

Courtside: Studying the language of briefs

Tony Mauro

A massive study of the language used in Supreme Court briefs has found that federal agencies and northern states produce the most complexly worded briefs, but overall the writing presented to the Court is getting more and more readable.

Scholars in the growing field of empirical legal studies downloaded nearly 9,000 briefs filed with the high court between 1969 and 2004 and analyzed them with the same methods used to determine the reading level of books and texts. They tallied the length of sentences and the complexity of words, along with other variables. A report of the study appears in the current issue of *The Journal of Appellate Practice and Process*.

"This is all made possible by the data explosion," said Brady Coleman, co-author of the study and a law professor at the International Islamic University in Pakistan. Similar research has been done, for example, on the language in corporate financial statements, concluding that more complex language is used when reporting poor performance.

Some of the findings on the Supreme Court briefs were inconclusive, Coleman said, especially when he tried to correlate complexity of briefs with winning and losing parties.

Unsurprisingly, Coleman said one of the most definitive conclusions was that "the government agencies use a much higher level of technical language" in their briefs before the Court. Among the alphabet soup of federal agencies that take that dubious prize are the Federal Election Commission, the



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Federal Communications Commission, the Federal Labor Relations Authority, and the Federal Energy Regulatory Commission. Briefs for the National Labor Relations Board, interestingly, use significantly simpler language.

Briefs filed by parties with presumably fewer financial resources – such as aliens and disability claimants – also use less complex language, according to the study.

Another steady trend that turned up in the data is that over time, the average complexity of Supreme Court briefs has decreased, a positive development that Coleman says could be explained by the movement in recent decades in law schools to teach students to use plain English and improve their writing skills.

The survey also found some regional differences in brief writing. All nine of the states that used highly complex language were northern states, while many – though not all -- of the states using simpler language were in the south.

"I hope they are not trying to confirm the stereotype that southerners are

dumb," said Alabama lawyer Kevin Newsom when told of the finding. The former Alabama solicitor general has filed numerous briefs with the high court and heads the appellate practice group at Bradley Arant Boulton Cummings in Birmingham.

But Newsom acknowledged that "southerners may be more colloquial in their conversation, and I am a firm believer that you should write like you talk."

Newsom often uses contractions in his briefs. "It drives my secretary crazy," he added. "But I think that within the boundaries of decorum, legal briefs ought to be fun. Contractions make a brief more real."

In one brief, Newsom recalls using the phrase "double whammy" to describe a lower court ruling, and in another he started off with this sentence: "It's worse than we thought."

Newsom makes no apologies for trying to keep brief-writing simpler and more interesting. "If briefs are an instrument, a tool, to win, you've got to keep the judge interested."

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