

HB 2702 Testimony of Dr. Richard Lauchman

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Chairman Riley and members of the committee, thank you for inviting me to testify regarding HB 2702, the draft form of Oregon's Plain Language Act. For 24 years, beginning well before Plain Language had its name, I have been working with organizations (both public and private) to help them clarify and simplify their written communication with customers, constituents, and the public. I've published two books and several articles on the issue, and I wrote the *Plain Language Handbook*, a resource used widely throughout the Federal government, by a number of state governments, and by private-sector concerns as divergent as AARP and the Mayo Clinic.

I understand that Oregon's agencies have expressed some concern about (1) the Act's potential to damage legal precision and (2) the cost of rewriting current regulations and rules in plain language. I'll address those issues first, and then make an additional point.

1. Won't Plain Language undermine legal validity?

I understand this concern, but it is theoretical. I do not know of an instance where a transactional document, rule, or statute written in plain language has failed the test of legal sufficiency. Joseph Kimble, an attorney and professor of law whose testimony you are also receiving, is infinitely more qualified than I am to demonstrate that the choice between legal precision and clarity is a false dichotomy: we can have both; we don't have to sacrifice one for the other.

Instead let me address the two concerns underlying the question. They have important bearing on how you implement procedures to foster Plain Language.

The primary source of this false either/or is the widespread misunderstanding of what Plain Language requires. Too many attorneys (I'm tempted to say "the majority") hear the phrase "plain language" and instantly imagine short, choppy sentences, a vocabulary limited to words every fifth-grader knows, and a page cluttered with colorful cartoons. If I were an attorney, I wouldn't want to write that way either. It's important to clarify what Plain Language is, because people are much more willing to practice it once they hear that it does not require "dummying down" the language, but rather *targeting the text toward the intended reader, simplifying where possible, and eliminating needless complexity*.

The secondary source of the false dichotomy lies in that lovable mess we call human nature. Not only attorneys, but professionals in all fields – engineers, geneticists, accountants, and so on – spend years learning a specialized language. For many of them, the specialized terms (the jargon and terms of art) assume the status of what linguists call a "prestige dialect." Writers who are concerned about their prestige (in this case, their status as professionals or experts) are reluctant to abandon these dialects. Furthermore, it is far easier for the writer to snatch a readymade phrase or paragraph from a form book

than it is to craft the right text for the occasion. I'll be candid – the use of specialized terms can camouflage poor writing skills, and professionals who for any reason are insecure about their writing, or about their expertise in their field, naturally argue in favor of the complex status quo. Unfortunately this insecurity is often the source of the argument that Plain Language might undermine legal precision.

However, it's also my experience that an attorney who is both competent in the law and confident in his expertise is able – and often willing – to write much more clearly than one who lacks either of these traits. Time and time again, in my dealings with groups of attorneys, it is the confident, practical-minded veteran who finally says, at the Federal Communications Commission, “Look, you don't have to write page-long paragraphs here. I use bullets and lists all the time in executive summaries of Agenda Items, and they aren't edited out.” His kindred spirit at the U.S. Patent and Trademark Office says, with some impatience, “You just don't have to tell the applicant to *elect a restriction for prosecution*. All you need to say is that he has to decide which claims he wants to pursue a patent for.”

This has bearing on how you implement Plain Language in the various State agencies because, in every agency, the program must enlist the services of one of these hard-headed and reader-directed attorneys. If it doesn't, you're going to squander a lot of time in needless back-and-forth debate about whether “unworthy of attention” and “de minimis” have the same legal meaning, whether a judge might think “retroactively” has a different legal meaning than “nunc pro tunc,” and so on. Confident people give themselves permission to use plain words. It makes very good sense, from the point of view of brute efficiency, to enlist a plain-speaking attorney as a liaison in every agency. He would have the final word on the legal sufficiency of the phrasing.

2. What's it going to cost to rewrite the old documents in Plain Language?

There is cost involved in implementing any Plain Language program. However, study after study indicates that money spent on a well-thought-out Plain Language program is quickly recouped. Since Professor Kimble and Dr. Cheek are supplying numerous examples of these studies, and since I do not wish to duplicate their testimony, I'll discuss, from a consultant's perspective, how you can minimize the cost while creating a practical program.

At any organization, the cost of implementing Plain Language depends on a number of factors – how many documents require rewriting, how long those documents are, what shape they're in now, the average salary of the people designated as rewriters, and – certainly most important – how the program is staffed and managed. Organizations can control the last factor, so I'll focus on that.

All Plain Language programs consist of two phases. The first phase consists of rewriting existing documents in plainer language; the second phase, which occurs over time,

consists of adjusting the organization's culture until sensible writing habits become the norm.

Phase 1 – The Rewrites

The way to minimize cost here is to avoid the three mistakes that eat up the budget. The first mistake lies in failing to recognize the resources at your disposal.

It is important to decide, at the outset, whether to hire a consultant to rewrite existing documents or do the work in-house. Nearly all organizations initially opt to try the latter, assuming it will save money. But then many put the wrong people in charge, and establish too many levels of review, and end up either unsatisfied with the product or appalled at the time-consuming infighting that results. Then, of course, they either spend additional money on a consultant or tell themselves they're satisfied with a mediocre product.

This needn't happen. Hiring a consultant makes sense only when no one on staff is a gifted writer. But everywhere I go (I have over a hundred clients), there are good writers, writers who are perfectly able to render complicated stuff in Plain Language. Sometimes – and this is important – these writers are “hidden” in low-ranking positions.

At the Federal Communications Commission, a manager faced an emergency and was forced to delegate a writing task to an employee whose responsibilities included almost no writing. She was a GS-7 in a clerical position. But having no option, he assigned her the task of drafting one of the “FCC Consumer Facts” documents.¹ He was surprised and delighted at the result. The layout and text she created epitomized Plain Language. Her draft required only a few minor tweaks and edits – and it just happened to be better than anything the manager himself had ever done. This story has a happy ending: the manager behaved practically, and she is now drafting the bureau's “FCC Consumer Facts” documents.

Now if her life depended on it, this employee could not tell you what a passive voice is. She'd never heard that it's wrong to use pronouns, outrageous to use contractions, and practically sinful to write one-sentence paragraphs. She had never heard the rigmarole about “style” foisted on so many highly educated people. Her thinking wasn't polluted by a lot of nonsense, and the only way she knew how to write was simply. Plainness, in other words, was natural to her, and her skill with the mechanics of English was perfectly adequate. From reviewing a few samples of the document, she quickly picked up a sense of the established format, and she managed to improve it.

¹ There are hundreds of individual *FCC Consumer Facts* broadsides, usually one or two pages in length. Each explains a particular issue to the general public. One, for example, explains what you can do if you receive unwanted faxes. Another explains what to do if you are annoyed by the commercials in the shows your children watch. The one written by the GS-7 under discussion explained how to choose a provider for cellular phone service.

I mention this story because it can help you save money. I may be wrong, but I suspect that in each State agency are a number of such “hidden gems.” Identifying them should be your first priority. An education does not necessarily make a good writer. More to the point here, lacking a college degree does not automatically disqualify anyone from writing in the style readers prefer.

So getting frustrated and hiring a consultant before thoroughly examining the writing skills among their employees is the first costly mistake organizations make. The second mistake (which can be at least as costly) is putting the wrong individual in charge.

A former Director of the Patent Academy – where fledgling patent examiners learn how to write their responses to patent applications – once looked me in the eye and said, “I want my examiners to be able to communicate well, both orally and writtenly.” He said this without the least trace of humor. I didn’t get to work with the examiners until after they’d graduated from the Academy. By that time, they’d been ruined, as the Director’s unusual style, evident in the quotation, had become, to them, “the way it is done” at the Patent Office. To this day, examiners moan about how much time they spend on the phone with applicants’ attorneys in the attempt to explain what they actually *meant* by the preposterously difficult phrasing they feel obligated to use.²

Over and over again, the wrong individual is tapped to head an organization’s Plain Language initiative. A large national association selects a former college English professor whose sheer technical skill with language is indisputable but whose stylistic preferences are studiously formal and “academic” in tone. What results is not Plain Language. One of the institutes at National Institutes of Health selects a technical editor who is eminently skillful at editing and proofreading but whose fastidious insistence on many of the “superstitions”³ of English usage not merely wastes a great deal of time but results in awkward, unemphatic, and overblown expressions.

I encourage you to be judicious in selecting the person you designate, in each agency, as Plain Language Coordinator. This individual’s responsibilities include reviewing existing ordinances, rules, and boilerplate correspondence, and revising these documents. Only when he lacks a grasp of specific technical complexity should he delegate the rewriting to an expert, and even then he is responsible for reviewing the expert’s draft and simplifying where possible (for phrasing, sentence length, page design, and so on). As previously mentioned, this coordinator should have at his disposal an agency attorney – a kind of legal liaison – who can quickly settle any questions regarding the “legal meaning” of various phrasings.

² Examiners are taught to tell applicants to *nexus* their ideas (not to “link” them). They are taught to write that a surface is *in communication with the ambience* (not that the surface is “exposed to the air”). They are educated to avoid simple words like “choose” and “then” and instead write *elect* and *subsequent to*. These examples should suffice to demonstrate the point.

³ By “superstitions” I mean the dozens of overgeneralizations such as *Never begin a sentence with “because,” Never split an infinitive, Inanimate objects cannot act, Pronouns are taboo, Always use the active voice*, and so on.

It's essential that the coordinator *already* have (1) great technical skill with language, (2) an excellent general grasp of the subject matter, and (3) the psychological make-up conducive to making things plain. The first two items in that list take time to acquire, and may possibly come with training, but the third cannot be taught; you either have it or you don't. There is no such thing as a Plain Language egotist.

The third costly mistake in the rewriting phase lies in structuring a program that has too many levels of review. This can easily choke the process. Input from too many people often leads to paralysis, with weak writing skill and personal preference about style disguising themselves as arguments about clarity. In each agency, what you want is a two-person team – a coordinator and the legal liaison – and no more. Eight years ago, National Archives hired me to write a style guide that would settle, once and for all, certain issues of usage in dispute (what to capitalize, what to hyphenate, how to use numerals, the proper titles to use for dignitaries, and so on). But I had to have each draft reviewed by six experts, all National Archives employees whose responsibilities included a lot of writing. At one meeting the group squandered *two hours* arguing over whether to use “a” or “an” in front of the words “historic” and “historical.”

People are surprisingly passionate about language; they are also surprisingly willing to waste time arguing about issues that cannot be resolved. Unfortunately, there are going to be times when we can't please everyone, times when opposing points of view have merit, and when, for the sake of getting something done, we simply have to make the decision. You will save time by minimizing the number of people who have authority to comment on the rewrites.

Phase 2 – Establishing a “Plain Language” Culture

Once the existing documents have been rewritten, you can save money by establishing what we might call a “culture” of Plain Language. Clearly written documents do not provoke time-wasting calls and correspondence asking for clarification. Clearly written ordinances, rules, and regulations get better compliance and are less likely to be (expensively) litigated. The degree of the 1979 Three-Mile Island meltdown could have been radically reduced if the technical manual – consulted in panic – had been more plainly written.

By now I think it's commonly accepted that writing in Plain Language saves money. From an organization's point of view, it thus makes sense to create a culture in which Plain Language is the norm. Here I'll briefly address how to make that happen.

For Plain Language to take root in an organization, management at the highest level must support it. And employees need to hear – not by rumor, but explicitly – that management expects it. The Director of each agency should write a short memo clearly stating this expectation. As an example, here's what the CEO of IBM wrote to all IBM employees in the early 1980s:

Lately, a foreign language has been creeping into the letters and memos I've been reading, and I want it to stop.

Words and phrases like "modality," "collateral reduction," and "downsizing" are doubletalk of the worst sort if what we're talking about is a method, saving money, and laying people off.

IBM was built on clear thinking and plain talk. We can't afford to forget that.

As another example, here's what a Senior Vice President for Auditing at Fannie Mae wrote to his 30-person staff in 1993:

We all want to write excellent audit reports. Reports that really get management's attention and cause significant improvements in Fannie Mae's operations. We have worked long and hard on our own to achieve that goal, and we have made noteworthy progress. But our process is laborious and, despite our best efforts, the reports do not always elicit the praise your good work deserves.

Believing that we can and should do better, we engaged [a consultant] to prepare this manual, which provides professional guidance from a writing expert on the form and style of our reports. Much of what you see herein differs from what we've been doing in the past. I think you'll agree that these changes will produce a significant improvement in the quality of our reports and simplify the process of writing them.

I enthusiastically endorse the use of these concepts and formats for our future audit reports.

Note the relaxed style of each example. In each case, the writer is putting his own style where his mouth is, so to speak, and leading not only with words, but *by example*. The first thing to do is get management's support and make people aware of that support.

Second, it's essential that employees not feel threatened or "reduced" by the idea of writing in Plain Language. To prevent the all-too-common misunderstanding that Plain Language is "dummied down," the term must be carefully (if broadly) defined: *make the text as simple as it can be for your particular reader, and format the page to show how you've organized the ideas*.

This definition is non-threatening because it enables writers – in fact, it requires them – to use judgment when deciding whether to use the shorthand of jargon or whether they need to use more words to explain a concept. It's best to avoid is any definition resembling *Write at an eighth-grade level*. Such definitions are essentially meaningless, since clarity cannot be accurately measured. *The annual AARP membership fee is \$10, which includes a spouse at no extra charge* is certainly fit for anyone in the eighth grade, but the organization is not giving away free spouses.

Third, employees who write a lot at work (employees at all levels, and especially those who communicate with the general public) should receive some guidance in what Plain Language requires. Here is where you acquaint writers with those aspects of usage, organization, and format particularly important to Plain Language and, where necessary, shore up matters of grammar, punctuation, and word choice.

There are numerous sources for such guidance, ranging from full-blown workshops to self-study. Some writers need more guidance than others. Some may require two or even three days of training, while others may need only a couple of hours of one-on-one instruction. Again, you might first look for staff qualified to provide this guidance and seek outside help only as a last resort.

Fourth, and finally, each agency should recognize and reward good writing. At a minimum, an employee's writing should figure into his performance review. Some organizations award small cash bonuses for exceptional writing; others simply hold regular "plain writing contests," where the winner receives recognition – which may not be as welcome as cash, but which certainly reinforces the importance of writing well.

3. One last cautionary point.

From reading the summary of HB 2702, I think your approach to the legislation is reasonable and well thought-through. The way you have prioritized the rewriting makes good sense.

But I must mention two unpleasant truths about writing in the workplace: (1) most people either don't understand or misunderstand the terms used to describe grammar, and (2) writers who don't have much experience take generalizations at face value. Like most Plain Language legislation, Section 1.3.b of HB 2702 advocates the use of "the present tense and the active voice." You may be surprised at the proportion of people who will not understand this requirement.

I myself don't understand it. I'm baffled by the idea of trying to write in the present tense of actions that have already occurred or that have yet to occur. Now, if I really work hard to figure out how this advice might be reasonably interpreted, I come up with something much simpler, more precise, and more useful: *avoid "shall."*⁴ But I am guessing, and I know I'm guessing, and if I am your employee I have already wasted time in trying to interpret the requirement.

"Use the active voice" is probably the most-often-advocated aspect of Plain Language. In a terrible irony, this advice is not Plain Language, but is what I'm tempted to call a bumper-sticker phrase – short, and easy to remember, but dangerously oversimplified and, ultimately, counterproductive. We must remember how people who lack experience take advice at face value, and we must also understand the confusion surrounding voice. A casual search of the Web instantly turns up thousands of instances of this confusion. Worse, even people in positions of authority sometimes "explain" the matter in ways that do far more harm than good.

⁴ There's more to it than this, I know. I think that the intent of "use the present tense" is to eliminate such constructions as *Eligibility to receive benefits shall be determined by income* and replace it with something on the order of "Your income determines whether you are eligible for benefits" or "Your eligibility for benefits depends on how much money you make." This clarifying point, and many others like it, needs to be made in guidance accompanying the legislation.

Here's guidance from a publisher of Plain Language real estate forms:

Use the active voice in preference to the passive voice. For example, use "Possession will be delivered at the close of escrow" rather than "The close of escrow shall determine the delivery of possession."

In this sadly typical example, the authority – let me emphasize this, the *authority* – gets things backwards. The suggested revision is passive, while the original is active. And in no way does either version approach any standard of Plain Language.⁵

Here's my point: I encourage you to be thorough when explaining what Plain Language requires. I realize that the legislation itself cannot provide clarifying examples of using the present tense (instead of "shall"), of when to use active and passive voices, and so on. But either accompanying the legislation, or immediately after its passage, you should supply agencies with detailed guidance.

I encourage you to explain, clearly and with examples, precisely what *tense, voice, pronoun, contraction, etc.*, actually are, and how to use common sense when manipulating these aspects of writing. If you neglect to do so, you will not get Plain Language. Instead you will get documents that follow the letter of the law and ignore its spirit.

Having aired that single misgiving, I wholeheartedly support the approach the Committee is taking in its Plain Language initiative. I have attempted to show how concerns about cost and possible legal imprecision are not as daunting as many suppose. And ultimately, writing in Plain Language is simply the right thing to do – not merely practically, but also ethically and morally – when government communicates to the people.

This concludes my testimony. I appreciate the opportunity to contribute these ideas and would be happy to elaborate.

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⁵ Sensible revisions here would be *The property belongs to you at the close of escrow* or *You own the property as soon as escrow is closed.*