The Proof Is in the Reading

Solid Evidence That Plain Language Works Best

By Joseph Kimble

To help round out this plain-English theme issue of the Bar Journal*, I offer the evidence of four studies. These four are among 50 that I collect and summarize in my book* Writing for Dollars, Writing to Please: The Case for Plain Language in Business, Government, and Law. *Of the 50 studies, 18 involved different kinds of legal documents—lawsuit papers, judicial opinions, statutes, regulations, jury instructions, court forms and notices, and contracts. And they included readers of all sorts—judges, lawyers, administrators, and the general public. The evidence is overwhelming: readers strongly prefer plain language to legalese, understand it better and faster, are more likely to comply with it, and are more likely to read it to begin with.* —*JK*

U.S.: Lawyers—Judicial Opinions

This survey[1] may have been the first to test judicial opinions. In the mid-1990s, I sent the original and a revised version of a short appellate opinion[2] to a random selection of 700 Michigan lawyers. One was marked O (my own clever code for "original") and the other Y; half the readers saw the O opinion first, the other half the Y opinion.

The revised opinion had an opening summary containing the crucial facts, the deep, or dispositive, legal issue, and the answer; it divided the opinion into short sections with informative headings and began each section with its own summary; it used topic sentences that advanced the analysis; it shortened the average sentence length from 25 words to 19; and it omitted unnecessary cases, other unnecessary detail (beyond the 500 words' worth I had already cut), and unnecessary words. Readers were asked which opinion they liked better, how they rated the two opinions on a 1-to-10 scale, and the top two reasons (from among several provided) why they liked one better than the other.

Out of the 251 lawyers who responded, 153, or 61%, preferred the revised opinion. They rated the (already shortened) original at an average of 6; they rated the revised version at 7. And the 61% that preferred the revised opinion gave as the top two reasons that it left out a lot of unnecessary detail and had a summary at the beginning. Those are two strong lessons for opinion-writers.

The article describing this study reproduces the package that readers received, compares a bunch of examples from the opinions, and even shows the original opinion with the unnecessary detail lined through. Here's the difference just in the all-important opening paragraph:

Opinion O:

Plaintiff Robert Wills filed a declaratory judgment action against defendant State Farm Insurance Company to determine whether defendant has a duty to pay benefits under the uninsured motorist provisions found in plaintiff's policy with defendant. Pursuant to the parties' stipulated statement of facts, the trial court granted summary disposition in plaintiff's favor upon finding coverage where gunshots fired from an unidentified automobile passing plaintiff's vehicle caused plaintiff to drive off the road and suffer injuries. Defendant appeals as of right. We reverse and remand.

Opinion Y:

Summary

Robert Wills was injured when someone drove by him and fired shots toward his car, causing him to swerve into a tree. He filed a declaratory-judgment action to determine whether State Farm had to pay him uninsured-motorist benefits. The issue is whether there was a "substantial physical nexus" between the unidentified car and Wills's car. The trial court

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> answered yes and granted summary disposition for Wills. We disagree and reverse. We do not find a substantial physical nexus between the two cars because the bullets were not projected by the unidentified car itself.

Note that the revised summary goes beyond the surface issue (was there a duty to pay?) to the deep issue (was there a "substantial physical nexus"—an unfortunate concept—between the cars?). And the revised summary gives an answer as well.

U.S.: Judges—Lawsuit Papers

This was the first study[3] to test a complete lawsuit paper—a 3¼-page response to a motion. The author sent 800 surveys to judges across the United States, 200 surveys to each of four different "cohorts": federal trial judges, federal appellate judges, state trial judges, and state appellate judges. Each judge received (1) the original motion and (2) either a plain-English version or what the author called an "informal" plain-English version. As in the other legal studies, the participants were chosen randomly; the cover letter merely said that the sender was conducting a study on legal writing; the versions were not identified as "legalese" or "plain English"; and half the recipients saw the versions in one order, while the other half saw them in the reverse order. A total of 292 judges responded.

The participants were simply asked which version they found more persuasive, along with a request for some demographic information. The published study includes all three versions, but they are too long to reproduce here. The differences between them, though, will sound familiar.

The plain-English version improves on the original version in these ways:

- It's shorter—2½ pages. So it obviously eliminates unnecessary sentences and words.
- It does away with underlining and all-caps in headings.
- It sets out the four reasons why the court should deny the motion—the critical points—in a vertical list.
- Its topic sentences provide a better organizational framework.
- Its sentences average 17.8 words, as opposed to 25.2 words.

The informal version of the plain-English sample makes the following additional changes:

- It does away entirely with the formulaic opening ("Plaintiffs, [names], through their attorneys, [names], state as follows in response to….").
- It uses contractions.
- It uses the first person, although just once.
- It's more conversational in tone.
- It further reduces the average sentence length, to 16.3 words.

As in the previous studies, the results were decisive. The author broke them out in various ways, but overall the judges preferred the plain-English version to the original by 66% to 34%. And the demographics made no difference. Preferences were not correlated with state versus federal judge, trial versus appellate judge, rural versus urban area, gender, or years of experience as a judge. The informal plain-English version did not fare quite as well, but 58% still preferred it. The author suggests, based on judges' volunteered comments, that its use of contractions was the main reason for the 8% falloff.

U.S.: General Public—Court Forms

A California study conducted in 2005[4] tested the use of plain language in two different court forms: a proof of service and a subpoena. Researchers, with the help of the local jury commissioner, selected 60 volunteers and divided them into two equal groups. Group 1 was tested first on the original proof of service and then on the plain-language version of the subpoena. Group 2 was tested on the plain-language proof of service followed by the original subpoena.[5] For each form, 10 questions were read aloud, and participants were given 20 seconds to respond in writing on a blank answer form. The questions were designed to elicit participants' understanding of each form's purpose and the specific steps that each form required.

The scores showed a "marked and statistically significant improvement in reader comprehension" for the plain-language forms.[6] The average score on the plain-language proof of service was 81% accuracy, compared with 61% on the original. The scores on the subpoena showed even greater average improvement: 95% accuracy on the plain-language version and only 65% on the original. Although the researchers did not try to quantify savings, they concluded that more comprehensible forms would have obvious benefits: less time spent explaining the forms and dealing with errors; more confident and self-reliant customers; and reduced printing costs, since plain-language documents are typically shorter (by 40%, in the researchers' estimation).

U.S.: General Public—Government Regulations

This study[7] and the previous one are among nine in the book that tested the comprehensibility of law (a statute or regulation) or other legal documents or language on a nonlegal audience—the public or administrators.

In the early 1980s, the Federal Communications Commission reorganized and rewrote its regulations for marine radios on recreational boats. (Apparently, though, the new rules were never incorporated into the Code of Federal Regulations but were put only in a booklet for the public.) The FCC asked the Document Design Center to test the old and new versions. Readers of the old rules got an average of 10.66 questions right out of 20; readers of the new rules got an average of 16.85 right. The average response time improved from 2.97 minutes to 1.62 minutes. Finally, on a scale of 1 (very easy) to 5 (very hard), readers rated the old rules at 4.59 and the new rules at 1.88.

In revising these rules, the FCC adhered to what may be the hardest principle of all to follow because it involves judgment and

restraint—don't try to cover every remote possibility under the sun:

> Probably the most important guideline used in revising the FCC's marine radio rules…was one that would say "select only the content that the audience needs." The rules for recreational boaters were originally mixed in with rules for ocean liners and merchant ships and were loaded down with exceptions and rules to handle unusual cases.[8]

The cardinal rule of clarity is to put yourself solidly in the minds of your readers: what would they like to know, and how would they like to get it? ■

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ENDNOTES

1. Kimble, *The Straight Skinny on Better Judicial Opinions*, in *Lifting the Fog of Legalese: Essays on Plain Language* (Durham: Carolina Academic Press, 2006), pp 15–35 and 89–104.
2. *Wills v State Farm Ins Co*, 222 Mich App 110; 564 NW2d 488 (1997).
3. Flammer, *Persuading Judges: An Empirical Analysis of Writing Style, Persuasion, and the Use of Plain English*, 16 Legal Writing: J Legal Writing Inst 183 (2010).
4. Mindlin, *Is Plain Language Better? A Comparative Readability Study of Plain Language Court Forms*, 10 Scribes J Legal Writing 55 (2005–2006).
5. See *id.* at 64–65 for the original and revised proof of service.
6. *Id.* at 55.
7. Redish, *How to Write Regulations and Other Legal Documents in Clear English* (Washington, DC: American Institutes for Research, 1991), pp 42–43; Redish, Felker & Rose, *Evaluating the Effects of Document Design Principles*, 2 Information Design J 236 (1981).
8. *Evaluating the Effects of Document Design Principles*, 2 Information Design J at 240.

SBM MONEY JUDGMENT INTEREST RATE

MCL 600.6013 governs how to calculate the interest on a money judgment in a Michigan state court. Interest is calculated at six-month intervals on January and July of each year, from when the complaint was filed, and is compounded annually.

For a complaint filed after December 31, 1986, the rate as of July 1, 2016 is 2.337 percent. This rate includes the statutory 1 percent.

But a different rule applies for a complaint filed after June 30, 2002 that is based on a written instrument with its own specified interest rate. The rate is the lesser of:

(1) 13 percent a year, compounded annually; or

(2) the specified rate, if it is fixed—or if it is variable, the variable rate when the complaint was filed if that rate was legal.

For past rates, see http://courts.mi.gov/Administration/SCAO/Resources/Documents/other/interest.pdf.

As the application of MCL 600.6013 varies depending on the circumstances, you should review the statute carefully.