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Writing To Nonlawyers About The Law

Eight tips that will help you write so that readers who aren't lawyers like you will understand what you're saying.

Lawyers don't always realize when they are speaking, or writing, in their dialect: Legalese. But non-lawyers sure realize it. Jokes poking fun at lawyers' pompous writing reflect the anger and frustration that result when clients are asked to read long opinion letters they can't understand or articles in law-firm newsletters that would be more appropriate for a law review.

Whatever your purpose in writing something for a client to read, it will surely be defeated if you use language and style that discourage the client from reading. Even if you were one of those misguided and insecure lawyers who write only to impress their clients with their superior knowledge, you wouldn't accomplish your goal by revealing that you don't know the law well enough to explain it clearly.

In forcing yourself to write in plain English, you face a task opposite to the one Professor Higgins took on with Eliza Doolittle: You have already learned a new way of talking and writing, but you need to go back to the old ways to be understood.

Although some of the problem is language—that is, using words that only lawyers understand—the cause might be termed cultural, as lawyers assume everyone who cares about the law knows how the judicial system works. Worse, some lawyers think understanding Legalese is a sign of sophistication and that successful businesspeople might be offended by plain English.

Luckily, writers don't have as hard a job as Henry Higgins and Ms. Doolittle did, because we can fix our mistakes before anyone else sees or hears them. That means, a lawyer can write in Legalese, as long as he or she is willing to rewrite (edit) so a non-lawyer can understand it.

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The overarching principle to keep in mind while editing is the first rule of all writing: Consider your audience. With that as your guide, a few simple editing steps will make your writing more intelligible.

1. Use simple words.

First, get rid of all the fancy words, not just the Legalese. Words such as “prior to” or “hereinafter” aren’t strictly legal terms; they are English. But they aren’t words that people use in ordinary conversation, and ordinary conversation is easier to understand than academic writing. Look at every word and ask yourself if a simpler word means the same thing: “before” instead of “prior to,” for example, or “from now on” instead of “hereinafter.”

2. Avoid legal jargon.

Lawyers really do speak their own language. Such terms as “summary judgment,” “remand,” and “cause of action” are true Legalese, and you learn them by going to law school or working around lawyers. They function as shorthand expressions of complex concepts, and such a term may actually be the simplest way to say something – but only if the audience understands it. Our articles should use words that one would know before going to law school. And if there is no simpler way to say it and you have to use legal jargon, define the term **before** using it, not after.

3. Avoid citations.

No doubt some non-lawyers reading an article or newsletter will want to know where they can find a statute or case that the author refers to. Most, however, will be primarily concerned with how the law affects them and their business, and they will be happy to let their lawyers worry about chapter and verse.

Both kinds of readers — as well as lawyers reading the article — will be served by a reference that identifies the statute or case without using a formal citation. For example, “In 1892, the United State Supreme Court held in *McPherson v. Blacker* that state legislatures select electors for President,” tells a lawyer enough to look up the case, but it will communicate more to most readers than, “State legislatures select electors for President. *McPherson v. Blacker*, 146 US 1, 35 (1892).”

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Equally important, you should ask whether the case name is necessary at all. For example, who but a lawyer would care that the case was called *McPherson v. Blacker*? What matters is that the Supreme Court decided something more than a century ago.

4. Identify courts.

One thing that a formal citation communicates (to those who know how to read it) is which court decided the case. But the parenthetical indication “(C.D. Cal.)” means nothing to most people. And the court’s name – The U.S. District Court for the Central District of California – means only a little more. Saying “a federal trial judge in Los Angeles,” however, communicates that same information to the non-lawyer.

Similarly, lawyers often assume everyone understands how the courts work – that their state has intermediate appellate courts to review trial-court decisions, for example, or that the federal courts are divided into circuits. If such information is important to the point the writer is making, the writer should explain it fully. Of course, no one should spend time explaining something that isn’t important.

5. Keep quotations short.

Long quotations are hard to read, and those from judicial opinions or statutes are often hard to understand. But legal analysis, and therefore legal writing, is built on just such quotations, and the exact words of the opinion or statute are important. That is, they are important to the legal audience that reads the memos, briefs or letters we are translating into articles, but usually **not** to the audience for the articles themselves.

Indeed, an important purpose of the articles is to explain the decision or law to the reader – that is, to paraphrase the original, translating it into language the reader will understand. If a case or statute uses a term that is especially important, or phrases something particularly well, or if the writer wants the audience to learn the new term, then go ahead and quote that brief term or phrase – and explain it. But avoid long, double-indented quotations that force readers to translate as they read.

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6. Remember the purpose.

Articles that educate non-lawyers about an interesting issue don't need to prepare those readers to argue the issue before the World Court in the Netherlands. The readers want to know how a recent court decision affects them, not the reasoning the court used or how it differs from another recent decision across the country. This is a hard thing for some lawyers to give up. After all, the subtle, intellectual intricacies of the analysis often are what made the issue so interesting to the lawyer. But those intricacies probably ought to be lost in the translation to a non-lawyer's language.

7. Don't sweat the small stuff.

Lawyers often worry that they haven't been absolutely accurate with a description or a summary, or that they haven't covered every contingency. Indeed, paying attention to detail is a big part of their job. But the lawyer who writes about a "writ of error" rather than commit the sin of mislabeling by referring to an "appeal" may confuse the reader. Most clients don't know writs of error from Ritz crackers, but they understand that an appeal means that another court will consider the case.

8. Remember where you came from.

I have a colleague who grew up in Alabama, but has since lived in Chicago and Washington, D.C., and is now an urbane San Franciscan. Sit in a meeting with him, and you will have no idea of his roots; but walk by his office when he's on the phone to the folks back home, and you'll hear an accent so thick you could spread it on cornbread.

We've all experienced, and practiced, this chameleon-like adaptation of our speech patters to those around us. The problem, however, is not just that lawyers spend so much time around each other. Before writing, we read things that other lawyers wrote: briefs, memos, and judicial opinions. No wonder we write like lawyers.

We need to look up from the advance sheets and the memos and read some plain English in the popular press or in a good novel. If they communicate well to us, they teach us how to communicate to others. By acquainting ourselves with good prose—and by keeping in mind what we are saying and to whom—we can write letters and articles that our clients will appreciate reading.