The Scrivener

Scribes–The American Society of Writers on Legal Subjects

Spring 2005

President's Column

Beverly Ray Burlingame
Partner, Thompson & Knight LLP

The Scoop on Scribes

As my term as President draws to a close, I want to thank all of you who have helped advance the goals and programs of Scribes during the past two years. Through the efforts of Board members, Committee Chairs, Committee members, and Scribes members and through several generous donations, we've been able to:

- Increase membership to 1,334, including 26 institutional members.
- Add a new category of institutional membership for appellate courts—our newest member being the U.S. Court of Appeals for the Armed Forces.
- Present the second Scribes Lifetime Achievement Award, in August 2004, to Judge Richard Arnold.
- Cohost a successful writing seminar at each of the past two ABA Annual Meetings.
- Print an attractive new Scribes brochure and distribute thousands of copies to potential Scribes members.
- Boast record attendance at the 2004 Scribes Annual Luncheon Meeting.
- Completely redesign the website, scribes.org, which is now maintained by a professional webmaster, Astrid Gulley, of S&S Merchants.
- Completely redraft and update the Scribes Constitution and Bylaws.
- Distribute the last two issues of *The Scribes Journal of Legal Writing* to almost 9,000 readers—a much larger number than most other law journals can claim.

Beverly Ray Burlingame, President of Scribes.

Although my term is ending, the work of Scribes continues. We're currently planning for the 2005 Annual Luncheon Meeting, which will be held on Saturday, August 6, during the ABA Annual Meeting in Chicago. At the meeting, Norman Otto Stockmeyer, Emeritus Professor at Thomas M. Cooley Law School, will take the helm as our new President. Otto is a longtime Board member, a tireless worker on Scribes programs, an award-winning teacher, and a prolific author. Otto is a Life Fellow of the Michigan and American Bar Foundations and was named Professional of the Year by the Michigan Association of the Professions.

For the third year, Michael Hyman—one of our newest Board members—is arranging for Scribes to cohost a writing seminar at the ABA Annual Meeting. This year, along with the Business Section of the ABA, we'll be hosting a writing seminar on Friday, August 5. As in the past, we'll offer useful writing advice and many valuable door prizes, including books by two prominent Board members, Bryan Garner and Richard Wydick. Please support the work of Scribes by attending this seminar.

Scribes' three award committees have started—and in one case finished—their annual work of combing

(continued on page 2)

(continued from page 1)

through the nominated books, briefs, and law-review articles to identify the entries that best exemplify the qualities we advocate: lucidity, concision, and felicitous expression. Jeremiah Kelman, a third-year law student at the University of Southern California, received the 2005 Scribes Law-Review Award for the most outstanding student-written law-review article. The award was presented by a past Scribes President, Roy Mersky, at the meeting of the National Conference of Law Reviews in Charleston, South Carolina, in March 2005. Kelman's note, *E-Nuisance: Unsolicited Bulk E-Mail at the Boundaries of Common Law Property Rights*, was published in the November 2004 issue of the *Southern California Law Review*. The article examines whether the law of common-law nuisance could be applied to help stem the onslaught of spam.

Members of the Book-Award Committee have received and are now reading the 40 books nominated this year for the prestigious Scribes Book Award. Likewise, members of the Brief-Writing Award Committee are reviewing the nominations for the 2005 Brief-Writing Award. Both awards will be presented at the Scribes luncheon on August 6, 2005.

The Scribes Board of Directors held its annual meeting on Saturday, March 5, 2005, in Dallas, Texas. During the meeting, Board members met and received website advice from our new webmaster, Astrid Gulley of S&S Merchants, in Dallas; discussed and made plans for ongoing and new Scribes programs and publications; discussed long-range goals and plans of Scribes; reviewed membership and financial records; and met informally with Dallas-area Scribes members, including several prominent judges and law professors.

I want to specially thank the following organizations for their generous support during my term as President:

- Thomas M. Cooley Law School, for its continuing help in underwriting the cost of publishing *The Scribes Journal of Legal Writing*.
- Thomson West, for its continuing generous sponsorship of the Scribes Annual Luncheon Meeting at the ABA Meeting and the Law-Review Award Luncheon at the National Conference of Law Reviews.
- Carolina Academic Press, for underwriting the cost of an entire year of *The Scrivener*.
- Thompson & Knight LLP, for underwriting the cost of the 2005 dinner for the Scribes Board of Directors and Dallas Scribes members and for otherwise supporting me in my work as President of Scribes.
- LawProse, Inc., for contributing the books of Bryan Garner as door prizes for Scribes writing seminars and for publicly promoting the work of Scribes by distributing Scribes publications.

Finally, thanks to you—the judges, law professors, authors, legal publishers, and practicing lawyers who are Scribes members. All of us share the noble goal of improving legal writing and thus helping to restore respect for the legal profession. As in the past, I urge you to participate actively in Scribes, by attending its meetings and seminars, by volunteering for its committees, and by asking your prominent colleagues to join us.

A Personal Postscript

How did we become lawyers who appreciate good writing? Each of us has a unique story about who or what inspired us. Instead of closing with my usual legal-writing tidbit, I'd like to share with you my inspiration—my mother, Winnie B. Ray, who passed away in March 2005.

Winnie taught high-school English for three decades before becoming English supervisor in a large Louisiana public-school system. Winnie could write rings around most professional writers. Her talent lay in the grace, and the rhythm, and the power of her words.

During her long career, Winnie anonymously penned many brilliant speeches for others to deliver—from principals to deans to superintendents. She was generous with her talent and almost never said *No*. Her words were most potent, however, when she delivered them herself, whether in a high-school classroom or a city coliseum. Her words and her character combined to inspire others, often raising goose pimples in even the most impassive listener. She illustrated the principle that quality writing is done by people of quality.

In *Zen and the Art of Motorcycle Maintenance*, Robert Pirsig says that quality depends on three traits: self-reliance, integrity, and gumption. Having grown up on a farm in rural Mississippi just before the Depression, Winnie demonstrated all these traits. Through self-reliance, she worked her way through college, earned a master's degree in English, and took many post-graduate-level courses. Her integrity was legendary too; she was honest, straightforward, and just, showing

respect for everyone, including students, colleagues, and acquaintances. During the five decades that I knew her, I never heard her disparage anyone.

"Gumption" was one of Winnie's favorite words. She loved its rousing sound and its gutsy tone. Winnie had gumption, like Amelia Earhart and Eleanor Roosevelt. Winnie valued the gumption that Americans showed by rebuilding the naval fleet after Pearl Harbor and by putting astronauts on the moon. Like Martin Luther King, Jr., Winnie believed in excellence and refused to judge people by superficial criteria such as wealth or social status. Indeed, one of her favorite quotations was this one, from Dr. King: "All labor that uplifts humanity has dignity and importance and should be undertaken with painstaking excellence."

Winnie was never a quitter, and she challenged everyone to follow her lead, including her three children, all of whom became lawyers. The youngest of the three, I studied music and taught both music and English for several years before going back to law school. Winnie must have whispered in my ear a hundred times, just before I stepped up to play the piano, to deliver a speech, or to conduct a choir, the following verse:

God, give me sympathy and sense
And help me keep my courage high.
God, give me calm and confidence
And please, a twinkle in my eye.

God blessed Winnie with all these traits—and a perpetual twinkle in her eye. In her words and in her life, Winnie shone like a diamond. She is shining still in the memories of all those whose lives she touched.

Carolina Academic Press Sponsors *The Scrivener*

This issue of *The Scrivener* is generously sponsored by Carolina Academic Press—a leading publisher of texts on law and legal writing. Scribes is very grateful for this support. See page 9 for information about the Carolina Academic Press publications.

In This Issue

Submit Your Articles

Please send items for upcoming issues of *The Scrivener* (electronically or on disk) to the address shown below.

Deadlines

Summer	August 15
Fall	October 15
Winter	February 15

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The Metaphysics of Courses in Legal Writing

Lynn N. Hughes

The following is a transcription of remarks that Judge Hughes delivered on January 3, 2002, for the Legal Writing Institute's Golden Pen Award. The remarks were first published in Volume 8 of Legal Writing: The Journal of the Legal Writing Institute.

The significance of legal-writing courses in law school—especially as exemplified in the plain-language effort—depends on what legal education itself means. What should law schools do? How does legal writing fit that mission?

Law schools would do well doing two things. Legal education should immerse the student in the cultural heritage of Anglo-American jurisprudence. This is the vocabulary of law—the labels and processes that have evolved over 400 years to resolve conflicts and to ensure expectancies.

> "Legal education should invigorate the students' capacity for critical thinking . . . so they may have a sense of relevance."
> —Lynn N. Hughes

Next, legal education should invigorate the students' capacity for critical thinking—develop their rational faculty so that they may discern patterns, draw analogies—so they may have a sense of relevance.

Law schools have three types of courses: principled, practical, and pretty. *Principled* courses are those dull basics like contracts and property; they are the large lumps of legal culture. Although they are far from elemental truth, they are the conceptual foundations—our frames of reference. These frames of reference may not be as tidy or progressive as some would have them, but they do have the virtue of experience. The percentage of coursework spent on the principled topics is declining.

Practical courses are those that familiarize the students with the mechanics of the legal enterprise, like legal bibliography and moot court. These courses have a modest but legitimate role in helping the students acclimate themselves to the tools and workshops of law. An excess of mock trial or law review, however, produces a shell of a lawyer—something between a mannequin and an android—with technical skill but without perspective or imagination.

Pretty courses are those that are derived from professorial niches or terminal sociopolitical trendiness. Here, too, we have the growth industry of the "law &" courses. Look at your catalogues: law and psychology, law and sexuality, law and music. Here, too, we have the free-floating ideological self-indulgences like critical legal studies—places where there are no data and no testable hypotheses, just felt visions.

To illustrate the problem of legal education, take the example of a legitimate course like securities regulation. While we may need professorial experts in that particular specialty, we are looking at law school as *education*. If a student learned securities regulation, she might be able to say what the specific rule required at that moment. On the other hand, if she mastered contracts, torts, and agency, she could teach herself securities law in an afternoon or two. Most important, she would have a sense of why it is the way it is and whither it might be tending. Teaching law through a course in sports law is like teaching physics through a class in T.V. repair.

Legal writing has an aspect of the practical. It has nuts and bolts, but those details are merely the fringe. The bulk of legal writing addresses—and addresses cogently—the second great purpose of law school: critical thinking. Teaching grammar is not teaching English. It is teaching logic. As my friend, the Rice physicist Pol Spanos, says, "Words in a sentence are terms of an equation."

Forms of argumentation and styles of persuasion can be taught as superficial tools. But mostly, to use an old-fashioned term, legal-writing teachers give courses in rhetoric. Exposition—oral or written—can be

successful only as the product of thinking. It is impossible to improve a student's text without improving the thought expressed. As the student's text improves, her jurisprudence improves.

Students arrive at law school with precious little experience of converting what they think into words on paper. Like most important or beautiful things, craftsmanship in exposition requires work. No one happens to play the violin. No one happens to write.

The trouble with legal writing is that it is too essential, too basic. On it, though, depends the usefulness of whatever it is that they may learn in seminars about Marxist perspectives on international trademark law or in contracts, if it is even offered anymore.

The substantive professors may say *scholarship* but they practice *pedantry*. Substance lies in molding—no, in freeing—the minds entrusted at great cost to law schools toward a constructive and productive rigor. Footnotes and quotations—those hallmarks of modern scholasticism—are neither analysis nor explication. The substance of a course should be judged by—and only by—its effect on the mind. By this standard, legal-writing classes are substantive. Even a student who knows all the arcana of jurisprudence has her life as a lawyer truncated if she has not mastered what teachers of legal writing offer. Legal writing affords the student the ability to fuse culture and analysis in exposition. The facts of our heritage must be applied with the *force of reason* to old problems in new contexts—to old conflicts in new media.

The work you will have done in legal-writing courses empowers the student to have a useful role in the economy, in our society, and in law. This role is more than the mindless replication of the forms of law—pleadings, depositions, courtesy copies. The common phrase "going through the motions" has an awful double resonance in law.

This role is a lawyer who creatively combines her foundation in the concepts and modes of law with her habits of keen analysis so that a condition is ameliorated, a problem solved, a bargain struck, a hope fulfilled. We teach the mechanics of language not so that the students will be proficient in the mechanics of language but so that they will live in the habit of paying attention to language—the only repository of meaning.

Thank you from their future clients.

Thank you from the future of the rule of law itself.

Thank you.

Lynn N. Hughes is a United States District Judge in Houston. He was educated by the University of Alabama (B.A.), University of Texas (J.D.), and University of Virginia (LL.M.).

Call for Articles

The *Journal of the Association of Legal Writing Directors* (J. ALWD) is inviting submissions of articles for its Fall 2006 Rhetoric & Argumentation issue. In this "best practices" issue, the *Journal* will publish articles relating classical and contemporary rhetorical theory to the practice of professional legal writing.

The final deadline for submission of articles is September 15, 2005. Article selection will be completed by November 1, 2005. The *Journal* welcomes submissions from legal-writing professionals, including law professors, lawyers, and judges, as well as from academics, researchers, and specialists from other disciplines. In addition to full-length articles, the *Journal* welcomes essays and practice notes.

The complete Call for Articles is available at www.alwd.org or by contacting Linda L. Berger, Chair, Editorial Committee, Thomas Jefferson School of Law, lberger@tjsl.edu, (619) 374-6933.

Scribes Presents Its 18th Annual Law-Review Award

On March 17, 2005, Scribes presented its 2005 Law-Review Award for the most outstanding student-written law-review article at the National Conference of Law Reviews in Charleston, South Carolina. Roy Mersky, past Scribes President, presented the award to Jeremiah Kelman, a third-year law student at the University of Southern California. Kelman's note, titled *E-Nuisance: Unsolicited Bulk E-Mail at the Boundaries of Common Law Property Rights*, was published in the November 2004 issue of the *California Law Review*. The article examines solutions to the problem of spam —unsolicited bulk e-mail—using common-law nuisance as a legal remedy.

The Scribes Law-Review Award Committee comprised Roy M. Mersky, Chair; Glen-Peter Ahlers, Sr.; Anne Enquist; Roger Newman; and Thomas M. Steele. The committee selected Kelman's note for its clear, succinct, and forceful legal writing. In his acceptance speech, Kelman told the audience about the growing prevalence of spam and his creative—and legal—approach to the problem.

Kelman first became interested in exploring legal remedies to spam when he investigated a junk e-mail that he received, ostensibly from an online pharmacy, and discovered that the website was registered to an organization in China. The site first went on-line just three days before Kelman received the e-mail. "This is typical of spam," said Kelman in his award speech. "Over 80% of e-mail that you receive comes from 200 known spam gangs, with the vast majority working out of the United States."

The 2005 Scribes Law-Review Award Committee

Roy M. Mersky, Chair
Glen-Peter Ahlers, Sr.
Anne Enquist
Roger Newman
Thomas M. Steele

Kelman's research led him to the CAN-SPAM Act. In 2003, Congress addressed the burgeoning spam problem by passing the Act, which preempted some stronger state laws. The Act denied a private right of action and legalized spam sent by legitimate companies

"Over 80% of e-mail that you receive comes from 200 known spam gangs, with the vast majority working out of the United States."
—Jeremiah Kelman

using legitimate methods. When the Act took effect, spam constituted about 55% of all e-mail. But since 2003, spam has grown. In 2004, it was up to 64%. Today, about 80% of all e-mail is spam, and it is rapidly approaching 95%. The cost of spam is approaching $20 billion a year; in 2005, the market for anti-spam software will be over $1 billion.

It occurred to Kelman that spam arriving in his e-mail in-box was similar to someone "throwing a barrage of annoying, offensive fliers through an open window into my house. It seemed that the mere fact that I opened my window, or that my in-box was open and I'm not able to close it, did not give someone the right to throw things through it." Kelman thought that spam could be viewed as an intangible invasion to property, and so nuisance law might apply. After exploring current legal remedies and caselaw, Kelman concluded that this venerable common-law doctrine—traditionally applied to land—could actually apply to an intangible: e-mail.

If you'd like to read Kelman's note, you can find it at 78 S. Cal. L. Rev. 363 (2004).

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Volume 9 of The *Scribes Journal of Legal Writing*

We have received reports from a few members that their copies of Volume 9 were damaged in mailing. If you would like another copy, please contact Joe Kimble (kimblej@cooley.edu), and he will send you one.

Excerpts from *Garner's Modern American Usage*

Bryan Garner, a former President and current Board member of Scribes, has kindly agreed to let us print excerpts from his invaluable *Modern American Usage*, the second edition of which has recently been published by Oxford University Press. Please note that some of the items do not contain the full entry as it appears in the book; they are abbreviated excerpts, if you will. Also note that the terms in small capitals cross-refer to other entries. Obviously, we can't do justice to the book. But we've picked some items that should be interesting to legal writers, and we'll continue with more in the next issue.

enforce; inforce. A. Spelling. The latter is an archaic spelling whose only vestige appears in *reinforce*.

B. "Enforcing" a Contract. Lawyers continually speak of *enforcing* contracts, but this term is not apt unless one is seeking specific performance. Usually, the law merely specifies a remedy for breach of contract—damages—and does not compel performance.

Esq., in AmE, typically signifies that the person whose name it follows is a lawyer. The mild honorific is used nowadays with the names of men and women alike; it is incorrect, however, to use it with any other title, such as *Mr.* or *Ms.* In BrE, of course, *esquire* is used of any man thought to have the status of a gentleman.

et al. A. Generally. *Et al.* is the abbreviated form of the Latin phrase *et alii* (= and others), which is used only in reference to people, whereas *etc*. is used in reference to things. Since *alii* is abbreviated, it always takes a period. But American writers commonly mispunctuate it *et al, et. al.,* or *et. al*—all wrong.

even, adv., gives rise to syntactic problems similar to those arising from *only*. It should be placed directly before the word it modifies. Note, for example, the difference in meaning between *this summer is even hotter and wetter* and *this summer is hotter and even wetter.*

eventuality is a needless pomposity for several everyday words, each of which is more specific: *event, possibility, outcome, contingency, consequences,* or *result.*

ex-felon is an illogical expression—except, perhaps, in reference to a pardoned offender—because a convicted offender does not lose the status of felon merely by serving out a criminal sentence. Once a felon, always a felon. But *ex-convict* is quite all right, *convict* now being viewed as a close synonym of *prisoner*.

fact, n. **A. *Fact of the matter*.** This FLOTSAM PHRASE occasionally serves well in speech—to fill up space while the speaker thinks of what to say next—but generally has no justification in writing.

fax, n & vb. This term is now all but universal, in the face of which *facsimile transmission* is an instant ARCHAISM—and a trifle pompous at that. . . . Some writers mistakenly put the word in all capitals, as if it were an acronym. It isn't. It's just a clipped form with a slight change in spelling: write *fax*, not *FAX*.

> "Write *fax*, not *FAX*."
>
> —Bryan Garner
> *Garner's Modern American Usage*

fewer; less. *Fewer* emphasizes number, and *less* emphasizes degree or quantity. *Fewer number* and *fewest number* are illogical tautologies, since *fewer* means "of smaller number." E.g.: "The *fewest number* [read *smallest number*] of people use the library between 4:30 and 7:00 p.m." (Or, better, read: *The fewest people use the library between 4:30 and 7:00 p.m.*)

Fifth Amendment. The idiom is *take the Fifth*, not *plead the Fifth*—e.g.: "He was advised to keep silent and *plead* [read *take*] the Fifth Amendment." Kevin Diaz, "$4 Million Award's a Start Toward a Clean Slate," *Star Trib*. (Minneapolis), 22 Oct. 1994, at A1.

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Don't Miss It!
The Scribes Annual Luncheon Meeting
August 6, 2005

Come to Chicago, enjoy lunch with fellow Scribes members, and make your voice heard at our Annual Luncheon Meeting. Held in conjunction with the ABA Annual Meeting, the Scribes luncheon will be Saturday, August 6, in the Embassy Room of the Fairmont Hotel, 200 North Columbus Drive.

You'll enjoy lunch with friends. You'll hear the keynote address by our guest, Judge Diane P. Wood, of the United States Court of Appeals for the Seventh Circuit. You'll have the chance to win valuable door prizes—including books by Bryan Garner and Richard Wydick. And finally, you'll have the opportunity to participate in Scribes board elections.

For more information, please go to our website, www.scribes.org.

See you in Chicago.

Nominations for Scribes Officers and Board Members

The Scribes Constitution provides for the election of the officers and members of the Board of Directors at the annual membership luncheon. The meeting will be conducted at the conclusion of the Annual Luncheon Meeting in Chicago on Saturday, August 6, 2005, at the Fairmont Hotel.

Officers

The Nominating Committee has selected the following persons as nominees for officers. All officers serve two-year terms.

President: **Norman Otto Stockmeyer**, Emeritus Professor at Thomas M. Cooley Law School. Professor Stockmeyer has been a member of Scribes since 1981. He was elected to the Board of Directors in 1994 and served terms as Treasurer and Secretary before being elected Vice President in 2003. If elected, he will be the second member from Michigan to head Scribes. Judge Charles Joiner, then a University of Michigan law professor, held the post in 1963–64.

Vice President: **Stuart Shiffman**, Associate Circuit Judge, State of Illinois. Judge Shiffman joined Scribes in 1985 and was elected to the Board in 1994. He has served as Treasurer since 2003.

Secretary: **John C. Williams**, Principal Attorney Editor, Thomson West. John Williams has been a Scribes member since 1980. He was elected to the Board in 1995 and to the office of Secretary in 2003. He also chairs the Membership Committee.

Treasurer: **Joseph Kimble**, professor at Thomas M. Cooley Law School. Professor Kimble joined Scribes in 1987 and has been on the Board since 2001. He was Managing Editor of *The Scribes Journal of Legal Writing*, 1996–2000, and has been its Editor in Chief since 2001.

Board of Directors

Three members of the Board of Directors are elected annually to serve three-year terms. The Nominating Committee has nominated **Steven R. Smith** for reelection to the Board. He is Dean and President at California Western School of Law and incoming Chair of the ABA Section of Legal Education and Admissions to the Bar.

Also nominated for election to the Board are **Darby Dickerson**, Vice President and Dean at Stetson University College of Law and author of the *ALWD Citation Manual: A Professional System of Citation*, and **Lee Rosenthal**, U.S. District Court Judge for the Southern District of Texas and chair of the Federal Advisory Committee on Civil Rules. **Beverly Ray Burlingame** will continue on the Board for a two-year term as Past President.

Other nominations may be made from the floor. Election to each position is decided by a majority of members present at the meeting.

From Our Peevish Readers

In the last issue, we asked you to send in your pet peeves about legal writing. We heard from just a few of you (with Joe Kimble being particularly peevish). We'd like to hear from many more of our readers. In fact, we'd like to be inundated with pet peeves—swamped, if you will—with a veritable overflowing of the desk or e-mail in-box. So please take us up on our challenge and vent, won't you?

Jerry Smith, United States Circuit Judge, Fifth Circuit Court of Appeals, wrote:

- One of my pet peeves is beginning sentences with *As such*. I contend that this phrase has absolutely no meaning in the English language, at least in the way it is so commonly used to begin sentences. I give my law clerks the following rule about when to use *as such*: Substitute the word *asparagus*. If the phrase *as such* imparts more meaning to the sentence than the word *asparagus*, go ahead and use *as such*. Otherwise, don't.

(Was that with or without hollandaise?)

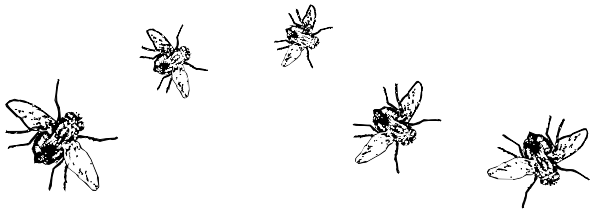
Joe Kimble, apparently deciding that our collection of peeves should be expanded to any usage (not just legal), sent these peeves:

- "Thank you for taking my call"—the first words out of the mouth of many who call talk shows. Dear People: It's a call-in show. They're *supposed* to be taking your calls. No need for this mechanical, overdone thank-you (a cousin to "Please do not hesitate to contact me if I can be of further assistance"). What's more, would you please be good enough to think about your question beforehand and deliver it in two or three crisp sentences?
- "If you're the [Detroit] Pistons, you need to stop the turnovers." Dear Sportscaster: They *are* the Pistons. Why this conditional form? Why not "The Pistons need to stop the turnovers"?
- *In regards to* and *with regards to*. The plural *regards* is increasingly common, but still a mistake in my book. And while we're at it, *with regard to* can usually be replaced with *about* or *on* or *for*. Occasionally, you may need *concerning* or *regarding*.
- Using *notoriety* to mean "fame." *Garner's Modern American Usage* acknowledges that the noun is more neutral than the adjective *notorious* but adds that "the noun is becoming tinged with the unpleasant connotations of its adjectival form." I'd avoid the neutral sense, especially given its potential ambiguity: "the Pistons' notoriety."
- *Prior to*. This, the most common inflated phrase in legal and official writing, should be the first inductee into the Hall of Notoriety. I used to think that it primarily afflicted writing, but we now have to listen to the football referee say, "False start, prior to the snap." As if it weren't bad enough by itself, *prior to* often leads to clumsy, indirect constructions: "prior to the filing of a decision by the court." In other words, "before the court files a decision."
- *In terms of*. This should be the second inductee as probably the most common inflated phrase in speech. Peeved beyond endurance, I finally devoted an entire column to it in the November 2002 *Michigan Bar Journal*. I gave 25 or so examples of how it not only wastes words, but also tends to obscure meaning. Here's my favorite, from a weather announcer: "Since May, we have been dry in terms of rain."

Steve Smith wrote that these verbal habits bug him:

- The use of *one*, as in "One comes to the conclusion that the law in this area is confused." I think that sometime around sixth grade, students are taught not to refer to themselves as *I*—one writing lesson that some people have learned with a passion.
- Starting a lot of sentences and, even worse, paragraphs, with conjunctions. Perhaps, once in a while, it is acceptable. But when it is every sentence, it is too much. Or when it is every paragraph, it is too distracting. However, I should probably just get over it.
- Sentences: Sentences over 200 words long.

(Thank you, Steve, for not sending a sample.)



News from Members

Aspen Publishers announces the publication of the second edition of *Just Writing—Grammar, Punctuation, and Style for the Legal Writer* by **Anne Enquist** and **Laurel Currie Oates**. The new edition focuses on the fundamentals of writing and helps both beginning and experienced legal writers; the book includes a Teacher's Manual and CD. The authors teach at Seattle University.

Michael Frost, a professor at Southwestern University School of Law, in Los Angeles, California, and a longtime Scribes member, has published a new book, *Introduction to Classical Legal Rhetoric: A Lost Heritage* (Ashgate Publishing Ltd. 2005).

Michael Greenwald, Retired Deputy Director of the American Law Institute, served as a Reporter for the ALI's new *Capturing the Voice of The American Law Institute: A Handbook for ALI Reporters and Those Who Review Their Work*. The Handbook is posted on the ALI's website; printed copies are available, free, from Nancy Shearer of ALI's Publications Department (phone: (215) 243-1626; e-mail: nshearer@ali.org; fax: (215) 243-1636).

Mark I. Harrison recently published an article titled *The Ethical Implications of Partnerships and Other Associations Involving American and Foreign Lawyers* in the Penn State International Law Review. The article, which Mr. Harrison coauthored with Mary Gray Davidson, can be found at 22 Penn St. Int'l L. Rev. 639 (Spring 2004).

Michael Hyman, of Much Shelist Freed Denenberg Ament & Rubenstein, Chicago, was quoted in the *National Law Journal* and the *Chicago Daily Law Bulletin* about the Class Action Fairness Act, which alters the landscape for nonfederal, class-action claims. Mr. Hyman is completing his term as President of the 900-member Decalogue Society of Lawyers, an organization of Jewish lawyers headquartered in Chicago.

Judge Roger J. Miner, Senior Judge of the United States Court of Appeals for the Second Circuit, published an article on trends in judicial ethics as part of the Hofstra University School of Law's Legal Ethics Conference: "Judging Judges' Ethics." Roger J. Miner, *Judicial Ethics in the Twenty First Century: Tracing the Trends*, 32 Hofstra L. Rev. 1107 (2004).

David Louis Raybin, a partner of the Nashville law firm Hollins, Wagster, Yarbrough, Weatherly & Raybin, received the Tennessee Bar Association's Justice Joe W. Henry Memorial Award for Outstanding Legal Writing. Mr. Raybin won the award for his 2004 article published in the *Tennessee Bar Journal*, *What Is the Impact of* Blakely v. Washington *on Sentencing in Tennessee*? He is only the second person to receive this award twice; his first award was in 1982. Find the article at http://www.hwylaw.com/CM/Articles/Articles91.asp.

Judge Edward D. Re, Chief Judge Emeritus of the United States Court of International Trade, President of Scribes in 1978–1979, was recently appointed by the Office of the United States Trade Representative and the Department of Foreign Affairs and International Trade to serve on an Extraordinary Challenge Committee under Article 1904 of the North American Free Trade Agreement (NAFTA). One of the first actions of the Committee was to select Judge Re as Chair. The Committee will review the final injury decision of the Binational Panel, by the International Trade Commission, *In the Matter of Certain Softwood Lumber Products from Canada*.

Anthony E. Turley, of Connelly, Jackson & Collier, LLP, in Toledo, Ohio, edited *Negligence Caselaw Update*, published in 2003 by the Ohio Academy of Trial Lawyers. In August 2004, Mr. Turley was named one of five "Up and Coming Lawyers" by *Ohio Lawyers Weekly*. And in February 2004, Mr. Turley obtained a $50 million consent judgment against Buckeye Egg Farm in *Bear v. Buckeye Egg Farm*, Wyandot County Court of Common Pleas (Ohio), Case No. 02-CV-0064.

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