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Remarks, Golden Pen Award

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Presentation of the Legal Writing Institute's First Golden Pen Award January 8, 2000, at the National Press Club, Washington, D.C.

Text of the Award:

The Legal Writing Institute Presents
Its first Golden Pen Award to
Arthur Levitt, Chairman
United States Securities and Exchange Commission

For his leadership in requiring plain language in financial disclosure documents.

Chairman Levitt and the Commission have proved that good legal writing can make even the most complex legal documents easier to understand.

The Commission's successful initiative has significantly advanced the cause of better legal writing.

**Remarks of Professor Joseph Kimble
Thomas Cooley Law School
Chair, Outreach Committee, Legal Writing Institute**

Welcome. We are here to present the first Golden Pen Award from the Legal Writing Institute.

I want to thank Steve Johansen of Lewis and Clark Law School and Mark Wojcik of John Marshall Law School for their help in putting together this event.

I also want to recognize some special guests here today. We welcome three Commissioners from the Securities and Exchange Commission: Commissioner Isaac Hunt, who's been a great, great supporter of this initiative throughout the country and around the world. Commissioner Norman Johnson is also here, as is Commissioner Laura Unger.

And I also want to welcome Morley Winograd, who is Senior Policy Advisor to the Vice-President. He is director of the Vice-President's National Partnership for Reinventing Government, which we know has been very involved with plain language initiatives. We are also pleased to thank Annetta Cheek for being here. She directs the plain language activities to comply with the presidential memorandum on plain language. Thank you

very much for attending. We're very honored to have you all here today.

Now to the business at hand.

We are here to recognize a big step forward in the good fight for better legal writing. Sometimes we take smaller steps. All the writing teachers in this room take smaller steps every day when they meet individually, one-on-one with students to work on their writing.

But the Securities and Exchange Commission, under the leadership of Chairman Levitt, has given our cause a huge boost by requiring that investment prospectuses be written in plain language — or at least in much plainer language than they have traditionally been written. Several years ago the Securities and Exchange Commission studied the problem, issued proposed rules, and took on the formidable, not to say monumental, task of trying to persuade the investment and legal communities to use plain language. And they had to train their own staff at the same time. They worked with a number of companies on pilot projects to show that investment documents could indeed be made more understandable for readers. The Commission even produced its own *Plain English Handbook*, an excellent resource. I have two — one for the home and one for the office.

Then just about two years ago, the Securities and Exchange Commission produced the final version of the plain English rules, which you see on the posters in this room. And they have enforced those rules, by sending back prospectuses that don't make the grade.

So it's just possible to imagine the day when to be a truly good lawyer, it won't be enough just to know the law. Good lawyers will need to be able to express it well, and to write it clearly, plainly, and succinctly for their readers. And if that glorious day ever comes, we may trace its beginnings to the work of the Securities and Exchange Commission in the final years of this last century.

And now I'd like to introduce Peggy Foran, of Pfizer, Inc., who was involved in the pilot project.

**Remarks of Peggy Foran
Vice President for Corporate Governance
Pfizer, Inc.**

Joe invited me because he said he wanted a reformed securities lawyer, and I guess that's what I am. I want to congratulate Chairman Levitt and the Securities and Exchange Commission for all their efforts in Plain English and congratulate you on the Golden Pen Award.

I think that the rules have had a tremendous effect, and my company, Pfizer, thinks the rules have had a tremendous effect. (Pfizer was one of the first companies in the pilot project.) I think that investors believe that the rules have had a tremendous effect. But most importantly, my mother is happy. I get fewer phone calls when the brokers send her these prospectuses. She no longer asks me, "Is this the garbage that you write?"

Joe asked me to share for just a minute or two some of the experiences that we had in the pilot program, including why we decided to be in the pilot program and why we think Plain English makes sense.

Right now Pfizer and a lot of other companies are writing all their documents in Plain English. A lot of companies are getting a lot of positive feedback, and we've even documented that we are saving a lot of money and that it makes good business sense.

But I can boil it all down to three reasons why the switch to Plain English has been beneficial.

First, your clients want it. When I presented the idea of giving my clients documents that they could read and understand and that would be inviting, they looked at me and said they wanted to do that ten years ago, but it was lawyers who told them that they couldn't do it.

And we showed the lawyers that it could be done.

Not only did our clients want it, our investors loved it. When we sent the first document out in Plain English, we got tremendously positive feedback.

In my job as a securities lawyer, I not only write SEC documents, but I deal with senior executives, and I deal with our board of directors. Not in my wildest dreams would I dream of sending these people a memo that they couldn't understand or that wasn't inviting, that wasn't concise and in Plain English.

Investors also love plain language. We found that out when we sent Plain English documents; they love Plain English. We

got fewer phone calls; there were fewer questions. Even at our annual meeting, there were actually fewer questions on procedure as a result of Plain English.

The second thing most companies have found out is that switching to Plain English has been a really good intellectual experience for both the lawyers and the business people. We've always believed that the best lawyers are those that can take very complex thoughts or transactions and put them in a way that everyone can understand.

So there's a group of lawyers now who realize that it's not just about writing Plain English SEC documents. This switch has really helped them because they're writing everything else in a more clear and concise way.

And the third reason that the switch to Plain English is great is that using Plain English creates a better perception of lawyers and of your company. There's now a whole group of lawyers out there who realize that other people were telling jokes about us. We've been in boardrooms and we heard what they say about lawyers and their writing. Writing in a way that people can understand is something that will improve the perception of lawyers.

Using Plain English makes good business sense as well. We have fewer phone calls, we have more positive responses from our customers because of Plain English. Pfizer recently did a stock split, and we did a book entry, which is a very complicated process. We had an outside vendor tell us that over 50% of our shareholders — and we have 1.6 million shareholders — were going to request stock certificates because that was the average. We looked at that as a challenge. When you're doing stock splits, you generally have a lot of very legalese-y documents. But we wrote our documents in Plain English, in question-and-answer format. And we've calculated that we saved hundreds of thousands of dollars. First, from people not calling and asking questions, and second, from people deciding to do a book entry system because our Plain English documents helped them understand how to do it.

So we've shared our experience with other companies. And there are groups of lawyers that swear by Plain English.

At Pfizer, we have our own little internal competition now on how many documents you can do in Plain English. And that's where you come in. This enthusiasm and excitement is in your hands because you have the students. I did an informal poll of the lawyers that were involved in the pilot program. And

the majority of them said that they really were influenced by legal writing faculty or by a law professor who emphasized that it's not only knowing the law. You have to write well. You have to communicate well.

So I congratulate you, I congratulate the SEC, but I also say that it's in your hands. So good luck to the next generation.

**Remarks of Mary Beth Beazley
The Ohio State University College of Law
President, Legal Writing Institute**

Welcome to all of you here. Especially welcome to SEC Commissioners Johnson, Hunt, and Unger. And welcome also to Mr. Winograd and Ms. Cheek.

I'm very excited to be here today to present the Legal Writing Institute's first Golden Pen Award. I can't think of a better recipient than Chairman Levitt. The writing regulations that the Securities and Exchange Commission have promulgated are so important because writing rules do more than just fix sentence structure. When you improve your writing, you improve your thinking. When you improve your thinking, you improve your writing. And when you work on both, you're going to improve communication to your audience. These rules have done so much to help that communication.

Legal writing, like any kind of writing, is not an uncontrollable event. I've heard people talk about writing as an art, but it's not a watercolor. Nor should it be a paint by the numbers set. I'd like to think of Legal Writing more as an architect's rendering. First, because it's meant to communicate specific information to a specific audience; and second, because if you don't get it right the first time, you can erase it and do it over.

When you write, you are making a series of decisions. Unfortunately, those decisions have often been unconscious decisions. What we as legal writing teachers have been trying to do is to make our students aware of the decisions that they make when they write, so that they can make them consciously and do a better job. What we have lacked, alas, is congressionally granted rule-making authority. This is why we're so pleased with what the SEC has done and with the way that they have done it.

When Congress approved President Clinton's appointment of Chairman Levitt in 1993, the Chairman made investor protection one of his top priorities. As part of that priority he created the Office of Investor Education, and he held town meetings at which investors were allowed to express their concerns. The Chairman listened to those concerns, and that is where these regulations came from.

I'm so impressed, both with what the SEC did and with how they did it. The SEC didn't just tell lawyers who write prospectuses to do a better job. The SEC taught them how. They

did the pilot project, they did studies, and they figured out what worked and what didn't work.

And they wrote the *Plain English Handbook*, which you can download from the SEC website [<http://www.sec.gov/pdf/handbook.pdf>]. I recommend it to you, and you should recommend it to your students. It's a wonderful, wonderful document. The Handbook explains how to write an effective prospectus document. It identifies the decisions that you make when you create a prospectus document and explains how to do a better job making those decisions so that the audience will understand the document better.

In creating this handbook, the Chairman and the SEC thought not just of the audience of investors, but also of the audience of the people who write these prospectuses. The handbook is a wonderful recognition of the needs of these two audiences.

As Joe noted earlier, just as important as the initiative has been the enforcement. As the writing teachers in this room know, when writing isn't done right, you have to send it back and make the writers do it again. That's what the SEC has been doing. And without that enforcement, all the regulations would be for naught.

In looking at the Chairman's background, in some ways he's a real Wall Street insider. He's a Phi Beta Kappa graduate of Williams College, and he worked on Wall Street for 16 years. As most of you here know, from 1978 to 1989, he was chairman of the American Stock Exchange. From 1989-93, he was chairman of the New York Economic Development Corporation.

But in reading about the Chairman, I read that he has often noted that his pro-investor stance was shaped by his parents. His father, Arthur Levitt Sr., was New York State Comptroller for 24 years, and Chairman Levitt has often noted that his father was "obsessive" about safely managing retirement savings.

I'd like to think, though, that the regulations and the handbook were also shaped by the influence of his mother, who was a career schoolteacher. Because the SEC's *Plain English Handbook* is in essence a teaching document.

**Remarks of Arthur Levitt, Jr.,
Chairman of the Securities and Exchange Commission
Accepting the Golden Pen Award**

Thank you very, very much. I am deeply honored by the warm welcome and by this singular award. I am especially grateful for the praise from Peggy Foran on behalf of Pfizer, Inc., a company whose every action symbolizes excellence, quality, professionalism, and willingness to take individual and sometimes controversial stands.

I wish that Nancy Smith, the *real* recipient of this award, were at least standing by my side. Without Nancy Smith, we could not have built the unique Office of Investor Education. Her determination and insight made possible what was the beginning of a vast corporate cultural change. Somebody once noted that "to hold a pen is to be at war." If you had read most of the disclosure documents that confronted our investors before the movement to Plain English, you'd have thought that the prospectus was a weapon in the war *against* clarity and understanding.

The battle for Plain English is not a one-time event. What we're talking about has been tried many times before. It has been tried, but it hasn't succeeded, because it is essential to recognize that this is part of a continuing effort. That effort starts at the Securities and Exchange Commission, and I must add that I'm not at all persuaded that what we have done with our own documents at the Commission has gone far enough. I face some of the same problems that people in corporate America face. Individual division directors say to me, "This is so complex we *can't* say it in any other way." Of course they can.

The effort to promote Plain English is a matter of balance. We cannot become grammatical despots. We cannot permanently hold up the process of capital formation because somebody's view of the way something is stated is different from an examiner's view. We must exercise balance and restraint and wisdom and understanding while constantly pushing forward to promote the use of Plain English.

This is something that is the responsibility not just of the Chairman but of every SEC Commissioner. And I'm really proud that my fellow Commissioners have taken the time to join with us today. I'm particularly pleased that Dean Hunt, who is passionate about this issue, is here. And I know that if I slip, he'll be on my back to have us do a better job.

In talking about my background and the influence on my writing and my concern for Plain English, you were right to focus on my mother, but there were other parts of my background that are also relevant. If I asked most of you what my major in college was, you'd undoubtedly say economics, possibly mathematics or philosophy. Well, I did honors work with the great American playwright Lillian Hellman. And the first job that I had out of college was as a drama critic for the Berkshire Eagle in Pittsfield, Massachusetts. And then I went to work for *Life* magazine in New York and in Cincinnati, and I came back to New York to work for Time magazine. After I finished my stint in the securities industry, what I went back to was publishing magazines and newspapers. So I obviously have some concerns about the use of language.

You noted that when I came to the Commission, one of my principal concerns was the investor. I share that concern with every one of my fellow Commissioners. We have an absolute obsession for the primacy of the individual investor above all other considerations. Full disclosure has been the mantra of the Commission ever since its formation. Full disclosure is really the foundation of everything we do and everything that we say. The Commission holds the conviction that it must be part of the public perception that our markets are fair and that what is read by the typical investor is reliable and accurate. This conviction motivates us in the first place to say it right and in the second place to have it right, which is why we are so concerned with accounting standards and the kind of disclosure documents that must be part of our process.

So I challenge our law schools and also legal writing faculty not only to strive for Plain English in the classroom, but also to emphasize its importance in the profession for the public good. Our success in this project depends to a large extent on your cooperation and vigilance in ensuring that the next generation of lawyers is trained to prepare legal documents using Plain English prose.

I expected the opposition of many of those in the legal profession to this initiative, and I certainly wasn't disappointed in that regard. Many of those people regard themselves as the unique guardians of a system that they believe only they can understand and interpret. And I can understand that feeling.

But if the succeeding generations of lawyers don't give up that kind of blind adherence to what they regard to be their own, that will be your fault in part. It will be my fault in part

for not emphasizing sufficiently that what we do begins right in our own headquarters. We've got to be even more vigilant in terms of how we deal with the public, with the media, with our every constituent, and I pledge to you to do that.

The investing public is greeting our combined efforts, I believe, with open arms. I can't tell you how many times in recent weeks and months I've heard from investors and companies that we're on the right track and that they welcome this initiative.

I want to commend you for your ongoing work in this endeavor. A corporate cultural shift of this magnitude simply would not be possible without commitment of organizations such as the Legal Writing Institute. I am honored to accept this award, I encourage you in your efforts in the future, and I pledge to work with you, with Pfizer, and with other great companies that have embraced this cause to continue these efforts in the future. I pledge to do everything I can to see to it that America's investors get a clearer picture of what their alternatives are and what their basic protections are. Thank you very much.

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