear between jurists, we must be rigorous and, eminently, technical, because with this technical language we achieve the greatest legal precision and, consequently, the least risk and the greatest legal security. And this also means that we can exercise our own legal science in a way that saves time and costs. This means using clear language among jurists, as long as, logically, it complies with the linguistic rules that make the message well written or pronounced.

When a non-lawyer, on the other hand, asks us, as lawyers or legal professionals, to draw up a financial contract, for example, we expect to do so with two simultaneous features:

1) Using technical terms, so that the person who requested this contract from certain professionals, obtains a good document containing those issues that make that contract an effective document to achieve the purpose for which it is intended. This will also mean that we use technical and therefore precise terms, so that each word expresses a single reality, and is not polysemic or ambiguous. If we do not use such technical language, the contract will most likely end up in court so that they can interpret who was right in the face of possible interpretations. And this will generate costs, of time, money and wear and tear on the users of the contracts.

2) Explaining those same technical terms so that the contracting parties, all of them, can understand what they are signing. To this end, on each occasion that a technical term must be used, the meaning of the technical terms used must be explained. This ensures that all parties receive understandable information without difficulty.

II. The importance of clear legal language in access to justice

In this section, and given that the expression “access to justice” has numerous manifestations, we are going to refer to the access to justice that is given from courts.

To this end, we propose two types of access, that of people who go to court without a lawyer and those who go with a lawyer.

In Spanish law, for example, to access justice, it is required, in most cases, that a lawyer defend our interests in court. It is just as reasonable that the law provides for the mediation of experts to ensure the best defense of rights as it is, for instance, for a surgeon to operate on us when we need it. In this way, it is to be expected that the health system of a country not only allows us to operate in its facilities, but that a team of doctors, surgeons who operate on us, but general practitioners, specialist doctors, nurses and other collaborators intervene in our health issues. We also hope that a group of people, judges, officials and lawyers will intervene in the solution of our legal disputes.

So how do we make sure that clear legal language facilitates access to justice? We are starting from the premise that the laws should be clear for all citizens, but that is an ideal and a proposal for any government. Counting with the current laws in each country, and referring to the precise access to Justice, we express this access from two perspectives that are related, the first one is when it is necessary to have a lawyer to access justice and second, the role that judges and the Administration of Justice have in that access when a lawyer is not needed.

1) The need for lawyers to defend petitions in Justice. On the one hand, in cases where a lawyer is necessary, and we insist, that in most cases a lawyer

is needed, the lawyer should present our petitions in the courts in a technical and correct language, so that the judge and the court involved do not have any doubts about what is being requested on behalf of their clients to ensure that they have the best defense of their interests.

At the same time, that lawyer should explain to his client every issue reflected in the written submissions he makes or the oral arguments he presents in court. In this way, he will achieve full and real access to the justice he is seeking.

2) The role of judges and the Administration of Justice in access to justice when no lawyer is needed. In this case, the judge and the people who work in the courts from the Administration of Justice have an extraordinarily relevant role in transmitting the legal contents. These people can and should explain in a simple manner the law in question in oral and written communications.

On the other hand, the documents addressed to people who have access to justice should always be simple to understand. In this respect, it is to be hoped, and, in our opinion, also required, that both the rights of individuals are simple to understand and the forms to be used to access justice are equally simple and accessible, so that citizens can complete them without difficulty.

For example, we can cite the models provided by the courts in Spain, so that citizens can file complaints in simple proceedings.

Furthermore, citizens' rights, especially in criminal cases involving the rights of detainees and possible deprivation of liberty, must be drafted in a simple and understandable manner. To this end, we recommend that states make an effort to update the wording and, where appropriate, the oral presentation of these rights, so that they can be understood by arrested and prisoners.

III. Conclusions

1) Access to justice can be improved from the perspective of using clear legal language.

2) Access to justice, from its communication, has two manifestations depending on the receiver of the message and the need or not for a lawyer.

If the recipient of the petitions we make as citizens is a jurist, as is usually the case in court, we will need a lawyer in most cases. In these cases, the communicative access will be technical and clear.

If we don´t need a lawyer, the court will have to provide us, using simple language, with all the necessary explanations. In addition, the Administration of Justice can

Link to Carreterro YouTube TED talk

https://mail.google.com/mail/u/0/#inbox/FMfcgxwHMsWPNGLqDSWTlhhBMLFblGSJ?projector=1

El acceso a la justicia a través de la claridad del lenguaje jurídico

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I. La premisa del concepto de lenguaje jurídico claro como instrumento de acceso a la jurisdicción

Entendemos el lenguaje jurídico claro como el lenguaje del Derecho expresado de tal modo que el destinatario puede comprenderlo sin dificultad.

Analicemos:

- Primero, “el lenguaje del Derecho” es un lenguaje especial, que trata cuestiones jurídicas y que, por tanto, constituye lo que se denomina un “tecnolecto” o lenguaje técnico de la ciencia jurídica, una terminología propia, un léxico propio dotado de precisión que evita la ambigüedad y la vaguedad.

- Segundo: decimos “expresado de tal modo que el destinatario puede comprenderlo sin dificultad”. De este modo, tenemos que hablar de dos tipos de destinatarios que son los que se relacionan con el Derecho, los legos en Derecho y los no legos, como los juristas y personas relacionadas con la Justicia que comprenden el Derecho.

En consecuencia, el lenguaje jurídico ha de ser claro para cualquier destinatario, pero el modo de hacerlo claro tiene dos tipos de registro o expresión, según a quién se dirija.

No podemos ignorar que la claridad tiene que ver con las formas de expresión: entre profesionales y entre no profesionales, Y su expresión es diferente en cada caso: en el primero, es claridad técnica, y en el segundo, es claridad no técnica.

Por otro lado, hay que saber bien qué es lo que pedimos y en qué ámbito, y, en este sentido, lo que pedimos aquí es la implantación de mecanismos que permitan utilizar el lenguaje jurídico con claridad, para que, con una correcta delimitación, se convierta en un objetivo de política pública en los distintos países.

Quienes escribimos, somos juristas y especialistas en lenguaje jurídico; nos toca trabajar el Derecho e intentamos hacerlo siempre con la mayor claridad posible. Como tales, sabemos que para hablar o redactar cuestiones relativas al Derecho, si la comunicación se produce entre juristas, debemos hacerlo de una manera técnica y correcta, es decir, clara. Esa claridad del lenguaje jurídico empleado al hablar o al escribir para juristas es distinta de la que debemos emplear al hacerlo con no juristas.

Para ser claros entre los juristas, debemos ser rigurosos y, eminentemente, técnicos, porque con este lenguaje técnico alcanzamos la mayor precisión jurídica y, en consecuencia, el menor riesgo y la mayor seguridad jurídica. Y esto también conlleva que podamos ejercer nuestra propia ciencia jurídica de manera que se ahorre tiempo y costes. Esto significa utilizar un lenguaje claro entre los juristas, siempre y cuando, lógicamente, cumpla con las reglas lingüísticas que hacen que el mensaje esté bien redactado o pronunciado.

Cuando una persona no jurista, por el contrario, nos pide, como juristas o profesionales del Derecho, que redactemos un contrato financiero, por ejemplo, esperamos hacerlo con dos características simultáneas:

1) Utilizando términos técnicos, de tal modo que la persona que solicitó ese contrato a ciertos profesionales tenga un buen documento que no genere problemas de interpretación y que contemple aquellas cuestiones que hagan de ese contrato un documento eficaz para lograr el fin para el que va destinado. Esto implicará también, que utilicemos términos técnicos, y, por tanto, precisos, de modo que cada palabra exprese una sola realidad, y no resulte polisémica o ambigua. Si no utilizamos ese lenguaje técnico, muy posiblemente, el contrato termine en los tribunales para que interpreten quién tenía razón ante posibles interpretaciones. Y esto generará costes, de tiempo, dinero y desgaste en los usuarios de los contratos.

2) Explicando esos mismos términos técnicos para que los contratantes, todos, puedan comprender lo que firman. Para ello, en cada ocasión que se deba emplear un tecnicismo, debe explicarse su significado. Con ello nos aseguramos de que todas las partes reciben una información comprensible sin dificultad.

II. La importancia de la claridad del lenguaje del Derecho en el acceso a la justicia

En este apartado, y dado que la expresión “acceso a la justicia” tiene numerosas manifestaciones, nos vamos a referir al acceso a la justicia que se imparte desde juzgados y tribunales.

Para ello, planteamos dos tipos de acceso, el de las personas que acuden sin un abogado a juicio y las personas que acuden con abogado.

En la legislación española, por ejemplo, para acceder a la justicia, se requiere, en la mayoría de las ocasiones, que sea un abogado quien nos defienda nuestros intereses en juicio. Resulta tan razonable que la ley prevea la intermediación de expertos para asegurar la mejor defensa de los derechos como que sea un cirujano quien nos opere cuando lo necesitemos. Es decir, igual que es esperable que la sanidad de un país no solo nos permita operarnos en sus instalaciones, sino que sea un equipo de médicos, cirujanos los que nos operan, y otros, médicos generales, especialistas, enfermeros y otros colaboradores quienes intervengan en nuestras cuestiones de salud. Igualmente esperamos que sea un grupo de personas, jueces, funcionarios y abogados quienes intervengan en la solución a nuestras controversias jurídicas.

Entonces, ¿cómo lograr que la claridad del lenguaje jurídico facilite el acceso a la justicia? Vamos a partir de que las leyes deberían ser claras para toda la ciudadanía, pero ese es un ideal y una propuesta para cualquier gobierno. Contando con las leyes actuales en cada país, y referidos al preciso acceso a la Justicia, expresamos este acceso desde dos perspectivas que están relacionadas, la primera, cuando sea necesario tener un abogado para acceder a la justicia, y la

segunda, relativa al papel que los jueces y la Administración de Justicia tienen en dicho acceso cuando no se necesite abogado.

1) La necesidad de abogados para defender las peticiones en la Justicia. Por una parte, en los casos en los que resulte necesario un abogado, e insistimos, que, en la mayoría de los casos se necesita un abogado, este debería presentar nuestras peticiones en los tribunales en un lenguaje técnico y correcto, para que el juez y el tribunal que intervenga no tengan ninguna duda de qué se solicita en nombre de sus clientes para lograr que tengan la mejor defensa de sus intereses.

Al mismo tiempo, ese abogado debe explicar a su cliente cada cuestión reflejada en los escritos que presente o las alegaciones orales que presente en el tribunal. Así, el cliente logrará tener un acceso completo y real a la justicia que pide.

2) El papel de los jueces y de la Administración de Justicia en el acceso a la Justicia cuando no se necesite abogado. En este caso, el juez y las personas que trabajan en los tribunales desde la Administración de Justicia tienen un papel de transmisión de los contenidos jurídicos extraordinariamente relevante. Estas personas, pueden y deben explicar de manera sencilla el Derecho que se trate en las comunicaciones orales y escritas.

Por otra parte, los escritos que se dirijan a las personas que accedan a la justicia, deberían ser siempre sencillos de comprender. En este sentido es esperable, y, en nuestra opinión, también exigible, que los tanto los derechos de las personas sean de sencilla comprensión, así como los formularios que se deban emplear para acceder a la Justicia, sean igualmente sencillos y accesibles, para que los ciudadanos puedan completarlos sin dificultades.

Por ejemplo, podemos citar los modelos que se facilitan por los tribunales en España, para que los ciudadanos puedan presentar demandas en procesos sencillos.

Por otra parte, los derechos de los ciudadanos, especialmente, en las causas penales en las que se tratan los derechos de los detenidos y las posibles privaciones de libertad, deben estar redactados de modo sencillo y comprensible. Para ello, aconsejamos que los estados realicen un esfuerzo de actualización en la redacción y, en su caso, en la exposición oral de estos derechos, para que puedan ser entendidos por los detenidos y privados de libertad.

Conclusiones

1) El acceso a la justicia puede mejorarse desde la perspectiva de la utilización de un lenguaje jurídico claro.

2) El acceso a la justicia, desde su comunicación, tiene dos manifestaciones en función del receptor del mensaje y de la necesidad o no de abogado.

Si el destinatario de las peticiones que hacemos como ciudadanos es un jurista, como ocurre en el caso de los tribunales, necesitaremos un abogado en la mayoría de las ocasiones. En estos casos, el acceso comunicativo será técnico y claro.

Si no necesitamos un abogado, el tribunal tendrá que darnos, con un lenguaje sencillo, todas las explicaciones necesarias. Además, la Administración de Justicia puede facilitar el acceso a la Justicia mediante documentos sencillos, elaborando formularios sencillos o modelos de escritos que puedan ser fácilmente cumplimentados por los ciudadanos.

Improving access to criminal justice, by rewriting the Belgian letter of rights

Florence Cols

Florence Cols is a legal design expert at Droits Quotidiens since almost 10 years. Droits Quotidiens works for making law understandable and accessible for all by (1)explaining rights and obligations in plain language; (2) creating visuals; and (3) helping professionals to rewrite their legal documents.

Persons under arrest receive a Letter of Rights, which explains them what are their rights : right to keep silent, right to get a lawyer, right to get medical help, etc.

But this document isn't adapt for them to correctly understand their rights, especially as they receive it in a stressful context. The document is far too long, written in legalese style, with complicated vocabulary, unlogical structure, unnecessary information, etc.

And as a result : persons under arrest don't read the document, or don't read it all, or don't understand what they read.

Persons under arrest don't understand their rights

They are unaware of their rights, or they don't know how to exercise their rights.

They don't know what the police officers can do and cannot do.

They don't know that they can act in a way (for example keep silent and refuse to answer questions), without the police reproaching them this later.

Another example : if they don't have their own lawyer, they get one "for free", that they don't know. They think that this is the lawyer of the police, and they don't trust him/her. But this lawyer is present for them, he or she is there to help them. Persons under arrest need to know this, in order to receive an efficient legal help from their lawyer.

A European project called "Access Just"

This project aims to improve the access to criminal justice, mainly by clarifying all european letters of rights. This project is financed by the European Union, and carried by Fair Trials Europe[1] and the Hungarian Helskinki Committee[2].

Belgium is one of the pilot countries, and Droits Quotidiens was asked to help with this work, as a legal design expert.

Droits Quotidiens[3] rewrote the Belgian letter of rights, in order to make it clear, understandable and efficient for the persons under arrest.

Changing a document is a whole process !

Here is the methodology we followed to rewrite the Belgian letter of rights.

1 www.fairtrials.org

2 https://www.helsinki.hu/en/

3 www.droitsquotidiens.be

1. Practical training module “how to write clearly” for lawyers and judges in criminal procedures. The training goals were to :

- raise awareness on the importance to be clear ;
- teach the participants to plain legal language method ;
- work on the letter of rights.

The training included exercises on the Belgian letter of rights to :

- identify its target audience, objective, context of communication, etc. ;
- select important and relevant information to keep ;
- structure it in a logical order for the person under arrest ;
- rewrite it in plain legal language.

2. Rewriting work by :

- plain legal language and legal design experts (Droits Quotidiens) ;
- criminal law experts (Fair Trials) ;
- graphic designer (Droits Quotidiens).

3. Presentation to field actors (lawyers, judges, legal aid actors, etc.), in order to take their input as field actors, and to assess if the new version is :

- relevant, pertinent and usable for the persons under arrest ;
- complete enough to be legally correct.

4. Correction by the experts (Droits Quotidiens and Fair Trials), in order to improve the letter of rights thanks to the reactions and information from the field actors.

5. Presentation to a european group of plain language experts and criminal law experts, in order to :

- confront the new version to european experts ;
- identify the cultural and national aspects that must be taken into account ;
- show one example for their own work in their country on their letter of rights.

6. Presentation to police officers, in order to confront the new version to the field, and to assess if the new version is :

- usable for police officers ;
- relevant for the persons under arrest ;
- matching their needs (the needs of both police officers and persons under arrest).

7. Corrections by the experts (Droits Quotidiens and Fair Trials), in order to improve the letter of rights thanks to the reactions and information from the field actors.

8. Confrontation to persons under arrest, and testing : “How do they understand their rights :

- with the former version of the Letter of rights ?
- with the new version?”

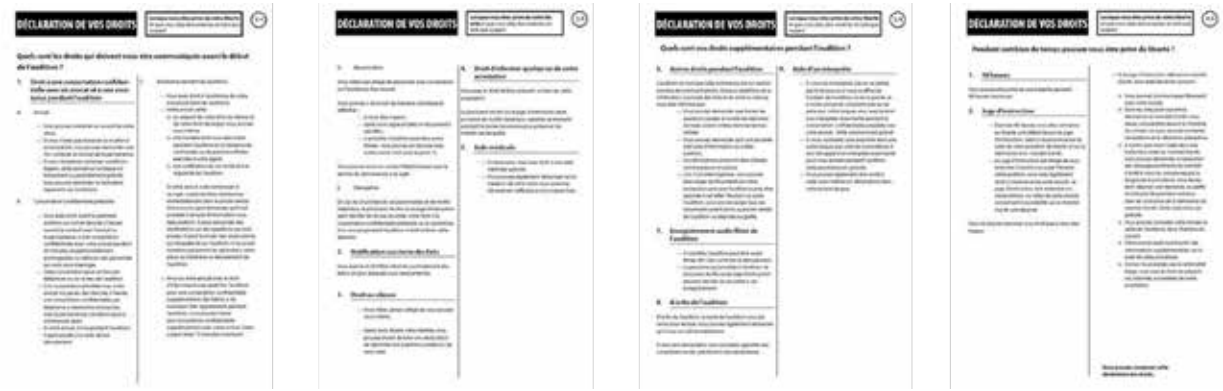
This step is still to be realized, at the time I write this paper.

9. Argumentation and plea for the ministry of justice to make the new version mandatory for all criminal justice actors.

Here is an overview of the former version and the new version.

Former letter of rights

- 4 pages
- Only text
- Too much information, and irrelevant information for the person under arrest.
- Maybe useful for a lawyer, but not for the target audience.
- Similar information at different places, creating unnecessary repetitions, and risk of confusion.
- Complicated vocabulary, legalese style, complicated formulations.
- Long sentences, with a complicated structure.



New letter of rights

- 1 practical leaflet : short and easy to keep (pocket size)
- Less information : only pertinent and important information for the person under arrest. For example, we removed the information about the rights of the person if she's taken to the examining magistrate (prosecutor).

We removed it for mainly 2 reasons :

If you want the person to read, understand and remember the information, you must give her the information at the right moment. So only if she's in a situation that makes her need this info.

In this case, the person needs this information at the moment she's taken to the prosecutor.

Before that moment, this information is irrelevant for her.

- It is very stressful for the person to talk about the prosecutor while she's only under arrest, and not yet suspected for anything. Being arrested is already stressful enough. Let's not add unnecessary stress.
- Color code.
- Highlight important information and key words.

- Visual structure, pictograms, lay-out that helps the comprehension.
- Usual vocabulary, day to day words.
- Sentences easy to read, short, and simply structured.
- Similar information grouped together.
- Structure :
  - Logical for the person :
    - What info does she really need ?
    - What info does she need first ?
    - What info is important for her ?
  - First : important rights (they were on the last page in the former version)
  - Then :
    - Always, as soon as the person is arrested (before and during the audition)
    - Before the audition
    - During the audition
    - In another document : rights if the person is taken to the examining magistrate (prosecutor).

Here are some pictures of the new version, when folded.

This is the new version, that still needs to be folded.

Améliorer l'accès à la justice pénale en transformant la déclaration des droits

Florence Cols

Les personnes arrêtées reçoivent une déclaration des droits. Ce document leur explique leurs droits : droit de garder le silence, droit d'avoir un avocat, droit à une aide médicale, etc.

Mais ce document n'est pas adapté pour permettre à ces personnes de comprendre leurs droits. Surtout qu'elles le reçoivent dans un contexte stressant ! Le document est très long, rempli de formulations juridiques et de mots compliqués, structuré illogiquement, avec des informations non- pertinentes, etc.

Conséquence ? Les personnes arrêtées ne lisent pas le document, ou ne lisent pas tout, ou ne comprennent pas ce qu'elles lisent.

Les personnes arrêtées ne comprennent pas leurs droits

Les personnes n'ont donc pas connaissance de leurs droits, ou elles ne savent pas comment exercer leurs droits.

Elles ne savent pas ce que les officiers de police peuvent faire, et ce qu'ils ne peuvent pas faire. Elles ne savent pas qu'elles peuvent se comporter d'une certaine façon (par exemple garder le silence et refuser de répondre à des questions), sans qu'on le leur reproche plus tard.

Autre exemple : si les personnes n'ont pas d'avocat, elles en reçoivent un « gratuitement ». Mais comme elles ne connaissent pas cet avocat, elles pensent qu'il est l'avocat de la police, et elles ne lui font pas confiance. Alors que cet avocat est présent pour elles, pour les aider. Les personnes arrêtées doivent le savoir, pour pouvoir recevoir une aide juridique efficace de leur avocat.

Un projet européen appelé « Access Just »

Ce projet a pour but d'améliorer l'accès à la justice pénale, notamment en réécrivant les déclarations des droits européennes. Ce projet est financé par l'Union européenne, et mené par Fair Trials Europe[1] et par le Hungarian Helskinki Committee[2].

La Belgique est un des pays pilotes. Droits Quotidiens[3] a été contacté pour aider à réaliser ce travail, en tant qu'expert en langage juridique clair.

Droits Quotidiens a donc réécrit la déclaration des droits belge, pour la rendre claire, compréhensible et efficace pour les personnes arrêtées.

Changer un document est un processus complet !

Voici la méthodologie que nous avons suivie pour réécrire la déclaration des droits belge.

1. Module de formation pratique « Comment écrire clairement » pour des avocats et des juges de procédure pénale. Les objectifs de la formation sont de :

1 www.fairtrials.org

2 https://www.helsinki.hu/en/

3 www.droitsquotidiens.be

- prendre conscience de l'importance d'être clair ;
- apprendre une méthode pour s'exprimer en langage juridique clair ;
- travailler sur la déclaration des droits.

La formation inclut des exercices sur la déclaration des droits belge, pour :

- identifier le public-cible du document, son objectif, le contexte de communication, etc. ;
- sélectionner les informations importantes et pertinentes à garder ;
- structurer les informations dans un ordre logique pour les personnes arrêtées ;
- réécrire le document en langage juridique clair.

2. Travail de réécriture par :

- des experts en langage juridique clair et en legal design (Droits Quotidiens) ;
- des experts en droit pénal (Fair Trials) ;
- une graphiste (Droits Quotidiens).

3. Présentation aux acteurs de terrain (avocats, juges, acteurs de l'aide juridique, etc.), pour recevoir leur avis et évaluer si la nouvelle version est :

- adéquate, pertinente et utilisable pour les personnes arrêtées ;
- assez complète pour être correcte juridiquement.

4. Corrections par les experts (Droits Quotidiens et Fair Trials), pour améliorer le document grâce aux réactions et informations reçues des acteurs de terrain.

5. Présentation à un groupe d'experts européens en langage clair et en droit pénal, pour :

- confronter la nouvelle version à ces experts européens ;
- identifier les aspects culturels et nationaux qui doivent être pris en compte ;
- montrer un exemple de réécriture, pour le travail que ces experts devront mener dans leur pays, sur leur déclaration des droits.

6. Présentation à des officiers de police, pour confronter la nouvelle version au terrain, et pour vérifier qu'elle :

- est utilisable pour des officiers de police ;
- est pertinente pour les personnes arrêtées ;
- correspond aux besoins des officiers de police et des personnes arrêtées.

7. Corrections par les experts (Droits Quotidiens et Fair Trials), pour améliorer le document grâce aux réactions et informations reçues des acteurs de terrain.

8. Confrontation aux personnes arrêtées, et test : « Comment comprennent-elles leurs droits en lisant :

- l'ancienne version de la déclaration des droits ?
- la nouvelle version ? »

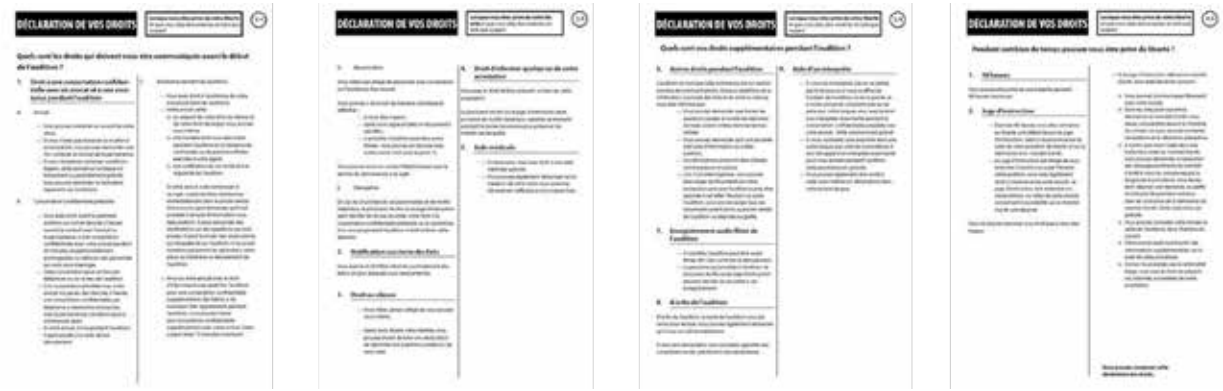
Cette étape doit encore être réalisée, au moment où nous écrivons cet article.

9. Argumentation et plaidoyer, pour convaincre le ministère de la justice de rendre cette nouvelle version obligatoire, pour tous les acteurs de la justice pénale.

Voici un aperçu de l'ancienne version, et de la nouvelle version.

Ancienne version de la déclaration des droits

- 4 pages.
- Uniquement du texte.
- Trop d'informations, et informations non pertinentes pour les personnes arrêtées. Peut-être utiles pour un avocat, mais pas pour le public-cible.
- Certaines informations semblables se trouvent à différents endroits. Cela crée des répétitions inutiles, et un risque de confusion.
- Vocabulaire compliqué, avec du jargon juridique et des formulations compliquées.
- Longues phrases, structurées de façon compliquée.



Nouvelle version de la déclaration des droits

- 1 dépliant pratique : court et facile à garder (format qui se glisse dans la poche).

  Moins d'informations : uniquement les informations pertinentes et importantes pour les personnes arrêtées.

  Par exemple, nous avons enlevé les informations concernant les droits de la personne quand elle est amenée devant le juge d'instruction.

  Nous les avons enlevées, notamment pour 2 raisons.
- Si on veut que la personne lise, comprenne et retienne l'information, il faut lui donner la bonne information au bon moment. Donc uniquement si elle est dans une situation où elle a besoin de cette information.
- La personne arrêtée a besoin de ces informations uniquement quand elle est amenée devant le juge d'instruction. Avant ce moment, ces informations sont inutiles et non-pertinentes pour elle.
- C'est très stressant pour la personne, de lui parler du juge d'instruction alors qu'elle n'en est qu'au stade de l'arrestation. Toutes les personnes arrêtées ne se retrouvent pas devant le juge d'instruction !
- C'est déjà stressant de se faire arrêter. Pas besoin d'ajouter du stress inutile.
- Code couleur.
- Informations importantes et mots clés mis en évidence.
- Structure visuelle, pictogrammes, mise en page qui aide à la compréhension.
- Vocabulaire courant, mots de tous les jours.
- Phrases faciles à lire, courtes et structurées simplement.

- Informations similaires regroupées.
- Structure :
  - Logique pour la personne :
    - De quelle information a-t-elle réellement besoin ?
    - De quelle information a-t-elle besoin en premier ?
    - Quelle information est importante pour elle ?
  - D'abord : les droits importants (ils se trouvent à la dernière page dans l'ancienne version).
  - Ensuite, les droits de la personne :
    - à tout moment, dès que la personne est arrêtée (avant et pendant l'audition) ;
    - avant l'audition ;
    - pendant l'audition.
    - Dans un autre document : les droits de la personne si elle est amenée devant le juge d'instruction.

Voici quelques photos de la nouvelle version, quand elle est pliée.

Voici la nouvelle version, avant d'être pliée.

Access to justice and the right to understand in Spain: Plain language in the administrative justice of Andalusia

Nuria Mesa

ABSTRACT: This article analyzes the role of plain language in access to Justice in Spain. It offers a review of the regulations that includes rights derived from the right to understand in access to Spanish Justice, as well as its real impact on daily practice. Given the low impact of these rights in ordinary Justice, this article focuses on the progress made in administrative Justice, especially in Andalusia, that is, in the work of the Andalusian Ombudsman.

KEY WORDS: Justice, Plain Language, Official Regulation, History, Ombudsman, Andalusia.

Nuria Mesa, jurist and political scientist with experience in accessible institutional communication. Master's Degree in Contracting Law and Civil Responsibility and researcher on accessible communication in private relations (Pablo de Olavide University, Seville). Collaborator of Instituto Lectura Fácil, a spanish entity which promotes the civil right to understand the information.

The secondary role of the right to understand in access to Justice in Spain

Access to Justice is one of the areas that most highlights the need to democratize access to information.

Legal procedures have been developed to safeguard large legal assets, such as security, freedom or the rule of law itself, but among them, the right to understand did not have the same level of protection.

Until 2002, the right to understand was limited to people who speak languages other than Spanish. No consideration was given to the gap generated by the universal use of a technical jargon as concrete as the legal-administrative one among the population that speaks the language itself.

Complaints processed by the General Council of the Judiciary or by the Ombudsmen in the country highlight a certain perception among citizens regarding legal language: an overwhelming majority points out that it is a obscure and incomprehensible language.

The opinion barometers of the General Council of the Judiciary confirm that 82% of citizens believe that legal language is excessively complicated and difficult to understand (Commission of experts on modernization of legal language - Ministry of Justice, 2010, 2).

Along these same lines, other opinion studies can be highlighted, such as the one carried out in 2007 by the Ombudsman with its Transparency Survey. This yielded data such as the following: 42.3% of the population acknowledged not understanding the language used by the Public Administration as a whole.

In 2002, the debate about the barriers to access to Justice imposed by technical language was transferred to the Congress of Deputies. All the groups represented in the Chamber at that time signed a non-law proposal called the Bill of Rights of Citizens Before the Justice System in which the foundations were laid to modernize the Spanish judicial system.

Among the elements addressed, we highlight the inclusion of the right to understand in proposals such as the recognition of the citizen's right to receive communications that "are understandable to citizens who are not specialists in law" (Ministry of Justice, 2002, 2).

The non-binding nature of the instrument chosen to capture the content of the Charter influenced the impact of the rights recognized therein. There have been no draft legal reforms nor have these principles been assumed within the Spanish judicial practice.

Subsequently, in 2013, the right to understand returned to the debate on access to Justice.

The Council of Ministers of the Government of Spain echoed the demand and formed a working group to delve into the issue and develop possible solutions. This was called the Commission for the Modernization of Legal Language and was formed by different professionals linked to linguistics and the legal world.

The Commission made a series of recommendations crystallized in a report that lays the groundwork for the transformation and modernization of legal language (Commission of Experts on Modernization of Legal Language - Ministry of Justice, 2010, 1)

Advances in the right to understand access to Justice in Spain

Since then, more and more professionals have become interested in dealing with a critical perspective on the legal language and its implications in effective judicial protection, a principle that enjoys the greatest legal protection offered by the Spanish law, but few concrete actions have been developed with true impact.

Another tool of cognitive accessibility more closely linked to intellectual disability, easy reading, has had a greater journey in this area.

This technique has been used to make police investigation and rights communication proceedings accessible.

The two great security forces of the State, the National Police and the Civil Guard, have in recent years made the commitment to the right to understand.

Both organizations have carried out adaptation projects for the easy reading of documents that constitute the first contact with the Administration of Justice for people who report crimes, for victims and for the alleged perpetrators[1].

As is mandatory when using the technique of easy reading, these texts follow certain guidelines in their composition, and then, a group of people with different cognitive profiles tests their understanding, engaging first hand in the preparation of these supporting texts.

Not only have police procedures been adapted, but, in the hands of a major legal reform on the capacity of persons with disabilities in Spain, the first adaptation of a judicial ruling in the country has recently been undertaken[2].

1 You can consult an example in the following link: https://www.guardiacivil.es/web/web/documentos/prensa/lectura_facil/Protocolo01_GuardiaCivil_Fina l.pdf

2 You can consult the sentence in the following link: http://www.poderjudicial.es/cgpj/es/PoderJudicial/Tribunales-Superiores-de-Justicia/TSJ-Asturias/Sala-de-prensa/Archivo-de-notas-deprensa/Asturias-adapta-la-lectura-facil-por-primera-vez-en-Espana-una-sentencia-del-ordenContencioso-Administrativo---

Thus, we can say that citizens' rights of understanding collated in 2002 have only come a short way, and as we can see, closely related to a tool regarding intellectual disability.

The plain language in Administrative Justice

To find some examples of interest in the field of plain language we have to look to the field of administrative Justice, that is, in the work of the Ombudsmen, and more specifically, the Ombudsman of Andalusia.

The institution has delved into cognitive accessibility from a double dimension: the integration of people with disabilities, making adaptations to easy reading of accountability documents, and from the perspective of cognitive democracy in its broadest sense, transforming its forms and plain language communications.

From the Instituto Lectura Fácil we address the defence of plain language through general training and the training of public employees: the agents who have the real competencies to implement the technique in Public Administration.

Thus, we began a cooperation project with the workers of the Ombudsman of Andalusia that has led to the adaptation of the forms intended for citizens to transfer their claims, as well as, the resolutions through which the institution transfers its responses to the citizens.

These resolutions were the starting point that showed the need to adopt a new communicative paradigm to make the exercise of rights possible.

The specific case was that of an older woman who sent a question about the rise in the price of electricity. The woman pointed out that the rise made it impossible to pay. Upon receiving the response resolution, with the usual technical legal format and language of these procedures, the woman could not understand the message and returned to the institution for clarification and explanation.

This episode made those responsible for the institution reflect and as a consequence they began to be interested in the tools of cognitive accessibility, particularly in plain language.

The project initiated with the Ombudsman of Andalusia did not end there. Given the nature and competences of citizen care of the institution, those responsible indicated the need to review the understanding of its web portal from a critical perspective.

Given this need, we proposed a service that combines plain language analysis and web accessibility called a user-friendly web plan[3], a service through which we offered:

1. An audit of understanding the current web space.
2. A proposal to improve the user experience and the language used.
3. A validation of the proposals made by a group of people with different profiles that are potentially users of the institution's services.

The items analyzed in the development of this service are those collected by the W3C web accessibility (Fernández-Díaz, Jambrano Maldonado and Iglesias Sánchez, 2019, 47), in addition to another list of items developed by the Easy Reading Institute to measure the degree of understanding of the language used.

These projects were developed throughout the year 2019, so it remains for the results to be measured as time progresses.

3 You can check the results of the user-friendly web plan at the following link: https://www.defensordelpuebloandaluz.es/el-defensor-a-un-clic

Conclusions and future challenges

In summary, we could affirm that, although important steps have been taken to include the importance of the right to understand in access to Justice in political debate, little has been done at a material level.

In any case, the new Government of Spain seems to have the will to resume this commitment. The new Minister of Justice, Juan Carlos Campo, has affirmed that in this term he will assume the task of "modernizing the Spanish judicial system"[4]. We hope that this modernization will be exercised in the terms stated in the Report of the Commission for the Modernization of legal language when he says that "a modern Justice is a Justice that citizens are able to understand" (Commission of experts of modernization of legal language-Ministry of Justice, 2010, 2).

4 You can consult the statements of the Minister of Justice in the following link: https://www.eleconomista.es/legislacion/noticias/10294931/01/20/El-nuevo-ministro-Juan-CarlosCampo-apuesta-por-un-pacto-de-Estado-para-un-nuevo-modelo-de-Justicia.html

Bibliography:

Ministry of Justice. Government of Spain (2002). Charter of citizens' rights before Justice. Madrid.

Committee of experts for the modernization of legal language. Ministry of Justice. Government of Spain (2010). Report of the Commission for the Modernization of Legal Language. Madrid.

GECONTEC: International Journal of Knowledge Management and Technology. ISSN 2255-5648. Fernández-Díaz, E., Jambrino Maldonado, M.A. and Iglesias Sánchez, P.P. Vol. 7 (2). 2019.

Ombudsman of Spain (2007). Transparency Report. Madrid. Recovered from: https://www.defensordelpueblo.es/otras-publicaciones/encuesta-transparenciaconclusiones/

Acceso a la justicia y derecho a comprender en España: Lenguaje claro en la justicia administrativa de Andalucía

Nuria Mesa

ABSTRACT: Este artículo analiza el papel del lenguaje claro en el acceso a la Justicia en España. Se ofrece un repaso a la normativa que recoge derechos derivados del derecho a comprender en el acceso a la Justicia española así como su impacto real en la práctica diaria. Ante el escaso impacto de estos derechos en la Justicia ordinaria, se analizan con mayor atención los avances que se han dado en el Justicia administrativa, especialmente en Andalucía, es decir, en la labor del Defensor del Pueblo de Andalucía.

KEY WORDS: Justicia, Lenguaje Claro, Normativa, Historia, Defensor del Pueblo, Andalucía.

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El papel secundario del derecho a comprender en el acceso a la Justicia en España

El acceso a la Justicia es uno de los ámbitos que más pone de relieve la necesidad de democratizar el acceso a la información.

Los procedimientos y trámites judiciales han sido desarrollados para salvaguardar grandes bienes jurídicos, como la seguridad, la libertad o el propio Estado de Derecho, pero entre ellos, el derecho a comprender no tuvo el mismo nivel de protección.

Hasta el año 2002, el derecho a comprender se encontraba circunscrito al ámbito de las personas que hablan idiomas distintos al español. Nada se reflexionó sobre la brecha que genera el uso universal de una jerga técnica tan concreta como la jurídicoadministrativa entre la población que habla el propio idioma.

Las quejas tramitadas por el Consejo General del Poder Judicial o por las Defensorías del Pueblo en el país destacan una percepción ciudadana determinada respecto al lenguaje jurídico: una mayoría abrumadora señala que es un lenguaje oscuro e incomprensible para la ciudadanía.

Los propios barómetros de opinión del Consejo General del Poder Judicial confirman que un 82% de la ciudadanía considera que el lenguaje jurídico es excesivamente complicado y difícil de entender (Comisión de expertos de modernización del lenguaje jurídico-Ministerio de Justicia, 2010, 2).

En esta misma línea se pueden destacar otros estudios de opinión como el realizado en 2007 por el Defensor del Pueblo con su Encuesta de Transparencia. Esta arrojó datos como el siguiente: existía un 42,3% de la población reconocía no entender el lenguaje que emplea la Administración Pública en su conjunto.

En el año 2002, el debate sobre las barreras para acceder a la Justicia que impone el lenguaje técnico se traslada al Congreso de los Diputados. Todos los grupos representados en la Cámara al momento firman una proposición no de ley llamada Carta de Derechos de los ciudadanos ante la Justicia en la que se sientan las bases para modernizar el sistema judicial español.

Entre los elementos abordados, destacamos la inclusión del derecho a comprender en propuestas como el reconocimiento del derecho ciudadano a recibir comunicaciones que "resulten comprensibles para los ciudadanos que no sean especialistas en derecho" (Ministerio de Justicia, 2002, 2).

El carácter no vinculante del instrumento escogido para plasmar el contenido de la Carta influyó en el impacto de los derechos reconocidos en la misma. No se han producido reformas legales de calado ni se han asumido estos principios en el seno de la práctica judicial española.

Posteriormente, en el año 2013, el derecho a comprender vuelve al debate sobre el acceso a la Justicia.

El Consejo de Ministros del Gobierno de España se hace eco de la demanda y forma un grupo de trabajo para ahondar en la cuestión y desarrollar posibles soluciones. Esta se llamó Comisión de Modernización del lenguaje jurídico y estuvo formada por distintos profesionales vinculados a la lingüística y al mundo jurídico.

La Comisión realizó una serie de recomendaciones que cristalizaron en un informe que sienta las bases para la transformación y modernización del lenguaje jurídico (Comisión de expertos de modernización del lenguaje jurídico-Ministerio de Justicia, 2010, 1).

Avances en el derecho a comprender en el acceso a la Justicia en España

Desde entonces, cada vez son más los profesionales interesados en abordar con perspectiva crítica el lenguaje jurídico y sus implicaciones en la tutela judicial efectiva, principio que goza de la mayor protección jurídica que ofrece el ordenamiento español, pero se han desarrollado pocas actuaciones concretas con verdadero impacto.

Otra herramienta de la accesibilidad cognitiva más vinculada con la discapacidad intelectual, la lectura fácil, sí ha tenido un mayor recorrido en este ámbito.

Esta técnica se ha empleado para hacer accesible las diligencias policiales de investigación y comunicación de derechos.

Los dos grandes cuerpos de seguridad del Estado, Policía Nacional y Guardia Civil, han asumido en los últimos años el compromiso con el derecho a comprender.

Ambas organizaciones han realizado proyectos de adaptación a lectura fácil de documentos que constituyen el primer contacto con la Administración de Justicia para las personas que denuncian delitos, para las víctimas y para los presuntos autores de los mismos[1].

Como es preceptivo al emplear la técnica de la lectura fácil, estos textos siguen unas determinadas pautas en su composición, y luego, un grupo de personas con distintos perfiles cognitivos, pone a prueba la comprensión del mismo, involucrándose en primera persona en la confección de estos textos de apoyo.

1 Pueden consultar un ejemplo en el siguiente enlace: https://www.guardiacivil.es/web/web/documentos/prensa/lectura_facil/Protocolo01_GuardiaCivil_Fina l.pdf

No solo se han adaptado diligencias policiales, sino que, de la mano de una reforma legal importante sobre la capacidad de las personas con discapacidad en España, se ha acometido recientemente la primera adaptación de una sentencia judicial en el país[2].

Así, podemos decir que los derechos de comprensión ciudadanos recogidos en el año 2002 han tenido un recorrido muy escaso, y como vemos, muy relacionado con una herramienta vinculada con la discapacidad intelectual.

El lenguaje claro en la justicia administrativa

Para encontrar algún ejemplo de interés en el ámbito del lenguaje claro tenemos que poner la vista en el ámbito de la justicia administrativa, es decir, en el trabajo de las Defensorías del pueblo, y más concretamente, el Defensor del Pueblo de Andalucía.

La institución ha ahondando en la accesibilidad cognitiva desde una doble dimensión: la integración de las personas con discapacidad, realizando adaptaciones a lectura fácil de documentos de rendición de cuentas, y desde la óptica de la democracia cognitiva en su sentido más amplio, transformando sus formularios y comunicaciones a lenguaje claro.

Desde el Instituto Lectura Fácil abordamos la defensa del lenguaje claro a través de la formación y la capacitación a los empleados y empleadas públicas, que son los agentes que tienen las competencias reales para implementar la técnica en la Administración Pública.

Así, comenzamos un trabajo de acompañamiento de los trabajadores y trabajadoras del Defensor del Pueblo de Andalucía que ha llevado a la adaptación de los formularios destinados a que la ciudadanía traslade sus reclamaciones, así como, las resoluciones mediante las que la institución traslada sus respuestas a la ciudadanía.

Estas resoluciones fueron el punto de partida que hicieron ver la necesidad de adoptar un nuevo paradigma comunicativo para hacer posible el ejercicio de derechos.

El caso concreto fue el de una mujer mayor que remitió una consulta sobre la subida del precio de la luz. La mujer señalaba que la subida le hacía imposible hacer frente al pago. Al recibir la resolución de respuesta, con el formato y el lenguaje jurídico técnico habitual

de estos trámites, la mujer no pudo comprender el mensaje y volvió a recurrir a la institución buscando una aclaración y una explicación.

Este episodio hizo reflexionar a los responsables de la institución que comenzaron a interesarse por las herramientas de la accesibilidad cognitiva, especialmente por el lenguaje claro.

El proyecto iniciado con el Defensor del Pueblo de Andalucía no terminó ahí. Dada la naturaleza y las competencias de atención ciudadana de la institución, sus responsables señalaron la necesidad de revisar con una perspectiva crítica la comprensión de su portal web.

2 Pueden consultar la sentencia en el siguiente enlace: http://www.poderjudicial.es/cgpj/es/PoderJudicial/Tribunales-Superiores-de-Justicia/TSJ-Asturias/Sala-de-prensa/Archivo-de-notas-deprensa/Asturias-adapta-la-lectura-facil-por-primera-vez-en-Espana-una-sentencia-del-ordenContencioso-Administrativo---

Ante dicha necesidad, les propusimos un servicio que combina el análisis de lenguaje claro y la accesibilidad web llamado plan web de uso fácil[3], un servicio a través del cual ofrecimos:

1. Una auditoria de comprensión del espacio web actual.
2. Una propuesta de mejora de la experiencia de usuario y del lenguaje empleado.
3. Una validación de las propuestas realizadas por un grupo de personas con distintos perfiles que son potencialmente usuarias de los servicios de la institución.

Los ítems analizados en el desarrollo de este servicio son los recogidos por el W3C de accesibilidad web (Fernández-Díaz, Jambrano Maldonado e Iglesias Sánchez, 2019, 47), además de otra lista de ítems desarrollados por el Instituto Lectura Fácil para medir el grado de comprensión del lenguaje empleado.

Estos proyectos se han desarrollado a lo largo del año 2019, por lo que queda por medir los resultados a medida que avance el tiempo.

Conclusiones y retos de futuro

En resumen, podríamos afirmar que, aunque se han dado pasos importantes para incluir en el debate político la importancia del derecho a comprender en el acceso a la Justicia, poco se ha hecho a nivel material.

En todo caso, el nuevo Gobierno de España parece tener la voluntad de retomar este compromiso. El nuevo ministro de Justicia, Juan Carlos Campo, ha afirmado que en esta legislatura asume la tarea de "modernizar el sistema judicial español"8, esperamos que esa modernización se ejerza en los términos que afirma el Informe de la Comisión de Modernización del lenguaje jurídico cuando dice que "una justicia moderna es una justicia que la ciudadanía es capaz de comprender" (Comisión de expertos de modernización del lenguaje jurídico-Ministerio de Justicia, 2010, 2).

Bibliografía:

Ministerio de Justicia. Gobierno de España (2002). Carta de los derechos de los ciudadanos ante la Justicia. Madrid.

Comisión de expertos para la modernización del lenguaje jurídico. Ministerio de Justicia. Gobierno de España (2010). Informe de la Comisión de Modernización del lenguaje jurídico. Madrid.

GECONTEC: Revista Internacional de Gestión del Conocimiento y la Tecnología. ISSN 2255-5648. Fernández-Díaz, E., Jambrino Maldonado, M.A. y Iglesias Sánchez, P.P. Vol. 7(2). 2019

Defensor del Pueblo de España (2007). Informe de Transparencia. Madrid. Recuperado de: https://www.defensordelpueblo.es/otraspublicaciones/encuesta-transparencia-conclusiones/

3 Pueden consultar los resultados del plan web de uso fácil en el siguiente enlace: https://www.defensordelpuebloandaluz.es/el-defensor-a-un-clic

8 Pueden consultar las declaraciones en el siguiente enlace: https://www.eleconomista.es/legislacion/noticias/10294931/01/20/El-nuevo-ministro-Juan-CarlosCampo-apuesta-por-un-pacto-de-Estado-para-un-nuevo-modelo-de-Justicia.html

Plain language principles

Romina Marazzato Sparano

Romina Marazatto Sparano is a plain language expert, translator, and writer with Language Compass. She provides language services, consulting, and training to professionals, organizations, and companies (including Fortune 500) backed by over 20 years of experience in medical localization and health literacy. Romina taught at the Middlebury Institute of International Studies where she designed the Master of Arts in Translation/Localization Management and is also an instructor at Plain Language Academy. She is a leader and active member in professional associations, including PLAIN, ATA, AMWA, and SEA, works on translation and plain language standards development at ASTM and ISO, and has been invited as a judge for the 2020 ClearMark Awards sponsored by the Center for Plain Language.

"Plain language is clear language. It is simple and direct
but not simplistic or patronizing."
Nick Wright

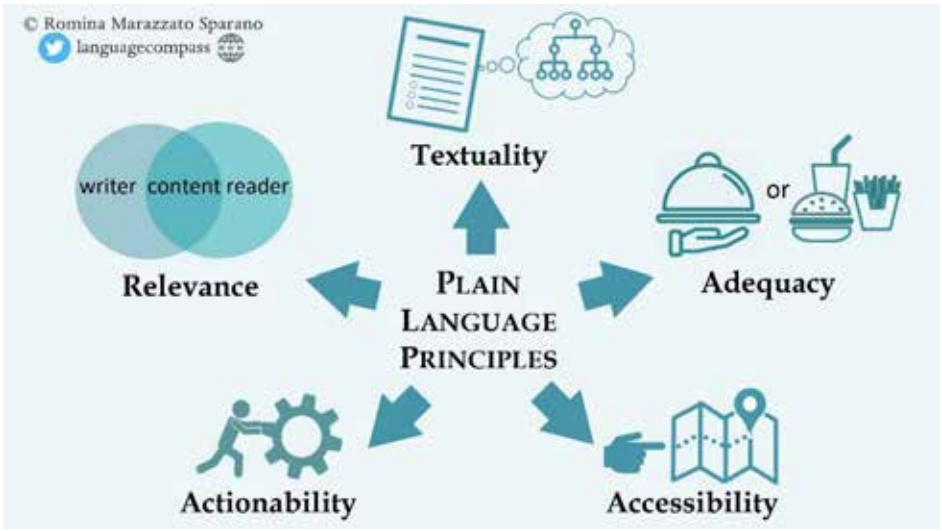

Figure *1*: Plain Language Principles: Relevance, Accessibility, Adequacy, Textuality, Actionability.

Plain language is about clear communication. Period. Not just clear communication with a certain audience or about a certain topic. And it certainly includes clear communication with and among experts about complex subjects.

Clients and students often ask me how plain language can apply to both lay and technical texts. The short answer is that all texts written to inform should be clear to their intended audience, whichever their expertise. You can meander into mystery, suggestion, and ambiguity in creative writing.

The longer answer includes an exploration of text and the principles of plain language.

What is text?

The word **text** literally means *woven*. It comes from the Latin verb for weaving, *texere*. We often allude to this *textile* image when we talk about *weaving a story*, *the thread of an argument*, *patterns of organization*. Text is woven out of **words**. But loose words are not text.

We need **grammar** to combine words in meaningful ways and help text make sense. Yes, that's why grammar exists, not to police your writing. With grammar, phrases, clauses, and sentences emerge that we can line up.

Now, loose sentences are not text, either. Text requires **cohesion** or visible connections between sentences. Cohesion helps create text through related

vocabulary and syntactic manipulations that link sentences to one another, creating visible links for the reader. Of course, superficial cohesion doesn't help a set of sentences add up to text: "India shares a border with Pakistan. Pakistan is a polysyllabic word."

To create wholesome text, in addition to grammar within the sentence and cohesion between sentences, we need the invisible thread of **coherence** throughout the piece. Coherence emerges from the thematic unity of the piece, its focus and organization, and the flow of information that moves the argument forward—all articulated by interrelated concepts and imagery, the rhythm of information delivery, and the logical and pragmatic relationships between ideas—either pointed out by cohesive devices or woven into the content.

An additional layer of text building involves choices beyond grammar and logic: the use of superstructures or conventional organization **patterns** that help text production and comprehension. These are schemes or global structures—somewhat independent of the content—that provide a conventional container for the message. Examples include storytelling, hierarchical, and argumentative models. Adherence to an organizational pattern not only helps readers understand text, it also provides a mold for later recollection of ideas and a template for action.

The combination of all the features that make text more than a collection of random words or sentences is called **textuality**. Building meaningful text requires grammar, cohesion, coherence, and structure whether your text is intended for a lay audience or for specialists.

To promote successful written communication, we also need attention to a variety of contextual features. Communication, in general, is the sharing of meaning between minds. It requires interlocutors (sender and receiver), a shared code to convey the meaning, and a channel for that conveyance. In written communication, the sender, the writer, is removed from the receiver, the reader. So careful attention to the context of communication is as important as attention to the content.

How do we promote successful written communication?

Writing is a decision-making **process** that includes planning, drafting, and revising. Although the stages are often discussed in a linear fashion, writing is a complex, iterative process that spirals (many times bumpily) towards a finish **product**.

And it is that finished product that we judge good writing by. Perhaps this is why, when asked about what makes good writing, we can get caught up in strategies or **techniques**.

For example, some writing guides reject the passive voice. Yet this rejection is not a principle of good writing. Rather, it is a stylistic ban based on the faulty premises that the passive 'hides the action' or 'helps evade responsibility.' Think of Elvis' "I'm all shook up," Eurythmics' "Sweet dreams are made of this," or Maroon 5's "She will be loved." No one would describe these passives as lifeless or culprits for unclaimed responsibilities. The passive is simply a syntactic technique that helps shed light on the receiver of an action. Put it in your writer's toolbox and use it as such. (if you want a deeper dive on the passive, I invite you to read this article.)

Techniques don't make good or bad writing by themselves. It is their use in context that matters. And that use is guided by overarching principles about text as a whole and the context of its sharing.

Here are the **principles** I (try hard to) follow to promote successful written communication:

1. Relevance: The content responds to the reader needs, wants, and interests. Writers may have a plethora of information to share but must decide what to include or discard based on the purpose and audience of the piece.

For instance, in a brochure about a Foley bulb induction for an OBGYN's office, we will likely explain that it is a method for getting labor started using a flexible tube inflated with saline solution. But we need not include information about the history of this catheter such as the fact that Dr. Frederic E.B. Foley—who lent the catheter its name—lost the legal battle over the patent to the Davol Rubber Company.

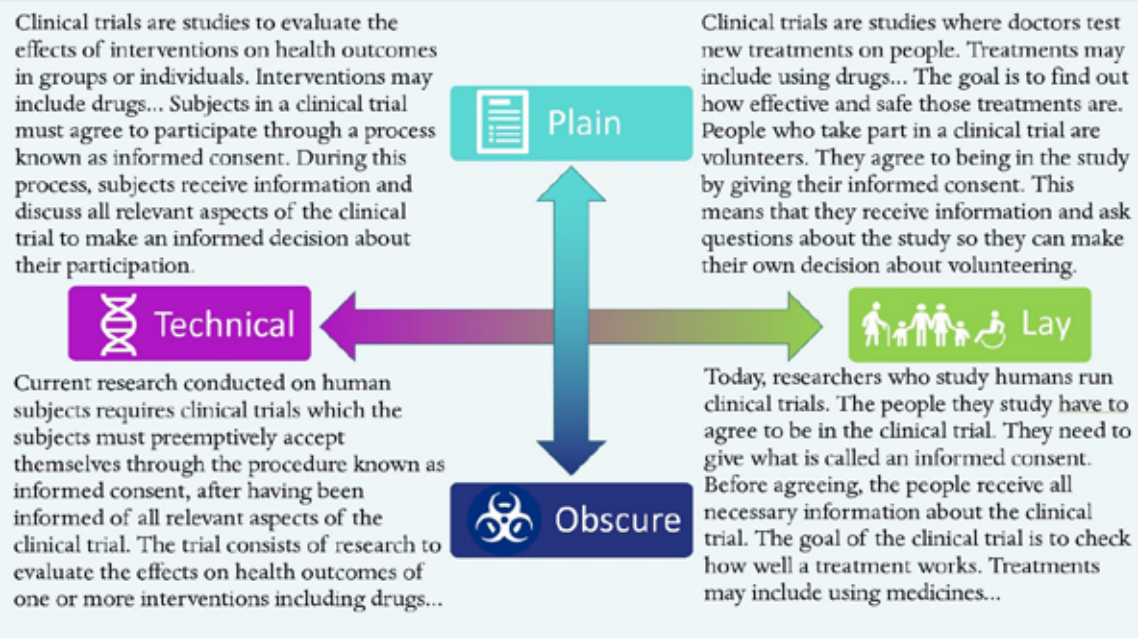

Figure 2: Example showing the 4 quadrants of writing: Along one dimension text can be for technical or lay audiences. Along an intersecting dimension, text can be plain or obscure. The original passage appeared in a piece about informed consent in clinical research. Notice how, in order to truly translate obscure technical text to clear lay text, it is not enough to substitute terminology or shorten sentences. First and foremost, the thinking supporting the text must be streamlined.

2. Textuality: The communication builds meaning logically using grammar, cohesion, coherence, and overall organization. Writers pick vocabulary, wording, and structure that help readers understand the message, including explicit information, unstated information, and the implications of that information.

For instance, to explain a process, we will try and cover all steps in logical progression. If we are sharing a story to make a point (whether it is a call to action for patient safety or instilling identity **into a brand**), we need to follow a storytelling pattern to guide the reader through the content: introduce the setting, characters, and relationships, present the conflict, unveil the resolution, and even articulate the moral of the story. Picking organizational patterns that readers are familiar with will increase their chances at understanding, remembering, and applying the content.

(I have found that introducing novel textuality strategies scaffolded by familiar ones helps expand understanding.)

3. Adequacy: The communication builds meaning empathetically by tailoring form of expression to the reader and the context at hand. Writers adapt the style and register of wording and structure, and use design to support communication with the intended reader.

Adequacy examples often include adaptations of technical information for lay audiences. Indeed, that is one possibility. Technical adequacy is also needed. For instance, science journals have writing guidelines about referencing style, font, space, and even the order of sections (abstract, introduction, methods, results, discussion, and references). Not following those guidelines can be reason for rejection o revision requests due to inadequacy—even when the content itself may be relevant and well-written.

4. Accessibility: The document helps the reader find relevant content. Within the text itself, the structure of the document—its visual layout—supports the structure of the content—its logical organization— so that the reader can find the information they seek.

Accessibility in a stricter sense refers to the practice of making websites usable by people with disabilities. This is certainly ne aspect of general accessibility. Accessibility also includes the contextual need of making the content discoverable: publishing through an appropriate channel, promoting it as necessary, optimizing searchability (placement, search engine optimization, library-style classification, etc.)

For instance, if we are explaining who can apply for certain benefits and several conditions must be met to qualify, creating a list—rather than lining line up all conditions within the paragraph—will help readers identify each condition and assess whether they meet them.

Another example of accessibility within the text is the use of headings and tables of contents. Headings signpost the structure of the content. A table of contents acts as a map and should reflect the structure built throughout the text. You will confuse the reader if you use too many levels of headings, mismatch the formatting of different levels, or skip headings in the table of contents.

5. Actionability: The communication explicitly states or unambiguously conveys the purpose of the content and how the reader can use it. In procedural text, this emerges as an integral part of a piece meant to tell the reader how to complete a specific task. However, actionability is more than step-by-step instructions. At the start of a piece, the title discloses the topic and activates prior knowledge that will help the readers understand and apply new knowledge. Throughout the piece, logical progression helps the reader process new information. At the end of a piece, summaries, highlighted points, questions, or suggestions help integrate new knowledge and guide the application of the content.

For instance, if you are providing instructions for enrollment in a special program for a subset of users who will need to fill out a specific form, make sure you only provide access to the relevant form. Providing access to forms that apply to a different subset of users will confuse target readers and deter them from taking the appropriate action.

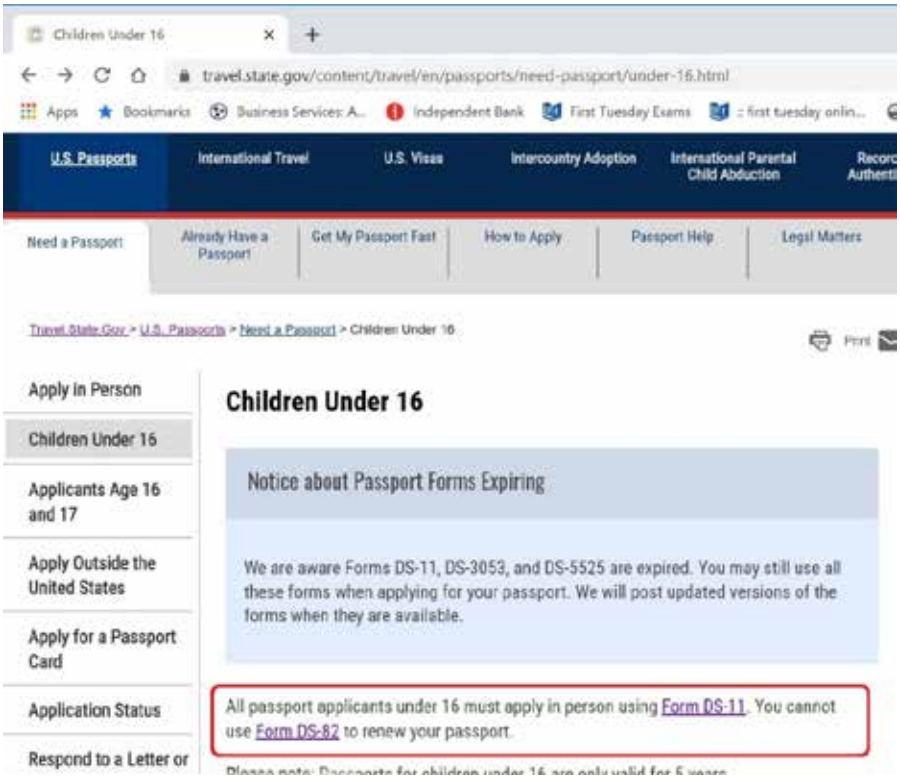

Figure *3*: Providing access to an irrelevant form confuses the reader.

Perhaps it goes without saying, but I also apply **truthfulness** to my writing: I try to be as accurate as possible and write about topics that I am familiar with and have adequate evidence or support for.

Access for All:

Plain language is a civil right

ACCESS FOR ALL

Not every vulnerable population experiences the same barriers. We must consider all vulnerabilities and look for the most appropriate plain language tools and techniques. Learn about different populations and the different projects than can help protect their rights.

www.accessforallconference.org

Usability testing results for legal icons Northwest Justice Project – a case study

Tanushree Padath is a Project Manager/Visual and UX designer at Transcend. She makes plain text more accessible by incorporating design principles and iconography. She also conducts design and usability workshops for the legal sector. She has served as a judge in the 2019 Clearmark awards in the website category.

Tanushree Padath and Maria Mindlin

Background

Northwest Justice Project (NJP) and the Superior Court of Washington have long relied on plain language and readable design to support people who want access to legal forms and information, but do not have lawyers. In 2018, NJP asked Transcend to create 6 new legal icons to enhance the readability of their family law document assembly project. These new icons are now included in the legal icons set at transcend.net. NJP uses the icons to support step-by-step court form instructions on The icons provide a visual summary of each step, aiding comprehension and making a complex process feel more manageable.

The purpose of this article is to share the various testing methods used to ensure the legal icons conveyed their intended messages. We detail the testing steps below.

NJP requested icons for these phrases:

1. Review your forms
2. Print
3. Sign
4. Copy [forms] (show the number of copies)
5. Deadline[2]
6. Parenting Plan[2]

NJP provided “inspiration” icons from nounproject.com, and asked Transcend to create and test icons that matched the style of Transcend’s existing set of 200+ legal icons.

1 To learn more about how we started the legal icons project, watch this video.

2 NJP requested these two icons at a later stage (they were not tested for recognizability, only in-context)

Usability testing procedure

1. Research / identify existing icons

Our first step was to collect existing icons for these phrases. Icons were selected based on a google search of each phrase.

2. Preference test existing icons

We next did individual preference testing with 5-12 users of existing icons to ask users which image they most preferred for each phrase.

How to Preference Test

Show each user the inspiration image along with other popular icons for each phrase. Ask, “Which icon do you think best represents the phrase: ?”

Example:

Which icon do you think best represents the phrase “Sign”?

None of them

If you chose “None of them”, do you have a suggestion for a better icon for this phrase?

At the end of this test, the icon with the most votes was redesigned to match the style of our previous icon set. It was ready for the next phase.

3. Test icon recognizability (icon only)

In this phase, we tested the icons for recognizability. We showed 3 new participants the icons and asked what each icon meant to them. We said:

> *“I am going to show you some pictures of things you might find on a legal website or in legal self-help documents.*
>
> *I’d like you to tell me what you think they mean. There are no right or wrong answers. It’s OK if a picture has NO meaning for you. You can just say, I don’t know. All answers are OK. The information you give us helps us get better.”*

Two of the icons (Review & Copy) did not test well. But because these icons would not be used in isolation; i.e., they would appear next to text, we decided to test them in-context with text.

4. Test icons in-context (icon with text)

Each participant was shown some icons next to typical text and asked to rate how well they communicate a particular phrase.

Maria Mindlin is CEO of Transcend, a company that provides plain language and translation services to courts and agencies in the U.S. She also teaches and trains others in the legal sector so they can learn more about readability and user testing. Maria’s work integrates today’s technologies with plain language, accessibility, and design.

Example:

Look at the picture for # 8. Now look at the words. Does this picture do a good job communicating **Deadline**?

8.  Write down the deadline for your court form.

Participants were asked to rate their answers using the following scale:

1	2	3	4	5
NO!	A little	Pretty good	Good	Great!
X **Unsuccessful** Icon needs more work			✓ **Successful** Accept Icon	

Icons rated **Good** or **Great** were considered a success. The icons were accepted without further changes. Only Print & Sign were deemed successful by every participant.

5. Get more input on unsuccessful icons

The 4 other icons (Review Your Forms, Copy, Deadline, Parenting Plan) received low ratings. At the end of each test, we asked each participant for more input on each of these icons.

The artists and production team then translated the participants' input to revise the icons; this triggered a new round of in-context testing, with new users.

6. Iterative testing on unsuccessful icons

It took several more rounds of iterative testing, feedback, and reworking the icons to produce icons for "Parenting Plan", "Copies", "Deadline" & "Review" that participants successfully connected with.

Customized copy icon

NJP requested a customizable copy icon where the user could specify the number of copies required.

> We conducted a preference test at Usability Hub, asking "Which image best represents the phrase '5 copies'. Please explain why you chose this option".

A B C

Choice B got the most votes as it appeared less cluttered and most effective to the participants.

Further testing helped us determine that some users would have difficulty figuring out how to use the customizable version of this icon, so we created a How-To video here.

Summary

Effective images can do much to enhance access to legal information and court forms and websites. Testing them is not that difficult. Follow the basic steps outlined in this article, including:

1. Research/Identify existing icons
2. Conduct preference testing
3. Conduct recognizability testing
4. Conduct in-context testing
5. Get feedback on unsuccessful icons
6. Rework unsuccessful icons
7. Conduct iterative testing until Icons are successful

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Resultados de los ensayos de uso de iconos legales Proyecto de Justicia del Noroeste (Northwest Justice Project) – un caso de estudio

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Tanushree Padath y Maria Mindlin

Antecedentes

El Proyecto de Justicia del Noroeste (Northwest Justice Project, NJP) y la corte superior de Washington han dependido desde hace mucho tiempo del lenguaje claro y diseño legible para apoyar a las personas que quieren acceder a formularios e información legal, pero no tienen un abogado. En 2018, NJP le pidió a Transcend que creara 6 nuevos iconos legales para mejorar la legibilidad de su proyecto de ensamble de documentos de derecho familiar. Estos nuevos iconos forman parte del juego de iconos legales de transcend.net.[1] NJP usa los iconos para respaldar las instrucciones paso a paso de los formularios de Washington en línea. Los iconos proporcionan un resumen visual de cada paso, ayudando a su comprensión y haciendo que un proceso complejo sea más manejable.

El propósito de este artículo es compartir los diversos modelos de ensayo utilizados para garantizar que los iconos legales comuniquen el mensaje deseado. Los pasos de ensayo se detallan a continuación.

NJP solicitó iconos para las siguientes frases:

1. Revise sus formularios
2. Imprimir
3. Firmar
4. Copiar [formularios] (mostrar la cantidad de copias)
5. Fecha límite[2]
6. Plan de crianza[2]

NJP proporcionó iconos de “inspiración” de nounproject.com y le pidió a Transcend que creara y ensayara iconos que se conformaran al estilo del juego existente de más de 200 iconos legales de Transcend.

Procedimiento de ensayo de uso

1. Investigar / identificar iconos existentes

Nuestro primer paso fue recolectar los iconos existentes para estas frases. Los iconos se seleccionaron en base a una búsqueda de cada frase en Google.

2. Ensayo de preferencia de iconos existentes

Después realizamos ensayos de preferencia con 5 a 12 usuarios de los iconos existentes para preguntarles cuál de las imágenes preferían más para cada frase.

Cómo hacer el ensayo de preferencia

Mostrarle a cada usuario la imagen de “inspiración”, junto con otros iconos populares para cada frase. Preguntar: “¿Cuál de los iconos cree usted que representa mejor la frase: ?”

Ejemplo:

¿Cuál de los iconos cree usted que representa mejor la frase: “Firmar”?

Si selecciona “Ninguno de ellos”, ¿tiene alguna sugerencia para un mejor icono para esta frase?

Al finalizar el ensayo, el icono con la mayor cantidad de votos se rediseñó para conformarse al estilo de nuestro juego de iconos previos. Estaba listo para la próxima fase.

3. Ensayo de nivel de reconocimiento del icono (icono solo)

En esta fase, ensayamos el nivel de reconocimiento que tenía el icono. Les mostramos a 3 participantes nuevos los iconos y les preguntamos qué significaba cada icono. Les dijimos:

“Le voy a mostrar algunas figuras que representan cosas que podría encontrar en un sitio web legal o documentos de autoayuda legal.

Quiero que me diga lo que cree que significan. No hay respuestas correctas ni incorrectas. Si NO tiene ningún significado para usted, no hay problema. Simplemente diga “No sé”. Todas las respuestas son aceptables. La información que nos dé nos ayudará a mejorar”.

Maria Mindlin es directora ejecutiva de Transcend, una compañía que brinda servicios de lenguaje claro y traducción a cortes judiciales y agencias en los EE. UU. También enseña y capacita a miembros del sector legal sobre temas de legibilidad y ensayos con el usuario. El trabajo de Maria integra las tecnologías de hoy con lenguaje claro, accesibilidad y diseño.

Dos de los iconos (Revisar y Copiar) no dieron buenos resultados en el ensayo. Pero como estos iconos no se van a utilizar en forma aislada (o sea, aparecerían junto a un texto), decidimos ensayarlos con el texto que le da el contexto.

4. Ensayo de los iconos en contexto (icono con texto)

Se le mostró a cada participante algunos iconos junto a un texto típico y se le pidió que indicara qué tan bien comunican una frase en particular.

Ejemplo:

Fíjese en la figura núm. 8. Ahora mire las palabras. ¿Cree que esta figura comunica bien el concepto de Fecha límite?

8. 

Anote la fecha límite para su formulario de la corte.

Se pidió a los participantes que calificaran su respuesta usando la siguiente escala:

1	2	3	4	5
¡NO!	Un poco	Bastante bien	Bien	¡Excelente!
X **No exitosoI** Hay que trabajar más en este icono			✓ **Exitoso** Se acepta el icono	

Los iconos calificados con Bien o Excelente se consideraron exitosos. Estos iconos se aceptaron sin más cambios. Solo Imprimir y Firmar fueron calificados como exitosos por cada participante.

5. Obtener más comentarios sobre los iconos no exitosos

Los otros 4 iconos (Revise sus formularios, Copiar, Fecha límite, Plan de crianza) recibieron calificaciones bajas. Al final de cada ensayo, le pedimos a cada participante más comentarios sobre cada uno de estos iconos.

Los artistas y el equipo de producción luego tradujeron los comentarios de los participantes para revisar el diseño de los iconos; esto generó una nueva ronda de ensayos en contexto, con usuarios nuevos.

6. Ensayos iterativos con los iconos no exitosos

Tuvimos que realizar varias rondas de ensayos iterativos, recogiendo la opinión de los participantes y rediseñando los iconos, para producir los iconos de “Plan de crianza”, “Copias”, “Fecha límite” y “Revisar” que resonaban con los participantes.

Icono de Copia personalizado

NJP solicitó una copia modificable del icono Copias, donde el usuario pudiera especificar la cantidad de copias requeridas.

Realizamos un ensayo de preferencia en el Centro de facilidad de uso (Usability Hub), preguntando “¿Cuál de las imágenes representa mejor la frase ‘5 copias’? Explique por qué eligió esta opción”.

A B C

La opción B obtuvo la mayor cantidad de votos, ya que los participantes dijeron que era la menos abarrotada y más efectiva.

Después de hacer más ensayos, determinamos que algunos usuarios tendrían dificultad para entender cómo usar la versión modificable de este icono, así que creamos un video explicativo aquí.

Resumen

Las imágenes efectivas pueden mejorar mucho el acceso a información legal y a los formularios y sitios web de la corte. No es difícil ensayar los iconos. Hay que tomar los pasos básicos reseñados en este artículo:

1. Investigar/identificar los iconos existentes.
2. Realizar ensayos de preferencia.
3. Realizar ensayos de nivel de reconocimiento.
4. Realizar ensayos en contexto.
5. Obtener comentarios sobre los iconos no exitosos.
6. Rediseñar los iconos no exitosos.
7. Realizar ensayos iterativos hasta que los iconos sean exitosos.

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