

¶Law students should use better English.

## ENGLISH AS SHE IS WROTE

I HAVE just finished grading a set of 225 law school examination papers. The writers are all graduates of accredited high schools. All have attended some presentable college for at least two years and about half of them are Bachelors of Arts. They are all educated young men, and since the law school's standards are high and the work is notoriously difficult—it may reasonably be supposed that they are a selected group.

The examinations I have inflicted on them are very old fashioned and not at all in accordance with the dictates of modern pedagogy. In the first place, they are of the "essay" type. In the second, they are four hours long—a fact which occasionally leads to something approaching nervous prostration from the sheer strain of thinking for that length of time. Worst of all, they do not even inform the victim what the problem is but leave him to discover it for himself. The questions consist of a set of facts of the sort which may wander into any lawyer's office, and to these facts he is expected, in his own words, to apply the law.

Here, verbatim, is one young man's answer to one question

involving an apartment house elevator, some children who set it in motion, and their mother, who suffered a miscarriage from fright:

"Defendent should be libel for the freight. Children are all ways foreseible by a reasonable man the fear of children and their consequences freight is all ways to be antissipated from a woman. Wimmen are afraid of children and she could foresee when he left the elevator open that there might be children and she might be frightened and have a miscarriage. The owner of a bilding is required to keep the premaces safe for people who come to visit the tennents and when he causes fear of children and a miscarriage he should pay for the freight."

The author of this scandalous paragraph is a graduate of a high school of excellent reputation in a city of 300,000 people, and has been exposed to a course in English composition at a rather eminent university. He is seeking to enter what is, after all, one of the principal literary professions. The average lawyer in the course of a lifetime probably does more writing than the average novel-

ist. He must set thousands of words on paper where the most meticulous accuracy is of supreme importance, and the use of "effect" for "affect," of "except" for "accept," of "heirs" for "legatees," or of "may" for "shall," may conceivably bankrupt a client. He must use the English language with all the precision of a surgeon wielding a scalpel. When I look upon this candidate for such a life of literary composition I am reminded of the cry of Henry Van Dyke to the boy who did not like to read: "Poor child! Who crippled thee?"

The above example is of course extreme. Not many of my embryo counselors at law involuntarily introduce the doctrines of Mrs. Sanger into questions dealing with legal liability for emotional disturbance. Not many of them are really good for a laugh. But very, very many of them are hopelessly, deplorably inept in the use of words to say what they mean, or, indeed, to say anything.

One might, perhaps, pass over all the bad spelling, although it goes against the grain to graduate from any major law school men who, after three or four years, still write "negleganse," "arest," "sueing," "assaut and batery." Surely there is something wrong when 20 papers, selected entirely at random,

yield "speshal," "titel," "vishious," "ofer," "beleaf," "gilty," "rong," "insolt," "attact," and more than a score of other similar spellings of common, nontechnical words. But after all, I suppose this may not be very important. Perhaps it is too much to ask that an attorney, an officer of the court and a gentleman, shall not be illiterate, so long as he can find a stenographer who can spell.

One might also overlook all the bad grammar, although it is difficult not to wince at "could of been," "not done nothing," "hadn't ought to of," "had went," "when he done same," and "these cases is," and the like, from college men seeking to enter a learned profession. But it is not so easy to dismiss the appalling lack of ability to organize a paragraph or even a sentence, to say simply and clearly what is meant. For weary hours I have struggled profanely through dismal swamps of incoherence, of which the following is a fair, by no means exaggerated example:

"The buyer has an action for breech of warenty if he has gave notice to the seller in reasonable time Uniform Sales Act sec. 48 after he knows of the defect there is a trade name here but here he does not give such he has an action no action for breech of warenty also after he

reasonably ought to of known the warenty would be implied warenty of merchantable quality there thirty days is too long . . . .”

In 16 years of education, through grade school, high school, and college, the author of this passage has not acquired the ability to think through what he has to say, organize it coherently, and write it down. It is not his memory of the law which is at fault; the answer is there, if one excavates deeply enough. He simply never learned to think in terms of his own written language—certainly a very elementary skill. He has traveled a long educational road to plague my evenings with compositional *sukiyaki* like that. To the end of his days he will remain convinced that he was not treated fairly on the law examinations, because he knew all the answers but “didn’t know how the faculty wanted them written.” In greater or less degree, he is typical of hundreds. Poor child, who crippled him?

It is not for me to stay where the responsibility for all this may lie. It is easy to leap to the conclusion that there must be astonishingly low standards in any English department which has passed these students on. But I do not believe that the fault lies primarily with the colleges. Confronted

with an entering class of a thousand in all stages of literary deficiency, the teacher of composition can do little more than require a daily theme and deal savagely with the blunders. It is a rare student who, given 24 hours and a fraternity brother to help, cannot produce something which will pass muster. Once the unpleasant chore is out of the way, he relapses into his own written language, which resembles nothing unless it be Mark Twain’s German. Teachers of college English must be reminded constantly of that phrase of Bolivar’s that he who fights for liberty in Spanish America plows the sea.

One learns to write, I think, for better or worse, in high school or even before that. The last real opportunity for drill in the fundamentals is in the secondary school. For whatever reason, and however the job is being done, it is apparent that their current product is not one of which anyone can be proud.

What is to be done about all this? I wish that I knew. We can do little in the law school except guard the professional gates pretty brutally. The damage has been done long ago. I wish these people could be taught to write English. Or, failing that, I wish they would not come to study law.—*William L. Prosser, Professor of Law, in the English Journal.*