The Scrivener

Scribes — The American Society of Legal Writers

Fall 2006

Annual Luncheon a Great Success

President's Column

Norman Otto Stockmeyer
Emeritus Professor
Thomas M. Cooley Law School

"It was a pleasant, finely orchestrated, and well-attended meeting."

"Congratulations on a very successful and enjoyable event."

"Kudos for a superb annual luncheon, with a first-rate presentation."

"A huge success—the best one I've attended."

"It was certainly one of our most successful. The book raffle was the icing on the cake."

Those were some of the e-mail accolades I received following our annual luncheon in August. It truly was a nice event for those members of Scribes fortunate enough to be in Honolulu for the ABA convention.

The turn-of-the-20th-century Sheraton Moana Surfrider was a choice venue, and we filled the charming Rooftop Garden with members and guests. They included the deans of four of our institutional members: Deans James Alfini of South Texas, Don Dunn of La Verne, Dennis Honabach of Northern Kentucky, and Steve Smith of California Western. Three other institutional members sent representatives: John Marshall, Thomas M. Cooley, and University of Texas. Thank you for your support.

The Scribes Brief-Writing Award was presented to the moot-court team of Heather Harris and Erica Thonsgard of the University of Houston. Theirs was selected from 57 entries, all winning briefs from regional and national moot-court competitions.

Yale Law Professor Ian Ayres and Georgetown Law Professor Gregory Klass won the 46th Scribes Book Award for *Insincere Promises: The Law of Misrepresented Intent* (Yale University Press). Prof. Klass was present to accept the award and autograph copies of the book.

I want to express a great big thank-you to Judge Kenneth Gartner and the members of his Brief-Writing Award Committee, and to Judge Michael Hyman and his Book-Award Committee, for the enormous amount of time they devoted to the selection process.

Don Dunn did a fine job of introducing our speaker, Roy Mersky. Both are former presidents of Scribes and coauthors of a popular law-school text on legal research. Roy was in top form, delivering a thoughtful and timely talk on the state of teaching legal research and legal writing in American law schools.

The luncheon concluded with a raffle of 20 legal-writing books that were written, donated, and inscribed by four Scribes board members: Bryan Garner, Darby Dickerson, Joe Kimble, and Richard Wydick. Scribes is much indebted to them, as well as to the Thomson West organization, our luncheon sponsor. Their financial support kept the cost of a luncheon ticket very reasonable.

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(continued from page 1)

I also want to acknowledge and express appreciation to the two Honolulu members of the Annual Meeting Committee, Sherrie Sasaki and Susan Jaworski. They provided on-site help with planning and arrangements, and they donated beautiful leis for our officers and dignitaries.

At a brief business meeting after the luncheon, members adopted amendments to our constitution and bylaws. One result is that we are now "Scribes—The American Society of Legal Writers."

Members also filled three three-year terms on the board of directors. Reelected were Charles Dewey Cole, Jr., a trial and appellate lawyer with the Wall Street law firm Newman Fitch Altheim Myers, P.C.; and Christy Nisbett, court administrator of the Travis County (Texas) Probate Court. Also elected was newcomer Christopher Wren, solicitor general for the Wisconsin Department of Justice.

Finally, I must acknowledge the extremely capable planning of every detail by our executive director, Joe Kimble, and his assistant, Becky McAlpine, at Thomas M. Cooley Law School. The accolades rightly go to them.

Legal-Writing Tidbit

The renowned appellate advocate John W. Davis, in *The Argument of an Appeal*, 26 ABA Journal 895 (1940), famously wrote that if fish could talk, no one would ask an angler what bait is best. Thankfully, some targets of appeals have published their thoughts on what constitutes persuasive advocacy. Among that genre, one of my longtime favorites is Judge Godbold's *Twenty Pages and Twenty Minutes—Effective Advocacy on Appeal*, 30 Southwestern Law Journal 801 (1976).

Now Judge J. Dean Morgan has published his succinct suggestions for persuasive communication. Recently retired from the Washington State Court of Appeals, Division Two, Judge Morgan served for some years as Chief Judge of the Washington State Court of Appeals. He has also taught extensively at two law schools and at both the Washington State and National Judicial Colleges. I appreciate his permission to pass along this sage advice to appellate anglers.

Judge J. Dean Morgan's Top Ten List for Legal Writers*

I offer ten suggestions for legal writing. Each is a generalization that will help many, but not all, situations.

1. Use short words, short sentences, short paragraphs.

The goal is to communicate clearly and quickly. A writer is more likely to achieve that goal if he or she uses common words, simple sentences, and a separate paragraph for each idea.

2. Strip away excess verbiage.

Communication requires clarity. To achieve clarity, one must expose the essence of the case. To expose the essence of the case, one must strip away the superfluous.

3. Play your own game first.

Describe your theory in complete and cohesive form; *then* rebut your opponent's theory. If you rebut your opponent's theory in the midst of discussing your own, you risk obscuring your own.

4. Recognize and deal with your weak points.

To a limited extent, the court is interested in your strong point. To a greater extent, the court is interested in your weak points—in other words, in exploring the bad things that may happen if it embraces your position. What any judge really wants to know is this: If I jump over the cliff in the direction you are urging, how far will I fall?

5. Don't overstate your facts or your authorities.

If you don't follow this tip, your credibility will suffer—in this case, and perhaps in future cases also.

6. Write, rewrite, and rewrite some more.

As someone once said, there's no such thing as great writing; there's only great *re*writing.

7. Write a road map.

A *road map* is a statement of each proposition essential to your analysis, in linear order. If you can't write a road map, think about settling.

8. Begin each paragraph with a topic sentence that proceeds linearly from the last to the next.

If you have written a road map, this step will not be as hard; if you haven't, this step may be impossible. To do this is to avoid redundancy.

9. Follow the usual rules of good writing. Examples:

a. active over passive;
b. singular over plural;
c. present tense over other tenses;
d. parallel subjects within the same paragraph;
e. one meaning per pronoun within the same paragraph;
f. transition words to relate ideas (e.g. *accordingly*, *hence*, *thus*, *therefore*, *consequently*, *additionally*, *alternatively*, *finally*);
g. subject and verb as close together as possible.

10. Above all, make sense.

Would your barber or grocery clerk understand why you are right? If not, go back and start again.

* Reprinted from 8 *Legal Writing: The Journal of the Legal Writing Institute* 226 (2002) with permission of the author and publisher.

Otto Stockmeyer and Michael Hyman tearing up the old Scribes banner. Scribes has changed its name to Scribes—The American Society of Legal Writers.

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

Winter	January 15
Spring	April 15
Summer	July 15

Jane Siegel
Thomas M. Cooley Law School
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Lansing, Michigan 48901
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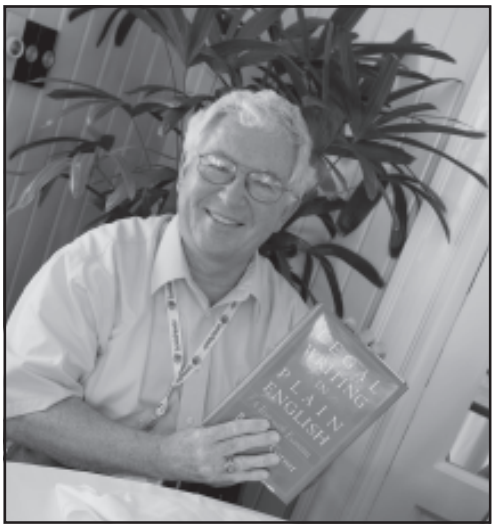
Volume 10 of *The Scribes Journal of Legal Writing* was mailed in early August. If you did not receive it, please contact Joe Kimble: kimblej @cooley.edu.

From the Annual Meeting



Dean James Alfini of South Texas College of Law, an institutional member of Scribes. Dean Alfini is holding one of the door prizes.

Door prizes donated and signed by Scribes board members Bryan Garner, Darby Dickerson, Joseph Kimble, and Richard Wydick.

Dean Stephen Smith of California Western School of Law, an institutional member of Scribes. Dean Smith is a Scribes board member.

Professor Gregory Klass signing copies of his award-winning book, Insincere Promises: The Law of Misrepresented Intent. *His coauthor was Professor Ian Ayres.*

From the Annual Meeting

From left to right, Gregory Klass, Scribes President Otto Stockmeyer, Michael Hyman, Mark Wojcik, Leslie Hyman, and Dorean Koenig.

Susanna Ripken

Dan and Andrea Nicewander

Sherri Sasaki

News from Members

Roy M. Mersky was appointed to the *State Bar of Texas Bar Journal* Board of Editors. Roy was also selected unanimously by the University of Wisconsin-Madison School of Library and Information Studies Alumni Association as the recipient of the Centennial Celebration Alumnus of the Year Award, with recognition in the Special Libraries category. Roy received this award in Madison on September 30, 2006.

Marc M. Schneier has published "Understanding and Applying Construction Law" in *Essentials of Construction Management* (Informa Center for Professional Development 2006).

A lawyer and author seeks examples of well-written judicial opinions for inclusion in an anthology focusing on the simple and effective use of language. For suggested selection criteria or to nominate particular cases, contact:

J. Stuart Showalter
1313 Lake Willisara Circle
Orlando, Florida 32806
(407) 650-4996 or
sshowalter@cfl.rr.com

Scribes Book Award Goes to *Insincere Promises: The Law of Misrepresented Intent* by Ayers and Klass

The 46th annual Scribes Book Award was presented to Yale Law Professor Ian Ayres and Georgetown Law Professor Gregory Klass for their book Insincere Promises: The Law of Misrepresented Intent. *The book was selected from a long and prestigious list of nominees; the complete list was published in the summer* Scrivener, *and short reviews by Steve Sheppard appear at www.scribes.org/SteveSheppardArticle2.pdf. Prof. Klass was at the Scribes luncheon in Hawaii to accept the award and autograph copies of the book. His acceptance remarks are excerpted below.*

Judge Michael Hyman, Chair of the Scribes Book-Award Committee, presenting the 2006 award to Professor Gregory Klass.

It was a real pleasure when I heard that we received the Scribes Book Award. First, we are in very good company, in a list of wonderful books that have received this award. The first book I was assigned in law school was an award winner: Jonathan Harr's *A Civil Action*. And when I received the news, I was in the middle of another recipient: Edward White's biography of Justice Holmes, *Law and the Inner Self*.

Second, it was such a pleasant surprise to hear that we were receiving this award for a book that is about a rather odd and ignored legal subject: promissory fraud. The basic idea of promissory fraud is a familiar one: Breaking one's promise is bad, but it's much worse to make a promise you don't intend to keep.

One example of promissory fraud that I discovered recently is *The Wizard of Oz*. When Dorothy and her friends arrive in Oz and first meet with the Wizard, he tells them he will grant their wishes but only if they first kill the Wicked Witch of the West. The four heroes tromp off, accomplish that task, and return to Oz expecting the Wizard to fulfill his side of the bargain. Only at this point do they learn that he's not a real wizard and that it was never in his power to grant their wishes—particularly Dorothy's wish to go home. Dorothy responds that the Wizard is nothing but a "humbug." What she means is that it would have been understandable if, after the Wizard had made his promise and while the four were away taking care of the Wicked Witch, something had happened that prevented him from performing. His breach would be understandable if, for example, he lost his wizardly powers, or the cost of sending Dorothy home had suddenly shot up, or he had an unexpected opportunity to sell his powers to someone else at a higher price. But what the Wizard did was worse: He never intended to perform. He was not just a promise-breaker; he was a charlatan.

For over a hundred years, the law has recognized the action for promissory fraud. A promise accomplishes two things at once. First, it puts the promisor under an obligation to perform. This is what gives rise to the action for breach of contract. Second, it represents that the promisor intends to perform. When this is false—that is, when the promisor doesn't intend to perform—the misrepresentation may qualify as fraud. The promisor, in addition to liability for breach of contract, may be subject to tort liability—and even criminal liability.

Promissory fraud is a forgotten corner of contract law, where contractual duties overlap with tort duties. Who would write an entire book about this little anomaly? While Ian and I obviously find promissory fraud just fascinating, it's great to know that some other people share our unusual taste.

The third reason I am so pleased to be receiving the Scribes Book Award is that it suggests Ian and I succeeded in transposing something of the theory of law into a practical register that is of wider interest. We tried to write something that would be interesting and

Dean Harold Koh, of Yale Law School, presenting the 2006 award to Professor Ian Ayres at a Yale faculty meeting.

useful to both academics and practitioners, by transmitting ideas often expressed in technical language in a more accessible way.

One example is the difference between not intending to do something and intending not to do it. If Juliet's father tells her, "I have no intention of permitting you to see that Romeo again," what he really means is that he intends not to let her see Romeo. Not only does he have no intent to allow the relationship; he intends to disallow it. But there is a difference between *no intent* and *intent not to*.

If I were to ask you right now whether you intend to hold your breath for the next four minutes, the answer would probably be "No." But the reason is not because, before I asked, you intended not to hold your breath. It is because, until I raised the issue, you hadn't even thought of the idea. You didn't have an intent one way or the other. You did not intend to hold your breath, nor did you intend not to hold your breath.

The distinction is important for the law of promissory fraud because it's much worse to enter into a contract with an affirmative plan to breach than it is to enter into a contract you are not sure you are going to perform. We would reserve criminal liability for the former case, although civil liability is appropriate where there is a mere lack of intent.

That was one of the challenges in writing the book—explaining these subtle theoretical distinctions in a way that was accessible, so accessible that you could imagine instructing a jury on them. So that is the third reason—in addition to the good company it puts us in and the book's odd subject matter—that I am so pleased to receive the Scribes Book Award.

Because this is an organization devoted to legal writing, I presume everyone understands the power of now having arrived at a third point. Two is never enough, and four is almost always too many. So I will end with three. Thank you.

New This Year: Honorable Mentions to the 2006 Book Award

In addition to the annual book award, Scribes awarded two Honorable Mentions and a Special Commendation.

For an outstanding work of legal scholarship published during the previous year, Scribes awarded an Honorable Mention to **Protecting Liberty in an Age of Terror**, by Philip B. Haymann and Juliette N. Kayyem (160 pages, MIT Press, $20). The book surveys the laws affecting the security of the United States, discusses central questions in the tension between individual liberty and collective security, considers the policy implications, and makes clear recommendations. The prose is straightforward; the authors' style never interferes with their ideas.

A second Honorable Mention went to **Courtroom 302: A Year Behind the Scenes in an American Criminal Courtroom**, by Steve Bogira (416 pages, Knopf, $25; paper, Vintage, $14.95). Bogira records the daily events affecting a single criminal court—one of America's busiest, Cook County Criminal Court in Chicago. The prosecutors, the addicts, the crooks, and the judge are real people, and the author writes about them in a clear journalistic style.

Finally, the Book-Award Committee awarded a Special Commendation for a work that has been an outstanding contribution, over time, to advancing legal writing: **Plain English for Lawyers**, Fifth Edition, by Richard C. Wydick (139 pages, Carolina Academic Press, $17). Through five editions and over 30 years, this writing guide and style manual has become a driving force in the plain-language movement. Students, practicing lawyers, judges, and scholars keep this little book on their bookshelves and turn to it often.

The History and the Future of Teaching Legal Writing and Research

Roy Mersky

Professor Roy M. Mersky spoke at the Scribes annual meeting and luncheon; excerpts of his speech appear below. Don Dunn introduced Prof. Mersky.

Introduction by Don Dunn:

I am honored to introduce Professor Roy Mersky, who holds the Harry M. Reasoner Chair in Law at the University of Texas. To introduce Roy Mersky properly would take longer than he has been asked to speak. He has been my mentor for almost 40 years. He also has been a mentor to countless others, putting more individuals into law-library director positions than anyone in this country.

Dean Donald Dunn, of the University of La Verne College of Law, introducing the guest speaker, Professor Roy Mersky. La Verne is an institutional member of Scribes, and Dean Dunn is a past president.

Roy has his B.S., J.D., and M.A.L.S., all from the University of Wisconsin in Madison. This September, he will receive the Centennial Alumnus of the Year Award from his alma mater. He is a member of the American Law Institute, the American Bar Foundation, the ABA's Law Library of Congress, and numerous other prestigious groups and organizations. He served as a member of the Scribes board for several years and as its president from 1991–93. In 2003, the American Library Association named him a "Mover and Shaker," recognizing him as one of the most influential librarians in the country.

Roy began his work in 1953 when he accepted a position at the Milwaukee Municipal Reference Library. From 1954–59, he worked in the reference department at Yale Law Library. In 1959, he was named Director of the Washington Supreme Court Library. In 1963, he became Director of the University of Colorado Law Library. For the past 40 years, he has been the director of the law library at the University of Texas at Austin. Under his leadership, the Jamail Center for Legal Research has become one of the most important research centers in the nation. He has pioneered approaches to library management that have improved library resources, services, and facilities. He is an expert in legal research, law librarianship, language and the law, law-library architecture, and the history of the U.S. Supreme Court.

His publication list is so long that I can highlight just a few. Since 1973, he has coauthored *Fundamentals of Legal Research*, now in its eighth edition; he is hard at work on the ninth. I have had the honor of being his coauthor since the sixth edition. In July of this year, the Centennial Committee of the Academic Law Library Special Interest Section of the American Association of Law Libraries named the eighth edition of *Fundamentals* as one of the most influential writings in the law-library profession for the second half of the twentieth century. Roy recently coauthored *The First One Hundred Eight Justices*; he coedits the multivolume series *The Supreme Court of the United States: Hearings and Reports on Successful and Unsuccessful Justices by the Senate Judiciary Committee*.

Roy Mersky is a true leader in the legal and the law-library professions. He is indeed a mover and a shaker. But most importantly for me, he is my very great friend.

Professor Roy Mersky:

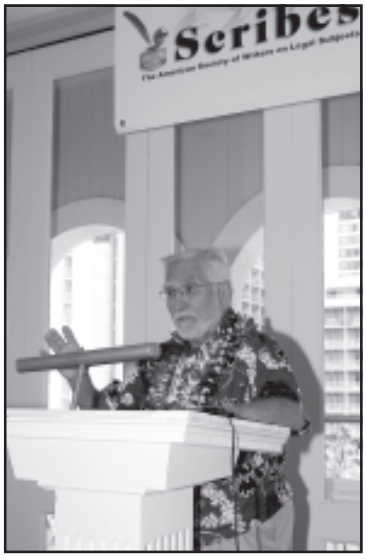
I am especially pleased and honored to have been asked to speak at this luncheon hosted by Scribes—in its own words, the "American Society of Legal Writers." In a day and age when the notion of legal subjects has

become increasingly amorphous and when we see legal education and, most pertinently for this audience, legal writing and legal research incorporate disciplines and methodologies from far afield, it might be worthwhile to reflect on the recent history of legal-writing and legal-research education and look forward to its future. And I must say that I am quite optimistic, although cautiously so, about that future, due in no small part to what I see as an increasingly healthy relationship between legal-writing instructors and legal-research instructors. I emphasize here that I consider those two different groups of educators, with very different expertise and very different responsibilities.

Let me begin by saying that some of my best friends are legal-writing instructors. Of course, that phrase immediately suggests a form of prejudice of which, I must confess, I may, at some time, have been guilty. As one whose professional career has been dedicated to teaching legal research, I have at times over the past two decades been jealous and envious of the attention that legal writing receives in the typical law-school curriculum. That attention, I felt, was often at the expense of legal-research instruction. With the publication of the MacCrate Report in 1992, training in legal writing became the object of increased funding, talent, and time.

It was certainly true in 1992, and it remains true today, that not enough money, not enough time, and not enough concern are devoted to legal-writing programs. Legal-writing instructors have often been treated like poor relatives of the law school. But as bad as that position and status may have been within the law-school community, the teaching of legal research, eclipsed by legal writing, was for some time relegated to an even lesser position. Legal-writing instructors were asked to be jacks—and jills—of all trades, responsible for teaching first and foremost legal writing, but also, as clearly subordinate tasks, responsible for teaching legal research and other practice skills, counseling the tender psyches of first-year law students, and conducting advocacy and writing competitions.

My former colleague Doug Laycock, a veteran of the legal-writing battles and a strong supporter of teaching legal writing and legal research, identified, in an article published in Scribes in 1990, three academic functions, related but distinct, served by the first-year writing course: (1) it gives students their only chance to practice their burgeoning legal-reasoning skills on a sustained basis; (2) it teaches legal research; and (3) it teaches legal writing. In Doug's view, because the course does these various things, it cannot do much about *bad* legal writing. Students do not enter law school with the basic skills in legal writing, and what they must learn first is a new set of conventions, a new set of forms, and a new vocabulary.



Professor Roy Mersky presenting his talk on teaching legal research and writing. He is a past president of Scribes.

Doug's argument is that, in serving important but varied functions in the first year, the course lacks the time and the instructors the energy to teach anything beyond the rudiments of legal writing. Therefore, the argument continues, the course is hard-pressed to respond to complaints that students graduate without knowing how to write effectively.

Doug suggests that teaching the basics of legal writing is even more fundamental than teaching *better* legal writing. We might recognize that the first-year writing course cannot address the problem of students who do not write well. Doug concludes that any serious effort to improve our students' writing must continue in the second and third years.

Those of us who have spent years in legal education know that such complaints about the lack of writing skills are not new. Listen to the following passage:

> Most members of law firms tell me that the young men who are coming to them today cannot write well. I think the situation has reached almost epidemic proportions. . . . I don't think the practicing bar and the law firms can undertake to cure the deficiencies of the men that matriculate from law schools . . . New York law offices are paying $7,500 per annum for a prospect just finishing law school.

The gender-biased language, not to mention the salary figure, gives away the fact that this is not a

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contemporary lament. It is from a speech by Dean William Warren of Columbia Law School in 1958.

More recently, in February of this year, a bankruptcy judge responded to a party's motion with an "order denying motion for incomprehensibility." The court explained its holding in a footnote quoting from, of all things (and I am not using this as an example of the sources for legal research), the movie *Billy Madison*:

> Mr. Madison, what you've just said is one of the most insanely idiotic things I've ever heard. At no point in your rambling, incoherent response was there anything that could even be considered a rational thought. Everyone in this room is now dumber for having listened to it. I award you no points, and may God have mercy on your soul.

The court concluded its chastisement by noting that "deciphering motions like the one presented here wastes valuable chamber staff time and invites this sort of footnote."

So as Yogi Berra might put it, nearly forty years after Dean Warren's remarks, it is "déjà vu all over again."

In the twenty-first century, legal writing is a vital subject. Legal-writing programs are well established and fairly well recognized for the significant positive impact they have on students' scholarship and on the sense of community among students in law school. And the legal-writing literature has exploded; there are innumerable legal-writing texts and commentaries, there is a stand-alone, legal-skills bar exam published by the National Conference of Bar Examiners, and the sheer number of law-school courses incorporating legal-writing components continues to multiply.

But legal-writing instructors are still asked to take on much more than legal writing alone. There is little consensus on a standard curriculum for the first-year legal-writing course. Topics covered in the various legal-writing texts include introduction to the law and the common-law system; sources of the law; the court system; analyzing legal authority; legal method; briefing cases; writing law-school examinations; drafting letters and contracts; writing a legal memorandum; organizing a legal discussion; effective paragraphs; legal research; format of an appellate brief; advocacy and oral argument. And this is just a representative sampling of topics.

Many of my colleagues who teach "real" first-year courses—torts, contracts, property, constitutional law—continue to view skills courses such as legal writing and legal research as distractions from the real work at hand. Worse yet, in their view, we don't hide the ball. When the law-school culture—one immersed in theory—is invaded, some might say, by the introduction of practical skills, the result can be angry faculty and schizoid students—never a happy combination.

I have long argued that increased attention to legal writing has come at the cost of teaching legal research. Many of our students and graduates are simply unable to perform competent legal research. The problem is exacerbated when students arrive in law school with an often misplaced confidence in their information-gathering skills. Today, students are quite able and, in their minds, efficient in retrieving all sorts of information with, frankly, very little effort. In the old days, the sight of the law library with its distinctive, yet unfamiliar, volumes might be enough to intimidate law students into paying attention to legal-research instruction. There's no similar intimidation factor today when students approach electronic resources (perhaps there should be, but there simply isn't).

Complaints and comments from practitioners testify to the inadequacy of the legal-research skills of young lawyers; a representative comment from an experienced practitioner follows:

> Our attorneys are smart and can spot issues in any assignment with little difficulty. However, when it comes to researching these issues, they are really quite lost. They have no idea how to design a research strategy and usually just jump into a variety of sources without any direction. The inefficiency and waste of the clients' money is incredible.

Another lawyer similarly recognized the problem and pointed to a possible solution:

> Legal-research training programs at United States law schools are grossly inadequate. These programs should be an integral part of the curriculum throughout law school rather than just a few weeks each semester. Legal research is often crammed into a one-week or one-semester course. It ought to be spread over three years. Give the first-year students the basics, and, for example, don't cover administrative materials until they have had administrative law.

And, of course, there are legions of stories that proliferate among the legal community about young associates who cite cases overruled decades previously, who think that *Federal Reporter 2d* includes only federal cases from the Second Circuit, or who assume that, if information cannot be retrieved on Lexis or Westlaw, then it is unobtainable or, even worse, simply does not exist.

But I am encouraged that the twenty-first century has seen a renewed focus and healthy attention directed to teaching legal research in law schools. Law-school administrators have heard the cries of practitioners and, even more persuasively, the voices of alumni and have taken note of students' interest in upper-level courses devoted to teaching legal research and in outreach programs undertaken by law libraries. At the University of Texas, we have long offered intensive upper-level courses in advanced legal-research topics—ranging from international and foreign materials to intellectual-property law to tax. For the first time this past year, our lawyer librarians, working with our legal-writing instructors, offered a first-year elective focusing on advanced legal-research strategies in the context of brief-writing and oral advocacy. That elective was limited to four sections of 20 students each, and I'm happy to say that each section was oversubscribed.

I also teach two three-hour courses each year that are cross-listed in the law school and the University of Texas Graduate School of Information. One of those courses comprehensively covers legal-research resources and strategies in both U.S. and foreign law; the other is designed to provide a broad overview of theory and practice in legal-information organization, retrieval, and access. And again, we do not have enough space in those courses for the law students who wish to register. Other law schools and law librarians are seeing similar renewed interest in legal research.

Recognition of this increased attention on legal-research skills has prompted the American Association of Law Libraries to explore what it can do to foster and support legal research as a subject specialty, in academia, in practice, and in our communities. One outcome of an AALL committee formed to study this issue was the development of a grant program that will support initiatives to develop legal-research programs for a variety of audiences. I plan to sponsor a symposium at Tarlton that will focus on teaching the teachers of legal research in educational methods and strategies.

Another especially positive development is the initiative recently undertaken by the National Conference of Bar Examiners to explore the possibility of developing a stand-alone bar exam on legal research. This project is in a very preliminary stage, but the Conference's recognition of the importance of legal-research skills and the necessity of ensuring that law graduates are equipped with those skills bodes well for educators who have long struggled to squeeze legal research into already crowded curricula.

With the increased attention on legal research, I hope there will be a corresponding focus on the nature and qualifications of the individuals who teach legal research. Our world is characterized by how information is exchanged and how knowledge is amassed, incorporated into specific tasks and daily life, and leveraged. The practice and scholarship of law is predicated on easy and efficient access to information, and the nature of that information is changing as we speak. The instructors of legal research must be both information professionals, skilled in information-retrieval theory and practice, and licensed attorneys who understand legal analysis and the content of law-related sources, and who are able to apply that knowledge in both academic and practical environments. I've just described a lawyer librarian.

I'm encouraged that law schools have begun to at least recognize that legal research deserves instructors and a curriculum of its own and that many legal-writing instructors support the development of that curriculum outside legal-writing instruction. The work of the Conference of Bar Examiners will only further these developments.

John Locke once said, with unusually pertinent application to the twenty-first century, that things of this world are in so constant a flux that nothing remains long in the same state. How well this applies not only to legal research, but to teaching legal research and legal writing and, in fact, to the entire law-school curriculum as well. Over a century ago, Christopher Columbus Langdell had one crucial idea that changed and molded legal education: the case system. I hope that legal-writing and legal-research instructors will similarly revolutionize at least some aspects of the law-school curriculum so that law scholarship and law practice have the benefits of the information explosion that will no doubt continue unabated well into this century.

Scribes Will Sponsor Panel on Writing Jury Instructions at the AALS Annual Meeting

Scribes is sponsoring a panel on writing jury instructions on January 6 in Washington, D.C. We will be doing it during the annual meeting of the Association of American Law Schools.

Jury instructions are a hot plain-language topic these days—and rightly so. Justice depends on whether jurors can understand the law they are supposed to apply, and for years jury instructions have been incomprehensible to most jurors. That's starting to change. The National Center for State Courts has been pushing hard for plainer instructions. And some states are finally acting. California has just written entirely new civil and criminal instructions. In fact, two California justices who led that work will be on the panel. Another panelist will be the author of the lead article—on communicating with juries—in Volume 10 of *The Scribes Journal of Legal Writing*.

Here are the details:

Program:	*Jury Instructions in Plain English*
Panelists:	Justice James Ward Justice Carol Corrigan Professor Peter Tiersma Professor Wayne Schiess Professor Joseph Kimble
Date:	Saturday, January 6, 2007
Time:	10:45 a.m. to 12:15 p.m.
Place:	Hoover Room Mezzanine Level Marriott Wardman Park Hotel 2660 Woodley Road, NW Washington, D.C.

New Members

Zascha Blanco Abbott (Coral Gables, Florida)
Daniel Aleksynes* (Grand Rapids, Michigan)
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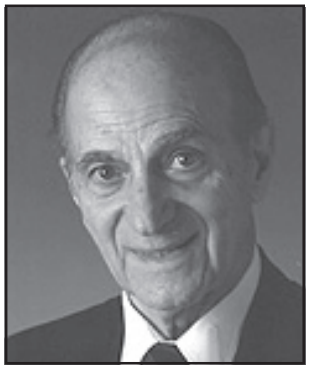
In Memory of Judge Edward D. Re



The Honorable Edward D. Re

Scribes is saddened by the passing of Edward D. Re of New York, an active member and former president of this organization. He served as the first Chief Judge of the United States Court of International Trade. When he retired in 1991, Judge Re was named a Distinguished Professor of Law at St. John's University School of Law. He was the author of several books, including a Remedies casebook for Foundation Press and *Brief Writing and Oral Argument*, published by Oceana Publications. During his lifetime, he received 20 honorary degrees from universities in the United States and abroad.

Judge Re was president of Scribes in 1978–79. He remained active in the affairs of Scribes for years, and he was the featured speaker at the 1994 annual luncheon. His talk, "Law Office Sabbaticals for Law Professors," appeared in the Fall 1994 issue of *The Scrivener*.

Another former president of Scribes, Stetson University College of Law professor James J. Brown, offered this reminiscence of his experiences with Judge Re:

> I remember Judge Edward D. Re with the greatest admiration, respect, and affection. Long before he took on a leadership role in Scribes, he arranged several educational programs on legal writing at St. John's Law School in the early 70s. Scribes sponsored them, but Ed, behind the scenes, was instrumental in convincing the St. John's dean to foot the expenses for the one-day programs. Ed set up the schedules and assembled the speakers. Our attendance grew with each year of the program. These may have been our first educational programs that did not occur at our luncheons at the ABA Annual Meetings.
>
> During my presidency of Scribes (1974–75), Ed always took my calls when I needed to seek his counsel or just needed a dose of his good-natured humor. He was always willing to offer his time and outstanding oratorical skills to improve written communication.
>
> He accepted an offer to speak at Stetson University College of Law. He inspired those students by his positive characterization of the lawyer's role in society, by his sparkling little vignettes, and by his mastery of multiple languages. I felt then, more than ever, that we were in the presence of a master. His awesome presentation set the standard for all of us.
>
> Edward D. Re was a great educator, a consummate gentleman, and a good human being.

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Scribes Brief Award Goes to Students at the University of Houston Law Center

Christy Nisbett

A record number of 57 briefs were nominated for this year's Scribes Brief-Writing Award. In an initial screening process, three legal-writing professors read each brief, giving each brief a thumbs-up or thumbs-down vote. These 36 screeners, who all teach at law schools that are Scribes institutional members, had the following directive in reading each brief: Could the brief possibly be considered **the** national winner of the Scribes Award?

Twenty of the 57 nominated briefs were sent to the selection committee after receiving at least two thumbs-up votes out of three votes cast by the screeners.

The selection committee—made up of judges, practitioners, court staff, and professors—read all 20 briefs. After a first reading, six briefs made the list of finalists. Each committee member then ranked those six briefs. The winning brief won in a landslide.

Here's what one longtime committee member said about the winning brief:

> When I reread the final six briefs, I made notes not only about overall effectiveness and graceful writing, but also about specifics such as the questions presented, the point headings, the summaries of argument, and the topic and thesis sentences of all the paragraphs. In the process, I jumped from brief to brief. When I went back and looked at my notes, I noticed that the word "excellent" showed up in all my notes about the University of Houston Jessup Applicant's Brief. The questions presented and the point headings were by far the best of the six briefs—and remember that all six briefs were excellent briefs. The topic and thesis sentences were models of clarity. And so on. The brief was at the top of my list in every category I'd taken notes about, with one exception. The brief didn't have any cites to the record in the Statement of Facts (which I do consider a significant flaw), but the writing was superb. Overall, the brief is one of the best I've read while on the committee. It's a worthy winner for Scribes, which—as our website notes—was founded to encourage a "clear, succinct, and forceful style in legal writing."

Heather Harris and Erica Thonsgard, winners of the Scribes 2006 Brief-Writing Award. They are students at the University of Houston Law Center.

The winning brief was written by Heather Harris and Erica Thonsgard, students at the University of Houston Law Center. In her acceptance remarks, Erica Thonsgard said,

> We are deeply honored to be here and to accept this award. Thank you for honoring the hard work and dedication that went into this brief. The University of Houston Law Center places a strong emphasis on teaching legal research and writing, and this award is a testament to that undertaking.

Thank You to Our Volunteer Screeners

These people read multiple briefs that were nominated for the 2006 Scribes Brief-Writing Award and selected the best 20 to be reviewed by the selection committee. Scribes extends a sincere thank-you for their hard work. (One asterisk indicates that the screener read briefs in 2005 and 2006. Two asterisks indicate that the screener read briefs in 2004, 2005, and 2006.)

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