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THE PUBLIC SPEAKS, AGAIN: AN INTERNATIONAL STUDY OF LEGAL COMMUNICATION*

Christopher R. Trudeau, JD & Christine Cawthorne**

I. INTRODUCTION

Clear legal communication is vitally important. Think about how much of people's lives are governed by the ability to read and understand legal information. What can or can't you do in your rental unit? That is usually governed by the terms in your lease. Can you terminate an employee for visiting inappropriate websites? That is determined by the terms of your employment policies and the governing law in your area. Does your company need to file a form to comply with licensing regulations? That requires that you read and interpret government information on what is legally required. We could go on and on with examples that make it clear that what lawyers say and how they say it impacts how people live their lives. But, too often, people struggle to understand just what lawyers are trying to say.¹

For example, consider informed consent forms in healthcare settings. Research has shown that many patients "do not . . . understand (60% of) the information contained in informed consent forms, despite signing them."² In fact, the Joint Commission has put part of the blame squarely on lawyers for this when it stated over 10 years ago that "[i]nformed consent forms that are written by lawyers for lawyers do not increase the knowledge of those who, with their signature, are committing to allow the performance of treatments

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* Christine Cawthorne is a U.K.-based expert in clear content development. She is the founder of Crocstar, Ltd., in the U.K., and she's a BBC-trained journalist. Christine inspired Professor Trudeau to conduct this international study, and she contributed extensively to all phases of it.

1. See JOSEPH KIMBLE, *SEEING THROUGH LEGALESE* 3 (2017).

2. *Implementing a National Voluntary Consensus Standard for Informed Consent: A User's Guide for Healthcare Professionals*, NAT'L QUALITY F. 1–2 (2005), http://www.qualityforum.org/Publications/2005/09/Implementing_a_National_Voluntary_Consensus_Standard_for_Informed_Consent_A_User_s_Guide_for_Healthcare_Professionals.aspx (last visited May 30, 2018).

and procedures that may be associated with significant risks. The typical informed consent form is unreadable for any level of reader.”³

The same is true with credit card agreements. Research has shown that, on average, credit card agreements are written at levels that are too hard for over half the United States (“U.S.”) population to understand.⁴ Insurance documents may be the worst of all—a study by SunLife found that “on average insurance products come ‘with more than 25,000 words of explanation written in PhD level language.’”⁵ What happens when legal documents are written this way? People stop reading. And when people quit reading because they cannot find what they are looking for or cannot understand something, then the writer is not doing his or her job. By writing legal information in this way, lawyers decrease productivity, increase frustration, and make things harder for all involved.

To be sure, the inability to understand information is not limited to legal documents.⁶ Over thirty-two million Americans have such low literacy skills that they have difficulty reading and connecting basic sentences and paragraphs or interpreting simple numerical data.⁷ The same is true in other parts of the world. For example, in the United Kingdom (“U.K.”), more than 25% of people aged 16–65 have low literacy skills, numeracy skills, or both.⁸ And in Australia, nearly 44% of people aged 15–74 have below-proficient literacy levels.⁹

Given this lack of literacy worldwide and the knowledge that traditional legal communication is hard to understand, how do you think the public views legal writing? If you are a lawyer, this is probably a question you hes-

3. “*What did the Doctor Say?*” *Improving Health Literacy to Protect Patient Safety*, THE JOINT COMM’N 34 (2007), https://www.jointcommission.org/assets/1/18/improving_health_literacy.pdf (last visited May 30, 2018).

4. *Study: Credit Card Agreements Unreadable to Most Americans*, CREDITCARDS.COM (Sept. 16, 2016), <https://www.creditcards.com/credit-card-news/unreadable-card-agreements-study.php>.

5. Fiona Murphy, *Customers ‘Only Read 15%’ of Insurance Documents They Receive*, COVER MAGAZINE (Aug. 26, 2016), <https://www.covermagazine.co.uk/cover/news/2469033/customers-only-read-15-of-insurance-documents-they-receive>.

6. See RUSSELL WILLERTON, *PLAIN LANGUAGE AND ETHICAL ACTION* 13–14 (2015) (discussing how hard-to-read language can adversely impact voters).

7. See Mark Kutner et al., *Literacy in Everyday Life: Results from the 2003 National Assessment of Adult Literacy*, NCES 2007-480, 4, 12 (2007), <https://nces.ed.gov/pubsearch/pubinfo.asp?pubid=2007480> (last visited May 29, 2018).

8. Malgorzata Kuczera et al., *Building Skills for All: A Review of England*, OECD, 9 (2016), <http://www.oecd.org/edu/skills-beyond-school/building-skills-for-all-review-of-england.pdf> (last visited Jan. 2, 2018).

9. Benjamin Law, *Australia’s Literacy Rate is Shocking—and Potentially Dangerous*, THE SYDNEY MORNING HERALD (Sept. 2, 2017), <http://www.smh.com.au/good-weekend/adult-education/benjamin-law-australias-literacy-rate-is-shocking--and-potentially-dangerous-20170829-gy6gbn.html>.

itate to ask. If you did ask this, you are likely to receive answers ranging from simple indifference to long rants about how lawyers use language to make themselves seem better than others.¹⁰ How do we know this? One of us, Professor Chris Trudeau, asked hundreds of people about their thoughts on legal communication in the seminal study he published on legal communication preferences in 2012.¹¹ That study was insightful and has yet to be duplicated.

That is why we conducted this follow-up study—to expand the data set on legal communication preferences to those in other English-speaking countries.¹² We expanded this study to include responses from the U.S., the U.K., Canada, Australia, and New Zealand. We also conducted this study to gather more data on the conclusions of the first study, so we could find out if the results of the first study held up with a broader audience, and so we could gauge how preferences for legal communication differ from country to country. Finally, we conducted this study to gather new data about how often people encounter legal information in the workplace and how traditional, hard-to-read legal documents hurt workplace productivity.¹³ There is little data on this, yet we have both consistently observed how often non-lawyers encounter legal information in the workplace as we have trained employees over the years on the need for clear language. For example, from 2013 to 2014, Christine Cawthorne trained hundreds of people working in the U.K. government to write for the web. She was amazed at how much legal information these people frequently encountered in order to do their jobs well. That insight helped lead us to gather data for this study; we think you will find the results intriguing.

The rest of this article will explain how we conducted this follow-up study, summarize some key results from the first study, and describe this study's results in detail, both in the aggregate and for the countries we surveyed. We will then draw conclusions about the public's preferences for legal writing based on our analysis of the data from both studies.

II. STUDY METHODOLOGY: THE FIRST STUDY'S IMPACT ON THIS STUDY'S DESIGN

In 2011, Professor Trudeau conceived and conducted the first U.S. study to measure the public's preferences for legal communication because clients have long been neglected in the discussions of how to convey legal

10. See Christopher Trudeau, *The Public Speaks: An Empirical Study of Legal Communication*, 14 SCRIBES J LEG. WRITING 121, 140–41 (2011–2012).

11. *Id.*

12. *Id.* at 122–25 (discussing the limited number of past studies on legal communication from other countries).

13. See *infra* Part V.

information.¹⁴ There had been past studies on what judges and other lawyers preferred, but none in the U.S. at that time about what clients preferred, despite the fact that clients are the ones who drive the legal marketplace.¹⁵ What's more, there were only a few dated studies on public preferences for legal communication in other parts of the world.¹⁶ The first study was designed to focus on both client preferences and non-client (i.e. public) preferences for legal communication. After receiving 376 survey responses from both clients and non-clients, Trudeau found very little appreciable difference between the two groups' preferences—it seems that both clients and non-clients prefer clear legal communication at similar rates.¹⁷

This study follows up on key results from the first study. While it does not differentiate based on whether people have used lawyers within the recent past, it does test other untested things, such as how often people encounter legal information in the workplace and how much workplace productivity is lost by legal information that is difficult to understand.

A. Preferences for Legal Communication

The first study began by surveying responders about their experience with lawyers and their preferences for legal communication.¹⁸ We followed up on three of these preferences in this study, so we could gather more evidence from the rest of the English-speaking world.

First, that study found that nearly every responder (n=366/367) thought it was at least important to understand an attorney, yet 71% of them said they had struggled to do so at least once in their lifetime.¹⁹ That is the real disconnect with legal writing—people want to understand what lawyers say, yet lawyers often make it difficult for people to do so. To be sure, sometimes the law itself is complex and causes confusion for many. In these cases, it is the lawyer's role to demystify this complexity and explain, clearly, what it means for the client's situation. Yet, too often, this fails to happen.

Next, the first study found that only 0.5% of people were impressed when lawyers “use Latin words or complicated legal words in written documents.”²⁰ And this result proved true regardless of the education level of

14. See Trudeau, *supra* note 10, at 123–25.

15. See generally Mark A. Cohen, *Differentiation in the Legal Marketplace and Why it Matters*, FORBES (Jan 2, 2018), <https://www.forbes.com/sites/markcohen1/2018/01/02/differentiation-in-the-new-legal-marketplace-and-why-it-matters/#319881e838ef>.

16. See Trudeau, *supra* note 10, at 122–25.

17. See Trudeau, *supra* note 10, at 141–42.

18. See Trudeau, *supra* note 10, at 129–31.

19. See Trudeau, *supra* note 10, at 137–38.

20. See Trudeau, *supra* note 10, at 138–39.

the responder.²¹ The only difference in preference was that those with advanced degrees (master's, doctoral, or Juris Doctor) were more apt to say that those types of words had "no influence" on them.²² That data helps dispel the oft-proclaimed myth that using Latin words or complicated legal words will help impress people.²³ For that reason, we measured this again to see if the results held true in the U.S. and in other English-speaking countries.

Finally, that study measured whether a person's "frustration over a complicated document had ever caused the [person] to stop reading."²⁴ At this point in the survey, people had underscored the importance of understanding a lawyer and revealed that many had struggled to do so at times.²⁵ But there is a difference between struggling to read a document and being frustrated enough to stop reading it.²⁶ About 47% of responders in that study had not stopped reading a legal document, but the rest either did stop reading mid-document (38%) or could not recall if they did so (16%).²⁷ Those who said they had stopped reading were then asked an open-ended follow-up question about why they had done so. Those eighty-one responses were highly instructive and provided useful insight into their reasoning.²⁸ For this new study, we measured whether frustration caused responders to quit reading a legal document in the workplace that they needed to understand to do their jobs.²⁹ Doing so expanded the data and will allow us to find common themes that cause people to become frustrated and quit reading legal documents.

B. Choice-of-Language Questions

As in the first study, this study asked a number of choice-of-language questions—questions that asked which version of text people would prefer

21. See Trudeau, *supra* note 10, at 138–39.

22. See Trudeau, *supra* note 10, at 139 (comparing how the preferences change across educational levels).

23. See, e.g., Matthew Salzwedel, *It's 2012—Nix Latinisms In Your Legal Writing*, LAWYERIST (July 25, 2012), <https://lawyerist.com/its-2012-nix-latinisms-in-your-legal-writing/>.

24. Trudeau, *supra* note 10, at 139.

25. See Trudeau, *supra* note 10, at 139.

26. See Trudeau, *supra* note 10, at 140–41 (discussing the reasons why respondents were frustrated enough to quit reading a document before finishing).

27. See Trudeau, *supra* note 10, at 139–40.

28. See Trudeau, *supra* note 10, at 140–41 (compiling a selection of these open-ended responses to why people quit reading a legal document out of frustration).

29. Specifically, in Question 10 of the survey, we asked whether people had quit reading a document before it ended. If a responder answered yes, they were shown question 11, which asked why they had done so (and allowed an open-ended response).

to read in a legal document.³⁰ The questions were carefully crafted so as not to bias the results by suggesting that people pick the clearer version.³¹ Every question in both studies simply asked responders which version they would prefer to read.³² Additionally, most of the paired passages were designed not to be remarkably more difficult to understand than the other.³³ Accordingly, the results for the choice-of-language questions provided more accurate preferences, from which we could draw better conclusions.

There were many results from the first study that we hoped to replicate in this study. For example, as in the first study, this study tested word-choice preferences to gather data on what type of wording people would prefer if everything else in that version remained the same.³⁴ This study does not test active versus passive voice as heavily since the results from the first study were clear—responders preferred the active voice 69% of the time, and they even preferred it when both versions were short and understandable.³⁵

But there were two results from the first study that we specifically wanted to target in this study. First, this study focuses on whether the preference for plain language changes with the responder's education level.³⁶ The first study results showed the opposite of what you would expect—as education increased, so did the preference for plain language in the choice-of-language questions.³⁷

Second, this study follows up on another result that had never been tested before the first study—whether responders naturally prefer added length if that length helps to explain a legal term that most would not understand.³⁸ In the first study, 78% of responders preferred a longer version that explained what default judgment meant over a shorter version that was very clear, yet did not explain that term.³⁹ In fact, that was the only choice-of-language question where the longer version prevailed, so we felt compelled to test this same question again—with more respondents from various English-speaking countries—to see if this result would be consistent.⁴⁰ If so, this data would help to dispel a common misconception about plain language: that it means you must always shorten things. While shortening text is usually a byproduct of plain language, the point is to clearly explain technical

30. See Trudeau, *supra* note 10, at 131.

31. Trudeau, *supra* note 10, at 131–32.

32. Trudeau, *supra* note 10, at 131.

33. Trudeau, *supra* note 10, at 132.

34. See Trudeau, *supra* note 10, at 145–46 (explaining the word-choice questions in the first study).

35. Trudeau, *supra* note 10, at 144–45.

36. Trudeau, *supra* note 10, at 142–43.

37. Trudeau, *supra* note 10, at 142–43.

38. See Trudeau, *supra* note 10, at 149.

39. Trudeau, *supra* note 10, at 149–50.

40. See Part VII.F.

information to interested readers in ways they can understand—even if that does lengthen the text, at times.

III. STUDY METHODOLOGY: DESIGNING & DISTRIBUTING THE SURVEY

A. Designing the Survey to Avoid Bias

Like the first study, we created an electronic survey to gather responder preferences. We used SurveyMonkey to create the survey and gather results to be consistent with the first study. The first study consisted of twenty-eight questions in four areas: (1) experience with attorneys, (2) preferences for legal communication, (3) choice-of-language questions, and (4) demographic questions.⁴¹ This survey was designed the same way, but we made some significant changes because of the complications that arose when attempting to survey people from different parts of the world. For example, while it is generally advisable to leave demographic questions until the end of a survey so people build “confidence in the survey’s objective,”⁴² this did not suit our purposes well because classifying people by their nationality was one of our main objectives. What we did not want was people exiting the survey before answering these questions, which was more likely to happen if we put these questions at the end. Of course, once we decided to begin the survey with a question on nationality, we continued with the demographic questions at the beginning. In the end, this survey consisted of twenty-seven questions in four areas: (1) demographic questions, (2) experience with legal information at work, (3) preferences for legal communication, and (4) choice-of-language questions.⁴³

However, to help build confidence despite asking for personal information at the beginning, we included the following note to reassure responders that we would not misuse their personal information:

Because this is an international survey, these questions about you are important to help compare the results. This information will not be used in any way outside of this survey.

41. See Trudeau, *supra* note 10, at 129–33 (explaining the four parts of the survey and rationale that went into designing the first study).

42. Trudeau, *supra* note 10, at 133 (citing G. Iarossi, *The Power of Survey Design: A User’s Guide for Managing Surveys, Interpreting Results, and Influencing Responses*, 75 (World Bank 2006)).

43. Although we used an electronic survey, a printed version of the survey can be found in Appendix A at the end of this article. We will quote portions of the survey in the article to illustrate our points, but we do not cite to specific portions of Appendix A elsewhere in these footnotes.

Importantly, this note followed the first page of the survey, which we carefully drafted to not only assure people about the privacy protections for this study but also to ensure that we were not biasing the results by telling people we were in any way seeking responses that favored plain language. Instead, the survey stated that we sought “to better understand what people look for when reading legal information.” This, of course, is true—we just hoped that the results would favor clear legal communication.

We also made careful language choices throughout the survey to ensure that our true aims were not so obvious. For example, each choice-of-language question asked only which of two versions a person would prefer to read.⁴⁴ Also, at the start of the choice-of-language section, we provided the following instructions, and we were careful to frame them so we did not give away our preference:

The following questions have two choices. These choices present the same message to the reader, but they are written in different ways. We understand that sometimes you’d prefer something totally different that isn’t listed. But, for this survey, please select the one you would prefer to read.

Additionally, because this survey was specifically targeted to people from different English-speaking countries, we struggled with word choice and spelling because we did not want to put off any segment of responders. Ultimately, we chose to actively avoid words that have variant spellings, but in places where we couldn’t avoid them, we hedged by including this introductory note:

A note on language and spelling: Because this is an international survey, this survey is being written using a mixture of American English and British English, so you may see some words spelled differently than you are used to seeing them (e.g. color (American) or colour (British)). Please try to ignore these differences in responding.

In the end, we did what we could to remove our biases from all aspects of the survey, which should help improve the reliability of the results.

However, we should note that as people worked their way through the survey, they surely began to see a trend towards clear legal communication. For example, by the time people reached the choice-of-language questions, they would have already answered questions about how they have used legal information at work in the past, how long it took them, and how it makes them feel when lawyers use Latin words or complicated words. We managed this as best we could by adding skip logic to certain questions so that responders’ answers to prior questions led them to only relevant future ques-

44. See *infra* pp. 37–51.

tions.⁴⁵ For example, if a responder answered that they had never used legal information at work or at home during the past year, then the skip logic embedded in the online survey would send them directly to the choice-of-language questions, thereby reducing the time it would take them to complete the survey and ensuring that they would not see questions that might bias their future answers.⁴⁶

B. Distributing the Survey to Gather International Responses

While, generally, we designed this study to replicate the first one, that proved to be difficult given that our new aim was to gather enough responses from all of the world's major English-speaking countries: the U.S., the U.K., Canada, South Africa, Australia, and New Zealand. Like in the first study, we used a purposive method—called snowball sampling—to obtain most of the responses. With snowball sampling, “[t]he researcher begins with those members of the population to whom the researcher has access and then asks each participant to help the researcher . . . contact . . . other members of the population. . . . The sample builds, or ‘snowballs,’ as more and more participants are discovered.”⁴⁷ For this study, we used a modified version of snowball sampling where we identified contacts in each country that would be willing to forward the survey to their email contact lists and social media contacts. To ensure that our preference for plain language was not compromised by our contacts, we crafted specific language that people could cut and paste into any email or online post that they sent to their lists. Here is an example of that language (we slightly changed the wording to fit each particular contact we were asking for help):

A friend of mine is conducting an international study about legal communication. He and I would greatly appreciate it if you would click on the link below and take the survey. All your responses will be confidential and completely anonymous. No one will even know if you've taken the survey.

Fortunately, we had enough contacts in the U.S., U.K., Canada, Australia, and New Zealand to gather a substantial number of responses using snowball sampling—535 of them. We conducted multiple rounds of distribution from late September 2016 through January 2017. Essentially, this means we first sent the survey to the contacts we knew would be the most willing to help. When responses started to slow down from that round, we

45. See SurveyMonkey, *Skip Logic*, https://help.surveymonkey.com/articles/en_US/kb/What-is-Skip-Logic (last visited January 15, 2018).

46. See *id.*

47. ROBERT M. LAWLESS ET AL., *EMPIRICAL METHODS IN LAW*, 148–49 (2010).

then sent the survey to our next set of contacts, and the snowballing started again. We soon realized that we had few contacts in South Africa so achieving a substantial number of responses to make the numbers worthwhile was not realistic. As a result, we removed South Africa as a target country.

After having received a substantial number of responses through snowball sampling from the other countries, we then decided to test our methods and further support the results with a random sample of 200 U.S. individuals that we paid for through SurveyMonkey's Audience feature.⁴⁸ This allowed us to target U.S. responders that had no connection with our contacts or with us.⁴⁹ Not only did this increase our total responders, but it also allowed us to see whether the results from the snowball-sampling group were consistent with the non-snowball group. Fortunately, the results were consistent, which further helped validate our methods.

After months of collecting responses through these methods, our sample included 763 responses—535 from snowball sampling and 228 from SurveyMonkey Audience.

IV. DEMOGRAPHICS OF THE SAMPLE

A preliminary note: almost all of the numbers that follow are rounded up or down. The numbers don't always add up perfectly because of this rounding and because a few responders skipped questions from time to time.

The demographic breakdown of the sample was very encouraging. There were a substantial number of responses from the U.S. and the U.K. (our primary target areas since both of us are from one of these countries), and there were a fair amount of responses from Canada, Australia, and New Zealand. Specifically, of the 754 responses to the demographic questions, nationality broke down as follows:

United States	=	427	(57% of the sample)
United Kingdom	=	165	(22%)
New Zealand	=	67	(9%)
Canada	=	48	(6%)
Australia	=	35	(5%)

48. See SurveyMonkey, *SurveyMonkey Audience for Academics*, [https:// help. Survey monkey.com/articles/en_US/kb/How-do-Academics-use-SurveyMonkey-Audience](https://help.surveymonkey.com/articles/en_US/kb/How-do-Academics-use-SurveyMonkey-Audience) (last visited Jan. 16, 2018).

49. See *id.*

Other countries⁵⁰ = 12 (1.6%)

As for age, of the 763 responses to that question, we had responses from every age category:

18-29 = 86 (11%)

30-39 = 187 (25%)

40-49 = 195 (26 %)

50-59 = 140 (18 %)

60-69 = 104 (13 %)

70-79 = 29 (4%)

80+ = 8 (1%)

While the varied age range is helpful because we obtained responses from all categories, this age breakdown includes a higher percentage of those from 30 to 59 than the worldwide population.⁵¹ This is likely due to the digital nature of the survey and to our purposive sampling, where the survey was sent to our contacts, most of whom were between 30 and 60 years old.

Like in the first study, we wanted to test whether as education levels increased, so did the preference for plain language. However, the educational ranks in the various English-speaking countries differ, so we struggled to categorize the various levels without breaking them out so much that they were unwieldy. From the 757 responses to this question, the breakdown was as follows:

Less than a Bachelor's degree = 234 (30% of the sample) (Univ. undergraduate degree)

Bachelor's degree = 258 (34%) (Univ. undergraduate degree)

Master's degree or PhD = 185 (25%)

50. Through snowball sampling our survey reached beyond our target countries. There were responses from Sweden, Spain, Saudi Arabia, Romania, Moldova, Norway, Mexico, Italy, Indonesia, India, and Armenia. We did not discard these responses for our aggregate results, but we did not include them when breaking down country-specific results.

51. See United Nations, *World Population Prospects 2017*, AGE COMPOSITION BY PERCENTAGES IN BROAD AGE GROUPS, <https://esa.un.org/unpd/wpp/Download/Standard/Population/> (last visited Jan. 17, 2018) (categorizing the percent of world population by broad age groups from 1950 to 2015).

Professional degree (ex. Juris Doctor, Medical Doctor)	=	69	(9%)
I would rather not say	=	11	(1.4%)

The survey itself broke out the educational levels more specifically in the “less than a bachelor’s category” to make everyone feel included.⁵² But we grouped those responses into the broader category so that we would have enough responses in each category to make the results more reliable, and so we would have educational categories that matched those used in the first study. In the original study, 32% had less than a bachelor’s degree, 29% had a bachelor’s degree, 22% had a master’s or doctoral degree, and 17% had a law degree.⁵³ While this study grouped professional degrees, whereas the first study only targeted law degrees, this change seemed appropriate because we wanted to target more than Juris Doctor degrees and much of the rest of the world includes law as an undergraduate degree.⁵⁴ Also like the first study, “the sample includes far more responders with advanced degrees than the population as a whole. But that was a benefit here because it allowed us to more accurately measure whether respondents with advanced degrees had different preferences from the other groups.”⁵⁵

The new demographic information obtained from this study was the responders’ work status and industry they worked in. Again, one of the novel things this study measured was how often people encountered legal information at work and how much impact it had on their productivity. But even though we asked these questions, we used skip logic to ensure that responders who did not work or who did not encounter legal information in the past year skipped directly to the choice-of-language questions at the end.⁵⁶

Of the 751 responders that answered whether they worked, 81% (n=610) currently worked and 19% (n=141) did not. We then sub-categorized those who said they worked into the industries in which they worked, so we could measure any differences in the frequency with which workers encountered legal information in one industry versus another (e.g.

52. The categories less than a bachelor’s degree included not a high school graduate (n=9), completed high school/secondary school (n=131), and Associate’s degree/certificate of higher education (n=94).

53. Trudeau, *supra* note 10, at 135.

54. See *Best Universities for Law Degrees 2018*, TIMES HIGHER EDUCATION (Oct. 4, 2017), <https://www.timeshighereducation.com/student/best-universities/best-universities-law-degrees>.

55. *Id.*

56. See SurveyMonkey, *Skip Logic*, https://help.surveymonkey.com/articles/en_US/kb/What-is-Skip-Logic (last accessed May 25, 2018) (for a discussion on how skip logic works on the SurveyMonkey Platform).

government v. business). We chose broad industry designations to be inclusive and to increase the data for each industry, which broke out as follows:

Government	=	181	(30% of the sample)
Health	=	81	(13%)
Education	=	80	(13%)
Law	=	60	(10%)
Non-profit	=	22	(4%)
Business	=	193	(31%)

Because we did not receive enough responses in the non-profit category for the individual results to be reliable, we used those results in our overall numbers set out in the next section, but we did not describe the results for that individual industry. Also, we used the “business” category as a catch all, and we realize that sometimes this may have caused people to choose between many appropriate industries—for example, a doctor who owns a family practice may be in the health and business sectors. Alas, our aim was a rough approximation of the industry that people perceived that they worked in, so these broad categorizations seemed appropriate.

V. RESULTS: LEGAL INFORMATION’S IMPACT ON WORK

Again, our aim for this part of the survey was to gather evidence on how legal information impacts the workplace. Both of us have encountered anecdotal evidence of traditional, hard-to-read legal information causing workplace confusion, but there has been little data published on this. And there has been no data on how much productivity is lost in the time employees spend trying to read and interpret this legal information so they can do their jobs. As you’ll see, it is significant, and we encourage others to build on this data and dive more deeply into the impact traditional legal language has on varied aspects of the workplace.

A. Overall Results

After the initial demographic questions, Question Six of the survey asked people the following: “Over the past year, in your business or personal life, have you had to use legal information to accomplish a task?” Of the 750 people who responded to that question, about 20% (n=148) had not encountered legal information in the past year. That is very telling—it means that 80% (n=602) had encountered legal information at some point.

And of that 80% who had encountered it, 17% (n=128) had encountered it only at work and 44% (n=331) had encountered it at work and in their personal lives. From a workplace perspective, that means that 61% of responders (n=459) had used legal information at work in some capacity within the past year.

But how often do these workers use legal information at work to accomplish a task? We asked that question, and the results show that a significant number of the 415 responders used legal information daily or weekly:

Daily	=	131	(32% of the sample)
Weekly	=	82	(20%)
Monthly	=	116	(28%)
Yearly	=	57	(14%)
Other ⁵⁷	=	29	(7%)

What was surprising to us was just how often people encountered legal information—we were expecting that most of them would encounter legal information monthly, with a smaller percentage doing so daily or weekly. But that is not what happened. Nearly one-third of responders who used legal information at work said they did so daily. And more than half of them said they did so at least weekly. What this tells us is that there are a lot of people who frequently use legal information at work that was not initially written for them. This underscores the importance of writing clearly for all readers—you do not always know who will need to understand what you wrote, so it is best to make it clear for everyone.

Given these results, the next logical question is, how much time do people spend reading legal information at work? We asked this question next in the survey. Specifically, Question Eight asked: “When you do have to use legal information at work, about how much time (on average) do you spend reading this information?” Of the 412 responses to this question, the results broke down as follows:

A couple of mins	=	87	(21% of the sample)
15 to 30 mins	=	153	(37%)
30 to 60 mins	=	84	(21%)

57. For the “other” response, we allowed people to insert their own responses. Most of these responses were some hybrid of the categories above. For example, a few answered “every two months” or “once in a while.” We kept these out of our calculations so we wouldn’t skew the results consciously or subconsciously.

Over 60 mins = 88 (21%)

From this, it is clear that people are often spending a significant amount of time trying to decipher legal information at work—79% spent more than fifteen minutes doing so and 41% spent over thirty minutes doing so.

But why do so many people use legal information at work? Those who answered the previous question were then asked the following one, which allowed qualitative responses: “Thinking of the last time you used legal information at work, please describe (generally) the task that the legal information was helping you accomplish?” There were 373 of these qualitative responses—far too many to include them all in this article. But here is a sampling of those responses, which helps to show the broad reasons why people may need to interpret legal information in the workplace:

”Reviewing info related to food safety.”

“Verifying legal requirements for electrical work re safety & insurance.”

“Handling [protected health information] at work, so needed to read and re-read HIPAA sections.”

“Using a deed of funding to understand funding conditions for a project.”

“Gaining entry into a correctional facility for research.”

“Compliance training.”

“Compliance with U.S. federal election laws.”

“Compliance with confidential rules for work.”

“Legal procedures needed to follow when a deaf person requests an interpreter at the last minute.”

“To comply with company policies and customer’s agreement.”

After this line of questioning, we shifted to questioning responders about whether they stopped reading legal information before it ended, whether they tried to find legal information a different way if they couldn’t find it from the first source, and how much time they spent trying to find and interpret this legal information in a different way. These questions were designed to follow up on what we learned in the first study. The first study found that 38% of responders had stopped reading a legal document midway through, so we knew there would be a substantial number of workers who

did the same.⁵⁸ These questions helped us further quantify how much lost productivity is created by difficult legal language.

Question 10 of the survey, which was presented only to those who had answered the prior workplace questions, asked the following: “Have you ever had to read legal information for work and stopped reading it before it ended?” Surprisingly to us, 78% (n=322) of responders had done this, while 17% (n=68) had not done so, and 5% (n=21) couldn’t remember doing so. That percentage is higher than we expected given the results of the first study.

Naturally, we wondered how frequently this was happening. So those responders who had stopped reading were asked how frequently they stopped reading a document midway through. The results were as follows:

Frequently	=	52	(16% of the sample)
Fairly Often	=	115	(36%)
Occasionally	=	133	(42%)
Rarely	=	18	(6%)

To be sure, this question measured the responder’s perception of how often this had happened to him or her. This means that those responders who had a few early exits within the weeks before responding to this survey were likely to respond that this happened to them frequently.⁵⁹ And, of course, those who had not had this happen to them recently would be more likely to choose “occasionally” or “rarely.” Nevertheless, more than 50% of responders had this happen at least “fairly often.”

We also wondered why these early exits were happening, so we asked them this and allowed qualitative responses. There were 302 of these responses, but we found this sampling of responses very indicative of the typical reasoning:

”At some point it feels like you cannot locate the information clearly so I end up stopping and using a search function within the document for keywords in order to help focus my search.”

“It was too convoluted and confusing.”

“Difficult to process when I was already busy.”

“To take care of my patients. Then went back in the next few days to read.”

58. Trudeau, *supra* note 10, at 139.

59. See generally, Jeff Sauro, *9 Biases that Affect Survey Responses*, MEASURING U (Sept. 27, 2016), <https://measuringu.com/survey-biases/>.

“Found what I was looking for.”

The last response (“found what I was looking for”) is an important reminder that efficiency and productivity is something that can be improved if documents are designed in ways that are easy to use and understand. A handful of the 302 responses mentioned some response similar to this. However, the rest of the responses were negative and dealt with frustration caused by time constraints and difficulty of the material.

Our final line of questioning in this workplace segment of the survey consisted of two questions that were only shown to responders who had quit reading legal information before it ended. Question 13 asked: “Did you try to find the legal information in a different way, for example, by asking a colleague, calling a helpline, or searching on the internet?” And Question 14 followed up on this by asking: “How much time did you spend trying to find the legal information in a different way?” Using skip logic, this question was only asked to those responders who had continued trying to find legal information.

First, 77% (n=245) of the responders who had quit reading legal information midway through had also tried to find that legal information a different way. That is encouraging because it means that the workers were persistent, but it also means that 23% of people would quit and not get the information they need. That is troubling. But what is even more troubling is how much additional time people spent on finding the information another way:

A few min	=	64	(26% of the sample)
15 to 30	=	108	(44%)
30 to 60	=	51	(21%)
60+	=	22	(9%)

Once again, time is wasted and productivity is lost because of traditional, hard-to-read legal information. Not only are the vast majority of the people spending more than fifteen minutes on the first legal information they read, but the ones that continue trying to find something that works for them wasted even more time. More than 73% spent more than fifteen minutes searching for and trying to understand this secondary source of legal information and nearly 30% spent more than thirty minutes. What a waste.

So what can we take away from these legal-information-at-work questions? People quit reading for many reasons, but the data shows that it happens fairly often. When people quit reading because they can't find what they are looking for or cannot understand something, then the writer is not doing his or her job. By writing legal information in confusing ways, law-

yers decrease productivity, increase frustration, and make things harder for all involved. And even when people find what they are looking for and finish early, a clear design helps facilitate easy finding and clear writing increases understanding. And doing both of these will increase productivity.

B. Industry-Specific Results

The overall results in the section above were telling, but the question still remains whether the use of legal information varies based on the industries where people work. Of course, logic tells us that this will vary from industry to industry, but in this section, we will break out the data for government workers, business workers, and healthcare workers.

You'll find that no matter the industry, clear legal communication can increase productivity and reduce frustration. Additionally, we do not break out the industry results by national origin because breaking out the results in that way significantly minimized the response totals, which could lead to unreliable conclusions. However, for these three industries, we have stated the number of responses by country, so readers will have a sense of the significance of the results for their country.

1. *Government-Specific Results*

Based on the demographic questions, 181 responders identified that they worked in the government sector. Notably, 110 of these were from U.K. responders, while 41 were from the U.S., 19 were from Canada, 7 were from Australia, and 6 were from New Zealand. Therefore, these results should be of particular significance to U.K. readers. Of those 181 government workers, nearly 80% (n=144) used legal information at work. This, of course, makes sense because much of government work involves complying with regulations, policies, and administrative rules. In fact, more than 31% of these government workers encountered legal information daily, 24% did so weekly, 30% did so monthly, and 11% did so yearly. This aligns well with overall results discussed in the last section.

Some of the qualitative responses that the government employees gave for having to use legal information at work are indicative of the regulatory nature of government work:

"Using a deed of funding to understand funding conditions for a project."

"Reviewing legal provisions with respect to food safety."

"Compliance with confidentiality rules at work."

“Looking up rights of way.”

“Whether a worker complied with the legal requirements of their job.”

“Writing safe operating plans for vessels.”

“To understand a statute.”

Additionally, nearly 84% (n= 103/123) of government workers had quit reading a legal document before it ended. And 25% of these said that they “frequently” did so, while another 36% said that it happened “fairly often.” In the aggregate then, 61% of government workers stopped reading a document at least “fairly often.” And the three qualitative responses that follow are indicative of the typical reasons that people had early exits in every industry we studied:

”Couldn’t understand and went looking for someone in legal to understand.”

“Boring and complicated.”

“Got the gist of it, and the rest seemed to be saying the same thing in different words.”

Regarding lost productivity, 83% of government workers spent more than fifteen minutes interpreting the initial legal information (nearly 47% spent over 30 minutes doing so), and 75% of those who couldn’t figure out what the legal info meant, spent more than fifteen additional minutes finding and interpreting the legal information in a different way (nearly 35% spent more than thirty minutes doing so). That means that more than half of government workers who said they used legal information either gave up when they could not understand it the first time, or they wasted more than an hour of productivity in trying to figure out what it meant.

2. *Business-Specific Results*

Based on the demographic questions, 186 responders identified that they worked in the business sector. Unlike the government sector, only 30 of these were from U.K. responders, while 114 were from the U.S., 2 were from Canada, 7 were from Australia, and 33 were from New Zealand. Of those business workers, about 65% had used legal information at work within the past year. This is 15% less than the government workers, but this makes sense because even though certain industries of business are heavily regulated, it is not as heavily regulated as the government sector is as a whole.

These lower results also carried over to the frequency with which business workers had to use legal information at work. Nearly 16% of business workers encountered legal information daily (as opposed to 31% in the government sector), and another 20% did so weekly, while 39% did so monthly, and 18% did so yearly. These results show that while business workers encounter legal information at work less frequently than government workers, still more than one-third of business workers have to use legal information for work at least weekly.

Some of the qualitative responses that the business workers gave for having to use legal information at work are instructive:

”Complying with state regulations.”

“OSHA regulations.” (Occupational Safety & Health Act, U.S. state and federal workplace-safety laws)

“Requirements for working with a new vendor.”

“Compliance training.”

“Certifying FMLA leave.” (Family & Medical Leave Act, a U.S. federal law)

Regarding lost productivity, nearly 77% of business workers spent more than fifteen minutes interpreting the initial legal information (nearly 37% spent more than thirty minutes doing so). Plus, 70% of those who could not figure out what the legal information meant spent at least another fifteen minutes finding and interpreting the legal information in a different way. That means that more than half the business workers who used legal information either gave up when they could not understand it the first time (almost 27% said they would not try to find the legal information another way), or they wasted more productivity in trying to figure out what it meant using a different source.

3. *Healthcare-Specific Results*

Based on the demographic questions, 82 responders identified that they worked in the healthcare sector. The vast majority of these were from the U.S.—68 were from the U.S., 2 were from the U.K., 2 were from Canada, none were from Australia, and 9 were from New Zealand. Of those, about 60% had used legal information at work within the past year. This is 20% less than the government workers and 5% less than business workers, but this too makes sense because even though healthcare is a heavily regulated industry, many healthcare employees spend their time on patient care, not necessarily on interpreting documents.

Interestingly though, of those healthcare workers who have used legal information at work, 22% said they did so daily and another 24% said they did so weekly. That's 46% of healthcare workers who frequently have to use legal information at work, which is 11% more than the business workers. The most common reason responders gave as to why they had to use legal information in the healthcare workplace—to interpret patient privacy laws. Other reasons included “to place an individual into rehab,” “to find out the details of a healthcare law,” and to figure out “patient rights.”

Regarding lost productivity, more than 65% of health workers spent more than fifteen minutes interpreting the initial legal information (nearly 22% spent more than thirty minutes doing so), and 80% of those who couldn't figure out the legal information spent at least another fifteen minutes finding and interpreting the legal information in a different way. Again, as in the government and business sectors, the vast majority of healthcare workers who had to use legal information in their work either gave up when they could not understand it the first time (24% said they would not try to find the legal information another way), or they wasted more productivity in trying to figure out the answer using a different source.

As a result, there are two significant reasons for clearly conveying legal information in workplace contexts—it will help to increase compliance with workplace policies and regulations and it will help improve workplace productivity.

VI. RESULTS: GENERAL PREFERENCES FOR LEGAL COMMUNICATION

As explained in the methodology section, the “general preferences” section of the survey was designed to follow-up on data gathered in the first study. Specifically, in this section of the survey, responders were asked the following, which were the exact questions asked of responders in the first study:

Question 15: How important is it for people to understand what a lawyer is saying in a legal document?

Question 17: How does it make you feel when lawyers use Latin words or other complicated words in a legal document?

A. Importance of Understanding a Legal Document

One of the main results of the first study was that nearly everyone (99.7%) said that it was at least “important” to understand what a lawyer is saying in a legal document.⁶⁰ This made sense, but we wanted to gather

60. Trudeau, *supra* note 10, at 137.

more data on the topic. In this study, 97.61% of responders (n=531/544) thought it was at least “important” to understand this information. Specifically, the results broke out as follows:

very important	=	472	(87% of the sample)
important	=	59	(11%)
somewhat important	=	10	(2%)
less important	=	2	(0.37%)
not important	=	1	(0.1%)

The results were similar from country to country. In the U.S., 96.51% thought it was at least “important” to understand legal information. In the U.K., that number was 97.47%, and in Canada, Australia, and New Zealand, every one (100%) of the admittedly limited responders thought that understanding legal information was at least important.

Based on these results and those of the first study, it is clear that no matter the country, people think it is important to understand what lawyers say, yet they often struggle to do so—both in and out of the workplace.

B. The Impact of Latin Words or Complicated Terms

In the first study, 0.5% of responders (2 people) were impressed by a trait common in traditional legal writing—using complicated terms or Latin words.⁶¹ That was very useful data to help dispel the myth that using such terms helps writers to seem more like lawyers.⁶² Therefore, we used the same question for this study to see if the results were consistent, and so we could see how the results broke down by nationality. The following table sets out the overall results and the results for each of the main countries we surveyed:

Impact of Latin Words or Complicated Terms on Responders						
	Overall	U.S.	U.K.	Can.	Aus.	N.Z.
It annoys me	50%	41%	61%	64%	52%	62%
It bothers me a little	16%	19%	15%	8%	10%	13%
It has no influence on me	22%	29%	11%	11%	24%	11%
It impresses me	2%	3%	2.5%	0%	0%	2%
Other	10%	8%	10%	17%	14%	11%

61. See Trudeau, *supra* note 10, at 138–39.

62. See Salzwedel, *supra* note 23.

What's telling about this is that no matter the country, Latin words and complicated terms bother people. As the table shows, the U.S. was the only country where fewer than 50% of respondents were "annoyed" by such language and that is probably because a substantial number of respondents (29%, n=83) answered "other." But an examination of those "other" responses indicates that many of these folks were frustrated, bothered, or (at the very least) think that such terms lead to protectionism and elitism because most of them are not understood. Here is a sampling of some of those "other" responses, which are themselves instructive as to the impact of Latin words or complicated terms:

"Very aggravated, I don't feel it is necessary."

"It makes me look for another lawyer."

"I believe they should also give the layman definition. So everyone is on the same page."

"I have to waste time on the Internet finding out what it stands for."

"It bothers me if they don't explain the meaning because I feel threatened by their apparent demonstration of greater education, but if they attempt to educate me then I am grateful for their thoughtful consideration."

"It irritates me because it is elitist."

"I understand that the use of French and Latin terms in English (and American) common law is part of the history of the discipline, but it often seems to me to be a deliberate barrier to understanding for non-experts."

"'Annoys' is too strong; feel such language is unnecessary, the easier to understand the better."

"It shows a lack of respect for the reader and protectionism by a profession."

Based on these results, it is clear that the risk of using such language is great, while the reward is minimal. At most, 2% may be impressed, but 65% of the time lawyers will (at least) bother people by using them. As one of the "other" comments suggested, if you must use a legal term, then clearly define it, "[s]o everyone is on the same page."

VII. RESULTS: CHOICE-OF-LANGUAGE QUESTIONS

As explained earlier, the final section of the survey involved ten choice-of-language questions, which presented two versions of text that had the same meaning. Responders were asked which version of text they would prefer to read in a legal document. As explained, we carefully crafted the questions so as not to bias the results by suggesting that we wanted people to pick the clearer version. We also designed most of the paired passages so that one choice was not remarkably more difficult to understand than the other.

Below, we will first break out the results by individual category, so we can provide country-specific detail and analysis when needed. After that, we will describe the aggregate results for all of these questions and how the results changed based on educational attainment.

A. Individual Results: The Only Question That Was Close

Question 18 of the survey was the first choice-of-language question, but it was also the only question where the responses were even close on the traditional version⁶³ versus the clearer version. The question was as follows:

Question 18: Which would you prefer to read?

1. A decision was made by the Board of Directors to review the file.
2. The Board of Directors decided to review the file.

In this question, the second choice was clearer because it did not contain the nominalization “decision,” and it used the active voice instead of the passive voice. Overall, 67% of responders (n=457) chose this version, while the other 33% (n=224) chose the traditional version. These results were comparable to the same question in the first study, where 72% chose the clearer version and 28% chose the traditional version.⁶⁴

Importantly, for all questions, the way the versions appeared to responders was random. That is, we purposely chose to have the Survey-Monkey software randomize which version was first for that respondent and which was second. We did this to combat another type of survey bias—

63. When we say traditional version, we mean a version that is passive, wordy, or otherwise legalistic. Those are some of the hallmarks of traditional legal writing, so we used the term traditional to describe it.

64. Trudeau, *supra* note 10, at 144.

survey fatigue⁶⁵—which can happen when people are eager to complete the survey so they simply choose the first response that appears.

What is really interesting about these results, however, was how they broke out by country. The percent that chose the clear version by country were as follows:

U.S.:	56%	(N=226)
U.K.:	83%	(N=106)
NZ:	84%	(N=54)
AUS:	87%	(N=26)
CAN:	88%	(N=36)
All but U.S.:	85%	(N=222)

From this data, it appears that outside the U.S., the passive voice and the use of nominalizations (at least in this sentence) is much less preferred than in the U.S.—85% preferred the clearer version when the U.S. results are excluded from our calculations. However, in the U.S. only slightly more than half (56%) preferred the clearer version to the traditional version. This disparity will give researchers additional things to study about the semantic and syntactic preferences among English-speaking countries.

B. Individual Results: Avoiding Using Shall

There has been a lot written about the ambiguity that using the word “shall” can create.⁶⁶ But for this study, we wanted to see what people preferred when given the option between two words that both state a mandatory obligation: “shall” and “must.” The sentence choices, and the overall numbers that selected each version, were as follows:

Question 20: Which would you prefer to read?

1. 83% (n=562) Employees must send a signed copy of the form to the Human Resources Department.
2. 17% (n=119) Employees shall send a signed copy of the form to the Humans Resources Department.

65. See Andrea Fryrear, *5 Easy Ways to Avoid Survey Fatigue in Your Respondents*, SURVEYGIZMO (Feb. 25, 2016), <https://www.surveygizmo.com/survey-blo/g/5-basic-ways-to-avoid-survey-fatigue/>.

66. See Bryan A. Garner, *Shall We Abandon Shall?*, ABA J. (Aug. 2012), http://www.abajournal.com/magazine/article/shall_we_abandon_shall/.

As you've noticed, the rest of the words in the sentence were exactly the same—we only swapped “shall” for “must.” This is what we call a single-variable question—there was only one change to the sentence. We did this in some choice-of-language questions (like this one) because by isolating the changes, it is easier to determine what could be the cause for the change in preference. In this case, it was that people preferred “must” by a wide margin over “shall.”

Again, like in the last question, the rest of the world had a higher preference for “must” than in the U.S. The percent that chose “must” by country were as follows:

U.S.:	76%	(N=306)
U.K.:	94%	(N=120)
NZ:	95%	(N=61)
AUS:	94%	(N=29)
CAN:	88%	(N=35)
All but U.S.:	93%	(N=245)

While there is a marked difference in preference between the U.S. and other countries, it is clear that no matter the country, a substantial majority prefer “must.” Yet another reason to get rid of “shall” in favor of a clearer word.

C. Individual Results: Avoid Utilize

As we did with “shall,” we tested a lot of individual word choices. We did this with the word “utilize” versus “use” in Question 22. We should also note that “utilize” is one of our least favorite words because in nearly all instances, people could just say “use” when they instead say “utilize.” The sentence choices, and the overall numbers that selected each version, were as follows:

Question 22: Which would you prefer to read?

1. 17% (n=114) You must utilize the Agency's electronic filing system when submitting your application.
2. 83% (n=565) You must use the Agency's electronic filing system when submitting your application.

Following the trend, the rest of the world had a higher preference for “use” than in the U.S., but it still was not really close in any country. The percent that chose “use” by country were as follows:

U.S.:	74%	(N=298)
U.K.:	98%	(N=124)
NZ:	100%	(N=63)
AUS:	87%	(N=26)
CAN:	98%	(N=40)
All but US:	92%	(N=253)

While there was a difference in preference between the U.S. and other countries, it is clear that no matter the country, a substantial majority prefer “use.” And if you are outside the U.S., it would be best to avoid it altogether. It really surprised us that in New Zealand, every single person chose “use” instead of “utilize,” and nearly everyone one from the U.K. and Canada did the same.

D. Individual Results: Avoid Jargon

In the first study, we did not test words that would traditionally be called “jargon.” But since one of our goals of this study was to test workplace legal communication, we tested a couple terms that we thought qualify as “business jargon.” We did this in Questions 23 and 25. The sentence choices, and the overall numbers that selected each version, were as follows:

Question 23: Which of the following would you prefer?

1. 7% (n=47) We’ve been going round the houses on this one.
2. 93% (n=632) We’ve been wasting time on this one.

Question 25: Which of the following would you prefer?

1. 3% (n=23) We would like to start onboarding users in regards to the new features of our software.
2. 97% (n=652) We would like to start educating users about the new features of our software.

For country-specific results, every single country overwhelmingly preferred the version without jargon in both Questions 23 and 25. Even in the U.K., where this phrase—“round the houses”—is common, 95% (n=119)

still preferred the version without jargon. And the same is true for “onboarding,” which has more global reach than “round the houses.” Nonetheless, even in the U.S., where this is common business speak, 96% (n=384) of U.S. responders chose the version without it.

However, we regrettably note that Question 25 qualifies as a multi-variable sentence because we not only changed “onboarding,” but we also changed “in regards to” for the word “about.” Thus, there is more uncertainty about what caused the preference, but given that the results for Question 25 were so overwhelming, like in Question 23, it is pretty certain that the jargon had an impact on responder preference.

E. Individual Results: Avoid Being Overly Legalistic

While parts of every choice-of-language question could be called legalistic, there were two questions that embodied the spirit of traditional legal language—Questions 20 and 27. The sentence choices, and the overall numbers that selected each version, were as follows:

Question 20: Which would you prefer to read?

1. 86% (n=586) If this breach continues, my client will immediately terminate this contract.
2. 14% (n=96) If there is a continuation of this breach, my client will effect an immediate termination of this contract.

Question 27: Which would you prefer to read?

1. 6% (n=39) I am herewith returning your stipulation for the dismissal of your case; the same being duly executed by me.
2. 94% (n= 634) I have signed and enclosed the stipulation to dismiss your case.

For country-specific results, the responses to Question 20 repeated the trend from earlier—the rest of the world preferred the clearer version at a higher rate than U.S. responders. Specifically, 93% (n=247) of responders outside the U.S. preferred the clearer version, while 81% (n=327) of U.S. responders preferred it. Still, however, the vast majority preferred the clearer sentence with active verbs instead of nominalizations.

For Question 27, the results were substantially similar no matter the country—every country preferred the clearer version in the mid-90% range. What that tells us is that while there may be slight differences in preference for things like active voice and action verbs, when traditional legalisms (like “herewith”) are coupled with a difficult sentence structure, all but a very small percentage will prefer something clearer.

Finally, the results for these two sentences were comparable to the results of the first study. Questions 20 and 27 used the same sentence choices as Questions 17 and 18 in the first study.⁶⁷ In the first study, 90% chose the clearer version of this study's Question 20, which is only slightly more (4%) than the result here even though the first study had about half as many responses, which were mainly from the U.S. For Question 27, in the first study, 97% preferred the clearer version (the one without "herewith"), which, too, is only slightly more (3%) than in this study.

As a result, what is clear from the data in this study and the data in the first study is that people around the globe overwhelmingly prefer a clearer sentence with active voice and active verbs to a traditional legal sentence with nominalizations and needless legalisms.

F. Individual Results: Explain Any Legal or Medical Terms That You Cannot Avoid

As explained in the section on study methodology, one of our primary aims was to follow up on another result that had never been tested before the first study—whether people would naturally prefer a longer version if the added length helped to explain a term that most would not understand.⁶⁸ For this study, we tested this with two types of difficult language—medical language and legal language.

We added a question with a medical focus because in order for health professionals to comply with many legal requirements (e.g. informed consent), they must explain medical procedures, risks, and alternatives to patients. Thus, to do this well, this information must be clear and use non-technical language. For the medical question, the sentence versions, and the overall number who selected each version, were as follows:

Question 24: Which version would you prefer to read on a health form?

1. 16% (n=106) A colonoscope will be inserted into your rectum and the inside lining of your colon will be carefully inspected. A biopsy may be removed for examination under a microscope. Polyps that may develop in the intestinal tract will be removed using forceps or electrocautery. Electrocautery may also be used to coagulate any bleeding lesions.

2. 84% (n=569) Your medical provider will use a flexible, lighted tube, called a colonoscope, to look at the inside lining of your colon. This is done to see if there are any problems with your colon, such as cancers, growths that could turn into cancer, or other medical problems. During

67. See Trudeau, *supra* note 10, at 146.

68. Trudeau, *supra* note 10, at 149–50.

this process, your provider may use an instrument to remove any growths found or to remove small pieces of your colon for testing.

Electrocautery? Coagulate? Lesion? Many would not understand these terms, especially when they are all used in one sentence.⁶⁹ It is no wonder that responders overwhelmingly preferred the version with the explanation of the medical term that could not be avoided—colonoscope. The preferences were also fairly consistent across countries. In the U.S., 81% of responders chose the version without those medical terms. And 90% of those in the U.K, 90% of those in New Zealand, 83% of those in Australia, and 93% of those in Canada preferred that version too.

Notably, the clearer version was also the longer version—by 16 words. Specifically, the difficult version was 54 words and the clearer version was 71 words. Importantly, since we were adding a second choice-of-language question to test length preference in this study, we wanted to test two longer passages to see if responders would gravitate towards the version with more words even when presented with multiple lengthy options. The legal choice-of-language question, as explained below, presented a noticeably shorter option along with a longer, yet better explained, option. In any case, what the results of the medical choice-of-language help to validate is that if you cannot avoid a technical term, people will prefer the added length if that length explains medical terms that must be used (e.g. a colonoscopy).

But what about legal terms—will people prefer added length if that information is helpful to define a legal term that must be used? Question 21 was designed to test that. In fact, it presented the exact wording as in the first study. Specifically, the sentences options, and the overall results, were as follows:

Question 21: Which would you prefer to read?

1. 21% (n=142) If you don't respond, the court will issue a default judgment.
2. 79% (n=538) If you don't respond, the court will issue a default judgment. That means you'll lose, and the court will give the plaintiff what he is asking for.

These results were strikingly similar to those in the first study. In the first study, 78% of responders preferred the longer version⁷⁰ compared to 79% here. This surprised us because this study had more than double the

69. See generally Raymond L. Ownby, *Influence of Vocabulary and Sentence Complexity and Passive Voice on the Readability of Consumer-Oriented Mental Health Information on the Internet*, AMIA ANN. SYMP. PROC. 2005, 585–88.

70. Trudeau, *supra* note 10, at 149–50.

number of responses and was five years removed from the first study, yet the results were still substantially the same.

For country-specific results, the results varied in no discernable pattern. For instance, in the U.S., 74% preferred the explanation, while that number was 88% in the U.K, 92% in New Zealand, 77% in Australia, and 92% in Canada. Nevertheless, based on the results of both the first study and this one, the verdict is in—people want an explanation of technical terms that cannot be avoided. No matter the country, people will prefer extra words if those words help to explain a term that is not intuitive to them.

G. Overall Results: English Speakers Overwhelmingly Prefer Plain Language

Now that we have explained the results for each choice-of-language question, the aggregate results should be more meaningful. Overall, the vast majority of people prefer clear writing to traditional, hard-to-read writing when given the choice. Specifically, after averaging the results for all choice-of-language questions, 85.6% of responders preferred the clearer version to the traditional version. However, the results did vary by country, as explained in the table that follows:

Overall Results by Country	
	PL Pref.
Overall	86%
U.S.	81%
U.K.	93%
Canada	95%
Australia	91%
New Zealand	95%

Despite the lower results in the U.S., what is notable is the consistency of these U.S. results when compared with similar U.S. studies. In the first study, 80% of largely U.S. responders preferred the clearer version.⁷¹ And in a past study measuring the preference for plain legal language among U.S. judges, the preference rate was 82%.⁷² This suggests that no matter the audience, the study methodology, or the specific language tested, about 80% of people in the U.S. will prefer clearer language when given the choice.

What is also notable is the increased preference for plain legal language in other English-speaking countries. This suggests that traditional legal language is even less tolerable in other parts of the world than it is in

71. See Trudeau, *supra* note 10, at 141–142.

72. JOSEPH KIMBLE, LIFTING THE FOG OF LEGALESE 8 (2006).

the U.S. However, the lower number of responses in these countries no doubt caused some of this variance. For the choice-of-language questions, there were about 402 responses from the U.S., 127 from the U.K., 41 from Canada, 30 from Australia, and 64 from New Zealand. Nevertheless, this data provides evidence of a trend that should be measured in future research.

H. Overall Results: Plain Language Preference Increases with Education

As explained earlier in the section on study methodology, one of our main goals of this study was to see whether the preference for plain language changed with the responder's education level. The first study showed that as education increased, so did the preference for plain language in the choice-of-language questions.⁷³ Because this was against conventional wisdom, we measured it again in this study. In the table that follows, we show the results for each choice-of-language question and the overall average for all questions. Additionally, we also provided the number of responders selecting the clear version of each question along with the total number of people answering the question in each educational group. We hope that this specificity will aid future research into plain language and educational attainment.

Results by Education Level					
Question	Over-all PL Pref.	Less than Univ. Degree	University Degree	Master's or PhD	Prof. Degree
#18	67%	50% (n=107/212)	74% (n=166/224)	73% (n=117/160)	88% (n=52/59)
#19	83%	72% (n=154/212)	87.5% (n=196/224)	88% (n=141/160)	86% (n=51/59)
#20	86%	74.5% (n=158/212)	90% (n=201/224)	92.5% (n=148/160)	98% (n=59/60)
#21	79%	74% (n=158/213)	83% (n=187/224)	87% (n=139/159)	64% (n=37/58)
#22	83%	72% (n=153/213)	86% (n=192/223)	90% (n=143/159)	91% (n=53/58)
#23	93%	84.5% (n=180/213)	98% (n=219/223)	97% (n=154/159)	98% (n=57/58)
#24	84%	82% (n=173/212)	84% (n=186/222)	87% (n=138/158)	90% (n=52/58)
#25	97%	95% (n=200/210)	98% (n=217/222)	97% (n=155/159)	97% (n=56/58)
#26	90%	80%	94%	96%	95%

73. Trudeau, *supra* note 10, at 142-43.

		(n=169/211)	(n=207/221)	(n=151/158)	(n=55/58)
#27	94%	89% (n=187/210)	96% (n=213/221)	97% (n=153/158)	100% (n=58/58)
Total (Avg.)	86%	78%	89%	91%	91%

As the table shows, as education increases, so does the preference for plain language. What's more, this correlates surprisingly well with the results in the first study, which showed a 76.5% preference for those with less than a university degree increasing to an 86% preference for those with a law degree.⁷⁴ As we noted earlier, we categorized the degrees differently in this study to account for the different labeling of degrees in countries outside the U.S., so we were a bit surprised that the results correlated so well between the studies. In the end, what these results show is that there is a clear connection between plain language preference and educational attainment—"even though people with advanced degrees might understand traditional legal style, that's not what they prefer. They know what's clear; they know what's understandable. They know better."⁷⁵

VIII. CONCLUSION

In conclusion, there are many things that readers can take away from this study. But four results are particularly notable.

First, and this is worth remembering, people frequently needed to use legal information to do their jobs. This is true no matter what sector they are in: in healthcare, in government, or in business. But what was surprising was how much workplace productivity is impacted by traditional legal language. To recap, not only did the vast majority of responders spend more than fifteen minutes interpreting legal information they had to use, but the ones who could not understand that information wasted even more time trying to find and interpret that information in a different way. What a waste of time.

Second, no matter the English-speaking country, people overwhelmingly prefer clear language to traditional legal language. In fact, the results show that the preference for plain language may be even stronger outside of the U.S. But, even in the U.S., more than 80% preferred plain language, which is a substantial majority by any measure.

Third, the preference for plain language increases with the person's education level. We were pleasantly surprised to see that the results from this study were consistent with the results in the first study. This additional data

74. Trudeau, *supra* note 10, at 142–43.

75. Trudeau, *supra* note 10, at 152.

helps further “debunk the argument that higher-educated people will not mind traditional legal language as much as other[s] do.”⁷⁶

Finally, if technical terms cannot be avoided, explain those terms. We were encouraged—and a little surprised—by the results from the two choice-of-language questions that tested preference for explaining technical terms (one medical term and one legal term). Notably, these were the only two choice-of-language questions where the longer version prevailed. These results are a good reminder that using plain language does not always mean shortening something. It means explaining technical concepts to a reader in ways that help them understand—even if that means adding more words.

In the end, the public has spoken, again, and from nearly every major English-speaking country. They know what they want—they want plain language.

76. Trudeau, *supra* note 10, at 143.