Justice Anthony M. Kennedy

BAG: Thank you, Justice Kennedy, for agreeing to talk a little bit today about legal writing. I wanted to ask you, first of all: What are the qualities of a good prose style, a prose style that you admire?

AMK: I think they're probably ones you've heard mentioned often: it must be lucid, cogent, succinct, interesting, informative, convincing.

BAG: Why should it be interesting?

AMK: Because otherwise the reader's mind will wander. One of the great pieces of prose in certainly our legal heritage and really in literary history is the Constitution of the United States. I can read the Constitution of the United States cover to cover. Very few other people can. The Declaration of Independence you can read cover to cover, and it was designed to be read to the troops. Washington wanted it — ordered it — read to the troops in order to get them mad. He wanted them to be mad at George III. It was like an indictment of George III. And it has a dramatic progression to it. The more you read it, the madder you get at George III. The Constitution is a little bit different. The Constitution, I think, was not meant to be read in a single sitting. I've done it just for discipline to see if I could do it, although my mind wanders. And it should be interesting. *Hamlet* I was rereading not long ago, and in one of the early scenes in the first act, the ghost is talking to Hamlet, and the ghost is describing his own murder. And the ghost says something to the effect, "And know, thy noble youth, that the serpent that did sting thy father now wears his crown"; i.e., his uncle was the murderer. And I was think-

ing: a serpent? In the garden? Does this sound biblical? This is right out of the story of Adam and Eve. And was Eve, i.e., Gertrude, really behind this? So here I'm on one of the very early scenes, and my mind wanders; I have to stop. A half hour later, I begin reading the rest. That's really interesting prose. And the Constitution is like that: if I read it, I'll get through the first couple of pages, and then I'll say, "Well, now, I've never seen that before. Now, this is really interesting." So that's good writing.

BAG: Now, you've read *Hamlet* many times, and this was the first time you'd noticed it. Actually, I know the line, but I've never noticed that similarity to the Adam and Eve story.

AMK: It's fascinating. And good writing — great writing — is one which captures the imagination and allows you, the reader, to become part of the text. Now, I think it would be presumptuous and arrogant to say that this is what we can do or should do with judicial opinions.

BAG: How did you come out, by the way, in adjudicating the murder of Polonius last week?

AMK: There was a trial where we had two of the world's finest forensic psychiatrists testifying in a trial in which Hamlet is on trial for his criminal responsibility. Not first-degree, second-degree murder, but just for his mental competence to be tried for the murder of Polonius. And the jury divided six to six, which was wonderful. It was so wonderful, everybody thought it was a fix, but it was not.

BAG: Outside law, what writers do you most admire?

AMK: Shakespeare, Dickens because I read Dickens with my father. My father loved Dickens, and I would go with him when he tried cases, and I would read to him in the car when we went to try cases, when I was a little boy. He would take me out of school, and I would sit at the counsel table.

So we would read Dickens. Trollope is wonderful because Trollope has all of the wit of Dickens, but he's much shorter. The problem with Dickens is that he's too long for the modern audience. Dickens was designed to be read in chapters each night by the fire over a long winter.

BAG: Because they came out in serial magazines.

AMK: Right. And so Dickens was designed to be long. Trollope is much more concise. Hemingway. Faulkner. It just sounds like a Literature Greats course. Solzhenitsyn — I think required reading for law students is *One Day in the Life of Ivan Denisovich*. It just takes one day in the life of a prisoner. One day. And it's absolutely gripping. Writers talk about a sense of time, a sense of place, a sense of voice. This was a sense of place. You're in the gulag for one day, and it's absolutely fascinating. We think that voice is important in the law. What's an example? We had a case — I wrote it — *Edmonson v. Leesville Concrete*.[1] The issue was whether or not in a civil case two private parties — the government's not a party — whether it is lawful and constitutional to excuse a juror on account of the juror's race. It was a black juror who was excused. We'd had earlier cases where the Court made the rule clear for criminal cases. *Batson*[2] is the leading case. But the question was whether or not this also applied in a civil case, where there are just two private parties. And at the end of the case — there was only a minute or so left — the lawyers made what basically was a standing argument: What about the right of the jurors? And it was a very beautiful statement to the effect that: May it please the Court, this case is not just about my

[1] 500 U.S. 614 (1991).

[2] 476 U.S. 79 (1986).

client, Mr. Edmonson, or my opposing counsel's client, Leesville Concrete Company. It's about two jurors who are not in this courtroom and who are not parties to the suit. Their names were Willis Simpson and Wilton Coombs (I'll make up those names or something like it). They were excused from the jury without being asked any questions. We did not know if they could be fair. We could not know if they could be impartial, because they were not asked any questions. We did not know their occupation. We did not know their education because they were being excused without being asked any questions. But those jurors, when they went into a United States district courthouse that day, knew or thought that the right of service on a jury was as important as the right to vote. And for them, service on a jury was especially important because their fathers and their grandfathers and their mothers and grandmothers could not have served. And we ask that this Court keep the promise that was made in this courtroom in *Brown v. Board of Education*,[3] that people are judged not by the color of their skin but by the content of their character. And it was a very moving presentation, oral presentation. And I convinced my colleagues that this should be the voice for the case. It was the jurors' voice that was the case. So voice was important. So: time, place, voice.

BAG: Would lawyers do well to read more literature?

AMK: Yes. I tell my law clerks, sometimes you can't write anything good because you've never read anything good, and that gets them interested [laughter]. And some of the writers I've mentioned . . . Hemingway is one of my favorites because he's concise. There's a wonderful book about a

[3] 347 U.S. 483 (1954).

woman who teaches writing and English to students in Kosovo. She goes with her husband, who's in the Peace Corps, to Kosovo. And she forgets to bring the book. So she's over there to teach English without a book, so she buys Hemingway, *The Old Man and the Sea*. A good choice because it's concise, short, a good way to teach English. But also, the kids related to the old man because the old man was like the country — down on its luck — and the young students related to the old man because they associated him with all the misfortune that had befallen the country. And so the book is about teaching Hemingway. And she, of course, later gets the Spencer Tracy movie. The kids all would come over to see her every night, and it's a beautiful book about teaching writing. It's called *The Hemingway Book Club of Kosovo*.

BAG: I don't know it, but I'll look it up. What is your earliest memory of writing?

AMK: Oddly enough, you'll think that it's rather sad [laughing]. It was when I was 10 or 12 years old, and I marked up statutes because I was a page in the legislature. I wasn't happy in school, so they found me a job as a pageboy, the only pageboy in the California State Senate. And I had nothing to do, so I read bills — and I thought some of them were poorly written. It sounds a little nerdy, doesn't it? And then I worked in my father's law office, and I typed documents for him and copied. So when I was 12, 14 years old, I worked in my dad's law office; he was a solo practitioner. And my father taught me how to write. He was a very good writer.

BAG: Was he maybe your main influence in developing as a writer?

AMK: Yes. I had a wonderful English teacher and history teacher in high school. And when I went to Stanford, I handed in a

short story to Wallace Stegner, who's a great writer. When I handed Professor Stegner my story, I think my hands were shaking, just like when I handed in my first opinion around here to my colleagues. And I remember that event.

BAG: What about law school? Do you think law school tends to help people become better writers or maybe sets them back a little bit?

AMK: I don't think it sets them back at all; I think it helps them because you think about the purpose of writing, and there's always a purpose in writing. Most young lawyers will have their first experience in sending a memo to another lawyer in the firm or to draft a memo to the client, and you have to remember who your audience is. And the audience, if it's the lawyer in your firm, doesn't have a lot of time and is not interested in your displaying everything that you know. That lawyer has to have a quick answer and a clear answer. He wants to be convinced in a short period of time that you know what you're talking about because you have some authority — or that you don't, and then it's an unclear question depending on how you come out. So you look at the audience. Now, in a legal opinion we have different audiences. I write a case much differently if it's a railroad-reorganization case than I do if it's a First Amendment case that the public is generally interested in. And you have various purposes in writing opinions, again varying slightly because of the audience. You must convince the parties that you've understood their arguments. You must convince the attorneys that you've understood the law. And if it's a case of public importance, you have a different and much more difficult objective. You must command allegiance to your opinion. You must command allegiance to the judgment of the Court. This is the common-law tradition. It is quite

different in this respect than the Continental tradition. If you read a judgment of a European court in the civil-law tradition in a civil-law jurisdiction, it would strike you as being rather uninteresting. It is digested. It is almost like a headnote in the West Digest, whereas if you look at an opinion of the Supreme Court, say in a case of public importance, it has a rhetorical, almost an emotive, quality about it designed to instill this allegiance of which I speak. In the last two decades in Europe, we now have the European Court of Justice, the European Court of Human Rights, and other transnational courts. They are beginning to follow the caselaw system, the caselaw method, that we're familiar with in the Anglo-American legal tradition. The only judges that knew that method were the Irish and the English and the Scottish judges on those courts. And I've had the great pleasure of meeting with those judges and talking about writing and talking about writing style in their opinions. And I've told them what I've just told you — that you have to look at the purpose for the opinion. The purpose for the opinion is to convince, ultimately. The only authority our Court has is the respect that's accorded its judgments, and that respect is based on what we write. So writing is of immense importance.

BAG: You like to begin your opinions by going straight to the issue: what is the issue before the Court? Why are issues so important to you?

AMK: I wasn't aware that that's what I did. I'm interested that that's how you look at my cases. In part, I think it's a discipline on your own thinking. I think that an opinion is not an autobiographical or an egocentric exercise. I think the personality of the judge should be submerged. And I think that framing the issue in the legal terms is a way to do that.

It's, again, a discipline on the writer. Much of what we do is a discipline on the writer, I think.

BAG: What about a statement of facts in a brief? What are the characteristics of a really good statement of facts?

AMK: It's a little hard for me to tell brief-writers and lawyers how to argue or write their cases because in part — and this may sound like it's immediately contradicting what I've just said — the personality of the lawyer and of the advocate have a role. You can't wholly suppress your own personality. I don't think you should. I think you should as a judge; I don't think you should as an advocate. So what might be my style might not be yours. But the most important thing in a brief when you state the facts is you must be fair. Now, we know that the plaintiff's brief is going to be slanted for what the plaintiff wants to emphasize, and the defendant's too. We expect that. But I think the reader has to have confidence you're being fair. And one way to do this is to say, "The appellant (if that's who you're representing) is convinced that the district court erred because it did not give sufficient weight to some of the very important facts in the plaintiff's case, and they are these." Now, that's immediately fair because you are acknowledging that what you're doing is you're talking about the plaintiff's side. And of course that should be up in front, and that's very important to get the judge interested in your case. But you can't conclude by allowing a loophole or an opening for your learned friend on the other side to say that you have been selective with the facts. And you say, "These facts are so important that in our respectful submission they wholly overcome what the appellee is going to tell you, which is that . . ." And then you state the appellee's and try to take the wind out of his or her sails in that respect.

BAG: It's a very important thing to do, isn't it, to take the wind out of the sails from the other side — whatever they're going to say?

AMK: Yes, that's a good tactic. And if you're on the other side, then you've got to put the wind back in. That's the fun. Now, I have to be honest. I have read briefs now for 33-plus years, and I can't remember one I couldn't put down in the middle [laughing]. I have to tell you that. On the other hand, I do admire well-written briefs.

BAG: Last week, I was in London interviewing a British judge, who told me that he thought, first and foremost, that for an advocate to be persuasive, the advocate had to be likable. Does that make sense to you?

AMK: Again, it's style. I suppose there are advocates that distinguish themselves by being mean and egocentric, but they're so good that you secretly admire them [chuckling]. Sort of a Richard III advocate: "Was ever woman in this humor wooed? Was ever woman in this humor won?" I mean, he's so absolutely outrageous, you kind of enjoy it. I guess you can get away with that. I couldn't do that.

BAG: So it's a good idea, probably, to be likable.

AMK: Yes, but there is a difference between being likable and being patronizing; being fair and being a sycophant; being balanced and being namby-pamby. There's a difference.

BAG: What is the patronizing advocate like? What are examples of patronizing from the bar?

AMK: There's a line between being respectful and deferential, and being so patronizing that you're ineffective. [In a sarcastic tone] "Well, now, Judge, I'm *not* the one to decide, but let me say that I think what you ought to do is . . ." That's not good advocacy. That's not good advocacy. In fact, sometimes if a counsel tries to be the law professor and give me a

little of this and a little of that, I miss the advocate. Of course, I loved to try cases. Frankly, I miss the courtroom. I loved trying cases. And I loved arguing cases. One time, we had a moot-court competition, and this counsel wasn't doing very well, I didn't think . . . the student. And so I asked him a few questions designed to help his case. What do you call it . . . softball questions. Questions he should have hit out of the park. And he was so suspicious of me that he said, "Oh, no, that's not right." He should have said, "That's right." It helped his case. So finally I couldn't stand it anymore, and I said, "What size suit coat do you wear?" And he looked at me with this frown, and he said, "41 long." I said, "Take it off." And I went off the bench, and I put his coat on, and I put my robe on him, and I put him up on the bench. And I said, "Now, here's how you should answer that question." I just couldn't stand it any longer. Now, many judges who have been trial lawyers feel that way: we wish we were down there. And this was a moot court, so I could do it. And I think it helped get the message across about what advocacy should be. I was never invited back to that school, I don't think [laughing].

BAG: Have you learned things since becoming a judge that you wish you'd known when you were an advocate?

AMK: Oh, yes. And I suppose it's most of the things that I'm telling you about. I've learned that the judges really want your help — especially in this Court. We have very difficult cases. The amount of time we give is so short that it is cruel. My colleague Justice Breyer and I wish we had more than 30 minutes per side. The English judge you mentioned would be horrified that we would have only 30 minutes. For the English, their language, their diction, their orality, their writing style is their great national resource. And to them it is

something close to treason [chuckling] to limit oral argument to 30 minutes. But we have only 30 minutes. We need that help, and I didn't realize before I went on the bench how much the judges really want help from the advocate. It's not pretend. They're not there pretending. They want the advocate's help. And sometimes we are harder on the side which we think is right than the one we think is wrong, because if we think it's right, I might have to write the opinion, and I want help. Now, we're talking, I guess, more about advocacy style than writing, but I think the same applies to briefs.

BAG: Let's talk about oral argument a little bit. What could advocates do to help the Court more than they typically do?

AMK: We sometimes criticize the arguments before our Court. I must say that in the run of cases we have very fine advocates. I think they could understand the dynamic a little bit better. They could understand that when I'm asking a question, I'm sometimes trying to convince my own colleagues, and so they could answer not just me but answer based on what they think the whole Court needs to know to decide the case. And the other mistake they make is they don't realize, on our Court especially, that we've taken the case — because we are a Court of discretionary jurisdiction — we have taken the case in order to give guidance in other cases. And so it's not just if they win or if they lose. What's at stake is what the rule ought to be. And the other mistake is lawyers sometimes speak for their clients and they want to tell — this is especially in the courts of appeals and sometimes trial courts — they want to tell the client what the client wants to hear. I'm not interested in that. Another mistake they make, and it's the same way in writing, is they want to tell us about the easy parts of the case. I'm not

interested in the easy parts of the case. The good lawyer is one who says, "The proposition that we wish this Court to adopt is X. We think that that is the correct rule for this case because justice will be served, and for other cases. We recognize that there are authorities against us on this point. We recognize, in fact, Your Honor, that this is an uphill battle, but we are here to tell you why we think this rule should be adopted." Now, that's an honest statement. And then the judge knows where you are going.

BAG: Why should lawyers be willing to answer hypothetical questions?

AMK: Because we ask hypothetical questions in order to test the dimensions, the meaning, the significance of the general rule. And a common mistake is for the lawyer to hear the hypothetical and say, "Well, now, that's not this case." Well, I know that's not this case; that's why I asked the question. So you have to accept the argument dynamic that the Court sets for you.

BAG: Can you think of any adjustments you'd like to make to Supreme Court practice?

AMK: Yes, I would like longer time for oral arguments because I love oral arguments. And I think it's cruelly short.

BAG: It is interesting. What explains the reason that American advocates rely almost totally on the briefs with very foreshortened oral argument, but the British have almost no briefs — at least just kind of a summary of points relied on — and it's all oral arguments?

AMK: It's just the opposite. And as you indicate — and I've sat on the House of Lords, as a visitor, not voting — the cases will go on for three and four days. Part of the reason is the English judges use the barristers as we use our law clerks. The English judges are learning about the case in part for the

first time, and they will actually say, "Well, let's read this case." And they will bring the case down to the bench and read it. And this is a wonderful system, but it's inefficient. We could not, with our caseload, have that system. We have to be prepared in advance.

BAG: What makes a cert petition really stand out?

AMK: The cert petition, again, has to tell us that there is a systemic significance to this case that's much greater than most other cases — that our guidance is needed, that our guidance will be helpful.

BAG: Linda Greenhouse and some other commentators who read a lot of cert petitions have suggested to me that it's actually fairly easy to look at one and tell whether it has much of a chance pretty readily. Is that so?

AMK: It is so in part for this reason: we've read a lot of other cert petitions, and we know about this issue. And we're walking through familiar terrain. And if there isn't something urgent about the case that is expressed to us at the outset, we know that we're not going to do it. The discipline with a brief, the discipline with a cert petition, the discipline with a bluebook — and I've read thousands of bluebooks — is to continue reading it [laughing] when you know from the first page what you're going to do. But incidentally, we tell the lawyers that we have read their briefs, and we are honest about that. We have read the briefs, just like with the bluebook. I will read the bluebook from beginning to end, painful though it may be. Although, I might say, some bluebooks are fascinating because the student, if it's a very good student, is going to get to the issue you want, and you see him getting there, or her, and then when they do, it's a triumph.

BAG: How could judicial opinions be improved?

AMK: I think it's perhaps presumptuous for me to say that. I suppose by giving the judges more time. When I write an opinion, it's difficult for me to go back and read it before about a year or two. And when I do, I say, "Oh, if I only had inverted that paragraph. Why did I use this phrase at the beginning instead of the end?" I'm very hard on myself — and in part, that's because I go through many drafts before I submit something to my colleagues. I wished I had more time.

BAG: How many drafts do you go through?

AMK: Well, it's a little hard because I do it in snippets. Right when I hear the opinion's assigned, I'll write out what I think should be the key portions, but then I obviously have to discuss the cases and so forth. I tell my clerk what I want written, but I can't read what the clerk writes until I've read my own. Because the clerk spends a long time on it, and if you're on a scale of 1 to 10, he'll be at level 8. And if I haven't written anything, I'm still at level 1. And I won't know the false starts that the clerk made, or the blind alley, whatever the metaphor is, until I've gone down the blind alley or made the false start myself. There are certain things that you think immediately will be the way to decide the case, but that doesn't work. But you have to almost try them yourself before you understand that. So it's very hard to read someone else's writing unless you've written something on it before. Then you know why this suggestion is being made.

BAG: You have some pet peeves as a writer — among which, you don't like adverbs, do you?

AMK: I do not like adverbs. In part, it's because it's a rule that I want to have for myself. A lot of my writing rules are just discipline for myself. I noticed once that Hemingway had no adverbs, or very few, very few. And I think adverbs are

a cop-out. They're a way for you to qualify, and if you don't use them, it forces you to think through the conclusion of your sentence. And it forces you to confront the significance of your word choice, the importance of your diction. And it seems to me by not using the *-l* word . . . or, pardon me, the *-ly* word, you just discipline yourself to choose your words more carefully.

BAG: Probably . . .

AMK: Or "with more care" [chuckling].

BAG: You get better verbs.

AMK: Yes. Or better adjectives, or stronger adjectives: *with more care* is much stronger than *more carefully*. Number one, it's shorter; number two, it's more direct.

BAG: You seem to have an aversion to the word *that*. Is there anything to this? Now, that's just something I've picked up from reading your . . .

AMK: That's interesting. I do. I think it's overused.

BAG: So do you cut some *that*s, but you also use some *that*s. Do you just make a judgment: Can I cut this?

AMK: Yes. I think it makes for a more concise style. It flows more easily if you don't have too many *that*s.

BAG: Something about the sound of that word seems to bug people. It's unfortunate that it's such a common little kernel word in the language, but its sound or whatever it is that . . .

AMK: Yes. I don't like the word *that*. It's unavoidable, and sometimes helpful for a long sentence. I'd have to plead guilty perhaps to being overly cautious about *that*, and it makes the writing too dense. You need to give the reader a break once in a while.

BAG: Do you think there's anything to the view that Supreme Court prose is too congested with citations, given that it's a court of last resort?

AMK: I'm not sure. I don't think we should have unnecessary citations. And maybe it's like word choice: if you're really sure of a proposition and you have a case, cite it. But on the other hand, remember that one of the things we're doing is to try to make the law cohesive, and if there are cases out there that bear on the point, I think it's only fair to cite them. Now, I'm concerned about the number of cases — I look in our libraries where we're having to add walls and shelves for these books — and I once said on the Ninth Circuit that we should have an en banc case and say, "Here are the following cases that you never need to cite to us again." And then cite a hundred of them and say, "Don't cite these to us anymore." But then I wondered if that might be self-defeating, and I'm sure we'd get a petition for rehearing saying, "Well, please at least cite this case." But I have other pet peeves about writing. One is I'm a traditionalist. This is something that I will admit. And I do not like nouns that are turned into verbs: *I task you* or *I was tasked with this assignment* or *I was tasked with this opinion.* A "task" is a noun; it's not a verb. *Impact. This impacts our decision*; *impact* is a noun, and it seems to me trendy. I don't like trendy words. Now, the language obviously grows; it can't be static. The beauty of the language is its dynamism and its growth, so I accept that. I don't like the word *grow*: *We're going to grow the economy.* It seems to me that you *grow* a carrot; you don't *grow* the economy. But after a while I have to succumb to some of these things [laughing].

BAG: What do you think about *incentivize*?

AMK: I think *incentivize* is highly objectionable for two reasons: Number one, it uses *-ize*. I do not like *-ize* words, which are also made-up words. And that's also . . . it's a word that reminds me of someone wearing a very ugly cravat.

BAG: [Laughter.]

AMK: And I don't like to use too many commas. I don't think commas should be used after prepositional phrases. I was taught that. *In this case we are deciding* . . . I don't think you need a comma. Now, some teachers — writing teachers — will say that you use a comma where there should be a pause; you hear what you write. And I think good writers hear what they write. Good writers hear what they write. And that's helpful as a signal that maybe you should think about whether a comma should be used. I do not think, though, that this is anything more than a warning; it's not a rule. It's not a rule that you use a comma where there should be a pause; it's a warning that a comma might be used there. *Four score and seven years ago our fathers brought forth upon this continent* . . . . There is no comma after *Four score and seven years ago* because it stops the reader. One of the things . . . some of us are speed-readers. I used to do speed-reading contests, and it's the only way I can survive in my profession: I have to read very quickly. If you have strange rules for the use of commas, it makes it much slower reading. And generally I do not think you should use commas after prepositional phrases. I do not think you should begin sentences with *Moreover* or *However* or *But*. I just don't like it. I don't like the word *focus* because it's overused. I just don't like the word, so I don't use it [laughter].

BAG: In an earlier interview, you said that the Supreme Court — and you said something just a few minutes ago similar — we are judged by what we write. Don't you think it would make sense to consider writing ability in the appointment of federal judges?

AMK: I've never had that question. That's very interesting. I don't mean to turn the question around, but let me just test it for

myself. If a lawyer does not enjoy writing, he would not enjoy this Court. We are legal writers, for better or worse. And why would you punish yourself by electing a career where you're required to do something you don't like or you're not good at? So my guess is — I've never thought about the question — my guess is that when the Justice Department is looking at candidates for the appellate bench, they inquire about the candidate's writing style, or the prospective nominee's writing style.

BAG: And if they don't, they probably ought to?

AMK: If they don't, they probably ought to. Now, the reason I guess I was a little hesitant was to say that attorneys who are in practice often don't have time to really work on their writing skills — they have more time on the bench — so it might be a little bit unfair to require it, but you ought to at least warn the candidate. I was taught in my law school in civil procedure that my pleading must be very concise. So one of the first complaints I filed, I'd worked so hard on, it was beautifully concise, and then I was with another plaintiff — there were multiple parties to the action — and the other complaint was just like the kitchen soup: he threw in everything. And I said, "Why did you do that?" He said, "Because I might have missed something." He said that's the judge's job — he can weed all that out. So maybe I shouldn't be saying this to our law students [laughter]. But practitioners will sometimes say they're concerned with the sin of omission. And so they have the kitchen-sink approach, and then they let the judge figure it out. I think that's sad, but I have to recognize that this is one of the things some practitioners do.

BAG: That's a sin in itself, isn't it? That's a sin of commission.

AMK: Yes [laughter].

BAG: Do you think it's fair to say that Supreme Court Justices are among the most influential writers in the world?

AMK: I think that may be true not because they're good writers, but just because they're making decisions that are important. And perhaps that's a good warning to us that we should be good writers for that reason.

BAG: And you as a Supreme Court Justice . . . all the Justices have something that most writers yearn for, which is a built-in readership.

AMK: We have a captive audience. That is true.

BAG: There aren't very many writers who can assume that they're going to get headlines throughout the world many times during the year.

AMK: I sometimes go to authors' conventions, and I know some authors, and I tell them, "You know, I read what you write. Why don't you read what I write?" And they laugh. They are too polite to say, "I'm not interested in what you write."

BAG: Do you think more lawyers ought to see themselves as professional writers?

AMK: I wish they would. I think the profession would be well served. I think they would be well served.

BAG: Well, Justice Kennedy, I'd love to continue this sometime when we have more time because I have a feeling you and I could go on for many hours, but I want to thank you for your time today.

AMK: Well, you're most gracious, and I think this is important because the law lives through language, and we must be very careful about the language that we use.

BAG: Let me ask you one last question. Legalese . . . and when I ask you about legalese, I don't mean terms of art like *habeas corpus* and *collateral estoppel.* I mean *pursuant to*, *in the instant case*, and that sort of thing. Do you have a view on legalese?

AMK: I think we have to be careful not to overuse it. In part, again, it's discipline. We might think we're saying something important when we're really not. It can be pretentious.

BAG: Thanks again for your time.

AMK: Thank you.