



The Scrivener

Scribes — The American Society of Legal Writers

Spring 2007

Scribes Annual Luncheon: August 11 in San Francisco

Scribes will host the annual luncheon for members and guests on Saturday, August 11, in conjunction with the American Bar Association's annual meeting in San Francisco, California. The event will begin at noon in the Peninsula Room on the 25th floor of the Hotel Nikko. Our guest speaker will be former Scribes president and current board member Bryan Garner. Roy Mersky will introduce him.

Bryan Garner founded LawProse in 1990 and has held over 1600 seminars about legal writing for lawyers and judges. He has written 21 books on legal writing, drafting, and usage, and he founded *The Scribes Journal of Legal Writing*. The topic of his talk will be "Knowing Your Stuff as a Legal Writer."

We will present the forty-seventh annual Scribes Book Award, for the best book on a legal subject, and the Scribes Brief-Writing Award, for the best of the winning briefs in national moot-court competitions. Following the presentations, we will hold a short business meeting to elect officers and new members of the Board of Directors and vote on amendments to the bylaws. The amendments are reported on page 10 of this issue.

All members of Scribes and others interested in legal writing are invited to attend the annual luncheon. Advance registrations are encouraged because seating is limited. The cost is \$30 a person or \$50 with a guest. Checks should be made out to Scribes and sent to Professor Joseph Kimble, Thomas M. Cooley Law School, P.O. Box 13038, Lansing, Michigan 48901.

Scribes has been able to keep the cost of the luncheon very reasonable through the generous sponsorship of Thomson West. If you are planning to attend the ABA annual meeting in San Francisco, please be sure to include the Scribes luncheon in your plans.

More about Bryan Garner

Bryan A. Garner is editor in chief of all current editions of *Black's Law Dictionary* and the author of *The Elements of Legal Style*, *A Dictionary of Modern Legal Usage*, *The Redbook: A Manual on Legal Style*, *Legal Writing in Plain English*, and many other books and articles on legal writing. *Garner's Modern American Usage*, a comprehensive 879-page guide, is widely considered the preeminent authority on general English usage. In 2003, he contributed the 94-page chapter on grammar and usage for the 15th edition of *The Chicago Manual of Style*.

A graduate of the University of Texas School of Law, Garner has taught there and at Southern Methodist University Dedman School of Law, where he is now a distinguished adjunct professor.



Bryan Garner will be the guest speaker for the 2007 Scribes luncheon.

President's Column

Norman Otto Stockmeyer
Emeritus Professor
Thomas M. Cooley Law School

What is Scribes?

Just what is Scribes, an honorary society or an advocacy group? When I joined twenty-five years ago, Scribes had the appearance of an honorary society. Authorship of a law book or three articles was required for membership back then, plus nomination by an existing member. The constitution's list of objectives was headed by this one: "To promote and foster a feeling of fraternity between those who write concerning the law, and particularly between those who are members of this organization." *The Scrivener* regularly recited members' accomplishments and honors. The mind's eye pictured a very select group of accomplished legal authors enjoying brandy and cigars in a private club while conversing about their latest published work.

More recently, Scribes has taken on the role of a good-writing advocacy group. We are devoting most of our resources to another of the objectives listed in our constitution: "To promote a clear, succinct, and forceful style in legal writing." Creation of *The Scribes Journal of Legal Writing* has made that goal tangible. So has the publication of more articles on legal writing in *The Scrivener*, including the Legal-Writing Tidbits series initiated by my predecessor, Beverly Burlingame. Our awards promote good legal writing by giving recognition to outstanding examples in book publishing, moot-court briefs, and law reviews. Our legal-writing programs at ABA meetings and law schools are all about writing in a clear, succinct, and forceful style.

So just what is Scribes? Clearly, it is not *just* an honorary society or *just* an advocacy group. It's both! But our membership is limited to those who have already contributed to the legal literature. What about members of the legal profession who aspire to write something for a legal periodical—or who just want to write better briefs or draft better documents—but need some guidance and encouragement? Or those who have not published themselves but share our goal of improving legal writing?

At its spring meeting, the Board of Directors approved an amendment to our bylaws. It would open associate membership in Scribes to all members of the

legal profession who share our goals and wish to lend their support. Regular membership would continue to be limited to those who meet our publication



Norman Otto Stockmeyer is ending his term as president of Scribes.

standards. If approved by the membership at our annual luncheon in August, this bylaw change would expand our membership categories to reflect more fully our twin goals of honoring published legal authors *and* promoting good legal writing.

This change has the greatest potential to increase our membership base since creation of the institutional membership back in 1990. I support it and hope that you will, too.

Legal-Writing Tidbit

Transitions*

Transitions tell your reader, as Humphrey Bogart said to Ingrid Bergman in *Casablanca*, "where you've been and where you're going." Transitions tie together sentences and paragraphs; they link familiar material (which you have already discussed) to unfamiliar material (which you are about to discuss). A missing or inappropriate transition can leave your reader with a confusing jumble of ideas.

Transitions exist at many levels. Large-scale transitions, such as road maps and transitional paragraphs, link large sections of the writing together. Small-scale transitions may be no more than a sentence or a clause or a word. They are, however, equally important because they link together issues, subissues, and cases.

Transition Tips

First, overlap. Start a sentence with the concluding thought of the previous sentence, and put new material toward the end of the new sentence. Do the same thing with paragraphs, with subsections, and with sections.

(continued on page 3)

(Transitions *continued*)

Second, use repetition to emphasize important terms or ideas. A similar technique is dovetailing, which is the use of words with a similar linguistic base, such as *denial* and *deny*.

Third, use demonstrative pronouns (*this, that, these, those*). These act as “pointer words” to nouns in preceding sentences or paragraphs.

Fourth, use “tiebacks.” Tiebacks are sentences or paragraphs that refer back to your thesis. A summary-judgment motion, for example, should have several tiebacks to the general theme, which will usually be some variation on the theme that there are (no) disputed material facts.

Fifth, use “mini-introductions” throughout your writing to tell the reader where you are going. Use “mini-conclusions” to sum up a point and to tell the reader that you are moving to a different point.

Sixth, use a formal outline structure within your writing for headers. This makes it unlikely that the reader will get so wrapped up in a subpoint that the reader forgets how that subpoint relates to the overall argument. If your writing is particularly lengthy, consider putting a table of contents, again in formal outline form, up front.

Finally, use transitional words frequently. For example:

To illustrate: for example, for instance, such as.

To contrast: however, on the other hand, despite, nonetheless, but, conversely.

To add: and, also, additionally, another, moreover, besides.

To concede: although, doubtless, even though.

To summarize: therefore, thus, consequently, accordingly, in conclusion.

* Excerpts reprinted from Rick Bales, *Transitions*, 66 Bench & Bar 35 (Sept. 2002) (footnotes omitted), with permission of the author and publisher. The complete article can be downloaded through the Social Science Research Network (<http://ssrn.com/abstract=910041>).

Nominating Committee Report

The Nominating Committee will place in nomination these names for election at the 2007 annual luncheon in San Francisco on August 11:

<i>President:</i>	Stuart Shiffman
<i>Vice President (President Elect):</i>	Dean Steven R. Smith
<i>Secretary:</i>	Dean Darby Dickerson
<i>Treasurer:</i>	Judge Michael B. Hyman
<i>Board of Directors (three-year terms):</i>	Beverly Ray Burlingame
	Bryan A. Garner
	Richard C. Wydick

Other nominations may be made from the floor. Election to each position is decided by a majority of members present at the meeting.

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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

Summer	July 15
Fall	October 15
Winter	January 15

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Scribes Board Meets in Houston

The annual meeting of the Scribes Board of Directors was held March 3, 2007, at the facilities of the South Texas College of Law in Houston, Texas. The meeting was preceded on March 2 by legal-writing seminars conducted by Scribes for law students at South Texas College of Law and University of Houston Law Center. Both law schools are institutional members of Scribes and cosponsored the seminars and the board meeting.

Speaking at the seminars were Chief Justice Adele Hedges, Texas 14th Court of Appeals, author of the *Texas Practice Guide on Civil Appellate Procedure*; Professor Richard Wydick, author of *Plain English for Lawyers*; Professor Joseph Kimble, author of *Lifting the Fog of Legalese: Essays on Plain Language* and editor in chief of *The Scribes Journal of Legal Writing*; and attorney Beverly Ray Burlingame, appellate specialist at Thompson & Knight LLP and executive editor of *The Scribes Journal*.

The University of Houston's noontime seminar featured a law-book raffle and concluded with pizza for the students and speakers. South Texas's late-afternoon seminar was accredited for MCLE credit and was followed by a wine-and-cheese reception. Both were free, and we videotaped both events for possible future use.

Attending the board meeting were Charles Dewey Cole, Jr. Dean Darby Dickerson, Judge Michael Hyman, Professor Joseph Kimble, Christy Nisbett, Stuart Shiffman, Dean Steve Smith, Professor Otto Stockmeyer, John Williams, Christopher Wren, and Professor Richard Wydick.

President Stockmeyer opened the meeting by reporting that the goals he set for his term have been fairly well accomplished. Scribes is running efficiently and is

in good financial condition. Two things remain on his agenda: adding photos to the Scribes website and establishing a Scribes archive.

Vice President Shiffman endorsed the continued pre-



Richard Wydick speaking at the Scribes seminars in Houston.



These banners hang outside the entrance to the University of Houston Law Center. The banner on the left proclaims that Houston students won the 2006 Scribes Brief-Writing Award.

sentation of Scribes programs at legal institutions and law schools. He proposed that Scribes undertake activities to celebrate the 200-year anniversary of the birth of attorney and U.S. President Abraham Lincoln.

Treasurer Hyman reported that Scribes took in about \$7,500 more than the budget had projected. There were no salary expenses for the executive director or his assistant because of the generosity of Thomas M. Cooley Law School, which houses our administrative office. Life-membership dues are invested in a \$25,000 certificate of deposit.

Annual Membership Meeting

President Stockmeyer reported on the success of the 2006 annual meeting luncheon in Hawaii and on plans for the forthcoming 2007 luncheon in San Francisco. He expressed appreciation to Roy Mersky for agreeing to speak at our Hawaii luncheon without payment or expense reimbursement, and to Thomson West for continuing to help underwrite our luncheons so that ticket prices can be kept at a reasonable level.

Book Award

Judge Hyman reported that about 50 books were submitted in 2006 and that review copies for the 2007 award are already coming in. The 2006 award was the subject of an article in the fall 2006 issue of *The Scrivener*.

Brief-Writing Award

According to Kenneth Gartner's report, 57 briefs were nominated in 2006, well above the number in recent years. Christy Nisbett administers the screening system. The 2006 award presentation was also written up in the fall 2006 *Scrivener*.

Law-Review Award

Professor Mersky's report states that there were 70 submissions for the 2005–06 award. The Legal Research & Writing faculty at Cooley Law School screens the submissions. The award presentation for 2007, at the Scribes dinner at the National Conference of Law Reviews, is reported in this issue.

Legal-Writing Programs

In addition to the two seminars in Houston, Scribes sponsored a program at the 2006 annual meeting of the Association of American Law Schools in Washington, D.C., in January. Judge Hyman is working with Professor Roger D. Billings, Jr., of Northern Kentucky University, a past president of Scribes, on a program about Lincoln as a writer.

Membership and Outreach

We added about 475 new members in 2006, mostly faculty and judges at institutional-member law schools and courts. Deans Dickerson and Smith have been very helpful. The board debated and adopted a proposal to open associate membership to all members of the legal profession who support Scribes' goals. A bylaw amendment to this effect will be submitted for a vote of the membership in San Francisco. The committee also discussed ways to reach members of groups whose interests overlap with ours.

Nominating Committee

This year we will need nominees to fill the four officer positions and from three to five board seats. The list of nominees appears on page 3.



Scribes board members at their annual meeting.



Professor Joseph Kimble, Beverly Burlingame, and Chief Justice Adele Hedges (Texas 14th Court of Appeals) at the Scribes seminars.

Scribes Journal

Editor in Chief Kimble mailed Volume 10, which included a ten-year index of articles, last September. Cooley Law School underwrote the printing and mailing costs. Duncan MacDonald's article was selected for reprinting in *The Green Bag's* anthology of exemplary writing. Volume 11 should be out late this year or early in 2008.

Scrivener and Website

The Scrivener continues to improve in content and timeliness, thanks to Editor Jane Siegel. We published articles last year by and for attorneys, judges, and law professors. Judge Diane Wood's article in the summer 2005 issue was also selected for reprinting by *The Green Bag*. Back issues are being scanned for the website. Christopher Wren is working on plans to expand website content.

New Business

The board exchanged ideas for obtaining underwriting for *The Scrivener* and sponsorship of our awards from law firms or legal publishers. The board will explore the cost of taking out ads in the legal media to announce our award winners and publicize our annual luncheon.

Next Meeting

The board selected Las Vegas, Nevada, as the site for the 2008 meeting, and hopes to be in partnership with our institutional member there, the University of Nevada, Las Vegas, William S. Boyd School of Law.

Scribes extends a sincere thank-you to the University of Houston Law Center and the South Texas College of Law for their outstanding hospitality and many contributions to the success of the 2007 meeting.

Georgetown Student Wins 2007 Scribes Law-Review Award

Kevin Trowel, a May graduate of Georgetown Law School, won the 2007 Scribes Law-Review Award for his note, "Divided by Design: Kitzmiller v. Dover Area School District, Intelligent Design, and Civic Education." The note is published in Georgetown's law journal (93 Geo. L. J. 855). More than 67 articles were submitted during 2006; professors at Thomas Cooley Law School did the initial screening. The Law-Review-Award Committee, chaired by Roy Mersky, made the final selections: Mary Bowman, Daniel R. Karon, Richard Leiter, Robert N. Markle, Roger Newman, and Richard Wydick. Trowel received his award during the Scribes dinner, one of the highlights of the National Conference of Law Reviews, held in March at the University of Arkansas at Little Rock. The annual dinner was sponsored by Thomson West. Roy Mersky gave opening remarks and then presented the award.

Remarks by Roy Mersky

The American Society of Legal Writers—Scribes—was founded in 1952 to promote greater clarity in legal writing. The many judges, lawyers, legal editors, writers, and law professors who belong to Scribes believe that rewarding good legal writing is more productive than simply condemning poor legal writing. Scribes advocates excellence in legal writing with publications such as our newsletter *The Scrivener* and *The Scribes Journal of Legal Writing*; with workshops and conferences; and with various legal-writing competitions.

The tremendous diversity of legal writing in the profession, however, makes it impossible to have a single competition to judge every possible genre of legal writing. For this reason, Scribes has annual awards that recognize outstanding legal writing in three different categories: best book, best written brief, and best student law-review note or comment.

Scribes established the Law-Review Award in 1987. This award, presented each year at the National Conference of Law Reviews, seeks to recognize the most outstanding note or comment authored by a law student and published by a student-edited law review. In fact, the Scribes Law-Review Award has become known as the most prestigious recognition honoring an

article by a law student and the law review with which it is associated.

This law-review award is quite competitive because there are about 600 student-edited law reviews published by ABA-accredited law schools. Of these, 393 focus on specialized interests, such as foreign, international, and comparative law; gender issues; environmental law; intellectual property; maritime law; public-interest law; religion; and tax law, to name a few.

Today we are here to present the twenty-first Scribes Law-Review Award. This year there were 67 entries for the best student-written piece published in their law-school journals. Previous winning entries have been from Yale Law Journal (1987); George Washington Law Review (1988); Virginia Law Review (1989); Texas Law Review (1990); University of Chicago Law Review (1991); William and Mary Law Review (1992); University of Pennsylvania Law Review (1993); University of Maine Law Review (1994); Suffolk University Law Review (1995); Columbia Law Review (1996); University of Pennsylvania Law Review (1997);



At the Scribes Dinner for the Law-Review Award (from left to right): Professor Barry Scheck, Yeshiva University, Benjamin N. Cardozo School of Law, speaker at the dinner; Merideth Harness, University of Arkansas at Little Rock, William H. Bowen School of Law, editor of that school's law review and conference organizer; Kevin Trowel, Georgetown University Law Center, winner of the Scribes Law-Review Award; and Professor Roy Mersky, The University of Texas School of Law, chair of the Scribes Law-Review-Award Committee.

St. John's Law Review (1998); Marquette Law Review (1999); Case Western Reserve Law Review (2000); California Law Review (2001); California Western Law Review (2002); San Diego Law Review (2003); Michigan Law Review (2004); University of California Law Review (2005); and Hastings Law Journal (2006).

This special event has been made possible through the efforts of many individuals and the support of various organizations. I would like to take a few minutes to acknowledge these people and thank them for their support of Scribes.

I have the privilege of chairing a committee of dedicated law professors who select the law-review competition winner, and I would first like to acknowledge the great contributions of Professor Joseph Kimble, executive director of Scribes, and Professor Otto Stockmeyer, president of Scribes, as well as all the members of the 2007 selection committee. We all read the final entries and worked together to select the winner of the award this year.

Initial screening of entries was done by a number of Cooley Law School professors, and I would like to acknowledge their efforts on behalf of this award as well.

I would also like to thank Thomson West for sponsoring this award. Several people from West have come today to show their support, and I want to publicly acknowledge our sincere appreciation to Foster Blair, regional manager of the Southwest Central area, and Amy Ireland, director of marketing.

We are honored to have other special guests here tonight, including our keynote speaker, Barry Scheck, professor of law at Cardozo Law School and co-founder of the Innocence Project, an organization that uses forensic DNA testing to exonerate the wrongly convicted, while working to reform the criminal-justice system to prevent future injustice. We would like to thank Mr. Scheck for participating and making this a very special evening.

And a special thank-you to the organizer of this year's National Conference of Law Reviews, especially for this night's program: Merideth Harness, NCLR editor and conference coordinator. This is a well-organized event that has been intellectually stimulating as well as socially entertaining.

And last but not least among the many thank-yous to give, I would like to recognize Don Petty, Tracy Chenault, and Mary Leonard of Cadmus Communications, which has generously reprinted the winning

essay and provided us all with a copy.

Now it is with great pleasure that I announce the winner of the 2007 Annual Scribes Law-Review Award: Kevin Trowel, for his note, "Divided by Design: *Kitzmilller v. Dover Area School District*, Intelligent Design, and Civic Education," 93 Georgetown Law Journal 855.

Mr. Trowel, would you please come to the podium to accept your award? While Mr. Trowel makes his way to the podium, let me tell you a little about him.

Kevin Trowel grew up in a military family and lived throughout the United States, as well as in Poland. He has traveled extensively throughout Europe and speaks both Polish and Russian. He earned his Bachelor of Arts in Government and Politics from the University of Maryland, his master's in Russian and East European Studies from Oxford University in England, and he will receive his J.D. in May from Georgetown University.

He has been a summer clerk for Miller & Chevalier in Washington, D.C., and Davis Polk & Wardwell in New York City, as well as interning for the Honorable Paul Friedman of the United States District Court for the District of Columbia. Upon graduation, Kevin will clerk for the Honorable Faith Hochberg, United States District Court for the District of New Jersey.

In his spare time, Kevin is an accomplished singer, guitarist, and songwriter. His band *The Fuses* released three CDs and numerous singles in the United States and Europe, toured the United States five times, and played shows in 38 states. Kevin was also CFO of an independent record label, *Morphius Records*.

Kevin, I am pleased to present you with this commemorative plaque in recognition of your excellence in legal writing. I would also like to ask you to share with us tonight the reasons you wrote your piece on intelligent design and civic education and tell us about your future plans as well. But before I give up my place at the podium, I want to offer my sincere congratulations to you on winning the 2007 Scribes Law-Review Award. I'm sure everyone in the audience joins me in wishing you all the best for an outstanding career in law.

Remarks by Kevin Trowel

First, I would like to thank Professor Mersky and the Scribes committee for selecting my note. It was a great honor to be chosen by the Georgetown Law Journal's executive editors to represent the Journal, and it is a tremendous honor to be chosen by Scribes from so many excellent student papers. They are not here

today, but it would be very dangerous to forget to thank Primary Editor Michael Huang, Executive Editor James Caputo, Editor in Chief Andrew Ditchfield, and Managing Editors Annie Christoff and Brendan DeMay. Finally, I would like to thank the Journal's executive board for its dedication to student writing.

I think when someone asks a student why he or she wrote a note, the student's first reaction—or at least *this* student's first reaction—is to say, “Because I had to.” That is not because students do not enjoy writing or lack strong opinions. The problem is one of timing. From the moment a student finds out that he or she has made a journal, there are just a few months—at most a year—to find a topic, research it, write it, and rewrite it before publication. It can be daunting.

But for those of us lucky enough to be in the right place—reading the right book or article, or taking the right class—at the right time, this feeling is temporary. Once the initial idea starts to fill out, the note-writing process is exciting and rewarding.

My right-place, right-time moment came with Judge Jones's decision in *Kitzmiller v. Dover Area School District*. The case and other intelligent-design controversies were all over the news in the fall of 2005, and Judge Jones was expected to issue his decision that winter. This period just happened to coincide with the semester when I was looking for a topic and trying to figure out when I would have time to write about it.

To step back for a moment, I was interested in this topic because I attended public schools all the way through University of Maryland. I grew up in a military family that moved every few years, so I attended public schools in Alabama, Maryland, and California. In those years in the public-school system, I saw many great things. I had dedicated teachers, including one who created the school district's only constitutional-law class and another who created the district's only economics class. Both of those teachers encouraged us to speak our minds, and they instilled in us a strong sense of civic duty and civic pride. Of course, not everything I saw was good, but the bad things were exceptions to the rule.

With some distance, I have come to realize how important those years were to my development. The schools, teachers, and my fellow students shaped my character, and I am very thankful. The depth of my conviction on this should be apparent, since I am willing to say this even in a year when the Terps did not make

the Sweet Sixteen.

As I watched the *Kitzmiller* controversy unfold, I was unsettled by the prospect of those kids growing up in a public school—as I did—but missing a key aspect of what I think it means to be an American: a belief in science, both as a means to specific ends, such as improvements in public and private health, and as a means to achieve that most American of ideals: *progress*.

I realize this controversial statement is both under- and over-inclusive. It is overinclusive because science is no panacea, and taken to the extreme, it presents its own dangers. It is underinclusive because, of course, science is but one part of what it means to be American. It is also underinclusive because the controversies are not about *only* science; they are either directly related to, or proxies for, issues including (most obviously) education and separation of church and state, and local control, federalism, and parental control.

So I make this statement about science with these qualifications and with respect to the wide spectrum of reasonable approaches to the problem. In my note I suggest that this respect for reasonable viewpoints is, in fact, embedded in the Establishment Clause. Science and faith have not been, are not, and need not be seen as mutually exclusive. And it is from this key premise that I view the controversy.

As I was following the controversy, I started noting suggestions in the press about population changes in some of the areas that were experiencing intelligent-design controversies. These articles suggested that the controversies that were dividing these towns were, in part, between longtime residents, but they were also between old and new residents. These communities were faced with an influx of outsiders as cities expanded and urban residents fled urban congestion and high real-estate prices in favor of exurbs.

As I did more research, it appeared that the census data supported the idea that population change was playing a role in these controversies. This in turn led to the first point I make in my note, which is sociological: there are many factors—most of them unquantifiable—that contribute to these controversies. One of them, however, appears to be population change. To clarify, I do not intend to suggest that there is a causal connection between a town's rapid population change and intelligent-design controversies. Obviously, not every small town invaded by urbanites will be faced with this problem; and not every place that is faced with such a

controversy will have experienced such population changes. The connection, such as it exists, is correlative, not causal. If population change is a factor, it is one of many.

But the data seems to suggest that it is one factor. In all four communities that have had recent intelligent-design challenges in court—York County, Pennsylvania; Tangipahoa Parish, Louisiana; Cobb County, Georgia; and Kern County, California—population growth was from 33% to 300% above the national average. I also looked to the Fordham Foundation’s state-by-state grades for instruction on evolution. Thirteen states received failing grades. Of those, five exhibited growth well above the national rate. Another six had the opposite problem—significant population loss. Rapid population loss, I suggest, may also be correlated to intelligent-design controversies for the same reason as rapid population gain: these communities are threatened by population changes, and intelligent design is one way to draw the line between *us* and *them*.

If population change is one reason for these controversies, it suggests that the introduction of intelligent design into public schools serves an *intentionally* divisive purpose. Perhaps certain segments of the population are resisting the encroachment of urban life into their small towns. It is hard to say what percentage that is, but as I show in the paper, it’s far from all of the cities’ old residents, and it may not even be many. These proposals have not always been particularly popular, it seems, beyond the members of the school boards that propose and pass the measure.

My second point is doctrinal. If it’s true that population change is playing this role in these controversies, what follows? To answer this question, I scrutinize intelligent design from the perspective of civic education. Civic education must provide students with the tools to be active, critical, political, but tolerant citizens. The Supreme Court has endorsed this view of education’s role in landmark decisions from *Myer v. Nebraska* in the ’20s, through *Brown v. Board of Education*, all the way through to *Grutter*. The teaching of intelligent design, however, poses substantial challenges to an education that encourages students to fulfill their civic roles as they are defined in the paper.

As I noted, the Establishment Clause is itself the product of a balancing of science and faith. But the idea that religion in the public sphere could serve to divide communities and tear our delicate civic fabric was a

very real concern to the Framers. This problem has continued to concern the Supreme Court, and in a number of decisions the Court has suggested that courts may consider the divisiveness of a given policy in Establishment Clause analysis. Considering this factor would, I think, reconnect Establishment Clause doctrine with one of the clause’s important underlying goals and would give real meaning to the Court’s commitment to the ideal of civic education.

It seems as though we may have entered a relatively quiet period for intelligent-design controversies. That must be the result, in no small part, of Judge Jones’s well-reasoned and meticulous decision in *Kitzmiller*. Nobody would suggest, however, that the issue has disappeared. The caselaw on divisiveness is inconsistent, and the approach may be difficult to apply. Nevertheless, I conclude that this tool—rooted in the Framers’ vision of the Establishment Clause—may prove helpful in analyzing these problems in the future.

Thank you for listening, and thank you again to Professor Mersky and Scribes for this great honor.

***Teaching the Teachers:
Effective Instruction in Legal Research***

October 18–20, 2007, in Austin, Texas

The Tarlton Law Library will host a conference that will explore the teaching of legal research in today’s information environment.

Teaching the Teachers: Effective Instruction in Legal Research will focus on the best methods and practices for teaching legal research to today’s generation of law students. Conference faculty represent excellence in teaching and communication and come from the judiciary, the practicing bar, and the legal academy. The conference responds to and will further the National Conference of Bar Examiners’ initiative to develop a stand-alone component of the bar exam focusing on legal research methods and skills.

The conference will be held October 18–20, 2007, in Austin at the Tarlton Law Library and Jamail Center for Legal Research at the University of Texas. More information and registration details are available at <http://tarlton.law.utexas.edu/ttt/>.

Proposed Bylaw Changes

The following changes in the bylaws will be voted on at Scribes' annual luncheon meeting, August 11, during the ABA annual meeting in San Francisco.

The changes in Article 1, sections 2 and 3, will add a second category of associate members, add a new category for student-editor members, and eliminate honorary members. The change in Article 2, section 1, will alter the annual fee for an institutional member with more than 100 members of its own.

* * *

The bylaws, Article 1, sections 2 and 3, are amended to read as follows:

2. Associate Members.

- a. *Members of the legal profession.* A member of the legal profession who is not otherwise qualified for membership but shares the goals in the Constitution, Article 1, may be approved for associate membership on the Executive Director's recommendation.
- b. *Persons who are not members of the legal profession.* A person who is not a member of the legal profession but is otherwise qualified for membership may be approved for associate membership on the Executive Director's recommendation.
- c. *Dues and rights.* An associate member must pay the same dues as a regular member. An associate member has no right to vote or to be elected to the Board but has all the other rights of membership.

3. Student-Editor Members. Any student member of a law journal may become a student-editor member for one year by paying \$15. After one year, the membership may be renewed for another year only if the student is still in law school. A student-editor member has no right to vote or to be elected to the Board but has all the other rights of membership.

[Former Article 1, section 3, concerning Honorary Members, is abolished.]

* * *

The bylaws, Article 2, section 1, are amended to read as follows:

1. Amount. Each full member must pay dues as follows:

• • •

- Institutional Member — \$350 annually for an institution with fewer than 10 eligible members; \$650 annually for an institution with 10 to 100 eligible members; and for an organization with more than 100 eligible members, \$650 annually plus \$20 for each additional member over 100.

Life Members

Glen-Peter Ahlers (Orlando, Florida)
Lee C. Buchheit (New York, New York)
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In Memory of Tom Steele

Scribes lost a great friend on Tuesday, March 27, 2007. Longtime Scribes Executive Director Professor Thomas McNight Steele passed away unexpectedly after he had been seriously ill for several weeks. A memorial service was held Wednesday, April 4, at 4:00 p.m. at Peace Haven Baptist Church in Winston-Salem, North Carolina.

In lieu of flowers, the family requests that donations be made to the Thomas M. Steele Research Scholarship in History Fund, a scholarship that Professor Steele established several years ago at his undergraduate alma mater, Oklahoma State University. Checks should be made to The OSU Foundation, with a notation of "Steele Scholarship in History" on the memo line. Mail contributions to The OSU Foundation, 400 South Monroe, Stillwater, Oklahoma 74074.

We plan to offer a longer memorial tribute in the next issue of *The Scrivener*. Remembering the contribution of Tom Steele to Scribes has heightened our awareness of the richness of its history and the need to preserve it. If you have any archival material, please send it to Executive Director Joseph Kimble, Thomas M. Cooley Law School, P.O. Box 13038, Lansing, Michigan 48901.

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News from Members

Brian Hooper has moved from private practice to accept a government appointment. He is now Special Advisor for Legal Policy at the Office of Weapons of Mass Destruction Terrorism, Bureau of International Security and Nonproliferation, U.S. Department of State.

Judge Mark P. Painter announces that his 350th judicial opinion has been published. He is the most-published local judge, and one of the most published Ohio judges, in history. His 350th opinion is *Cincinnati v. Scheer & Scheer Development* and can be found at <http://www.sconet.state.oh.us/rod/newpdf/1/2006/2006-ohio-1221.pdf>

Stuart Shiffman has written another book review, “A Consensus Builder—A Review of *Justice for All: Earl Warren and the Nation He Made*,” by Jim Newton. The review appears in 90 *Judicature* 181 (2007).

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An Update on the Joseph Marticelli Gavel and Its Namesake

In the summer 2006 issue of *The Scrivener*, President Otto Stockmeyer wrote about the Joseph Marticelli Gavel, used by all Scribes presidents. President Stockmeyer recently received this e-mail:

Hello, Mr. Stockmeyer. My name is Frank Marticelli, and Joe is my father. Sadly, he passed away in 1995 at age 74. I saw your 2006 article about the gavel with his name on it; I did not know the gavel existed. My father was an avid member of Scribes, and he had his membership certificate framed. To this day, it hangs on the wall of his study in my mother's house. It has hung there for decades. I am certain that he would have considered the gavel a supreme honor.

My father was a judge and sat on the Town of Henrietta's bench until he could no longer sit for health reasons. He lobbied the state to install three judges in Henrietta due to workload; the town was one of only two in the state to be afforded the honor by then Governor Mario Cuomo. My father also filled in on Rochester City Court when they were short on judges. His daughter, Barbara McGarey, is chief counsel for NIH in Washington, D.C. Please let your readers know on my behalf that he would be proud to be recognized more than ten years after his passing by an organization that he cherished. Thank you.

Thank you, Frank, for letting us know about your father and your family. We'll continue to use his gavel—respectfully.

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