The Science Behind Plain Language

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If you're reading this journal, you already know the rules for writing well: prefer simple words to difficult words; keep sentences and paragraphs from becoming too long; follow a logical structure; make that structure obvious to the reader; ensure flow and cohesion by making explicit connections from one sentence to the next and one paragraph to the next; and the like. For convenience, let's refer to this batch of rules by the shorthand term *plain language*.

Also, you already know that one reason for writing in plain language is to communicate effectively. It's self-evident that the reader cannot accept the message without first understanding it. And writing in plain language increases the chances that the reader will understand the message.

You probably also know that plain language makes a good impression on the reader, and that its opposite — legalese — has the opposite effect. Bryan Garner has gathered plenty of anecdotal evidence to prove this point through interviews with dozens of judges, including Justices of the U.S. Supreme Court.[1]

But what most lawyers probably don't know is that the effectiveness of plain language — in both persuading and making a good impression — has been proved empirically. What's more, cognitive psychology offers an explanation of how plain language

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[1] *See* Bryan A. Garner, *Garner on Language and Writing* 308–10 (2009); Bryan A. Garner, *Interviews with United States Supreme Court Justices*, 13 Scribes J. Legal Writing at 97–98, 141, 156 (2010), *collected in* Julie A. Baker, *And the Winner Is: How Principles of Cognitive Science Resolve the Plain Language Debate*, 80 UMKC L. Rev. 287, 294–95 (2011).

works to persuade the reader to both trust the messenger and believe the message.

Science says, "Plain language works."

In the mid-1980s, Robert Benson and Joan Kessler conducted a study to measure readers' impressions of two versions of the same legal argument: one in plain language and the other in mind-numbing legalese. The readers were judges and research attorneys from a California appellate court. The statistically significant results included the following impressions of the legalese version and its author:

- unpersuasive writing
- incomprehensible writing
- unconvincing writer
- unscholarly writer
- not from a prestigious firm
- ineffective appellate advocate[2]

About 20 years later, a study by psychologist Daniel M. Oppenheimer showed similar results. Oppenheimer had noticed that applicants to a university often tried to show off their vocabulary of long words when composing admission essays. He wanted to find out whether this strategy worked. His study proved just the opposite: complex language led readers to rate the writer as less intelligent.[3] His advice: "write clearly and simply if you can, and you'll be more likely to be thought of as intelligent."[4]

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[2]   Robert W. Benson & Joan B. Kessler, *Legalese v. Plain English: An Empirical Study of Persuasion and Credibility in Legal Writing*, 20 Loy. L.A. L. Rev. 301, 314 (1987).

[3]   Daniel M. Oppenheimer, *Consequences of Erudite Vernacular Utilized Irrespective of Necessity: Problems with Using Long Words Needlessly*, 20 Applied Cognitive Psychol. 139 (2006).

[4]   *Id.* at 153.

These studies showed that using plain language leaves the reader with a good impression of the writer. But does plain language win cases? A study published in 2018 answered that question with a *yes*. The study's authors, Shaun Spencer and Adam Feldman, used Westlaw to obtain decisions on summary-judgment motions and the parties' briefs for and against the motions. They graded the briefs on readability to determine whether a correlation existed between plain language and success in winning or defeating summary judgment. Although the state-court results were not statistically significant, the results in federal court were not only statistically significant, but dramatic: readability increased the chances of winning from 31% to 69%.[5]

Science says, "Go with the fluency."

These studies prove empirically that plain language makes a better impression on the reader and increases the chances of success. But how does plain language do this? The answer comes from cognitive psychology: the study of the mental processes used by people to process information.[6]

Cognitive psychologists offer a theory that people — including your readers — have two processes for performing mental tasks, labeled System 1 and System 2. System 1 is our autopilot; its operation is heuristic, automatic, and effortless.[7] System 2 kicks in when we take control from the autopilot; its operation is

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[5]   Shaun B. Spencer & Adam Feldman, *Words Count: The Empirical Relationship Between Brief Writing and Summary Judgment Success*, 22 J. Legal Writing Inst. 61, 98 (2018). In state court, readability increased the chances of success from 44% to 56%, a result that Spencer and Feldman determined to be not statistically significant. *Id.*

[6]   Baker, 80 UMKC L. Rev. at 295 (defining *cognitive psychology*).

[7]   Daniel M. Oppenheimer, *The Secret Life of Fluency*, 12(6) Trends in Cognitive Sci. 237, 239 (2008).

analytic and deliberate, and it requires effort.[8] Although we need both systems to operate in and make sense of our world, we naturally prefer System 1 because it requires less effort.

Many things may influence which system a reader uses. One of these things is something that the writer has some control over: fluency.[9] Fluency is the reader's subjective experience of ease or difficulty associated with a mental task.[10] The more easily the information can be processed or the problem solved, the more likely that the reader will rely on System 1 to process it.

As legal writers, we usually want the reader to experience fluency and to thus digest the writing with System 1. This is because a reader experiencing fluency is more likely to trust what the writer says and to accept the writing as true. According to psychologist Daniel Kahneman, the causes of fluency or disfluency have interchangeable effects. "When you are in a state of cognitive ease [fluency], you are probably in a good mood, like what you see, believe what you hear, trust your intuitions, and feel that the current situation is comfortably familiar."[11]

The opposite occurs when you experience disfluency, or what Kahneman calls "cognitive strain": "you are more likely to be vigilant and suspicious, invest more effort in what you are doing, [and] feel less comfortable . . . ."[12] According to Kahneman, the causes and effects of fluency or "cognitive ease" go together; so do the causes and effects of disfluency or cognitive strain:

> [G]ood mood, intuition, creativity, gullibility, and increased reliance on System 1 form a cluster. At the other pole, sadness, vigilance, suspicion, an analytic approach, and increased effort also go together. A happy mood loosens the

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[8] *Id.*

[9] *Id.*

[10] *Id.* at 238.

[11] Daniel Kahneman, *Thinking, Fast and Slow* 60 (2011).

[12] *Id.*

control of System 2 over performance . . . . A good mood is a signal that things are generally going well, the environment is safe, and it is all right to let one's guard down. A bad mood indicates that things are not going very well, there may be a threat, and vigilance is required.[13]

Besides putting readers in a good mood, fluency tends to lead them to make higher judgments of truth, confidence, and liking. That is how we, as writers, want our readers to feel and how we want them to perceive our writing. Anything that we do to increase fluency will help us achieve this goal.[14]

One way to make readers experience fluency is to write in plain language. This was shown by Oppenheimer's study, discussed above. Recall the results of that study, showing that readers perceived writers of plain language as being more intelligent than writers of complex language. Oppenheimer thought that the explanation for that result was fluency. To see whether this was true, he did another experiment that directly manipulated fluency by manipulating the font. The results: readers rated authors of text in an easy-to-read font as more intelligent than authors of the same text in a hard-to-read font.

This result, together with the results of the experiments using simple versus complicated language, suggested to Oppenheimer that "complex vocabulary makes texts harder to read, which in turn lowers judgments of an author's intelligence."[15] Thus, fluency was at least partly responsible for the readers' evaluation of the writers' intelligence. And since longer words lower fluency, they can lead readers to judge the writers as less intelligent.[16]

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[13]   *Id.* at 69.

[14]   *Id.* at 62–63.

[15]   Oppenheimer, 20 Applied Cognitive Psychol. at 149.

[16]   *Id.* at 152.

Kahneman neatly sums up the lesson from all this: "If you care about being thought credible, do not use complex language where simpler language will do."[17]

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[17]   Kahneman, *Thinking, Fast and Slow* at 63.