

From the Editor

We've got an agenda. Just one. And it's right there in our back-cover manifesto: promoting better legal writing. Yet our manifesto also acknowledges the subject's breadth. The field of legal writing is expansive, and some of its not-so-far reaches touch the blurry edges of jurisprudential and political perspective. This volume reflects that; it contains some spirited entries with frank points of view. As you'll see, it all comes back to writing. And the frequent subtext is that inattentive (or untrained) drafting sometimes forces courts to make educated guesses.

A number of our authors examine judicial writing and decision-making, and their commentary ranges from the laudatory to the instructional to the critical. For our editorial staff, the sharper points posed a dilemma. The judiciary has long been a welcome and active partner in our mission. (Just check volumes 13 and 15.) But if there was occasional editorial discomfort over authorial candidness, we were even less comfortable censoring authors who've more than earned their lines in the legal-writing dialogue. We strove for a fair, even tone, but we did not mute our authors' voices.

Again, in the end, it all comes back to writing, and we welcome — encourage — submissions offering a different perspective on any point raised in this volume.

We lead with Joe Kimble's latest work, which takes on the canons of construction and textualism. Joe was the drafting consultant on the projects to restyle the Federal Rules of Civil Procedure and Evidence — projects meant to help judges and lawyers more easily extract meaning from the rules' text. So some may find it ironic that this plain-language lion now sinks his teeth into textualism, which was historically known as a "plain language" theory of jurisprudence and which still,

in its modern form, puts a premium on the words in the text.¹ Whatever your views, you'll find the article thought-provoking.

Drafting expert Ken Adams, a recent recipient of the Legal Writing Institute's prestigious Golden Pen Award, also advocates against a strict adherence to canons of construction. His petri dish is a federal case in which, he believes, a long-recognized canon produced mischief instead of genuine insight.

Stepping beyond the canons, our remaining authors offer a unique mix of style and content, including a bit of memoir, prophecy, Oscar Wilde wit, and praise for "impure" court opinions.

Ross Guberman, whose book *Point Made: How to Write Like the Nation's Top Advocates* has been something of a sensation, shares an excerpt from his forthcoming book, *Point Taken: How to Write Like the World's Greatest Judges*. The book advises judges on effective opinion-writing, and his article shows how and why some judges infuse breezy prose into their opinions.

Matthew Salzwedel, founder of the *Legal Writing Editor* and *Lawyerist* blogs, recounts his formative years while exploring the challenges faced by new legal writers. And he wonders whether the best educational innovation for today's students might be to restore some old-fashioned traditions.

Kenneth Bresler, who penned Massachusetts' first legislative-drafting manual (among other things), gives us a potpourri of sorts. He gazes into his crystal ball for a peek at legal language's future, advocates for a new entry in *Black's Law Dictionary*, and teaches us how to avoid those common, everyday redundancies that so frequently sneak into our prose.

We finish with the next installment of our "Best of" series, this time featuring short pieces by Gerald Lebovits. Judge

¹ See Ronald Turner, *Title VII, the Third-Party Retaliation Issue, and the "Plain Language" Mirage*, 5 Ala. C.R. & C.L. L. Rev. 77, 82 (2013); Jonathan T. Molot, *The Rise and Fall of Textualism*, 106 Colum. L. Rev. 1, passim (2006).

Lebovits is a frequent contributor to the *New York State Bar Association Journal*, in which he offers practical advice shaped by his years as a legal reader and writer. He has written many pieces worthy of inclusion here, but we've picked our favorite favorites.

Besides these articles, you'll find a few items of special note. First, we take a moment to remember Beverly Ray Burlingame, whose passing touched so many Scribes members. Her name and work will always be associated with this publication, and it's an association that we wear with pride.

You'll also notice a page (the back inside cover, actually) thanking the law firms whose generous financial contributions helped make this volume possible.

Let me thank our new assistant editor, Laurel Romanella, for her hard work. And my thanks to Joe Kimble and Ray Ward for their usual editorial excellence. As always, we thank Karen Magnuson, the world's finest copyeditor. And thank you, Cindy Hurst, for your eagle eyes.

Finally, I offer special thanks to our dedicated (and remarkably tolerant) typesetter, Patricia Schuelke. Thank you, Trish. After all, you make the *Journal*.

— Mark Cooney

