

30 Years and Counting

By Joseph Kimble

Do you know what is by far the longest-running legal-writing column in the history of the known universe? This one. And because 2014 marks its 30th year, perhaps readers will allow me a look back and a little celebration.

Credit for introducing the column goes to George Hathaway, who was then a staff attorney at Detroit Edison. Earlier, in 1979, the same year that two plain-English bills were introduced in the legislature, the State Bar had formed a standing Plain English Committee. The first chair was Irwin Alterman. Sadly, the bills never passed (one opponent: the Michigan Bankers Association), but the committee lived on, and Hathaway became the chair. He coordinated a superb “Plain English” theme issue of the *Bar Journal* in November 1983—still worth reading today¹—and that was the precursor to this column. The first one appeared in May 1984, written by Gregory Ulrich.

A complete list of columns is available at <http://www.michbar.org/generalinfo/plainenglish/>. Through the good offices of Linda Novak, the *Bar Journal*'s editor, we've

gotten all the older columns online. And during this anniversary year, we will be re-printing some classic columns.

Hathaway's contributions during his earlier years were memorable in more ways than one. I've always thought that a table he created for his “Overview” article in the 1983 theme issue was a masterstroke—at least for that time. (It's reproduced, with minor edits, in the appendix at the end of this column.) Hathaway adopted a pseudonym, T. Selden Edgerton, the name of a great-grandfather, to write eight columns in the mid-'80s. Most were accompanied by drawings and photos that must have drawn smiles and laughs from readers. In one column (January 1986), Edgerton was photographed with a bag over his head because, as a plain-English lawyer, he wanted to remain anonymous. In another (July 1986), he was covered with a blanket to demonstrate the “security blanket” style of writing with doublets and triplets. Hathaway even invented Mr. Edmund Z. Righter for a mock column (January 1987) called *In Defense of Legalese*, and Edgerton answered (March 1987) with one called *In Disgust of Legalese*.

I became the column's editor in 1988—last year was my own 25th anniversary—and Hathaway continued as the chair of the Plain English Committee. Over the years, the committee organized two more “Plain English” theme issues of the *Bar Journal* (January 1994 and January 2000); produced a videotape called *Everything You Wanted to Know*

About Legalese...But Were Afraid to Ask; promoted the move to 8½-by-11-inch paper in Michigan courts; worked on a number of forms projects; and gave nationally publicized Clarity Awards to well-written documents throughout the 1990s. The committee itself was discontinued in 2001 but left the column as its enduring legacy.

How do I try to capture the column's accomplishments and influence? We have published articles by the luminaries in legal writing and plain language: Bryan Garner, Reed Dickerson, Robert Benson, Irving Younger, Peter Butt, Christopher Balmford, Wayne Schiess, my colleague Mark Cooney, and many others. Perhaps you'll take my word that the column has an international reputation and has been cited in countless books, articles, and news releases—not to mention the committee notes to Rule 1 of the newly restyled Federal Rules of Evidence. Several columns (October 1987, May 1990, March 2006, September 2011, and September 2012) have reported on the incontrovertible empirical evidence that all readers—legal and nonlegal—strongly prefer plain language to legalese. We were among the first to develop data from the actual testing of legal documents. Similarly, another influential column (October 1985) reported on a study of a real-estate sales contract: the authors found that less than 3% of the words had significant legal meaning based on precedent. So much for the myth that terms of art subvert efforts to write in plain language.



“Plain Language” is a regular feature of the *Michigan Bar Journal*, edited by Joseph Kimble for the Plain English Subcommittee of the Publications and Website Advisory Committee. To contribute an article, contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901, or at kimblej@cooley.edu. For an index of past columns, visit <http://www.michbar.org/generalinfo/plainenglish/>.

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Ah, yes, the myths and false criticisms. We have seen—and exposed—they all (I won't cite columns because we've addressed these myths repeatedly):

- Plain language is baby talk, or Dick-and-Jane style. It dumbs down.
- Plain language is dull and drab.
- Plain language is all about simple words and short sentences.
- Plain language is less precise than traditional legal style (it's actually more precise).
- Legalese is required by law—statutes or regulations or precedent.
- Some ideas are too complex for plain language.

The only things standing in the way of plain language are the will and the skill to do it. I said in the 1994 theme issue that “nothing

would do more to improve the image of lawyers.” And I think nothing is more likely to make readers and listeners happy.

Finally, some thank-yous are in order. To the State Bar and the Publications and Website Advisory Committee for supporting the column. To the *Bar Journal* editors—Sheldon Hochman, Valerie Robinson, Amy Ellsworth, and Linda Novak—for putting up with my nonstop tinkering. (One of them told me once, “I am putting my foot down.” No more changes to that column.) And of course, thanks to all you loyal readers. In a 2002 readership survey, “Plain Language” ranked third on the list of monthly features that members are most likely to read always or most of the time. Almost half of those who responded fell into that category—always or usually. On the electronic front, last year the column received tens of thousands of visits on the State Bar's website.

The column is a labor of love, but a labor nonetheless. It's taken a good slice of my working life. But I'm proud to have done it.

Happy anniversary, “Plain Language.” ■



Joseph Kimble has taught legal writing for 30 years at Thomas Cooley Law School. He is the author of Lifting the Fog of Legalese: Essays on Plain Language and Writing for Dollars, Writing to

Please: The Case for Plain Language in Business, Government, and Law. He is also senior editor of The Scribes Journal of Legal Writing, the past president of the international organization Clarity, a founding director of the Center for Plain Language, and the drafting consultant on all federal court rules. He led the work of redrafting the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

ENDNOTE

1. This issue (like all others back to 1921) is available through HeinOnline at the member area of the State Bar's website, <http://e.michbar.org/ecommerce/home/main.aspx>.

Appendix Reasons (and Replies) to Use of Traditional Language

REASONS GIVEN FOR USING THE TRADITIONAL LANGUAGE OF THE LAW

1. The traditional language of the law is more *precise* than plain English.
2. The traditional language of the law is more *complete* or *comprehensive* than plain English.
3. The traditional language of the law is more *intelligible* than plain English.
4. The traditional language of the law is more *durable* than plain English.
5. The traditional language of the law takes *less time to write* than plain English.
6. The traditional language of the law *sounds better* and is more beautiful, more majestic, and more awe-inspiring than plain English.
7. The traditional language of the law is *not understood* by lay people. They therefore cannot argue with it, and this makes it easier to direct and control them and keep their *respect* for the law.
8. The traditional language of the law is longer and looks *more impressive* than plain English. Therefore, a greater fee can be charged.

REPLY TO THESE REASONS BY ADVOCATES OF PLAIN ENGLISH

- Ninety-nine percent of the traditional language of the law is not precise. Even the one percent that is precise, the terms of art, can be stated and then defined in plain English.
- Long complex sentences are not necessarily any more complete than short sentences. Most of the length and complexity of the traditional language of the law consists of unnecessary words, not words that make the thought more complete. In fact, length, rather than making a passage more complete, usually increases the possibility of error.
- Short words and short sentences can be just as intelligible as long words and long sentences—and are usually more intelligible.
- Legal words and phrases change with time just as much as other words. Example: *due process*.
- True, but time spent in writing is saved many times in reading.
- Plain English can be great prose. Example: the writings of Jefferson, Cardozo, and Holmes.
- Obedience based on ignorance may work for a while but usually leads to contempt and disrespect.
- Fees based on impression do not last as long as fees based on results.