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Winter 2013

# The Scrivener

Scribes — The American Society of Legal Writers

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## Featured Articles

### *Three Stories* *A Bibliography of* *Writing Resources*

## The President's Column: Three Stories<sup>1</sup>

by Darby Dickerson, Dean  
Texas Tech University School of Law

In our fast-paced world, we often forget to stop and think about the consequences of our actions, including how they might affect legal research and writing, and the overall quality of lawyering. One evening in January, three episodes grabbed my attention and prompted me to think about trends, mindfulness, and serving as a positive role model for law students and other attorneys.

First, I had the pleasure of accompanying law students in Texas Tech's new regional externship program to a presentation at Southern Methodist University by Justice Antonin Scalia and Scribes board member Bryan Garner. While discussing their new book, *Reading Law: The Interpretation of Legal Texts*, the coauthors addressed the "Fixed-Meaning Canon," which states that "[w]ords must be given the meaning they had when the text was adopted."<sup>2</sup>

In their book, they introduce this canon by warning:

Words change meaning over time, and often in unpredictable ways. Queen Anne is said . . . to have commented about Sir Christopher Wren's architecture at St. Paul's Cathedral that it was "awful, artificial, and amusing"—by which she meant that it was awe-inspiring, highly artistic, and thought-provoking. All three words have since undergone what linguists call *pejoration*: Their meanings have degenerated so that they now bear mostly negative connotations.<sup>3</sup>

They further illustrate the point with an 11th-century law that forbade ecclesiastics from "purchas[ing]

provisions at Rome."<sup>4</sup>

To a modern reader, this language would seem to prohibit the purchase of food, rations, or other supplies. But the authors explain that "the historical evidence showed that in the 11th century, 'the nominations to benefices [ecclesiastical-office appointments] were called *provisions*,' so that the statute was actually meant to prohibit bribes . . ."<sup>5</sup> They then conclude that to give *provisions* a 21st-century meaning, "would be utterly wrong."<sup>6</sup>

This example stuck with me, not only to help remember the Fixed-Meaning Canon, but as a cautionary tale about the lack of care we sometimes take when researching legal issues. How many attorneys would have stopped to research the historical meaning of *provision*, or any other key term in a statute? And if we did, would we have conducted that research thoroughly and accurately? At an earlier presentation on *Reading Law*, Garner shared that dictionaries list the meanings of words in different orders; in some, the list goes from the most common to least common usage, while in others, the oldest usage appears first.<sup>7</sup> My guess is that only a small percentage of law professors in the room knew this fact.

The lesson learned is that we must always be mindful about the proper steps to conduct legal research. With Westlaw, Lexis, Bloomberg, Google, and more, it can be easy to forget that we, the attorney—the human—



Darby Dickerson, president of  
Scribes

(continued on page 2)

must think, and think critically. It's not enough to type words into a search box and wait for the results to appear. It's not enough to read a statute and assume we know what the words actually mean in that context. Indeed, these are just initial steps, and incomplete ones at that. In short, we can never abdicate our responsibility to design a thoughtful research plan, and to continue to "research how we research" by consulting authoritative texts, such as *Reading Law*.

Later that evening, a nonlawyer friend posted this plea on Facebook:

I'm publicly calling for the end of the use of LOL. It is disturbing. This is back to "like" of the 80s. They don't even hear it anymore. If you say LOL constantly, think of the message it sends.

LOL we just ate meatloaf. LOL.

Are you really incessantly laughing like an idiot? Stop it. Stop ROFL and OMG too. It's not clever. I once thought we could go back to using this appropriately, but when kids start saying it, SAYING IT, then we all just need to stop.

When I read the post, I knew my friend was correct, and I also knew I was an offender. The acronym had become filler—an easy, but mindless, response. So I stopped using it—for about one week. During that week, I focused on where "LOL" and similar acronyms and symbols, such as "ROFL" and "winky faces," were popping up. The answer: everywhere, and in every type of writing, including communications that were strictly professional in nature.<sup>8</sup>

During my week of abstinence, I felt that something was missing from our online conversations. To convey that we thought something was funny, we were either saying, "that's funny," or using terms like "haha," which I thought were just as bad as "LOL." I also noticed awkward gaps in the conversation; on my end, I was thinking about what I could substitute to convey that I was "listening," and *was actually laughing*. After about a week, and to my friend's disappointment, I started to use the acronym again, but with a new mindfulness. I resolved to use it judiciously: only when actually laughing and when I felt "LOL" conveyed that point better than anything else to a friend in a quick online message.<sup>9</sup>

The lesson is that we must be ever mindful of trends, especially those that affect language. Texting is a fact of current life, and its language includes a variety of

shortcuts, such as acronyms ("LOL"), emoticons ("smiley faces"), and truncations (18r). When texting on a phone, these often make sense because they can speed communication and express tone.<sup>10</sup> But we should not allow textisms to creep into formal writing or into the spoken word. And even when texting with friends, we should actually think about what we are saying and how we are saying it. Actual words are, more often than not, more effective than acronyms and emoticons.

"Word for word," Bryan Garner has emphasized, "lawyers are the most highly paid professional writers in the world."<sup>11</sup> As paid professional writers—and researchers—we must continue to hone our skills, eschew trends that negatively affect our craft, and consider the example we set for others.

And as my colleague Dustin Benham, Assistant Professor of Legal Practice and Assistant Dean for Strategic Initiatives at Texas Tech, has informally commented, "We must also recognize that law is an interpersonal game and that tone flows from quality sentence-level writing. If we sacrifice quality sentences, we aren't just sacrificing clarity or a perception of competence, we are sacrificing relationships."

Still later that evening, while reading Justice Sonya Sotomayor's memoir, I was impressed with how she had overcome her early challenges with the English language by seeking advice from teachers; accepting constructive criticism; researching points she needed to know; and practicing, practicing, practicing. During her freshman year at Princeton, she received a "C" on a paper. Instead of feeling sorry for herself, blaming her professor, or ignoring the issues, she sought her professor's advice and then took steps to improve. She recounts:

In writing, . . . one's words stand naked on the page. Professor Weiss had minced none of her own informing me that my English was weak: my sentences were often fragments; my tenses erratic; and my grammar often just not grammatical. . . . It wasn't until the following year . . . that the roots of my problem were uncovered: my English was riddled with Spanish constructions and usage . . . .<sup>12</sup>

To remedy this problem, she bought grammar and vocabulary books and devoted an hour a day to grammar exercises; she also spent time learning and using ten new words a day.<sup>13</sup> During her law-school and legal career, she actively sought opportunities to write and receive feedback on that writing.<sup>14</sup> Justice Sotomayor's

mindfulness about her writing, determination to improve, and dedication to the craft is in stark contrast with the two cautionary tales presented above.

The final lesson—and a unifying one—is that we all should reflect on our actions and inactions. When we perceive a problem, we should acknowledge it, be willing to change, seek advice from experts, and work hard to make the needed corrections. Justice Sotomayor, along with Bryan Garner, Justice Scalia, and my Facebook friend, inspired me to stop and think about how I research and write, and what messages I send by the care I take in these important activities. I hope they have inspired you to do the same. As members of Scribes, we can and should set the best example possible.

### Endnotes

- <sup>1</sup> “Three Stories” is also the title of an award-winning episode of *House, M.D.* (Fox 2003–2012), which happens to be my favorite television series. Apologies for the talking footnote!
- <sup>2</sup> Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 78 (West 2012).
- <sup>3</sup> *Id.* (footnote omitted, italics in original).
- <sup>4</sup> *Id.* at 80 (footnote omitted).
- <sup>5</sup> *Id.* (footnote omitted, italics in original).
- <sup>6</sup> *Id.*
- <sup>7</sup> Antonin Scalia & Bryan A. Garner, Presentation, Assoc. Am. L. Schs. Ann. Mtg., Sec. on Legis. & the L. of Pol. Process, *Reading Law: The Interpretation of Legal Texts* (New Orleans Jan. 5, 2013).
- <sup>8</sup> Dustin B. Benham, Legal Writing Prof Blog, *Smileys: Professional Writing Scourge : (or Boon :)?*, <http://lawprofessors.typepad.com/legalwriting/2011/week43/index.html> (Oct. 25, 2011).
- <sup>9</sup> *But see* Judith Newman, *If You’re Happy and You Know It, Must I Know It, Too?*, N.Y. Times (Oct. 21, 2011) (available at [http://www.nytimes.com/2011/10/23/fashion/emoticons-move-to-the-business-world-cultural-studies.html?adxnlnl=1&adxnlnl=1319493795-IpcVw+LmOTvnXttlIp1sUw&\\_r=0](http://www.nytimes.com/2011/10/23/fashion/emoticons-move-to-the-business-world-cultural-studies.html?adxnlnl=1&adxnlnl=1319493795-IpcVw+LmOTvnXttlIp1sUw&_r=0)).
- <sup>10</sup> Larry D. Rosen et al., *The Relationship Between “Textisms” and Formal and Informal Writing Among Young Adults*, 37 *Commun. Res.* 420, 421 (2010).
- <sup>11</sup> Alex Carp, *Writing with Antonin Scalia, Grammar Nerd*, <http://www.newyorker.com/online/blogs/newsdesk/2012/07/writing-with-antonin-scalia-grammar-nerd.html> (July 16, 2012).
- <sup>12</sup> Sonia Sotomayor, *My Beloved World* 134 (Knopf 2013).
- <sup>13</sup> *Id.*
- <sup>14</sup> *E.g., id.* at 192, 263.

## In This Issue

The President’s Column:	
Three Stories .....	1
A Bibliography of Writing	
Resources .....	4
Life Members .....	7
New Members .....	7
Member News .....	8
2010–2013 Committees .....	8
Institutional Members .....	9
Scribes Board Members .....	10
Membership Application .....	11

## Submit Your Articles

Please send items for upcoming issues of *The Scrivener* (electronically) to Jane Siegel at [siegelj@cooley.edu](mailto:siegelj@cooley.edu).

### Deadlines

Spring	April 15
Summer	June 15
Fall	August 15

## New Benefit for Scribes Members

Scribes is pleased to announce a new benefit for members: Scribes will soon offer e-mail tips to improve legal research and writing skills. The tips fit into four categories: research, Internet research, grammar, and writing. Tips vary widely in nature and content. Some examples: writing on a computer, Internet sources for some 850 codes of ethics and rules of professional conduct, paragraphing, research reports available from the U.S. Government Accounting Office, Uniform Laws, and practical citation rules. Members will also receive tips about what to do when you think you are done with a writing assignment, when the U.S. Code is only prima facie evidence of the law, and how to proof. These tips will be e-mailed to the address or addresses you have provided to Scribes, so please let us know about any changes to your addresses. We encourage our institutional members to forward the Scribes tips to their students and employees.

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## A Bibliography of Writing Resources

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Scribes member Kara Zech Thelen, Assistant Professor of Research & Writing at Thomas Cooley Law School, prepared the following bibliography for her students. We thought it might be helpful for all our members; it lists the usual suspects, but also some classics and new sources that you might not have in your library and should consider. With thanks to Cooley librarian Shannon Keyes.

### Books on Plain Writing

#### *Eats, Shoots and Leaves: The Zero Tolerance Approach to Punctuation* by Lynne Truss

This witty book emphasizes the importance of proper punctuation. Ms. Truss, a former editor, describes her contempt for poor punctuation in a conversational tone while still providing instruction on proper grammar. In this best-selling book, the sometimes-tedious topic of punctuation is transformed into a clever, enjoyable topic.

#### *On Writing: A Memoir of the Craft* by Stephen King

Most famous for his best-selling suspense novels, Stephen King writes this entertaining book that is part memoir, part writing guide. Mr. King shares many revelations about his life and how those experiences are intrinsically tied to his writing. As Mr. King recounts his own childhood and life journey of becoming a writer, he outlines the basic elements that every writer must possess to succeed.

#### *On Writing Well: The Classic Guide to Writing Nonfiction* by William Knowlton Zinsser

In its 30th edition, this book is a comprehensive guide that outlines the fundamental principles of good writing. Mr. Zinsser explains how to write clearly and concisely to connect with the reader. While not specific to legal writing, this resource is great for learning how to write well using plain English. The author emphasizes the importance of editing and gives examples from his first drafts of the book itself with clearly marked edits. He also gives several examples of good writing by other authors. These examples vary greatly in style, but they all demonstrate the qualities that all good writing must have: clarity and simplicity. This is a very readable resource that is useful to all writers.

#### *Simple & Direct: A Rhetoric for Writers* by Jacques Barzun

Jacques Barzun, a writer and editor of prose, has written a book on rhetoric that reads more like a novel than a textbook. Barzun advises that good writers are aware not only of the words they choose but also of the audience they are writing for. Each chapter of the book focuses on one of the following topics: diction, word order, tone, purpose, composition, and revision. Throughout the book, Barzun gives many writing examples that drive home his point that the best writing is simple and direct.

#### *Style: Lessons in Clarity and Grace* by Joseph M. Williams and Gregory G. Colomb

In its 10th edition, this resource emphasizes the importance of revision throughout the writing process. Organized into 12 lessons, the book outlines principles of writing aimed to help writers predict how readers will judge their prose and then determine whether their writing needs to be edited or rewritten. At the end of many lessons there are exercises for the reader to complete. An answer key is included in the back of the book along with a useful glossary and appendices on punctuation and using sources properly. This resource is not specific to legal writing, but it's a well-respected guidebook to writing well.

#### *Writing with Style* by John Trimble

In its third edition, this short manual emphasizes that to write like a professional, you must think like a professional writer. Specifically, Mr. Trimble first explains the importance of being aware and respectful of your audience and recognizing that you are not writing for yourself, but rather trying to communicate your point to another person. Mr. Trimble provides practical advice on generating ideas; constructing the opening, body, and conclusion of an essay; and using diction. He also explains how to make a strong argument through simple prose. This very readable resource provides practical advice on improving writing skills.

### Books on Legal Writing

#### *A Lawyer Writes: A Practical Guide to Legal Analysis* by Christine Coughlin, Joan Malmud, and Sandy Patrick

Written from the perspective of an attorney in his or her first year of practice, this book teaches how to tackle real-life legal-writing projects. The authors give many examples of good writing and use visual graphics throughout.

***Legal Writing in Plain English: A Text with Exercises* by Bryan A. Garner**

This book is divided into five parts. The first part, which is approximately half the book, gives a general overview of principles applicable to all legal writing. Parts 2, 3, and 4 focus on analytical and persuasive legal writing, legal drafting, and document design. Finally, the fifth part gives methods for continued improvement through editing and self-reflection. The book includes numerous exercises for the reader to complete. Each exercise emphasizes the principle being outlined and has a basic, intermediate, and advanced level of application. An answer key for many exercises is located in the back. The book also has appendixes that detail proper punctuation and give models of legal documents, including a research memorandum, motion, appellate brief, and contract.

***Lifting the Fog of Legalese* by Joseph Kimble**

In this collection of essays, Professor Kimble dispels the myths about plain legal language and assails legalese—the jumbled, dense, verbose style that has characterized lawyers’ writing for centuries. He stresses that to be an excellent legal writer, you must use the simple, direct language that readers strongly prefer. The book is broken down into two parts. The first part focuses on the arguments and evidence for plain language. The second part advises writers on how to achieve it, with guidelines and before-and-after examples.

***Making Your Case: The Art of Persuading Judges* by Antonin Scalia and Bryan A. Garner**

Associate Justice of the United States Supreme Court Antonin Scalia and noted legal writer Bryan Garner present the elements of writing and arguing persuasively. Written in a conversational tone, the book is easy to read and explains how to apply sound legal reasoning to arguments. The book deals generally with the principles of argument and then dives more specifically into writing briefs and giving oral arguments. With its straightforward advice, this book is an excellent guide for novice or experienced litigators.

***Plain English for Lawyers* by Richard C. Wydick**

In its fifth edition, this resource is organized into nine chapters, each outlining a different lesson explaining how to use plain English in legal writing. Richard Wydick points out that good legal writing is nothing more than ordinary well-written English. Throughout the book, Wydick emphasizes the benefits of omitting surplus words, using the active voice, crafting short sentences, choosing and arranging words with care, and punctuating

carefully. Each chapter contains several exercises for the reader to complete, with an answer key located in the book’s appendix. This resource gives clear explanations that are useful and easy to incorporate into the reader’s own legal writing.

***Reading Law: The Interpretation of Legal Texts* by Antonin Scalia and Bryan A. Garner**

Associate Justice of the United States Supreme Court Antonin Scalia and renowned legal writer Bryan Garner team up again to coauthor this forceful guide to interpreting legal documents. In the first half, Justice Scalia emphasizes that textualism—writing with exactness—leads to better judicial decisions and forces legislators to write better laws. In the second half of the book, Mr. Garner gives advanced rules for legal writing. This is an excellent guide for interpreting and arguing the meaning of a law or statute.

***The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Courts* by Bryan A. Garner**

This reference book gives step-by-step instructions on how to plan, organize, and edit a brief. It breaks down the writing process into stages that the reader can easily follow to organize and write a legal brief. And it discusses choosing the best words, writing clearly and persuasively, and punctuating properly. Each chapter focuses on one specific tip and is broken down into the following sections: relevant quotations; an explanation of the importance of the tip; and examples from actual briefs demonstrating the use of the tip. One particularly helpful characteristic of this book is that the author gives not only good examples of brief writing but “bad” examples for comparative purposes.

***Writing for Dollars, Writing to Please: The Case for Plain Language in Business, Government, and Law* by Joseph Kimble**

Professor Joseph Kimble expands on and updates his article from Volume 6 of *The Scribes Journal of Legal Writing* (1996–1997) in this very lively and persuasive book. It summarizes 50 studies showing that using plain language saves organizations and agencies huge amounts of money; that readers strongly prefer it and understand it better and faster; and that they are much more likely to read it in the first place. The book outlines the elements of plain writing and debunks the ten biggest myths about it. It also contains a summary of 40 historical highlights in plain language. A pleasure to read, the book will appeal to anyone who writes for the public.

(continued on page 6)

## Reference Guides

### ***The Elements of Style* by William Strunk and E.B. White**

In its fourth edition, this is one of the seminal books on writing. This classic style manual is known as well by its authors' names as it is by its title. For decades, this manual has been appreciated not only for its authority on how to write, but also for its succinct nature. The manual is organized in sets of elementary rules on usage, composition, and form. Each rule is presented as a brief, explanatory statement and often includes an illustrative example.

### ***Garner's Dictionary of Legal Usage* by Bryan A. Garner**

In its third edition, this usage dictionary is an alphabetized collection of legal language that gives definitions of words or phrases as they are used in legal contexts. The entries provide clear, concise directions on proper and effective use of a term. Many of the entries also include a quote demonstrating how to use the specific word or phrase. This resource gives quick answers to many legal, grammatical, and stylistic questions. It is an excellent starting place to become acquainted with legal language.

### ***Garner's Modern American Usage* by Bryan A. Garner**

In its third edition, this usage dictionary gives advice on effective use of words and phrases in the English language. Its alphabetized organization makes it easy to use, and the examples in many entries are illustrative and informative. While this book is a great resource to consult when a specific question about usage of the English language arises, it's also an excellent way to learn how modern American English is properly used.

### ***The Gregg Reference Manual* by William A. Sabin**

In its 11th edition, this manual gives basic rules applicable to all forms of writing. Organized like a textbook, the manual includes a descriptive table of contents at the beginning and comprehensive index at the end. The text includes several examples of different writing formats and gives detailed guidance on grammar, usage, and style.

### ***The Redbook: A Manual on Legal Style* by Bryan A. Garner**

This manual gives the essential rules of legal writing. With a similar organization to *The Bluebook* and *ALWD Citation Manual*, *The Redbook* is a guide to legal-writing style. This resource is an exhaustive authority on how to properly punctuate, capitalize, design, cite, footnote, and edit your legal document. The first part focuses on the mechanics of writing; the second part focuses on grammar and usage; and the third part gives model examples of research memos, opinion and demand letters, motions, appellate briefs, and contracts.

### ***Typography for Lawyers: Essential Tools for Polished & Persuasive Documents* by Matthew Butterick**

In this resource, Matthew Butterick explains that the appearance of a document is almost as important as its content. By exploring the best fonts, type size, and page layouts, this resource defines what typography is, explains why it's important, and gives the typographical rules applicable to legal writing.

## Journals on Plain Writing

### ***Clarity***

First published in 1983, this journal is published twice a year by Clarity, an international association promoting plain legal language. Clarity is a worldwide group of lawyers who advocate plain language over legalese. You must be a member to get current issues, but non-members may download some past journals for free, normally two years after they've been published. This interesting and informative journal is an excellent international plain-language resource.

### ***The Scribes Journal of Legal Writing Volumes 1–14***

This scholarly journal publishes articles on legal writing. First published in 1990, the journal now has 14 volumes. Many of its articles have been authored by the best-known figures in legal writing. This very readable, informative journal is an excellent plain-language resource.

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## Life Members

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## Member News

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**Stuart Shiffman** has had a book review published in 96 *Judicature* 85 (September–October 2012). Shiffman, who served as an associate circuit judge in the Seventh Judicial Circuit of Illinois from 1983 until his retirement in January 2006, reviewed *Reading Law: The Interpretation of Legal Texts* by Scribes members Justice Antonin Scalia and Bryan A. Garner. Shiffman's review is titled "The Art of Textualism: Constitutional Interpretation in the Age of Scalia." Shiffman is now of counsel to Feldman, Wasser, Draper and Cox in Springfield, Illinois.

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Mary Bowman (Chair)  
[bowmanm1@seattleu.edu](mailto:bowmanm1@seattleu.edu)

Glen-Peter Ahlers, Steven Feldman, Richard Leiter, and Richard Wydick

### Lifetime-Achievement Award

Bryan Garner (Chair)  
[bglawprose@yahoo.com](mailto:bglawprose@yahoo.com)

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### Nominating

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Darby Dickerson, Joe Kimble, Norman E. Plate, and Stuart Shiffman

### Scribes Journal

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Joe Kimble

### Strategic Planning

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Bryan Garner, Hon. Michael Hyman, and Steve Smith

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