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.[1] 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.[2] 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.[3]

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.

> 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.