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# “Clear Beyond the Peradventure of a Doubt,” Or, Plain English

Curtis E.A. Karnow

## **“Clear Beyond the Peradventure of a Doubt,” Or, Plain English**

By Curtis E.A. Karnow\*

There’s a movement in the law—towards plain English. As opposed, one might say, to *Leglish*. Law school writing courses and advice columns in legal magazines and papers frequently make the argument for straightforward, concise writing, and object to Latin words and other configurations unique to the legal field such as *hereinafter* and *wherefore*. The advice urges active, and avoiding passive, forms. It counsels short sentences. It urges us to avoid triplets such as “ordered, adjudged and decreed” and “give, devise and bequeath.” Some advise us to smooth out writing by either dropping citations into footnotes, or least using as few letters as possible, i.e., “*Zonker*, 34 Cal.4<sup>th</sup> at 345,” rather than “(*Zonker*, supra, 34 Cal.4<sup>th</sup> at p. 345, 218 Cal.Rptr. 313, 705 P.2d 886.)”.

Bryan Garner, who with Justice Scalia was in town last year to hawk their new book, *Reading Law*, is a preeminent proponent of plain English and author of a book called, remarkably, *Legal Writing In Plain English*. I have previously suggested revisions to the California Style Manual along these lines in an article titled, remarkably, “Revising The California Style Manual,” *San Francisco Attorney* 42 (Winter 2012). SCOTUSblog has a plain English section noting petitions and arguments at the U.S. Supreme Court. In many cases, the Ohio Supreme Court issues plain English summaries prepared by its Office of Public Information for the public and news media.

Recently I tried to do as I say, adding a plain English appendix to a lengthy memorandum order I issued in a case of public interest. There I explained how preliminary injunctions work and the process I used to decide the issues.

The case for plain English is obvious, but I’ll state it anyway. For the courts, it’s an important tool to cross the high boundaries of incomprehension, and do our best to explain ourselves, and the role of the judiciary generally, to the public. Judges and lawyers bitterly complain that our work is misunderstood, that civics education is badly taught when taught at all, that high school graduates know more about American Idol judges than those on the Supreme Court. This may be true, but judges also have an obligation to reach out from their end and clarify their work to the public. This must be done not only with jury instructions—and we are only part way there with those—but also in our written decisions.

For both judges and lawyers, plain English is the secret ingredient for logical, powerful writing. It is difficult to make a foolish argument in plain English. Convoluted sentences, drizzled with obscure jargon and Latin, steamed with clumsy string cites, are a recipe for disaster. (Bad metaphors might be too.) These sentences cover up bad logic. They make it seem there is authority (or facts) for a result when there really isn’t. And the worst of it is that writers fool themselves: the mind turns easily to imitation

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logic, suggesting parallels among cases based on pointless similarities. Sometimes, writers believe words with that magical, legal-sounding timbre are good enough.

I know plain English is risky. It seems counter to the style that surrounds us. It seems a shame not to use the verbal dexterity and vocabulary we bought so dear at law school. It seems inadvisable to say something plainly when the client is paying a pretty penny for our manifest expertise. Some lawyers believe judges need the cozy, familiar comfort of argument dressed-up with symbols of legal authority. And it *is* a comfort. Jargon and ‘legal’ style trumpet membership in the learned society of the law. Don’t they?

Perhaps, but it’s a false comfort. Unlike the work of pilots and theoretical physicists, the value of legal work depends directly on transparency and on public understanding. Public ignorance of what we do fuels civic cynicism, and inhibits funding of the courts and acceptance of court decisions. Without a knowledgeable electorate, we cannot have useful discussions on important issues such as the role of money in judicial elections, how different kinds of proposed changes in the law ought to be addressed, or how to improve the justice system.

There is something else. The work of lawyers and judges suffers when other professionals whose work touches the justice system do not understand what we are doing. Those professionals include experts from every background, criminologists who advise on evidence-based sentencing, statisticians, sociologists, and behavioral economists who explain decision-making. In the end, lawyers and judges do their work with others. So let us explain ourselves as plainly as we can.

Consider it—our civic duty.