

The Scrivener

Scribes — The American Society of Legal Writers

Featured Articles

*Institutional Member Profile:
Southwestern Law School
The Rose of Aberlone Story*

Profiles of Our Institutional Members: Southwestern Law School

A Scribes institutional member since 1990, Southwestern Law School is known for its diversity, its location, and its landmark Art Deco building. Located in the Wilshire Center of Los Angeles, Southwestern is private and independent.

Southwestern Law School was founded in 1911 as the Southwestern College of Law by John J. Schumacher. The school is one of the oldest law schools in California and the second oldest in Los Angeles.

Schumacher founded the nonprofit law school to invite women and minorities to enter the legal profession, a tradition of diversity that continues today. About 35% of the school's 1,000 students represent racial and ethnic minorities; Southwestern's students are fluent in 30 different languages.



Photo courtesy of Southwestern Law School

The historic Bullocks Wilshire Building, part of Southwestern Law School's campus in Los Angeles.

(continued on page 9)

The President's Column

by Stuart Shiffman

The Scribes Annual Board Meeting

The weekend of March 27 was cool, breezy, and wet in St. Louis, Missouri. But as Scribes board members met for our annual board meeting in the Gateway City, the chilly weather was easily overcome by the warm reception from our hosts at Saint Louis University Law School.

On Friday afternoon, board members Bryan Garner and Dean Darby Dickerson presented a writing program to alumni and students at the law school. The program focused on writing fundamentals, and it was greatly enhanced by Bryan's recorded interviews with state and federal judges who are outstanding legal writers, including eight current Justices of the U.S. Supreme Court. Dean Darby Dickerson spoke about an important but often overlooked subject, the ethics of good writing. Over the years, I have attended many Scribes programs, and I always come away from them with fresh insights to improve my writing; this program was no exception.

After the program, Dean Jeff Lewis hosted a reception for the board at his home. We met with members of the law-school faculty, including writing instructors. After the reception, we enjoyed a wonderful dinner in St. Louis; all in all, we shared an enjoyable evening. Scribes is grateful to Dean Lewis and Saint Louis University for their hospitality. Our special thanks also to Director of Writing Support Services Kim Novak Morse, who coordinated the presentation of the program, the board meeting on Saturday, and all

(continued on page 2)

(The President's Column *continued from page 1*)
the travel logistics for our weekend in St. Louis.

On Saturday morning, the board got down to business with a full agenda. Each year, our organization identifies outstanding writing at several levels. Our awards committees review student law-review articles and moot-court briefs. Last month, our law-review awards committee, under the leadership of Prof. Richard Wydick, selected the winning student article and presented the award at the National Conference of Law Reviews meeting held in New Orleans. The winning author was Michelle Shamblin, a third-year student at Louisiana State University School of Law. Her article, *Silencing Chicken Little: Options for School Districts After Parents Involved*, 69 La. L. Rev. 219 (2008), discussed a controversial 2007 U.S. Supreme Court ruling. By a 5-4 vote, the Court's decision in *Parents Involved* struck down the use of race as a classifier in school-integration efforts. Liberal commentators have asserted that *Brown v. Board of Education* is dead after *Parents Involved*. But Ms. Shamblin argues that racial integration of public schools is still possible if school districts use family income and similar factors, instead of race, as classifiers.

Thanks to Prof. Wydick and his committee for their work in screening and evaluating the numerous articles submitted for consideration. Our other award committees, for the Scribes brief-writing and book awards, are now considering entries; the committees will announce the winners at the Scribes annual meeting. The meeting will be held on Saturday, August 1, 2009, in conjunction with the American Bar Association's meeting in Chicago; watch for details to follow.



Bryan Garner makes a point about good writing to Saint Louis University law students and alumni.

Our special thanks go to Christy Nisbett, who coordinates the screening process for the brief-writing award. Christy's full-time job now requires her to reduce her participation on the committee, work that she has enthusiastically performed for several years. We will miss her.



Scribes board members discussed programs and agenda for the upcoming year.

The Scribes board also voted to award Justice Ruth Bader Ginsburg a Lifetime-Achievement Award. Justice Antonin Scalia won this award last year. While Justice Ginsburg has advised us that her health prevents her from receiving the award in person, she will prepare written remarks to be read at the luncheon in Chicago. We're planning to have another speaker for the luncheon, one who exemplifies the Scribes commitment to superior legal writing. Watch for that announcement, coming soon.

The board considered other business, too, in St. Louis. While it may seem ironic for an organization devoted to the written word, we've decided to update our visual presentation: the Scribes webpage. We're going to bring the webpage into the 21st century by allowing members to get copies of our publications online, make online purchases, and pay dues online.

And I am excited to announce that Scribes will re-issue *Advocacy and The King's English*, a book originally published by Scribes in 1960. Justice George Rossman of the Oregon Supreme Court edited the 1960 edition. The book will be reprinted, with a new introduction by Bryan Garner.

The American Bar Association has published a collection of many of Bryan's articles on legal writing, *Garner on Language and Writing*. Bryan graciously gave each board member a copy, and I highly recommend it as an important addition to your library.

Scribes is a busy and thriving organization. We are proud of the accomplishments of our membership and appreciate the hard work of those who support the organization. Of course, we always need volunteers; if you'd like to serve on a committee, please contact me at msshiffman74@sbcglobal.net.

Scenes from the Scribes

Annual Board Meeting



Saint Louis
University Law School

Board members attended the writing program. Seated: Prof. Richard Wydick and Stuart Shiffman. Standing: Prof. Otto Stockmeyer, Chris Wren, Prof. Norm Plate, Dean Darby Dickerson, Bryan Garner, and Christy Nisbett. (Dean Steven Smith and Dewey Cole were en route from the airport.)

In This Issue

Southwestern Law School	1
President's Column	1
To Err Is Human, to Moo, Bovine: The Rose of Aberlone Story	4
A Belated Thank-You to Our Overlooked Screeners	8
Why Didn't You Haiku?	8
2009 Scribes Law-Review Award Winner	8
News from Members	9
Legalese Lives—Still	10
New Members	10
Life Members	11
Institutional Members	12
Scribes Committees	13
Scribes Board Members	14
Membership Application	15

Submit Your Articles

Please send items for upcoming issues of *The Scrivener* (electronically) to the e-mail address shown below.

Deadlines

Summer	July 15
Fall	October 15
Winter	January 15

Jane Siegel
Thomas M. Cooley Law School
111 Commerce Avenue SW
Grand Rapids, Michigan 49503
siegelj@cooley.edu

Generous Support for *The Scrivener*

This issue of *The Scrivener* is generously sponsored by Stetson University College of Law and California Western School of Law.

To Err Is Human, to Moo, Bovine: The Rose of Aberlone Story

by Norman Otto Stockmeyer*

[The following is an abridgment of an article that first appeared at 24 Thomas M. Cooley Law Review 491 (2007) and was republished in the 2009 *Green Bag Almanac and Reader of Exemplary Legal Writing*. It is reprinted by permission of the author and the publishers.]

Introduction

More than a century ago, T.C. Sherwood of Plymouth contracted to purchase a cow from Hiram Walker of Detroit. Because it was thought that the cow was barren, it was sold for beef. The price was based on the cow's weight and amounted to eighty dollars. Later, when Walker tried to back out of the deal, Sherwood sued him.

The resulting opinion, *Sherwood v. Walker*, 66 Mich. 568, 33 N.W. 919 (1887), became a legal classic and is still studied by law students across the country. Indeed, in 1985 *American Heritage* magazine picked *Sherwood v. Walker* as one of its "Five Classic Cases" that every law student must know. Additionally, in Sherwood's hometown, the State Bar of Michigan dedicated a Legal Milestone historical marker that, according to the *Michigan Bar Journal* for August 1993, recognizes the case as "one of the most celebrated contracts cases in American history."

What could possibly be of such lasting importance about a dispute between two nineteenth-century farmers over a barren cow?

For one thing, nothing about the case is quite as it appears. Neither the buyer nor the seller was a farmer; rather, they were prosperous businessmen who could afford to pursue their dispute throughout Michigan's court system. More importantly, the cow turned out not to be barren after all, a mistake that formed the basis of the court's decision. And although Walker won the appeal, Sherwood ended up with the cow.

Here is the curious story behind the "Case of the Barren Cow," the parties to the lawsuit, and its surprising aftermath.

The Lawsuit

The story begins in May of 1886 when Sherwood approached Walker about buying some of his stock of

purebred Angus cattle. Sherwood did not find any to his liking on one farm, so Walker suggested that Sherwood look at a few head of cattle on another farm, Walker's Greenfield farm, which was located some eight miles northwest of downtown Detroit in what was then Greenfield Township and now part of Detroit.

Walker told Sherwood that the cows on that farm were probably barren and therefore could not breed. Sherwood picked out a cow with the fancy name of "Rose 2d of Aberlone." The parties agreed on a price of 5½ cents a pound, and Walker confirmed the sale in writing.

When Sherwood later returned to the Greenfield farm to take delivery of the cow, Walker refused to take Sherwood's money or to deliver the cow. By then, Walker suspected that Rose was expecting a calf, and if so, she was worth as much as \$1,000.

Walker offered Sherwood a different cow instead, "Lucy 8th." Sherwood refused. Instead, in July, Sherwood sued Walker, in Justice of the Peace court, to obtain possession of Rose under a writ of replevin, and he won.

Walker appealed to Wayne County Circuit Court. Following a full-jury trial that December, however, Sherwood won the case again. Meanwhile, Rose delivered a calf in October, thereby proving that she had been on the way to motherhood when the contract was made. (The gestation period for a cow is nine months.)

Determined not to lose his cow, Walker appealed again, this time to the Michigan Supreme Court. His lawyers raised 25 assignments of error. Sherwood's lawyer responded that because of the contract, title to the cow had passed to Sherwood, and it was Walker's turn to deliver.

The Michigan Supreme Court reversed the lower courts. It held that if both parties believed that the cow was barren and useless for breeding purposes—when, in fact, she was capable of breeding—then the seller could avoid the contract. Why? Because the contract would have then been based on a mutual mistake.

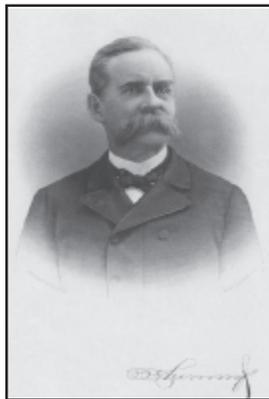
The bronze letters on the Legal Milestone plaque summarize the decision this way: “Because a mutual mistake affecting the substance of the transaction had been made, Hiram Walker had a right to rescind the contract, and keep the cow.”

(One may assume that the litigation delighted the lawyers. The case could well have served as the inspiration for “The Lawsuit,” a lithograph from the 1800s that depicts a plaintiff and a defendant tugging at opposite ends of a cow while a lawyer milks it.)

The Parties

Theodore Clark Sherwood

Theodore Clark Sherwood (1839–1910) was age 47 at the time of the controversy. He owned an 80-acre farm on Ann Arbor Road at Sheldon Road, just south of the village of Plymouth. There he raised the best breeds of livestock; his farm was one of the finest in the county. But Sherwood made his living as a banker. It has been said that, as a refined individual and prominent member of the Plymouth community, he always appeared in public wearing a tall silk hat.



Theodore C. Sherwood
(1839–1910)

Sherwood was born in Geneva, New York, in 1839, and he moved with his parents to the Detroit area in 1854. He began his banking career working for the First National Bank of Battle Creek, thereafter the First National Bank of Plymouth, and the Grand Rapids National Bank. He returned to Plymouth in 1884 to become president of the newly organized Plymouth National Bank.

Two years after the Supreme Court’s *Sherwood* decision, Governor Cyrus Luce appointed Sherwood to be Michigan’s first State Commissioner of Banking, a position he held from 1889 to 1896. He had the task of organizing the new state banking department and drawing up rules and regulations for banking institutions. According to his first annual report, published in the *New York Times* for January 29, 1890, Commissioner Sherwood had oversight responsibility for 90 state-chartered banks with assets of \$47 million.

As banking commissioner, Sherwood was credited with helping Michigan’s banks through the financial panic of 1893 and the business depression that followed.

A contemporary account said, “He is considered by business men of Michigan as one of the ablest financiers and one of the best informed men on financial questions in the state.”

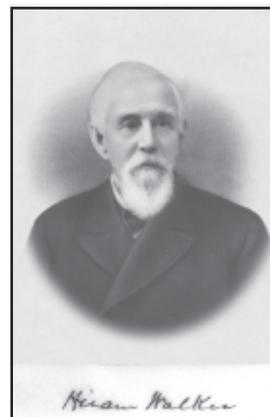
After his service as banking commissioner, Sherwood was president of Peninsular Savings Bank of Detroit for two years before retiring in 1898. He died October 1, 1910, at the age of 71. He is buried in Plymouth’s Riverside Cemetery, located on Plymouth Road west of Haggerty Road. An obituary referred to him as “a man of fine culture and pleasant address” and “the father of the state banking laws.”

A toy store is now located on the site that Sherwood’s bank once occupied, at the corner of Main Street and Penniman Street in downtown Plymouth. The State Bar of Michigan’s Legal Milestone marker stands across the street in Kellogg Park.

An indication of his banker’s frugality may be gleaned from Sherwood’s instruction not to water Rose on the morning she originally was to be weighed and handed over. Why pay 5½ cents a pound for water?

Hiram Walker

Hiram Walker (1816–1899), then age 70, seemingly was of a more generous nature. Even though Rose was being sold for a small fraction of what he had paid for her, Walker instructed his farm manager to throw in a free halter. (Of course, that was before he discovered that Rose might be worth ten times the sale price.) Walker could well afford to be generous because he was at the time one of Detroit’s most successful industrialists.



Hiram Walker
(1816–1899)

(Much of the information that follows comes from a collection of columns from the *Walkerville Times*, republished in 2006 in the second edition of *Best of the Times*.)

Walker was born on the July 4, 1816, in East Douglas, Massachusetts, near Boston. At age 22, he headed west to Detroit to seek his fortune. His first ventures were not successful. His Detroit grocery store failed, and a tannery he was a partner in burned down. But he had more luck as a grain merchant, buying and selling grain, and distilling some of it into whiskey.

(continued on page 6)

(The Rose of Aberlone Story *continued from page 5*)

Attracted by lax liquor laws and cheap land across the Detroit River in Ontario, Canada, in 1856 Walker purchased 468 acres of land 1½ miles upstream from Windsor for \$40,000, and he went into the liquor business in a big way. An innovative merchandiser, he was among the first distillers to brand his barrels, the first to sell whiskey in individual glass bottles, the first to employ whiskey “runners” to promote his product, and the first to advertise with billboards and electric signs.

Hiram Walker’s Canadian Club whiskey—“lighter than Scotch and smoother than bourbon”—achieved great success. By the time of his dispute with Sherwood, Walker’s whiskey was being marketed throughout Canada and the United States. It eventually became one of the most recognized brand names in the world.

Walker never gave up his U.S. citizenship, yet considered himself neither a Canadian nor an American, but rather (recalling his date of birth) a “Yankee.”

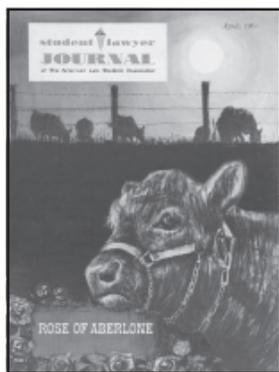
Hiram Walker died in 1899 at his home in Detroit. He was 84. He is buried in Elmwood Cemetery on Detroit’s near-east side. His three surviving sons inherited the business. Hiram Walker & Sons was sold in 1926 for \$14 million, not a bad return on Hiram’s initial \$40,000 investment.

A glimpse into why a man of such means would take a fight over a single cow all the way to Michigan’s highest court is provided by this reflection at his 74th birthday in 1890: “The young men of the present do not know the value of money. I had hardly the time, as a young man, to go fishing, for I was always working. My habit, in my younger days, of saving the pennies, has placed me where I am today.”

Walker could pinch pennies until they squealed—or in Rose’s case, moored.

Rose

Rose (1881– ?) was not what one would think from reading the opinion in *Sherwood v. Walker*. Her name was not Rose 2d of Aberlone. There was little reason to think that she was barren. And despite the ruling in favor of Walker, she ended up in Sherwood’s possession. (All of this has been



Rose of Aberlone (1881–?)

Wesleyan University law professor Franklin G. Snyder, who has pored over cattle-registry records of the period.)

She is called Rose 2d of Aberlone in the contract and in court papers, but her name was Rose 2d of *Aberlour*, not *Aberlone*. She was calved at the Mains of Aberlour, near the River Spey, in Scotland.

Rose was born on January 8, 1881, and subsequently registered with the American Angus breeders as number 2782. Records show that Walker paid \$850 for Rose, so parting with her for \$80 can be explained only by his belief that she was unable to breed.

But was that belief justified? Here is perhaps the biggest surprise: Rose had given birth to a calf in 1883, registered to Walker as the breeder. She did not calve in 1884 or 1885, but she had proved her breeding potential.

Moreover, the court record lists four other Angus cattle for sale at the Greenfield farm in the spring of 1886. One, by the name of Waterside Standard, was a bull. Clearly, Rose’s delicate condition that May was not wholly unexplainable.

The Aftermath

Professor Snyder has also discovered another surprising fact: after the case was decided, Sherwood acquired Rose from Walker. Her subsequent offspring list “T.C. Sherwood” as breeder. So, despite protracted litigation over the right to her possession, to Walker it was never about Rose, just her price.



The Legal Milestone Plaque (1993)

At the unveiling of the Legal Milestone, one speaker was quoted in the *Plymouth Observer* as saying, “Plymouth never got to be the hometown of Rose of Aberlone, but (the city) got the plaque—what a perfect way to make amends.” As is now known, however, Rose did get to graze on Sherwood’s farm after all.

Being the most sympathetic character in the case, Rose has become much celebrated in verse. The most widely published poem is that of UCLA law professor Brainerd Currie, which first appeared in the *Harvard Law School Record* in 1954 and has been reprinted several times in other legal publications. The 350-line epic concludes with a scene that generations of law students can recall—perhaps more fondly now than at the time:

'Tis the middle of the night before the exam,
And there's nothing to eat but a cold bit of ham . . .
Mark how the eager students cram.
A dismal specter haunts this wake—
The law of mutual mistake;
And even the reluctant drone
Must cope with Rose of Aberlone.
She rules the cases, she stalks the page
Even in this atomic age . . .
In many a hypothetical
With characters alphabetical,
In many a subtle and sly disguise
There lurks the ghost of her sad brown eyes.
That she will turn up in some set of facts is
Almost as certain as death and taxes:
For students of law must still atone
For the shame of Rose of Aberlone.

*(Harvard Law School Record,
Thursday, March 4, 1954)*

Sherwood v. Walker became “the single most loved law case at Harvard” because of Currie’s poem and the delight that Professor John P. Dawson, a native Detroit, took in teaching the case to generations of Harvard law students. But law students at the University of Iowa (who might know a thing or two about cows) were not impressed with Currie’s poem, according to this response:

My Wild Iowa Rose
(Anonymous)

Unlike another, my rhyme is terse:
Your name, Oh Rose, is under curse.
I can think of nothing worse
Than to suffer through the Harvard verse

(Journal of Legal Education, 1982)

My favorite tribute to the case, which summarizes it fairly well in far fewer words, was handed to me after class one day by a student:

To err is human,
To moo, bovine.

Conclusion

Several erroneous beliefs surround this historic case. Nevertheless, it remains one of the great contributions to contracts jurisprudence and law-school lore. *Sherwood v. Walker* has been cited as legal authority in more than 50 court decisions, from New York to California. Judges have called it “celebrated,” “classic,” “leading,” and “seminal,” as well as a “paradigm case” “revered by teachers of contract law.”

Michigan Governor John Engler issued a proclamation of tribute to Rose’s case in 1993. In it, the Governor rightly asserted that the case’s significance transcends the misguided individuals involved in the dispute: “The details of this case are less important than the ruling, which remains as sound today as it was over a century ago. The principals are gone but the principle will never die.”

- * Norman Otto Stockmeyer is an emeritus professor at Thomas M. Cooley Law School and a past president of Scribes.

Readers seeking more complete source citations may e-mail the author at stockmen@cooley.edu. The author thanks Texas Wesleyan University law professor Franklin G. Snyder for sharing his research into cattle-registry records relating to Rose and her offspring.

A Belated Thank-You to Our Overlooked Brief Screeners

To our chagrin, several volunteer screeners for the 2008 Scribes Brief-Writing Award were overlooked, so their names (and their schools) did not appear in the Winter issue of *The Scrivener*. We were even more embarrassed when we realized that these volunteers were from our four of our newest institutional members. We apologize for the error—and thank them, their schools, and their deans for their important contribution.

Hofstra University

Barbara S. Barron
Frank Gulino
Amy R. Stein

The University of Oklahoma Law Center

Michelle Johnson
Connie S. Smothermon
Michael G. Winchell

Texas Wesleyan University

Neil Sobol

Valparaiso University

Susan Stuart

Why Didn't You Haiku?

After we asked for legal haiku in the last issue of *The Scrivener*, we received several examples, including these, of legal haiku from our members. We're still waiting for yours.

Sent by **Robert Ellis**:

Settlement Authority

Give authority?
Yes, if this will settle.
That is, only if.

Dictation

I said 4-7-9,
But force of nine was transcribed.
So two were confused.

Sent by **Jayson Macyda**:

Legal Writing #1

Watch subject and verb.
If they're placed too far apart,
clarity is lost.

Legal Writing #2

Persuasive writing.
The brevity paradigm.
"The motion's granted!"

2009 Scribes Law-Review Award Winner

Pictured at right is the 2009 Scribes Law-Review Award winner Michelle Renee Shamblin with Jeffrey Toobin, author of *The Nine: Inside the Secret World of the Supreme Court* and keynote speaker at the awards banquet. Ms. Shamblin won the award for *Silencing Chicken Little: Options for School Districts After Parents Involved*, 69 La. L. Rev. 219 (2008). More details of the Law-Review Award presentation will appear in the Summer 2009 edition of *The Scrivener*.



News from Members

Judge Mark Painter has been elected to the United Nations Appeals Tribunal, one of two new courts created in 2007 to resolve internal grievances and disciplinary cases. Judge Painter was one of 237 people who applied for the position and one of 41 candidates invited for interviews at The Hague last September; only seven were finally selected. Judge Painter will serve a three-year term in New York City. Judge Painter has served on Ohio's 1st District Court of Appeals for 14 years. Before he was an appellate judge, he served as a trial-court judge for 13 years. He has authored six books, and he has been an adjunct professor at the University of Cincinnati College of Law.

The Scribes board of directors is pleased to announce that **Prof. Norm Plate** is now the acting executive director of Scribes. Prof. Plate was serving as the interim executive director; he was appointed the acting director by the board at its annual meeting in March. Prof. Plate teaches research and writing at Thomas Cooley Law School. Before he joined Cooley in 2005, he taught at Capital University Law School in Ohio. And before his teaching career, Prof. Plate served in several capacities with the Ohio and the Utah Attorneys General Offices. Prof. Plate is a graduate of the University of Notre Dame and the University of Illinois College of Law.

(Southwestern Law School *continued from page 1*)

Southwestern's first home was in the Union Oil Building in downtown Los Angeles; the school later moved to a small campus on South Hill Street. In 1974, Southwestern moved to its current home in the Wilshire Center area of Los Angeles. Southwestern's campus takes up nearly two city blocks.

In 1994, Southwestern acquired the Bullocks Wilshire Building, a historic Art Deco-style landmark. Every floor of the building has been returned to its original 1929 condition, including the smallest details, and the building is now listed on the National Register of Historic Places. The building houses the school's law library, the Leigh H. Taylor Law Library; with over 83,000 square feet, it's the second largest academic law library in California. The building also includes a 10,000-square-foot spa-quality fitness center.

The dean of Southwestern is Bryant G. Garth, who was director of the American Bar Foundation and dean of Indiana University School of Law (Bloomington). Dean Garth initiated the development of Southwestern's new first-year curriculum, recently recognized by the Carnegie Foundation.

The new curriculum features an expanded version of the first-year legal research and writing program. Called "LAWS" (for legal analysis, writing, and skills), the program gives first-year students six units (formerly

three) in legal methods and legal reasoning, client and witness interviewing, and appellate advocacy.

Southwestern is the only law school that offers four JD courses of study, with different scheduling and instructional approaches. In addition to the traditional three-year day program, the school offers a part-time evening program; a part-time day program (PLEAS) designed for students with child- or elder-care needs; and the SCALE® two-year program, which provides an accelerated and interdisciplinary course of study.

The school is known for its Donald E. Biederman Entertainment and Media Law Institute and for its ties to the entertainment industry, with many prominent Hollywood alumni. Southwestern also recently added two new clinics in children's rights and immigration law, serving the Los Angeles community. And Southwestern is the current home of the *Journal of Legal Education*, the quarterly publication of the Association of American Law Schools.

Finally, even though you've probably never been to Southwestern Law School, chances are good you've seen at least part of it. The Bullocks Wilshire Building served as a set for several episodes of the television series *Murder, She Wrote*. The building entrance appeared in the 2004 film *The Aviator*. And classic-movie buffs will recognize it as the setting for the 1937 film *Topper*, starring Cary Grant.

Legalese Lives—Still

Joe Kimble, executive director of Scribes, recently received this letter from Bob Markle at the Department of Justice. It's a reminder that Scribes' members must be ever vigilant to fight legalese with clarity, brevity, and readability. When it comes to legal writing, it is a virtue to be plain.

Prof. Kimble,

Lest you ever think that your work is near done, I submit the following "sentence" I recently encountered in a brief:

The facts and circumstances which formulate the basis of the subject, antecedent appeal are, perforce, indicated by the complex, procedural history of the instant case, which may be summed up by the BIA's first affirming the decision of the IJ, which decision, essentially, ordered Mr. Sadvani removed to Togo, and, thence, rejecting successive motions to reopen filed by Mr. Sadvani, premised, in the first instance, upon the pendency of a Form I-730 petition filed by the spouse of Mr. Sadvani, who, herself, had become a bona fide asylee, and, in the latter case, by a motion to reopen premised upon the existence of demonstrably changed circumstances in Togo, which changed circumstances conflated so as to confer a new compelling case for granting Mr. Sadvani asylum.

Bear in mind a few things: (1) this is 126 words long; (2) it came from a paragraph that, as you might suspect, is even longer; (3) the brief was not done pro se—it was written by lawyers at two firms.

FYI, BIA means Board of Immigration Appeals and IJ means Immigration Judge.

Another one-sentence (128-word) gem from the same brief:

With further regard to the aforesaid latter Motion to Reopen, *id est*, that motion premised upon changed circumstances in Togo that warranted a reassessment of the merits of Mr. Sadvani's underlying application for asylum, it is noteworthy that the DHS's written Opposition to said latter motion (J.A. at 113 - 117) does not challenge at

all the premise of Mr. Sadvani's motion thus, viz., that country conditions in Togo had worsened since his original application for asylum was first adjudicated, and thereby rendered Mr. Sadvani's asylum claims worthy of fresh consideration in light of such changed circumstances; instead, the averred basis for the DHS's putative Opposition was cast in a technical, resoundingly meritless, argument relating to the time and numerical limitations set forth in 8 C.F.R., § 1003.2 (c) (2).

Bob Markle

New Members

Mitchell E. Abbott (Los Angeles, California)

Joy Anakhu (Orlando, Florida)*

Peter C. Bergan (Chicago, Illinois)*

Hal O. Carroll (Pinckney, Michigan)

Linda M. Garbarino (Detroit, Michigan)

Joshua L. Gordon (Concord, New Hampshire)

Constance Hall (Arlington, Texas)*

Stephanie Hendricks (Brooklyn, New York)

Peter J. Keane (Concord, New Hampshire)

Denay L. Knope (Ottawa Hills, Ohio)*

Madeline Elizabeth McNeeley (Atlanta, Georgia)

John P. McShea (Strafford, Pennsylvania)

Peter Smythe (Dallas, Texas)

Michael S. Truesdale (Austin, Texas)

John Paul Walters, Jr. (Edmond, Oklahoma)

Sandra L. Wright (Shelby Twp., Michigan)

* Student Membership

Life Members

Glen-Peter Ahlers (Orlando, Florida)
Frank L. Branson (Dallas, Texas)
Lee C. Buchheit (New York, New York)
Christopher Camardello (Minneapolis, Minnesota)
Michael J. Collins (Dallas, Texas)
Judge Deborah Cook (Akron, Ohio)
Willard H. DaSilva (Garden City, New York)
Jeffrey A. Dennis-Strathmeyer
(Pleasant Hill, California)
Anthony Gair (New York, New York)
Bryan A. Garner (Dallas, Texas)
Judge Lynn N. Hughes (Houston, Texas)
Judge Michael B. Hyman (Chicago, Illinois)
Emil L. Iannelli (Southampton, Pennsylvania)
Lynne P. Iannelli (Southampton, Pennsylvania)
Joseph Kimble (Lansing, Michigan)
J.D. Lee (Knoxville, Tennessee)
Mark Levine (Denver, Colorado)

Molly Lien (Traverse City, Michigan)
Philip K. Lyon (Nashville, Tennessee)
Robert N. Markle (Fairfax, Virginia)
Bernard S. Meyer (Mineola, New York) (deceased)
Steven F. Molo (New York, New York)
Richard L. Neumeier (Boston, Massachusetts)
Judge Mark P. Painter (Cincinnati, Ohio)
K. David Roberts (Oklahoma City, Oklahoma)
J.G. "Jerry" Schulze (Little Rock, Arkansas)
Keldon K. Scott (Lansing, Michigan)
Gary D. Spivey (Albany, New York)
Tina L. Stark (New York, New York)
Paul R. Steadman (Chicago, Illinois)
Thomas M. Steele
(Winston-Salem, North Carolina) (deceased)
Norman Otto Stockmeyer (Lansing, Michigan)
Anthony Turley (Toledo, Ohio)

Help Scribes Grow

Would you be willing to help promote Scribes? Do you have friends or colleagues who might like to join? Will you be speaking at or attending any program involving legal writing or legal language? We would be happy to send you some of the attractive Scribes brochures to distribute. Just send an e-mail to our acting executive director, Norm Platen: platen@cooley.edu.

Institutional Members

- University of Akron, C. Blake McDowell Law Center
Akron, Ohio (since 2004)
- Alaska Appellate Courts
Anchorage, Alaska (since 2005)
- University of Arkansas at Little Rock,
William H. Bowen School of Law
Little Rock, Arkansas (since 2007)
- Barry University
Dwayne O. Andreas School of Law
Orlando, Florida (since 2002)
- California Western School of Law
San Diego, California (since 1996)
- The Catholic University of America,
Columbus School of Law
Washington, D.C. (since 2007)
- Chapman University School of Law
Orange, California (since 2002)
- Charlotte School of Law
Charlotte, North Carolina (since 2008)
- Chicago-Kent College of Law
Illinois Institute of Technology
Chicago, Illinois (since 2006)
- Commonwealth Court of Pennsylvania
Harrisburg, Pennsylvania (since 2005)
- Duke University School of Law
Durham, North Carolina (since 2008)
- Florida Coastal School of Law
Jacksonville, Florida (since 2002)
- Golden Gate University
San Francisco, California (since 2006)
- Hofstra University School of Law
Hempstead, New York (since 2007)
- University of Houston Law Center
Houston, Texas (since 2002)
- The John Marshall Law School
Chicago, Illinois (since 2004)
- University of La Verne College of Law
Ontario, California (since 2003)
- Lewis & Clark Law School
Portland, Oregon (since 2004)
- Michigan Court of Appeals
Lansing, Michigan (since 2004)
- Michigan State University School of Law
East Lansing, Michigan (since 2002)
- University of Missouri-Columbia School of Law
Columbia, Missouri (since 2008)
- University of Nevada, Las Vegas,
William S. Boyd School of Law
Las Vegas, Nevada (since 2006)
- Northern Kentucky University College of Law,
Salmon P. Chase College of Law
Highland Heights, Kentucky (since 2002)
- Ohio Court of Appeals, First District
Cincinnati, Ohio (since 2007)
- Oklahoma City University School of Law
Oklahoma City, Oklahoma (since 2004)
- The University of Oklahoma Law Center
Norman, Oklahoma (since 2006)
- Pace University School of Law
White Plains, New York (since 2007)
- Saint Louis University School of Law
St. Louis, Missouri (since 1990)
- Seattle University School of Law
Seattle, Washington (since 2001)
- South Texas College of Law
Houston, Texas (since 2006)
- Southwestern Law School
Los Angeles, California (since 1990)
- Stetson University College of Law
St. Petersburg, Florida (since 1990)
- Supreme Court of Texas
Austin, Texas (since 2006)
- Syracuse University College of Law
Syracuse, New York (since 2004)
- The University of Texas School of Law
Austin, Texas (since 1991)
- Texas Wesleyan University School of Law
Fort Worth, Texas (since 2007)
- Thomas M. Cooley Law School
Lansing, Michigan (since 1991)
- Thomson West
Rochester, New York (since 2007)
- United States Court of Appeals for the Armed Forces
Washington, D.C. (since 2005)
- Valparaiso University School of Law
Valparaiso, Indiana (since 2008)
- Washburn University School of Law
Topeka, Kansas (since 2001)
- Western New England College School of Law
Springfield, Massachusetts (since 2000)
- William Mitchell College of Law
St. Paul, Minnesota (since 2001)

2008–2009 Committees

Annual Meeting

Charles Dewey Cole (Cochair)
dcole@nfam.com
Stuart Shiffman (Cochair)
msshiffman74@sbcglobal.net
Glen-Peter Ahlers, James C. Parker,
Hon. Lee Rosenthal, Otto Stockmeyer,
and John Wierzbicki

Book Award

Hon. Michael Hyman (Chair)
hymikeb@aol.com
Beverly Ray Burlingame, Yoshinori
H.T. Himel, Steve Sheppard, Stuart
Shiffman, and Richard Wydick

Brief-Writing Award

Hon. Kenneth Gartner (Chair)
kgartner@tourolaw.edu
Charles Dewey Cole, Stephen Fink,
Michael Fried, Christy Nisbett, Laurel
Oates, Hon. Mark Painter, Hon. Lee
Rosenthal, and Robert M.
Shaughnessy

Law-Review Award

Richard Wydick (Chair)
rcwydick@ucdavis.edu
Glen-Peter Ahlers, Mary Bowman,
Steven Feldman, Daniel R. Karon, and
Richard Leiter

Legal-Writing Programs

Hon. Michael Hyman (Chair)
hymikeb@aol.com
Beverly Ray Burlingame, Darby
Dickerson, and Joe Kimble

Lifetime-Achievement Award

Bryan Garner (Chair)
bglawprose@yahoo.com
Hon. Mark Painter, Hon. Lee Rosenthal,
Stuart Shiffman, and Richard Wydick

Membership and Outreach

Darby Dickerson (Chair)
darby@law.stetson.edu
Beverly Ray Burlingame, Bradley Clary,
Hon. Michael Hyman, Joe Kimble, Hon.
Mark Painter, Mary Massaron Ross,
Steve Smith, Gary Spivey, and John
Wierzbicki

Nominating

Otto Stockmeyer (Chair)
stockmen@cooley.edu
Beverly Ray Burlingame, Bryan
Garner, Joe Kimble, Stuart Shiffman,
and Steve Smith

Scribes Journal

Joe Kimble (Chair)
kimblej@cooley.edu
Beverly Ray Burlingame, Bryan
Garner, Wayne Schiess, and David
W. Schultz

Scrivener

Jane Siegel (Chair)
siegelj@cooley.edu
Joe Kimble

Website

Christopher Wren (Chair)
wrencg@joj.state.wi.us

Mark your calendar . . .

The Scribes Annual Meeting and Luncheon will be held in Chicago on Saturday, August 1, 2009, during the ABA Annual Meeting. Watch for more information in upcoming issues of *The Scrivener*.

Scribes Board Members 2008

President – Stuart Shiffman

45 Golf Road
Springfield, Illinois 62704
(217) 546-3710
msshiffman74@sbcglobal.net

Vice President – Steven R. Smith

California Western School of Law
225 Cedar Street
San Diego, California 92101-3090
(619) 525-1405
ssmith@cwsl.edu

Secretary – Darby Dickerson

Stetson University College of Law
1401 61st Street, South
Gulfport, Florida 33707
(727) 562-7816
darby@law.stetson.edu

Treasurer – Hon. Michael B. Hyman

265 Graemere Street
Northfield, Illinois 60092
(312) 603-7582
hymikeb@aol.com

**Acting Executive Director –
Norm Plate**

Thomas M. Cooley Law School
P.O. Box 13038
300 South Capitol Avenue
Lansing, Michigan 48901
(517) 371-5140
platen@cooley.edu

Journal Editor – Joe Kimble

Thomas M. Cooley Law School
P.O. Box 13038
300 South Capitol Avenue
Lansing, Michigan 48901
(517) 371-5140
kimblej@cooley.edu

Past President – N.O. Stockmeyer

Thomas M. Cooley Law School
P.O. Box 13038
300 South Capitol Avenue
Lansing, Michigan 48901
(517) 371-5140
stockmen@cooley.edu

2007–2010 Beverly Ray Burlingame

Thompson & Knight LLP
1700 Pacific Avenue, Suite 3300
Dallas, Texas 75201
(214) 969-1110
beverly.ray.burlingame@tklaw.com

2006–2009 Charles Dewey Cole, Jr.

Newman Fitch Altheim Myers, P.C.
14 Wall Street
New York, New York 10005-2101
(212) 619-4350
dcole@nfam.com

2007–2010 Bryan A. Garner

LawProse, Inc.
14180 Dallas Parkway, Suite 280
Dallas, Texas 75254
(214) 691-8588
bglawprose@yahoo.com

2006–2009 Christy Nisbett

Travis County Probate Court
P.O. Box 1748
Austin, Texas 78767
(512) 854-9559
christy.nisbett@co.travis.tx.us

2008–2011 Hon. Lee H. Rosenthal

United States District Court
11535 Bob Casey U.S. Courthouse
515 Rusk Avenue
Houston, Texas 77002-2600
(713) 250-5980
lee_rosenthal@txs.uscourts.gov

2008–2011 William Snipes

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
(212) 558-4000
snipesw@sullcrom.com

2008–2011 John R. Wierzbicki

Thomson West
50 Broad Street, East
Rochester, New York 14694
(585) 258-3751
john.wierzbicki@thomson.com

2006–2009 Christopher G. Wren

Wisconsin Department of Justice
P.O. Box 7857
Madison, Wisconsin 53707-7857
(608) 266-7081
wrencg@doj.state.wi.us

2008–2010 Richard Wydick

U.C. Davis School of Law
Davis, California 95616
(530) 752-2899
rcwydick@ucdavis.edu

An Invitation to Membership in

Scribes —

The American Society of Legal Writers

Any member of the legal profession is eligible to join Scribes. You may join as a regular member if you have published or if you have edited a legal journal. Otherwise, you may join as an associate member. The dues are the same, and associate members receive essentially the same benefits as regular members.

Please print or type:

Your Name

Your E-mail Address

Your Preferred Mailing Address

Your Phone Number

Your Fax Number

If you are joining as a regular member, please cite:

- (1) a book you have published on a legal subject,
- (2) two articles you have published on legal subjects,
- (3) a legal publication for which you were an editor, or
- (4) two decisions you published as a judge or administrative-hearing officer.

Please select your membership category:

Regular Member; Annual Dues = \$65

Sustaining Member; Annual Dues = \$100

Associate Member; Annual Dues = \$65

Lifetime Member; Dues = \$1,000
(a one-time payment, or four payments of \$250)

Please complete this form and send it, along with a check made payable to “Scribes,” to:

Norm Plate
Scribes Acting Executive Director
Thomas M. Cooley Law School
P.O. Box 13038
Lansing, Michigan 48901
platen@cooley.edu



Scribes Administrative Office
Thomas M. Cooley Law School
P.O. Box 13038
Lansing, Michigan 48901

www.scribes.org

Address Service Requested