The Scrivener

Fall 2010

Scribes — The American Society of Legal Writers

Featured Articles

It's South Texas Again!

(*On Saturday, August 7, 2010, Donald J. Guter, President and Dean of South Texas College of Law, Houston, accepted the Scribes Brief-Writing Award for his school. These are his remarks.*)

Many thanks to Stuart Shiffman, President of Scribes, and Norman Plate, Executive Director, for all you do to make this event a reality each year. We are very happy to be here again this year.

First, I want to congratulate the first-place winners from South Texas College of Law, Michael Jones, Stuart Ladner, and Sabrina Stone, and our third-place winners, Christopher Burt, Ryan King, and Andrew Nelson.

We appreciate all of the kind remarks during the introductions about the consistent success of our program. In fact, I will expand on those remarks and try to answer the question that Becky McAlpine posed in her e-mail to me. She asked if I could say a few words, and tell you what makes South Texas so successful. Of course, I said yes. No dean turns down an opportunity to brag in public about his law school.

Donald Guter, Dean of the South Texas College of Law, accepts the 2010 Scribes Brief-Writing Award.

To begin with a bit of history—South Texas College of Law first entered the Scribes competition in 1999. Since then, we have received four first-

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The President's Column:

Being Optimistic About Legal Writing

by Steven Smith, California Western School of Law

Scribes was founded in 1953 "to promote a clear, succinct, and forceful style in legal writing." But the quality of legal writing in our first three or four decades did not give anyone much hope that the mission was possible. Indeed, the trend was in the wrong direction.

Outgoing Scribes President Stuart Shiffman congratulates incoming Scribes President Steven Smith.

During those early years of Scribes, it was fashionable to "write like" or "sound like" a lawyer, which resulted in complex, pompous, and almost impenetrable prose—in short, anything but clear and succinct. Legal writing at law schools was almost a joke—often taught by other students with little supervision. The Internal Revenue Code seemed to be the model for statutory drafting. And judicial opinions were longer and harder to read.

My interest in Scribes began when I was reading torts bluebooks. The writing was terrible—in part because much of undergraduate education had given up teaching writing because it was too costly. The last straw for me was a bluebook with no complete sentence (and an unfortunate reference to "intentional negligence"). I sought the advice of my mentor, Don

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(The President's Column *continued from page 1)*

Shapiro. As it turned out, he had recently been president of Scribes. Don said that there was a movement afoot, including Scribes, to do something about the state of legal writing. He was right.

Why be optimistic now? First, the attention to legal writing has increased significantly and created an atmosphere conducive to improvement. (The cynic may say that, given the quality of writing I have just described, very little improvement would be needed to produce the optimist I am now.) I have recently completed a book project that required me to read cases and law-review articles from the last sixty years or so. At the state level, the typical opinion is clearer and more readable now than it was twenty years ago. And the same is true for law-review articles. My informal survey of statutes, though, did not show the same upward trend in quality.

Members of Scribes, and their friends, have aided this attention to good legal writing by publishing excellent guides to improving writing. Bryan Garner (and his coauthor, Justice Scalia), Richard Wydick, Darby Dickerson, and Joe Kimble are just a few recent examples of the *many* who should receive credit. In short, these guides reflect the best of our profession—the wisdom of Supreme Court justices, attorneys, and law professors.

Second, the quality of writing instruction in law school has never been as good or as resource-rich. Almost every law school has a cadre of wonderful, full-time legal-writing faculty. At California Western, I see our legal-writing faculty devoting countless hours to one-on-one instruction with students—in the library, in their offices, in the courtyard—helping students improve their legal writing. These are the drill sergeants and heroes in the battle to improve legal writing. And beyond two or three semesters of basic legal writing, law schools now commonly require scholarly writing and drafting from upper-division students.

Third, the competitions in which students compete to produce the best legal writing are also a part of the progress. Law students are competitive, so they work harder to win a competition than they might for a class. This work is usually done in close cooperation with a lawyer or faculty member, and it means a lifetime of better writing. The competitions that Scribes sponsors are also cause for optimism. I wish every judge and lawyer could see the truly extraordinary work that students are doing—in brief and law-review writing.

So I have every reason to be optimistic and believe that the next generation of legal writers will be better prepared for, and pay more attention to, good writing. This is not to say, however, that we have reached writing nirvana. (I am optimistic, not delusional.) Legal writing is more often proficient and unobjectionable, but it is not yet "clear, succinct, and forceful." We have a way to go, particularly in legislative drafting. The new legal-writing professionals in law schools are thinking, writing, and publishing about better ways to approach legal writing. The *Scribes Journal* has been an important voice for better writing. The next few decades are likely to see great progress in improving legal writing.

And Scribes has been a part of the progress. Scribes has been fortunate to have the leadership of Stuart Shiffman as president for the last three years, and Otto Stockmeyer as president before that. Under their leadership, Scribes has expanded its membership considerably and promoted legal writing in cooperation with other groups, including the ABA and AALS. Programs cosponsored with the New York City Bar Association and with the Illinois Bar Association and Illinois Judges Association focused on Lincoln the writer. Each year, in conjunction with the spring board meeting, Scribes has presented a program on legal writing for law students and practitioners. They've heard nationally renowned good-writing advocates—such as Darby Dickerson, Bryan Garner, Joe Kimble, and Richard Wydick—tutor them in legal writing. Although Otto's term on the Scribes board is expiring, Stuart will remain on the board as immediate past president, fortunately for us.

This is an important and interesting time to be working on legal writing. As the new president of Scribes, I welcome suggestions about how we can work with colleagues to "promote a clear, succinct, and forceful style in legal writing."

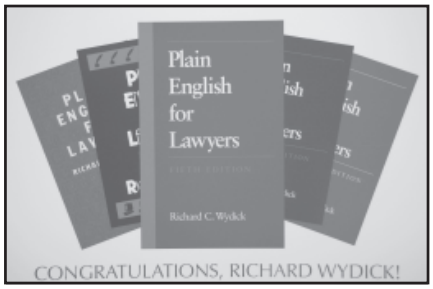
2010 Annual Meeting

2010 Lifetime-Achievement Award winner Richard Wydick signs copies of his books.

2010 Scribes Book-Award winner John Temple, author of The Last Lawyer: The Fight to Save Death Row Inmates.

Brief-Writing Award winner Stuart Ladner accepts the 2010 Scribes Brief-Writing Award on behalf of his team.

Richard C. Wydick and his family.



A collage of the book covers from the various editions of Plain English for Lawyers *by Richard Wydick.*

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 Scribes brochures to distribute. Just send an e-mail to our executive director, Norman E. Plate: platen@cooley. edu.

In This Issue

Submit Your Articles

Please send items for upcoming issues of *The Scrivener* (electronically) to the e-mail address shown below.

Deadlines

Winter	January 15
Spring	March 15
Summer	June 15

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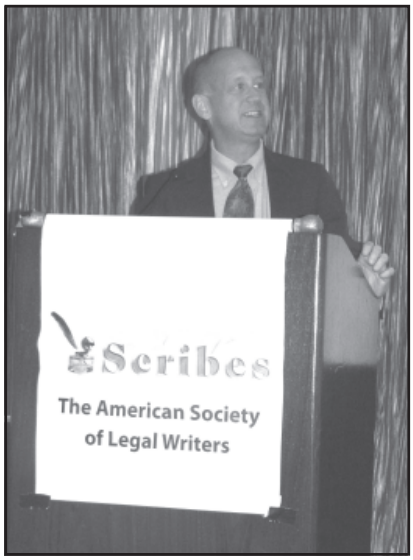
Scribes 2010 Annual Luncheon Meeting Keynote Address

by Pamela S. Karlan, Professor of Law, Stanford University Law School

Elvis Costello is famously supposed to have said that writing about music is like dancing about architecture. It makes me wonder what talking about writing is like—eating about parasailing, perhaps? One thing I do know, and have learned again and again over the past half-dozen years with the Supreme Court Clinic, is that you can't teach writing by talking about it. Or at least not *only* by talking about it.

Some of the hardest things to get through to students are the ways in which talking and writing are the same and the ways in which they are different. Things that work orally often fall flat on the page. When you're talking to someone, you usually can gauge your listener's level of comprehension or agreement and adjust your presentation accordingly. Not so in writing, where you have to guess and thus have a greater risk of not noticing when you've lost your listener. This is why I generally make students come by the office to ask questions rather than doing it by e-mail. I mean, otherwise, how am I to answer the question, "Can you explain qualified immunity"? Is the answer "Yes"? Or, "Apparently not, if you're asking me this question"? Do I have to start with first principles, or is this a student asking about subtleties?



Executive Director Norm Plate introduces the keynote speaker, Professor Pamela S. Karlan from Stanford Law School.

At the same time, while writing is generally a more formal medium than speech, formality is not a synonym for pomposity or verbosity or turgidity. No one would ever *say* "Petitioner respectfully prays," unless, perhaps, she were talking about a Religious Land Use and Institutionalized Persons Act case and describing her client's daily invocations of divine assistance. I've actually never *heard* the word "hereinafter" used out loud. So why do I assume that it's not pronounced her-ein-after?

Keynote speaker Professor Pamela S. Karlan from Stanford Law School.

My favorite example of writing run amok involves the McKinney's form book for New York lawyers. The book gives examples of letters to the court with the closing, "Yours, etc." The writer is *supposed* to use this as a springboard for phrases like "Yours truly"—whatever that means—but a shocking number of letters I've seen actually use the phrase "Yours, etc." Why does this happen? Because somehow people let their hands move ahead of their brains. Justice Kennedy has a very odd sentence in his opinion for the Court in *Ashcroft v. Free Speech Coalition*—"The right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought." I should hope not. But if people should think before they speak, they certainly should continue thinking once they start writing. Too often, folks go on autopilot or cut and paste.

I've been asked to talk to you a little today about how we try to teach legal writing in the Supreme Court Litigation Clinic that I codirect at Stanford. The answer is largely that we teach by doing. This year marks the

eightieth anniversary of the publication of Karl Llewellyn's *The Bramble Bush*, which remains some of the best advice ever given to law students. Llewellyn spent a fair amount of time describing how to read and think about "cases"—then, as now, largely appellate opinions. But ultimately he exhorted students to

> [p]ickle yourself in law—it is your only hope. And to do this you need more than your classes and your case-books and yourselves. You need your fellows. . . . In group work lies the deepening of thought. In group work lie ideas, cross-lights; dispute, and practice in dispute; cooperative thinking and practice in consultation; spur for the weary, pleasure for the strong.

That process of pickling through group work is how we aim to teach writing.

I thought I would spend a few minutes talking about the nature of the clinic and then walk you through the writing in a typical case. Our clinic litigates real cases, on behalf of real clients, before the Supreme Court of the United States. Over the past half-dozen terms, we've had as many merits cases before the Court as any firm in the country. Some of them are cases ripped from the headlines: for example, the case in which the Supreme Court held that the Eighth Amendment forbids capital punishment in cases involving the rape of a child. Some of them are cases that involve abstruse provisions of federal law: for example, whether section 522(d)(10)(E) of the Bankruptcy Code, which provides, among other things, for debtors to retain their right to payments under "a stock bonus, pension, profit sharing, annuity, or similar plan or contract," protects individual retirement accounts. But all of them are cases involving unsettled legal questions. All of them have high stakes for future cases.

"[Y]ou can't teach writing by talking about it. Or at least not *only* by talking about it."

So isn't this an odd arena for clinical education of second- and third-year law students? In some ways, it is, but in others, it isn't. Oddly enough, given how the first year or two of their legal educations are run, our students may have better intuitions about the Supreme Court, whose opinions they have pored over, than about the landlord-tenant tribunals or administrative-law hearings or informal negotiations with opposing counsel that have long formed the backbone of clinical education.

Moreover, Supreme Court litigation presents a number of great opportunities for bringing the skill students have developed in doctrinal analysis to bear on developing the skills that make great lawyers. While Supreme Court litigation shares many characteristics with other appellate litigation, it also involves a distinctive type of lawyering. In particular, the certiorari process involves a style of argument that centers not primarily on the correctness of the decision below, but on whether the case raises important legal questions and provides an appropriate vehicle for resolving them. As a descriptive matter, the former question usually involves the presence, depth and breadth, and intractability of a circuit split. So students in a Supreme Court Clinic gain a special kind of experience in how to shape legal issues.

Second, at the merits stage, Supreme Court cases are seldom squarely controlled by precedent. So students must learn not only to litigate cases in which there are strong legal positions on both sides. They must also learn to interweave textual, structural, policy, and prudential arguments. Moreover, because most Supreme Court cases have implications for a broad category of litigants, Supreme Court practice often involves amicus briefs as well as briefs for the parties. Students can learn about a variety of issues from representing amici and parties: how to work collaboratively with lawyers representing different perspectives, how to resolve conflicts among perspectives, and the special roles amici can play in providing the Court, or individual Justices, with alternative reasons for ruling one way.

Those of you who teach clinically know one thing: it's devilishly hard to do well because it's so much easier to do the work than to teach others how to do it. In our clinic, we struggle, usually successfully, I hope, to make our students be the lawyers. They work on everything in teams, usually of three students. The teams are largely opaque to the supervising instructor: we rarely meet with only a single team member on the substance of a brief; we expect the students to assign the work among

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(Keynote Address *continued from page 5)*

themselves; and we expect them to have edited the work among themselves multiple times before we first see it. Our goal is not only to produce first-rate legal work, but also, in the words of my longtime voting-rights colleague Bill Quigley, to teach them to "learn[ ] how to learn from experience."

So when a project comes through the door, the students on the team meet intensively with the supervising instructor. They draw up a schedule that assumes that there must be a nearly complete draft of the work—a cert. petition, a merits brief, or the like—at least a fortnight before the filing date. They work backwards from there to figure out when they need an outline, preliminary drafts, and the like. The team will produce a detailed outline, and almost always that outline requires substantial reorganization. One trick I've learned, inspired by advice from the great baseball statistics guru Bill James, who once remarked that walking a golf course from end to beginning gives you a really useful perspective, is that students tend to write inductively, building up to a conclusion. Getting them to see that a brief should not have an "Aha!" moment is one of the services we perform.

After the team has an outline, we often workshop the brief to the entire Supreme Court Clinic, which consists of three to four other teams and four other instructors. The workshop will identify a particular problem, often one of framing or exposition, for which the team seeks advice. It's impressive how often another student's fresh eyes can make a difference.

Then the team drafts. Once the team members have a draft, the instructor reads it intensively. Almost always, there's another round of what we might call gross anatomy—rearranging the skeleton. Then, the team and the instructor will sit down for a line edit. I like to do these on a big screen, with the entire team there and a student in control of the pen. It sometimes takes 12 hours, but it's the best time of the course. We hash through the brief, sentence by sentence. We may end up doing this two or three times. There are many of our briefs where the file extensions will be ".draft 23" or ".version 15." But we try to turn everything around within a day.

If we've got the time, and a problem, we may do a second workshop. For many of our cases where local counsel have remained actively involved, they will participate by phone, by e-mail, and sometimes in person in meetings with the team.

Finally, it's time for the production work. The team cite-checks, proofreads, proofreads again, pdf's the document, proofreads, proofreads again, and we send the brief to the printer. At the next clinic meeting, the team will reflect for the group on its experience. And then we start all over again.

So what have I learned about legal writing from this process? First, there are a couple of technical hints: take the last sentence of a section and move it to the beginning; that often helps. Do all the drafts, from the beginning, in the format the final product will use: this will give you a better sense than 12-point, double-spaced type on 8½ x 11 paper can whether your sentences are too long. Quote good language whenever you can, and rewrite sentences to avoid ellipses, which may make you look shifty.

But the bigger point is that there is simply no substitute for time and eyes. Editing improves everything. Talking about writing is *not* like dancing about architecture. Being open to criticism makes anyone's writing better. And reread George Orwell's Politics and the English Language every now and again to remind yourself of what's at stake.

Thank you.

New Members

Sylvia Bacon (Washington, D.C.)
Bethany K. Dumas (Knoxville, Tennessee)
Bryan G. Hale (Birmingham, Alabama)
Courtenay W. Hall (Ballston, New York)
Marjorie K. Nanian (Novi, Michigan)
Elan S. Nichols (East Lansing, Michigan)

Lifetime-Achievement Award to Richard Wydick

(*Scribes presented a Lifetime-Achievement Award to Richard Wydick at its annual luncheon meeting last September. Professor Joseph Kimble prepared these remarks and delivered them via DVD.*)

I'm recovering from pneumonia and can't be there today, and I'm so sorry—because Dick Wydick is not just my friend but a mentor to me and a formative influence, as he has been to so many others.

I understand that his granddaughters are in the audience, and I want to say something to them. Girls, Katie and Allie, are you listening? Your grandfather is what you would call a superhero. And you can believe it.

Today, Scribes is honoring Professor Wydick—of course, we call him Dick—with our Lifetime-Achievement Award. Our last two awards have gone to Justice Antonin Scalia and Justice Ruth Bader Ginsburg, so you can see the regard we have for this award.

In 1979, there appeared the first edition of a slim book—93 pages—called *Plain English for Lawyers*. Of course, Dick was not the first person to criticize legal writing; that has been going on for centuries. But the fresh tone, the lively style, the good advice, and very compactness of this book made it work—and stick.

After centuries of criticism, Dick Wydick's book finally started to break the cycle of bad legal writing.

Who can forget his opening words:

> We lawyers do not write plain English. We use eight words to say what could be said in two. We use archaic phrases to express commonplace ideas. Seeking to be precise, we become redundant. Seeking to be cautious, we become verbose. Our sentences twist on, phrase within clause within clause, glazing the eyes and numbing the minds of our readers.

And he then went on to boldly tell us—and show us how—to:

- omit surplus words
- use strong verbs, not noun forms
- prefer the active voice
- use short sentences, on average
- arrange words with care
- choose familiar, concrete words and cut out the silly lawyerisms
- avoid various language quirks, like cosmic detachment and sexist language

You may think this is pretty familiar advice, and now it is—because Dick Wydick, as much as anyone else, made it familiar.

Plain English for Lawyers is now in its fifth edition. It's still a slim book, at 128 pages. There are 800,000 copies in print—incredible for any law book, let alone a book on legal writing. (I'm sure that several thousand of them have been sold at Thomas Cooley Law School alone.)

We're midway through two generations of lawyers and law students who have been guided and changed by *Plain English for Lawyers*. No other book on legal writing can make a claim like that. It stands alone.

The words on our award say it all:

> We present this Lifetime-Achievement Award to Professor Richard C. Wydick for his profound influence in promoting plain English for lawyers.

Thank you, Dick, on behalf of our entire profession.

Scribes President Stuart Shiffman presents the Scribes 2010 Lifetime-Achievement Award to Richard C. Wydick.

The Last Lawyer by John Temple Wins Scribes 2010 Book Award

(*Author John Temple gave these remarks when he accepted the Scribes 2010 Book Award at the annual luncheon.*)

When I received the e-mail from Professor Norm Plate informing me that my book had won the Scribes Book Award, I was very surprised and gratified, of course. Then, when I looked at the past recipients, I was even more pleased. One of those books, *A Civil Action*, by Jonathan Harr, won in 1996. When I set out to write *The Last Lawyer*, I used *A Civil Action* as a model in many ways. I reread the book for inspiration and ideas several times during the five years I spent researching and writing *The Last Lawyer*. Like Jonathan Harr, I wanted to tell the story of a long and winding piece of litigation—in his case, an environmental lawsuit, and in my case, a capital postconviction case. And I wanted to tell the story, not from the perspective of the victims or the defendant or the public, but through the eyes of the lawyer. And then, like *A Civil Action*, I wanted my book to be turned into a major Hollywood motion picture starring John Travolta. But two out of three isn't bad.

Eight or nine years ago, when I was immersed in writing my first book, the seeds of *The Last Lawyer* were planted in my mind when I read a little news brief. I didn't keep the clipping, unfortunately, but it was just a paragraph or two about a death-row inmate in Texas who had an execution date coming up. What caught my eye was that a team of lawyers were flying into Texas to take on the case. And I thought (as I do a couple times a week), wow, what a story that would be—to tell a story, not about a death-row inmate, but about the lawyers who defend him. What would it be like to take on a case when the stakes are so high, when, if you lose, your client will be killed? What would it be like to defend a client who has killed other people? And what would it be like to defend a client who didn't receive a fair shake at trial—or even who might be innocent?

Book-Award-Committee Chair Michael B. Hyman presents the 2010 Scribes Book Award to John Temple.

The idea stuck with me. So when I finished my first book and was casting about for another topic to write about, I began reading books about capital punishment. There are many books on this topic, but I couldn't find one that did what I wanted to do. So I became more and more interested. I won't go through exactly what led me to North Carolina and the Center for Death Penalty Litigation. But in 2004, I contacted Ken Rose, who was the executive director of the CDPL. The CDPL is a nonprofit law firm in Durham of about a dozen lawyers who exclusively defend death-row inmates. I did not originally plan to write about Ken Rose—I figured he would be someone who could guide me into this world and help me find a case and a lawyer or lawyers to write about. He reacted positively to my idea and I traveled to Durham for several days that spring.

I interviewed lots of lawyers during that first trip, and none seemed quite right. Either they weren't interested or they were outright fearful about having me write a book about a case of theirs. Or they were interested, but they weren't currently working on a case that had the right scope for a book project. Ken was my guide during this process, and as the days passed, I found myself more and more interested in him.

Not that he seemed like the ideal subject for my book, either. While he had a prodigious mind for the law, he had a bad memory for the kinds of details a writer needs to know to recreate events from years ago. He was not a charismatic trial lawyer, not a storyteller with a big courtroom personality. Coworkers sometimes found him aloof and difficult to work with. And as his wife told me during that first visit: "Ken's a tough nut to crack."

But there was a genuine and honorable quality about him that I was drawn to. He was passionate about his cases and angry about the injustices he'd seen. He embraced the role of advocating for the lowest of the low, the person who had been rejected by society for good reason. No matter what his clients had done, he believed they had value. And he'd simply been doing the work longer than almost anybody else. Over time, I realized that very few people continued to do this work, full-time, for decades, the way Ken Rose had. He'd done essentially nothing else since the early 1980s.

And he seemed genuinely interested in the book idea. Not because he wanted to be in it. He did not enjoy being in the spotlight, especially on a personal level. That made him extremely uncomfortable. But he understood what I wanted to do—to write an honest book about what it was like to defend death-row inmates. And he supported it, despite his personal discomfort, because he felt that if he could just show people what he was seeing every day, their feelings about capital punishment would have to change.

So I became more and more interested in Ken over the course of that first visit to Durham. And finally, after we'd spent a couple of days together, I was excited to hear him say, "You know, *I* have this interesting case, a client named Bo Jones." I said, "Tell me about it."

So that was the beginning of my education about the death penalty. I didn't write the book for ideological reasons, but because I thought Ken Rose was a story worth telling. It's the story of a good lawyer, a man who was willing to work against a system that had greater resources and popular support; a lawyer who was willing to take on a client who didn't trust or like him; and a lawyer who would then work for years to try to save the client's life, for little thanks or money.

So I'd like to thank the Scribes organization for this wonderful honor. I'd like to dedicate it to my wife, Hollee Temple, who is here today. Coincidentally, she is the director of legal writing and research at the College of Law at West Virginia University, so she has much more in common with all of you than I do. But she provided me with tremendous support and love throughout the years it took to research and write this book, and I wanted to let her know that. Thank you.

Life Members

David Abney (Phoenix, Arizona)
Glen-Peter Ahlers (Orlando, Florida)
Frank L. Branson (Dallas, Texas)
Lee C. Buchheit
(New York, New York)
Christopher Camardello
(Minneapolis, Minnesota)
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(Winston-Salem, North Carolina)
Norman Otto Stockmeyer
(Lansing, Michigan)
Preston Torbert (Chicago, Illinois)
Anthony Turley (Toledo, Ohio)
Daniel Wallen
(New York, New York)

Team from South Texas Wins Scribes Brief-Writing Award

(*South Texas College of Law student Stuart Ladner accepted the award for his team. These are his acceptance remarks.*)

Thank you for this incredible award. We are truly honored. South Texas College of Law has long recognized that preparation for battle in the courtroom requires practical application as well as abstract theory. Our comprehensive Advocacy Program taught us to blend persuasion and logic as well as reason and passion. Michael Jones, Sabrina Stone, and I are the products of this wonderful tradition and are eternally grateful to have been a part of it.

Donald Guter, Dean of the South Texas College of Law (left), and Moot-Court Coach Robert Galloway (right) accompanied 2010 Scribes Brief-Writing Award winners Sabrina Stone, Stuart Ladner, and Michael Jones to the meeting.

We won the Scribes Award for our brief written at the International Moot Court Competition in Informational Technology and Privacy Law. The hypothetical problem involved a competitive diver who blamed his failure to make the Olympic team on a company taking pictures of his home from a public street. In an ironic twist that only law-school exams and moot-court problems can create, the company took the picture when the otherwise wholesome athlete was smoking an unknown substance from a Moroccan hookah—a situation similar to the public-relations incident that the swimmer Michael Phelps faced. When his dreams of Olympic fame fell apart, the publicly shamed athlete sued for what he would have earned in celebrity endorsements.

While the writing process always involves a struggle to make your point in a memorable way, one of our primary missions was to convey the idea that an Olympic hopeful had no legitimate business expectancy of endorsement contracts that were contingent on the results of a sporting event. Although this was primarily a policy argument, we wanted to use a story to make our point. Little was written on the subject. After hours of computer searches, we decided to make our argument by citing to what we thought was a vivid and somewhat irreverent account of an Iowa lawsuit. In *Bain v. Gillispie*,[1] a novelty store in Iowa City specializing in University of Iowa sports memorabilia sued a referee for making a bad call in a collegiate basketball game between the Iowa Hawkeyes and the Purdue Boilermakers.[2] In rejecting the claim, the court in Iowa reasoned:

> Heaven knows what uncharted morass a court would find itself in if it were to hold that an athletic official subjects himself to liability every time he might make a questionable call. The possibilities are mind boggling. If there is a liability to a merchandiser like the Gillispies, why not to the thousands upon thousands of Iowa fans who bleed Hawkeye black and gold every time the whistle blows? It is bad enough when Iowa loses without transforming a loss into a litigation field day for "Monday Morning Quarterbacks."[3]

We are certainly not ones to mourn an Iowa loss. Michael is an Arizona Wildcat. Sabrina is a Baylor Bear. I am a Texas A&M Aggie. Nonetheless, we used this passage because we thought it conveyed our point in an interesting way. At South Texas, we learned that good legal writing is not formulaic or tortured. It comes from using direct, concise policy arguments with vivid and memorable support. Michael, Sabrina, and I hoped this passage and the rest of our brief would resonate with the judges at John Marshall Law School's Privacy Law competition. We are so happy that it did. And, today, we are elated that our brief was memorable to the panel of judges choosing the Scribes Award as well.

Endnotes

1 357 N.W.2d 47 (Iowa Ct. App. 1984).
2 *Id.* at 48.
3 *Id.* at 49-50.

Member News

Richard L. Neumeier, a lifetime member of Scribes from Boston, Massachusetts, has been appointed an Advisor to the American Law Institute's Principles of the Law of Liability Insurance project.

Our congratulations to **Mary Massaron Ross**, who was selected by *Michigan Lawyers Weekly* as a 2010 Michigan "Super Lawyer." She is with Plunkett Cooney in Detroit, Michigan.

2009–2010 Committees

Annual Meeting
Charles Dewey Cole (Cochair)
dcole@nfam.com
Stuart Shiffman (Cochair)
msshiffman74@sbcglobal.net
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Beverly Ray Burlingame, Bradley Clary, Hon. Michael Hyman, Joe Kimble, Hon. Mark Painter, Mary Massaron Ross, Steve Smith, Gary Spivey, and John Wierzbicki

Nominating
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Beverly Ray Burlingame, Bryan Garner, Wayne Schiess, and David W. Schultz

Scrivener
Jane Siegel (Chair)
siegelj@cooley.edu
Joe Kimble

Website
Christopher Wren (Chair)
wrencg@doj.state.wi.us

(It's South Texas Again! *continued from page 1)*

place Best-Brief Awards, five second-place runner-up awards, and five third-place honorable-mention awards. Last year, we were the first law school to receive both first- and second-place awards, and this year, we were the first law school to receive the first-place award two years in a row. Obviously, I can claim no personal credit for this unprecedented achievement; I began my tenure last year, only two weeks before the 2009 Scribes Annual Luncheon.

So how has South Texas College of Law achieved so much success—and so consistently—in such a short period of time? I attribute it to outstanding leadership at the program level, total commitment by the law school, and a positive synergy between the advocacy program and the legal research and writing program.

The leadership has been provided for years by our Vice President, Associate Dean, and Professor, Jerry Treece. Dean Treece has built and sustained the nation's best advocacy program, a program whose achievements and total number of victories—104 national championships—will be difficult for anyone to duplicate. I equate it with the legacies of Bobby Bowden at Florida State, Joe Paterno at Penn State, and Eddie Robinson at Grambling—combined! Dean Treece has been assisted in this effort by Distinguished Lecturer in Appellate Advocacy Robert Galloway, who is with us today. Rob does not like the spotlight, but it must shine on him as the "road coach" and chief administrator of our advocacy program.

Commitment is across the spectrum of South Texas students, staff, faculty, and alumni. Our students compete to be "on the team," but they willingly and enthusiastically take on supporting roles, whatever the outcome of that competition, and staff members serve alongside. Faculty and alumni generously give their time as mentors, judges, and coaches. All take pride in our law school and make a commitment to our programs.

Finally, the quality of our writing program at South Texas cannot be denied. We are one of the relatively few law schools that provide a tenure track for legal research and writing professors, thereby attracting the best in the field. These superstars work closely with the student advocates, honing their writing skills and making them practice-ready. Success in the Scribes competition is just one measure of their effectiveness.

Allow me to close, in the following two paragraphs, with the words of those who best understand the "secret" of the consistent success of South Texas College of Law—two of today's award recipients, Stuart Ladner and Michael Jones:

> First and foremost would be the environment that the program has created. Due to the level of success and nationwide recognition our school has received, almost all of the students want to be a part of the program. I've always said to younger advocates looking for advice that "steel sharpens steel," and that the competition to get onto a successful team or to be known in the school as one of the top advocates pushes students early to constantly be improving their skills. While the program remains fiercely competitive internally, there is always an air of camaraderie among the advocates. Everyone pushes everyone to be better, but no one will try to advance their own agenda. It is, and always should be, about winning for the program and the school, not the individual.
>
> —Stuart Ladner

> I think the program's success boils down to the pride that the students who are part of it have for the program and for the school. What I've noticed from friends at other schools is that being a part of an advocacy program is a résumé booster, or an activity. At South Texas, it is much more than that for the students. The students are very proud of the school's past successes, and at least in my case, I wanted to do everything in my power to ensure that I did my part to add to the program's success.
>
> —Michael Jones

So there you have it: leadership, commitment, skill, pride, and selflessness. You can see from these quotations that our students have internalized the values and invested the time and hard work it takes to succeed.

As I said at the outset, we are proud to be here to represent South Texas College of Law. And we will continue to work very hard to be in this position again next summer.

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