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Writing Help At Your Fingertips-Readability Scale

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The Scrivener: Modern Legal Writing



Writing Help At Your Fingertips—Readability Scale

by *K.K. DuVivier*

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Writing well takes constant diligence. We all can use some help. But many of us may not be taking advantage of the tools that are available right at our fingertips. Most of us, especially those who are spelling-challenged, run our documents through spell check. Now, many word processing programs list readability statistics in addition to spelling and grammar advice. For example, in Microsoft Word, go to the “Tools” category and click on “Spelling and Grammar.” At the end of the spell check, Microsoft provides a chart labeled “Readability Statistics.” Understanding these readability scales can help improve your writing.

Readability Scales

Readability scales were first created in the 1920s.¹ During World War II, the military used them to ensure that weapons manuals could be read by soldiers in combat situations.² Readability research was popularized in the 1940s by Rudolf Flesch. Flesch was a Viennese lawyer who came to the United States to study education and wrote the best-selling book *Why Johnny Can't Read*.³ Now there are at least a dozen readability formulas on the market. The Flesch Reading Ease scale and the Flesch-Kincaid Grade Level formula are listed in the Microsoft Word software. The “Extended Fry” scale is often used to assess children’s books.⁴ Another popular readability scale is the “Fog Index” created by Robert Gunning, who founded a company called “Readable News Reports” and who advised newspapers on clear writing in the 1940s and 1950s.⁵

Readability scales attempt to measure reader effort. Most people find that they can read more efficiently when words and sentences are short. The scales measure “readability” by using a simple formula of counting syllables in words and words in sentences. Under the Flesch Reading Ease scale, text is rated

between zero and 100. A score of zero indicates text is incomprehensible. Last November in the Colorado election, the majority of the ballot measures scored zero.⁶ A score of 100 indicates the measured text should be some of the easiest to understand.

Documents written for the general public should aim for a score between 60 and 70, which translates to a reading level of the seventh or eighth grade.⁷ You can justify lower readability scores for documents written for judges and lawyers because this audience is better educated than the general public. However, legal documents generally contain complex ideas, and the less familiar your audience is with a subject, the higher your readability score should be.⁸ Consequently, legal readers, who often are working under time pressures, will appreciate your efforts to improve readability.

Because readability scales are scientific and objective, they “have become the accepted yardstick for measuring the clarity of writing.”⁹ Readability standards have been applied to securities disclosure statements,¹⁰ insurance policies,¹¹ income tax returns,¹² health care information for the poor,¹³ and, in Colorado, to Medicare Supplement insurance.¹⁴

Disadvantages of Readability Scales

The shortcoming of readability scales is that they can only measure the surface characteristics of words. They assume that reading is equivalent to understanding. Yet, using monosyllabic words does not assure readability. Computers can count syllables by counting the number of letters between spaces, but

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through the *Scrivener* column. Send your questions to: kkdುವಿವಿ@law.du.edu or call her at (303) 871-6281.

K.K. DuVivier is an Assistant Professor and Director of the Lawyering Process Program at the University of Denver College of Law.

The first “Scrivener” column appeared in The Colorado Lawyer ten years ago in the March 1991 issue. See DuVivier, “Slide Rules, Telegrams and Legal Writing,” 20 The Colorado Lawyer 485 (March 1991). It has been a regular bi-monthly feature since then.

they cannot determine whether the words are understandable. For example, the first two sentences of Lewis Carroll's "Jabberwocky" received a Flesch readability rating of 84.8, or a fourth grade level, because the sentences and words are short: "'Twas brillig, and the slithy toves did gyre and gimble in the wabe. All mimsy were the borogoves and the mome raths outgrabe."¹⁵ In addition, the computer cannot evaluate connections between words. Consequently, Emily Dickinson's enigmatic poem, "I heard a Fly buzz when I died," gets a perfect 100 on the Flesch Reading Ease scale.¹⁶

Computers also can count the number of words between periods, but cannot distinguish citation sentences from grammatical sentences. Thus, the readability programs register every period as the end of a sentence. Consequently, a citation sentence, such as 42 U.S.C. § 1983 (1994), is read as four short sentences, which can inaccurately boost a text's readability rating.

Conclusion

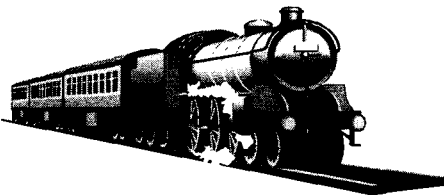
Here are some tips to help your documents rate high on the readability scales. As a general rule, keep your sentences short.¹⁷ Reading a sentence over twenty-one words becomes a struggle.¹⁸ You can avoid subordinate clauses by breaking longer sentences into shorter ones. However, be careful to avoid overly choppy text with little variation. Also, use short, everyday words.¹⁹ Only thirty-six of the 1,000 most frequently used words are more than two syllables.²⁰ When possible and appropriate, replace longer words with simpler, familiar ones.

If your word processing program has readability scales, check them out. As a general rule, they provide an accurate formula for predicting the ease with which your readers will digest your writing, so take advantage of this writing help at your fingertips.

NOTES

1. Crossen, "If You Can Read This, You Most Likely Are a High-School Grad," *Wall Street Journal* 1 (Dec. 12, 2000).
2. Hubbard, "Readability Test Finds if Writing Makes the Grade," *Denver Rocky Mountain News* 4A (Dec. 10, 2000).
3. Crossen, *supra*, note 1.
4. *Id.*
5. *Id.*
6. Editorial, "The Issue: Ballot Measures Written in the Most Obscure Verbiage. Our View: It's Time to Demand Straightforward English," *Denver Rocky Mountain News* 64A (Dec. 22, 2000).
7. Hubbard, *supra*, note 2.
8. O'Daniel, "Easier to Write With Word Processor," *New Straits Times—Computimes* 33 (Nov. 4, 1999).
9. Crossen, *supra*, note 1.
10. *Id.*
11. Indiana, Vermont, Massachusetts, and South Carolina require readability above a minimum score, such as 40 on the Flesch Reading Ease scale. Crossen, *supra*, note 1.
12. In Oregon, state income tax returns must rate at least a 60. Crossen, *supra*, note 1.
13. In Tennessee, health care information for the poor must meet the sixth grade level. Crossen, *supra*, note 1.
14. CRS § 10-18-103(2)(i) (2000). Text of a Medicare Supplement policy must achieve a minimum score of 40 on the Flesch Reading Ease test, according to 3 C.C.R. 702-4, § 23 (2000).
15. Crossen, *supra*, note 1. (Crossen reports a sixth grade level, but my word processor measured a fourth grade level.)
16. Crossen, *supra*, note 1.
17. DuVivier, "Plain English Part II: Shorter Sentences and Lighter Luggage," 27 *The Colorado Lawyer* 27 (March 1998).
18. Herman, "The Index of Gunning: A Quick Lesson in Utilizing Your Pen as a Sword," 167 *Global Cosmetic Industry* 34 (July 1, 2000).
19. DuVivier, "Plain English Part III: Choosing the Right Words," 27 *The Colorado Lawyer* 31 (May 1998).
20. Herman, *supra*, note 18. ■

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LEGAL SUPPORT BRIEFS . . .

**Come One and All to an Open House
Hosted by the CBA Paralegal Committee
March 7, 2001, at the CBA Offices in Denver**

The Colorado Bar Association ("CBA") Paralegal Committee ("Committee") will host an open house for members and non-members on March 7, 2001, 5:30 P.M., at the CBA Offices, 1900 Grant St., 9th Fl., Denver. There will be speakers, vendors, refreshments and an opportunity for attendees to network while learning all about the Committee and its sundry activities. For more information, contact Victoria K. Gibson, (303) 592-8345, or e-mail: paralegalscba@yahoo.com.

**Reggie Rivers will be Featured Speaker
At ALA, Mile High Chapter, Monthly Meeting
March 15, 2001, in Denver**

The Association of Legal Administrators ("ALA"), Mile High Chapter, presents Reggie Rivers as the featured speaker at its March 15, 2001, monthly meeting in Denver. Rivers is an author, media personality, newspaper columnist, and former Denver Broncos running back. Rivers' presentation, "Dare to Lead," deals with what makes a person a good leader. Additionally, Rivers will talk about *Power Shift*, his newest novel involving intrigue and mystery. Rivers will autograph copies of the book for interested buyers after the presentation. The ALA luncheon meeting will be held at the Top of the Rockies restaurant in Denver, and will begin at 11:30 A.M. ALA members, nonmembers, and guests are welcome. For complete information and to register, call Sylvia Jackson, (303) 899-7321.

**NALS of Colorado
Will Hold Monthly Dinner/Meeting
On March 13, 2001, at DBA Offices**

NALS of Colorado's monthly meeting is scheduled for March 13, 2001, at 6:00 P.M., at the Denver Bar Association offices, 1900 Grant St., 9th Floor. The featured speaker is Gwen J. Young, of Wheeler Trigg & Kennedy, P.C., and the topic of her presentation is "Agency Law." For complete information about this meeting or about NALS of Colorado, contact Betty Huff at (303) 244-1818.

Organizational Membership Information

**Association of Legal Administrators (ALA),
Mile High Chapter:**

Sylvia Jackson, Denver, (303) 899-7321

Association of Legal Assistants of Colorado (ALAC):

Sunde King, Colorado Springs, (719) 684-9241

Colorado Association of Legal Support Staff (CALSS):

Janet Boughton, Grand Junction, (970) 241-0316

Colorado Bar Association Paralegal Committee:

Eileen Kelly-Sharpe, Denver, eksparalegal@cs.com

Mile High Association of Legal Support Staff (MHALSS):

Ronda Bilby, Denver, (303) 864-1000

NALS of Colorado:

Perri Morris, Denver, pmorris@nea.org

Rocky Mountain Paralegal Association (RMPA):

Nanette K. Yokomizo, Denver, (303) 860-1900

New Lend-A-Lawyers Working in Greeley and Denver



Thomas Hagerman

Thomas Hagerman and Zoe Ann Corn are the latest participants in the CBA's Lend-A-Lawyer program. Hagerman will be working in the Greeley office of Colorado Legal Services, Inc. through July 2001. Corn will be working out of the Metro Volunteer Lawyers Office in Denver until July 15, 2001.

The Lend-A-Lawyer program sends volunteer attorneys to rural communities and services organizations in Colorado. The communities and organizations served by Lend-A-Lawyer include Greeley, Grand Junction, Durango, Alamosa, La Junta, and Salida, as well as Metro Volunteer Lawyers in Denver.

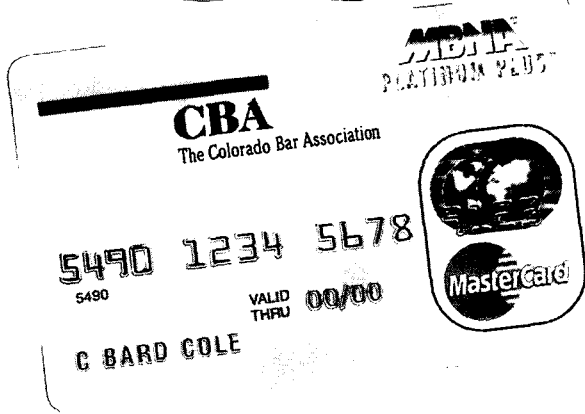


Zoe Ann Corn

Lend-A-Lawyer, Inc. is seeking other attorneys to place in the communities and organizations listed above. Some immediate openings are available. Interested attorneys must possess excellent communications, research, writing, and organizational skills, and must be enthusiastic about relocating temporarily to a rural community to provide legal assistance to indigent clients. A living stipend of \$850/month is offered. Participants will gain courtroom experience and an opportunity to assess a rural or legal services practice in Colorado while performing an important public service.

Applicants should submit a resume, recent writing sample, and names of three references to: Barb Martin, Colorado Bar Association, 1900 Grant St., Ninth Floor, Denver, CO 80203; (303) 860-1115 or (800) 332-6736.

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