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2012

## The Public Speaks: An Empirical Study of Legal Communication

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### Recommended Citation

Christopher R. Trudeau, *The Public Speaks: An Empirical Study of Legal Communication*, 14 *Scribes J. Leg. Writing* 121 (2012).

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# The Public Speaks: An Empirical Study of Legal Communication\*

Christopher R. Trudeau

Most attorneys agree that writers need to tailor their writing to a particular audience.<sup>1</sup> This just makes sense. So it's hardly a stretch to argue that in writing for a client, an attorney should use plain language — language that's so clear and effective that “the audience has the best possible chance of readily . . . understanding it.”<sup>2</sup> But there is little empirical data on whether clients actually prefer plain language. Rather, as proof, books and articles rely mostly on anecdotal evidence.

In fact, in my classes I have offered anecdotal evidence of my own experiences with clients. I've said things like “Don't use *conflagration* when you could just use *fire*. Don't say *disseminate* if you could say *give* or *send out*. Imagine if I told one of my English-as-a-second-language clients to ‘disseminate this letter to your family.’ They might ask, ‘What do you want me to do to my family?’”

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\* Supported by a scholarship grant from LexisNexis to the Legal Writing Institute and the Association of Legal Writing Directors. Reviewed for research methods by Deans Ann Wood and Laura LeDuc at Thomas Cooley Law School.

<sup>1</sup> See generally Wayne Schiess, *Preparing Legal Documents Nonlawyers Can Read and Understand* (ABA 2008); Nancy L. Schultz & Louis J. Sirico, Jr., *Legal Writing and Other Lawyering Skills* 161–68 (5th ed., Aspen 2010); Joseph M. Williams & Gregory G. Colomb, *Client Communications: Delivering a Clear Message*, 12 Persps. 127 (Winter 2004).

<sup>2</sup> Annetta Cheek, *Defining Plain Language*, Clarity No. 64, at 9 (Nov. 2010).

But we're still left with unanswered questions. To what degree do clients and potential clients prefer plain language over traditional legal language — which, to me, is writing marked by (among other things) a complex syntactical structure and inflated or needless words?<sup>3</sup> Do clients closely read what lawyers write? How do clients react when they see complicated legal language that they don't understand? How often will they look up complicated terms? Have they ever been so frustrated by such language that they quit reading a document?

These questions have been nagging me for some time. I'm probably not alone. Therefore, I designed a study to help answer them — and many others as well. In this article, I'll describe the study and analyze the results, which provide strong support for a simple principle: the public prefers plain language.

## Previous Studies

For centuries, prominent figures worldwide have advocated for plain language — Thomas Jefferson, Sir Edward Coke, and King Edward VI, to name a few.<sup>4</sup> Over 50 years ago, the first American organization was founded to advance a clear style in the law: Scribes — The American Society of Writers on Legal Subjects.<sup>5</sup> Similarly, over the past 30 years, a number of international organizations have formed to advocate for plain language.<sup>6</sup> And advocates have

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<sup>3</sup> Peter Butt, *Plain Language: Drafting and Property Law*, 7 Eur. J. L. Reform 19, 21 (2006).

<sup>4</sup> See Joseph Kimble, *Lifting the Fog of Legalese* app. 1, at 175–80 (Carolina Academic Press 2006) (collecting quotes from many prominent figures from 1537 to 2005).

<sup>5</sup> Thomas M. Steele & Norman Otto Stockmeyer, *Scribes After More Than 50 Years — A History*, 12 Scribes J. Legal Writing 1, 1–2 (2008–2009).

<sup>6</sup> E.g., Clarity: An International Association Promoting Plain Legal Language, founded in 1983; and Plain Language Association International (PLAIN), founded in 1993.

made substantial progress: “In countries such as Australia, New Zealand, and Canada, legal practitioners and parliamentary drafters now feel no compunction in boasting about the ‘plainness’ of their drafting.”<sup>7</sup> Then in 2010, the United States Congress passed the Plain Writing Act of 2010<sup>8</sup> — a major victory for plain language.

Despite this progress, the empirical research supporting plain language in the law is incomplete,<sup>9</sup> especially when compared to other social sciences. About half the existing research focuses on the cost savings and time savings from using plain language.<sup>10</sup> Part of the other half largely focuses on pleasing one type of legal reader — judges and lawyers themselves.<sup>11</sup> To be sure, this research has contributed critical ammunition by showing the huge economic benefits of plain language, together with the overwhelming preference for it within the profession (at least when it comes to *reading*). Significantly, one research study showed that over 82% of judges surveyed preferred plain language.<sup>12</sup>

But what about studies addressing the other main type of legal readers — clients, prospective clients, or, more generally, the public? There have been five to date, all providing some kind of empirical

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<sup>7</sup> Butt, *supra* n. 3, at 20.

<sup>8</sup> Plain Writing Act of 2010, H.R. 946, 111th Cong. (Oct. 13, 2010).

<sup>9</sup> See Karen Schriver & Frances Gordon, *Grounding Plain Language in Research*, Clarity No. 64, at 33 (Nov. 2010) (noting the need for further empirical research to support plain language).

<sup>10</sup> See generally Joseph Kimble, *Writing for Dollars, Writing to Please: The Case for Plain Language in Business, Government, and Law* 106–33 (Carolina Academic Press 2012).

<sup>11</sup> *Id.* at 135–42, 153.

<sup>12</sup> Kimble, *supra* n. 4, at 13; see also Sean Flammer, *Persuading Judges: An Empirical Analysis of Writing Style, Persuasion, and the Use of Plain Language*, 16 *Legal Writing* 183 (2010) (showing a 66% preference in another study).

support for using plain language in legal communication with lay readers.

The first is Mark Adler's study *Bamboozling the Public*.<sup>13</sup> Adler sent a legal letter to a number of clients and asked them questions about their comprehension and impressions. Among other things, Adler confirmed that most of them did not fully understand what they were reading.<sup>14</sup>

Second, in the mid-1990s, an Australian advertising agency surveyed "focus groups" of corporate executives. Through this qualitative study, the advertising agency confirmed that clients preferred documents in plain language.<sup>15</sup>

Third, in 1997–1998, the Law Society of England and Wales studied 44 clients of 21 different solicitors.<sup>16</sup> Through interviews, the Law Society found that clients value having a solicitor who will listen and who explains concepts in a manner that the client can understand.<sup>17</sup>

Fourth, in 1993, the Plain Language Institute in British Columbia conducted a study called *Critical Opinions: The Public's View of Lawyers' Documents*.<sup>18</sup> It surveyed residents of British Columbia

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<sup>13</sup> See Mark Adler, *Bamboozling the Public*, 9 *Scribes J. Legal Writing* 167 (2003–2004).

<sup>14</sup> *Id.* at 185.

<sup>15</sup> See Michele M. Asprèy, *Plain Language for Lawyers* 57–58 (4th ed., Fed'n Press 2010) (discussing the study).

<sup>16</sup> Clark D. Cunningham, *What Do Clients Want from Their Lawyers?* (Ga. St. U. Legal Studies Research Paper Series, No. 2010-04) (2009) (available at <http://ssrn.com/abstract=1505616>) (citing and explaining the study conducted by Hilary Sommerland & David Wall, *Legally Aided Clients and Their Solicitors: Qualitative Perspectives on Quality and Legal Aid*, The Law Society, Research Study No. 34, at 2–6 (2000)).

<sup>17</sup> *Id.*

<sup>18</sup> Plain Lang. Inst. Rep., *Critical Opinions: The Public's View of Lawyers' Documents*, vol. 11 (1993).

and asked their impressions of various types of legal documents. The results were awful, showing “a widely held public perception that lawyers care little about whether they communicate effectively to their clients.”<sup>19</sup>

Finally, Joseph Kimble tested state-agency staff members (nonlawyers) on two versions of an agency contract. Their speed and accuracy in answering questions was considerably better on the plain-language version.<sup>20</sup>

But since these studies were conducted, some years have passed, and the plain-language movement has grown significantly. What’s more, none of the studies isolated specific features of legalese and tested them on the public. My study tries to fill that gap.

## Designing the Study

My primary goal was to gather information from clients about their preferences in legal communication. This meant that I would need to use a type of purposive sampling to ensure that I received usable results.<sup>21</sup> And to do that, I would need to carefully plan how to best identify clients to take the survey. I understood that client information was not readily available to the general public or to other attorneys.

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<sup>19</sup> Butt, *supra* n. 3, at 27–28.

<sup>20</sup> Joseph Kimble, *Answering the Critics of Plain Language*, 5 *Scribes J. Legal Writing* 51, 69–70, 84 (1994–1995).

<sup>21</sup> See Robert M. Lawless, Jennifer K. Robbennolt & Thomas S. Ulen, *Empirical Methods in Law* 149 (Aspen 2010) (discussing purposive sampling and other nonprobability methods).

### *Compiling the Sample*

Initially, I intended to focus only on current or past clients, but it soon became clear that this was not practical. I contacted a number of Michigan law firms, explained my study, and asked them to send the survey to their clients. From the outset, each firm was understandably hesitant to provide its clients' contact information. While this information may not be privileged in all instances, it's good professional judgment for firms to err on the side of caution.<sup>22</sup>

So I decided to use an online survey instead of the traditional printed survey that I had originally planned. Although this would force me to survey only those clients who had provided e-mail addresses, it would allow me to sidestep the firms' concerns about releasing client information. I could forward the survey's link to the firms, who would then e-mail the link to their clients, who in turn could respond anonymously to the online survey. (The online survey system I used, *surveymonkey.com*, allows researchers to make responses completely anonymous by not retaining IP addresses.) A secondary benefit was that I could reduce the clients' concern that their current attorney would discover how they responded to the survey. In the end, these benefits would greatly outweigh the sampling bias of having to exclude clients without e-mail addresses.

Then I again contacted many Michigan law firms, explained the confidentiality protections I had made, and asked them to forward the survey's link to their clients. This time around, some firms were more than willing to help. But most were still hesitant. Although the stated reasons varied, they ranged from not wanting to bother clients with "trivial matters" to a managing partner's telling me that

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<sup>22</sup> See generally R.M. Weddle, *Disclosure of Name, Identity, Address, Occupation, or Business of Client as Violation of Attorney–Client Privilege*, 16 A.L.R.3d 1047 (1967).

he was afraid of the responses his firm's clients might provide. I explained that there would be no way for me to know where these responses were coming from, but alas, the firm still declined.

At this point, I had four firms willing to send the survey to their clients. To protect client identity, I agreed not to disclose the firm names. These firms focus primarily on four different legal areas: civil defense, civil litigation, estate planning and real-estate transactions, and family law. I thought this range might provide a mix of clients so that I could further subcategorize the results.

Next, I decided to expand my sample population to include the general public — even those who may not have used attorneys in the recent past. I did this for a few reasons: it would increase my sample size (I was aiming for 300 or more);<sup>23</sup> I could reach people who had used attorneys at some point in their past, as well as those who are potential clients in the future; and I could further compare and analyze the data among the two groups — clients and nonclients.

To obtain these additional responses, I used a nonprobability sampling method called “snowball sampling.”<sup>24</sup> 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.”<sup>25</sup> For this study, I employed a modified version of snowball sampling by sending the survey to my own e-mail contact list and then asking those contacts to forward the survey's link to their contact lists. To ease the senders' burden, I

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<sup>23</sup> See Lawless et al., *supra* n. 21, at 149 (stating that “[i]n general, larger samples will result in more precise estimates of population characteristics”).

<sup>24</sup> *Id.* at 148–49 (discussing snowball sampling).

<sup>25</sup> *Id.*



drafted this sample message that they could cut and paste into their own e-mail:

A friend of mine, who is a law professor at Thomas M. Cooley Law School, has received a grant to conduct a survey studying lawyers' communications with their clients. This is one of the first U.S. studies of its kind, so he would like to make his sample size as large as possible. He and I would greatly appreciate it if you would click on the link below and take the survey. All of your responses will be confidential and completely anonymous.

### *Writing the Introduction*

One important goal, obviously, was not to bias the results by suggesting that I preferred plain-language responses. To accomplish that, I carefully considered every word, starting with the introduction. An important part of drafting any survey is earning trust early on — helping to ensure that people finish the survey and respond thoroughly.<sup>26</sup> So I tried to put myself in the respondent's position. As soon as the respondent clicked on the survey's link (sent by the respondent's law firm or friend), he or she should be at ease about three things: the survey's purpose, how much time the survey would take, and the confidentiality of the responses. I tried to accomplish this in the introductory section:

#### **About This Survey**

The purpose of this survey is to help attorneys better understand what clients prefer when communicating with their attorneys. You are receiving this survey because a friend, colleague, or attorney has determined that your responses would be valuable and forwarded this survey to you. Your participation should help improve

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<sup>26</sup> See SurveyMonkey, *Smart Survey Design* 14, <http://s3.amazonaws.com/SurveyMonkeyFiles/SmartSurvey.pdf> (last accessed May 9, 2012).

communication between attorneys and their clients. This survey should take no more than 15 minutes of your time.

### **Protecting Your Privacy**

This survey is being conducted by Professor Christopher Trudeau, an associate professor at Thomas M. Cooley Law School. Your privacy is important to Professor Trudeau, and it will be protected at all times.

Specifically, after completing this survey, your responses will be sent only to Professor Trudeau, and he will receive no identifying information, such as your name, your contact information, or any details about your legal experiences (other than what you provide). Plus, your responses will be combined with other responses and will never be linked to you directly.

If you would like to contact Professor Trudeau, you may call him at (517) 371-5140 x 2603 or e-mail him at [trudeauc@cooley.edu](mailto:trudeauc@cooley.edu).

Notice that there was no mention of plain language, clarity, or legalese. My ultimate goal was truly stated — “to help attorneys better understand what clients prefer when communicating with their attorneys” — regardless of the results.

After the introduction, I grouped all the questions into four sections: (1) experience with attorneys; (2) preferences for attorney–client communications; (3) choice-of-language questions; and (4) demographic questions.

### ***Section One: Experience with Attorneys***

I wanted to separate the responses into two groups — clients and nonclients — so the first question asked whether the respondent had used an attorney at any time in the past five years. To me, this time frame helped to ensure that the person’s experience with an attorney was relatively fresh in mind. But I also asked whether the respondent had ever used any attorney without recalling how long ago, and I included that subset in the client group.

One benefit of using an online survey was that I was able to add “skip logic” to certain questions so that respondents received only follow-up questions that were relevant to their own experiences.<sup>27</sup> For example, if a respondent had not used an attorney, then the respondent would not see questions 2 through 4 asking about past use of attorneys. But if a respondent had used an attorney in the past five years, I then asked follow-up questions about how many times and for what types of legal matters.

All these questions were designed to help further categorize the responses given to later substantive questions.

### *Section Two: Preferences in Communications from an Attorney*

The second section consisted of eight questions, each designed to gather useful information on matters for which there is limited or no empirical data. Specifically, the questions measured:

- the respondent’s preference for oral or written communication;
- the respondent’s preference for electronic or printed written communication;
- the respondent’s reaction when an attorney uses Latin words or complicated legal words in written documents;
- the care a respondent usually takes when reading a legal document;
- the importance a respondent attaches to understanding an attorney;

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<sup>27</sup> See SurveyMonkey, *What Is Skip Logic?* [http://help.surveymonkey.com/app/answers/detail/a\\_id/39/kw/question%20logic](http://help.surveymonkey.com/app/answers/detail/a_id/39/kw/question%20logic) (last accessed May 9, 2012).

- whether the respondent has received a document from an attorney that was difficult to understand;
- whether the respondent has quit reading an attorney’s document out of frustration; and
- whether a respondent would look up a term that he or she did not understand.

Except for two questions that required a “yes” or “no” answer, the available answers consisted of four options, from which the respondent could choose one. Most questions also included an “other” option. And for the question whether a respondent had ever stopped reading because of frustration, I included a text box for including more specific information about the reason why.

### *Section Three: Choice-of-Language Questions*

The third section included questions designed to test whether the respondent preferred plain or traditional legal language — but again, I did not try to steer respondents. In fact, I carefully worded the instructions for this section to avoid tipping my hand:

Instructions: The following questions will have two choices. These choices will present the same message to the reader, but they will be written in different ways. Please select the choice you would prefer an attorney to use in a written document.

After these instructions, I presented 11 pairs of passages — one written in plain language and the other in traditional language. To further mask any unintended plain-language bias, I chose to randomize the way the versions appeared for each respondent. That

is, the online surveying program would randomly select which version to list first.<sup>28</sup>

I tested four things: (1) active voice versus passive voice (four questions); (2) strong verbs versus nominalizations (two questions); (3) plain words versus complex words (four questions); and (4) explaining a legal term versus not explaining it (one question). Of course, there are many more aspects of plain language.<sup>29</sup> In my view, though, the four I tested are hallmarks. And frankly, others are harder to test. By limiting the survey to those four, I was also able to include multiple questions on the first three, helping me analyze the consistency of the results.

Crafting these questions required care. The plain-language version had to have the same meaning as the traditional version. And I had to vary the complexity of the traditional passages — I did not want every one to be so complex that the respondent was forced to pick the plain-language passage. So I weighed the number of errors to include in each question. (I realize that choosing between active and passive voice is not a matter of “error,” but I’ll use that word for simplicity.)

In 5 of the 11 choice-of-language questions, I tested only one error. That is, the only difference between the versions was a word choice or the type of voice used in the passage. I call these single-variable questions: they were questions 14, 19, 20, 21, and 22. In those questions, I could tell for sure the reason for the respondent’s choice.

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<sup>28</sup> See SurveyMonkey, *How Do I Make Answer Choices Flip, Appear Randomly or Alphabetically?* [http://help.surveymonkey.com/app/answers/detail/a\\_id/104](http://help.surveymonkey.com/app/answers/detail/a_id/104) (last accessed May 9, 2012) (discussing how the user can randomize answer choices).

<sup>29</sup> See, e.g., Joseph Kimble, *The Elements of Plain Language*, in *Writing for Dollars, Writing to Please*, *supra* n. 10, at 5 (setting-out 42 guidelines).

For the other 6 questions, I tested more than one error. I call these multivariable questions: they were questions 15, 16, 17, 18, 23, and 24. For example, in question 16, I included a passive sentence that also contained a nominalization — “A decision was made by the Board of Directors to review the file.” I did this to test my hypothesis that the more errors in the traditional version, the greater the likelihood of choosing the plain-language version. As you’ll see in the results, this hypothesis proved to be true.

#### *Section Four: Demographic Questions*

I ended with demographic questions designed to help categorize the responses. I had learned that “[q]uestions like demographics or personal information are usually best to introduce towards the end of the survey. This way, respondents are likely to have already developed confidence in the survey’s objective.”<sup>30</sup>

In this section, I asked respondents to give their age, level of education, and income. To me, these were potentially critical factors that could influence how respondents answered. For example, a person with only a high-school diploma might prefer different things from a person with a doctoral degree.

After months of researching, preparing the survey, identifying the sample, and validating the survey, I was ready to administer it. On March 10, 2011, I officially released it by sending the link to the law firms and my e-mail contact lists. I accepted responses for about a month, and they began amassing rather quickly. Within a week, there were 100, and within three weeks, there were 350. When I closed the survey on April 13, 2011, there were 376 — 76 more than my goal.

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<sup>30</sup> SurveyMonkey, *supra* n. 26, at 14 (citing G. Iarossi, *The Power of Survey Design: A User’s Guide for Managing Surveys, Interpreting Results, and Influencing Respondents* (World Bank 2006)).

## Analyzing the Sample

A preliminary note: almost all the numbers that follow are rounded up or down. And they don't always add up perfectly because a few respondents skipped a question or questions.

Of the 376 responses, clients made up 54.5% (202 responses) and nonclients made up 45.5% (171 responses) — significant numbers for each group. In the first group, 191 respondents (51%) had used a lawyer within the past five years, and 14 (4%) had used a lawyer at some point but couldn't recall the time frame.

As for ages, I had respondents in every adult age category (none were under 18):

- 59 respondents (16%) were 18–29;
- 100 (28%) were 30–39;
- 64 (18%) were 40–49;
- 78 (21.5%) were 50–59;
- 46 (13%) were 60–69;
- 11 (3%) were 70–79; and
- 1 (0.3%) was 80 or older.

This distribution is at least marginally representative of the U.S. population as a whole.<sup>31</sup> That is, the sample was not skewed to include only the opinions of young adults, for example. But the sample

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<sup>31</sup> See U.S. Census Bureau, *2012 Statistical Abstract: Population*, at 12, table 9 (available at <http://www.census.gov/prod/2011pubs/12statab/pop.pdf>) (specifying the statistical breakdown of the U.S. population by age).

does include a higher percentage in the 30–39 and 50–59 age ranges than the population as a whole.<sup>32</sup>

For educational level, the breakdown was as follows:

- 116 respondents (32%) had less than a bachelor's degree (an associate's degree, some college, or a high-school diploma);
- 105 (29%) had a bachelor's degree;
- 80 (22%) had a master's or doctoral degree; and
- 61 (17%) had a law degree.

Admittedly, the sample includes far more respondents with advanced degrees than the population as a whole.<sup>33</sup> But that was a benefit here because it allowed me to more accurately measure whether respondents with advanced degrees had different preferences from everyone else. The results may surprise you.

## The Results

### *Preferred Forms of Communication*

Early in the survey, I wanted to gauge the respondents' preferences for oral or written communication. So in question 5, I asked this: "How do you prefer for an attorney to provide most client

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<sup>32</sup> *Id.*

<sup>33</sup> See U.S. Census Bureau, *Educational Attainment in the United States: 2003*, at 3, table A (June 2004) (available at <http://www.census.gov/prod/2004pubs/p20-550.pdf>) (specifying the percentage of the U.S. population with a bachelor's degree or more).



communications?” Respondents were then given five choices: e-mail, phone, mail, face-to-face, and “other.”

Overall, 58% preferred oral communication to written, either face-to-face or by phone. About 35% favored e-mail, and only 4% preferred traditional mail.

That result is not too surprising, and two of the qualitative responses to the “other” category help explain it. One person stated that “either phone or face-to-face — vocal is important — communication by definition is two-way.” And another said that “the most effective communication type is face-to-face, then other two-way verbal communication modes. Written is by far [second] place, especially when trying to clarify or explain issues.” Well put.

Still, written communication is an essential part of the attorney-client relationship. So in question 6, I asked this: “How do you prefer that attorneys send letters and documents to their clients?” For this question, I did not want to dissuade nonclients from responding, so I wrote it to ask for a general preference. Respondents had five choices: as a hard copy in the mail, electronically through e-mail, as a fax, both as a hard copy and as an electronic copy, and “other.”

Overall, 43% preferred to receive both a hard copy and an electronic copy of a letter or document; 33% preferred to receive only an electronic copy; and 21% preferred only a traditional mailed copy. (Nonclients were a little more likely than clients to prefer both hard and electronic copies.) What’s telling is that 76% of all respondents preferred to receive either an electronic copy alone or an electronic copy along with a hard copy. The days of sending documents by mail alone should be behind us — only 21% preferred that.

### *The Importance of Clear, Understandable Communication*

As explained earlier, I designed the communication part of the survey to gather information in areas for which there was limited or no empirical data: (1) the importance respondents attached to understanding an attorney, (2) the percentage of respondents who have received a legal document that was difficult to understand, and (3) their reactions when reading material that was difficult to understand. The results are unmistakable — the public prefers clear, understandable communication.

First, in question 10, I asked a general question: “How important is it for a client to understand what an attorney is saying in a letter or document?” Respondents had four choices: very important, important, less important, and not important.

Overall, 88% thought it was “very important” to understand what an attorney is saying. Plus, another 11% thought it was “important.” That’s 99.7% — 366 out of 367 who answered the question. This result may seem obvious, but it provides bedrock empirical support for the central goal of the plain-language movement.

Second, in question 11, I asked: “In your lifetime, have you ever received a letter or document from any attorney that was difficult to understand?” I specifically worded this question to include “any attorney” so that nonclients could answer. Many people have received class-action notices, collection letters, and other legal documents even if they have never hired an attorney. In any case, I asked for a “yes” or “no” response so that those who had never received a legal paper could simply answer “no.”

Overall, 71% said they had received a document at some point in their lifetime that was difficult to understand. Remember that 99.7% thought it was important to understand what an attorney is saying, yet seven out of ten people have, at some point, struggled

to do so. And the numbers are even worse for clients: 79% have received such a document in their lifetime.

Third, in question 13, I again wanted to follow up on this line of questioning: “If you read an attorney’s letter or legal document and you did not understand a term, would you look up that term?”

Overall, 32% said they would “always” look up a term they didn’t understand; 26% “often”; 25% “sometimes”; 13% “rarely”; and 4% “never.” And these results were consistent among clients and nonclients.

So while a majority (58%) would at least “often” look up a term, 17% would “rarely” or “never” do so. That means 1 in 8 people wouldn’t understand the term — odds that I sure wouldn’t want to take.

Fourth, I wanted respondents’ reaction to receiving a document that uses complicated terms or Latin words. So back in question 8, I asked: “How does it make you feel when an attorney uses Latin words or complicated legal words in written documents?” The positioning of this question was critical. I didn’t want it to follow the questions that I discussed above because the answers might be biased by previous answers. So I put it before question 10, about the importance of understanding an attorney.

As you might expect, 41% said they get “annoyed” when they read complicated terms or Latin words; another 19% are “bothered a little”; 30% said that such terms have “no influence” on them; and — get this — only 0.5% (2 respondents) said they’re “impressed.” That’s not much support for the long-held notion that using complicated terms and Latin words impresses people.

In total, 60% were at least bothered by complicated terms or Latin words. And to tilt the scales even more, about half the “other” responses indicated a preference for simple terms or at least an explanation of any complicated term.

Client respondents were even more likely to be put off: 68% were “annoyed” or “bothered a little” by complicated terms or

Latin words. Moreover, these results were similar across educational levels:

	Overall	Less than Bachelor's	Bachelor's	Master's & Doctoral	Juris Doctor
Annoyed	41%	44%	42%	40%	34%
Bothered a little	19%	24%	14%	19%	15%
No influence	30%	23%	31%	30%	44%
Impressed	0.5%	2%	0%	0%	0%
Other	10%	9%	12%	11%	7%

True, the percentage of “annoyed” respondents dropped slightly as the educational level increased. But the drop was insignificant except for respondents with a law degree.

Note, too, that zero respondents with a bachelor’s degree or an advanced degree were impressed, and these are the people who are more likely to understand complicated terms. The lesson: don’t use complicated terms or Latin words. You’ll impress half a percent of the people, and you’ll annoy around 40% of them.

Finally, I wanted to learn whether a respondent’s frustration over a complicated document had ever caused the respondent to stop reading. Surely, this is the worst-case scenario for an attorney: no one benefits when a client is frustrated and doesn’t understand the message. So in question 12, I asked this: “Have you ever felt so frustrated when reading an attorney’s letter or a legal document that you stopped reading it before it ended?” This was a follow-up to question 11, which asked whether the respondent had ever received a document that was difficult to understand. Respondents were given three choices: “yes,” “no,” and “I cannot recall.” I included a text box that allowed respondents who selected “yes” to explain why they were frustrated.

About 38% said they had stopped reading a document out of frustration, 16% could not recall, and 47% had not stopped reading. But the results are skewed a bit because nonclients who never

received documents were forced to answer “no” or “I cannot recall,” or to skip the question. As for clients alone, 44% had stopped reading a document out of frustration. Not good.

But what frustrates these clients? Here are ten responses that help to explain:

- It was all in the English language, yet I could not understand the mumbo-jumbo!! This for me feels condescending and corrupt.
- If you can’t understand the document, there is little motivation to read the entire thing.
- Lack of answer, simplicity, and way too long.
- Because of legal terminology. I do not feel like I am a stupid person by any stretch of the imagination, but just imagine how those feel of average or below average intelligence due to lack of education, social circumstances, etc.
- I wondered: Why should I have to do the work? So I called him. Then when we’d spoken and he’d “explained” it to me, I could work my way through the letter, just.
- Used words and phrases that caused me to spend more time in a dictionary than reading the correspondence. I asked for them to redo the correspondence into plain English, even when my attorney could understand it.
- I don’t need much to stop reading a document. So if I don’t understand it, I won’t read it.
- Because it made me feel dumb. And I didn’t know what was being said.

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

What more needs to be said? The public knows it is important to understand what attorneys say, yet over seven out of ten people have struggled to understand their attorneys at some point. And as these results show, when attorneys use complicated terms, they put unnecessary barriers in the way of that understanding.

### *Choice-of-Language Questions: Some General Results*

It's one thing to prefer clear, simple writing when asked, but it's another thing to actually select the clear, simple version when given the choice. To recap, for the 11 questions in this section of the survey, respondents were presented with two passages: one written in plain language and the other in a more inflated, indirect style. The results are striking.

*The vast majority of clients & nonclients prefer plain language.*

Respondents chose the plain-language version about 80% of the time. In fact, the plain-language version won handily in all 11 questions. This was much higher than I expected because I varied the complexity of each question so that respondents were not forced to choose the only understandable option.

Question & Error Type	Overall Avg.	Client	Nonclient
Q.14 (passive)	57%	59.5%	53%
Q.15 (wordy, legalistic)	83%	85%	81%
Q.16 (passive)	72%	77%	66%
Q.17 (wordy, legalistic)	91%	93%	88%
Q.18 (wordy, legalistic)	97%	98.5%	96%
Q.19 (wordy, legalistic)	81%	81%	81%
Q.20 (legal explanation)	78%	81%	75%
Q.21 (wordy, legalistic)	97%	99%	94.5%
Q.22 (passive)	68%	69%	67.5%
Q.23 (wordy, legalistic)	80%	82%	77%
Q.24 (passive & wordy)	79%	82%	74%
Total Average	80%	82%	77.5%

Clients were 5% more likely to choose the plain-language version than were nonclients. When you think about it, that may make sense. Nonclients have likely not been exposed to the vexations of traditional legal writing, so they haven't experienced these differences outside the questions in this survey.

*As education increases, so does the preference for plain language.*

My original theory was that the lower the respondent's education, the greater the likelihood that he or she would select the plain-language version. But the opposite proved to be true:

Question & Error Type	Overall Avg.	Less than Bachelor's	Bachelor's	Master's & Doctoral	Juris Doctor
Q.14 (passive)	57%	47%	57%	60%	70.5%
Q.15 (wordy, legalistic)	83%	81%	81%	81%	93%
Q.16 (passive)	72%	63%	69%	77.5%	87%

Q.17 (wordy, legalistic)	91%	88%	89%	94%	93%
Q.18 (wordy, legalistic)	97%	95%	97%	100%	98%
Q.19 (wordy, legalistic)	81%	85%	82%	82.5%	69%
Q.20 (legal explanation)	78%	79%	76%	82%	76%
Q.21 (wordy, legalistic)	97%	100%	97%	99%	88.5%
Q.22 (passive)	68%	62%	66%	64%	88.5%
Q.23 (wordy, legalistic)	80%	70%	81%	84%	90%
Q.24 (passive & wordy)	79%	71%	79%	79%	92%
Total Average	80%	76.5%	79%	82%	86%

There was a statistically significant correlation between educational level and the likelihood that a respondent would choose the plain-language version. That is, as education increased, so did the preference for plain language — as you can see by reading across the “Total Average” line. These results debunk the argument that higher-educated people will not mind traditional legal language as much as others do. Rather, 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.

*As complexity increases, so does the preference for plain language.*

A reminder: 5 of the 11 questions were single-variable questions including only one error. (Again, I use the term “error” loosely.) The other five were multivariable questions with more than one error.

For the single-variable questions, respondents chose the plain-language version 75% of the time. But for the multivariable questions, they chose it 86% of the time. There was no significant difference between clients and nonclients for this calculation. So



respondents were 11% more likely to choose the plain-language version if there was more than one error. And these results were fairly consistent across educational levels.

These results support the theory that the more confusing the sentences become, the more likely that a client or potential client will prefer plain language. But as I'll explain later, serious single offenders, like Latin words, turn off the vast majority of readers regardless of what else is around that term.

### *A Closer Look at the Choice-of-Language Questions*

#### *Active versus passive*

Of the 11 choice-of-language questions, four of them tested whether the respondents preferred the active or passive voice. Below is the exact wording of each one, along with the overall percentage of respondents who selected each version. The plain-language version comes first here, but again, the online survey randomized the order.

- Q.14: 57% — The employer's attorney questioned the witnesses.  
43% — The witnesses were questioned by the employer's attorney.
- Q.16: 72% — The Board of Directors decided to review the file.  
28% — A decision was made by the Board of Directors to review the file.
- Q.22: 68% — The court dismissed the case.  
32% — The case was dismissed by the court.

- Q.24: 79% — Michigan courts have consistently held that homeowners must actually supply alcohol to a minor to violate the statute.
- 21% — It has been consistently held by Michigan courts that a homeowner must actually engage in the supplying of alcohol to a minor to commit a violation of the statute.

Respondents preferred the active voice 69% of the time. The figure was 73% for clients and 65% for nonclients. This, too, helps prove the theory that those who have experienced traditional language oppose it more than those who have not.

There was also a significant difference in choosing the active voice between the single-variable questions (14 and 22) and the multivariable questions (16 and 24) — 62% versus 75%, or 13% more with the multivariable questions. Why the difference? My theory: the more complex the sentence, the more likely that a respondent will select the simpler version. For instance, in the single-variable questions, both versions were understandable on the first read-through. And both had about the same number of words per sentence — the active sentences were each two words shorter. But for the multivariable questions, the active sentences were noticeably shorter, and they both used nominalizations (*decision, the supplying of, violation*) instead of strong verbs. They were more of a slog.

#### *Word choice*

Of the 11 choice-of-language questions, 6 tested whether respondents generally preferred the plainer, simpler language. For these questions, I wanted to test some of traditional writing's common offenders — nominalizations (apart from the passive voice),

multiword prepositions, inflated words, Latin words, and hardcore legalese (like *herewith* and *said* as an adjective). The questions:

- Q.15 83% — Discovery may begin before the judge considers the motion.  
17% — Discovery may proceed prior to the judge's consideration of the motion.
- Q.17 90% — If this breach continues, my client will immediately terminate this contract.  
10% — If there is a continuation of this breach, my client will effect an immediate termination of this contract.
- Q.18 97% — I have signed and enclosed the stipulation to dismiss your case.  
3% — I am herewith returning the stipulation to dismiss your case; the same being duly executed by me.
- Q.19 81% — Under the statute, you must purchase insurance.  
19% — Pursuant to the statute, you must purchase insurance.
- Q.21 97% — The court, among other things, decided that the defendant was negligent.  
3% — The court, *inter alia*, decided that the defendant was negligent.
- Q.23 80% — Before the injury, my client was able to work a full week. Therefore, the injury has significantly impacted my client's ability to lead a normal life.

20% — Prior to the injury, my client was able to work a full week. Therefore, said injury has significantly impacted my client’s ability to lead a normal life.

Respondents chose the simpler version 88% of the time. This is simply astounding when you consider two points. First, I never asked them to choose the plain-language version; rather, I simply asked which passage they would prefer to read in a legal document. Second, only a couple of the traditional passages were difficult to understand; the other traditional passages had one or two errors, but the sentences were still understandable.

And both clients and nonclients preferred the simpler version at similar rates — 90% and 86%. So given these results and past studies of judges and lawyers,<sup>34</sup> it’s safe to say that regardless of the audience, attorneys should write in plain language. Readers aren’t impressed by legalese and don’t like it.

*Latin terms and multiword prepositions — Again.*

This point is even clearer when you consider two of the individual questions.

First, the Latinism — *inter alia*. When I created question 21, I purposely chose a Latin word that did not have a legal meaning. I avoided legal terms of art like *res judicata* and *res ipsa loquitur*. These are legitimate legal terms that “convey in a word or two a fairly specific, settled meaning.”<sup>35</sup> But *inter alia* conveys no such legal meaning — it’s simply Latin for “among other things.” Since most nonlawyers don’t know what it means, it was ripe for testing. I wanted to make *inter alia* the only difference between the two sentences.

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<sup>34</sup> See Kimble, *supra* n. 10, at 135–42, 153.

<sup>35</sup> Kimble, *supra* n. 4, at 10.

And 97% preferred *among other things* to *inter alia*. All respondents with less than a bachelor's degree chose it. Even 54 out of 61 respondents with a law degree preferred it — and these are the folks who would understand Latin terms. There's no reason for attorneys to use Latin words that don't have a legal meaning, no matter what the audience.

Next, consider question 19, which includes the multiword preposition *pursuant to*. “Although [*pursuant to*] is used in legal writing and in the legal community, it is not used in ordinary speech or writing.”<sup>36</sup> Using a multiword preposition where one word would do is a common affliction of traditional legal writing.<sup>37</sup> In fact, it's a problem in all writing. In his classic *Dictionary of Modern English Usage*, H.W. Fowler said that multiword prepositions (which he called “compound propositions”) “are almost the worst element in modern English, stuffing up what is written with a compost of nouny abstractions.”<sup>38</sup> So I wanted to test, specifically, whether respondents preferred the simpler *under* to the commonly used *pursuant to*. Even though I included different multiword prepositions in other questions, I wanted to create a single-variable sentence where that was the only difference.

No surprise: 81% preferred *under*. Clients and nonclients preferred it at exactly the same rate — 81%. And almost every educational group preferred it at rates higher than 80%: 85% of respondents with less than a bachelor's degree, 82% of those with bachelor's degrees, 80% of those with a master's degree, and 100%

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<sup>36</sup> Canadian Dep't of Just., *Pursuant to*, <http://www.justice.gc.ca/eng/dept-min/pub/legis/n31.html> (last updated Dec. 1, 2011).

<sup>37</sup> See Richard C. Wydick, *Plain English for Lawyers* 11 (5th ed., Carolina Academic Press 2005).

<sup>38</sup> *A Dictionary of Modern English Usage* 102 (Ernest Gowers ed., 2d ed, Oxford U. Press 1965).

of those with doctoral degrees. The only group that lowered the average was, of course, the lawyers, but 69% still preferred *under*.

The lower rate for lawyers may be because there is occasionally a subtle difference between *under* and *pursuant to*, a difference that some lawyers might understand. Occasionally, *under* won't work, and you need to use *in accordance with* (itself a compound preposition). But *under* worked in question 19, it works most of the time, and *pursuant to* always reeks of legalese.

Nor is there any reason to think that the result would be any different if I used another multiword preposition. Questions 15 and 23 included the multiword preposition *prior to*. Although there were other errors in those two questions, respondents overwhelmingly preferred the plain-language versions of those questions too — by 83% for question 15 and 80% for question 23.

### *Explaining Legal Terms*

For question 20, I tested something that, to my knowledge, has not been previously measured: whether respondents would prefer a longer passage if it explained a legal term that was not explained in the shorter passage. I did this because there are some legal or technical terms that attorneys must use. Words like *default judgment*, *interrogatory*, and *mistrial* are common terms that any attorney will understand. But too often, attorneys assume that all readers will understand them. So I designed this question to test whether, if a technical term cannot be avoided altogether, attorneys should try to explain it (as some authorities recommend<sup>39</sup>).

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<sup>39</sup> See Kimble, *supra* n. 10, at 9.

- Q.20 22% — If you don't respond, the court will issue a default judgment.
- 78% — 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.

Both clients and nonclients overwhelmingly preferred the legal explanation: 81% of clients and 75% of nonclients. And these rates were consistent across educational levels. Remarkably, even those with law degrees overwhelmingly preferred the explanation: 76%.

### **Summary: Ten Points for Plain Language**

The responses to my survey resolved a number of important questions about attorney–client communication — and gave attorneys some clear marching orders.

First, do not underestimate the importance of oral communication. Over half of all respondents preferred some type of oral communication to written communication.

Second, deliver written documents electronically even when you must send a hard copy. Over three-quarters of all respondents preferred to receive either an electronic copy alone or an electronic copy along with a hard copy.

Third, use clear, understandable written communication. Even though almost all respondents thought it was important to understand what an attorney is saying, seven out of ten said they had received a document that was difficult to understand. What's more, over 40% of clients had, at some point, stopped reading a document out of frustration.

But what frustrates these clients? Three client responses are worth repeating:

- Because of legal terminology. I do not feel like I am a stupid person by any stretch of the imagination, but just imagine how those feel of average or below average intelligence due to lack of education, social circumstances, etc.
- If too much of the content is difficult to understand, I feel like I've already missed too much to get the full meaning anyway.
- I used to work for some good attorneys that treated people as equals. So when I used my own, I was mad that he was using terms to make himself sound better than me.

Fourth, do not assume that all readers will understand commonly used legal terms. Instead, define these terms if you must use them.

Fifth, avoid complicated terms and Latin words. They generally bothered or annoyed nearly seven out of ten clients. And in the word-choice questions, 88% preferred the versions with simpler terms.

Sixth, prefer the active voice. Respondents preferred it almost 70% of the time — and clients at a higher rate than nonclients.

Seventh, avoid multiword prepositions like *pursuant to* and *prior to* and *with regard to*. They are among the worst aspects of legalese.

Eighth, remember that the more confusing the sentences become, the more likely that a reader will prefer plain language. Respondents were 11% more likely to choose the plain-language version if there was more than one error in the traditional version.

Ninth — and this needs to be proclaimed repeatedly, ceaselessly — the vast majority of clients and nonclients prefer plain language. For the choice-of-language questions, readers chose the plain-language version 80% of the time.



Finally, use plain language no matter what the reader's educational level. Contrary to my original theory, as the level increased, so did the respondent's preference for plain language. So this study helps dispel the notion that higher-educated people will not mind traditional legal language. They do mind. They know better. All readers do.