

# Writing to Persuade Judges

## A New Comprehensive Study Confirms That Judges Find Plain English More Persuasive Than Legalese

By Sean Flammer

**F**or more than 25 years, this column has demonstrated why writing in plain language is better than writing in legalese. In fact, this column reported the results of some of the earliest testing of legal documents—testing which showed that readers overwhelmingly prefer plain language.<sup>1</sup> I have now completed and reported on what I believe is the first study to test an extended excerpt from a pleading—3¼ pages from a response to a motion.<sup>2</sup> This article summarizes the study.

### Who received the survey and what they saw

I surveyed 800 judges across the United States—200 judges in each of four cohorts: federal trial judges, federal appellate judges, state trial judges, and state appellate judges. I distributed three different writing samples—an original response written in traditional legalese, a plain-English version, and what I would describe as an “informal” plain-English version. (Of course, I did not use those descriptions in my cover letter.) Everyone received the original version; then half also received the first revision (plain English), and

the other half received the second revision (informal plain English). To ensure that the subject matter did not influence the results, I chose a boring procedural issue—whether the court should issue a stay pending an appeal in a bankruptcy proceeding.

The plain-English version improves on the original in a number of ways, including these:

- It does not begin with *COMES NOW*.
- It does away with underlining and all-caps in headings.
- It uses a tabulated list to set out the four reasons why the court should deny the motion.
- Its topic sentences do a better job of laying out the organizational framework.
- It's shorter by almost a page, so it obviously eliminates unnecessary sentences and words.
- Its sentences average 17.8 words, as opposed to 25.2 words.

The informal version made the following additional changes:

- It does away not only with *COMES NOW* but with the entire boilerplate opening that names the parties

and their attorneys; instead, it begins with a section called “Introduction.”

- It uses contractions liberally.
- It's more conversational in tone in some other small ways.
- It uses the first person, although just once.
- It further reduces the average sentence length, to 16.3 words.

All three versions are reproduced in my full article on the study.<sup>3</sup>

### What the judges were asked

Each of the 800 judges received a cover letter; the original version, and either the plain-English version or the informal plain-English version; a questionnaire; and a self-addressed, stamped envelope. The cover letter stated that I was doing research on legal writing and that I hoped to have the results published. Again, nowhere did I use the words “plain English” or “legalese.” The most important item on the questionnaire was which of the two writing samples the judges found most persuasive. But I also asked for some demographic information, and I left room on the questionnaire for judges to make comments if they wished.

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“Plain Language” is a regular feature of the *Michigan Bar Journal*, edited by Joseph Kimble for the Plain English Subcommittee of the Publications and Website Advisory Committee. Want to contribute a plain-English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901, or at kimblej@cooley.edu. For an index of past columns, visit [www.michbar.org/generalinfo/plainenglish/](http://www.michbar.org/generalinfo/plainenglish/).

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## The results

A total of 292 judges returned the surveys—a response rate of 37%. Overall, the judges preferred the plain-English version to the original by 66% to 34%. More specifically, the rates for federal trial, federal appellate, state trial, and state appellate judges were 52%, 73%, 72%, and 65%. The judges' location (rural versus urban area), age, gender, and years of experience did not correlate with which version they preferred.

Perhaps most telling were the judges' comments. Several judges wrote that the plain-English version was more persuasive because of the succinctness of its argument.

“Thinking and writing like a lawyer does not require arcane, stilted language.”

One wrote that it was “easier to understand, more clear and straightforward, and therefore more persuasive.” Another said that it was “simpler, more direct prose. Getting to the point trumps pontificating any day.” A few judges commented on its brevity, and several on its use of lists. The general theme was that judges found it to be cleaner, leaner, and more effective and understandable.

The judges made some other telling comments. One wrote: “Thinking and writing like a lawyer does not require arcane, stilted language.” And another: “My first impression [of the original version] was negative with the first word [*COMES NOW*]. After that, it read like someone trying to sound like an attorney. The convoluted style lead me to skimming for its essence.” And this judge was not the only one who stated that the legalese caused him to pay less attention to the substance.

Finally, the informal plain-English version did not fare quite as well, but 58% still preferred it. I believe, based on several judges' comments, that the liberal use of contractions (most of them in the Introduction) may have been the reason for the 8% falloff.

There's little more to say. We now have 25 years of empirical research leading to an inescapable conclusion: if you want to please and persuade your reader, write in plain English. ■

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## FOOTNOTES

1. See Kimble, *Survey: Plain English wins every which way*, 66 Mich B J 1024 (October 1987); Kimble & Prokop, *Strike three for legalese*, 69 Mich B J 418 (May 1990); Kimble, *The straight skinny on better judicial opinions*, 85 Mich B J 42 (March 2006).
2. Flammer, *Persuading judges: An empirical analysis of writing style, persuasion, and the use of plain English*, 16 Legal Writing: The Journal of the Legal Writing Institute 183 (2010).
3. *Id.* at 213–219.

## A New Contest

I say “new” contest, but this one is similar to the last one (if you remember). It presents exactly the same kind of ambiguity. See whether you can identify it, send me your fix, and briefly explain your assumption. Here's the sentence:

Highway...includes...bridges, sidewalks, trailways, crosswalks, and culverts on the highway.

You might even recognize that beauty.

A free copy of *Lifting the Fog of Legalese* goes to the first two people who send me an “A” revision. Send an e-mail to kimblej@cooley.edu. The deadline is September 23. And I have to be the sole judge of the winners.

Give it a try.