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Literacy and the Courts

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Related story: [National Assessment of Adult Literacy and Literacy among Prison Inmates](#)

Alteneder, Katherine. (Summer 2007). "Literacy and the Courts." *Alaska Justice Forum* 24(2): 1, 5-8. The findings of the 2003 National Assessment of Adult Literacy reveal that the average level of literacy in the United States is not particularly high. Though startling, the survey's findings help explain why so many employees, clients and customers in everyday situations often fail to complete forms accurately, do not provide information in a timely manner, do not demonstrate knowledge of written material that has been provided, or do not follow instructions. Most are not being oppositional, lazy or uncooperative; rather, the average American simply cannot process the information provided. Within the courts, this crisis in literacy has been amplified by the rise of self-represented litigants trying to navigate a system designed for use by lawyers. This article discusses literacy in relation to self-representation in Alaska courts, particularly in domestic relationship cases, which have a high proportion of self-represented litigants.

Editor's Note

Since the format of a document can affect comprehension, for the samples of test questions and reading selections displayed as figures throughout this issue, we have attempted to replicate as closely as possible the original format of the item. Because of layout constraints, however, it was not always possible to achieve an exact duplicate.

The law is a labyrinth of possibilities and interpretations, girded by time and place as determined by hindsight. It is somewhat like a casbah. In

See also:

its buildings we find the parent trying to get child support, the loved ones of a murder victim seeking justice, the couple tangled in a divorce, the adult child seeking the guardianship of a parent suffering from dementia, the building contractor collecting a debt, landlords, tenants and many more individuals, businesses and governments resolving disputes under the rule of law.

- Courts
- Fairness & access in the courts

The only requirement for entry to this legal casbah is possession of a specific bundle of skills: the ability to express ideas, analyze, argue, interpret, and compute in both written and oral forms. In other words, access to the courts turns on literacy—which one would not expect to be a concern in a country with free and compulsory education. The ugly truth, however, is that a very high percentage of Americans cannot read or comprehend everyday written materials.

The findings of a survey conducted by the National Center for Educational Statistics reveal that the average level of literacy is not particularly high. The 2003 National Assessment of Adult Literacy surveyed the literacy skills of a sample of over 19,000 individuals in the nation's households and state and federal prisons. Scores were classified according to four performance levels: below basic, basic, intermediate, and proficient. The average scores for prose and document literacy fell at the low end of the intermediate range, while the average score for quantitative literacy fell at the high end of the basic level. (See Table 1 in the accompanying article "National Assessment of Adult Literacy and Literacy among Prison Inmates" for a description of abilities tested and score levels.)

The findings of the survey are startling, but once explored explain why so many employees, clients and customers in everyday situations often fail to complete forms accurately, do not provide information in a timely manner, do not demonstrate knowledge of written material that has been provided, or do not follow instructions. The reality is that most are not being oppositional, lazy or uncooperative; rather, the average American simply cannot process the information provided. And within the courts, this crisis in literacy has been amplified by the rise of self-represented litigants trying to navigate a system designed for use by lawyers.

Increase in the Self-Represented

During the last ten years, state courts throughout the country have experienced a steady increase in the number of self-represented litigants in civil cases, resulting in a situation in which self-representation is now the norm. Alaska's experience is no different. This has particular significance in domestic relations cases because of the reverberating impact these decisions have on parents and children. The Alaska Family Law Self-Help Center estimates that 25 percent of contested domestic relations cases in Alaska have lawyer representation for both parties, 50 percent have lawyers on one side, and 25 percent have no lawyer involvement. For uncontested and post-judgment domestic relations cases, it is estimated that 95 percent of the parties are without lawyers.

Being your own lawyer—which is the position of a self-represented litigant—requires the ability to engage in the court process fully; there are no special rules for people without lawyers. Our courts are adversarial forums, in which the role of the judge or judicial officer is to be neutral and impartial, making decisions within a complex framework of legal precedents, statutory authority, and evidentiary and procedural rules. It takes years of education and experience to become competent operating within this framework, and more to excel. In a system with lawyer representation, the lawyers frame the issues and arguments and the judge decides.

However, in today's courts, the judge is often in the courtroom with two lay people, who likely

lack the necessary reading and comprehension skills. The judge must remain neutral and impartial, while the lay people must, in theory, read and analyze the relevant law, apply their facts to the law, construct a strategy for their case, draft clear, concise and persuasive legal documents, engage with evidentiary and procedural rules to their advantage, follow all pre-trial orders, and finally prepare for the day in court when they finally engage their adversary in a way authorized by rule and law. Again, this is theory. In reality, lay people are struggling to complete very basic forms, and many just hope that the judge will “see what they mean.”

The purpose of this article is to elevate public understanding of the importance of literacy for effective participation in the court process, not to assess how the courts are meeting this challenge. Nevertheless, it’s worthy of mention that litigants in Alaska benefit from some of the nations most pro se friendly case law, as well as an institutional commitment to do all that is possible within ethical constraints to make the courts and justice meaningfully accessible.

To understand fully the impact literacy skills have on an individual’s ability to represent themselves in court, it is instructive to compare the tasks presented by the National Adult Literacy Survey (NAAL) to the tasks required by the court for individuals in domestic relations cases. Results from the NAAL formed the basis of the report mentioned above.

Assessing Literacy

Literacy is often assessed by evaluating grade-level reading skills, but this can provide a rather flat perspective without insights into an individual’s ability to function in the world. (Grade-level analysis can, however, be a useful tool for writers and editors as they draft forms and publications for public consumption. Professional accessible-language editors and consultants recommend that materials designed for the general public in government, law and medicine be written at the fifth grade level. See sidebar “Plain Language.”) The NAAL utilizes a different approach—one which is skills-based and unrelated to formal education levels. It looks at prose literacy, document literacy, and quantitative literacy.

Table 1 compares NAAL tasks with some basic tasks commonly encountered in court processes.

Table 1. Comparison of NAAL Tasks and Literacy Levels with Analogous Tasks Encountered in Court Processes

NAAL task	Skill evaluated	Percent who answered incorrectly	Analogous court task
Read one-page flier on SSI eligibility and find specific information. (Figure 1)	Prose literacy	58 %	Reading any court form instructions, although most comprise numerous, single-spaced pages. (Figure 3)
Enter 3 pieces of information in a maintenance log on the correct line. (Figure 2)	Document literacy	50 %	Entering information onto any court form, although court forms often require hundreds of pieces of information. (Figure 4)
Using the one page SSI flier, calculate the annual benefit for a couple. (Figure 1)	Quantitative literacy	62 %	Calculating annual income from a pay stub. This and far more complex calculations are required for child support. (Figure 4)

Figure 1. NAAL Test Item: Supplemental Security Income

ARE YOU ELIGIBLE FOR SSI?

WHAT IS SSI?

SSI stands for supplemental security income. It is a Federal program run by the Social Security Administration. It pays monthly checks to aged, blind, and disabled people who do not have much income or resources.

Under SSI, *aged* means you are 65 or older. *Blind* means the vision in your better eye is 20/200 or less or you have a limited visual field of 20 degrees or less. *Disabled* means you have a severe physical or mental condition that keeps you from doing any substantial gainful work, and medical evidence shows it is expected to last at least 12 months or result in death.

HOW MUCH IS AN SSI MONTHLY PAYMENT?

The basic Federal monthly payment is:

- \$368 for an eligible person
- \$553 for an eligible couple

But, you may not get this exact amount. You may get less if you, your spouse, or your parents (if you are under 18) have other income. Or you may get *more* if you live in a State that adds money to the Federal payment.

RESOURCES AND INCOME

To get SSI, your resources and income must be below certain amounts. Both resources and income are explained below.

RESOURCES

Resources are the things you own, such as real estate, personal belongings, cash, bank accounts, or stocks and bonds. We do not count all of your resources. For example, we do not count your home or some of your personal belongings. And we usually do not count your car.

You may be able to get SSI if the resources we count are less than:

- \$2,000 for an eligible person
- \$3,000 for a couple

INCOME

Income means earnings, Social Security checks, and pension plus non-cash items you receive such as food, clothing, or shelter.

If you do not work, you may be able to get SSI if all your income adds up to less than:

- \$388 a month for an individual
- \$573 a month for a couple

If you work, you may be able to get SSI if your earnings are less than:

- \$821 a month for an individual
- \$1,191 a month for a couple

(These figures may be higher if you live in a State that adds money to the Federal payment.)

OTHER RULES YOU SHOULD KNOW

Before you can get SSI checks, you must meet these other requirements:

- Be a U.S. citizen, or a lawfully admitted immigrant, or an alien permanently residing in the U.S. "under color of law";
- Be a resident of the U.S. or the Northern Mariana Islands; and
- Apply for any other money benefits that may be due you.

ALSO: If you are disabled, you must accept vocational rehabilitation if offered to you. And if you are a disabled drug addict or alcoholic, you must accept available treatment and receive SSI payments through a representative payee.

OTHER BENEFITS

Being eligible for SSI also means you may be eligible for other benefits such as food stamps, Medicaid, and social services. For information about these benefits, ask the people at your local Social Security office.

HOW TO APPLY FOR BENEFITS

It is easy. Just call any Social Security office. You can find the phone number in the telephone directory under "Social Security Administration" or "U.S. Government."

Source: National Center for Education Statistics, National Assessment of Adult Literacy

6. enter hundreds of pieces of information in the appropriate blanks on the fifteen-page Petition for Dissolution (see Figure 4).

Figure 3. Excerpt of Instructions for Dissolution of Marriage, Alaska Court System

Procedure to Follow

To get a decree dissolving your marriage, you must do the following:

...

2. Fill out the following three forms attached to these instructions:
 - a. Form DR-105, Petition for Dissolution of Marriage. See the instructions beginning on page 5. If you want shared custody, you will also have to fill out form DR-306 (included in this packet) and attach it to the petition. For “divided” custody, attach DR-307 instead; and for “hybrid” custody, attach DR-308. Neither DR-307 nor DR-308 are included in this packet. You can get them at the court or on the court website. See the discussion of physical custody on page 10 for definitions of these terms.
 - b. Form DR-314, Information Sheet
 - c. Form VS-401, Certificate of Divorce, Dissolution of Marriage or Annulment. Complete the “Parties’ Information” block, lines 11-30. If you make a mistake, get a new form from the court. This form will be sent to the Bureau of Vital Statistics after the dissolution is granted, and the Bureau will not accept forms with crossouts, whiteouts, or other corrections on them. The Bureau also will not accept photocopies of this form.

...

Source: Alaska Court System, Form DR-10, “Dissolution of Marriage Instructions for Husband and Wife Filing Together When There are Minor Children of the Marriage”, p. 3 of 17.

Figure 4. Excerpt of Petition for Dissolution of Marriage, Alaska Court System

II. FINANCIAL INFORMATION AND AGREEMENT OF PETITIONERS

Each party must attach a copy of his or her most recent federal tax return and most recent pay stubs to verify income and deductions.

The following income and deductions are monthly yearly.
If your work is seasonal, show yearly income.

A. Gross Income (Do not list ATAP or SSI below.)	Husband	Wife
Gross Wages	\$ _____	\$ _____
Value of employer-provided housing/food/etc.	\$ _____	\$ _____
Unemployment Compensation	\$ _____	\$ _____
Permanent fund dividend	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
TOTAL INCOME	\$ _____	\$ _____

B. Deductions Allowable Under Civil Rule 90.3		
Federal, state and local income tax	\$ _____	\$ _____
Social security tax or self-employment tax	\$ _____	\$ _____
Medicare tax	\$ _____	\$ _____
Employment security tax	\$ _____	\$ _____
Mandatory retirement contributions	\$ _____	\$ _____
Mandatory union dues	\$ _____	\$ _____
Voluntary retirement contributions if plan earnings are tax-free or tax-deferred, up to 7.5% of gross wages and self-employment income when combined with mandatory contributions	\$ _____	\$ _____
Other mandatory deductions (specify): _____	\$ _____	\$ _____
_____	\$ _____	\$ _____
Child support/alimony ordered in other cases and currently being paid	\$ _____	\$ _____
Child support for children from prior relationships living with this parent, calculated under Civil Rule 90.3	\$ _____	\$ _____
Work-related child care for children of this marriage	\$ _____	\$ _____
TOTAL DEDUCTIONS	\$ _____	\$ _____

C. Net Income		
TOTAL INCOME from section A	\$ _____	\$ _____
TOTAL DEDUCTIONS from section B	\$ _____	\$ _____
Subtract deductions from income to get		
NET INCOME	\$ _____	\$ _____

Husband's Signature

Wife's Signature

Page 3 of 15
DR-105 (10/06)(cs)
PETITION FOR DISSOLUTION OF MARRIAGE (WITH CHILDREN)

AS 25.24.200-.260
Civil Rule 90.1(a), f(2)(A)(B), (i)(1)

Source: Alaska Court System, Form DR-105, "Petition for Dissolution of Marriage (with Children)", p. 3 of 15.

Once the dissolution is completed, a hearing is scheduled for at least thirty days in the future, which both spouses must attend unless they have completed an Appearance and Waiver form. The hearing is usually brief, perhaps fifteen minutes. The judicial officer reviews the petition to ensure that it satisfies the legal standards of a fair and equitable division of property and that the custody and visitation plan is in the best interests of the children. The court inquires to determine whether

there is any appearance of coercion and confirms that what is stated in the petition reflects the couple's wishes.

The parties are not called upon to make legal argument and generally speak very little. The judicial officer advises the parties whether he or she will recommend approval of the petition; if so, the parties can expect to receive the final decree in the mail within several weeks. Unless there has been a deficiency in the petition, or the petition is denied, the parties are not required to file any additional paperwork or make any further court appearances. Generally, after fifteen minutes in the courtroom, the parties are done.

In terms of complexity of process, the dissolution is simple when compared to contested divorce proceedings, which require opposing parties to file numerous responsive documents, as well as exchange comprehensive discovery during the pre-trial period as issues are identified and narrowed. During this pre-trial phase, evidentiary or motion hearings may be necessary. When the trial finally arrives, parties are required to examine and cross-examine witnesses and exhibits, as well as make legal argument, all in accordance with the rules of evidence. Subsequent to trial, parties must be prepared to draft documents, as well as evaluate issues for appeal.

In terms of activities requiring prose, document and quantitative literacy, we see that the dissolution process requires tasks in each of these areas, although the NAAL survey tasks do not require an individual to manipulate nearly as much information as required in the dissolution.

For instance, the prose task of reading a one-page flier on SSI eligibility and subsequently answering the question, "If you are working, you may be able to get SSI as an individual if you earn less than what amount?" is somewhat similar to an individual reading the dissolution instructions and then being asked, "How many days can elapse between each spouse's signature?"

Each assignment demands that an individual read the text, comprehend the text, and subsequently search the text for the right answer. However, a side-by-side comparison of the texts in which this information is embedded suggests that the dissolution task is significantly more difficult (Figures 1–4). The dissolution instructions comprise seventeen pages of single-spaced, full-page text, without any readily apparent suggestion of where the answer might be. The SSI flier has been drafted using many plain-language editing techniques: it is less than one page; it has narrow columns, white space, bolded section headings that serve as signposts, serif font, and easy-to-read mini-paragraphs with check-boxes used as bullets to draw attention to important specifics regarding income requirements, payments and essential rules. Even presented in this way, 58 percent of American adults could not find this specific piece of information: as a working individual, you may be able to receive SSI if you earn less than \$821 per month. It would not be unreasonable then to project that more than half of the self-represented litigants attempting to digest instructions for a marital dissolution will miss key pieces of important information and will not be able to locate the answers to their questions.

With the document and quantitative exercises, we see a similar pattern, with the NAAL assignment answered incorrectly by 50 percent or more of the general population, while presenting a significantly less complicated task than those required by a dissolution.

The document test (referenced in Table 1 and Figure 2) was answered incorrectly by 50 percent of the respondents, with only three pieces of information needing to be transferred to the log sheet. A dissolution (Figure 4) requires hundreds of pieces of information. Similarly in the quantitative test, which 62 percent answered incorrectly, one piece of information needed to be found (the monthly benefit), and one computation completed (monthly benefit X 12 = annual benefit); whereas the dissolution requires many more computations (Figure 4).

With this discussion in mind, we must recognize that this court proceeding—one of the easiest—is, in fact, a fairly incomprehensible procedure for most. And in reality, the majority of dissolution petitions are not completed adequately. During dissolution hearings, bench officers are regularly called upon to take testimony to clarify visitation schedules, gather earnings information, and perform the necessary child-support calculations. In other words, the court has come to accept that it will have to do the people's homework. In addition to real-time facilitation provided during hearings, the court now produces forms and instructions in plain English, provides extensive self-help services for self-represented litigants in domestic relations cases, and provides judicial education about the literacy crisis and tips for editing in plain English.

It is also worth noting that while the NAAL survey did not assess people's ability to write, writing ability is one of the most critical skills in the bundle of literacy skills required when participating in the court system. Judges are often called upon to muddle through garbled text in an effort to understand what a litigant is requesting and to parse the relevant legal information from the emotional. Interpreting these communications and fitting them into the law is often a Herculean task. The following is an example of an e-mail inquiry to the Alaska Family Law Self-Help Center. (It has been edited only to protect privacy.)

I am Emailing to find out if can make Appointment to talk to over case I have down in [WA]. I need to file here in Alaska. Youcame Highly recommended by [Bob]. My email [sally@dotcom] My home Number is [555-1212] or my Husband [555-1212].Yes by way My name Is [Sally] My Husband is [John]/[Jack]/ is what everyone calls him. I need to get in touch with as soon possible or have you referr me to someone....I really dont have idea about to go about this so hope you have Patience..lol...I have 42 days to get this filed here in alaska asking for full custody of my Girls which case was done in [WA] that is were resided, but kids afraid to go back home & incident report from person who say My Ex & his Wife so drunk & had gun driveing with My daughters not frist time she only one willing to file incident report due that people are afraid of him in Home down...small town..I have lived here in AK for pass 3 years....Thank You For any help you can give to me....

As this email illustrates, in addition to basic literacy challenges, individuals in court are extremely stressed by their circumstances and are facing a myriad of confusing requirements that require multiple tasks to be completed within tight timelines. They are often in a panic and firing blind. Under these conditions, literacy drops for everyone. To complicate matters even further, some studies show that the marginally literate are generally unaware that they are not reading, comprehending or writing at a proficient level and therefore honestly do not appreciate that they are not communicating.

* * *

America's literacy crisis has serious repercussions for the justice system. The causes of this crisis are complex and beyond the scope of this article; however, the crisis is real, and since successful communications are essential for justice to be delivered, all providers within the justice system must be aware of these issues, and not presuppose that clients, customers, or consumers have skills adequate to the demands of a particular process.

Successful management may require a re-evaluation of an institution's approach to service delivery. A realistic understanding of an individual's literacy proficiency is paramount for successful communications, and where appropriate, this may include conducting an assessment or developing protocols for staff to screen for behaviors that may mask illiteracy. In addition, providers can develop strategies to evaluate and revise written and web-based materials using editing techniques recommended by plain language experts. As these efforts clear the path for more effective communications, providers are likely to be more efficient and even lower costs, and most importantly, justice will have been delivered more effectively.

*Katherine Alteneder is Co-Director of the Alaska Court System **Family Law Self-Help Center**.*

Assessment Tools

The following can provide assessment strategies for evaluating literacy skills:

The Justice Literacy Indicator

<http://www.justiceliteracy.org/>

The Justice Literacy Indicator, a brief, inexpensive, and easily administered testing instrument, was developed to screen clients/offenders for reading ability by the Justice Literacy Assessment and Awareness Project, a partnership project of The John Howard Society of Saskatchewan, Regina Council, The University of Regina (SIDRU), and The National Literacy Secretariat, Ottawa, Ontario. This project has also developed a Justice Literacy Workbook for justice and social services practitioners to enrich their awareness of the challenges that people with limited literacy skills face when they come into contact with the criminal justice system.

Lawyers for Literacy Project

<http://www.plainlanguagenetwork.org/LawyersForLiteracy/>

The Plain Language Committee of the Law Practice Management Section of the Canadian Bar Association, B.C. Branch maintains this web page for practitioners. The page provides easy-to-implement strategies to identify literacy issues as well as tips for service delivery that can not only improve communication but also increased office efficiency.

Plain Language

Plain language, sometimes called Plain English, refers to the practice of communicating in a way that lay people can easily understand — with words and images free of jargon and terms of art and written at a level appropriate for the audience. For the average native English-speaking American, this means reading at the 5th grade level.

The Plain Language Action and Information Network

http://www.plainlanguage.gov/examples/before_after/index.cfm

Transcend Translations

http://www.transcend.net/at/before_at.html

Two of the leading websites chronicling the trend are:

Plain Language Association International

<http://www.plainlanguagenetwork.org/>

Plain Language Action and Information Network

<http://www.plainlanguage.gov/index.cfm>

A checklist of editing techniques and additional references:

<http://www.plainlanguage.gov/howto/quickreference/checklist.cfm>



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