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INTENDED READERSHIP: Army military and civilian lawyers world-wide

BRIEF SUMMARY

This paper tells Army lawyers about the plain English movement in legal writing. It describes what plain English means and how the movement has generated support and opposition among lawyers. The paper analyzes why most lawyers continue to write in complex language rather than simple English.

Bringing the analysis home to Army lawyers, the paper describes what the Army is doing to improve legal writing. More significantly, there are recommendations to push plain English legal writing from the top, to increase opportunities to learn to write in plain English, and to adopt plain English in Army forms.

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Plain English For Army Lawyers

by

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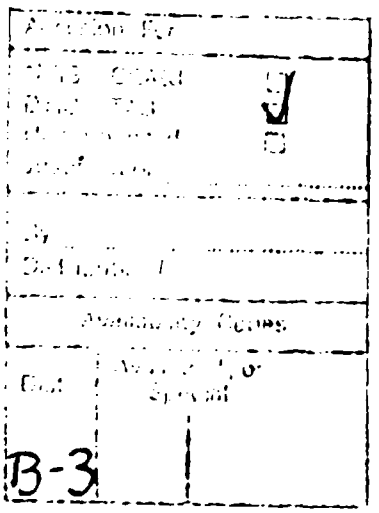

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Thomas W. Taylor is the Senior Assistant to the General Counsel. He left active duty in The Judge Advocate General's Corps of the Army as a Lieutenant Colonel after twelve years of service to accept his current position in the Pentagon. He remains a Reserve Officer assigned to the Administrative Law Division, Office of The Judge Advocate General, and is a frequent lecturer at The Judge Advocate General's School. While on active duty, he taught at the U. S. Military Academy and served in legal positions in Alaska, Germany, and Washington, D. C. He has a B.A. (with High Honors) from Guilford College and J. D. (with Honors) from the University of North Carolina at Chapel Hill, where he published several articles in the North Carolina Law Review. He was the Distinguished Graduate in his Graduate Course at The Judge Advocate General's School in 1979 and graduated from the Industrial College of the Armed Forces in 1987.

EXECUTIVE SUMMARY

The Questions

Why don't lawyers write in plain English? What is the Army doing to encourage lawyers to use plain English? What else could the Army do to encourage better legal writing?

The Answers

Army lawyers generally don't write in plain English for the same reasons other lawyers don't; they have bad writing habits that have been reinforced over years of education, tradition, and practice. The Army is attempting to make inroads by teaching its mid-level lawyers how to use plain English as they cycle through the graduate course at The Judge Advocate General's School (TJAGSA).

But the Army could do more to encourage plain English in Army legal writing by strong endorsements from the top Army lawyers to the entire field, by making plain English the norm for most Army legal forms, and by expanding the teaching of plain English to entry-level judge advocates and all civilian lawyers who work for the Army. The most important benefits will come from the clearer legal analysis that plain English will force; lawyers will be better able to see the weaknesses in their legal positions and tailor their advice accordingly.

Background

Lawyers have been interested in the plain English movement for a relatively short time, just over a decade. Yet the main idea of plain English -- that writing should be simple, clear, and conversational in style -- has popped up in cycles over the past four centuries.

Plain English is not oversimplified baby talk that reduces a beautiful language to disjointed fits and starts. It is a way of approaching all writing with an eye toward telling readers what they need to know in language they're likely to understand. This requires an audience analysis that will permit simplification of a lot of legal writing while allowing the use of some legalese, including terms of art, in communications strictly among lawyers.

Pro's and Con's of Plain English

Lawyers disagree about whether plain English is suitable for legal writing. Some argue that plain English cannot be used for legal writing because legal concepts are too complicated to reduce to simple terms. Oversimplification

would weaken the role of precedent, they believe, and cause our legal system to fail in reaching its basic goal of fairness -- deciding like cases alike.

Others believe that the benefits of plain English outweigh the burdens feared by its detractors. What could be more conducive to basic fairness than the clear and mutual understanding among lawyers and other citizens about the meaning of laws, regulations, contracts, notices, and other legal language? Plain English can improve the understanding of even the most complicated legal concepts and help ensure that precedents are followed.

Why Lawyers Don't Use Plain English

If plain English is so good for lawyers, why don't more use it? There are many reasons.

1. Schools at all levels do a generally poor job of teaching plain English writing, and only a few law schools have begun to emphasize the importance of clear and effective legal writing by dedicating top instructors and giving significant weight to this instruction.

2. Traditions of the legal profession and its language are hard habits to break. Law professors, judges, legislators, and other lawyers reinforce the shared experience of thinking, talking, and writing in legalese. And commonly used legal forms perpetuate complex legal language.

3. Courts have special influence because they interpret what lawyers write. Lawyers need to be able to predict results for their clients, and the safest way to ensure a particular result is to use language, however complex, that courts have interpreted in the past.

4. Legislatures persist in writing most laws -- even plain English laws! -- in complex legalese. Of course, lawyers dominate most legislatures.

5. Executive agencies tend to write highly technical regulations in language only bureaucrats and lawyers can -- and are willing to -- decipher.

6. While consumerism has encouraged competitive prices and clear communications among lawyers and the public, lawyers have generally continued to use complex legal language to actually deliver their services (wills, separation agreements, etc.) because of convenience and because clients expect documents to "look legal" (i.e., stilted or formal).

What The Army Is Doing

In addition to the Army-wide program to improve writing, TJAGSA has an excellent program to teach legal writing to mid-career officers attending the graduate law course. The Assistant Judge Advocate General gives the opening lecture to the communications course, which exclusively occupies the first two weeks of the academic year. His presence and personal endorsement are worth a ton of directives because he promises to -- and does -- follow up on the subject by checking on field visits to see if these officers have on their desks four books: a dictionary, thesaurus, style manual, and a book on plain English for lawyers.

In contrast, the basic course for entry-level lawyers needs more time devoted to teaching plain English writing. Although the time would be at the expense of some substantive law instruction, it would be easier for students to learn the law on their own than to learn -- on their own -- the benefits and techniques of writing in plain English.

What the Army Can Still Do

Top Army lawyers can help spread the word to the mass of Army lawyers who have not cycled through the graduate course that plain English is the expected norm of Army legal writing. They can do this through letters and speeches, pointing out the advantages of clearer legal writing and --implicitly -- clearer legal thinking.

Many Army forms can use plain English so that clients can better understand routine documents, such as wills and powers of attorney, that they sign. Plain English notices would give soldiers and civilians a clearer understanding of their rights and responsibilities concerning personnel actions, security clearances, and medical procedures. Plain English would even improve complex commercial transactions where forms and tailored language combine to address all the necessary contingencies.

Finally, as mentioned earlier, the Army needs to build on its graduate course program by teaching plain English writing in the basic course. Beyond that, as more than a quarter of all Army lawyers are civilians, the program must reach them too. One recommendation is to teach a block on plain English legal writing as a part of every short course at TJAGSA. Another is to have a TJACSA teaching team visit commands with large numbers of civilian lawyers. That would introduce the program to many lawyers and refresh the memories of others. Tips on good legal writing could become a regular feature of Army legal publications, such as The Army Lawyer.

Conclusion

Bad writing habits, like prejudices, can be overcome if lawyers recognize them and do something about them. Receiving the instruction will be the least painful part of the treatment. Putting the ideas into practice for oneself and others will be painful, not only because of ingrained habits reinforced over years of practice and powerful influences, but also because plain English writing requires more rigorous legal analysis to reduce complex problems to their basic elements. The potential payoff is the improved quality of legal services to Army clients with a minimum of economic cost.

Plain English for Army Lawyers

I. INTRODUCTION

When you read complicated judicial opinions or Government contracts, do you ever wonder why we lawyers torture each other (not to mention our clients) with writing that is so hard to understand that it takes two or more readings?

And, if it takes two or more readings for us -- as experienced attorneys -- to understand our own colleagues' writing, what must the average person think about legal writing and about our ability as professionals to communicate to them or for them?

Most people have some contact with legal writing, whether on a somewhat rare occasion (for them) such as a divorce; a more frequent occasion, such as a home or car purchase; or a common occasion, such as a credit card transaction. In all three instances, legal concepts govern their rights and duties, yet most people have only a vague idea about where they stand legally, because of the complexity of legal writing. Although there has been some progress toward making consumer transactions more easily understood (as I'll discuss later), complex legal writing bedevils, confounds, and confuses average people and leads them to add their voices to a growing chorus of critics of the legal profession.

And Army lawyers are not immune from this criticism. In addition to military criticism of the consumer-oriented services just discussed, commanders and staff officers frequently make caustic comments about hard-to-understand legal opinions on a variety of complex issues from environmental law to fiscal law. Military appellate judges frequently criticize (and even sometimes reverse) trial judges for their confusing jury instructions during courts-martial. Contractors and contracting officers outdo each other in blaming lawyers for problems that crop up in Government contracts. And so the list of complaints could go on and on, while our clients ask the burning question: <u>Why don't Army lawyers write in plain English</u>?

That's what this paper is all about. I'll begin by looking at the plain English movement and its impact on legal writing. Experts disagree about whether the movement has merit, but the evidence so far is in favor of the movement. Then I'll discuss why -- in light of the trend favoring plain English -- lawyers have not embraced the movement.

I'll look at what the Army is doing to encourage its lawyers to use plain English and what it might do to develop a more effective program.

For the most part, poor legal writing is more a matter of neglect, than intent. We don't intentionally use unclear words and write incoherent sentences; we do so out of ingrained habit. And if the benefits of the plain English movement were only semantical, there would be less reason to push it.

But the real issue is that poor writing often disguises poor legal analysis -- disguises it from others and from ourselves! And if you write a poor legal analysis in plain English, as George Orwell observed, "When you make a stupid remark, its stupidity will be obvious, even to yourself."[1]

II. SO WHAT IS PLAIN ENGLISH?

Before examining the pro's and con's of the plain English movement and why lawyers haven't embraced it, let's look at what "plain English" means.

What Plain English Is

Plain English has a variety of definitions; many of them also illustrate rules for its use. Consider the following definitions.

1. Good English.[2]

2. English easily understood by an ordinary person.[3]

3. English expected of someone with an eighth or ninth grade education.[4]

4. English that is written the way we talk.[5]

5. English you would want someone to use if you were the reader and knew nothing about the subject (the Golden Rule of plain English).[6]

6. English "written in a clear and coherent manner using words with common and every day meanings."[7]

All of these definitions are essentially correct but reflect progressively complex ideas about plain English. You will not be surprised to learn that the last -- and most complicated -- definition in the list comes from New York's plain English consumer protection law, the first plain English law in the country when it passed in 1978. For our

purposes, plain English is a dynamic approach to writing in clear conversational language that your audience will easily understand.

What Plain English Is Not

To better understand what plain English is, let's look at what it is not. In one critique of plain English statutes, Professor Dickerson commented that plain English is "anything but plain."[8]

However, most agree that plain English is not simple, disjointed baby talk, using only short sentences and shorter thoughts in machinegun-style bursts. It also is not condescending, and its use is not restricted to simple ideas, such as "you lost the case but still must pay my fee."

Finally, plain English is not a substitute for a decent education, a panacea for a bad one, or an attempt "to turn our rich language into a series of one-syllable words" or legislate "the style of a society's prose."[9]

III. PLAIN ENGLISH AND LEGAL WRITING

Now that we have looked at some ideas about what plain English is and is not, we need to focus briefly on legal writing to see if there is anything about it that precludes the use of plain English. In discussing (in the next section) why lawyers have resisted the use of plain English, we'll examine some of these ideas in more detail.

What is Legal Writing?

A language? Is legal writing a specialized type of English? Or ordinary English adopted for the function of talking about the law? Or both?

Some law professors contend that "[l]inguistic research suggests that legal language is a sublanguage of English which has certain linguistic features rarely found in normal discourse;" examples include the frequent use of the passive voice and nominalizations (making nouns out of verbs).[10] Most lawyers' spouses would probably agree with this position, especially if "sublanguage" connotes an inferior form of English!

Other legal scholars contend that most legal writing uses ordinary English words sprinkled with terms of art and holdovers from antiquity.[11]

This view makes more sense; as social and legal problems change, we use ordinary words to describe legal relationships, rather than creating new "legal language." However, we inevitably rely on certain terms of art in relating the new developments to precedents.

Literature? Another way of looking at legal writing is to compare it with literature. Both legal writing and literature are more organized than ordinary conversation, and both have a story to tell; but legal writing "isolates from the story the legally relevant facts and subsumes them under a rule of law . . . interprets the facts theoretically -- and therefore conceptually," allowing us to compare cases with diverse facts by finding in them similar legal concepts, so that we can reach the basic goal of justice -- "deciding like cases alike."[12]

Literature -- although it also deals with concepts -- does not have this goal and need not be concerned with functioning as a pragmatic problem-solver for society. Thus the language of literature is more flexible than the language of law.

A straight jacket? Another characteristic of legal writing is that while "all writers write to be understood, lawyers write so they cannot be misunderstood."[13] This leads to using more words to qualify, explain, and limit what is intended than would otherwise be the case. The goal is usually to leave no loopholes.

This also limits lawyers' literary licenses; they are not allowed to wax poetic lest others misconstrue their ramblings as side agreements in a contract or precedents in a judicial opinion. In fact, when a judge does venture into poetry or other literary anomalies in opinions, it is usually newsworthy and reported in state or national legal newspapers or journals.

The Case Against Plain English

As we have just seen, legal writing differs from other forms of writing. Critics of the plain English movement seize upon these differences to stake out positions along a spectrum from indignation to compromise.

Plain English? Never! Among the indignant are those who believe that complex language is necessary to identify and explain complex legal problems or facts and that simpler statements may be misleading. According to these critics, "[t]he 'Plain English' movement is born of nostalgia and displays an impatience and frustration with our times," a yearning to return to the simpler times of yesteryear.[14]

Taking a humorous swipe, another critic complained of being "told to avoid gerunds, participles, and infinitives. Well, you may be able *[sic] live without them, but it would sure make my come [sic] and go [sic] difficult. But then, see [sic] is believe [sic], I always say."[15] Other critics see plain English as an "alternative to [a] decent public education."[16]

Conceptual issues are sacred. Still indignant -- but with a different twist -- are those critics who acknowledge that legal writing has all the appeal of a cockroach, but perceive the sentiment underlying the plain English movement is that the law "is the law -- and not life" and that lawyers "are lawyers -- and not ordinary people."[17] These critics explain that the general public, without the benefit of a professional legal education, has difficulty understanding the law because they do not understand legal concepts; however, lawyers and legislators must use legal concepts to safeguard the role of precedent in our system.

The obvious fallacy is that lawyers and legislators have no excuse for using tortured language to express the concepts. And, as to precedent, George Hathaway observed:

> "Case precedent" is the classical reason for not writing Plain English, like a headache is the classical reason for not making love. Case precedent is the real reason for not writing Plain English about as often as a headache is the real reason for not making love. ("Sorry counselor, no plain English tonight, I have a slight case precedent.")[18]

Plain English Statutes. Critics have specifically targeted so-called plain English statutes. These statutes typically require maximum average sentence lengths, use readability formulas to measure degree of difficulty, or otherwise mandate what plain English requires. Even some of those who favor the use of plain English in legal writing oppose these statutes because they tie the drafters' hands as they struggle to write the clearest possible language.[19]

Statutory writing standards will surely reduce innovation and may guarantee that clear writing will not advance beyond the statutory requirements; however, they may be a first, and necessary, step in the evolutionary process.

In summary, the best case against plain English is that there are risks in trying to make complicated facts, issues, and concepts appear too simple; the key risk is degradation of legal precedent by oversimplification. One answer is that the risks of oversimplification are acceptable if the stakes are relatively low and clarity of understanding is paramount (as in a common consumer transaction). As the stakes increase (either in a more complex transaction or a precedent-setting case), the argument for simplification loses some weight, but the additional details could still be expressed in plain English.

The Case for Plain English

Now that we have looked at the arguments against the use of plain English in legal writing, let's look from the other side of the fence.

History. From the beginning of our Anglo-American legal tradition, famous people have called for the reform of legal writing to make it simpler and easier to understand. In the seventeenth century Sir Edward Coke, Chief Justice of England, advised his fellow lawyers that their profession required them "to speak effectively, plainly, and shortly."[20] In the eighteenth century Thomas Jefferson wrote that, in drafting a criminal bill, he aimed at "accuracy, brevity, and simplicity" rather than "modern statutory language, with all its tautologies, redundancies, and circumlocutions . . . unintelligible to those whom it most concerns."[21]

The early nineteenth century found Jefferson apologizing for the simple style of a bill he had drafted, adding that the bill could be corrected "to the taste of my brother lawyers, by making every other word a 'said' or 'aforesaid,' and saying everything over two or three times."[22] Later that century, Jeremy Bentham called legal language "excrementitious matter" and "literary garbage" and advocated writing clear codes that everyone could understand.[23]

The criticism has continued into this century. In 1939, a critic remarked, "Almost all legal sentences . . . have a way of reading as though they had been translated from the German by someone with a rather meager knowledge of English."[24] Seeds for the present movement were sown in an effort to ensure that the public could understand regulations enacted during World War II to control prices.

Although the push dwindled after wartime pressures eased, the consumer movement in the early seventies revived interest in simplifying legal documents and gave birth to the plain English movement. Simpler automobile insurance

polcies emerg · in 1974, and simplified consumer loan agreements, i· 1975.[25] And, as mentioned earlier, New York passed a plai· English law covering certain consumer transactions in 197·. That same year, President Carter became the first Pres·dent to require Government regulations to be in plain Engli·h.

Benefits. The advantages that plain English offers legal writing are implicit in the discussion of definitions and legal writing to this point. However, the following list summarizes the more salient benefits:

1. Clarity of language, tailored to a particular audience, in a straightforward conversational style.

2. Clarity of analysis and thought, required to produce number 1.

3. Clarity of understanding the problem, required to produce numbers 1 and 2.

4. In a word, clarity -- for the writer and the reader.

These benefits are obviously important in the business world. The consumer knows what to expect; the business also knows what to expect so mutual confidence should result.[26] Not so obvious, but of equal importance, would be the benefits if all legal writing were equally clear. (More about this later.)

Acceptance. Although the jury is still out on the degree of acceptance of plain English by the legal community, the following trends are emerging:

1. Businesses are complying with plain English statutes in consumer transactions with relatively little difficulty and expense. Reports from a New York survey indicate that a majority of firms believed that their effort was worth the trouble.[27] It is obviously good business to be able to tout openness and honesty in disclosing to customers all terms and conditions of an agreement.

2. Consumers have every reason to praise the plain English movement since they are primary beneficiaries of the reforms. Better than ever before, they are able to tell how much something will cost (to purchase and operate), how long it will last, and what will happen if it breaks. These are relatively new ideas when you consider that caveat emptor has been the universal rule in a market economy for centuries.

3. Finally, we come to the lawyers. Their reaction has been mixed, as you can see from the cases many made against plain English, and most lawyers still feel uncomfortable with the notion. On the other hand, some lawyers

have embraced the movement and become outspoken advocates. Some blue chip law firms have even hired writing instructors to teach their lawyers to write better English; moreover, they have hired professional writers to edit and redraft legal briefs and letters![28]

Some state bar associations have regularly devoted portions of their journals and publications to improving the writing skills of their audiences; Michigan is noteworthy in this regard, with its "Plain Language" series.

Judges have written opinions and made speeches castigating their colleagues for poor writing; at least one has recently required a lawyer to re-write and re-submit a brief without the usual jargon! And many state legislatures -- comprised primarily of lawyers -- have passed laws requiring plain English in certain consumer transactions.

Future. Felsenfeld and Siegel predict the growth of the plain English movement, whether or not legislatures continue to pass plain English laws. They cite four reasons.

1. Prominent lawyers have accepted the movement.

2. Vocal consumers will not let up the pressure.

3. Law schools are introducing writing programs for their students.

4. Courts will insist on clearly understandable contracts.[29]

The difference between the current movement and earlier reform efforts is that a larger sector of society is involved in today's movement than ever before. Coke, Jefferson, Bentham -- theirs were voices crying in the wilderness, as were the lesser known critics of this century. But now that consumer advocates, business, legislatures, and -- yes -- even some lawyers have gotten into the act, the movement is likely to continue. It has already lasted longer than a decade. With laws on the books of many states, plain English is not going to fade away.

IV. IF PLAIN ENGLISH IS SO GOOD, WHY WON'T MOST LAWYERS ACCEPT IT?

Fair question. The basic instincts of lawyers are honed over years of education and experience and shaped by a number of persuasive influences, including schools, traditions, courts, legislatures, executive decisions, and

consumerism. We will examine each of these from the viewpoint of their influence on a lawyer's willingness or ability to use plain English in legal writing, both now and in the future. These influences are powerful and are similar to prejudices; if we expose them to light and recognize that they exist, we have a chance of overcoming them.

Schools

Some educators believe that we form good or bad writing habits at a relatively early age. It is common knowledge that too many of our writing habits are bad, probably reflecting the "rule" orientation that intermediate and high school English teachers have followed too long, producing students who can write grammatically correct, but unclear, sentences.[30]

Colleges sometimes improve students' writing skills, but most students enter law school without a critical appraisal of their writing skills. Except for staff members of law reviews and similar publications, most lawyers in practice today came through law school without anyone critically reviewing their writing beyond exams and an occasional paper. Is it any wonder we have trouble writing?

Fortunately, some law schools are recognizing this deficiency. For example, both the University of Oklahoma and Wayne State University have writing programs that teach and stress plain English.

Unfortunately, most schools have not established such ambitious programs. Too many law schools pay lip service to their writing programs but do not furnish them their best instructors or stress their importance, so the students get the clear message that good legal writing is not that important after all and react accordingly.

Professor Dickerson has suggested in a number of articles that law schools need a solid jolt to shake their lethargic, traditional approach -- trivializing the teaching of legal writing by reducing it to semantics and busywork; until better law school education comes, plain English laws help force the issue.[31]

Traditions

Traditions are also powerful influences that hinder lawyers from breaking bad writing habits. When traditions are combined with financial incentives (as we shall see momentarily), they become almost insurmountable.

Rites of Passage. For now, let's look at the tradition of legal language and why lawyers perpetuate it. First, upon entering law school, we began to assimilate our professional knowledge in a vocabulary most of us had never heard before. Sure, many of the words (such as void) were ordinary, but were combined in extraordinary ways (null and void) that appeared to have legal magic! Who were we -- under pressure to conform or fail -- to question the language of a profession we hoped to enter?

That leads to the second point: the legal profession -- as many professions -- is like a priesthood. As initiates, we wanted to belong, to measure up to the standards, to pass the rites of initiation, and to assume our places as members of the bar. That goal required us to think, talk, and write in legal English.

Legal Language. English itself is a latecomer as a language used for law.[32] That accounts for the rich mixture of English, Latin, and French that characterizes our legal language today.

Professor Wydick has commented that lawyers in our tradition usually had

> two languages to choose from: first, a choice between the language of the Celts and that of their Anglo-Saxon conquerors; later, a choice between English and Latin; and later, still, a choice between English and French. [To be sure that everyone would understand what was meant,] [l]awyers started using a word from each language, joined in a pair, to express a single meaning.[33]

Hence, we ended up with "null and void," two words which mean about the same thing. But try convincing a business lawyer to use one without the other in an important commercial transaction!

These words achieved a mystical level of importance over years and years of usage. Listen to Professor Mellinkoff's description that ties the priesthood to the language:

> The redundancies of primitive word magic and metaphysical ritual; the solemn repetitions coaxing barbarians to accept an unestablished law; the need and fashion of bilingual duplication; the involvement brought on by the translation of Latin, by Elizabethan literary styles, and by a pay-by-the-word legal economy; the overcautious repeating of the repeated to circumvent the harshness of

> the law and to mask an ignorance of its content . . . -- all of these have burdened the law with language unnecessary, confusing, and wasteful.[34]

Why Don't We Change? Now that many of the reasons have vanished for using two words when one will do, why does this tradition persist? Several reasons.

1. The best justification may be that certain words or combinations are terms of art. They enable lawyers to use a shorthand method to convey a fairly well-defined set of legal meanings and implications. When lawyers should use these terms of art is a different issue that will be addressed later.

2. We also tend to think and speak in the legal language we have learned and used over a lifetime of legal practice, and just like everyone else, feel comfortable with our own habits. Change is often painful and almost always inconvenient.

3. Lawyers tend to be conservative. Aware of the blessings that judges, as high priests, have given to certain legal language used in contracts, deeds, wills, and the like, lawyers -- as lesser priests -- tend to use that same language to ensure a predictable result for our clients based on precedents. Is that so bad? Isn't that what we're paid for?

4. The legal language that has stood the tests of time, trials, and appeals often ends up in forms that lawyers use, perpetuating complex legal language. Commercial publishers, banks, insurance companies, and realtors flood the market with these legal forms; and lawyers normally have several to pick and choose among, as well as documents they have drafted in the past. Routine legal matters, such as wills and deeds, require little modification of these forms from client to client. The use of word processers has made forms even more inviting because now lawyers can quickly prepare routine legal documents that don't look like forms!

5. And that brings us to the hardest point to justify -- some lawyers intentionally keep the language complex to baffle their clients and justify a higher fee. These motives cannot justify complex legal language and remind us of an earlier time when lawyers were paid by the word. Yet -- hard to believe - there is another side to this story.

A lawyer who had reached the pinnacle of his profession tells that when he began practicing law more than two decades ago, his boss had to go into the hospital but left a number of things for him to do, including preparing wills for an elderly couple. Fresh out of law school and eager to

try to simplify writing, he created the wills without the usual legalisms and proudly presented them to the couple, who read them and began to converse with each other in Russian, their native tongue. Finally, they said, "These just don't look like the wills we had before." After listening patiently to his explanation that these wills were perfectly legal and reflected the new way of doing things, the couple said, "We'll just wait until Mr. Smith gets back," and left, without signing the wills!

This is a painful statement to a young, hungry lawyer about clients' expectations that documents look "legal." And it illustrates how deeply legalistic language is ingrained -- not just in lawyers -- but in our society in general.

Courts

We have already touched briefly on the courts' influence over lawyers: Lawyers need to be able to predict that courts will interpret their legal writing in a certain way. The best way to ensure that result is to use language that the courts have blessed in previous cases.

Appellate Courts. But suppose lawyers are willing to simplify their writing, and clients are willing to risk litigation for the sake of simplicity. (Most won't.) How will appellate courts interpret plain English documents?

Over half of the states have some type of plain English statutes applying to insurance policies, consumer contracts, and so forth. In some cases, courts have had little difficulty applying traditional legal principles to decide cases arising under these laws.

But in at least one case, arising out of mudflows from the eruption of Mount St. Helens in 1980, the Washington Supreme Court has put plain English insurance policies in jeopardy.[35] The issue was whether a homeowner's insurance policy excluded mudflows from coverage. Prior to plain English simplification, the policy excluded earth movements, which were defined and specifically illustrated to include mudflows. After simplification, the policy still included earth movements but omitted the examples. By reversing a summary judgment for the insurance company, and allowing the jury to decide the case on a proximate cause basis, the court placed the risk of plain English policies on the insurance companies despite the fact that it was clear what happened.

Decisions such as this will discourage business from following the plain English movement. Within a year of this decision, insurance companies in Washington had modified 95%

of the policies to deal specifically with volcano coverage.[36] And who among us can dispute that business ought to be able to predict as easily as consumers the extent of their potential liability when they set their rates for coverage?

Decisions such as this also obviously discourage lawyers from simplifying language but encourage them to continue to follow the old adage: "If you write at all, write it all." After all, clients do sue their lawyers for errors and omissions, making this threat another incentive not to be miserly with words.

Trial Courts. In addition to influencing lawyers, appellate judges also influence trial judges. As most of these appellate and trial judges are also lawyers, their writing tends to be no better or worse than that of other lawyers.[37] And if we were only writing to and for each other (as is often the case in a legal system based on precedent), we would deserve the poor quality of writing we get.

But the legal system is not the sole province of the lawyers. Nowhere is this clearer than in jury instructions; let's look at them for a moment to illustrate the pernicious effects of bad writing and why trial judges can't seem to get away from it.

The Charrows have done a useful study on how much average jurors understand of a jury instruction they hear. They concluded that jurors do not understand standard instructions very well, but the primary culprit was the difficulty of the language, rather than the legal concepts themselves.[38] The implications are serious, when you consider the legal and historical weight accorded the sacred right to a trial by jury.

The good news is that judges can make modifications to improve their instructions; the bad news is they probably won't. As one California trial judge, a member of a committee that writes standard instructions, explained, "There's strenuous opposition to rewriting jury instructions in plain English because you get reversed."[39] So trial judges feel trapped by the sometimes arcane language drafted by legislatures and upheld by appellate courts.

Compounding their dilemma is the fact that appellate judges don't "write for jurors"[40] (or litigants either, for that matter) but for other lawyers; they write to explain how their decisions fit within the precedents and broad legal concepts enshrined in other cases. The trial judges then have the unenviable task of translating those concepts into understandable jury instructions; obviously they often fail, and it's a wonder that juries do as well as they do.

(Their overall success is probably a credit to their own common sense and their visceral ability to figure out what's fair.)

Without a fundamental willingness to change from top to bottom, the courts will continue to assert a powerful influence against the use of plain English in legal writing; but, as we shall later see, there is some hope for military courts in this regard.

Legislatures

As we have just seen, judges blame part of their bad writing on legislatures that write laws in such complex language. Is this a valid criticism?

Consider an interview of Assemblymen Peter Sullivan, sponsor of New York's plain English law, by Robert MacNeil, in which MacNeil observed that the law itself was written in fairly complex terms and asked, "Why, if one can demand by statute that plain English be used in contracts, can't you write a law in simple English?"

Sullivan answered,

> . . . [T]here's probably one group that's more traditional than the legal profession and that's the legislature . . . . [T]hey had difficulty enough accepting the concept as far as a consumer transaction was concerned without having to accept it as far as the way we wrote our laws.[41]

In other words, even the plain English law had to be in legalese!

So while the legislatures get some credit for passing plain English statutes, they share the blame for poor legal writing by enacting most laws -- even plain English laws -- in complex language and format. Tradition is probably the strongest influence on legislatures -- remember Thomas Jefferson's complaint about their tendency to be verbose and repetitive. But as lawyers comprise most legislatures, they bear the lion's share of responsibility for the complex language.

Even when legislatures try to simplify legal documents by enacting statutory forms, such as powers of attorney, with magic language to incorporate provisions of the law without having to spell them out, the resulting documents tend to be stilted and hard to understand, leaving clients in doubt as to what they

are signing. But, as mentioned earlier, lawyers use these forms repeatedly because they are convenient and virtually guaranteed to be predictable.

An anomaly that needs correcting is that some laws passed to ensure the rights of consumers make it harder to comply with other laws mandating plain English. For example, the Truth in Lending Act requires a number of complex disclosures in various consumer transactions; reducing these disclosures to plain English has proved difficult and, in some cases, of doubtful value.[42] Witness the disclosures in a typical installment sales contract for a car.

Even municipalities are getting into the act. The City Council of Los Angeles passed policy guidelines in the Spring of 1986 that require new ordinances to be written in plain English. However, it took five years to pass the proposal because of the Council members' disagreement on the wording![43]

Executive Decisions

In addition to the influences of the courts and legislatures, the third branch of government -- the executive -- also influences lawyers to continue to write as they do.

As mentioned earlier, one of the initial movements in this century to simplify legal writing came after the United States entered World War II. The Office of Price Administration (OPA) found that businesses could not understand wartime regulations on their own, so OPA hired Rudolf Flesch (whose works are now standard authorities on clear writing) to help improve the readability of their regulations.[44]

Movements to simplify Executive Department regulations have gone in cycles since then, but President Carter issued Executive Order 12044 in 1978 requiring regulations to be "as simple and clear as possible." President Reagan revoked that order in 1981, but anyone who reads or listens to his speeches knows that he is a master of plain English.

Despite these good examples, the Executive Departments and independent regulatory agencies have continued to write in gobbledygook, pretty much unmoved by the coming and going of Chief Executives. The inertia against simplifying the complex language of these regulations is almost overwhelming because many (1) deal with fairly technical subjects and complex relationships, from the regulation of nuclear power plants to the criteria for receiving certain

welfare payments, and (2) are the livelihood of entrenched bureaucrats. And this writing has a powerful influence on the thousands of lawyers who work for these departments and agencies and whose clients must deal with their regulations daily.

Consumerism: Clients And Their Lawyers

We have now looked at schools, traditions and governmental institutions that make it hard for lawyers to break bad writing habits. We will now turn to the influence of the consumer movement on legal writing, and on lawyers' reaction to the movement. The consumer movement is different from other influences, such as the legislative and executive branches, in that it does not give mixed signals about legal language, but consistently supports plain English. However, lawyers' reactions to this movement are definitely mixed.

You will recall that in our discussion of tradition as a force in maintaining complex legal language, I sadly observed that some lawyers use complicated language to maintain the mystique of their legal practice and justify a higher fee. And, as illustrated by the elderly couple who wouldn't sign a plain English will, some clients mistakenly believe that documents, to be legal, must look legal (meaning that they have a liberal sprinkling of "witnesseth, wherefore, aforesaid, hereby, etc.").

Consumerism is dealing deadly blows to both the lawyers' mystique and their clients' mistake (aforesaid). Once the Supreme Court cleared the way for lawyers to advertise their services, they realized that they could most effectively market legal services by the same simple, direct approach that others use to sell cars, including clear advertisements for simple wills and uncontested divorces at set prices.

While this trend has its professional downside if lawyers in drugstores advertise blue-light specials on divorces, the result of the trend is that the general public has greater access to legal services now than ever before, a lot of the lawyers' mystique is gone, and clients are less likely to pay happily for something that they cannot understand. Moreover, many clients are threatening to seek other counsel if their lawyers charge unreasonable fees. Finally, don't forget that legal malpractice suits are filed daily, and state bar ethics and grievance committees meet continuously to adjudicate complaints against lawyers.

What does all this mean? Despite the healthy competition for legal services spurred by the consumer movement, and the growing awareness of clients that they should be able to understand what lawyers say, it is only natural for lawyers to be slow to abandon the habits reinforced by the weighty influence of their education, tradition, and governmental institutions. In fact, the legal profession is so conservative that it would be surprising if lawyers did embrace the plain English movement wholesale and without question.

So it's unreasonable to expect that lawyers as a profession will change their legal writing just because some of us believe it's a good idea supported by a lot of evidence. Individual lawyers may get religion and try to convert others. But without some institutional re-ordering, the movement to plain English will be slow if inevitable.

Drawing on the Bible's Four Horsemen of the Apocalypse (Conquest, War, Famine, and Death), George Hathaway has dubbed lawyers' resistance to plain English the Four Horsemen of Legalese --"ignorance, apathy, stubborness, and misrepresentation."[45] As we shall see, the Army is making some exciting inroads to all four of these.

V. SO WHAT IS THE ARMY DOING TO STAMP OUT LEGALESE?

Answer: A lot, but it can do more.

General Writing Program

Before looking at what Army lawyers are doing to improve their legal writing, let's review briefly the general writing program that applies Army-wide.

The current program began in 1984 when General Thurman, as Vice Chief of Staff, directed the U. S. Military Academy to develop and teach an executive writing seminar that summer. The teaching team then proposed an expanded communications program to be taught to soldiers in Army schools. Army Regulation 600-70 established the program in 1985.[46] The Training and Doctrine Command is executive agent for the program and requires each Army school to have a writing office to teach clear writing.

The Secretary of the Army and Chief of Staff have personally supported efforts to improve communications. Secretary Marsh, in a letter to those attending communications courses, stressed the importance of making the best possible impression in letters responding to inquiries about Army issues.[47] And in the foreword to the pamphlet issuing plain English standards and guidelines, General Wickham, as Chief of Staff, emphasized the need to improve communicating skills and called for improving the quality of writing.[48] Without going into details, the program can be summarized as a plain English approach to writing.

Legal Writing Programs

History. The Judge Advocate General's School of the Army (TJAGSA), the Army's graduate law school located at Charlottesville, Virginia, was ahead of its time in developing a legal writing program. For years TJAGSA required all advanced course students (now called graduate course students and made up of officers approaching mid-career) to complete a thesis. By the mid-seventies, the students had an option of writing a thesis or one or more lengthy papers. The school required some legal writing courses, including practical exercises, covering technical legal writing skills (such as footnotes and citations) and general writing skills (such as organization).[49]

Because of "complaints from the field that judge advocates lacked adequate writing skills and because TJAGSA concluded that not all students could or should write a thesis," an expanded communications program for graduate course students began in 1976 and now includes plain English writing classes, several short writing exercises, a lengthy research paper, and a formal briefing.[50] (More about this in a moment.)

In 1984, a communications program began for basic course students (entry-level lawyers). Until then, their instruction consisted of military-unique legal research and military correspondence, with limited and unrelated research projects.[51]

Basic Course Program. So what does the basic course teach about plain English today? Not much.

The current program is limited because of the stringent competition for time in the basic course curriculum. New Army lawyers receive six hours of instruction, broken down as follows:

1. Three hours of legal research and bibliography peculiar to the military;

2. Two hours of military correspondence and writing; and

3. One hour of "military speaking."

Students then have a practical skills exercise requiring them to write a research paper answering a question and to give a decision briefing on their answer. A faculty member critiques both.[52]

As you can see, not much time is devoted to improving the writing skills of these new Army lawyers. It is difficult enough to cover the various forms and uses of military correspondence in the available two-hour block without trying to teach the use of plain English!

TJAGSA has kept the time devoted to writing limited because, within a relatively short period, new attorneys must learn a lot that law school never taught to equip them to be effective from the first day in their new offices. And TJAGSA has assumed that "most lawyers coming to the School already have at least minimally adequate verbal skills."[53]

This assumption probably needs re-examination based on what we have learned about how little law schools (and colleges and high schools) teach about writing in plain English. Random reports from colleagues supervising new lawyers in the field indicate that writing skills of many new judge advocates are weak. Although surveys might provide feedback on the problem, they probably could not gauge whether field supervisors are measuring new lawyers' writing skills against a plain English yardstick!

In any event, I believe that -- as hard as it will be -- TJAGSA should consider finding more time in the curriculum to teach plain English writing. Here is why. If new lawyers do not learn while at TJAGSA the substantive knowledge that they need to function, they will learn it at their first duty station. But if they don't learn how to write in plain English during the basic course, they may never learn to write well, unless and until they attend the graduate course. In the meantime, their substantive knowledge will grow without a corresponding growth in their ability to express it in plain English.

In the long run, the Army would be better off with more new lawyers who have better writing skills than with new lawyers who know a few more legal principles (that may eventually change anyway). And -- here's the best part -- portions of the current graduate course program could easily be adapted to provide the extra edge the basic course needs.

Graduate Course Program. The graduate course program clearly surpasses that of the basic course and could be a model for law schools to emulate.

As the graduate course students stay for an academic year, instead of several weeks, the curriculum permits more time for teaching communications. But the priority of communications skills is evident from the beginning because students devote the first two weeks of the academic year exclusively to the communications course.

Adding to the high priority of the communications course, Major General Suter, The Assistant Judge Advocate General, kicks off the course with a lecture stressing the importance of communications skills to their success as Army lawyers. Hearing that kind of personal message from a respected, successful lawyer is worth a ton of regulations and directives.

The students then receive instruction in basic writing skills with a plain English orientation, along with practical exercises in writing and speaking. Throughout the remainder of the year, students have an opportunity to improve or sharpen their writing skills in a series of short and long writing projects from answering Congressional inquiries to drafting litigation reports. Fellow students and faculty members critique the writing so each student has a chance to learn supervisory editing. The culmination is a lengthy research paper which three faculty members critically evaluate. As an aside, classes and exercises on oral communications skills (speaking and briefing) provide balance to the writing program.[54]

Over the years this program has attracted top-notch speakers, such as Professor Smith, to lecture on basic grammar, writing style, and military writing. Students receive books on how to write in plain English and how to cite legal references. General Suter uses that fact as a challenge and a promise: he tells the students that when he visits them in their offices around the world, he expects to see four books on their desks -- a dictionary, thesaurus, style manual, and Professor Nydick's book on plain English for lawyers. He says that when he visits former students a year or more later, he does check, and they all know to be prepared with their four books![55] As we'll see in a moment, General Suter is onto something with his "four book" requirement that the Army could develop into a quality assurance check.

Other Formal Training. In addition to the basic and graduate course instruction, Army lawyers have opportunities to improve their writing through the general Army-wide program mentioned at the outset of this section. They also attend other Army schools that teach writing.

Army lawyers also have opportunities to attend courses sponsored by private and Government agencies to improve their writing. For example, Army appellate judges have attended courses sponsored by national judges' associations on how to write judicial opinions in plain English, and attorneys frequently attend courses on legal writing sponsored by the Department of Justice.

Finally, to their great credit, many Army lawyers take courses at their own expense to earn advanced degrees; while some of these courses provide opportunities for writing that is critiqued, many of them follow the more traditional pattern of unsupervised writing discussed earlier.

So Where Does the Army Stand with Legalese?

The Army is on record against it. More specifically, The Judge Advocate General's School has waged an impressive campaign to rid legalese from the writing of mid-career officers attending the graduate course. The basic course needs to cram more legal writing instruction into the curriculum, even at the expense of some substantive law instruction, for reasons explained earlier.

Is there more the Army could do? Read on.

VI. OVERCOMING THE OBSTACLES TO PLAIN ENGLISH IN ARMY LEGAL WRITING

In discussing the poor quality of legal writing, Professor Charrow observed that "words of admonition . . . are insufficient. The profession must be willing to match those words with deeds, but it has been unwilling to make this commitment. Instead, law schools, judges, and attorneys send mixed messages."[56] (We just saw these mixed messages in the section on why lawyers persist in writing badly.)

The Army legal community must make its message clear and consistent that plain English is the standard for Army legal writing. Here are some suggestions.

Top-Down Pressure

As mentioned earlier, General Suter's personal presence and indorsement at the opening lecture of the communications course send a clear signal to graduate course students of the importance he places on communications. He sends a similar, consistent message when he actually walks into offices halfway around the world to see if the officers have their "four books" on their desks. The other top Army lawyers (the General Counsel and The Judge Advocate General)

also agree that the plain English movement has merit for the Army; they could initiate several steps to attempt to instill the use of plain English in Army legal writing.

The General Counsel and The Judge Advocate General could task all Army lawyers to use plain English in their legal writing whenever possible. Both could follow-up through their subordinates to ensure compliance with this request by their review of legal documents that routinely make their way to the Pentagon. By messages and letters in Army publications, they could point out examples of very good writing (with praise to the author) and very bad writing (without attribution) -- both would show that the top Army lawyers are serious about improving our writing. Their public speeches to audiences of Army lawyers would provide still another opportunity to push the program.

The key is that in an ordered environment, such as the military, the chance for meaningful institutionalized change to occur is far greater than in more ecletic surroundings. With their influence over more than 2600 Army lawyers, our leaders should be able to make inroads in years that would otherwise require decades because they can set standards for plain English legal writing by judges, litigators, drafters, and advisors in wide-ranging areas of legal practice -- from courts-martial to client services and from business transactions to administrative regulations. Although Army clients may balk initially at documents that don't "look legal," they should soon come to appreciate the new style of legal writing.

Plain English Army Legal Forms

Just as the use of legal forms containing traditional legalese has been a barrier to the plain English movement, new and improved legal forms could play a key role in making plain English the norm.[57] The Army could change some forms immediately with little risk or difficulty, while other forms will require greater study.

Consumer-oriented Forms. The Army could quite easily re-write many of the forms used in legal assistance offices to make it easier for clients to understand such routine documents as powers of attorney and bills of sale, two of the most common legal services provided. Documents for more complicated transactions such as separation agreements and wills would take more work to simplify but could also use plain English so long as the documents satisfy the requirements of applicable state laws.

Notices. Notices are another category of forms that could use plain English to satisfy legal requirements and better insulate the Army against lawsuits. Privacy Act notices are often more complex than necessary. Plain

English security clearance forms would put the sig[illegible]on notice of potentially controversial conditions of [illegible]ss, such as polygraphs and urinalysis. Plain English [illegible]eal consent forms would give clearer notice of the ext[illegible]of risks and scope of consent. Finally, military enlistment and civilian personnel forms have legal consequences that plain English could help both sides to understand more clearly from the outset.

Commercial Forms. Forms used in Government commercial or business transactions are often the product of a variety of laws, regulations, and policies governing contracts, leases, and the like. While some of these provisions are required by law, plain English would help simplify their meaning for routine commercial transactions. This simplification process would be more time-consuming than for powers of attorney and bills of sale because more laws and policies are involved. Yet the payoff could eventually be more competition and cheaper prices because more businesses might be willing to bid if they didn't have to wade through the gobbledygook.

For those transactions that are too novel or too complicated for simple forms, plain English will still help clarify the intentions of the parties and ensure a legally enforceable agreement. In tailor-made agreements, you may want to cover every possible contingency but should do so in plain English.

Expand Legal Writing Education

I described in the previous section what The Judge Advocate General's School (TJAGSA) is doing to improve legal writing and how to expand the basic course instruction to include more plain English writing. There are other steps that TJAGSA should also consider.

Civilian Lawyers. Although more than a quarter of the Army's lawyers are civilians, most never receive training in plain English writing. Indeed, they do not attend the basic or graduate course at TJAGSA and generally depend on non-military courses or short courses at TJAGSA for specialized or continuing legal education.

TJAGSA should consider creating a minimum two-hour block of instruction on plain English writing that could be taught in every short course at TJAGSA. That would serve to provide a minimum level of writing competency to all lawyers, including civilians, who attend the short courses and to serve as a refresher for those who had received some prior training.

The TJAGSA instruction team could also give this block to any large groups of Army civilian lawyers, including conferences sponsored by commands with a predominance of civilian lawyers, such as the Army Materiel Command (AMC) and the Corps of Engineers. The idea is to disseminate the plain English policy and training as widely and frequently as possible to cover gaps caused by personnel turnovers.

Senior Military Lawyers. As some senior military lawyers attend short courses or are assigned to AMC, they will receive some training through those sessions. In addition, The Judge Advocate General could impress on them at their annual worldwide conference that plain English writing is a priority. As the success of the new program depends upon the senior military lawyers' willingness to join in the effort, the conferees should have a chance to see the benefits of better writing. To that end, TJAGSA could offer a block of instruction at the conference to sharpen or refreshen their skills.

Publications. At all short courses and conferences providing some instruction on writing in plain English, students should receive a style manual and book on plain English writing, or handouts of equivalent value, to take with them. The senior Army lawyers could reasonably expect all lawyers to understand the basis of good writing and have the necessary resources, just in case someone asks!

To serve as a constant reminder of the importance of writing in plain English, Army legal publications could encourage notes and articles on good writing. A short article on writing tips could be a regular feature of the monthly magazine, The Army Lawyer, for example. Just as bad writing results mostly from bad habits rather than bad motives, good writing will replace it only when it becomes, like a habit, second nature. Continuing articles would also serve as a refresher as well as a reminder for lawyers to follow up on the training they should eventually receive through the systems of courses and training just described.

Follow-Up

There would be no substitute for follow-up on these initiatives. Just as General Suter looked for the "four books" on his visits to the field, senior lawyers could routinely test all the legal writing they review by the plain English standard and make on-the-spot corrections if possible. If problems recur, senior lawyers could remind their subordinates of the need to write clearly and succinctly and of the importance of that skill to a military or civilian lawyer's success, including a successful efficiency report or performance appraisal! After a lifetime of bad

writing habits, lawyers will not -- and probably cannot -- go cold turkey without some pain. But, as the weightlifters say, no pain, no gain!

VII. CONCLUSION

As an optimist by nature, I hope that the plain English movement is a trend that will continue to grow; that law schools, judges, legislators, and lawyers will use plain English more and more in their writing; that clients will demand their documents in plain English; and that Army lawyers will adopt and press hard for a plain English writing standard.

I am also a realist. The legal profession worked hard at bad writing for several centuries and isn't about to turn its back on that historical (hysterical?) experience. Progress will be incremental in the legal profession generally, but progress can be dramatic and vital among Army lawyers if a steady push comes from the top and meets minimal resistance throughout the system.

This much is clear: No one is asking lawyers not to talk to each other in legal jargon nor to use terms of art. Lawyers should come together often to lawspeak among parties of the first and second parts about what they hearsay or witnesseth. (Aforesaid lawspeak is useful shorthand for complex ideas.) And we should preserve our traditional legal language for each other and the profession for much of it has a rich history worth remembering.

But, to the average person, these words surely sound like incantations from some now-extinct loyal order of the past. And, out of courtesy to and respect for the general public, and to be sure they understand what we mean, we should try to speak to them and write for them in plain English. The laws, after all, belong to everyone. And we'd all really be better off if we wrote in plain English to each other, even when -- or especially when -- the language has legal importance.

For, ultimately, as I indicated at the outset, the worst you can say about legalese is that its complexity can hide gigantic flaws in facts or logic from the reader or -- even worse -- from the writer. Make no mistake about it, clearer legal writing will require clearer legal analysis. And clearer legal analysis will require better understanding of the law and facts and legal reasoning than ever before.[58] But the reward will be better legal services for our clients. Is this too high a price to pay?

Consider what Professor Dickinson said on this point: ". . . The price of clarity, of course, is that the clearer the documents the more obvious its substantive deficiencies. For the lazy or dull, this price may be too high."[59] No lawyer, I daresay, would admit that the price is too high.

When all is said and done, lawyers have usually been able to explain things to their families, friends, and clients in plain English. Not even the worst lawspeaker would say, "I like that cake; aforesaid cake is so good I want some more."[60] All the plain English movement is asking lawyers to do is to write -- for other lawyers, other people, and ourselves -- like we talk when we're trying hard to make ourselves understood, as when we're pleading for that last piece of cake!

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42. Felsenfeld, 233.

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DIRECTORATE FOR FREEDOM OF INFORMATION AND SECURITY REVIEW
1155 DEFENSE PENTAGON
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29 AUG 2002
Ref: 01-F-2189

Mr. Michael Ravnitzky
Director of Database and Computer-Assisted Reporting
American Lawyer Media
1730 M Street, N.W., Suite 800
Washington, DC 20036

Dear Mr. Ravnitzky:

This responds to the August 6, 2001, referral by the Defense Technical Information Center (DTIC) of your March 13, 2001, Freedom of Information Act (FOIA) request and two documents to this Directorate, of which DTIC advised you. The documents, numbers AD-B115964 and AD-B134001, are enclosed.

There are no assessable fees for this action.

Sincerely,

H. J. McIntyre
Director

Enclosures:
As stated

cc: DTIC
(w/only DD Fm 1473 for each document)

DEFENSE INFORMATION SYSTEMS AGENCY
DEFENSE TECHNICAL INFORMATION CENTER
8725 JOHN J KINGMAN RD STE 0944
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01-F-2189

IN REPLY REFER TO DTIC-RS (FOIA 2001-93)

6 AUG 2001

SUBJECT: Freedom of Information Act (FOIA) Request

TO: Department of Defense
Directorate of Freedom of Information
& Security Review
Room 2C757
1155 Defense Pentagon
Washington, DC 20301-1155

1. Reference FOIA request from Mr. Michael Ravnitzky, dated March 13, 2001 (enclosure 1).

2. Release of documents AD B115964, entitled *Plain English for Army Lawyers,* and AD B134001, entitled *The Army Judge Advocate General's Corps Recruiting Program: Can It Continue To Attract Quality Lawyers?* (enclosures 2 and 3) may only be performed by the appropriate controlling activity. Our records indicate that the documents were produced by the Industrial College of the Armed Forces, ICFA-AR, Fort McNair, Washington, DC 20319-6000. Therefore, we are forwarding the request to you for processing and direct response back to Mr. Ravnitzky. We have notified Mr. Ravnitzky of this action. Please note Mr. Ravnitzky's request has been forwarded to the appropriate controlling activities for the other documents listed in his letter.

3. Should your review of the documents result in a determination to delimit (make available to the public) one, or both, of the documents or a determination that the distribution statement should be changed, please advise this office in writing so we may mark our records accordingly.

4. The category of request is "**news media.**" Mr. Ravnitzky incurred no assessable fees for services from the Defense Technical Information Center (DTIC). If you have any questions, call me at (703) 767-9194.

FOR THE ADMINISTRATOR:

3 Encls a/s

KELLY D. AKERS
FOIA Program Manager

01-F-2189

AMERICAN LAWYER MEDIA

March 14, 2001

Defense Technical Information Center
Attn: Kelly Akers, FOIA Manager
8725 John J. Kingman Road Suite 0944
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FOIA REQUEST

Dear Ms. Akers:

American Lawyer Media respectfully requests, under the Freedom of Information Act, a copy of the following records:

AD B115964 Plain English for Army Lawyers.

AD B134001 The Army Judge Advocate General's Corps Recruiting Program: Can It Continue to Attract Quality Lawyers?

AD B116103 Legal Assistance Preventive Law Series.

AD B241805 Litigiousness. Contract Design and the Economic Motives of the Contingent Fee Lawyer.

AD B120334 Environmental Law for the Air Force.

AD B157868 Maritime Defense Zones and the New World Order.

AD B124193 Military Citation. Fourth Edition.

AD B182238 User's Guide to the United States Marine Corps (USMC) Courts-Martial Database

We agree to pay up to $25 for costs associated with this request. We are grateful for your kind assistance in this matter. Please contact me at 212-313-9067 if you have any questions relating to our request.

Sincerely,

Michael Ravnitzky
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Encl