



THE Scrivener

Summer 2019

Scribes—The American Society of Legal Writers

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Submissions—Please send items for upcoming issues of *The Scrivener* to Maureen Kordesh at zkordesh@jmls.edu.

Scribblings from the President

By Scribes President Mark Wojcik

So many things are happening now with Scribes that this single issue of *The Scrivener* cannot report on it all.

Scribes held its annual CLE and Award Program in April at the Law Library of Congress, the world's largest law library. We thank the staff of the Law Library of Congress for taking care of even the smallest details and for helping us present a magnificent program. We extend special thanks to Mark Sweeney, the Principal Deputy Librarian of Congress, who welcomed Scribes and the CLE participants to the Law Library of Congress, and Barbara Bavis, a Bibliographic and Research Instruction Librarian, who shared information about the library's extraordinary collections. We also thank the American Bar Association's Standing Committee on the Law Library of Congress for its support of the program and for its important work on behalf of the law library.



Justice Stephen Breyer, winner of the Scribes Lifetime Achievement Award, center, with former Scribes President Darby Dickerson, left, and current Scribes President, Mark Wojcik, right

The highlight of the program was the presentation of the 2019 Scribes Lifetime-Achievement Award to Justice Stephen G. Breyer of the U.S. Supreme Court. As part of the award presentation, former Scribes President Darby Dickerson interviewed Justice Breyer about his writing style and his views on effective legal communication. You can watch some video excerpts from that interview on the Scribes Facebook page. You can also read the transcript of Bryan Garner's interview with Justice Breyer that appeared in Volume 13 of *The Scribes Journal of Legal Writing*. Scribes presented its first Lifetime-

Achievement Award in 2002 to Judge Guido Calabresi of the Second Circuit. Other winners of the Scribes Lifetime-Achievement Award include Supreme Court Justices Ruth Bader Ginsburg, Antonin Scalia, and John Paul Stevens, Circuit Court Chief Judges Richard Sheppard Arnold, Frank Easterbrook, Richard Posner, Diane Wood, and Lord Woolf, the Lord Chief Justice of England and Wales. You can read more about the presentation of the award to Justice Breyer in this issue of *The Scrivener*.

The CLE portion of our program at the Law Library of Congress was a roundtable discussion with former assistants to the Solicitor General of the United States. The participants collectively have been involved in hundreds of cases before the U.S. Supreme Court. They shared their tips for writing an effective appellate brief. Scribes Immediate Past President Justice Michael B. Hyman of the Illinois Appellate Court served as moderator. You can also read more about this appellate advocacy roundtable in this issue of *The Scrivener*.

Awards at the program included the presentation of the 2019 Scribes Book Award, which was presented to Professor Adam Winkler of the UCLA School of Law for his book, *We the Corporations: How American Businesses Won Their Civil Rights* (Liveright Publishing 2018), a book that traces the history of American corporate personhood and other rights of corporations. Justin Driver and Margaret Edds were also recognized as runners-up for the Scribes Book Award. You can read more about their work in this issue of *The Scrivener*.

Other awards included the awards for the best student law-review article and for the “best of the best” brief-writing awards, given to the best moot-court brief that had won a regional or national writing competition. In this issue of *The Scrivener* we congratulate the winners and

thank the teams that screened dozens of law-review articles and moot-court briefs before our awards committees made their final selections of the winners.

The award presentations for lifetime-achievement, best legal books, best law-review articles, and the best moot-court briefs allow Scribes to celebrate legal writing. Please visit the Scribes website to see the full lists of winners of our various awards.

The next issue of *The Scrivener* will include information that we simply cannot fit into this issue. We'll introduce new Board Members Jamie Baker, Ross Gubberman, and Teri McMurtry-Chubb. We'll update you on some activities of our Scribes Student Chapters and let you know how to encourage other law schools to start similar chapters. And we'll share with you news about the winner of the 2019 Joseph Kimble Distinguished Service Award and news of upcoming events sponsored by Scribes. I thank the Georgetown University Law Center and Professor Kristen Tiscione for hosting the 2019 Scribes Board Meeting in April. Professor Tiscione is President of the Legal Writing Institute, which will hold its 29th Biennial Conference next year at the Georgetown University Law Center from July 15-18, 2020. We are deeply grateful for the hospitality extended to us by Georgetown University and Professor Tiscione.

In closing, we note that Professor Maureen Collins, editor of *The Scrivener*, has announced her retirement from UIC John Marshall Law School, which serves as the institutional host of Scribes. Professor Maureen Kordesh of UIC John Marshall Law School will become the new editor of *The Scrivener*, working with Professor Collins to ensure a smooth editorial transition. We thank Professor Collins for her service to Scribes and welcome Professor Kordesh to the Scribes Team.

From One Maureen to Another

Maureen Collins, editor of the *Scrivener* for the last several years, is passing the editorial torch to her colleague Maureen Kordesh. Both are professors at UIC John Marshall Law School. They each refer to the other as simply “the other Maureen.” As Maureen Collins begins her phased retirement, Maureen Kordesh has agreed to take on the task of editing the *Scrivener*. If you have an article, some news, or just an idea, contact Maureen Kordesh at zkordesh@jmls.edu.



Maureen Collins,
Professor, JMLS



Maureen Kordesh,
Professor, JMLS

2019 Scribes CLE and Awards Program

Law Library of Congress Hosts the 2019 Scribes CLE and Awards Program

The Law Library of Congress in Washington, D.C., served as the host for the Scribes CLE and Awards Program held on April 12, 2019. The event marked the first time that Scribes held an event at the Law Library of Congress, the largest law library in the world. The library contains the complete record of American law as well as extensive primary and secondary legal materials from jurisdictions around the world.

Mark Sweeney, the Principal Deputy Librarian of Congress, welcomed Scribes and the CLE participants to the Law Library of Congress. Mr. Sweeney also introduced Barbara Bavis, a Bibliographic and Research Instruction Librarian, who introduced the extraordinary collections of the Law Library of Congress and updated the audience on the most recent developments at the law library. These developments included information about expanded electronic access to the collections and updates to legislative and judicial resources.

After presenting the best student law-review article award, the brief-writing award, and the Scribes Book Award, the CLE program turned to a roundtable discussion on effective appellate advocacy with former assistants to the Solicitor General of the United States. The roundtable participants have collectively been involved in hundreds of cases before the U.S. Supreme Court, and all were veterans of the Solicitor General's Office – an office famous for the high quality of its briefs and oral arguments. The roundtable participants were Elaine J. Goldenberg, (Munger, Tolles & Olson LLP, Washington, D.C.), William M. Jay (Goodwin

Upcoming Dates



September 15, 2019—
Deadline for submitting
nominations for the Scribes
Brief-Writing Award

January 15, 2020—Deadline for submitting
nominations for the Scribes Law-Review Award

February 15, 2020—Deadline for submitting
nominations for the Scribes Book Award

April 3, 2020—Scribes National CLE and Award
Presentations, UIC John Marshall Law School,
Chicago, Illinois

April 4, 2020—Scribes Board of Directors
Meeting, Chicago, Illinois

Proctor LLP, Washington, D.C.), Joseph Palmore (Morrison & Foerster LLP, Washington, D.C.), and Melissa Arbus Sherry (Latham & Watkins LLP, Washington, D.C.). Scribes Immediate Past President Justice Michael B. Hyman of the Illinois Appellate Court served as moderator for the appellate advocacy roundtable.

The program concluded with the presentation of the Scribes Lifetime-Achievement Award to Justice Stephen G. Breyer of the U.S. Supreme Court. Former Scribes President Darby Dickerson, Dean of UIC John Marshall Law School, interviewed Justice Breyer about his writing style and views on effective communication.

Justice Breyer Wins the Scribes Lifetime-Achievement Award

Associate Justice Stephen G. Breyer of the U.S. Supreme Court received the Scribes Lifetime-Achievement Award at a special ceremony held at the Law Library of Congress. The award was presented to him by Scribes President Professor Mark E. Wojcik and by Scribes Past-President Darby Dickerson. As part of the award ceremony, Dean Dickerson interviewed Justice Breyer about his philosophy of legal writing.

After earning an undergraduate degree in philosophy from Stanford University, Stephen Breyer attended Oxford University's Magdalen College as a Marshall Scholar. He returned to the United States to attend Harvard Law School, where he was a member of the *Harvard Law Review* before graduating magna cum laude in 1964. His first job after law school was as a clerk to Justice Arthur J. Goldberg of the U.S. Supreme Court during the 1964 Term.

After clerking for Justice Goldberg, he served as a Special Assistant to the Assistant U.S. Attorney General for Antitrust, as an Assistant Special Prosecutor for the Watergate Hearings, and as Special Counsel and later Chief Counsel of the Senate Judiciary Committee.

He was an Assistant Professor, Professor of Law, and Lecturer at Harvard Law School (1967-94), a Professor at the Harvard University Kennedy School of Government (1977-80), and a Visiting

Professor at the College of Law, Sydney, Australia and at the University of Rome. From 1980-90, he served as a Judge of the U.S. Court of Appeals for the First Circuit, and as its Chief Judge from 1990-94, when President Bill Clinton nominated him to replace Justice Harry Blackmun as an Associate Justice of the Supreme Court. After a week of hearings, the Senate approved his nomination by a vote of 87 to 9.



Justice Breyer

Justice Breyer joined the Supreme Court on August 3, 1994. This year marks his 25th anniversary on the Court.

Justice Breyer is considered to be among the best writers in the federal judiciary. In addition to the hundreds of majority, concurring, and dissenting opinions he has written while serving on the First Circuit and the U.S. Supreme Court, Justice Breyer is a prolific author. In addition to a casebook on Administrative Law, his books include:

- *Breaking the Vicious Circle: Toward Effective Risk Regulation* (1995)

- *Active Liberty: Interpreting Our Democratic Constitution* (2005)
- *Making Our Democracy Work: A Judge's View* (2010)
- *America's Supreme Court: Making Democracy Work* (2011)
- *The Court and the World: American Law and the New Global Realities* (2015)
- *Against the Death Penalty* (2016)

The first Scribes Lifetime-Achievement Award was presented in 2002 to Judge Guido Calabresi of the U.S. Court of Appeals for the Second Circuit. Other winners of the Scribes Lifetime-Achievement Award include Supreme Court Justices Antonin Scalia (2008), Ruth Bader Ginsburg (2009), and John Paul Stevens (2012), Circuit Court Chief Judges Richard Sheppard Arnold (2004), Frank Easterbrook (2016), Richard Posner (2016), Diane Wood (2018), and The Right Honorable the Lord Woolf, Lord Chief Justice of England and Wales (2015).



Darby Dickerson, Justice Breyer

Teri McMurtry-Chubb Wins the LWI Phelps Award for Scholarship in Legal Communication



Teri McMurtry-Chubb

The Board of Directors of the Legal Writing Institute announced that Teri A. McMurtry-Chubb, a member of the Scribes Board, has won the Teresa Godwin Phelps Award for Scholarship in Legal Communication. The Teresa Godwin Phelps Award for Scholarship in Legal Communication highlights LWI's discipline-building priority. This annual award recognizes outstanding scholarship that strengthens the discipline of legal communication. One or more awards are given each year for scholarly articles or essays; if warranted, additional awards may be presented for outstanding books within the discipline. For the purposes of the award, discipline-building scholarship includes (a) scholarship on the theories, principles, practices, and conventions of legal communication and (b) scholarship fostering the development of legal writing and research as an independent field of study. The sole criterion for the awards is the quality of the individual work of scholarship. The selection committee includes legal writing scholars and prior award winners.

New Members

Duncan Berry, Malahide,
Co. Dublin Ireland

Amy Blalock, Tyler, TX

Ashley Brandt*, Chicago, IL

Jerry Brown, Chicago, IL

Natalie Cooley, Dallas, TX

Elizabeth Furlow, Oakland, CA

John Gear, Olympia, WA

Elaine Goldenberg, Washington, DC

Ross Guberman, McLean, VA

Lana Hawkins, Guntersville, AL

William Jay, Washington, DC

Shelley Kierstead, Toronto, Ontario

Drake Mann, Little Rock, AK

LaDawn Nandrasy, Dallas, TX

Erin Okuno, Gulfport, FL

Joseph Palmore, Washington, DC

Melissa Sherry, Washington, DC

Jonathan Wheeler, Chicago, IL

Barbara Zalewski-Zaragoza,

San Diego, CA

* Sustaining Member

Volume 18 of *The Scribes Journal of Legal Writing*

Volume 18 of *The Scribes Journal of Legal Writing* is out. It offers a great collection of articles, essays, and reviews.

Professor Patrick Barry wonders aloud where all the rote details get us in his article “Uselessly Accurate.” The article includes helpful exercises and video links. Professor Jill Barton offers writing advice to readers who aspire to judgeships or judicial clerkships, supporting her observations with carefully selected passages from court opinions new and old.

Professor Brad Charles and *Clarity Journal* Editor Thomas Myers say that the future is now for the singular *they* — and offer tips on how to guard against potential ambiguity. Australian attorney Matt Keating picks up on Professor Barry's theme — but in the contract-drafting context — questioning the legal profession's “cult of precision.” He explains how accuracy is distinct from precision and why, in his view, accuracy should prevail.

Professor Joseph Kimble takes another look at textualism, using the First Circuit's *O'Connor v. Oakhurst Dairy* (multi-million-dollar Oxford comma) case as his vehicle. Legislative drafter Jery Payne explores the *eiusdem generis* canon and offers practical tips for drafters seeking to avoid the canon's uncertainties.

Professor Meg Penrose calls on the U.S. Supreme Court to shorten its opinions. She compares the length of some recent opinions to that of classic novels and Shakespearean plays, and her findings may surprise you.

Volume 18 also contains a variety of reviews and essays. Appellate specialist Mary

Massaron gives her professional and personal take on *Nino and Me*, the most personal work by the *Journal's* founding editor, Bryan Garner. Professor Rachel Smith reviews the 45th-anniversary edition of James Boyd White's *The Legal Imagination*. She explores, among other things, whether its lessons and language have withstood the intervening decades. Professor Beth Wilensky offers a thoughtful essay on John McPhee's latest collection, translating his strategies for nonfiction storytelling to legal storytelling. Finally, Mark Cooney reviews Mark Adler and Daphne Perry's *Clarity for Lawyers*, the latest edition of a UK standby.

The *Journal* is edited by Mark Cooney (editor in chief), Jill Barton, Brad Charles, Deleith Gossett, Joe Kimble (senior editor), Karen Magnuson (copyeditor), Jason Palmer, Laurel Romanella, and Ray Ward.



I am not at all in a humor
for writing. I must write
on till I am. ~ Jane Austen

Stanford Student Wins the 2019 Law-Review Award

By Mark Wojcik

Joseph DeMott of Stanford Law School won the 2019 Scribes Law-Review Award for his article *Rethinking Ashe v. Swenson from an Originalist Perspective*, 71 *Stanford L. Rev.* 411 (2019). The award was presented to Mr. DeMott as part of an awards ceremony held at the Law Library of Congress in Washington, D.C.

The Scribes Law-Review Award recognizes excellence in scholarly writing by law students. Scribes has presented the award annually since 1987, usually at the National Conference of Law Reviews. This year Scribes received 62 nominations for the Scribes Law-Review Award. Articles are submitted and screened by teams of law professors and other volunteer judges who select potential winning articles. That smaller group of articles is then submitted to the Scribes Law-Review Award Committee for final selection of a winning article.

The articles are judged on these four criteria:

- *Quality of writing*: The writing should be clean, direct, and engaging. (50 percent of the score.)
- *Topic*: The topic should be timely and interesting. (20 percent of the score.)
- *Research*: The research should be thorough, showing a passion for the topic, not just superficial research. (20 percent of the score.)
- *Footnotes*: The article should have few to no talking footnotes. (10 percent of the score.)

Screeners from across the country reviewed the first round of submissions before the Law-Review Award Committee picked the final winner. Members of the Screening Committee included Professors Anna M. Chan (St. Thomas University

School of Law), Lurene Contento (UIC John Marshall Law School), Raoul Fernandez (St. Thomas University School of Law), Emily Grant (Washburn University School of Law), Karen Grundy (The University of Tulsa College of Law), Amanda Harmon Cooley (South Texas College of Law), Joanne Hodge (UIC John Marshall Law School), Jessica G. Hynes (Quinnipiac University School of Law), Patrick J. Long (University at Buffalo School of Law), Denise Malloy (University of Rochester Writing, Speaking, and Argument Program), Karin Mika (Cleveland-Marshall College of Law), Mimi Samuel (Seattle University School of Law), Zachary Schmook (The University of Oklahoma College of Law), and Helene S. Shapo (Northwestern Pritzker School of Law).

The 2019 Scribes Law-Review Award Committee was chaired by Associate Dean Glen-Peter Ahlers (Barry University School of Law), Professor Mary Bowman (Seattle University School of Law), Mr. Steven Feldman (Legal Advisor to the U.S. Army Corps of Engineers), Professor Richard Leiter (University of Nebraska-Lincoln), and Professor Sarah Ricks (Distinguished Clinical Professor of Law at Rutgers Law School).

More information about the Scribes Law-Review Award, including a list of past winners, is available at <https://www.scribes.org/law-review-award>. Scribes welcomes additional volunteers for the Screening Committee.



Justice Kem Frost, Joseph DeMott, Mark Wojcik

Scribes Names the Best Legal Authors of 2018: Adam Winkler, Justin Driver, and Margaret Edds

By Mark Wojcik

Scribes—The American Society of Legal Writers—has announced the winners of its annual competition for the best law-related book published during 2018. The first-place winner is Adam Winkler for *We the Corporations: How American Businesses Won Their Civil Rights* (Liveright Publishing 2018). Two other authors were named as the runners-up for the Scribes Book Award: Justin Driver, *The Schoolhouse Gate: Public Education, the Supreme Court, and the Battle for the American Mind* (Penguin Random House 2018), and Margaret Edds, *We Face the Dawn: Oliver Hill, Spottswood Robinson, and the Legal Team That Dismantled Jim Crow* (University of Virginia Press 2018).

The Scribes Book Awards was presented in Washington, D.C. on Friday afternoon, April 12, 2019 at the Law Library of Congress. The award presentation was part of a Scribes CLE and Award Program that included the presentation of a Lifetime-Achievement Award to Justice Stephen Breyer of the U.S. Supreme Court.

Adam Winkler is a professor of constitutional law at the UCLA School of Law. His book, *We the Corporations: How American Businesses Won Their Civil Rights*, is an informative and engaging history of how American corporations became “persons” whose civil rights were protected even though they were not the traditional focus of Supreme Court jurisprudence. In addition to winning the 2019 Scribes Book Award, Mr. Winkler’s book was also a finalist for the National Book Award for Nonfiction and the National Book Critics Circle Award for Nonfiction. It was also named a notable book of the year by both the *New York Times* and the *Washington Post* and as one of the Best Books of the Year by both *The Economist* and *The Boston Globe*.

One runner-up for the Scribes Book Award is Justin Driver, who served as a law clerk to Justice Stephen Breyer. Justice Breyer received the Scribes Lifetime-Achievement Award at the CLE and Award Program.

The Scribes Book-Award Committee was chaired by Justice Michael Hyman of the Illinois Appellate Court. Other committee members included Bryan Garner (Southern Methodist University), Yoshinori H.T. Himel (Asian Pacific Bar Association Law Foundation), Brian Melendez (Barnes & Thornburg), and Stuart Shiffman (Feldman Wasser).



Justice Michael Hyman, Adam Winkler, and Mark Wojcik

The Scribes Best Brief Award goes to Florida State University College of Law

By Mark Wojcik

Caitlin Messinger and Keriann Smith of the Florida State University College of Law in Tallahassee have won the prestigious Scribes Best-Brief Award. The award was presented in Washington, D.C. on Friday afternoon, April 12, 2019 during a Scribes CLE and Award Ceremony at the Law Library of Congress. The award ceremony also included the presentation of the Lifetime-Achievement Award to U.S. Supreme Court Justice Stephen Breyer.

The Scribes Brief-Writing Award considers submissions of moot-court briefs that have won first place in a national or regional moot-court competition. The award committee selects the best brief from all of the winning briefs submitted.

The second-place winners for 2019 were Cesar Escalante and Jonathan Peña of the South Texas College of Law in Houston, Texas. Two schools tied this year for third place: Jacob Cunningham, Jessica Finley, and Sara Kuebel won from the Louisiana State University Paul M. Herbert Law Center in Baton Rouge, Louisiana, and Gabriella Gallego and Alyxandra N. Vernon won from the University of California, Hastings College of the Law in San Francisco, California.

The Brief-Writing Award Committee was chaired by the Honorable Kenneth Gartner and included as members Andrew Bender, Beth D. Cohen, Charles Dewey Cole, Stephen Fink, Susan Joffe, Robert Markle, and the Honorable Kevin G. Ross.

Screeners from across the country reviewed the first round of submissions for this award. Members of that committee included Rebecca Blemberg, Brooke Bowman, Megan E. Boyd, Alice Burke, Shannon Burke, Kathryn Campbell, Anna Chan, Maureen Collins, Elizabeth De Armond, Tessa Dysart, Lara Freed, Ardath Hamann, Amanda Harmon Cooley, Kimberly Holst, Michelle Johnson, Kerrin Kowach, Patrick J. Long, Karin Mika, Gail Mullins, Mary T. Nagel, Joseph Regalia, Mimi Samuel, Willie Schatz, Jim Sowerby, Mary Rose Strubbe, and Roberta Thyfault.



*Justice Kem Frost, Caitlin Messinger,
Keriann Smith, Mark Wojcik*

Scribes Institutional Members—Law Schools

Barry University, Dwayne O. Andreas School of Law
Baylor Law School Legal Writing Center
California Western School of Law
Chapman University, Dale E. Fowler School of Law
Charleston School of Law
Chicago-Kent College of Law
Duke University School of Law
Florida Coastal School of Law
Golden Gate University School of Law, San Francisco
Hofstra University, Maurice A. Deane School of Law
Mercer University School of Law
Mississippi College School of Law
Northern Kentucky University - Chase College of Law
Northwestern School of Law of Lewis & Clark College
Oklahoma City University School of Law
Saint Louis University School of Law
Seattle University School of Law
South Texas College of Law
Southwestern Law School
Stetson University College of Law
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Syracuse University College of Law
Texas A&M University
Texas Tech University School of Law
UIC John Marshall Law School
University of Akron, C. Blake McDowell Law Center
University of Arkansas at Little Rock, William H. Bowen
School of Law
University of Houston Law Center
University of La Verne College of Law

University of Louisville Brandeis School of Law
University of Mississippi School of Law
University of Missouri School of Law
University of Nevada, Las Vegas, William S. Boyd
School of Law
University of Oklahoma Law Center
Washburn University School of Law
Western Michigan University—Cooley Law School
Western New England University School of Law

Scribes Institutional Members—Courts

Alaska Appellate Court
Commonwealth Court of Pennsylvania
Missouri South District Court of Appeals
The Supreme Court of Texas
Texas 14th Court of Appeals



Reminder!

Join us for our 2020 CLE on
Friday, April 3 in Chicago
at the UIC John Marshall
Law Schools. Contact
Philip Johnson with
questions.