

Achieving Clarity

Eight Data-Driven Tips for Legal Communication

By Christopher R. Trudeau

Most attorneys agree that writers need to tailor their writing to a particular audience. This just makes sense. So it's not a stretch to argue that to convey a clear message to a client, attorneys should use plain language. But when I looked for empirical data to support that commonsense argument, I found very little—and went to work. In 2011, I conducted a study to help determine, among other things, whether the public actually does prefer plain legal language over the traditional style. And why should attorneys care? Because we don't want to alienate clients by making them feel uneducated or inadequate. After all, an attorney's goal should be to help clients make informed decisions, not confuse them and make them give up.

After months of researching, identifying the sample, developing the 28-question survey, and validating it, I began administering the study in March 2011 by sending the survey to law firms and e-mail contact lists. In the end, 376 people responded, from all adult age groups and educational levels. And past clients made up about 55% of the sample, allowing me to compare client preferences against those who had not recently used an attorney.

Although the study supports many different points, this article describes eight tips

that all attorneys can take from the results. The complete results and a detailed discussion of the research methods can be found in "The Public Speaks: An Empirical Study of Legal Communication," published in *The Scribes Journal of Legal Writing*.¹

Point 1: Avoid frustrating and irritating your clients²

Overall, 99% of respondents thought it was at least important to understand what an attorney says in a letter or document—366 out of 367 respondents to that question. While this may seem like an obvious result, it helps establish that the public pays attention to what attorneys say, so attorneys should care about being understood.

But what's troubling is that 79% of clients said they had received a document that was difficult to understand. And 44% of clients had, at some point, stopped reading a document out of frustration and did not get the intended meaning. Clearly, then, many attorneys are not communicating effectively—or at least not doing so consistently.

Here are three responses that help explain why some clients become frustrated enough to stop reading a document:³

- Because of legal terminology. I do not feel like I am a stupid person by any stretch of the imagination, but just imagine how those feel of average or below-average intelligence due to lack of education, social circumstances, etc.

- If too much of the content is difficult to understand, I feel like I've already missed too much to get the full meaning anyway.
- I used to work for some good attorneys that treated people as equals. So when I used my own, I was mad that he was using terms to make himself sound better than me.

Point 2: Use plain language because the public overwhelmingly prefers it⁴

A key section of the survey presented respondents with 11 choice-of-language questions, each with two passages—one written in plain language and the other in a traditional style. For example, here are the two versions of a question and the percentage that selected each version:

- Discovery may proceed prior to the judge's consideration of the motion—17%.
- Discovery may begin before the judge considers the motion—83%.

Overall, respondents chose the plain-language version 80% of the time. In fact, the plain-language version handily prevailed in all 11 choice-of-language questions. And clients were 5% more likely to prefer plain language than nonclients. This point is worth repeating—over 85% of previous clients preferred plain language when given the choice.

The public knows it's important to understand what attorneys say, yet many readers have struggled to understand their attorneys at some point.

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Point 3: Use plain language no matter what the client's educational level⁵

The results were counterintuitive when broken down by educational achievement. Initially, my theory was that the lower the respondent's education, the greater the likelihood that the respondent would prefer plain language. But the opposite proved to be true. As the respondent's education increased, so did the respondent's preference for plain language.

Across all educational levels, respondents selected the plain-language version a substantial majority of the time—77% for respondents with less than a bachelor's degree; 79% for respondents with bachelor's degrees; 82% for respondents with master's or doctoral degrees; and 86% for respondents with law degrees. So even though people with advanced degrees might understand sentences written in a traditional legal style, that's not what they prefer. They know what's clear; they know what's understandable. They simply know better.

Point 4: Define commonly used legal terms⁶

Of course, attorneys need to use some legal terms when communicating with clients. But if you cannot avoid using certain legal terms (like *default judgment* or *summary disposition*), then define them. When given the choice between a passage with an explanation and one without one, 78% preferred the legal explanation even though it was much longer than the other option. These rates were consistent regardless of the respondent's educational level.

Point 5: Prefer the active voice⁷

Of the 11 choice-of-language questions, 4 of them tested whether respondents preferred active or passive voice. Overall, respondents preferred the active voice 68% of the time. And clients preferred it at a higher rate than nonclients: clients chose it 73% of the time, nonclients 65% of the time. This supports the theory that those who have experienced complex traditional legal language oppose it even more than those who have not.

Point 6: Avoid complicated terms and Latin words⁸

The study also gauged a respondent's reaction to receiving a document that uses complicated terms or Latin words. Significantly, 47% of clients said they get "annoyed" by such language, and another 21% said they get at least "bothered a little." That's 68% of clients who were bothered or annoyed by the use of complicated terms or Latin words. Not surprisingly, then, in the choice-of-language questions, 88% preferred the versions with the simpler terms.

When attorneys use complex constructions or complicated terms, they put unnecessary barriers in the way of that understanding.

This point is driven home when you consider the survey's Latin-word-choice question—which included the term *inter alia*. An overwhelming 97% of respondents preferred *among other things* to *inter alia*. Or, to put it another way, 352 out of the 363 respondents to that question would rather see understandable, everyday words than legal Latin.

Point 7: Avoid multiword prepositions⁹

Using multiword prepositions where one-word prepositions would do is a common offense in traditional legal writing. In this study, 81% of respondents preferred *under* to *pursuant to* in a question where this was the only difference. Broken down by education, every group of respondents (except those with law degrees) preferred *under* at rates higher than 80%. Even 69% of attorneys preferred *under*. And there's no reason to think that this result would be any different for other multiword prepositions (like *in regard to* or *prior to*), so avoid them at all costs.

Point 8: Avoid complex sentences because as complexity increases, so does the preference for plain language¹⁰

The choice-of-language questions had varying degrees of complexity. Some questions had a single style difference (or "problem," as I'll call it here), while others had multiple problems. No matter the group, respondents were more likely to choose the plain-language version for questions with multiple problems: 86% chose the plain version when there was more than one problem in the sentence, while 75% chose the plain version when there was only one problem. Moreover, these results were fairly consistent across educational levels. Why? In my view, complexity serves as a mental trigger for readers to prefer something else. So when an attorney uses more than one complicated term (or the passive voice) in a sentence, readers get mental triggers that cause them to prefer a simpler sentence.

Conclusion

As a whole, this study helps prove what plain-language advocates have long thought: the public knows it's important to understand what attorneys say, yet many readers have struggled to understand their attorneys at some point. And when attorneys use complex constructions or complicated terms, they put unnecessary barriers in the way of that understanding.

The public has spoken: plain language, please. ■

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FOOTNOTES

1. 14 Scribes J Legal Writing 121 (2011–2012).
2. *Id.* at 136.
3. *Id.* at 140.
4. *Id.* at 141.
5. *Id.* at 142.
6. *Id.* at 149.
7. *Id.* at 144–145.
8. *Id.* at 138, 147.
9. *Id.* at 147–148.
10. *Id.* at 143–145.