Fall 2016

THE Scrivener

Scribes—The American Society of Legal Writers

The Scrivener is published three times a year and delivered electronically.

In This Issue

Submissions

Please send items for upcoming issues of *The Scrivener* to Maureen Collins at **7collins@jmls.edu.**

What Should Scribes Be Doing?

By Scribes President Justice Michael B. Hyman

Justice Michael B. Hyman

At our last board meeting, I asked that question and we identified several ideas for advancing Scribes. I would like to hear your reaction to them and any ideas you may have to increase our membership, participation, and message. Among the more popular suggestions were these:

- Create a legal gobbledygook award to recognize unintelligible or nonsensical language in opinions, law review articles, and briefs or other legal documents.
- Partner with judicial clerkship training programs and state bar appellate sections by providing them with packets of material about appellate briefing prepared by Scribes members.
- Publish in book form the best articles that have appeared in *The Scribes Journal*.
- Establish a Continuing Education Committee that would be available to consult with bar associations and other organizations on legal writing programs and to plan and conduct Scribes stand-along programs.
- Designate a national legal writing day on the birthday of an important legal writer.
- Hold a contest in which entrants rewrite bad legal writing.
- Expand efforts to initiate student chapters at law schools across the country.

So what do you think? Please send any comments or suggestions to Scribes at scribeslegalwriters@gmail.com.

Have You Read…?

I also asked our board members to recommend one book with a legal bent that they would encourage every lawyer to read. Some are classics and some are unfamiliar gems. Some are novels. And there are a few biographies, textbooks, and works of historical scholarship

too. All, though, have something in common for lawyers who enjoy the written word—they're memorable, impactful, durable, and engaging. Here are the responses:

- Kurt Eichenwald, *The Informant*
- Kenneth Feinberg, *What is Life Worth*
- Bryan A. Garner, *The Elements of Legal Style*
- Bryan A. Garner, *The Winning Brief*
- Karen Elizabeth Gordon, *The Deluxe Transitive Vampire: The Ultimate Handbook of Grammar for the Innocent, the Eager, and the Doomed*
- Andrew M. Greeley, *The Cardinal Sins*
- Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality*
- William Landay, *Defending Jacob*
- David McCullough, *John Adams*
- Abbey Mann, *Judgment at Nuremberg*
- John Noonan, *Persons and Masks of the Law*
- George Orwell, *1984 and Animal Farm*
- Bryan Stevenson, *Just Mercy*
- Richard Touhy and Rob Warden, *Greylord: Justice Chicago Style*
- Barry Werth, *Damages*
- Charles Alan Wright, *Federal Courts*
- Richard Wydick, *Plan English for Lawyers*

Now go read!

Richard Wydick Tribute

The legal writing community mourns the recent death of Richard Wydick. Wydick, a winner of the Scribes Lifetime Achievement Award in 2010, will be greatly missed. Perhaps his many contributions to the field of legal writing and practice are best summed up by remembrances from those who know him or simply benefited from his wisdom:

In his introductory remarks at the presentation of the Lifetime Achievement Award, his longtime friend Joe Kimble remarked:

Today, Scribes is honoring Professor Wydick—of course, we call him Dick—with our Lifetime-Achievement Award. Our last two awards have gone to Justice Antonin Scalia and Justice Ruth Bader Ginsburg, so you can see the regard we have for this award. In 1979, there appeared the first edition of a slim book—93 pages—called *Plain English for Lawyers*.

Of course, Dick was not the first person to criticize legal writing; that has been going on for centuries. But the fresh tone, the lively style, the good advice, and very compactness of this book made it work—and stick. After centuries of criticism, Dick Wydick's book finally started to break the cycle of bad legal writing. Who can forget his opening words: "We lawyers do not write plain English. We use eight words to say what could be said in two. We use archaic phrases to express commonplace ideas. Seeking to be precise, we become redundant. Seeking to be cautious, we become verbose. Our sentences twist on, phrase within clause within clause, glazing the eyes and numbing the minds of our readers." And he then went on to boldly tell us—and show us how—to:

- omit surplus words
- use strong verbs, not noun forms
- prefer the active voice

- use short sentences, on average
- arrange words with care
- choose familiar, concrete words and cut out the silly lawyerisms
- avoid various language quirks, like cosmic detachment and sexist language

You may think this is pretty familiar advice, and now it is—because Dick Wydick, as much as anyone else, made it familiar. *Plain English for Lawyers* is now in its fifth edition. It's still a slim book, at 128 pages. There are 800,000 copies in print—incredible for any law book, let alone a book on legal writing. (I'm sure that several thousand of them have been sold at Thomas Cooley Law School alone.)

We're midway through two generations of lawyers and law students who have been guided and changed by *Plain English for Lawyers*. No other book on legal writing can make a claim like that. It stands alone. The words on our award say it all: We present this Lifetime-Achievement Award to Professor Richard C. Wydick for his profound influence in promoting plain English for lawyers. Thank you, Dick, on behalf of our entire profession. ~ Joe Kimble

I have lost count of the number of students who have benefited from his book, *Plain English for Lawyers*. Suffice it to say that I felt like we were old friends even though we never met. ~ Cara Cunningham Warren

I imagine many of us, like Cara, can think of countless students who have benefited from Plain English for Lawyers. And imagine the ripples of clients, courts, and third party beneficiaries!

"I don't think I've ever seen a case or situation in which something was held insufficient because it was too simply written. "We could understand this! It can't be enforceable!"... Some folks regard it as a movement, but I never have. And regarded as a movement, I would say it's remarkably unmoving. At best, it comes and goes. But I think that if the movement ever moves, it will be because private enterprise discovers that plain language produces profit." Richard Wydick, Transcend Interview (Updated 2012) http://transcend.net/library/html/WydickInterview.html

I think the movement moved, because he provided a priceless tool for some educators who believed in helping people understand. Thank you, Richard Wydick, for making countless lives easier and smarter. May you rest in peace ~ Kathryn Fehrman

I had the great pleasure of working with Richard Wydick for many years on the Scribes Law Review Award Committee. He was just a delight to work with—warm, kind, and thoughtful. When we would have our yearly conference call, I was always most curious to learn what he thought of the articles that we had read, and on the fairly rare occasions when we disagreed, his analysis always made me rethink my initial position. I learned a lot from him about quality scholarship from those once-a-year conversations, and I'm so sorry to hear of his passing. ~ Mary Nicol Bowman

This is very sad news indeed. I have used *Plain English for Lawyers* ever since it was a law review article. It is a required book for all my classes. Richard was a pioneer and will be greatly missed. ~ Grace C. Tonner

Strunk and White admonished us to "omit needless words." Better than anyone, Richard Wydick showed us how. For that and more, god bless him. ~ Stephen Paskey

He made a lot of footprints through my students alone. ~ Grumpy Ed

He was my Evidence professor and he walked his talk. Meaning he had a great skill in translating the Federal Rules of Evidence into plain English so third year law students could discern the complexities of the rules well enough to apply them. I try to follow his example in teaching my students in all the courses I teach, including Evidence. Thanks to Professor

Wydick. ~ Suzianne D. Painter-Thorne

Not only have we lost a giant in the legal-writing field, we have lost a wonderful human being. I had the great good fortune to get to know Dick Wydick when I was Executive Director of Scribes and Dick was on the Board of Directors. I remember how excited I was to attend my first Board meeting, knowing that I was about to meet one of my personal "rock stars." I mean, I had been using Dick's book in my research and writing classes for years, and now I was about to meet the author himself. Wow!

One of my favorite bits of advice that Dick ever gave was his admonition against verbosity: "turn clauses into phrases, and turn phrases into single words." Those words have stayed with me since I first read them in *Plain English for Lawyers*, and I try to impress their lesson on my students each semester.

But my favorite memory of Dick has nothing to do with plain English, or even legal writing, for that matter. In 2011, I brought my mother with me to the Scribes Board meeting in San Diego because she wanted to see California. At the Board dinner the first night, my mom and I sat with Dick and his lovely wife, Judy. More than anyone else that evening, Dick and Judy made my mother feel right at home, letting one of her interests — genealogy — dominate the dinner conversation. My mother was so delighted by Dick and Judy that she continued to correspond with them for many months thereafter. My mother had come to that dinner knowing only me but left with a couple of new friends. God bless you for that, Dick. You'll be sorely missed. ~ Norman Pate

I was not a good writer when I arrived at law school. I had earned a B.S. and had never had to write about anything of any real length or complexity. At some point during my first year of law school, someone told me about a law review article called *Plain English for Lawyers* by Richard Wydick. Up until that point in my life, I had always thought of writing as something that people just did. *Plain English* showed me that writing was the result of a process and that one could improve one's writing by paying attention to the structure and mechanics of writing. I remember rereading *Plain English* every year I was in law school, each time trying to incorporate more and more of its lessons into my writing. The article (now a book) had a huge impact on my writing and thinking. When I read that Richard Wydick had died, I pulled out an old manila folder marked "Legal Writing." In it I found my copy of *Plain English for Lawyers* that I photocopied back in the mid-1980's. Thank you, Professor Wydick. ~ David Raeker-Jordan

This is a great loss. Many of us used his book over the years and it was a standard text for many legal writers. He was also a board member of Scribes... and a great supporter of legal writing professors everywhere. ~ Mark Wojcik

Professor Richard Wydick
1937 - 2016

Photo provided by UC Davis School of Law

Achieving Clarity with Compound and Coordinate Modifiers

By Wayne Schiess

Compound Modifiers

Take advantage of our new customer discount. This means a new discount for customers, but I bet the writer meant a discount for new customers. *We're selling a little used car.* This means the car is small, but I bet the writer meant the car had been used only a little. *He has a family law practice.* This means he practices with a relative, but I bet the writer meant he takes divorce cases.

What causes confusion in these examples is the absence of a hyphen. The rule—and yes, it's a rule of written English, although some of us never learned it—requires a hyphen between words that jointly modify a noun. *The Chicago Manual of Style* § 7.81 (16th ed. 2010). These jointly modifying words are called compound modifiers or phrasal adjectives.

Careful writers hyphenate compound modifiers: *Take advantage of our new-customer discount. We're selling a little-used car. He has a family-law practice.* The hyphen clarifies meaning, instantly telling the reader that the words modify the noun jointly, not independently. When the modifying phrase follows the noun, you need no hyphen: *We offer a discount to a new customer. The car we're selling is little used. His practice is in family law.* You also need no hyphen for proper nouns *(United States treaties)*, foreign phrases *(prima facie case)*, and adverbs ending in -ly *(highly skilled writer)*. You do need a hyphen for *well* phrases, like *well-pleaded complaint, well-known jurist,* and *well-rounded person*.

Some legal writers doubt the rule and say they don't see compound-modifier hyphens in other writing. But the truth is they're everywhere. We don't notice them because they're doing their job—smoothing out our reading and eliminating miscues. For the skeptical, I offer a sampling of hyphenated modifiers from a single edition of my local newspaper, the *Austin American-Statesman*. I recorded the first ten I saw:

- single-family home
- five-day period
- technology-based processing system
- city-owned street
- since-discredited promise
- 60-vote majority
- two-thirds requirement
- far-reaching change
- board-appointed reviewer
- call-center jobs

If you look for them, you'll find compound-modifier hyphens in any well-edited publication.

But wait. There's more. You can use several hyphens if the modifying phrase has several words. So all the following are correct: *all-or-nothing strategy, on-the-spot investigation, two-year-old plan*. Don't get carried away with long, hyphenated modifying phrases. This might be okay: a *sweep-it-under-the-rug approach*, but this is too much: *a let-the-jury-struggle-with-it-and-figure-it-out attitude*.

You can also use a "suspended hyphen" if you don't want to repeat the second part of two similar compound modifiers. So instead

of *right-brain and left-brain functions*, you can do this: *right- and left-brain functions*, or *15- and 30-year mortgages*.

In applying these hyphen rules, legal writers sometimes encounter a problem. In law, we have many familiar expressions and phrases that technically require hyphens but that will not confuse legal readers if left unhyphenated. For example, all these would take hyphens: *summary-judgment motion, good-faith effort, reasonable-person standard*. But hyphenating them can seem pointless and, given that some readers don't know the rule for compound-modifier hyphens, adding a hyphen might cause more confusion than it saves.

So you have a choice.

You can apply the hyphenate-your-compound-modifiers rule at all times, uniformly, even to familiar phrases. That way, you don't have to stop and think about whether you're causing confusion. You just follow your rule: I always hyphenate compound modifiers, and this is a compound modifier, so I'll hyphenate. The legal-writing expert Bryan Garner supports this "flat rule." Bryan A. Garner, *Garner's Modern American Usage* 627 (3d ed. 2009).

Or you can apply the hyphenation rule when confusion might result, but not to familiar legal phrases. So you'd hyphenate *high-performing employee* and *public-agency exception* but not *common law doctrine, third party beneficiary, or summary judgment motion*. Of course, with the case-by-case approach you have to gauge your audience's knowledge and differentiate general audiences from specialized ones. Thus, you'd probably need to hyphenate differently for a labor lawyer and for a generalist judge and maybe even for the judge's clerk. As you can see, you avoid wrestling with tough calls if you apply the flat rule.

Whether you apply the flat rule or a case-by-case standard, put "hyphenate compound modifiers" or "hyphenate phrasal adjectives" on your editing checklist. If you're fascinated by the subject or would like more guidance, there's law-review article on it: Joan Ames Magat, *Hawking Hyphens in Compound Modifiers,* 11 Legal Comm. & Rhetoric: JALWD 153 (2014).

Coordinate Modifiers

Coordinate modifiers don't take hyphens. They take commas, most of the time, and they can be tricky too. Here are the basics: coordinate modifiers (also called coordinate adjectives) modify a noun separately or independently. You use a comma to separate them instead of a hyphen to connect them. For example, here are three sets of modifiers:

a. the standard approved interpretation

b. an overstated implausible illogical argument

c. a contentious discovery dispute

To decide how to punctuate these modifiers, you can use two tests.

The first test. See if you could put the word *and* between the modifiers; if they still make sense, you've got coordinate modifiers, and you need a comma to separate them. In fact, as the editing expert June Casagrande points out, that's why they're called coordinate modifiers—because they can be separated with the coordinating conjunction and. June Casagrande, *The Best Punctuation Book, Period* 26 (2014). Let's try it.

a. the standard and approved interpretation

Correct. So we properly punctuate with a comma: *the standard, approved interpretation*.

b. an overstated and implausible and illogical argument

Correct. As you can see, we have a series of three, which could be appropriately punctuated with two commas: *an overstated, implausible, illogical argument* or with two commas plus *and: an overstated, implausible, and illogical argument*.

c. a contentious and discovery dispute

Incorrect. The words *contentious* and *discovery* aren't modifying *dispute* in the same way. In fact, *contentious* is an adjective, but *discovery* is a noun that, although it seems to be modifying *dispute*, is really part of the compound noun *discovery dispute*. So no comma: *a contentious discovery dispute*.

Yes, nouns can modify nouns, but it's likely the writer considers *discovery dispute* a compound noun—a single unit. (By the way, compound nouns come in three types. One word: *eyewitness*; hyphenated: *nation-state*; and two words: *subject matter*.)

Why no comma after *contentious*? We don't place a comma directly before the modified word. Wrong: *a radical, expansion*. That's true even if the modified word is a compound noun. Wrong: *a complex credit, transaction*.

The second test. See if you could change the order of the modifiers; if they still make sense, you've got coordinate modifiers, and you need a comma to separate them.

a. the approved, standard interpretation

Correct.

b. an illogical, overstated, and implausible argument

Correct.

c. a discovery and contentious dispute

Incorrect. So leave out the comma and put the modifiers in their original, sensible order.

These two tests usually work, but you sometimes encounter tricky modifiers that become "a matter of intent," according to Casagrande in *The Best Punctuation Book, Period*. Sometimes the first word is actually modifying the second modifier, not the following noun; in that case you need no comma. Or you might have mixes of compound and coordinate modifiers that require commas and hyphenation. For example:

d. a bright red tie

Bright modifies *red*, not *tie*, so no comma: *a bright red tie*.

e. uncooperative senior water rights holders.

You might disagree, but here's my take: *uncooperative* modifies *holders* and is a coordinate modifier that takes a comma; *senior* modifies *water rights*, not *holders*, and takes no comma (remember: no comma right before the modified noun); and *water rights* is a compound modifier of *holders* and takes a hyphen. So:

e. uncooperative, senior water-rights holders

Coordinate modifiers—and compound modifiers—are like many things in legal writing. The best approach is to inform yourself, use your best judgment, and strive for clarity.

Stanford Law Review wins Scribes Law Review Award for the Second Year

An article written by Wesley Sze for the Stanford Law review has been awarded the 2016 Scribes Law Review Award. Sze's article, "*Did X Mark the Spot: Overrides of Judicial Decisions*," analyzed the response to a controversial decision regarding the balance of administrative and judicial powers. His remarks follow:

Thank you so much for those kind remarks, Professor Ahler. Hello and good evening to everyone. Thank you so much for inviting me to be a part of your conference. Although I was not able to make the trip out to Syracuse, I am pleased to be able to join you all live, online, from here in California.

I want to first thank the Scribes Society and Law Review Committee for this distinguished award. It is an honor to have my Note selected for the Law Review Award this year, and to join the other impressive student works from years past. I also must thank everyone who contributed their time, effort, and advice to help bring the Note to where it is today: to my faculty advisor, Professor Daniel Ho; to my legal writing instructors, Andrew Gilden, Thea Johnson, and Kathy Wright; to classmates and friends for their lively debate and thoughtful comments on earlier drafts; and last, but certainly not least, to the editors of the *Stanford Law Review* for their amazing work. The Note is a testament to all their efforts, and I hope that it reflects the incredible support and contributions I have received along the way. This is as much their award, as it is mine.

I've been asked to prepare some remarks to share with you all this evening. And as with all good writing, I will try to keep these remarks brief.

Let me start by sharing with you a little bit about my Note. I don't assume that many of you have read the piece, but it is about statutory interpretation and the balance of powers between agencies and courts. The Note centers around a 2005 Supreme Court decision—*NCTA v. Brand X*—as the lens through which to capture and discuss broader questions about what the law means, and who gets to decide that meaning. We often think of the courts as the authoritative interpreters of the law. After all, we have all read Chief Justice Marshall's famous proclamation in *Marbury v. Madison* that "it is emphatically the province and duty of the judicial department to say what the law is."

But administrative law is a bit of a different animal, for the Supreme Court has long held that judges must actually *defer* to agency interpretations of law. The *Brand X* decision went even one step further by holding that agencies, as the authoritative interpreters, could even revisit and, in one sense "overrule," preexisting judicial interpretations of statutory meaning.

If this sounds provocative—that's because it is. And no one other than the late Justice Scalia picked up on the *Brand X* rule. In his characteristically colorful way, he wrote a dissent that brought into sharp relief the decidedly "breathtaking" implications of the decision. His fear was that *Brand X* would upset of the balance of powers by giving agency rule-drafters the ability to overrule judges by taking actions that the courts had once held unlawful.

I remember first reading the *Brand X* case in my Administrative Law class and being completely fascinated by how the decision fit right at the crossroads of language and power. To be honest, I was not sure I had anything to add to the theoretical debate—as a law student just beginning to understand what administrative law was even all about, I knew I wouldn't be coming up with any grand new theory of administrative statutory interpretation. But I wanted to write something, and so I decided to look at the issue from a different angle by turning the *Brand X* debate from a

theoretical question to an empirical question: did *Brand X* matter? Did the decision really create this new world of renegade agencies that Justice Scalia had predicted? So I delved into the weeds and collected as much data as I could on how agencies behave, focusing on what kinds of principles, reasoning, and judicial authority agency rule-drafters relied upon when interpreting statutes.

I will leave it to you to read my Note for the full answer, but here's the *Cliffs Notes* version: my Note argues that *Brand X* did not have any noticeable effect on agency rulemaking. Simply put, I found no empirical evidence that agencies were more willing to overrule or disregard judicial precedent as a result of the *Brand X* decision. Rather, my study revealed that agencies very much continued to show a thoughtful and principled respect for judicial views when interpreting statutes.

And on a broader level, my Note explores the idea that there is a disconnect between the formal, black letter law that we read and study in casebooks, legislation, or statutes, and the law as it is actually carried out and practiced in the everyday. If one were to read the *Brand X* decision in isolation, one would think that it gave agencies nearly *carte-blanche* to ignore judicial precedent and pursue their own interpretive agendas. But reality is perhaps more nuanced than that, and my Note points to a more restrained and self-regulating administrative state that sees its interpretive role as a partnership—and not a rivalry—with the courts.

But enough about administrative law. I want to conclude by sharing with you about my own experience of writing and publishing my piece.

First, I have a confession. To be honest, I was a bit taken aback when I found out my Note had been selected for the Scribes Law Review Award—my first thought was, *Me? Really?* And it wasn't because I thought my final published Note was not good. Certainly, it is a piece of writing that I am very proud of.

But the Award was a surprise to me because I knew, frankly, just how inelegant, clumsy, and exhausting of a process it was to put the Note together. I spent hours upon hours in front of my computer, struggling to write the next sentence or two, only to become frustrated by how inartful and wordy those sentences sounded. So I wrote, rewrote, and rewrote again. And again. And just when I was satisfied with what I had written, I gave it to the law review editors, who found yet more sentences to rewrite, words to cut, and of course, citations to correct. And I thought to myself, *I am getting an award for this? Surely this can't* possibly *be what good writing is all about.*

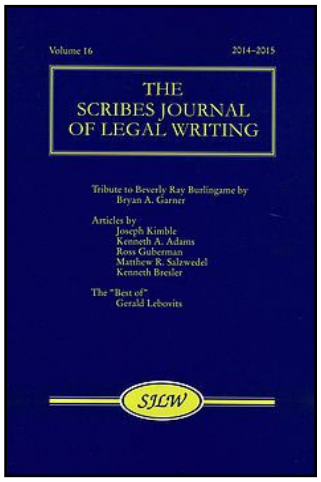
There is a famous phrase coined by the American poet John Godfrey Saxe that goes like this: "Laws, like sausages, cease to inspire respect in proportion as we know how they are made." Or as we might say today: "You don't want to know how the sausage is made."

It's a nice phrase, but I'm not actually sure if it is correct. In law school, we read things written by incredible writers—Judge Posner, Justice Jackson, Justice Scalia, and Justice Kagan—to name a few. You read their opinions and they sound so simple and effortless, as though they were the easiest things in the world to write. But I am sure if you asked them, they would all tell you that the secret to good writing is not in the innate ability to write, but rather in hard work, perseverance, and dedication to the craft. And that to me really does inspire respect.

So whenever I get discouraged about my own writing and how much time and effort it takes me to write even the simplest of things, I think about one of the greats working away at their own desk, writing, rewriting, and rewriting again. And then I don't feel so bad about myself.

Thank you all for this Award.

The Scribes Journal of Legal Writing



The Journal was founded by long-time Board member and Past President Bryan A. Garner. Current editor-in-chief, Professor Mark Cooney, and his staff work tirelessly to bring us first-rate scholarship on legal writing. Scribes thanks the following contributing editors: Bryan, Mark, Distinguished Emeritus Professor Joseph Kimble, copy-editor Karen Magnuson, and Cindy Hurst. Scribes would also like to thank editors Raymond Ward, Laurel Romanella, Jill Barton, and DeLeith Gossett.

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Visit the website and click on a journal cover to see that edition's table of contents.

Texas Tech University School of Law Joins The John Marshall Law School in Establishing a Pilot Scribes Program for Students

Texas Tech University School of Law will pilot a Scribes Student Legal Writing Society during academic year 2016-2017. The Scribes Headquarters Office will work in conjunction with the law faculty at TTUSL to host monthly writing events for law students. The student society will learn about Scribes history, the writing process – both scholarly and practical, publishing, and discuss good legal writing. The Texas Tech University School of Law Library will also host "write-ins" for students to work on their comments or seminar papers.

TTUSL joins The John Marshall Law School as a pilot for the Scribes student groups. If you are interested in bringing a Scribes student group to your law school, please contact the Scribes Headquarters Office via email at scribeslegalwriters@gmail.com.

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Scribes Book Award Goes to Will Haygood and Lawrence M. Friedman

Scribes is pleased to announce that the annual Scribes Book Award was presented to Will Haygood for *Showdown: Thurgood Marshall and the Supreme Court Nominations that Changed America*, and to Lawrence M. Friedman for *The Big Trial: Law as Public Spectacle*. Mr. Friedman's remarks are set out below.

I am deeply honored to be the co-winner of the Scribes 2016 book award, for my book, "The Big Trial;" and I am very sorry that I won't be able to receive the award in person. It would have been a great pleasure to be present; and if I were there, I would also have the opportunity to give special thanks to the University Press of Kansas, and especially to Charles Myers, the Director of the Press, for the help and encouragement I received from the Press.

I have, in the past, written a good deal about the history of criminal justice in America. I have spent a lot of time in the basement of courthouses, looking at dusty old files. I have tried to make the case that these dull, ordinary, routine cases, the plankton of the sea of criminal justice, are important in the aggregate. They show us the workaday world of the law, and they help us to unlock its secrets. Scholarship should pay more attention to these countless cases of drunks, vagrants, and street-walkers; and all the other members of this unsung and unchronicled tribe. We need to look, too, at the vast number of felony cases that make no particular splash in the world: the army of drug addicts, pushers, young men in ski masks who rob convenience stores, forgers and embezzlers; the plea bargainers, the multiple losers—the main (but unheralded) players in the drama of criminal justice.

Most of the attention goes to the big cases, the headline cases, the cases on the evening news and on the front page of the local newspaper. Some of these cases, like O. J. Simpson's trial, the trial of the Rosenbergs, or Lizzie Borden's trial, have generated a substantial literature. And yet, in a sense the big trial has been neglected; by this I mean that surprisingly little has been written *systematically* about headline trials, about big trials in general. So what I tried to do in this book is to turn my attention to these trials, as a group, a class, a species. I tried to classify them, to arrange them in neat little boxes; and try to explain the mystery that lies at the heart of some of them: why where they so famous? Why did they attract so much attention? What was it about these cases that so fascinated the public?

Sometimes the answer is obvious: the trial of Charles Guiteau, for example, who assassinated President Garfield; or the trial of Aaron Burr; or many of the sensational *political* trials. But what is it about Lizzie Borden that has so captured the imagination of the public? Why has book after book been written about this double murder in Fall River, Massachusetts, more than a century ago? Why has it entered American folklore? Big trials, I argue, all have messages. They are all didactic theater; they are social dramas, which explore or display important, deep-seated issues in America's normative life. My book is an attempt to show what these issues are; and how the big trial illuminates (or obscures) social problems and their solution.

But the Scribes award is not, as I understand it, in recognition of the arguments I make, nor even about my research: it is about the style, the writing in the book. And I find this particularly gratifying—gratifying to receive an award from an organization dedicated to clean, honest, effective prose, an organization which aims to "promote a clear, succinct, and forceful style in legal writing." Frankly, a great many books and articles that deal with law and the legal system, and a great many judicial opinions, fall far short of this ideal. Their style, to put it bluntly, is abysmal. Their language is turgid. Ugly. Dull. They string together chains of long and often obscure sentences. Their work is peppered with stilted words like "whereas" and "albeit." They use the passive voice far too

Scribes will hold a CLE on legal writing in Houston on **October 28, 2016** at the Harris County 1910 Courthouse. Scribes will also hold a CLE in Oklahoma City on **April 21, 2017** at the Oklahoma City University School of Law.

Click here to register for the Houston CLE.

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often. They prefer big words to little words, rare words to common words.

People who draft statutes and regulations at least have something of an excuse. Their job is to make sure their text has no loopholes, no inner contradictions. Their text has to say what its proponents want it to say, no more and no less. A flowing style is not their central concern. Maybe this attitude spills over into academic writing. Or maybe the problem is the tyranny of the law reviews, with their infamous book of rules. Student editors seem to have a passion for rewriting the work of their elders, and in the process, leaching out anything that does not conform to a crabbed, cramped, and unlovely style.

Paradoxically, writing clear, simple English is not that easy; it does not come naturally. It takes hard work. But it is worthwhile work. This is not just a matter of esthetics; good writing is also good reading, and good reading is good communication. A democratic society should be an informed society; and good communication is vital to the job of informing and educating the public.

Scribes is dedicated to good writing. This means writing which at least *seems* smooth, natural, and effortless. I applaud Scribes for wanting to honor those who make the effort. If I may say so, I do make the effort: I try hard, and I hope that, at least sometimes, I succeed. It is enormously gratifying to me that *Scribes* has chosen *The Big Trial* as co-winner of this year's award. Whether I merit it or not, it is important that this organization continues to work toward the goals it announces. And, as I said, I take their award as an enormous honor.

Scribes

The American Society of Legal Writers

2016 Houston CLE
October 28, 2016

Harris County 1910 Courthouse
301 Fannin, Room 245
Third Floor
First Court of Appeals Courtroom
Houston, TX 77002

2.5 Hours MCLE Credit

- **12:30pm Registration**
- **1:00pm Welcome: Chief Justice Kem Frost & Dean Darby Dickerson**
- **1:15pm – 2:30pm Giving Clients What They Want: Clear, Concise Communication**

Executive summaries, PowerPoint presentations, status reports, and the like often contain too much information. Unnecessary detail defeats the purpose of a summary and sometimes obscures critical data points. Reader-focused writing gives clients the crucial information clearly and concisely. Learn what lawyers can do to make this genre of legal writing more effective.

Bill Buck, *General Counsel, ExxonMobil Development Company*
Mark Schwartz, *Senior Vice President and Chief Human Resources Office, Waste Management, Inc.*

- **2:40pm – 3:25pm Reader-Focused Legal Writing for Arbitration**

For lawyers making a case, audience matters. Communicating with industry experts takes a special set of skills. Whether preparing submissions or other requests for relief, writing for arbitration presents unique challenges. Learn the most effective ways to get the client's message across in arbitration.

Ann Ryan Robertson, *International Partner, Locke Lord, LL.P.*

- **3:30pm – 4:25pm Opinion Writing Panel**

What is the best way to tell the court what you want and why you are entitled to it? Learn the secrets to effective motion-drafting from the experts as they provide practical tips for honing this important skill.

Erin Busby – Moderator
Hon. Jane Bland, *Court of Appeals for the First District of Texas*
Hon. George Hanks, *United States District Court for the Southern District of Texas*

Scribes Annual CLE & Board Meeting

By Jamie Baker

Scribes held its first-annual CLE, "Legal Writing: From Basics to Application," at The John Marshall Law School in Chicago on April 15, 2016.

Scribes provided programming in conjunction with esteemed members of the bench, bar, and legal academy. Judge Thomas Donnelly moderated the first panel on ethics and writing that included Professor Kevin Hopkins, Judge Kem Frost, and Dennis Rendleman from the ABA.

Dean Darby Dickerson welcomed Professor Jill Patterson and Professor Lisa McElroy to speak about Storytelling for Lawyers. Each speaker had captivating examples on presenting client stories for effective advocacy.

This was followed by an opinion writing panel that Judge Kevin G. Ross moderated. The panel included Justice Mary Jane Theis, Judge David Ellis, and Judge A. Benjamin Goldgar. Professor Mark Cooney and Professor Kim Chanbonpin closed with a session on basic writing tips.

After the programming, Scribes held a vote on the proposed amendments to the constitution and bylaws. The amendments passed unopposed, and the current version of both documents can be found on the Scribes website.

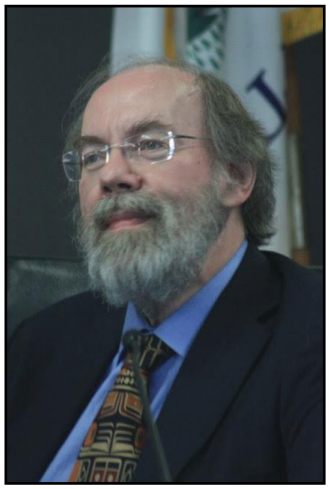
Scribes concluded the evening by holding a reception to honor our Lifetime Achievement Award Winners, The Honorable Frank Easterbrook and The Honorable Richard Posner. Bryan A. Garner held a well-received Q&A session with the winners.

To view the 2016 Chicago CLE materials, please visit our website under the heading CLEs. Scribes looks forward to continuing the annual CLE tradition by holding its next CLE on April 21, 2017 at the Oklahoma City University School of Law in Oklahoma City, Oklahoma.

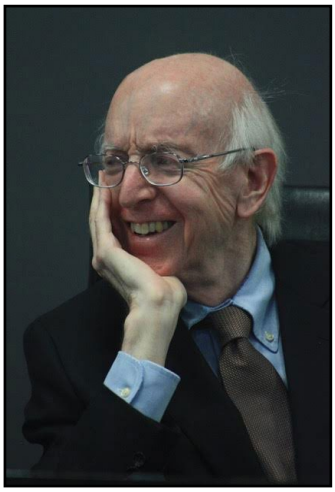
Following the CLE on Friday, Scribes held its Board Meeting on Saturday morning at The Union League Club of Chicago. Scribes President, Judge Michael Hyman, lead a productive meeting where the sixteen-member Board of Directors reviewed the strategic planning initiatives and future programming of Scribes. Each Committee gave an update and provided goals for the upcoming year.

Scribes Annual CLE & Board Meeting

Opinion Writing Panel
Judge Benjamin A. Goldgar, Justice Mary Jane Theis, Justice David Ellis, & Judge Kevin Ross



Lifetime Acheivement Award Winner
Judge Frank Easterbrook



Lifetime Achievement Award Winner Judge Richard Posner

Professor Mark Cooney

Bryan A. Garner

Professor Lisa McElroy & Dean Darby Dickerson

Book Award, Lifetime Achievement Award, Host School Awards

Charles D. Cole, Jr. & Judge Mark Painter

Professor Kim Chanbonpin

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