

*HOW TO WRITE PLAIN ENGLISH:  
A BOOK FOR LAWYERS AND CONSUMERS*

By Rudolf Flesch

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Rudolf Flesch is a crusader. His goal is the simplification of the English language. Over the years, he has been a consultant with banks, insurance companies and government agencies in the United States. Throughout, he has been self-directed by the idea that the consumer, and indeed, the average citizen, should be able to read and understand the legal documents and laws which affect them. The draftsman should not be able to hide imprecision and ambiguity behind an imposing wall of verbiage or legalese.

The Plain English movement is gaining ground. Many States have passed laws requiring plain language, at least in some consumer contracts. All American federal regulations must now be in Plain English. Flesch's Plain English translations of American taxing statutes are nothing short of amazing.

The movement may seem heretical to many. To those of us who have studied the case law of 19th Century England, Plain English might just as well be a different language.

The first Chapter introduces the reader to the basic precepts of Plain English. Flesch gives many examples of the pitfalls which beset the writer of legal documents, by showing first, the original, lawyer's version of a document, and then, his own Plain English version.

In the Second Chapter the author's readability formula is explained. This formula is based on the length of both the words and the sentences used in a piece of writing. His Readability Chart, which gives a readability score, is reproduced in the Chapter<sup>1</sup>. The scores range from zero to 100, zero being extremely difficult, and 100 being very easy to read. For example, children's comic books rate 92, Time Magazine rates 52, the Harvard Law Review rates 32 and the American Internal Revenue Code averages a dismal minus six. Flesch advises writers to use his formula in order to find the readability score of their work. If the score is less than 60, many people may be unable readily to understand the piece of writing. A low score indicates that the piece should be rewritten.

In the next eight Chapters, Flesch takes pot shots at some writing habits popular among lawyers. Chapter 3 deals with "oceans of verbiage." Flesch points out that two or more words are often used where one would do. He gives the example of an American federal regulation which uses the words *contradicts*, *negates*, *is inconsistent with*, *obscures*, *mitigates* and *derogates from*<sup>2</sup>. In this case, the single word *undermine* could be used to replace the other six. The regulation would become much easier to understand, without losing its effect.

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1. R. Flesch, *How to Write Plain English: A Book for Lawyers and Consumers* (1979) 25.

2. *Id.*, at 41-42

Chapter 4 suggests that many legal documents can be personalized by using the word "you." Both legislation and consumer contracts can be written in this way, "you" being the person who must comply with the statute or clause.

Chapter 5 presents a novel idea — taxing statutes can be simple to read! Flesch shows how he has "translated" parts of the Internal Revenue Code into Plain Math. The complex, rambling sections have become short, numbered steps which are clear and easy to follow.

In Chapters 6 to 8 three related problems are dealt with. Firstly, lawyers have trouble with definitions. Instead of finding a word to suit the exact purpose, many draftsmen provide lengthy definitions of words which do not quite fit. Secondly, Flesch suggests the use of simple examples to define the limits of a word or phrase. Thirdly, cross-referencing is attacked. The draftsman should not direct the reader to another section or sections of the statute. He should simply say what he means in so many words.

Chapters 9 and 10 round off Flesch's attack on legal writing. Two common habits of legal draftsmen are the use of double negatives and shredded English. The former results in phrases like "a trust shall not constitute a trust unless . . ."<sup>3</sup>. Flesch feels that double negatives are obstacles to easy reading. Instead, positive phrasing should be used. Shredded English is found in many statutes and is usually called tabulation. Sections of a statute often contain every possible condition and alternative in one sentence, linked up by semicolons and dashes. The sentence will probably be logical and gramatically correct, but very hard to understand. Again, Flesch shows how to say it in Plain English.

Throughout the book, Flesch pokes gentle fun at the way lawyers write. He points out some common faults and, also, how a writing style can be improved. The light, entertaining style and the many examples *should* make Flesch's suggestions easy to follow. However, try as I might, the average readability score of this review was about 63 — a bare pass.

Flesch has something to say to all lawyers, even though they might not agree with him. Some might argue that Plain English may open up loopholes, or make the meaning of a particular clause less certain. However, perhaps Plain English should be tried — the worst that can happen is that a consumer may actually understand what he is signing.

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3. *Id.*, at 94.