

F. Reed Dickerson: The Persistent Crusader

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Some thirty autumns ago, when I first encountered F. Reed Dickerson in his required freshman class on legislation at Indiana University in Bloomington, I did not realize that I was under the tutelage of “the dean of American legislative drafting,” as he was coming to be known even then. I did quickly learn, however, that Professor Dickerson was a crusader who championed his cause with uncommon persistence.

His cause was the improvement of legal drafting, which he considered to be the most intellectually rigorous form of legal writing — or of any writing outside mathematics, his undergraduate major. He had already published the first edition of his noted treatise, *The Fundamentals of Legal Drafting* (1965), the second edition of which won a 1987 Scribes Book Award Honorable Mention. Dickerson believed that many of the problems of constitutional and statutory interpretation that we faced in his class, and that he would soon address in *The Interpretation and Application of Statutes* (1975), could be minimized through skilled drafting. He advocated the basic training of all law students in the drafting of such legal instruments as contracts, wills, and simple trusts, and more advanced training for those interested in drafting statutes and regulations.

Not a mere theorist, Dickerson brought to the classroom a wealth of practical experience. As an attorney in the Defense Department, he had won the department’s highest civilian honor for his work in heading a project to recodify titles 10 and 32, the military provisions of the United States Code. He also had drafted many major regulations for the Office of Price Administration, had made recommendations for codifying the rules of the Federal Aviation Agency, and had served in the Office of Legislative Counsel of the House of Representatives, where his *Legislative Drafting* (1954) is said to have attained canonical status. His

students benefited not only from his government service but also from his experience as a member of the National Conference of Commissioners on Uniform State Laws and his many other civic and professional roles in this country and abroad.

Dickerson's courses on legislation and drafting were separate from the legal-research curriculum. It's not that he was uninterested in research. On the contrary, he was among the first to recognize and write about the potential of the computer as a tool for both research and drafting. Yet he believed that combined courses on "research and writing" tended to be monopolized by research and to trivialize writing. As an alternative, his practice was to provide students in his drafting classes with whatever research results were necessary, usually in the form of an existing instrument to be rewritten in the light of specific policy assumptions. (Perhaps as a result of Dickerson's influence, the separate first-year research-and-writing curriculum at Indiana was revised so that the first semester was devoted to writing, using canned research, and the second semester to research.)

This approach was consistent with Dickerson's most profound insight, one that would remain with me long after leaving Bloomington for a career in legal publishing: writing informs research — not merely, as conventionally assumed, the other way around. He taught that the writer generates ideas through the act of writing. Do not try to do all your research first, he advised. Instead, begin to write as soon as you have a fairly good idea of what your problem is and an inkling of the answer.

He recommended the early preparation of an outline as a device for improving substantive content. "It is amazing," he explained, "what substantive deficiencies you discover in a draft when you root out what appear to be only inconsistencies of arrangement or expression."¹

¹ F. Reed Dickerson, *Legal Drafting: Writing as Thinking, Or, Talk-Back from Your Draft and How to Exploit It*, 29 J. LEGAL EDUC. 373, 379 (1978).

Dickerson expanded on these concepts at the first Scribes Legal Writing Institute, conducted at St. John's University Law School in 1976, one of a number of his contributions to Scribes activities.²

Dickerson also challenged conventional doctrine by rejecting the notion that teaching a legal-drafting course requires that the instructor personally read, criticize, and grade each student's work in a small-seminar environment. His *Teacher's Manual for Materials on Legal Drafting* (1981) was designed to be used for teaching drafting classes having a large number of students (as many as 78 — without a teaching assistant — in his own experience at Indiana). The manual contained masters for transparencies that could be used on an overhead projector to illustrate drafting principles.

His instructional method, as recalled by faculty colleagues Maurice Holland and Harry Pratter, was to assign his students the task of producing a piece of actual legislation for adoption by a governmental unit. He taught students to begin with a thorough identification of the practical problems and pertinent policy questions and then to draft a finished product for submission to the "client." He collected student assignments and selected for class discussion the more typical or significant drafting errors or successes. Student papers were placed on overhead projectors and critiqued during class time.

Former student James Wolfe remembers that Dickerson "invented a system of editing using numerous drafts, making each revision like the draw of a whetstone, sharpening the logic, cleaning the grammar, smoothing the syntax."³ Reminiscing with me about Dickerson when I visited Bloomington in 1997, Professor Pratter described Dickerson's style as "sinewy, spare, supple, simple, and direct." Drafting does not try to create literature, Dickerson would say. "Always say the same thing the same way. Always say different things differently."⁴

² See *id.*

³ James J. Wolfe, *Fair Comment: F. Reed Dickerson*, RES GESTAE, Aug. 1991, at 55.

⁴ Dickerson, *supra* note 1, at 378.

Dickerson stressed that a legal instrument must carry the same meaning to those who will execute it as to the drafter. He adapted from language theory the concept of "ordinarily successful communication" to develop a theory of statutory interpretation based on the premise that legislative judgments embodied in statutes are authoritative and ordinarily discoverable without resort to legislative history.⁵

This theory of statutory interpretation places an enormous burden on the legal drafter. If the language of the statute is to be the sole witness to its meaning, then the statute must be free of what Dickerson described as three common faults: poor conception, structural defects, and lack of clarity. Through his writings and pedagogy, Dickerson sought to impart the skills that enable the drafting of statutes and other legal instruments in such a way that their meaning is stated clearly and communicated successfully.

Dickerson died in 1991 at the age of 81, reportedly only hours after sending for his office files because "we have so many projects to finish."⁶ As Professor Patrick Kelley notes, no one has had more influence than Dickerson on the practice and teaching of legal drafting.⁷ That so much more needs to be done to improve the quality of legal drafting did not disillusion Dickerson, the self-described realist. As he stated in his last law-school lecture in 1980: "Be persistent. Be patient. . . . I have been crusading against legal gobbledegook for more than 40 years and only recently have we made any real dent in it. . . . The point is, start. Solve whatever pieces of the problem you can and keep going. Persistence will take you a long way."⁸

⁵ See Patrick J. Kelley, *Advice from the Consummate Draftsman: Reed Dickerson on Statutory Interpretation*, 16 S. ILL. U. L.J. 591 (1992).

⁶ *In Memoriam: Reed Dickerson (1909-1991)*, THE SECOND DRAFT, Oct. 1991.

⁷ See Kelley, *supra* note 5, at 591.

⁸ F. Reed Dickerson, Last Lecture (II): Brideshead Revisited; Then Back to the Future (Jan. 30, 1997) (unpublished transcript, on file with the Indiana University Law Library).