For the past year I have been reading and have been growing increasingly irritated by the utter nonsense that the Michigan Bar Journal has seen fit to print in this so-called “Plain Language” column, if it can be called a column at all.

The articles by Mr. T. Seldon Edgerton are pure garbage, not even suitable to cover the bottom of a bird cage. They are about as exciting, funny and interesting as four hours of live broom to broom coverage of a semifinal curling match on common TV.

I’m told that Mr. Edgerton hopes to someday publish a book of his collected articles on Plain English. He even has the audacity to think that the book may outsell the Bible. I beg to inform Mr. Edgerton that a collection of his articles would not even outsell a book — which I abstain from dignifying by mentioning its name — that identifies and describes 50 different ways in which people pass gas.

Does this gentleman, and I use the term very loosely, realize what he is doing? In this writer’s opinion, Mr. Edgerton is performing a gigantic disservice to the profession to which he purportedly belongs. I pity him if he thinks his pathetic rumblings can have any effect at all on trying to rally the insignificant handful of misguided attorneys who wrongly think that the traditional language of the law needs to be changed.

I am appalled to think that not one single person has made any reply to these monstrous and outrageous attacks on our honorable legal language. I think it is high time that Mr. Edgerton got a taste of his own medicine. I am therefore forced to take pen in hand and rise to the defense of the noble writing style that has stood the test of time and has served generations of lawyers and Americans.

Mr. Edgerton tries to prove that he is “right” by listing some groups that supposedly support what he calls “Plain English.” Logicians call this proof by association. By using Mr. Edgerton’s same method of proof, and by relating a story told to me by a very high-ranking member of the Michigan Irish Judiciary, I will hereby prove that Jesus Christ was Irish. This is obvious because (1) He never married, (2) He lived at home until he was 33, (3) His mother thought he was God, (4) He had 12 drinking buddies, and (5) His last words were “I thirst.”

So much for Mr. Edgerton’s logic. I would now like to address myself to what Mr. Edgerton calls “specifics” rather than “generalities.”

Specific #1 — Legal-Size Paper

There is a very good reason why attorneys have traditionally used legal-size paper — you simply can get more on it than you can get on letter-size paper. A brief written on five legal-size pages would require six letter-size pages. Many of my briefs run fifty pages or more. For each fifty pages of legal-size paper I have saved ten pages that would have been required had I used common letter-size paper. Oh, I know that Mr. Edgerton will then point out that many of the fifty legal-size pages, such as the cover sheet, title page, table of contents, table of citations, statements of issue, affidavits, proofs of service, etc., are not covered from top to bottom with lines of print and would have fit on letter-size paper. For this I will grant him five pages. The uncontested result, however, is that I can write a brief on fifty legal-size pages that would take Mr. Edgerton fifty-five letter-size pages. Over the years this results in a not insignificant savings of paper and filing space. As to the other arguments that documents with various size paper, for instance, combinations of 8½ by 11, 8½ by 13 and 8½ by 14, are difficult to handle and copy and cause extra time for legal secretaries, paralegals and other document handlers, we need go no further than to say that compared to my billing rate their time is really very insignificant, almost miniscule. Besides, a legal document, even a proof of service, gives oneself a feeling of accomplishment and fulfillment. When drafted on legal-size paper it becomes an object of elegance and beauty, an attestation to the honor and worth of the profession. When printed on common letter-size paper it simply becomes another banal exercise. In short, it’s the paper we use that makes us attorneys, and we shouldn’t let anyone forget that.

Specific #2 — Obsolete Formalisms

From time immemorial the traditional phrase “Now Comes the Plaintiff” has graced the beginning of virtually each and every complaint and motion that any attorney worth his salt has ever written. Judges, regardless of whether they ever read the complaint or motion or not, have come to expect this language. Granted the obsolete formalism “Now Comes, ““Know All Men By These Presents” and “SS” are words that might be considered unnecessary to Plain English advocates and high school teachers. However, these words serve an important function. They serve an historical purpose of linking the past with the present. They give a feeling of confidence, continuity and certainty to anyone, be it lawyer, layman or judge, who reads them. Let’s take a standard mortgage form introduction of “Know All Men By These Presents.” This wording serves several important functions. First, the important psychological factor — when you read it it gives you an immediate sense that, “yes this is a real estate document, a solidly drafted instrument.” Secondly, since this phrase has been used since time immemorial, no need to worry about any new plain English words conflicting with case precedents, interfering with the legal effects of the instrument and
causing the documents to be null and void. Third, even though the words
"Know All Men By These Presents" have never had any legal significance
and have served only as meaningless introductory words, some introductory
words obviously have to be used. Therefore, why not continue to use the
words that everyone is used to seeing? Keeping six little meaningless words
is hardly going to obfuscate an entire legal instrument.

**Specific #3 — Old English Words**

Old English words such as "hereby" also serve an important function.
In a document the words "I hereby certify" indicate that the person is
attesting something by THIS specific act, not by some other specific act.
What is really being said is "I, right now by this document, certify etc." The
word hereby is really a shorthand version of "right now by this docu-
ment." Of course, as Mr. Edgerton is fond of pointing out it's always ob-
vious that the certification is being done "right now by this instrument." Neverthe-
less, it never hurts to em-
phasize this fact to the writer and the reader. Furthermore, phrases such as
"I hereby certify" have been used for
so long and are now so common that the phrase "I certify" sounds funny
and incomplete, as though something
has been left out.

In addition, words such as "here-
in" and "therein" are shorthand for
words such as "in this document" and
"in that document." It is commonly
established custom to use a "herein"
here and there. It not only specifies with precision what you are talking
about but also is language that serves
to demand the respect of the reader.

**Specific #4 — Redundant Phrases**

What Mr. Edgerton refers to as
redundant phrases have been in each
and every lawyer's arsenal of legal
language for so long that to change
them now would be foolhardy. The phrases have become terms of art. To
change them now would be opening up "Pandora's Box." Take a phrase
such as "due and payable," a standard phrase in all mortgages. What if a
plain English advocate drafted a mort-
gage that simply said "due?" If this
mortgage was ever subject to litigation
an opposing lawyer would most cer-
tainly note the discrepancy that most
mortgages say "due and payable" and
this mortgage says only "due." There
aren't any precedent real estate cases that
discuss the difference, if any, be-
tween "due and payable" and "due." This is because real estate cases are
usually too expensive to wait the long
years required before a case is finally
tried and the appeal heard. Therefore,
most real estate cases are settled bet-
tween the opposing lawyers in the
judge's chambers. Thus there is very
little published case precedent real
estate law. Most of it is unpublished
courtroom law. This law is heavily de-
pendent on what the individual judge
thinks the law is. And what attorney
wants to take the chance that some
judge in his chambers will know that
there is no difference between the
phrase "due and payable" and the
word "due." It is because of this uncer-
tain chameleon-like court room law
that we must keep all the phrases that
Mr. Edgerton has ridiculously ter-
med the "Horrible Hundred Redundant
Phrases of the Traditional Language of
the Law." Stop using entire phrases
such as "due and payable" and "terms
and conditions" and you will open
floodgates of litigation.

**Definition of Legalese**

At this point I must say that Mr.
Edgerton has me (and probably all
nine or ten other members of the State
Bar of Michigan who read his column)
completely confused. One month Mr.
Edgerton defines "legalese" as four
items, namely, legal-size paper, ob-
solete formalisms, old English words
and redundant phrases. And the next
month he goes ahead and enlarges his
definition of legalese to include ten
items. If consistency is an attribute of
plain English, and I assume it is, then
Mr. Edgerton's articles are anything
but plain English.

**Conclusion**

I could go on and on but I will
stop here. Suffice it to say that this al-
legedly well-meaning but clearly mis-
guided plain English nonsense must
be brought to an end. Present day at-
torneys simply have too much to do.
To bother them with this ridiculous and
amateurish tampering with a legal lan-
guage that has been shaped and
molded over the centuries into a preci-
sion lexicon would be nothing less
than a monumental tragedy.

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