

**STATEMENT OF WILLIAM LUTZ**

I, WILLIAM LUTZ, having been duly sworn, state as follows:

**I. Qualifications**

1. I am a Professor of English at Rutgers University. I am the author or co-author of sixteen books, including *Doublespeak Defined* (HarperCollins, 1999), *The New Doublespeak: Why No One Knows What Anyone's Saying Anymore* (HarperCollins, 1996), *Doublespeak: From Revenue Enhancement to Terminal Living* (HarperCollins, 1989), *The Cambridge Thesaurus of American English* (Cambridge University Press, 1994), and *Webster's New World Thesaurus*, (Simon and Schuster, 1985); and I am the author of over two dozen articles in such publications as *The London Times*, *The Los Angeles Times*, *The Atlanta Constitution*, *The Baltimore Sun*, *USA Today*, *Esquire*, *Business and Society Review*, and *Public Relations Quarterly*.

2. As an expert on language, especially clear language or plain English, I have worked with AAL Capital Management Corporation; Addison Design of New York; Bell Atlantic; Alumax Inc.; The Dreyfus Corporation; Herman Miller Inc; Ragan Communications of Chicago; North American Securities Administrators Association; John Nuveen & Co.; The Reddy Corporation International of Albuquerque; Ryder System Inc.; Charles Schwab & Co.; Securities Industry Association; U.S. Postal Service; and the Whirlpool Corporation. My services have included re-writing mutual fund prospectuses into plain language; writing, revising, and editing the prose in annual reports; judging the prose in annual reports in national competitions; and conducting seminars and workshops on plain English and clear communication in various forms of corporate publications.

3. From 1995 to 1999 I served as a consultant on plain English to the United States Securities and Exchange Commission ("SEC") as part of its Plain English Project. This project produced the SEC's plain English rules, 17 CFR §230.421 and §230.421(b), and the SEC's *Plain English Handbook: How to Create Clear SEC Documents* (Aug. 1998), of which I am one of the authors. As a result of these rules, over 8,000 mutual fund prospectuses and numerous other financial disclosure documents were rewritten into plain English.

4. In 2001 I was presented with the Pennsylvania Bar Association Clarity Award for the Promotion of Plain English in Legal Writing, and in 1996 I was given the George Orwell

Award for Distinguished Contribution to Honesty and Clarity in Public Language by the National Council of Teachers of English.

5. I was one of six invited experts to make a presentation at “Get Noticed: Effective Financial Privacy Notices,” an interagency public workshop sponsored by the Board of Governors of the Federal Reserve System; Commodities Futures Trading Commission; Department of Treasury, Office of the Comptroller of the Currency; Department of Treasury, Office of Thrift Supervision; Federal Deposit Insurance Corporation; Federal Trade Commission (“FTC”); National Credit Union Administration; and the Securities and Exchange Commission. Held on December 4, 2001, this workshop brought together government officials, financial institutions, industry associations, and other interested parties to address concerns about how to create clear and conspicuous privacy notices.

My resume is attached here as Appendix A.

## **II. Assignment, Methodology, and Materials Reviewed**

6. I was asked to review the language used in 168 privacy notices sent by various financial and insurance companies to their customers. These notices were prepared pursuant to the *Gramm-Leach-Bliley Act*, 15 USC § 6803 (“GLB Act”). I was asked to review the language in these notices for readability and clear communication. I calculated the Flesch Readability Index (also called the Flesch-Kincaid Index) and the Flesch Reading Ease Scale to determine the level of reading difficulty for each of the 168 notices and for the 168 notices taken as a whole. I also analyzed a representative sample of the notices to determine whether the notices followed the principles of plain English.

## **III. The Flesch Readability Index**

7. The term “readability” describes the ease with which a document can be read. A readability formula assesses the suitability of a text for a particular audience. Rudolf Flesch developed the Flesch Readability Index to indicate the readability of military training manuals, which contain some technical language and unfamiliar terms. The U.S. Department of Defense requires all contractors producing manuals for the armed forces to use this formula to assess the readability of the manuals. DOD MIL-M-38784B.

8. The Flesch Readability Index is expressed as a school grade, such as 5 meaning the fifth grade. The grade level means that readers at that grade level are *at the limit* of their reading ability and could *just* cope with the text. The Flesch Readability Index is based on a 50 percent correct answer score on a comprehension test of the text being assessed. Thus, a grade 5 reading level means that readers at that grade level would score only 50 percent correct on a comprehension test, while a grade 16 reading level means that college graduates would score 50 percent on a comprehension test of the material. Because readers find it difficult to read at their highest level of reading ability, they normally read two or more grade levels below their reading level. Since a person's normal reading level is not the same as his highest level of education, people usually read three to five grades lower than their highest level of education. Thus, high school graduates will have a reading level around the 7<sup>th</sup> to 9<sup>th</sup> grade.

9. The average reading level in the United States is approximately the 7<sup>th</sup> grade. The implications of this level are twofold: first, readers at this level are comprehending at most only 50 percent of what they read when they read at that level; second, readers at this level normally read two or more grade levels lower. Thus, literacy experts recommend that documents aimed at a large public audience should be written at the 5<sup>th</sup> grade level *at the highest*. To ensure that a mass audience can understand a document, literacy experts recommend that the document be written as low as the 4<sup>th</sup> grade level.

#### **IV. Flesch Reading Ease Scale**

10. The Flesch Reading Ease Scale is the most widely used formula to assess such general reading materials as newspapers, magazines, business communications, and other non-technical materials. It measures the reading level of a text on a scale from 0 (for very difficult to read) to 100 (for very easy to read). "Zero means practically unreadable and 100 means extremely easy. The minimum score for plain English is 65, or about 20 words per sentence and 1½ syllables per word. Conversational English for consumers should score at least 80, or about 15 words per sentence and 1½ syllables per word." Rudolf Flesch, *How to Write Plain English: A Book for Consumers and Lawyers*, 24 (Harper & Row, 1979).

11. A large number of studies have confirmed the validity of Flesch's formula. (Chafai Tekfi *Readability Formulas: An Overview*, 43 (3) 261-73 ( Journal of Documentation

1987)). Since the Flesch Reading Ease Scale is designed to measure the readability of consumer materials, a number of states require a minimum score on this scale for specified consumer documents. The state of Vermont requires a minimum Flesch Reading Ease Score of 40 for all property and casualty insurance policies (Regulation I-85-1, Section 6 (E), and a minimum Flesch Reading Ease Score of 40 on all credit accident and health insurance policies (Regulation I-84-1 (Revised), Section 13 (A) (1) (2)). The state of Indiana requires a minimum Flesch Reading Ease Score of 40 for insurance policies. (Indiana Code IC 27-1-26-3). Arkansas, Kentucky, and Ohio also require a minimum score of 40 on insurance policies, while Connecticut and Florida require a minimum of 45 and Maine a minimum score of 50. The following table explains the Flesch Reading Ease scale. Rudolph Flesch, *How to Write, Speak and Think More Effectively*, 302 (Signet, 1960):

<i>Flesch Reading Ease Scores</i>	<i>Reading Difficulty</i>
0-30	Very Difficult
30-50	Difficult
50-60	Fairly Difficult
60-70	Standard
70-80	Fairy Easy
80-90	Easy
90-100	Very Easy

12. To give some idea of what these scores and difficulty levels mean, Flesch tested samples of mass circulation reading materials and determined these scores (Flesch, 1979, at 26):

<i>Reading Material</i>	<i>Flesch Reading Ease Score</i>
<i>Reader's Digest</i>	65 Standard
<i>Sports Illustrated</i>	63 Standard
<i>Atlantic Monthly</i>	57 Fairly Difficult
<i>Time</i>	52 Fairly Difficult
<i>Newsweek</i>	50 Fairly Difficult
<i>Harvard Business Review</i>	43 Difficult
<i>New York Times</i>	39 Difficult

<i>Harvard Law Review</i>	32	Difficult
Standard auto insurance policy	10	Very Difficult

**V. The Privacy Notices Get Low Marks for Readability**

**A. Flesch Readability Index for the Privacy Notices**

13. As the following table reveals, 141 of the 168 notices, or 84 percent, scored at the 9<sup>th</sup> grade or higher on the Flesch Readability Index. As noted above, this grade level means that readers at the 9<sup>th</sup> grade level are at the limit of their ability and can *just* cope with the text. For such readers, these notices are not “reasonably understandable.” Indeed, taken as a whole, the 168 notices score a 9.5 grade level on the Flesch Readability Index, which means readers must have completed 9.5 years of school and must be reading at that grade level just to understand a maximum of 50 per cent of the text. The following table is the distribution of the grade levels for the 168 notices. Scores for each notice are listed in Appendix B.

<i>Flesch Readability Index</i>	<i>Number of Notices</i>
Grade 13	1
Grade 12	6
Grade 11	8
Grade 10	33
Grade 9	96
Grade 8	12
Grade 7	12
Grade 6	0
Grade 5	0

14. The average grade level of 9.5 means that readers at that grade level are *at the limit* of their reading ability and can *just* cope with the text, comprehending only 50 percent of what they read. Because readers find it difficult to read at their highest level of reading ability, they normally read two or more grade levels below their reading level and three to five grades lower than their highest level of education. Thus, readers who score a 9.5 on the Flesch Readability Index normally read at the 7<sup>th</sup> grade or lower, which is why literacy experts recommend that documents aimed at a large public audience should be written at the 5<sup>th</sup> grade

level at the highest. If the document is directed to a mass audience, literacy experts recommend that the document be written as low as the 4<sup>th</sup> grade level.

15. These notices are directed to all the residents of Vermont and other states who have any kind of insurance, including such widely held insurance as automobile, homeowner, rental, health, and life insurance. Thus, the audience for these notices is a mass audience, encompassing almost every adult resident of the states, an audience with a wide range of reading ability. In my opinion, to meet the requirement that the notices be “clear and conspicuous” so “that a notice is reasonably understandable.” In my opinion, all of these notices should be written at a Flesch Readability Index *no higher* than the 5<sup>th</sup> grade. Indeed, to ensure that the greatest number of people can read and understand these notices, they should be written at the 4<sup>th</sup> grade level.

**B. Flesch Reading Ease Score of the Privacy Notices**

16. The Flesch Reading Ease score for the 168 notices as a group is 43.59, which means that as a whole the notices are Difficult to read. For comparison, samples of the *Wall Street Journal* and *Harvard Business Review* had a Reading Ease score of 43, while *Time* magazine had a score of 52. Flesch (1979), at 26. The individual scores for the notices reveal how much they fail to be “reasonably understandable.” The following table summarizes the results of the individual scores. (Scores for each notice are listed in Appendix B.)

<i>Flesch Reading Ease Scores</i>	<i>Difficulty</i>	<i>No. of Notices</i>
0-30	Very Difficult	7
30-50	Difficult	138
50-60	Fairly Difficult	23
60-70	Standard	0
70-80	Fairly Easy	0
80-90	Easy	0
90-100	Very Easy	0

The scores range from a low (or very difficult) score of 20.94, to a high (fairly difficult) score of 59.48. No notice achieved a score of Standard, Fairly Easy, Easy, or Very Easy.

17. The Flesch Reading Ease Scale is designed to assess such general reading materials as newspapers, magazines, and business communications. On this scale, “Zero means practically unreadable and 100 means extremely easy. The minimum score for plain English is 65 . . . . *Conversational English for consumers should score at least 80 . . .*” (emphasis added) Rudolf Flesch, *How to Write Plain English: A Book for Consumers and Lawyers*, 24 (Harper & Row, 1979). Not one notice in this group of 168 comes even close to this recommended readability level. Indeed, the 43.59 score for the notices as a whole mean that the residents of Vermont would find these notices as easy to read as an issue of the *Harvard Business Review*. In my opinion the Flesch Reading Ease Scores on these notices demonstrate clearly that for most readers these notices are not “reasonably understandable.” To be “reasonably understandable” to readers whose reading ability is the national average of the 7<sup>th</sup> grade, these notices should score at least 80 on the Flesch Reading Ease Scale. To be “reasonably understandable” to readers whose reading ability is below the national average of the 7<sup>th</sup> grade, these notices should score at least 90 on the Flesch Reading Ease Scale.

**VI. The Privacy Notices Do Not Meet the Standards of the FTC for a “Clear and Conspicuous” Notice and Do Not Follow Well Established Guidelines for Writing a Document in Plain Language.**

18. In addition to scoring poorly on both Flesch readability scales, the privacy notices are not “clear and conspicuous” and do not follow the FTC strategies for writing a “clear and conspicuous” document. The FTC regulations are benchmarks for clarity and provide specific and ample guidance for writing notices in plain language. I have therefore measured the notices against these FTC benchmarks for clarity.

19. The regulations for the GLB Act incorporate many generally accepted principles of plain language. The phrase “clear and conspicuous” is defined to mean “that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.” 16 CFR §313.3(b)(1). Section §313.3(b)(s)(i) of the regulations then states that “You make your notice reasonably understandable if you:”

- present the information in clear, concise sentences, paragraphs, and sections;
- use short explanatory sentences or bullet lists whenever possible;



- use definite, concrete, everyday words and active voice whenever possible;
- avoid multiple negatives;
- avoid legal and highly technical business terminology whenever possible;
- avoid explanations that are imprecise and readily subject to different interpretations;
- use a plain-language heading to call attention to the notice;
- use a typeface and type size that are easy to read;
- provide wide margins and ample line spacing; and
- use boldface or italics for key words.

The State of Vermont has adopted these guidelines in its Rule of Construction for opt in notices for nonpublic personal information (Regulation IH-2001-01, Article I, Section 3 (B)). These strategies echo the SEC's plain English rules as listed in 17 CFR §230.421 and §230.421(b), Securities Act Release No. 33-7497 (January 28, 1998), and the SEC's *Handbook*. The SEC requires that financial disclosure documents be written following these guidelines: use short sentences; bullet lists; definite, concrete, everyday words; the active voice; and avoid multiple negatives; long sentences; jargon and technical terms; and overly complex presentations. Thus, the FTC has in effect adopted the plain language guidelines of the SEC in its regulations. In addition to these guidelines, there is ample guidance for writing financial and other documents in plain language in such books as Rudolf Flesch, *How To Write Plain English: A Book for Lawyers and Consumers* (Harper & Row, 1979); Martine Cutts, *The Plain English Guide*, (Oxford University Press, 1995), and Bryan A. Garner, *Legal Writing in Plain English: A Text With Exercises*, (University of Chicago Press, 2001).

20. The regulations also define "reasonably understandable" by offering the following writing strategies which the notices in question fail to follow.

21. "Present the information in the notice in clear, concise sentences, paragraphs, and sections." §313.3 (b)(2)(i)(A). Both the Flesch Reading Ease scores and the Flesch Readability Index grade levels show that while some of the notices may be written in a concise style, they are not clear. Being concise is not the same as being clear. Most of the notices use exactly the same language as this example from TIG Specialty: "TIG maintains physical, electronic and

procedural safeguards to protect customer information." Although only 12 words long, this sentence is so vague and abstract as to say little if anything, yet this sentence is found in most of the notices.

22. Here are other examples of sentences that are neither clear nor concise. Example one consists of 84 words, while example 4 consists of 80 words. Despite the use of capital letters and periods, example two is syntactically one sentence consisting of 633 words. Even good readers would have trouble deciphering the meaning in these sentences.

1. *We may, as permitted or required by applicable law, disclose your Information to nonaffiliated third parties, such as (i) your insurance agent or broker, (ii) independent claims adjusters, (iii) insurance support organizations, (iv) processing companies, (v) actuarial organizations, (vi) law firms, (vii) other insurance companies involved in an insurance transaction with you, (viii) law enforcement, regulatory, or governmental agencies, (ix) courts or parties therein pursuant to a subpoena or court order, (x) businesses with whom we have a marketing agreement, or (xi) our Affiliates. (Acadia Insurance)*
2. *We will not disclose any personal or privileged information about you that we collect or receive in connection with an insurance transaction without your written authorization unless the disclosure is:*
  1. *To a person other than an insurance institution, agent or insurance support organization, if the disclosure is reasonably necessary:*
    - (a) *To enable the person to perform a business, professional or insurance function for the disclosing insurance institution, agent or insurance support organization and the person agrees not to disclose the information further without the individual's written authorization unless the further disclosure either:*
      - (i) *Would otherwise be permitted by law if made by an insurance institution, agent or insurance support organization; or*
      - (ii) *Is reasonably necessary for the person to perform his function for the disclosing insurance institution, agent or insurance support organization.*

*(b) To enable the person to provide information to the disclosing insurance institution, agent or insurance support organization for the purpose of determining an individual's eligibility for an insurance benefit or payment or detecting or preventing criminal activity, fraud, material misrepresentation or material nondisclosure in connection with an insurance transaction.*

- 2. To an insurance institution, agent, insurance support organization or self-insurer if the information disclosed is limited to that which is reasonably necessary to detect or prevent criminal activity, fraud, material misrepresentation or material nondisclosure in connection with insurance transactions or for either the disclosing or receiving insurance institution, agent or insurance support organization to perform its function in connection with an insurance transaction involving the individual.*
- 3. To a medical care institution or medical professional for the purpose of verifying insurance coverage or benefits, informing an individual of a medical problem of which the individual may not be aware or conducting an operations or service audit, if only the information which is reasonable necessary to accomplish the purposes prescribed by this paragraph is disclosed.*
- 4. To an insurance regulatory authority.*
- 5. To a law enforcement or other governmental authority to protect the interests of the insurance institution, agent or insurance support organization in preventing or prosecuting the perpetration of fraud upon it, or if the insurance institution, agent or insurance support organization reasonably believes that illegal activities have been conducted by the individual.*
- 6. Made for the purpose of conducting actuarial or research studies, except that no individual may be identified in any actuarial or research report, materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed and the actuarial or research organization agrees not to disclose the information unless the disclosure would otherwise be permitted by law if made by an insurance institution, agent or insurance support organization.*

7. *To a person whose only use of the information will be in connection with the marketing of a product or service if:*

*(a) No medical record information, privileged information or personal information relating to an individual's character, personal habits, mode of living or general reputation is disclosed and no classification derived from the information is disclosed.*

*(b) The individual has been given an opportunity to indicate that the individual does not want personal information disclosed for marketing purposes and have given no indication that the individual does not want the information disclosed.*

*(c) The person receiving the information agrees not to use it except in connection with the marketing of a product or service.*

8. *To an affiliate whose only use of the information will be in connection with an audit of the insurance institution or agent or the marketing of an insurance product or service, if the affiliate agrees not to disclose the information for any other purpose or to an unaffiliated person.*

9. *To a group insurance policyholder for the purpose of reporting claims experience or conducting an audit of the insurance institution's or agent's operations or services if the information disclosed is reasonably necessary for the recipient to conduct the review or audit. (Allstate)*

3. *You are entitled to Opt Out of transactions involving the sharing of information, unless the transactions are exempt from Opt Out by law or regulation. The transactions described in the preceding paragraph are examples of exempt transactions. The companies of The Concord Group do not disclose or share information in any way that is subject to Opt Out. If this should change, we will notify you and, at that time, provide an opportunity to Opt Out. (Concord Group Insurance)*

4. *We collect information from non-public sources as follows: Information we receive on applications or other forms and which may include policyholder or claimant name, address, phone number, social security number, date of birth,*

*medical information related to underwriting and claims, and insurance coverage information; Information about transactions with us, our affiliates, or others including information about previous claims or accidents, medical information related to claims, information about the circumstances of your accident or injury (if applicable) and the names of witnesses and other contact information; and inspection services. (National Grange Mutual Insurance)*

5. *We use manual and electronic security procedures to maintain the confidentiality and integrity of personal information in our possession and guard against its unauthorized access. Some techniques we employ to protect information include secured files, user authentication, encryption, firewall technology and the use of detection software. (The Hartford)*
6. *We do not sell your personal information to anyone. We may disclose the following information to entities that perform marketing and administrative services on our behalf or as required or permitted by law for legal, regulatory or other purposes:*
  - *Information we receive from you on applications or other forms, such as your name, address, beneficiaries, Social Security number, family member information, assets, income, and property locations and values.*
  - *Information about your transactions with our affiliates, others, or us, such as your account balance, policy coverage, payment history, the premium you pay, the shares you purchase, preferences, claims information, and the method of your purchase.*
  - *If required for the products you select, information we receive from consumer reporting agencies and other sources, such as your creditworthiness, motor vehicle and driver data, medical and employment information, loss history reports, and additional driver data.*

**(Nationwide)**
7. *Please note that Nationwide Financial does not control information given to us by third parties. So, you will need to contact the third party to correct any information it gave us. (Nationwide)*

23. "Use short explanatory sentences or bullet lists whenever possible." §313.3  
(b)(2)(i)(B). Some of the notices use bullet lists, but often the list is so long that it is a summary of information and lacks any explanation. There are also bullet lists that consist of a long list of bullets filled with information. The bullet list does nothing to clarify or simplify the complex information. Here are examples of sentences that are neither clear nor concise, and numbered or bullet lists that simply overwhelm readers with information. Example three below consists of 354 words. In example four below the entire notice is a numbered list.

1. *We may share information with third parties we call upon to assist us in providing high quality products and services to you. These service providers may include financial institutions such as agents, brokers, reinsurers and excess loss insurers, non-financial institutions such as health care providers, detectors of fraud, auditors, claims handlers, underwriters, and others such as information technology specialists, consultants and attorneys. (Fortis)*
2. *We do not disclose any non public information about our policyholders except as permitted by law. In some cases this information can be disclosed to third parties without your authorization. What follows is a list that includes the types of third party disclosures which are permitted and/or required by law.*
  - *Our Affiliated Companies may use your information for purposes of issuing policies or settling claims;*
  - *Your Agent or Broker, as part of the insurance transaction, does have access to the information in your policy file;*
  - *Parties who perform a business, professional or insurance function for our company, including reinsurance companies;*
  - *Independent claims adjusters, appraiser, investigators and attorneys who need the information to investigate, defend or settle a claim involving you;*
  - *Businesses that help us with data procesing or marketing;*
  - *Businesses that conduct scientific research, including actuarial or underwriting studies;*

- Other insurance companies, agents or consumer reporting agencies as reasonably necessary in connection with any application, policy or claim involving you;
- Insurance support organizations which are established to collect information for the purpose of detecting and preventing insurance crimes or fraudulent claims;
- Medical care institutions or medical professionals to verify coverage or conduct as audit of services;
- Insurance regulatory agencies in connection with the regulation of our business;
- Law enforcement or other governmental authorities to protect our legal interests or in cases of suspected fraud or illegal activities;
- Authorized persons as ordered by a subpoena, warrant or other court order or as required by law;
- Certificate holders or policyholders for the purpose of providing information regarding the status of an insurance transaction; or
- Lienholders, mortgages, lessors or other persons shown on our records as having a legal or beneficial interest in your policy. (National Grange Mutual Insurance) (Emphasis in original)

3. We at The Hartford value our customers' trust and are committed to the responsible management, use and protection of personal information. All insurance companies must collect a certain amount of personal information to service customers and administer business. This notice describes our policy regarding the collection and disclosure of personal information.

1) Personal information, as used in this notice, means information that identifies an individual personally and is not otherwise available to the public. It includes personal financial information such as credit history, income, financial benefits, policy or claim information. It also includes personal health information such as individual medical records or information about an illness, disability or injury.

2) *We collect personal information to support our normal business operations. We may obtain personal information directly from the customer, from customer-related transactions and from third parties, such as a consumer reporting agency. Personal information such as name, address, income, payment history or credit history are gathered from sources such as applications, transactions and consumer reports.*

3) *The Hartford's employees have access to personal information in the course of doing their jobs, which includes underwriting policies, paying claims, developing new products or advising customers of our products and services.*

4) *We may share personal financial information with our affiliates, such as insurance companies, banks, agents, brokerage firms and administrators.*

5) *To service our customers and administer our business, we may also share information with unaffiliated third parties, including agents, brokerage firms, insurance companies, administrators and service providers and as otherwise permitted or required by law. In addition, we may share personal financial information with other unaffiliated third parties who are assisting us by performing services or functions, such as conducting surveys, marketing our products or services, or offering financial products or services under a joint agreement between us and one or more financial institutions.*

***Prior to sharing personal financial information with unaffiliated third parties, except as described in this policy, we will give affected customers an opportunity to direct that such information not be disclosed.***

(Emphasis in original)

6) *We may disclose personal health information with proper written authorization or as otherwise permitted or required by law.*

7) *We use manual and electronic security procedures to maintain the confidentiality and integrity of personal information in our possession and*



*guard against its unauthorized access. Some techniques we employ to protect information include locked files, user authentication, encryption, firewall technology and the use of detection software.*

*We are responsible for identifying information that must be protected, providing an adequate level of protection for that data and granting access to protected data only to individuals who must use it in the performance of their job-related duties. Employees who violate our Privacy Policy will be subject to disciplinary action, which may include termination.*

*8) We will continue to follow this policy regarding personal information even when a customer relationship no longer exists.*

*The Hartford will notify customers of our Privacy Policy at the inception of our business relationship and annually thereafter. The Privacy Policy is subject to change at any time. We will notify customers of any modifications at least annually. (The Hartford)*

24. “Using definite, concrete, everyday words and active voice whenever possible;” §313.3 (b)(2)(i)(C); and “Avoid legal and highly technical business terminology whenever possible.” §313.3 (b)(2)(i)(E). The language of the notices is filled with jargon and business terminology such as “reinsurers,” “nonaffiliated third parties,” “nonaffiliated financial institutions,” “affiliates,” “unaffiliated third parties,” “insurance-support organizations,” “transactions,” “opt in,” “opt out,” and phrases such as “entities that perform marketing and administrative services on our behalf.”

25. “Avoid multiple negatives.” §313.3 (b)(2)(i)(D). Reading research has shown that most readers have a difficult time understanding sentences that have double negatives in them. Among the many sentences with double negatives in these notices are the following. Almost all of the notices have a version of the sentence in example one below.

1. *If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, (other than disclosure permitted or required by law) you may direct us not to make those disclosures. (Liberty Mutual)*

2. *If you do not want your Nonpublic Personal Information disclosed to nonaffiliated third parties, you may “opt out” of those disclosures, meaning that you may tell us not to make those disclosures (other than disclosures that are permitted by law even if you opt out). (Progressive)*

26. “Avoid explanations that are imprecise and readily subject to different interpretations.” §313.3 (b)(2)(i)(F). Here are just a few of the sentences open to interpretation found in these notices. They are certainly less than clear and are written to obscure their real message.

1. *These third parties or joint marketers assist us in informing you about the products and services we have to offer or that may be of interest to you. (Fortis)*
2. *We will not disclose non-public personal information about you to others unless the disclosure is necessary to conduct business and is permitted by law. (Legion)*
3. *We disclose your personal information to any vendor who performs marketing or other administrative services for your benefit, on our behalf (however, any contractual agreement entered into with a vendor for such services would prohibit the vendor from further disclosing or using that information, other than to carry out the purposes for which we contracted to provide on your behalf). (United Health Group)*
4. *Prior to sharing personal financial information with unaffiliated third parties, except as described in this policy, we will give affected customers an opportunity to direct that such information not be disclosed. (The Hartford)*
5. *At the inception of our business relationship and annually after that, we will provide a copy of our current Privacy Policy to those individuals who have obtained our products or services and maintain a continuing business relationship with us. (The Hartford)*
6. *In addition, as permitted by law, we may share personal financial information with other unaffiliated third parties who assist us by performing services or functions, such as conducting surveys, marketing our products or services, or*

*offering financial products or services under a joint agreement between us and one or more financial institutions. (The Hartford)*

27. “Use a plain-language heading to call attention to the notice.” §313.3 (b)(2)(ii)(A). The titles in these notices ranged from “Privacy Policies and Practices” to “Privacy Policy.” None of the notices use the word “rights” in the title, and none tell consumers that the document is about their consumer rights, rights that sound in State and Federal law. All of the notices either directly or indirectly state that the document is about the company’s policy. Here is a sample of titles on the notices: “Your Privacy,” “Privacy Notice,” “Privacy Policy and Practices of The Hartford Financial Services Group,” “Important Privacy Statement,” “Customer Privacy Statement,” and “Notice of Privacy Policy.”

28. “Use a typeface and type size that are easy to read;” §313.3 (b)(2)(ii)(A); and “Provide wide margins and ample line spacing.” §313.3 (b)(2)(ii)(A). There are two varieties of typeface: serif and sans serif. This statement is written in a serif typeface which has small lines at the beginning and ending strokes of each letter. This sentence is written in a sans serif typeface which does not have the small lines on each letter. Generally speaking, serif type is easier to read and is the typeface used in most newspapers and magazines. Progressive, Mutual of Omaha, Safeco, Vermont Mutual, and Kemper are written in sans serif. Type size should also be between 10 and 12 point, but this depends on the style of typeface used. Lines should be between 36 to 64 characters and spaces which is comfortable for most readers. Longer than that and readers will lose their place when they move from line to line. The general rule is the smaller the type size, the shorter the line length. A number of the notices are written in small typeface, and some had exceedingly long lines. Among those using a small type face that is difficult to read are Fortis, State Farm, Kemper, Nationwide, and Progressive. The Kemper notice, for example, has lines that are 118 characters and spaces wide.

29. “Use boldface or italics for key words.” §313.3 (b)(2)(ii)(A). Generally, the notices use boldface type and italics for headings and subheads. None use these graphic devices to highlight key words in the text of the notices.

## **VI. Conclusion**

30. In conclusion, it is my opinion that these privacy notices are not “reasonably understandable.” They are difficult to read, requiring a high level of reader skill, far higher than the average 7<sup>th</sup> grade reading level of the U.S. To meet the requirement that the notices be “clear and conspicuous” so “that a notice is reasonably understandable” the notices should be written at a Flesch Readability Index *no higher* than the 5<sup>th</sup> grade. Indeed, to ensure that the greatest number of people can read and understand these notices, they should be written at the 4<sup>th</sup> grade level. In addition, to be “reasonably understandable” to readers whose reading ability is the national average of the 7<sup>th</sup> grade, these notices should score at least 80 on the Flesch Reading Ease Scale. To be “reasonably understandable” to readers whose reading ability is below the national average of the 7<sup>th</sup> grade, these notices should score at least 90 on the Flesch Reading Ease Scale. The privacy notices also do not follow FTC strategies for writing a “clear and conspicuous” document, and do not follow well established rules for writing a document in plain English.

Executed this \_\_\_\_\_ day of December, 2002, at \_\_\_\_\_.

\_\_\_\_\_  
William Lutz

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

Notary Public: \_\_\_\_\_

My commission expires: \_\_\_\_\_

## APPENDIX A

William D. Lutz  
Professor of English  
Rutgers, The State University of New Jersey  
Camden, New Jersey 08102

### EDUCATION:

J.D., Rutgers School of Law, 1983

Ph.D., University of Nevada, Reno, 1971 (Major in Victorian Literature; Minors in Linguistics and Rhetoric). Dissertation: *The Literary Criticism of James Thomson (B.V.)*.

M.A., Marquette University, 1963 (Major in English).

Thesis: *Pope's Homer: A Comparison of Pope's Translation of Book X of the Odyssey with the Original Greek and a Modern Translation by Robert Fitzgerald*.

A.B., Dominican College, Racine, Wisconsin, 1962 (Major in English; Minors in Classical Greek and Latin). Thesis: *Poetic Technique in E. E. Cummings' Poetry*.

### TEACHING EXPERIENCE:

#### **Rutgers University, Camden, 1971-present:**

**Graduate Courses:** Rhetoric of the Image; Language, Rhetoric, and Law; Applied Linguistics; Modern American Grammar; The Evaluation of Writing; The Teaching of Writing; Theory of Composition; Victorian Literature; Introduction to Graduate Literary Study.

**Undergraduate Courses:** Freshman Composition, Remedial grammar and composition courses, Business Communications, Dialectology, Doublespeak, History of the English Language, Introduction to Literary Study, Literary Masterpieces, Major English Writers, Materials and Methods in Teaching English in the Secondary School, Prose and Poetry of the Romantic Period, Prose and Poetry of the Victorian Period, Rhetoric and the Modern Media, Science Fiction Film, The War Film, Science Fiction Literature, Seminar in Victorian Literature (Tennyson and Browning), Structure of Modern English, Literature and Law, Media and Spectacle (Honors Program), Literary Masterpieces (Honors Program), Language, Literature, and Law (Honors Program).

**Jilin University, Changchung, People's Republic of China, 1983:** Visiting Professor; graduate course in the History of the English Language.

**University of Nevada Reno, 1970-71:** Freshman Composition, Introduction to Linguistics.

**University of Wisconsin, Stevens Point, 1967-70:** Freshman Composition, Introduction to Linguistics, Literary Criticism, Modern English Grammar, Modern Short Story, Survey of English Literature.

**ADMINISTRATIVE SERVICE:**

Acting Director, Graduate Program in Liberal Studies, Rutgers University, Camden, 1999.  
Acting Chair, Department of English, Rutgers University, Camden, 2000.  
Director, English Graduate Program, Rutgers University, Camden, 1991-1997.  
Chair, Department of English, Rutgers University, Camden, 1979-1985.  
Director, New Jersey Basic Skills Assessment Program, New Jersey Department of Higher Education, (on leave from Rutgers), 1977-79  
Director of the Writing Program, Rutgers University, Camden, 1971-77.

**AWARDS:**

Pennsylvania Bar Association Clarity Award for the Promotion of Plain English in Legal Writing, 2001.  
Rutgers University President's Award for Public Service, 2000.  
George Orwell Award for Distinguished Contribution to Honesty and Clarity in Public Language, National Council of Teachers of English, 1996.  
Warren I. Susman Award for Excellence in Teaching, Rutgers University, 1991.  
New Jersey Department of Higher Education Distinguished Service Award, 1989.

**SERVICE TO THE ENGLISH DEPARTMENT:**

Member of the Curriculum, Goals and Resources, Teacher Evaluation, and Graduate committees; chair of Freshman Writing, Personnel, and Graduate committees.

**SERVICE TO THE COLLEGE:**

Member, EOF-Community Liaison and Nursing Admission Committees; Chair of Scholastic Standing Committee; Member of Faculty Senate; Secretary of Faculty Senate; Vice President of Faculty Senate; President of Faculty Senate; Chair of Humanities Appointments and Promotion Committee.

**SERVICE TO THE UNIVERSITY:**

Member, Student Judiciary Committee; Member, University Senate; Executive Committee, University Senate; Senate Committee on Rutgers University and the Public; Basic Skills Task Force; Doctoral Committee for Graduate School of Education.

**SERVICE TO THE COMMUNITY:**

Consultant on Plain Language to the U. S. Securities and Exchange Commission, 1995-99  
Rutgers University Speakers Project.  
Member, Reading and Writing Advisory Committee, New Jersey Basic Skills Council.  
Member, Assessment Advisory Committee, New Jersey Basic Skills Council.  
Member, Test Development Committee for Secondary School Reading Test, New Jersey Department of Education.  
Director of New Jersey Basic Skills Assessment Program, New Jersey Department of Higher Education (on professional leave from Rutgers University) 1977-79.  
Member, Technical Services Committee on Statewide Testing in Writing, New Jersey Department of Higher Education.  
Expert witness on language and advertising, Federal Trade Commission, Washington, D.C.

Consultant on "Educating the Urban Child," Camden City Public Schools.

**GRANTS RECEIVED:**

**EXTERNAL:**

New Jersey State Department of Higher Education Humanities Grant of \$23,048 to teach a series of faculty seminars on Strengthening Expository Writing at Three Colleges, 1989.

New Jersey State Department of Higher Education Humanities Grant of \$28,863 to teach a series of faculty seminars on Writing in the Liberal Arts at Three Colleges, 1988.

New Jersey State Department of Higher Education Humanities Grant of \$20,606 to teach a series of faculty seminars on Writing As A Mode of Learning in the Humanities, 1987.

**INTERNAL:**

Rutgers University Council for the Improvement of Teaching Grant of \$2,500 to teach a series of seminars on Training Graduate Assistants to Use Microcomputers, 1989.

Rutgers University Council for the Improvement of Teaching Grant of \$3,000 to teach a series of faculty seminars on Using Microcomputer in Humanities Courses, 1988.

Rutgers University Research Council Grant of \$500 to update data base of doublespeak, 1988.

Rutgers University Council for the Improvement of Teaching Grant of \$5,000 to teach a series of faculty seminars on Microcomputer Applications in the Humanities, 1987.

Rutgers University Resources for Innovative Teaching Grant of \$3,600 to purchase computer software to use in remedial writing courses and Business Communication course, 1986.

Rutgers University Council for the Improvement of Teaching Grant of \$5,000 to teach a series of faculty seminars on Writing in the Liberal Arts, 1986.

Rutgers University Resources for Innovative Teaching Grant of \$1,500 to purchase computer software to use in remedial writing courses and Business Communication course, 1986.

Rutgers University Research Council Grant of \$750 to prepare data base of doublespeak in preparation of book manuscript, 1986.

Rutgers University Research Council Grant of \$500 for travel to present paper at International Symposium on Educational Testing in Stirling, Scotland, July, 1982.

Rutgers University Council on Instructional Development grant of \$1,800 to integrate the computer-assisted writing program with the Writing Center, 1980.

Rutgers University Council on Instructional Development grant of \$2,400 to prepare a computer-assisted instructional program in remedial writing, 1971.

Rutgers University Research Council grant of \$1,000 on the topic: “The Selected Literary Criticism of James Thomson (B.V.)”, 1975.

Consortium on Research and Development of the Wisconsin State Universities, in cooperation with the U.S. Department of Health, Education and Welfare, Office of Education, grant of \$2,400 on the topic: “A Feasibility Study to Determine the Possibility of Teaching Freshman Composition with a Programmed Text,” 1969.

## **PUBLICATIONS:**

### **Books:**

*Firestorm at Peshtigo: A town, Its People, and the Deadliest Fire in American History*, Henry Holt, 2002 (co-authored with Denise Gess)

*Doublespeak Defined*, HarperCollins, 1999.

*A Plain English Handbook: How to Create Clear SEC Disclosure Documents*, U.S. Securities and Exchange Commission, 1998, (with staff members of the SEC)

*The New Doublespeak: Why No One Knows What Anyone's Saying Anymore*, HarperCollins, 1996.

*The Politics, Policies, and Practices of Assessment in Writing*, Modern Language Association, 1996, (co-edited with Edward White and Sandra Kamusikiri).

*The Cambridge Thesaurus of American English*, Cambridge University Press, 1994.

*The Horizon Reader*, St. Martin's Press, 1992 (co-edited with Harry Brent).

*Beyond Nineteen Eighty-Four: Doublespeak in a Post-Orwellian Age*, National Council of Teachers of English, 1989.

*Doublespeak: From Revenue Enhancement to Terminal Living -- How Government, Business, Advertisers, and Others Use Language to Deceive You*, Harper and Row, 1989; paperback edition 1990.

*The Critical Reader*, Harper and Row, 1989 (co-edited with Harry Brent).

*Webster's New World Thesaurus*, revised edition, Simon and Schuster, 1985.

*The Perennial Reader*, Harper and Row, 1984 (co-edited with Harry Brent).

*Rhetorical Consideration: Essays for Analysis*, Little, Brown Publishers, 1984 (co-edited with Harry Brent).



*Rhetorical Considerations: Essays for Analysis*, Winthrop Publishers, 1974, 1977, 1980 (co-edited with Harry Brent).

*Modern English Reader*, 2nd edition, Prentice-Hall, 1977 (co-edited with Charlton Laird, Robert Gorrell, and Ronald Freeman).

*The Age of Communication*, Goodyear Publishing Company, 1974.

*On Revolution*, Winthrop Publishers, 1971 (co-edited with Harry Brent).

### **Articles in Books:**

“Legal Considerations of Large-Scale Assessment in Writing” in *The Practice and Politics of Assessment in Writing*. Edward White, William Lutz, and Sandra Kamusikiri, eds. Modern Language Association, 1996.

“The World of Doublespeak” in *The State of the Language 1990*. Leonard Michaels and Christopher Ricks, eds. University of California Press, 1990: 254-264; reprinted in *The Sunday Times* (London), 7 January 1990, p. C6.

“Language, Appearance, and Reality: Doublespeak in 1984” in *The Legacy of Language: A Tribute to Charlton Laird*, Phillip Boardman, ed. University of Nevada Press, 1987, pp. 103-119.

“Annotated Bibliography on Writing Assessment” in *Writing Assessment: Issues and Strategies*, Karen Greenberg, Harvey Weiner, and Richard Donovan, eds. Longman, 1986, pp. 183-191.

“How I Write” in *Writers on Writing*, Thomas Waldrep, ed., Random House, 1985, pp. 183-88.

“James Thomson (B.V.)” in *Dictionary of Literary Biography, Victorian Poets After 1850*, Vol. 35, William Fredeman and Ira B. Nadel, eds. Gale Research Co., 1985, pp. 268-280.

“Who Speaks Doublespeak in 1984?” in *Orwell's 1984: The Text and Its Transformation and Legacy*, University of Minnesota, 1984, pp. 39-43.

### **Articles:**

“Nothing in Life is Certain Except Negative Patient Care Outcome and Revenue Enhancement” *Journal of Adolescent and Adult Literacy* (November 2000): 230-233.

“Peace in Site” *Communicators in Business* [London, England] (October 2000): 21.

“Where’s the Word Going?” *Communicators in Business* [London, England] (March 2000): 11-12.

“Worth Reading?” *Communicators in Business* [London, England] (September 1999): 24-27.

“The End of the Flat Web Site” *wallstreetlawyer.com* (July 1999): 8-10.

“Words Worth” *Communicators in Business* [London, England] (May 1999): 14-19.

“Think You Don’t Write Doublespeak? Think Again” *Journal of Employee Communication Management* (November/December 1996): 25-32.

“Visual Doublespeak” *The AIGA Journal of Graphic Design*, Vol. 15 No. 2 (1996): 31-33.

“The Meaning Behind the Word: Being Clear . . . Obscurely” *Two and Two* (Amsterdam, The Netherlands) 3 (December 1990/January 1991): 3-6.

“Doublespeak, the Invasion of Panama, and the Corruption of Public Discourse” *The North American Review* (June 1990): 56-57.

“Doublespeak: *Nineteen Eighty-Four* is Still with Us” *Connoisseur* (March 1990): 70-73

“Doublespeak” *Public Relations Quarterly* 33 (Winter 1988-89): 25-30.

“Fourteen Years of Doublespeak” *English Journal*. Vol. 77, No. 3 (March 1988): 40-42.

“Language, Appearance and Reality: Doublespeak in 1984” *ETC.: A Review of General Semantics*. Vol. 44, No. 4 (Winter 1987): 382-391.

“Doublespeak At Large” *English Today*. Vol. 3 No. 12 (October 1987): 21-24; reprinted in *Anthropology 90/91*, Elvio Angeloni, ed. The Dushkin Publishing Group, 1990: 40-44.

“Doublespeak in 1984” *Halcyon 1986 A Journal of the Humanities*, University of Nevada, Reno, (1986): 75-80.

“Scenario: Setting Parameters for a Task Force to Implement Language Enhancement” *Social Education*. Vol. 48 No. 3 (March 1984): 177-179.

“Corporate Doublespeak: Making Bad News Look Good” *Business and Society Review*, Winter, 1983: 19-22.

“What We Know and Don’t Know About Using Multiple Choice Tests to Assess Writing” *Notes From the National Testing Network in Writing*, January, 1983.

“Unholy Preachings: The Gospel According to the Advertising Council” *Cyrano’s Journal*, Fall, 1982.

*How To Read 55,000 Essays a Year and Love It*. ERIC ED 185 563. Washington, D.C.: GPO, 1980.

*Statewide Testing in New Jersey*. ERIC ED 181 485. Washington, D.C.: GPO, 1979.  
“‘Unswept stone besmear’d with sluttish time’ James Thomson’s Grave” *Notes and Queries*, New Series, Vol. 24, No. 1, February, 1977: 35-36.

“The Death of James Thomson (B.V.)” *Notes and Queries*, New Series, Vol. 24, No. 1, February, 1977: 36-38.

“‘The American Economic System’: The Gospel According to the Advertising Council” *College English*, Vol. 38, April, 1977: 860-865.

“Bonehead English” *English Journal*, October, 1975.

“On Training Teachers of Remedial English” *Freshman English News*, Fall, 1973.

“Teaching Minority Students: Some Additional Comments” *Freshman English News*, December, 1972.

“Making Freshman English a Happening” *College Composition and Communication*, February, 1971.

### **Monographs:**

“The Annual Report in Plain Language” Mead Annual Report Conference, October 3-4, 1996, New York.

“Doublespeak: A Brief History, Definition, and Bibliography, with a List of Award Winners, 1974-1990” Concept Paper No. 2, National Council of Teachers of English, 1991.

“A Feasibility Study to Determine the Possibility of Teaching Freshman Composition with a Programmed Text” *The Consortium on Research and Development of the Wisconsin State Universities*, Wisconsin State University, Stevens Point, 1969.

### **EDITORIAL:**

Editor, *The Samsung Magazine*, 1997-2000.

Editor, *Quarterly Review of Doublespeak*, 1980-1994.

Contributing Editor, *The Oxford Companion to the English Language*, 1988-90.

Contributing Editor, *Longman Bibliography of Composition and Rhetoric 1984-1985*, Erika Lindemann, ed. (Longman, 1987).

### **PAPERS PRESENTED AT INTERNATIONAL CONFERENCES:**

Global Conversations on Language and Literacy, University of Bordeaux, Bordeaux, France, 1998.

Global Conversations on Language and Literacy, Heidelberg University, Heidelberg, Germany, 1996.

Global Conversations on Language and Literacy, Oxford University, England, 1994.  
Fourth International Conference on the Teaching of English, Ottawa, Canada, 1986.  
Third International Conference on the Teaching of English, Michigan State University, 1984.  
Forum for Interdisciplinary Research International Conference on Language Policy and Social Problems, Curacao, The Netherlands Antilles, 1983.  
Fifth International Symposium on Educational Testing, University of Stirling, Scotland, 1982.  
Forum for Interdisciplinary Research International Conference on Language Policy and Social Problems, Cancun, Mexico, 1981.

#### **PAPERS PRESENTED AT NATIONAL CONFERENCES:**

College English Association: 1979;  
Conference on College Composition and Communication: 1969, 1970, 1972, 1974, 1976, 1977, 1978, 1979, 1981, 1983, 1984, 1987, 1990, 1991, 1993;  
Conference on Twentieth Century Literature: 1975;  
Modern Language Association: 1979, 1982, 1992, 1993, 1996;  
National Association for Remedial/Developmental Studies in Post-Secondary Education: 1978, 1979;  
National Council on Measurement in Education: 1983;  
National Council of Teachers of English: 1971, 1974, 1976, 1977, 1980, 1981, 1993;  
National Testing Network in Writing Conference: 1985, 1986, 1987;  
Seventh Conference on Learning in Higher Education, 1986;  
Southeastern Conference on English in the Two-Year College, 1987, 1989;  
Speech Communication Association: 1980.

#### **LECTURES GIVEN BY INVITATION:**

(partial list)

Dyson Humanities Lecture, Center for Applied Ethics, Pace University, New York, 1987.  
Jane Globus Lecture in the Humanities, Baruch College, City University of New York, 1987.  
Chautauqua Lecture, Missouri Western State University, 1990.  
Federal Executive Institute, Charlottesville, VA, 1991.  
Crypto-Linguistic Association, National Security Agency, Fort Meade, MD, 1990.  
National Association of Government Communicators, Washington, D.C., 1990.  
Radio and Television News Directors Association, 1990.  
Administrative Conference of the United States, Washington, D.C., 1989.  
Wisconsin Intellectual Freedom Coalition, Milwaukee, 1984.  
The Miracle of Language: A Symposium in Honor of Charlton Laird, University of Nevada, Reno, 1984.  
Institute on National Affairs, Iowa State University, 1984.  
Ohio Wesleyan University, 1984.  
University of San Diego, 1984.  
University of Wisconsin - Whitewater, 1984.  
Canadian Council of Teachers of English, 1984.  
York University, Downsview, Ontario, Canada, 1983.  
Texas Library Association, 1984.

Conference on Orwell's 1984: The Text and Its Transformation and Legacy, University of Minnesota, 1984.

**POSITIONS HELD IN PROFESSIONAL ORGANIZATIONS:**

Executive Committee, Division on Language and Society, Modern Language Association, 1985-1990.

Executive Committee, Delaware Valley Writing Council, 1984-85.

President, New Jersey College English Association, 1983-85.

Delegate Assembly, Modern Language Association, 1980-82.

Chair of the Committee on Public Doublespeak, National Council of Teachers of English, 1978-1994.

Commission on the English Language, National Council of Teachers of English, 1978-81.

Executive Committee, Conference on College Composition and Communication, 1976-79.

College Section Executive Committee, National Council of Teachers of English, 1974-77.

Chair, Executive Committee, College and University Conference, Wisconsin, 1969-70.

**PROFESSIONAL ACTIVITIES:**

Reader for *College English* and *College Composition and Communication*.

Consultant on computers and writing for Salem County College and Middlesex County College.

Chief Reader, General Educational Development Testing Service essay reading, 1984.

Consultant on writing assessment for General Educational Testing Service, Maryland State Department of Education, Maryland Board of Higher Education, Florida Department of Education, Louisiana Technological University.

Evaluator of writing programs at Borough of Manhattan Community College, New York; Hunter College, New York; Florida State University Board of Regents; Camden County College, New Jersey; Burlington County College, New Jersey; Kean College of New Jersey.

**MEMBERSHIPS:**

American Bar Association

American Dialect Society

North American Dictionary Association

Pennsylvania Bar Association

Rhetoric Society of America

**SELECTED LIST OF MEDIA APPEARANCES:**

**Profiled on:** CBS Evening News with Dan Rather (CBS Television Network); CNN Headline News (CNN Cable Television); New Jersey Network News (Public Television); The Osgood File (Charles Osgood, CBS Network Radio).

**Interviewed on:** MacNeil-Lehrer News Report (PBS Television); Walter Cronkite Special (CBS Television Network); Today Show (3 appearances, NBC Television Network); CBS Nightwatch (CBS Television Network); Larry King Show (2 appearances, Mutual

Broadcasting System, Radio); Booknotes (C-SPAN Cable Television); Dick Cavett Show (CNBC Cable Television).

**Invited Commentary on:** Today Show (NBC Television Network); Monitor News (The Discovery Channel, Cable Television); Morning Edition, National Public Radio.

**Narrator and Host:** 30 minute PBS program “Doublespeak” produced by WNET Channel 13, New York, and syndicated on public television stations across the United States as part of its “Currents” series.

**EXPERT ON LANGUAGE IN:**

*Walter V. Thiemann, et al. v. OHSL Financial Corp.*

Michael Bruatigam, Esq.  
Gene Mesh and Associates  
2605 Burnet Avenue  
Cincinnati, Ohio 45219

*In Re America Online, Inc. Version 5.0 Software Litigation*

Reed R. Katherine, Esq.  
Milberg Weiss Bershad Hynes & Leach  
100 Pine Street, Suite 2600  
San Francisco, California 94111

*Federated Management Co. v. Coopers & Lybrand*

Leo R. Beus, Esq.  
Beus, Gilbert & Devitt, P.L.L.C.  
Suite 1000 Great American Tower  
3200 North Central Avenue  
Phoenix, AZ 85012-2417

*Hicks v. Nationwide*

Marian McGuire, Esq.  
Milberg Weiss Bershad Specthrie & Lerach  
225 Broadway  
2000 Coast Savings Tower  
San Diego, California 92101-5050

*Sprague v. Qualcomm, Inc.*

Michelle M. Ciccarelli, Esq.  
Milberg Weiss Bershad Hynes & Lerach  
600 West Broadway  
1800 One America Plaza  
San Diego, California 92101-3356

*JVC v. Singh*

Roberta Jacobs-Meadway, Esq.  
Panitch Schwarze Jacobs & Nadel

1601 Market Street, 36th Floor  
Philadelphia, Pennsylvania 19103

*Selective Insurance Company v. Raffa Construction*

Marie A. Cappuccio, Esq.  
Raso & Cappuccio, P.C.  
847-A Twelfth Street  
Route 54  
Hammonton, New Jersey 08037

*Eastabrooks v. UNUM*

Arthur J. Seidner, Esq.  
Glenview Corporate Center  
3220 Tillman Drive, Suite 100  
Bensalem, Pennsylvania 19020

*Cosans v. Division of State Police*

Ronald J. Cappuccio, Esq.  
1409 Kings Highway North, Suite 2A  
Cherry Hill, New Jersey 08034

*Cindy Blank v. Mutual of Omaha Insurance Company et al.*

Arthur J. Seidner, Esq.  
Glenview Corporate Center  
3220 Tillman Drive, Suite 100  
Bensalem, Pennsylvania 19020



**APPENDIX B\***  
**Readability Scores for 168 Privacy Notices**

Privacy Notice	Flesch Reading Ease Score	Flesch Readability Index
Acadia	35.72	10.8
Allstate A	47.99	9.3
Allstate B	30.68	12.0
Allstate C	43.75	9.6
Allstate D	48.03	9.0
Concord General A	35.61	10.5
Concord General B	40.50	9.8
Concord General C	36.29	10.4
Concord General D	40.37	9.8
Concord General E	44.55	9.3
Fortis A	43.05	9.7
Fortis B	40.03	10.1
Fortis C	39.94	10.1
Fortis D	42.76	9.8
Fortis E	42.08	9.9
The Hartford A	23.96	12.2
The Hartford B	24.88	12.4
The Hartford C	30.45	11.6
Kemper	48.29	9.0
Legion	41.32	10
Liberty Mutual A	35.11	11
Liberty Mutual B	38.52	10.4
Liberty Mutual C	36.40	10.7
Mutual of Omaha 1	51.07	8.6

Mutual of Omaha 2	46.21	9.3
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Privacy Notice	Flesch Reading Ease Score	Flesch Readability Index
Mutual of Omaha 3	49.53	8.9
Mutual of Omaha 4	33.25	11
Mutual of Omaha 5	47.19	9.2
Mutual of Omaha 6	32.93	10.8
Mutual of Omaha 7	32.93	10.8
Mutual of Omaha 8	46.56	9.3
Mutual of Omaha 9	32.35	11.1
Mutual of Omaha 10	37.96	10.4
Mutual of Omaha 11	47.53	9.2
Mutual of Omaha 12	46.05	9.4
Mutual of Omaha 13	50.08	8.8
Mutual of Omaha 14	47.53	9.2
Mutual of Omaha 15	45.96	9.4
Mutual of Omaha 16	39.89	10
Mutual of Omaha 17	37.19	10.4
Mutual of Omaha 18	39.89	10
Mutual of Omaha 19	51.36	8.5
Mutual of Omaha 20	39.87	10.1
Mutual of Omaha 21	42.64	9.7
Mutual of Omaha 22	45.52	9.3
Mutual of Omaha 23	45.89	9.4
National Grange 1	40.03	9.8
National Grange 2	38.11	10.2
National Grange 3	22.93	12.6

National Grange 4	42.44	9.6
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Privacy Notice	Flesch Reading Ease Score	Flesch Readability Index
National Grange 5	41.55	9.6
National Grange 6	40.40	9.6
National Grange 7	37.22	10.2
National Grange 8	29.86	11.5
National Grange 9	41.79	9.8
Nationwide A	40.09	10
Nationwide B	41.00	9.9
Nationwide C	46.09	9.2
Nationwide D	42.72	9.6
Nationwide E	40.84	9.8
Nationwide F	41.77	9.6
Nationwide G	46.94	9.2
Nationwide H	42.57	9.6
Nationwide I	44.18	9.4
Nationwide J	43.73	9.4
Nationwide K	45.04	9.3
Nationwide L	37.23	10.3
Peerless A	30.16	11.5
Peerless B	20.94	13
Peerless C	25.23	12.2
Peerless D	21.53	12.8
Progressive Casualty A	40.70	9.9
Progressive Casualty AA	43.23	10.2
Progressive Casualty B	42.92	9.6
Progressive Casualty C	43.62	9.5
Progressive Casualty D	59.48	7.1

Progressive Casualty E	58.03	7.2
Privacy Notice	Flesch Reading Ease Score	Flesch Readability Index
Progressive Casualty F	56.18	7.4
Progressive Casualty G	55.75	7.5
Progressive Casualty H	43.21	9.5
Progressive Casualty I	42.67	9.6
Progressive Casualty J	43.21	9.5
Progressive Casualty K	58.92	7.6
Progressive Casualty L	45.20	9.1
Progressive Casualty M	59.48	7.2
Progressive Casualty N	42.02	9.7
Progressive Casualty O	43.13	9.5
Progressive Casualty P	43.29	9.5
Progressive Casualty Q	56.18	7.4
Progressive Casualty R	43.58	9.3
Progressive Casualty S	43.48	9.4
Progressive Casualty T	53.20	8.7
Progressive Casualty U	47.11	9.6
Progressive Casualty V	47.93	9.2
Progressive Casualty W	54.31	8.6
Progressive Casualty X	53.62	8.6
Progressive Casualty Y	48.55	9.2
Progressive Casualty Z	51.06	9
Progressive Specialty A	40.70	9.9
Progressive Specialty AA	43.23	10.2
Progressive Specialty B	42.92	9.6
Progressive Specialty C	43.62	9.5

Progressive Specialty D	56.18	7.4
Progressive Specialty E	55.75	7.5
Privacy Notice	Flesch Reading Ease Score	Flesch Readability Index
Progressive Specialty F	59.48	7.1
Progressive Specialty G	58.03	7.2
Progressive Specialty H	43.21	9.5
Progressive Specialty I	45.20	9.1
Progressive Specialty J	43.58	9.3
Progressive Specialty K	58.92	7.6
Progressive Specialty L	42.67	9.6
Progressive Specialty M	59.48	7.2
Progressive Specialty N	42.20	9.7
Progressive Specialty O	58.03	7.2
Progressive Specialty P	43.58	9.3
Progressive Specialty Q	43.21	9.5
Progressive Specialty R	43.58	9.3
Progressive Specialty S	43.48	9.4
Progressive Specialty T	48.55	9.2
Progressive Specialty U	47.11	9.6
Progressive Specialty V	51.06	9.0
Progressive Specialty W	47.93	9.2
Progressive Specialty X	54.31	8.6
Progressive Specialty Y	53.20	8.7
Progressive Specialty Z	53.62	8.6
Safeco A	42.30	9.6
Safeco B	42.27	9.7
State Farm A&B	50.57	8.8

State Farm C&D	48.11	9.1
State Farm E	49.05	9.1
TIG A	35.40	10.6

Privacy Notice	Flesch Reading Ease Score	Flesch Readability Index
TIG B	32.65	11
United Health Care A	42.69	9.9
United Health Care B	36.25	10.8
Vermont Mutual	32.91	11.1

\*Because some attachments are composed of more than one privacy notice, the number of notices listed here do not total 168. For example, there are 45 notices in the 12 attachments submitted by Nationwide. Since the notices in each attachment were almost identical, and since the company submitted them as a group, each attachment is treated as a unit. Those notices written in Spanish are excluded from this analysis.