



# The Scrivener

Scribes – The American Society of Writers on Legal Subjects

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*Winter 2006*

## A Salute to Our Past Presidents

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On February 20, 2006, the United States celebrated Presidents' Day. This holiday honors in particular George Washington and Abraham Lincoln, two U.S. presidents whose birthdays we remember and whose legacies we honor in February. Thus, we thought it was fitting to remember and honor our Scribes' past presidents in this issue of *The Scrivener*. They gave to Scribes their time, talents, and dedication.

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- |           |  |            |  |
|-----------|--|------------|--|
| 1953–1957 | Sidney Teiser, Portland, Oregon                                    | 1977–1978  | William H. Erickson, Justice, Colorado Supreme Court         |
| 1957–1958 | Eugene C. Gerhart, Binghamton, New York                            | 1978–1979  | Edward D. Re, Chief Judge, Customs Court, New York, New York |
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| 1959–1960 | Harry Gershenson, St. Louis, Missouri                              | 1980–1981  | E. Donald Shapiro, New York, New York                        |
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| 1962–1963 | E.J. Dimock, Justice, Cambridge, Massachusetts                     | 1983–1984  | Margaret S. Bearn, New York, New York                        |
| 1963–1964 | Charles W. Joiner, Ann Arbor, Michigan                             | 1984–1985  | Michael Cardozo, Washington, D.C.                            |
| 1964–1965 | Willoughby A. Colby, Concord, New Hampshire                        | 1985–1986  | Rudolph C. Hasl, St. Louis, Missouri                         |
| 1965–1966 | Herman Finkelstein, New York, New York                             | 1986–1987  | Charles Blackmar, St. Louis, Missouri                        |
| 1966–1967 | Laurence Hyde, Justice, Missouri Supreme Court, Columbia, Missouri | 1987–1989* | Roger Billings, Highland Heights, Kentucky                   |
| 1967–1968 | Warren V. Ludlam, Jr., Jackson, Mississippi                        | 1989–1991  | Kenneth A. Zick, Winston-Salem, North Carolina               |
| 1968–1969 | Paul Wolkin, Philadelphia, Pennsylvania                            | 1991–1993  | Roy M. Mersky, Austin, Texas                                 |
| 1969–1970 | Rufus King, Washington, D.C.                                       | 1993–1995  | Lynne P. Iannelli, Southampton, Pennsylvania                 |
| 1970–1971 | Eugene C. Gerhart, Binghamton, New York                            | 1995–1997  | Marianna Smith, Bethesda, Maryland                           |
| 1971–1972 | Sidney Bernstein, New York, New York                               | 1997–1999  | Bryan A. Garner, Dallas, Texas                               |
| 1972–1973 | Howard L. Oleck, Cleveland, Ohio                                   | 1999–2001  | Gary Spivey, Albany, New York                                |
| 1973–1974 | Jack Kleiner, Atlanta, Georgia                                     | 2001–2003  | Donald J. Dunn, Springfield, Massachusetts                   |
| 1974–1975 | James J. Brown, Kansas City, Missouri                              | 2003–2005  | Beverly Ray Burlingame, Dallas, Texas                        |
| 1975–1976 | Bobby D. Dyess, Dallas, Texas                                      |            |  |
| 1976–1977 | Frederick D. Lewis, Miami, Florida                                 |            |  |

\* The bylaws were changed to provide for two-year terms.

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# President's Column

*Norman Otto Stockmeyer  
Emeritus Professor,  
Thomas M. Cooley Law School*

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## How did you first learn about Scribes?

Did an acquaintance invite you to join? At a board of directors retreat in 1998, we went around the table describing when each of us became interested in writing and how we learned about Scribes. A third of those present all attributed their knowledge of Scribes to the same individual: Roy Mersky. Roy is the esteemed director of the Jamail Center for Legal Research at the University of Texas. He was a longtime member of our board (1974–1994) and was president of Scribes in 1991–1993. Roy was very effective in promoting Scribes among his nationwide network of friends and associates. That is a lesson for all of us who support the Scribes mission. When it comes to membership-building, nothing is more effective than personal contact.

Did you first learn of Scribes through the media? We are not an organization that attracts national attention. Nor can we afford a P.R. firm. Yet over the years we have had some luck with the legal media. An article on the history of Scribes was published in *Case & Comment* (remember that *Reader's Digest*-size magazine?) in 1970. A similar article appeared in the *New York Bar Journal* in 1980.

More recently, *Student Lawyer* carried an extensive article on Scribes in its February 1995 issue. Then in 1997, former Executive Director Tom Steele wrote a tribute to Howard Oleck, focusing on his many contributions to Scribes, for the *Stetson Law Review*. That same year *Student Lawyer* published a very complimentary article about our Brief-Writing Award.

I think that it is time to see if we can get an article about our organization placed in the *ABA Journal* or *Judicature*, or syndicated in the legal newspapers. Invitees are more likely to join Scribes if their first reaction is “I’ve heard of that,” rather than “What’s that?” Who would like to take on that project?

A flier for a legal-writing institute first brought Scribes to my attention. Scribes conducted eight day-

long institutes from 1975 to 1992 at several host law schools. A who’s who of judges, authors, teachers, and practitioners drew audiences of 200 and more to these programs. We tried to resurrect the idea in the mid-’90s with workshops on how to get published. Despite many good ideas, the workshops never went beyond the planning stage.

Now I am proud to report that Scribes is back in the program business. Thanks to the organizational and networking skills of board member Michael Hyman, we have cosponsored legal-writing programs at the last three annual meetings of the American Bar Association.

“Motion Potion: How to Write Better Pleadings” was cosponsored with the ABA Litigation Section in 2003. Panelists included Scribes luminaries Beverly Ray Burlingame, Darby Dickerson, and Michael Hyman. In 2004, we presented “How Business Lawyers SHOULD Write” with the Business Law Section. Michael was the moderator and Joe Kimble, our executive director, was one of the speakers. Last year we did “How to Write Like Hemingway, Esquire: Legal Writing for Litigators Made Easy,” again with the Business Law Section. Board member Stuart Shiffman joined Beverly and Joe, and Michael again moderated.

Because of the travel distance involved, the programs are on hiatus for the 2006 annual meeting in Hawaii, but it is my hope that we can continue them in 2007 and beyond. Along with our publications and awards, the programs round out our mission of fostering excellence in all forms of legal writing. For this reason, I have created a committee on legal-writing programs to institutionalize the practice. A complete membership roster of our committees for 2006 appears elsewhere in this issue and on our website, [www.scribes.org](http://www.scribes.org).



*Norman Otto  
Stockmeyer,  
President of Scribes.*

## Join us in Hawaii

Speaking of the ABA annual meeting in Hawaii, although we will not be sponsoring a program, our tradition of membership luncheons will continue. May I be the first to invite you to join other Scribes members for lunch? There we will present our book and brief-writing awards to the authors of the best new book on a legal subject and the best brief submitted in a national moot-court competition. The hardworking members of our award-selection committees (*bless you all!*) are winnowing the submissions. The luncheon will take place on Saturday, August 5, in the Roof Garden on the sixth floor of the Moana Surfrider Hotel. The next issue will have more details.

The ABA has not held an annual meeting in Hawaii since 1989. That year, a 30-year-old University of Texas law-school instructor, who had been working on a new legal dictionary, spoke at our luncheon on the state of legal language and usage. The following year he founded LawProse, Inc. Since then Bryan Garner has held 1,609 seminars, attended by 78,841 lawyers and judges, in eight countries. Along the way, he has written 21 books. He also founded our *Scribes Journal of Legal Writing* and served as the society's president in 1997–1999. Many call him a genius; we're proud to call him a friend.

(continued on page 4)



**Join other  
Scribes members  
for lunch in Hawaii**

Saturday, August 5, 2006  
Roof Garden  
Moana Surfrider Hotel

**Aloha!**

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## Submit Your Articles

Please send items for upcoming issues of *The Scrivener* (electronically or on disk) to the address shown below.

### Deadlines

|        |           |
|--------|-----------|
| Spring | April 15  |
| Summer | June 15   |
| Fall   | August 15 |

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## Legal-writing tidbit

Terri LeClercq, senior lecturer in law at the University of Texas, began her first edition of the *Guide to Legal Writing Style* (Little, Brown & Co., 1995) with the admonition: "It is a compliment to be told that you think like a lawyer, but an insult to be told you write like one." Thomas Spahn, a commercial litigator with McGuire Woods LLP in McClean, Virginia, agrees. In

"How Not to 'Write Like a Lawyer,'" in the October 2005 issue of *The Practical Lawyer*, he reminds us, "People do not use 'legalese' as a compliment."

Spahn offers much good advice on how to write for clarity, precision, and ease of reading. I particularly liked his advice to use what he calls "signal" words. Here is that portion of his article:\*

### Using Signal Words

After you have chosen simple and familiar words, and built them into good sentences and short, sensible paragraphs, you should look for more ways to make life easier for your readers.

You can help your readers by using what can be called "signal" words—which refer to matters you have already discussed, or to matters that you will discuss. Using signal words like this can serve a number of functions.

First, signal words help guide your readers through your writing. They tie one sentence to the next, and build momentum. Good writing creates a sense of logical inevitability, pushing readers sentence-by-sentence toward an inescapable conclusion. Logic plays some part in this process, but signal words can also contribute.

Second, these internal references induce your readers—if only for a split second—to review what you have already written, or to anticipate what you will be writing. And each time your readers think of the ideas you are conveying, they are likelier to understand and remember them.

Some signal words can be blunt—such as "see below" or "as explained above." Some signal words create a more subtle impact. For instance, words like "this," "that," or "those" provide neutral reminders to readers about what they just read. If you want to reinforce or supplement a point, you might use signal words such as "also," "similarly," "moreover," "furthermore," and the like.

Your use of signal words becomes most important when you are shifting directions or creating contrasts. You owe your reader some warning that you are moving in another direction. The following signal words serve this function:

- On the other hand;
- In contrast;
- Unlike;
- But.

As you would expect, using signal words in your paragraph's opening sentences creates the biggest impact.

Look at [this opening sentence to a paragraph]: "The statute of limitations also bars Smith's claims." This sentence obviously looks forward to a statute of limitations discussion. But by including the simple word "also," the sentence also looks backward—at another defense barring Smith's claims. History's great writers knew this trick. And if you want a good example, go read Lincoln's Gettysburg Address.

\* Reprinted with the permission of Thomas E. Spahn and ALI-ABA, publisher of *The Practical Lawyer*.

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## From Our Peevish Readers

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**Graydon S. Staring**, editor, *American Maritime Cases*, sent us two of his “good supply” of pet peeves:

- Even generically, when their jurisprudential qualities cannot possibly be known, and also particularly when they probably are not known, judges are often referred to as *jurists*. Not all jurists are judges, and, unfortunately, not all judges are jurists. Their equivalence is a fallacy.
- We and our forefathers and foremothers have been content to cite thousands of opinions without benefit of a preposition. *To cite* is to *refer to*. A few years ago, some judge (a nonjurist?) thought, or was misinformed by a law clerk, that *cite* meant “refer” and therefore needed a preposition. The result was *cite to*, which is to say “refer to to.” This has spread, as such learning will do, and is now peevishly common in judicial opinions.

### A peevish controversy

In our last issue (Fall 2005), **Robert Markle** complained about the use of the plural pronoun *they* when the antecedent is singular (e.g., *everyone*) to reach a politically correct (i.e., gender-neutral) result. Robert cited an article that appeared in the *Scribes Journal* written by Judge Thomas G. Gee (*A Few of Wisdom’s Idiosyncrasies and a Few of Ignorance’s: A Judicial Style Sheet*, 1 *Scribes J. Legal Writing* 55, 60 (1990)).

**Judge David Mannheimer**, Judge of the Court of Appeals, Alaska, wrote an informed and spirited reply, citing another article from the *Scribes Journal*, “A Singular Use of *They*,” written by Robert D. Eagleson (5 *Scribes J. Legal Writing* 87 (1994–1995)). We reprint Judge Mannheimer’s letter in its entirety here:

Dear Editor:

I am writing in response to the comments of Robert Markle (page 8 of the Fall 2005 issue of *The Scrivener*), in which he asserts that it is a “barbarism” to use *their* as the possessive form of the gender-indefinite, third-person singular pronoun.

Every school child in America has heard teachers say, “I want everyone to put on their mittens.” And yet almost every school child has

heard teachers say that this construction is incorrect—that *everyone* requires a singular pronoun. But because *he*, *him*, and *his* are no longer acceptable pronouns to indicate the gender-indefinite, third-person singular, what words are to serve this function now?

I regularly use *they*, *them*, and *their*. Ironically, I decided to begin using these pronouns after reading an informative article by Robert D. Eagleson, “A Singular Use of *They*,” that appeared in *The Scribes Journal of Legal Writing*, Vol. 5 (1994–1995), pp. 87–99.

Mr. Eagleson was a member of the Simplification Task Force of the government of Australia. As explained in the *Scribes* article, when the task force redrafted Australia’s Corporations Law, the task force recommended the use of *they* as the pronoun for the gender-indefinite, third-person singular.

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*his or her vs. they, their, or them?*

—What do you think?

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In his article, Mr. Eagleson cites *The Oxford English Dictionary* (2d ed. 1989), for the proposition that the pronoun *they* is properly “used in reference to a singular noun made universal by *every*, *any*, *no*, etc., or applicable to one of either sex (=‘he or she’).” Mr. Eagleson quotes numerous examples of this usage:

*Now leaden slumber with life’s strength  
doth fight,*

*And every one to rest themselves betake.*

William Shakespeare

*So likewise shall my heavenly Father do  
also unto you, if ye from your hearts forgive  
not everyone his brother their trespasses.*

The King James Bible

*A person can’t help their birth.*

William Makepeace Thackeray

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(continued on page 6)

*You just ask anybody for Gordon Skerrett  
and they'll point him out to you.*

F. Scott Fitzgerald

Support for Mr. Eagleson's approach is found in the entry for "they, their, them" in *Webster's Dictionary of English Usage* (1989), pp. 901–02. The *Webster's* entry cites similar examples dating from the fourteenth century to the present day. The entry then concludes:

*They, their, and them* have been used continuously in singular reference for about six centuries, and have been disparaged in such use for about two centuries. Now the influence of social forces is making their use even more attractive. Thomas Pyles (*Modern Language Notes*, December, 1955) sums up their position: "The use of *they, their, and them* as singular relative pronouns of indeterminate gender has long been perfectly well established, even in formal contexts." Evans [Bergen and Cornelia Evans, *A Dictionary of Contemporary American Usage* (1957)] agrees; Reader's Digest [*Success with Words*, Peter Davies, editor (1983)] agrees; Chambers [*Chambers Pocket Guide to Good English*, George W. Davidson, editor (1985)] agrees. So do we.

I realize that, for Mr. Markle and many other *Scrivener* readers, the use of *they* or *their* as a singular pronoun may be grating. But this appears to be a matter of taste rather than grammar. I find the repeated use of *his* or *her* equally grating, and I refuse to recast all of my sentences to use plural subjects in an effort to avoid facing this problem. Thus, I unabashedly endorse the use of *they* and *their*.

Yours truly,

David Mannheimer  
Judge of the Court of Appeals

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## New Members

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H. Lowell Brown (Falmouth, ME)  
Cary Bufkin (Jackson, MS)  
Sue Cohen Goldstein (Olympia, WA)  
Elisha Fink (Dexter, MI)  
Michael Fried (Potomac, MD)  
David Frizell (Metuchen, NJ)  
Sandra Janin (New York, NY)  
Scott Longman (Chicago, IL)  
Lawrence Newman (New York, NY)  
Richard Phillips (Dallas, TX)  
Paul Sandler (Baltimore, MD)  
Brian D. Sheridan (Ishpeming, MI)  
Rebecca Vaccariello (Albany, NY)





### Keep Your News Coming



Send us news of your accomplishments, publications, and life changes. Send your news to:

**The Scrivener**  
c/o Jane Siegel  
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## News from Members

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**Ken Adams** wrote that he published an article on the phrase “representations and warranties” in *Business Law Today*. Although Ken wrote this article from a U.S. perspective, he says the logic would apply equally in the United Kingdom. Ken is looking for a coauthor to help him write a version that looks at the issue from a combined U.S.–U.K. perspective. Find the article at [www.adamsdrafting.com/articles.php](http://www.adamsdrafting.com/articles.php).

Stetson University College of Law Dean **Darby Dickerson** received the 2005 Burton Award from the Burton Foundation, in association with the Law Library of Congress, for her outstanding contributions to legal-writing education. Dean Dickerson received the award at a ceremony in June at the Library of Congress in Washington, D.C. Dean Dickerson is an active scholar and author on the topic of legal writing; she created the *ALWD Citation Manual*, which has been adopted by professors at over 100 law schools.

**Edgar T. Farmer** recently retired after almost 50 years in practice—including 34 years as an adjunct professor of law at the St. Louis University School of Law. In November 2005, Edgar published an article, “Common Sense and the Law—An Oxymoron?” in the *St. Louis Lawyer*. He presented a series of lectures about “Forms of Real Estate Ownership” on behalf of The University of Missouri at Kansas City and a program about “Business Expansion, Practical Concerns and the Law of Real Property” before the Property Law Committee of the Missouri bar.

**Joseph Kimble** published a new book, *Lifting the Fog of Legalese: Essays on Plain Language*. The book is a collection of essays published over 15 years. The book is available at [www.amazon.com](http://www.amazon.com) or [www.cap-press.com](http://www.cap-press.com).

**Matthew King** announced that he is now partner in the firm *Tewell & King* (formerly *The Tewell Firm*). Matthew has also published an article, “Temporary Regulatory Takings,” in the DRI’s Winter 2005 edition of *The Critical Path*.

**Terri LeClercq**, writing specialist at University of Texas School of Law, received a lifetime achievement award from the American Association of Law Schools during the Legal Research and Writing Section luncheon in Washington, D.C. She is the first nonlawyer to win this national award. Terri was also chosen to edit a report from a statewide criminal justice advisory council for Governor Rick Perry.

**Chad Oldfather**, assistant professor of the Oklahoma City University Law School, received the American Academy of Appellate Lawyers’ 2004 Howard B. Eisenberg Award for writing the year’s best article on appellate practice and procedure. Chad received the award at the academy’s October 2005 meeting. *Appellate Courts, Historical Facts, and the Civil–Criminal Distinction*, 57 Vand. L. Rev. 437 (2004).

*The Green Bag*, a quarterly journal dedicated to good writing about the law, selected one of **Judge Mark P. Painter**’s opinions for its annual list of outstanding legal writing. Judge Painter was the only state judge honored; the authors of the five other cases selected are all federal judges, including Justice Antonin Scalia of the U.S. Supreme Court. Judge Painter has served on the Ohio Court of Appeals since 1995, after 13 years on municipal court. He is the author of 4 books, 91 articles, and more than 325 nationally published decisions. The case is *Kohlbrand v. Ranieri*, 823 N.E.2d 76 (Ohio Ct. App. 2005).



### Help Scribes Grow

Would you be willing to help promote Scribes? Do you have friends or colleagues who might like to join? Will you be speaking at or attending any program involving legal writing or legal language? We would be happy to send you some of the attractive new Scribes brochures to distribute. Just send an e-mail to our executive director, Joseph Kimble: [kimblej@cooley.edu](mailto:kimblej@cooley.edu).

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### **Need Your Scribes Membership Certificate?**

If you have never received your Scribes membership certificate or you would like a replacement for any reason, please send an e-mail to [kimblej@cooley.edu](mailto:kimblej@cooley.edu). Include the year you joined (as best you can remember). We'd be happy to send you another.



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## Scribes Committees for 2005–2006

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### Annual Meeting

Otto Stockmeyer (Chair)  
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Glen-Peter Ahlers  
Roger Newman  
Hon. Lee Rosenthal  
Hon. Stuart Shiffman

### Book Award

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Beverly Ray Burlingame  
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Steve Smith  
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Otto Stockmeyer  
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Bryan Garner  
Wayne Schiess  
David W. Schultz

### Scrivener & Website

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Christopher Wren

## Scribes Executive Office Moves

The Scribes Executive Office has moved to Thomas M. Cooley Law School. The new executive director is Joseph Kimble. The new address is Thomas M. Cooley Law School, P.O. Box 13038, Lansing, Michigan 48901. Please address all future correspondence (address changes, dues payments, and so on) to Professor Kimble at that address. Or e-mail him at kimblej@cooley.edu.

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