

# You Think Anybody Likes Legalese?

By Joseph Kimble

*In this, my twenty-fifth year as editor, I take a short stroll down memory lane. The 1987 survey that I refer to was first published in this column. Little did we imagine then what an impression the study would make.*

I was an early convert to plain language—or plain English as it was called then—when it began to make headway in the 1970s. From the start, I was convinced that plain language is a just cause: right in its strong criticisms of traditional legal style, right in its call for reform, and right in its general prescriptions. Of course, my understanding of it has evolved and broadened over the years, but it remains for me a passion—a life's work. And the work will need to go on long after I've gone on. A reformer, someone once told me, needs a geologist's sense of time.

I started teaching legal writing at Thomas Cooley Law School as an adjunct in 1982, and that turned into a full-time position in 1984. Naturally, I brought with me a commitment to teaching a clear and plain style. Those first years are still vivid—the classrooms, students' names, even who sat where. Like any other teacher, I remember the hits and misses, the good moves and the blunders, and the intensity of it all. (Almost from

the start, I used live grading: I read a student's paper and graded it with the student sitting next to me.) I especially remember a couple of early challenges to my spiel and instructions on plain writing.

## Two of the many myths about plain language

One night a student waltzed into class with a tray of food. At the break after the first hour, I caught his attention and privately reminded him about the school's policy against food in the classroom. Maybe that put him in the mood to take issue. At any rate, during the next hour, he raised his hand and asserted: "A client wants to see you driving a Cadillac, not a little Honda. [This was 1984.] Why wouldn't he want to see you using big, impressive words?" I said something about the questionable analogy between size and value in cars, on the one hand, and words, on the other. I said that trying to keep people dumb about the emptiness of legalese does us no credit and will eventually lead to disrespect. And I must have said—I hope I said—something about writing to communicate. But that question was telling—as a version of the common myth that plain words are pedestrian, dull, uninspiring; they are beneath the dignity of professional writers.

This myth, like a vampire, will probably never die, although I tried again to bury it in part 2 of my book *Writing for Dollars, Writing to Please*. It will continue to spook inse-

cure writers, drain strength from their prose, and fill it with pretension. And the myth will not easily give way to reason and argument and evidence because it preys on a vague, undeveloped sense of literary quality.

But another myth will—or should—yield to evidence in the form of hard numbers. And that brings me to the second challenge that students raised in those early years of my teaching plain writing.

Too many times to ignore, I heard different versions of essentially the same question: How do we know that plain language is acceptable in the real world outside law school? What do judges say? What's the attitude among lawyers? Will I please or displease my readers? Maybe plain language is too newfangled for comfort. How do we know? Of course, I had no good answer—so a student and I decided to conduct a survey of Michigan judges and lawyers.

This was 26 years ago, in 1987, and I've since reported on the survey many times. No need to do it again here, except to say that given six pairs of passages from different legal documents—one written in plain language and the other in traditional style—425 Michigan judges and lawyers preferred the plain versions by margins running from 80% to 85%. And the same survey was repeated in three other states, with strikingly similar results.

What I haven't mentioned until now is my high anxiety while waiting for the results. As I remember, we gave the judges and lawyers about a month to respond. My

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student colleague was collecting the results, and I didn't ask for updates. I had no idea what to expect. (O ye of little faith.) What if my students—some of them, anyway—were right to be dubious or at least uncertain? Maybe traditional style is so entrenched that most legal readers won't see it as inferior. But they did. It was one happy, affirming day when I got the news.

That study was published the same year as another study (which I didn't know about at the time) testing legalese versus plain English in appellate briefs. Guess which style was rated “substantially weaker and less persuasive” and led readers to infer that the writers who used it came from less prestigious firms?

I'm deliberately avoiding detail and citations because I don't want you to dwell on those early studies alone. I'd like you to appreciate the full weight of the evidence against legalese. And for that, you need to see the complete picture.

## What the evidence shows

In *Writing for Dollars, Writing to Please*, I cite and summarize 50 studies of business, government, and legal documents. Of the 50, no less than 18 involved legal documents. And the documents were of all kinds: statutes, administrative regulations, judicial opinions, briefs and other lawsuit papers (complaints, motions), jury instructions, court forms, class-action notices, contracts, and client letters. The readers, too, were of all kinds: judges, lawyers, administrators, clients, and other members of the public. So the evidence could hardly be more complete—or more compelling.

Do you think anybody likes legalese? No. Nobody. Or I should say no body—not judges or lawyers or the public at large. All those groups strongly prefer plain language and find it more effective and persuasive. Besides that, they understand it better and faster, perform more accurately when they have to deal with it, and are more likely to read it in the first place. Please, purveyors and defenders of legalese, just look at the studies of your readers.

Now, I can hear the objections. “But clients expect legalese.” If they do, we should be ashamed of having conditioned them to

expect it because they certainly don't like it. “But my boss likes it the old way.” Then either try gentle persuasion or wincingly do what your boss wants, bide your time until you can decide, and know that your boss's attitude and style are retrograde. “But most lawyers are still churning out legalese.” That's the great disconnect: they forget as writers what they prefer as readers. (Not to mention the sheer force of habit and inertia.) “But plain language isn't accurate, isn't precise—isn't safe.” The biggest myth of all—the Goliath myth. I've flung a few stones at it before, arguing that plain language is actually *more* precise than traditional style.<sup>1</sup>

The case for plain language is altogether solid. All the myths and misconceptions about it have been debunked. What remains is for lawyers to summon the will and develop the skill to do it. Their readers have spoken. ■

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*Please: The Case for Plain Language in Business, Government, and Law. He is also senior editor of The Scribes Journal of Legal Writing, the past president of the international organization Clarity, a founding director of the Center for Plain Language, and the drafting consultant on all federal court rules. He led the work of redrafting the Federal Rules of Civil Procedure and the Federal Rules of Evidence.*

## ENDNOTE

1. See *Writing for Dollars, Writing to Please: The Case for Plain Language in Business, Government, and Law* 37–43 (Carolina Academic Press 2013); *The Great Myth That Plain Language Is Not Precise*, in *Lifting the Fog of Legalese: Essays on Plain Language* 37 (Carolina Academic Press 2006); *Wrong—Again—About Plain Language*, 92 Mich B J 44 (July 2013).