

Crafting Public Messages

By Gregory G. Colomb

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In several previous columns, Joe Williams and I offered advice on the tasks most commonly faced by legal writers: writing for colleagues, for clients, for decision makers, and for academic journals. Master those, and you will be an accomplished legal writer. But there is another task that lawyers face often enough that you should try to master it as well: communicating to the general public.

Whether you are issuing a statement on behalf of a client, or ghostwriting for a client, or simply publishing or speaking in a nonlegal forum—in these and many other cases, lawyers are called on to communicate legal issues to those who have little capacity and even less interest in talking or thinking like a lawyer. In those cases, the kind of writing that makes you successful in the office or the courtroom has all the appeal of cod liver oil: it's unpleasant going down and the bad taste lingers. So when addressing the public, you have to set aside some of your hard-earned ability to craft a nuanced, fully supported legal argument and adopt some habits not usually associated with the practice of the law.

You owe all your readers, knowledgeable in the law or not, your best efforts to follow the Golden Rule:

Write unto others as you would have them write unto you.

But when you write for the public, that rule carries a codicil:

It's not what you say but what they remember.

In following that codicil, there are lessons to be learned from the kind of communicators who for centuries have dealt successfully with the public:

advertisers, marketers, journalists, public speakers, and even politicians. You cannot simply appropriate their techniques, because you have to write to a higher standard. Even in their public communications, lawyers face greater constraints than do most public communicators. But you can learn from the state of their art, which reflects deep insights into how and why people understand and remember some, but not others of the messages they encounter every day. In this column, I will offer seven concrete strategies that make use of what public communicators know but that do not compromise good legal practice.

But first a warning: Some of what you see here rubs against the grain for many legal writers, who cannot happily simplify their reasoning as much as public communication requires. You will not be able to employ all or even most of these suggestions in every case, but used judiciously, these seven strategies can help you complete your repertoire of writing skills.

It's Not What You Say but What They Remember

The most successful public communicators always begin writing with the result in mind—not what *they* want to say but what *others* will remember. That focus on ends is one reason why the most common forums for public communication have relatively loose standards for their means of telling the truth.

Here's an example far removed from the law. In his book, *Awakenings*, the physician Oliver Sacks teaches readers a great deal about the nature of consciousness by telling the true story of how he “awakened” a group of encephalitis sufferers, whose catatonia left them effectively dead to the world, by giving them the psychoactive drug L-dopa. That story was made into a hit movie, directed by Penny Marshall and co-written by Sacks. One significant theme shared by the book and the movie concerns self-control in the awakened patients. In the book, a prime example of this is the frequent, aggressive

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masturbation by one awakened male (in the film, Leonard Lowe, the main character). The movie has no masturbation. What communicates that theme in its place is an invention: Leonard's sexual attraction to a young woman who regularly visits the ward, an attraction that he breaks off when he begins to lose control of his body.

Although Sacks and Marshall take liberties with the facts in the film, one could argue that they communicate what the book does more accurately than would a more literal representation. It is one thing to read about aggressive masturbation in a relatively clinical book written by a physician. It would be quite another to see it depicted, even furtively, larger than life on the screen. The shock of that depiction would overwhelm any message about the relationship between consciousness—our deliberate control over our thoughts and actions—and our physical drives, something that the substituted “love” story does well enough. In other words, if we consider the effect on the audience, Hollywood's bowdlerized version could be said to communicate the truer understanding and to leave the truer memory.

When you write for the public you have to make similar adjustments, *but without the poetic license we allow to Hollywood*. Nor can you stretch the truth as do advertisers and marketers or lie to our faces and call it “spin,” as politicians so often do. The seven principles here will help you use the lessons of public communicators within the constraints of responsible legal practice.

Respect Common Sense

It is tempting for smart, highly educated writers to feel that when they “reduce” complex legal reasoning to a message suitable for common understanding, they are “dumbing it down.” That is a grave mistake. First of all, it's false, because the limitation on public understanding is not chiefly intelligence. Even the brightest, most educated members of the public will have neither the interest nor the time for a disquisition on the law. You too would have little more than common sense to bring to the table if you were forced to listen to a

neurobiologist explain the memory research that underlies some of the advice below.

But what's worse, think *dumbing down* and you will put yourself in a frame of mind that leads to failure. Your goal is to talk common sense: to explain your position in light of the shared knowledge, experience, and values of the community you address. Don't listen to that inner voice that says, *If I just explain things fully and clearly enough, I can “educate” my readers*. You cannot cram a legal education into any message people will read. Your goal is not to help readers appreciate legal nuances or follow the intricacies of your argument. Neither can you afford to talk down to readers: you'll lose them as quickly by explaining the obvious as by assuming the arcane. (When in doubt, present what may or may not be obvious as something already known: “Of course, discovery is . . .”; “Since discovery is . . .”; “Given that discovery is . . .”)

Respect the common sense in others and you will make better decisions about what to say and how to say it.

1. Cut Jargon

One man's jargon is another's term of art. We may hate other people's jargon, but we mostly love our own—and for the same reasons. Every field of expertise has its own set of technical terms designed to facilitate the forms of reasoning specific to that field. That's why we love our own terms of art (especially when we are new to a field): once our expert way of thinking begins to seem natural to us, those terms mark out our home territory. But other people's terms of art are connected to ways of thinking that seem to us *unnatural*. It's not just that we don't know what the terms mean—even with a definition, they remain connected to forms of reasoning we do not share, ways of thinking that are not only alien but alienating.

You should not—indeed, cannot—avoid all legal terms. But you must learn to distinguish those that will alienate readers because they seem so much legal jargon. What makes a term jargon is that it functions as a term of art in a specialized discourse but *not* in ordinary language. There are many legal

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terms you can freely use because they do have a role in ordinary civil discourse, but many more do not. When in doubt, just ask someone on the street.

Most terms of art encapsulate a story, so the easiest way to avoid jargon is simply to tell the story behind the term, not as an abstract definition but as an application of a principle to a specific case. The public cares about the principle and the result, not what a lawyer would call it. For example,

promissory estoppel

When the Local Baseball League could no longer use city land for its games and practices, Mr. Donor promised to let the league use his nearby land rent free for 20 years, if the league cleared the land, built playing fields, and put in lighting. But after the parents solicited donations and built with their own hands four first-rate diamonds, Mr. Donor said that the league would have to pay rent to use the fields. Even though there was no formal contract, the law requires Mr. Donor to honor his promise, because the parents invested their time and money on the basis of his promise, and Mr. Donor knew they were doing so. So the league does have the right to use the land for the promised 20 years.

disparate impact

Ritzy Resort requires all applicants for maintenance and cleaning work to have a high school diploma, claiming that such workers “preserve our image as a premium destination with premium service.” In this part of the state, the diploma requirement affects minority applicants far more than white ones: twice as many African Americans and almost three times as many Hispanics. Since the work itself does not require a high school education and there is no necessary connection between a diploma and “premium service,” the requirement illegally discriminates against African-American and Hispanic applicants and must be eliminated.

When a term of art stands not for a story but for a person or a role, you can almost always find

ordinary correlates that may be less precise, but are adequate to the purpose:

surviving spouse	widow/widower
lessor	landlord
testator	someone who has a will

If you do use a legal term that may sound like jargon, present its ordinary language definition *before* you introduce the term. Once readers have a rough idea of what it might mean, you can use it again without further explanation. Here diversity jurisdiction is defined before it is named:

Despite what Abco claims, Giant Corp has not deprived Abco of its day in court: we just want to address this matter in the proper court. Abco could have sued Giant in the Ohio state courts, which is where this dispute belongs. Instead, Abco tried to bring suit in federal court because it and Giant are incorporated in different states (Ohio and Illinois). Suits like this can be filed in federal courts only if *all* of the parties in the case are located in different states, which is known as “diversity jurisdiction.” But many of the matters in this case involve Little Giant, a distinct Ohio corporation. So the court ruled that this case does not qualify for federal diversity jurisdiction because two of the parties are located in the same state. Giant Corp and Little Giant welcome the opportunity to defend their actions if Abco files suit properly—in an Ohio court.

2. Use Picturable Language

Words are more vivid, and more memorable, when readers can create mental images of what they depict. For example, compare these three warnings:

- If you don't let us replace your power steering unit, you will experience vehicle directional control difficulties, especially as velocity increases.
- If you don't let us replace your power steering unit, your steering mechanism will freeze up, especially at higher speeds.
- If you don't let us replace your power steering unit, you won't be able to steer when you go fast.

Arguably, the three say the same thing. But the first hardly warns at all. Its language is so abstract that it seems unconnected to any actual situation. The second is better: most of us can create a rough mental image of a steering mechanism freezing up and we can certainly imagine high speeds. But the third is by far the most effective warning: not only can we create a vivid mental image of going fast and not being able to steer, but that mental image carries the kind of emotional kick that makes a warning work.

You may have heard similar advice put this way: *Use specific, concrete terms rather than abstract ones.* That’s not bad advice, but it’s incomplete. What matters is not whether the terms are abstract or concrete, but whether readers can easily create a mental image of them.

Abstract terms are usually hard to picture, but the most familiar ones tend to have surrogate images: *justice* gives us a balance scale, *love* a heart or Cupid, *patriotism* a flag or Uncle Sam, and so on. On the other hand, it is not the case that more concrete terms are always more picturable. For example, *car* is for most people more picturable than *vehicle*, because the abstract category *vehicle* includes so many disparate kinds. *Sports car* is more specific than *car*, but about equally picturable. *Roadster* is still more specific, but for many people less picturable. *Spyder* is still more specific and *Murciélago* is as specific as a term can be; but unless you are a car nut like me, it’s unlikely that either term is as picturable as the more abstract *sports car*.

For any given object or event, the most picturable term is one that is as concrete as possible *and that the reader encounters most often in everyday speech*. For most of us, those terms are not the most specific ones available, but the everyday names for everyday objects: *apple* rather than *Fuji*, *bird* rather than *wren*, *cabinet* rather than *commode*. Picturable words tend to be somewhat general, one or two steps above the most concrete and specific level; they tend to name what psychologists call the “basic level of categorization.” This level is the most important one for memory (it’s where we tend to store most information about objects—so that we

think of a wren as a bird with special features), and we tend to process words at the basic level faster than we do others.

So unless you are addressing car nuts, antique dealers, or others with specialized knowledge and experience, try to keep your language at the basic level. Not only will your words seem less legalistic, but they will be more memorable.

<i>Use this</i> (basic level)	<i>Not this</i> (too general)	<i>But also not this</i> (too specific)
hammer	implement	ballpeen
gun	tool	
jail time/ prison sentence	weapon	Glock
	incarceration	Statesville

3. Don’t Explain, Illustrate

Every litigator and patent attorney knows the value—and limits—of a good illustration. Not only can pictures be worth thousands of words, but they are uniquely capable of evoking the kind of emotions that motivate even the most rational decision making. But no picture can ever convey the kind of deep understanding needed to resolve complex legal issues. For that, only good argument will do.

Of course, the resources of good legal argument are just what you cannot deploy effectively when you communicate with the public. So for the kind of quick, memorable, and yet powerful understanding you need in those cases, nothing beats a good visual or verbal illustration.

Here’s a familiar example: dietary advocates have learned that the best way to convince people that some food is not good for us is not to *explain* what’s in the food and why it’s bad for you but to *illustrate* the problem with a dietary equivalent. On the morning I drafted this page, the *Today Show* had a segment showing that restaurant kids’ meals can be dangerously high in calories. But rather than give calorie counts, the presenter paired kids’ meals with their caloric equivalents: a cheeseburger kids’ meal equals two Big Macs; a kids’ mini deep-dish pizza equals a 14-inch thin crust; a turkey burger kids’ meal equals two adult chopped steak and mashed potato entrees. No parent seeing those two

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adult meals can think the turkey burger and fries next to them would be good for their kids.

Even when you can’t use visuals, a verbal picture can illustrate your position more memorably than any explanation. For example, when a grocers’ trade association presented an amicus brief opposing new requirements for warning labels on produce, its lawyer used illustrations to good advantage in the “Statement of the Case”:

These regulations would mandate warning labels for trace amounts of ubiquitous naturally occurring substances, including nutrients and natural food constituents that are not deliberately added to food and pose no significant risk. Under these regulations, every local food store would become a forest of warning labels, frightening ordinary consumers with warnings on every product, not just those composed of a stew of artificial chemicals but every perfectly safe one containing only naturally occurring substances. How could any mother without a degree in chemistry differentiate between organically grown broccoli, with its warning label covered by more than forty items she’s never heard of, and artificial sweetener, with only two?

For the public version, she focused only on the illustration:

If these regulations pass, you will face a forest of warning labels every time you shop for food. Even organic foods will be laced with warnings—lettuce will have more than thirty items on its warning label; broccoli will have more than forty; and table grapes more than that. You need labels that help you tell which products are made from a stew of artificial chemicals, not labels that make you learn the full chemical composition of every fruit and vegetable. If the Commission has its way, you’ll need a degree in food science just to shop.

4. Focus on One Core Issue

When you write for judges or other legal decision makers, it is essential to focus their attention on the

dispositive issue(s). But it is equally important not to miss any ancillary issues that might help your cause. Those who write for the public, however, require a sharper focus: *Raise two issues and you risk confusion; raise three and all you create is noise.*

Stick to a single issue whenever you can identify one that is legally dispositive or otherwise decisive for your readers. You’ll have to reduce your well-crafted argument to what feels like a sound bite, maybe even ignore strong points that go your way. But the experience of the professionals is clear: you must be ruthlessly focused.

If you cannot separate out one specific legal issue, group the important ones into a more general matter that captures them all. For example, when actor Wesley Snipes was convicted of tax evasion in 2008, the case against him involved a number of specific issues beyond the mere fact that he did not file his taxes. But in the public statements from the Justice Department and the Internal Revenue Service, there was but one message: pay your taxes or else. Here is the assistant attorney general:

Those who unlawfully dodge their tax obligations should know that they face long prison terms and stiff financial penalties.

And here the IRS commissioner:

Our criminal justice system has once again determined that there are no legal grounds for failure to file or pay federal taxes. There is no secret formula that eliminates a person’s tax obligations—the law is very clear: people must pay their taxes.

Both might have been a tad less legalistic (not *tax obligations* but *taxes*; not *criminal justice system* but *the courts*), but both were admirably and effectively focused.

5. Don’t Bury the Lead

Readers of your legal documents do not want to wait to the end to learn your main point, but they are not likely to stop reading if they don’t find it where they expect—at the end of your introduction. And they will give you one or even two pages to develop that introduction. But readers of your public documents

will stop, quickly, if they don't see something worth reading right away. They want your main point early, after only one or two sentences of introduction.

Newspapers have responded to the limited patience of the reading public by beginning all news stories with a "lead"—one sentence that crams in all the most important information in a story. If a news writer takes even two or three sentences to develop important information, he is said to have buried the lead.

You shouldn't go as far as newspapers do: outside of news stories, readers find a crammed opening sentence too abrupt, even rude. But do remember to be quick. You should begin with one or two sentences of introduction to get readers up to speed, and then get your main point out early. It may be your only chance to communicate your message.

6. Tell (Familiar) Stories

Every good legal writer knows the power of stories. Most cases are won with good facts, clients follow directions best when they are presented in story form, and even contracts work better when they tell stories of who must do what. Human brains are hardwired for stories: they are what we take away when we read, how we structure much of our knowledge, and how we organize memories. So the most effective public communications are almost always a story.

Whenever possible, structure a public story in a familiar, prototypical form. It can be one of those stories that have names: David and Goliath (individual vs. giant corporation, small business vs. big government); the Good Samaritan (Korean shopkeeper helping neighborhood Hispanic kids); the Alamo story (a neighborhood center is a fortress where kids can fight off drugs, gangs, and so on). But there are many other prototype stories that readers will readily recognize and use for quick understanding of even a complex situation. Here's a version of the "if it looks like a duck" story:

Symphony Space did accept rental payments to defray its costs, which would seem to disqualify it for tax-free status. But of the 207

performances in the year at issue, only 127 performances involved rent, of which 82 were for less than \$500 and none were more than \$750. Ninety-seven performances were by student groups; and only six were by profit-making organizations. Symphony Space's director testified that it never made a profit on any performance and that events were chosen based first on their educational value; second to balance its programming among music, dance, and theatre; and third whether Symphony Space could afford to subsidize the performance.

In every way, Symphony Space has acted as a nonprofit organization supplying essential cultural services for its community. It is undisputed that Symphony Space is an important cultural force in the Upper West Side. Located in an area noted for its diversity of population, it has promoted programs of particular interest to each particular group and to the community at large. It has become a haven for theatre and dance companies that otherwise would have no place to perform. It opens cultural horizons to people who otherwise would not be part of a theatre or dance audience. The principal of the local public school whose students have performed at Symphony Space without charge and whose classes have watched performances, has described it as "indispensable." The founders, employees, and those associated with its artistic and cultural endeavors are idealistic, unselfish, and energetic. They have transformed a second-rate, dingy movie theater into a pulsating center for the arts whose only profit is the good it provides to its community.

7. Choose a Persuasive Frame

One final way that your words and stories can communicate is through the cognitive frames or mental models they invoke. For example, one of the most common frames is Life Is a Journey, which leads us to apply the model of a journey to the chronology of our lives. Accordingly, we talk about a first marriage as the first step in a journey: we say

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that a young couple is “starting out” and that their first condo is a “starter home”; television has even named a show about a divorced woman the *Starter Wife*. We also use lots of path terms: in bad times we say that we have hit a “rough patch”; in good times things are “smooth” or perhaps we are “sailing along”; when we act badly we have “lost our way,” but when we return to the “straight and narrow” we are “back on track”; we say that some jobs are on the “fast track,” that some are “dead ends,” even that some have a “mommy track.” Much of our talk about the progress of a life only makes sense if we are unconsciously thinking of life as a journey. And when we use journey language to write about our lives, that framework infuses everything that we say and that our readers understand.

One effect of cognitive frames is that they lead readers to play out the consequences of a statement, often far beyond anything that is actually said. For example, suppose that after graduation Sue takes a job at a large, high-pressure firm in the big city, but she comes to be unhappy with the job and moves to a smaller firm in a smaller town. Later in life, Sue might describe that first job negatively as a “detour” or positively as “a first step.” Although those terms convey different judgments, through the mental model of a journey they both imply a complex set of commitments about what Sue’s working life—her career—should be (*career* comes from the Latin *carrus* [car] via the Middle French *carriere* [street]). A career should follow one path; it should have a goal. Episodes that bring her closer to that goal are good and those that take her away are mistakes.

Frames are often used to convey judgments. For example, robber baron John David Rockefeller used to say that the success of his company was a case of the “survival of the fittest.” The phrase seems to fit the take-no-prisoners competition of 19th-century business (note the frame Business Competition Is War). But Rockefeller had something more in mind: by invoking a Darwinian frame, he implied not only that the survival of his business was an indication of its superiority but that its survival was *nature’s* (and so *God’s*) way.

Another effect of frames is to imply or even encourage a course of action: the Life Is a Journey frame entails a commitment to goals; Rockefeller’s Darwinian frame implies that to regulate business is to interfere with nature. Accordingly, effective writers choose a frame that supports the outcome they hope to achieve. For example, what’s at stake in all business problems or opportunities is ultimately a matter of money. In addressing a problem or opportunity, that monetary stake can be framed either positively as a benefit or negatively as a cost. Economically, the two are mirror images: to gain \$20M is not to leave \$20M on the table, and not to lose \$20M is to gain the benefit of keeping that \$20M. But a large body of research has shown that people are far more motivated by a negative frame than a positive one. We are quicker to act to avoid a loss than to achieve a gain. So the most effective business writers choose to use a negative frame to motivate their recommendations, even when there are only gains to be had.

Frames have their greatest effect when they imply both judgments and an expected course of action. For example, this is part of a statement explaining why a school suspended students with offensive slogans on their locker doors:

What those students had in their lockers was not just speech; it was hate speech. We isolated the offenders before their sick ideas could infect other children. Other schools have seen this kind of virulence spread through the entire school community, distracting students for weeks before the sickness could be eradicated.

Here, an extreme environmentalist group defends its actions:

A living thing has the right to protect itself from predators. And if it cannot defend itself, then those who love it have a duty to do so. The redwoods cannot defend themselves, so we who love them must defend them and punish their attackers. That’s justice; that’s nature’s law.

Here, a police department explains why it will not change its policy:

The accidental shooting of Mr. Hallows was a terrible tragedy, and we are thankful that he is expected to recover. But we cannot listen to those who want us to stop our raids on the drug dealers who attack our communities with their chemical weapons. The war on drugs is no picnic. Wars have casualties, but that cannot stop us from fighting an enemy that targets innocent children.

Writing for the public may seem a crude instrument compared to the rare and difficult art of the best legal writing. And if we expect fully considered, rational decision making, then it is. But such careful decision making requires the kind

of complex institutional structures that characterize the law, scientific research, and other expert forums. From the point of view of the rough-and-tumble forums in which people use quick-and-dirty tools to make the best decisions they can, the best writing for the public is also a rare and difficult art, one that the best legal writers cannot afford to ignore. You can be sure that those on the other side of your issue will not.

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Another Perspective

“When my son was very young, he loved toy trains. But when we purchased a train set for him, he was unable to assemble the individual cars into a train. Connecting two cars required a small twist of one of the cars before the mechanical coupling would connect. My husband repeatedly demonstrated the required twist. But even with multiple demonstrations, our son did not succeed in attaching the cars.

Later, I sat with our son and the train cars. As I wiggled the cars, so that the coupling caught, and assembled the train so that my son could play with it, I spoke in some detail about what I needed to do to make his train work. ‘Hold the engine, twist the coal car.’ Once the train was assembled, he played happily with it. But the plastic couplings tended to disengage with active play. They were, after all, designed to disengage easily so that children could add cars or reassemble the train into different configurations. Suddenly, I saw our son grasp the engine and the coal car and heard him say, ‘Hold the engine, twist the coal car’ as he held the engine and twisted the coal car to engage the mechanical link.

I did not know then that learning theorists and empiricists would have described my son’s preferred mode of learning as an aural one. But I did know that having him hear and hearing him speak (re-auditorize) the directions triggered his ability to learn and become the master of his train set. Like most human beings, his ability to process visually and through other modalities has grown with maturity. But this experience of observing my son as a learner changed me as a teacher.”

—Kate E. Bloch, *Cognition and Star Trek™: Learning and Legal Education*, 42 J. Marshall L. Rev. 959–60 (2009).