The Scrivener

Summer, 1987 Issue

SCRIBES BUSINESS MEETING IN SAN FRANCISCO

The SCRIBES will hold its Annual Breakfast meeting at 7:30 a.m., Sunday, August 9 in the George D. Smith Room of the Mark Hopkins Hotel. A business meeting will follow which will focus on a proposed amendment to the Constitution (see article "Minutes of the Executive Board Meeting in this issue).

Jerry Bringard, Counsel, Financing and Diversified Operations, Ford Motor Credit Company, will speak briefly on "One Man's Success in Rewriting the Consumer Documents of a Giant Corporation in Plain English." Mr. Bringard is a pioneer in the plain English movement. While working as an attorney for Ford Motor Credit Company (FMCC) in the 1970s, he saw the trend toward plain English and began rewriting FMCC forms for automotive installment loans and leases. As a result, that company was among the first to simplify its forms nationwide and still a leader.

Mr. Bringard will have some comments, too, on the Federal Trade Commission's legal writing, which does not always reflect plain English principles. This is ironic since they have a Consumer Protection Division.

Bringard will be followed by comments from President-Elect Billings on future plans of SCRIBES. This will be an opportunity for the members in approving a two-year agenda for SCRIBES.

BUSINESS DRAFTING INSTITUTE

SCRIBES will sponsor a Business Drafting Institute in March 1988 in Winston-Salem, North Carolina. The Institute will be held at Graylyn Conference Center, a restored French Renaissance chateau. Instruction will be provided via microcomputers and is based on instructional techniques developed at Wake Forest University. Further details will be announced by letter and in the newsletter.

THE SCRIBES BOOK AWARD

The SCRIBES Book Award Committee, selected the following winners for the Annual Book Award:

The SCRIBES BOOK AWARD: *Art Law,* 2 vols. by Franklin Feldman, Stephen Well, Susan Duke Biederman. Little, Brown & Co.

Honorable Mention: *The Fundamentals of Legal Drafting* by Reed Dickerson. Little, Brown & Co.

Honorable Mention: *The Supreme Court and the American Family* by Eva R. Rubin. Greenwood Press.

The choices were made from over seventy books submitted. The Committee was chaired by Professor Shirley R. Bysiewicz, University of Connecticut, and was composed of Arthur Litz, Circuit Judge, Clayton, Missouri and John P. Furman of Washington, D.C.

YALE SENIOR WINS FIRST SCRIBES STUDENT LAW REVIEW AWARD

Paul R. Q. Wolfson, a third-year student at Yale University Law School, was awarded first prize in the first annual SCRIBES competition for his note, "Is a Presidential Item Veto Constitutional?" published in Volume 96, No. 4 of the *Yale Law Journal,* March, 1987. His article was selected out of the 34 submitted by the staffs of law reviews throughout the United States. He received an award of $300, and a plaque was presented to the Yale Law Journal. The following is an abstract.

> "Dissatisfaction with Congress' budget processes has recently prompted calls for legal and institutional restraints on Congress' freedom in enacting appropriations. One frequently mentioned legal restraint is the "item veto," a power currently enjoyed by the governors of forty-three states which, if extended to the President, would permit the President to veto only parts of appropriation bills while approving the remainder.
>
> In this Note, I discuss the constitutional flaws in enacting an item veto by statute. Such a presidential power would fundamentally shift power away from Congress to the President in a way that the Framers could not have intended, for they understood legislative power over appropriations to be a crucial safeguard of legislative power against executive misfeasance. Moreover, the item veto would violate the nondelegation doctrine by permitting the executive to take action explicitly in defiance of legisla-

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tive will. Finally, the Note examines proposals to make the President's traditional veto power more effective through the use of congressional procedures designed to parse appropriation acts into many separate bills for presentment to the President and concludes that, although such a procedure might be constitutional, it would also fail to exact fiscal discipline, because either house of Congress could abandon the procedures at any time."

Mr. Wolfson has a B.A. from Harvard; a M. Phil. degree from Trinity College, Cambridge and has been a development worker in Togo, West Africa. He is an author and lyricist.

Michael F. Orman of Duke University Law School, was awarded second place for a note, "A Critical Appraisal of the Justice Department Guidelines for Grand Jury Subpoenas Issued to Defense Attorneys," [1986] *Duke Law Journal* 145. Honorable Mention Awards were presented to Edward J. Posselius III, Denver University Law Review; Adam D. Chinn, New York University Law Review; Robert B. Foster, Northwestern University Law Review; and John L. Segal, Southern California Law Review.

Articles were first received and evaluated by the Legal Research and Writing faculty at Wake Forest University.

The judges included Roger Billings, Northern Kentucky University, Chair; Michael Richmond, Nova University; Margaret Bearn, St. John's University and Joe Marticelli, Lawyers Coop. They commented on the high quality of the winning and mentioned writings.

The editorial boards of all law school reviews were invited to submit student writings. SCRIBES officers expressed disappointment at the relatively small number of entries but were pleased by the high quality of submitted articles.

The contest will be renewed for the next academic year. Any Law Review is eligible to submit one piece of student writing. Detailed instructions will be circulated shortly after the beginning of the 1987-88 academic year.

PRESIDENTS MESSAGE

Brief Writing

In my practice I wrote dozens of briefs, and came to think that I knew a great deal about brief writing. Now, after reading briefs in the hundreds, I find that I didn't know nearly as much then as I thought I did.

The purpose of a brief is to make it easy for the court to decide in your favor. So, as you are writing, try to put yourself in the position of the judge who will use your brief. Ask yourself how you can help the judge.

A brief should be brief. Most judges of present-day appellate courts try to read briefs before argument. The shorter the brief, the greater the likelihood of a thorough preliminary reading. Avoid long quotations, duplicating points, and lengthy discussion of peripheral authorities.

A brief must be accurate. Set out the facts which the appellate court must accept. If you are appealing from a jury verdict or a case decided by the court on factual grounds, set out the facts supporting the judgment. If a point relates to submissibility or denial of instructions, however, the appellates are entitled to state the facts favorable to their position, and opponents should not dwell on contrary evidence. If a point requires preservation, show how it has been preserved. If there is a preservation problem, admit it, and say why you think there is reason to review the point. Above all, do not misstate, or omit, or obfuscate anything. If your opponent doesn't pick you up, the court will.

A brief should be self-contained. If the case depends on statutes, set them out, whether the rules require this or not. Don't make the judge reach for the statute book. He may be sitting in an easy chair with the statutes on the other side of the room.

Don't simply cite or quote from your principal authorities in the expectation that the judge will read them. Tell enough about a case so that the reader can determine whether an immediate reading is necessary or helpful. As a general rule a case worth citing is worth discussing. If short portions of the record are particularly pertinent (as when your opponent asserts that there is "no evidence" on a particular issue), quotation is helpful; otherwise summarize and cite the record.

A brief should be a literary production. The Statement of Facts should tell a story which will capture the reader's attention. Rewrite constantly, until the words flow. Don't narrate the testimony in sequence; collect at one point all evidence supporting a finding. If all you have to show is that there is evidentiary support for a fact, don't string out the details. The argumentative portion should flow also. State legal propositions succinctly, in readable prose without inversions or disgressions. Summarize your important authorities concisely, and without diverting detail.

Reading a good brief is a pleasure. Reading a poor one is a chore. Duty requires us to perform our chores, but we appreciate the lawyer who writes a brief that is easy to use.

Charles B. Blackmar

SUMMARY OF MINUTES OF SCRIBES EXECUTIVE BOARD MEETING

May 9, 1987
St. Louis, Missouri

President Charles Blackmar convened a meeting of the Executive Board of SCRIBES, May 9, 1987 in St. Louis, Missouri. Present were Charles Blackmar, Margaret Bearn, Roger Billings, Harry Gershenson, Rudolph Hasl, Joe Marticelli, and Ken Zick.

President Blackmar reviewed the proposed agenda prepared by Mr. Zick for the meeting and asked if there were any additions. There being no additions, he requested a Treasurer's Report. Mr. Zick presented the SCRIBES Financial Statement.

The Board then turned to an examination of membership in the organization. Mr. Zick reported that there were 81 members who were delinquent in paying their dues. Most of them had not paid dues since 1985. After a discussion of membership responsibilities and the need to broaden our membership base, it was moved and seconded that the administrator notify all delinquent members before July 1 that if they have not paid this year's dues by August 1, they will be dropped from the membership rolls. The Board advised the administrator that his letter should apprise the membership of the activities supported by the dues. It should also inform them of the institution this year of a SCRIBES breakfast meeting at the AALS annual meeting. In order to provide the delinquent member an opportunity to renew his commitment to SCRIBES, the Board agreed that payment of this year's back dues would restore the member to good standing through the 1988 fiscal year.

In the course of the Board's discussion of membership, several questions were raised about the composition of the Board of Directors and Executive Board. Judge Blackmar informed the Board that Richard Nahstoll had resigned as Treasurer because of other commitments. It was moved and seconded that Mr. Hasl assume Mr. Nahstoll's responsibilities as Treasurer for the remaining term of office. The President then appointed the Board as a nominating committee to nominate a slate of candidates for the August meeting. Since the By-laws have been changed to allow the officers to serve a 2 year term beginning with officers elected at the August meeting, the only vacancy on the Board will be the position of President-Elect (Vice President). President Blackmar advised the Board that they should communicate suggested nominations to him. The Board then tried to reconstruct the present composition of the Board of Directors. Mr. Zick and Mr. Hasl were asked to reconstruct from their records the present composition of the Board of Directors. (A subsequent search of the office records revealed that the following people are presently serving on the Board:

1984-87
Margaret S. Bearn
Edward D. Re

1985-88
Joseph R. Julin
Roy Mersky

1986-89
James Brown
Joseph Marticelli

Two new directors must be nominated for three years beginning in 1987.)

The discussion then turned to an examination of criteria for SCRIBES membership, and the development of a new membership solicitation brochure to use in a membership drive. There was uniform agreement that a membership drive was essential to the continuing viability of SCRIBES as an organization. It was agreed that the new brochure should be concise and to the point. It was generally felt that the present brochure was written in prose that was too formal and stilted. The new membership brochure should briefly explain the purposes, goals, and activities of SCRIBES. It should also contain a list of the present officers and Board of Directors with their names and addresses. The application included within the brochure should be designed for convenient return mailing. As soon as the brochure is prepared, it will be sent to all sitting state appellate and all federal judges, contract authors, publishers, and legal writing and research faculty. Separate invitation letters prepared for each group will be sent with the brochure. Judge Blackmar will prepare the judges letter. Mr. Marticelli will prepare a letter to publishers. Ms. Bearn will write to the legal research and writing faculty, and Mr. Billings will prepare a letter for contract authors. During the course of this discussion the Board reexamined its membership criteria. It generally believed that there was a need to expand the membership to include judges that had written published judicial opinions. Several members also expressed the opinion that Article II, Section 1 should be revised to delete the requirement that a candidate for membership be nominated by an existing member. This requirement was thought to be too burdensome, and inhibited the solicitation of otherwise qualified members. After some discussion it was moved and seconded that the membership be notified 60 days before the next annual meeting of the following proposed amendment to Article II, Section 1 of the Constitution of SCRIBES.

Article II

Membership

Section 1. **Qualification:** Any member of the legal profession in good standing who shall have written at least one book on a legal subject which has been published, or who has written two or more articles on legal

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subjects which have been published in magazines or journals, **or as a judge has written three or more judicial opinions which have been published in an official reporter,** or who is or has been an editor of an established legal publication, shall be eligible to membership in SCRIBES.

The motion was voted upon and adopted.

Mr. Zick then directed the Board's attention to an examination of his proposal for a Business Drafting Seminar to be held March 10-13, 1988 at the Graylyn Conference Center of Wake Forest University. Briefly, the seminar will acquaint young lawyers with computer-enhanced organizations, problem solving, and drafting techniques. It will be directed at young lawyers with less than two years of experience. The Board engaged in a discussion of the organization and costs of the conference. (The budget for the program was approved and the conference fees were set at $300.00.) A mock-up of the program brochure will be presented for review at the August meeting of the Board.

President Blackmar next reported the results of the Law Review Notes and Comments Competition, and thanked Mr. Zick's Screening Committee and Mr. Billings' Finals Committee for judging the submissions. Thirty-four law reviews submitted articles.

The Board was somewhat disappointed with the number of entries in the competition. Mr. Hasl suggested that this may be due to the loose organizational structure of many reviews. He suggested that we copy all Deans in the future with notice of the competition. Notice of the winners of the competition should also be sent to the **West Law News.**

The Board then turned its attention to the SCRIBES Book Award Competition. Mr. Billings reported that book submissions have been pouring into Shirley Bysiewicz's office. At one point Ms. Bysiewicz, chair of the SCRIBES Book Award Committee (see article on page 1 for winners), had considered enlarging the committee, but she now believes that she will be able to complete her work in time for our August meeting. The Board reviewed its consideration of book award categories. This year the SCRIBES Book Award will be coupled with honorable mentions. The Board will continue to review categories in the future after receiving input from the book award committee.

The meeting adjourned at 3:45 p.m.

Respectfully submitted
Kenneth A. Zick, II
Acting Secretary

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The following articles are reprinted by permission from the February and March 1987 issues of the **Michigan Bar Journal.** *They were originally published in a "Plain English" column which regularly runs features supplied or solicited or selected by the State Bar of Michigan Plain English Committee.*

"In Defense of Legalese"
(An Answer to T. Seldon Edgerton)
By Edmund Z. Righter

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 semi-final curling match on Canadian TV.

I'm told that Mr. Edgerton hopes to someday publish a book of this 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 59 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 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 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 uncontestable 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 inconsiderable savings of paper and filing space. As to 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 Formalism

From time immemorial the traditional phrase "Now Comes the Plantiff" 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 formalisms "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 presence. They give a feeling of confidence, continuity and certainty to anyone, be it a 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 certifying 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 document." Of course, as Mr. Edgerton is fond of pointing out it's always obvious that the certification is being done "right now by this instrument." Nevertheless, it never hurts to emphasize this fact to the writer and 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 "herein" 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 mortgage that simply said "due?" If this mortgage was ever subject to litigation an opposing lawyer would most certainly 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, between "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 between 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 dependent 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 uncertain chameleon-like court room law that we must keep all the phrases that Mr. Edgerton had ridiculously termed the "Horrible Hundred Redundant Phrases of the Traditional Language of the Law." Stop using entire

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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, obsolete formalism, 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 allegedly well-meaning but clearly misguided plain English nonsense must be brought to an end. Present day attorneys simply have too much to do. To bother them with the ridiculous and amateurish tampering with a legal language that has been shaped and molded over the centuries into a precision lexicon would be nothing less than a monumental tragedy.

"In Disgust of Legalese"
(A Reply to Edmund Z. Righter's article "In Defense of Legalese")

Dear Mr. Righter:

In the beginning was the word and the word was with God and the word was God. But (ever since Adam bit the apple) the bed, the barstool and the campaign contribution have all become more powerful than the word. This is true regardless of whether the word is the written word, the spoken word, the word of God or the word of the law. It is especially true when the word is that part of the traditional language of the law known as legalese. For legalese has no power at all except to confuse, to irritate and to disgust.

I congratulate you for standing out from the ranks of the silent minority and speaking your mind. However, your article reminds me of a walking eagle --bold and arrogant, but so full of it that it can't fly. Your reasons for using legal-size paper, obsolete formalisms, Old English words and redundant phrases speak for themselves. As the saying goes, Res Ipsa Loquitur. If you can't see that your reasons are false and illogical, then no one, probably, will ever be able to convince you.

Finally, you seem very disturbed by what you call my indecisive definition of legalese. I remind you that the great German bacteriologist, Paul Ehrlich, experimented with 606 different formulas before he finally found a cure for syphilis. Surely you do not begrudge me a mere two attempts to find a cure for a similarly pervasive and pernicious disease.

The Two Sides

I realize that there are two sides to the question of plain English versus legalese. I also realize that some of the lawyers who hold your viewpoint, Mr. Righter, are members in good standing of the bar. And since I do not want to offend anyone, I will simply refer to the two sides as the forces of good versus the forces of evil.

The forces of evil, otherwise known as lovers of legalese, are led by no one. They are a dwindling but still powerful minority of lawyers who stubbornly cling to the past. They have no valid reason for using legalese. The only reason they use it is that they equate legalese with prestige.

They cannot be satisfied with simply writing a document in plain English that is both precise in meaning and clearly expressed. Instead they must satisfy some inner desire for perceived prestige by using 8½ by 13-inch paper, expressions such as "Know All Men By These Presents," words such as "hereby," and redundant phrases such as "each and every."

The Test

The forces of evil are difficult to identify. All 24,000 members of the State Bar of Michigan will say that they favor clear writing. And if pressed, each will say that it is very important for students to take a legal writing course in law school. But now comes the catch: Even though legal writing courses in law school teach plain English, some of the 24,000 members of the State Bar will not lift a finger to use or promote plain English in their legal practice. That's the test: Not what they say, but what they do. Forget the dicta; it's the holding that's important.

And the test for lovers of legalese is what are they doing to use or promote plain English in their practice of law. For some, the answer is always nothing. The line is always the same: "Don't get me wrong, I'm in favor of plain English but...." And after the "but..." come all kinds of excuses and rationales for stonewalling. --"I'm going on vacation next week," or "This is my busiest time of the year," etc.

Actually you don't even have to go that far to recognize a lover of legalese. All you need do is observe what size of paper they use. Whether or not they's going on vacation next week, regardless of whether or not they're willing to do anything positive to help the plain English movement, it would take no effort to tell the secretary to use 8½ by 11 paper for their pleadings and other legal papers. The size of paper they use gives them away. Show me a lawyer who uses 8½ by 13-inch paper and I'll show you a lover of legalese, a lover of prestige, a silent member of the forces of evil, for behind the prestigious 8½ by 13-inch paper comes all the rest of legalese --the obsolete formalisms, the old English words, the redundant phrases.

The Alternatives

If these lovers of legalese would only stop and think, they would realize that they will have to change voluntarily or they will be forced to change. Let's look at the situation.

The general public has always wanted legal documents written in plain English. When lawyers didn't provide them, state legislators began passing plain English bills to require the legal documents be written in plain English. Eight states have now adopted such laws, and more will undoubtedly follow.

The best examples of the effectiveness of these plain English bills are insurance policies. Most if not all insurance policies are now written in plain English. Some companies did this voluntarily, but most did it because they were made to do it by state plain English laws.

Three key factors are important in the insurance examples:

1) Most insurance companies didn't change until they were forced to by plain English laws.

2) Plain English laws were the only reason that these insurance companies would have changed.

3) The laws accomplished what they were supposed to do.

If lawyers don't write legal documents in plain English voluntarily, then legislation will eventually make them do it. Far better to be ahead of the game and voluntarily adopt the plain English the public increasingly demands before you are made to do it by legislation.

This is known as good PR. Public opinion polls usually rank lawyers next to used car dealers and undertakers as the three professions in which the public has the least trust.

Why are lawyer jokes so popular? (Example: What's the difference between a lawyer and a rat? Answer: You can learn to love a rat.)

It's not enough for lawyers simply to want respect. They must realize that they can't have both legalese and public respect at the same time. The public will not respect lawyers until lawyers eliminate legalese. Voluntary use of plain English will help to increase public respect for lawyers.

The Present Status

To illustrate the situation let's look at the present status in Michigan of the basic requirement of plain English: Standard 8½ by 11 paper.

A. All lawsuit papers filed in **federal court** are now written on 8½ by 11-inch paper. However, this was accomplished only because the federal courts adopted a rule requiring its use.

B. In **state courts** the size of paper is optional. You can file 8½ by 11, 13 or 14. About half the lawyers use 8½ by 11, but half are still using one or the other "legal" size. You would think that these lawyers would get the idea and start using 8 1/2 by 11. But no, they're either too dumb or too stubborn, or a combination of both. Even though the State Court Administrative Office offers many easy-to-use lawsuit forms, all on 8½ by 11 paper, some lawyers refuse to use either the forms or 8½ by 11 paper. Apparently the only way to get them to use 8½ by 11 is by mandatory state court rule, patterned after the federal rule.

C. The **State Court Administrative Office** has done an excellent job in developing a large number of plain English lawsuit forms -- all on 8½ by 11-inch paper. A typical example is the Proof of Mailing. But some lawyers are not aware of this form, or stubbornly refuse to use it. Instead they still use their 8½ by 14-inch Proof of Service form, filled with legal gobbledygook such as, "placed in a U.S. mail receptacle with postage prepaid," etc. Furthermore, they end the Proof with the Notary jurat which is now unnecessary on a proof of mailing.

D. The **Family Law Committee** has developed a complete set of divorce lawsuit forms, all on 8½ by 11 paper and approved by the State Court Administrative Office for use in Michigan courts. These forms include complaint, motions, orders and judgment. The forms are optional, not mandatory. Since a third of all lawsuits filed in Michigan circuit courts are divorce actions, lawyers are urged to use these forms, to increase the document handling efficiency of the courts. But their use is optimal. Will lawyers do it? Who knows? We'll just have to wait and see

Conclusion

Well, as you can see, Mr. Righter we are about as far apart on the subject as two lawyers can be. However, if we keep writing to each other long enough, we may be able to reach some common understanding about legal writing. It's almost as if I invented you to argue with. (Which I did.)

I realize that you simply love legalese. I hate it. It disgusts me. It gives me the same feeling that I get from Jane Fonda's aerobic exercise known as Rover's Revenge. But at least Rover's Revenge is good for me.

FROM THE EDITOR

The Scriviner is the official publication of SCRIBES and is designed as a periodic newsletter for the membership.

We are completely dependent upon you, the SCRIBES' members for news items, ideas, perspectives, etc. Please inform us of your recent accomplishments, publications, and/or activities so that we may share such news with your fellow SCRIBES' members.

Please send all submissions for future issues of *The Scrivener* to:

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The American Society of Writers On Legal Subjects

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CALENDAR

July 16 - 17, 1987	Workshop on Legal Writing, New York (Practising Law Institute)
July 25 - 26, 1987	Teaching Legal Drafting Without Tears, Embarrassment or Burnout (Indiana University, Bloomington, Indiana)
August 9, 1987	SCRIBES Breakfast Meeting, San Francisco, 7:30 a.m., Mark Hopkins Hotel
August 13 - 14, 1987	Workshop on Legal Writing Los Angeles (Practising Law Institute)
March 10 - 13, 1988	SCRIBES Business Drafting Seminar, Graylyn Mansion. Wake Forest University, Winston-Salem, NC