The Scrivener is published three times a year and delivered electronically.

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**Scribblings from the President**
*By Scribes President Mark Wojcik*

I’m truly honored to be the new President of Scribes—The American Society of Legal Writers. I look forward to serving the organization, its mission, and its members during my term. And with your assistance, I believe that Scribes is poised to enter a period of unprecedented organizational growth.

**New National Headquarters**

Scribes has moved its National Headquarters to The John Marshall Law School in Chicago, a law school with a long and strong history in the legal writing community. It was the first law school to create a tenure-track for its legal writing professors, and it has been a long-time leader in legal writing education. I’ve now had the pleasure of teaching legal research and writing at John Marshall for more than 25 years. The new Executive Director of Scribes is Philip Johnson, a librarian at The John Marshall Law Library. And Darby Dickerson, who served as President of Scribes while she was Dean of the Texas Tech University School of Law, is now Dean of The John Marshall Law School. My colleague Maureen Collins, another legal writing professor at John Marshall and the former Director of the Legal Writing Program at DePaul University College of Law, is the Editor of The Scrivener. John Marshall is also home to a Student Chapter of Scribes, where law students help each other publish short articles for bar journals and newsletters. Scribes will tap into these rich resources found at its new organizational home.

**Submissions**

Please send items for upcoming issues of The Scrivener to Maureen Collins at 7collins@jmls.edu.
Increased Outreach to Individual and Institutional Members
Scribes will also reach out across the country to involve individual and institutional members in its activities, and to recruit new members who share the goals and values of our organization. We will work closely with sister organizations such as the Legal Writing Institute (“LWI”). We hope to increase our cooperation with the Association of Legal Writing Directors (“ALWD”) and the Association of American Law Schools Section on Legal Writing, Reasoning, and Research (“AALS-LWRR”). We’ll also work internationally with the Global Legal Skills Conference Series. Scribes is a cooperating organization supporting the next GLS Conference in Melbourne, Australia in December 2018. We’ll also keep up our Scribes website and social media accounts.

Other Activities
Scribes will continue publishing The Scribes Journal of Legal Writing and this newsletter, The Scrivener. We’ll continue hosting national legal writing programs, such as “Well Written,” the legal writing CLE program that we held in Chicago in April 2018 on the anniversary of Thomas Jefferson’s birthday. We’ll continue providing regular email tips on legal writing and research, a membership benefit that has proven extremely popular since its inception. I’ve heard from many members who have created special folders to collect and save the research and writing tips. We will also continue our Awards program for the best legal books published each year, awards for the best student moot court briefs chosen from among the winners of regional and national moot court competitions, and the best student-authored articles in law reviews and journals. We’ll continue to present the organization’s prestigious Lifetime-Achievement Award.

Please share with me your ideas for the organization, and let me know if you would like to serve on one or more of our various member committees. We can use your help and we appreciate your support.
Upcoming CLE: The Art and Craft of Legal Writing: Advice from Master Writers
Thursday, August 2, 2018 - 10:30 AM-11:59 AM

Lawyers are professional writers. As such, they should strive to become masters of their craft. Panel participants will share insights about how to improve writing to enhance persuasiveness and credibility. The panel will also address several ethical issues that both judges and attorneys face when preparing court documents.

For more information, visit www.scribes.org

New Members
Joe Boatwright, East Palatka Southeast, FL
Sharon Cannon, Chicago, IL
Melissa Carpenter, Newnan, GA
Douglas Chabot, North Kingstown, RI
William Elliott, Dallas, TX
Ben A. Fernandez, Gainesville, FL
Joe Fore, Charlottesville, VA
Amy Gioletti, Oklahoma City, OK
Thomas Griggs, Mesa, AZ*
Jeffrey Hartel, Dublin, OH
Wendy Hess, Vermillion, SD
Heike Holthaus, Mikado, MI
Jennifer Jacobs, New York, NY**
Makenzie Keene, Lubbock, TX**
Joshua Lake, Houston, TX
Peter McVary, Tulsa, OK**
Kenneth Michaels, Chicago, IL
John Michalik, Scottsdale, AZ
Jery Payne, Conifer, CO
Patrick Spencer, Colorado Springs, CO
Caryn Suder, Chicago, IL
Su Wang, Skokie, IL
Beth Wilensky, Ann Arbor, MI
Cosmo Zinkow, Apex, NC**

* Sustaining Member
** Student Editor Member

Call for Submissions — The Scribes Journal of Legal Writing

Authors, the Scribes Journal accepts submissions year-round, with no fixed deadlines. We’re interested in anything to do with legal writing, and we define that broadly. We’ve published long articles, book chapters, short pieces, interviews, book reviews — even poetry. If you have an idea or a finished draft, e-mail Mark Cooney at cooneym@cooley.edu.
A Look-Back at the April CLE

The Annual CLE was held at John Marshall Law School in Chicago on April 13, 2018.

Scribes hosted a national CLE legal writing program at The John Marshall Law School on April 13, 2018. The program included a panel with supreme and appellate court justices who shared their thoughts on effective brief writing. Pictured here (from left to right) are: Justice Mary Jane Theis of the Illinois Supreme Court; Michelle M. Jochner, the panel moderator and a partner at Schiller, DuCanto & Fleck LLP; Incoming Scribes Vice President Justice Kevin G. Ross of the Minnesota Court of Appeals; Outgoing Scribes President Justice Michael Hyman of the Illinois Appellate Court; and Scribes Board Member Chief Justice Kem Thompson Frost of the Texas 14th Court of Appeals.

Scribes Board Member Chris Wren, an Assistant Attorney General with the Wisconsin Department of Justice’s Criminal Appeals Unit, retired from the Board after many years of service. He is pictured here with outgoing Scribes President Justice Michael Hyman of the Illinois Appellate Court. At the Scribes Board Meeting in April 2018, Mr. Wren was elected as the first Emeritus Board Member.

Scribes Past President Darby Dickerson, Dean of The John Marshall Law School in Chicago; Outgoing Scribes President Justice Michael Hyman of the Illinois Appellate Court; Incoming Scribes Vice President Justice Kevin G. Ross of the Minnesota Court of Appeals; and Incoming Scribes President Professor Mark E. Wojcik of The John Marshall Law School.

Speakers at the National Legal Writing CLE Program at The John Marshall Law School included Professor Michael D. Murray of the University of Kentucky College of Law.
Help Wanted (and Needed!)
By Otto Stockmeyer
Distinguished Professor Emeritus, Western Michigan University Cooley Law School

Otto Stockmeyer is not looking for a job. But he has been reading legal help-wanted ads and has noticed something disturbing.

Many law firm help-wanted ads demand excellent writing skills, which is good. But too many of these same ads don’t display such skills, which is bad.

Take this example: “Prominent Michigan law firm is seeking a motivated associate to join our East Lansing litigation team . . . Applicant must have strong academic credentials, excellent writing and organizational abilities.” (Would that include an understanding of parallel construction?)

Here’s another, from a Novi, MI, law firm: “Excellent research and writing skills, as well as solid oral communication skills are required.” (Parenthetical phrases need commas at BOTH ends. And phrasal adjectives require hyphens, i.e. oral-communication skills.)

Recently several firms have used verbal when they mean oral. A Warren, MI, law firm says, “Candidate must have excellent verbal and writing skills.” A Farmington, MI, firm is looking for “Excellent verbal and written skills.” A Lansing, MI, law office ad says, “The ideal candidate should . . . have superior written and verbal communication skills.” (Verbal means expressed in words, which can be written or oral. Bryan Garner, The Elements of Style, 2d ed., p. 145. Verbal for oral is a common misuse, but if excellence is sought, it should likewise be demonstrated.)

Garner recognizes that some people feel oral has acquired a prurient connotation. “If you think of ‘oral’ in a narrow sexual sense, you should immediately wash your mouth out with soap,” he writes. My suggestion: use speaking skills instead.

A Southfield, MI, law firm advertised “Strong writing and organizational skills required . . . Candidate should be self-motivated, with a friendly disposition that would enjoy working in a busy and productive office.” (This needs a comma after disposition and substitution of who for that. And a polished writer would shorten with a friendly disposition to friendly.)

A family-law firm’s ad for a legal assistant said, “Strong phone skills; as well as written and oral communication skills are a must.” (This sentence would be stronger if the semicolon were a comma, and another comma followed the word skills.)

A West Michigan firm sought someone with “exceptional writing and communication skills. The ideal candidates will be members in good standings [sic] of the State Bar.” (It’s just a typo, sure, but exceptional writers catch typos.)

Most recently a defense firm sought an attorney “to assist in handling employment claims, professional liability claims and/or construction related claims. Strong writing skills required.” (A person with strong writing skills should know that legal-writing gurus Bryan Garner and Ken Adams both condemn and/or as a gruesome abomination. My colleague Joe Kimble also
wishes that lawyers would shun it. Joseph Kimble, *Lifting the Fog of Legalese*, p. 155. And, again, good writers hyphenate phrasal adjectives.)

The teaching of legal writing has improved markedly during my 40-year teaching career. I am confident that today’s law students, upon successfully completing the legal-writing curriculum, are capable of spotting and correcting these sorts of writing faults. The law firms should have little trouble attracting candidates with strong language skills. Demonstrably, they are needed.

The author is a past president of Scribes and a frequent contributor to legal periodicals and blogs.

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**Institutional Members**

Barry University, Dwayne O. Andreas School of Law  
Baylor Law School - Legal Writing Center  
California Western School of Law  
Chapman University, Dale E. Fowler School of Law  
Charleston School of Law  
Charlotte School of Law  
Chicago-Kent College of Law  
Duke University School of Law  
Florida Coastal School of Law  
Golden Gate University School of Law  
Golden Gate University School of Law, San Francisco  
Hofstra University, Maurice A. Deane School of Law  
Mercer University School of Law  
Mississippi College School of Law  
Mitchell Hamline School of Law  
Northern Kentucky University - Chase College of Law  
Northwestern School of Law of Lewis & Clark College  
Oklahoma City University School of Law  
Saint Louis University School of Law  
Seattle University School of Law  
South Texas College of Law  
Southwestern Law School  
Stetson University College of Law  
Suffolk University Law School  
Syracuse University College of Law  
Texas A&M University  
Texas Tech University School of Law  
The John Marshall Law School  
The University of Oklahoma Law Center  
The University of Texas School of Law  
Thomson Reuters  
University of Akron, C. Blake McDowell Law Center  
University of Arkansas at Little Rock  
University of Houston Law Center  
University of La Verne College of Law  
University of Louisville Brandeis School of Law  
University of Missouri School of Law  
University of Nevada, Las Vegas, William S. Boyd School of Law  
Valparaiso University School of Law  
Washburn University School of Law  
Western Michigan University - Cooley Law School  
Western New England University School of Law
Thanks so much for that kind introduction, Professor Wojcik. I am thrilled to be here today, and honored to be accepting this year’s Law Review Award. Thanks so much to the Scribes Society and the Law Review Committee in particular for all the work that went into this competition, and thanks as well to all the people who helped and encouraged me while writing this note: my editors at the Vanderbilt Law Review who provided invaluable advice, Vanderbilt Law Professor Christopher Slobogin who provided some key feedback, and my parents, who are happy to be here today on my mom’s birthday, and who provided, as always, a warm and welcoming ear throughout this process. How lucky I am to have such a brilliant team unfailingly pushing me forward.

For those who haven’t read my note, which I assume is basically everyone except my parents, as a brief summary it takes a look at one of most instrumental government surveillance agencies: a little organization known as the United States Postal Service. Unbeknownst to most citizens, the USPS actually has a long history of government surveillance initiatives through its “mail covers” program, which has tracked and recorded all information on the outside of the mail of thousands of citizens a year since the late 1800s. This makes it perhaps the first government program designed to track citizens’ communications data, and certainly the most longstanding. In fact, mail covers are still in frequent use today, and tracked the mail of 57,000 citizens in 2014 alone. Additionally, the mail covers program has recently been expanded to include the secretive Mail Imaging and Mail Isolation Control and Tracking programs that together record and photograph, for unknown purposes and lengths of storage time, the outside of every parcel of mail delivered by the USPS—amounting to a record of over 160 billion mail parcels each year. All of this surveillance occurs without any judicial oversight, governed only by poorly enforced statutory regulations that have not been changed or even debated in over forty years and have long been ignored. Consequently, the history of the mail covers program, like the history of every large-scale government surveillance program we know about, is one roiled with abuse and scandal. My note tracks that abuse and scandal, using the mail covers program and the sparse but enlightening litigation that program has generated, as a case study. Further, it argues that Fourth Amendment jurisprudence must evolve if privacy rights are to be taken seriously in this age of ever-more invasive mass surveillance. Further, it also argues that such an evolution need not disrupt the foundations of Fourth Amendment law or inhibit national security—to the contrary, better privacy protections are necessary to protect the viability of democracy itself.
Obviously, much has been written about the Fourth Amendment and government surveillance of late, particularly in light of Edward Snowden’s alarming data privacy revelations in 2013. But, when I read a New York Times article about the centuries old and technologically outdated mail covers program while hunting for a note topic, I thought it provided a perfect opportunity to consider how we got here. What I found was that apathetic Congressional and judicial responses to old surveillance initiatives, like mail covers, undoubtedly led to the apathy surrounding surveillance today. To me, this proved that a change to Fourth Amendment jurisprudence was necessary long before Snowden’s revelations and, more candidly, long before modern technology opened our eyes to the dangers of the surveillance initiatives that had been monitoring us all along.

Clearly, I found this topic exceedingly interesting, and thoroughly enjoyed researching the intricacies of this rather obscure area of law. But more than that, I honestly enjoyed the work of writing this note—most of the time, anyway. Writing has always been and will always be a labor of love for me, which is why it means so much to receive an award not just for the substance of a work, but even more so for its style. I am of the rare breed that deeply enjoys academic writing—and really writing of all forms. To find that perfect turn of phrase and work it into a compelling narrative that teaches and persuades—and then to rewrite it all and find a way to make that phrase, that narrative, that persuasive argument even better—there is such creativity and skill in that, and such satisfaction. To be recognized for doing it well, here, among my people who clearly also enjoy this kind of writing and have devoted themselves to teaching the legal community and students like me to do it well? That is an honor for me beyond words.

Finalists Announced for the 2018 Scribes Law-Review Award
By Mark E. Wojcik

Scribes—The American Society of Legal Writers—presents an annual award to the best law-review article written by a law student. A total of 57 articles were nominated for the 2018 award. From that number, the screening committee selected the following finalists:

- Caroline Donze, Breaking the Seal of Confession: Examining the Constitutionality of the Clergy-Penitent Privilege in Mandatory Reporting Law (Louisiana Law Review);
- Adam K. Hersh, Daniel in the Lion’s Den: A Standard Reconsideration of Religious Exemptions from Nondiscrimination Laws since Obergefell (Stanford Law Review);
- Estalyn Marquis, Nothing less than the Dignity of Man: Women Prisoners, Reproductive Health, and Unequal Access to Justice under the Eighth Amendment (California Law Review);
- Fiona O’Carroll, Inherently Governmental: A Legal Argument for Ending Private Federal Prisons and Detention Centers (Emory Law Journal);
• Steven B. Pet, *Preserving Antitrust Class Actions: Rule 23(b)(3) Predominance and the Goals of Private Antitrust Enforcement* (Virginia Law and Business Review); and


The winning article was:

**Member News**

*Scribes Journal* editor Mark Cooney published the article *Once upon a Car (A Tale of Three Ambiguities)* in volume 20 of *The Green Bag* and published *Give a Clue (A Linguistic Whodunit)* in the *Michigan Bar Journal*’s “Plain Language” column. With *Journal* senior editor Joseph Kimble, he received the 2018 ClearMark Award for the Legal Documents category, in Washington, D.C. He gave presentations at Clarity International’s April 2018 London Breakfast, at the Association of Legal Writing Directors’ Biennial Conference in Minneapolis, at the State Bar of Michigan Young Lawyers Section’s Annual Summit, and to the Washtenaw County Bar Association in Ann Arbor. Three of his poems were published in *The American Journal of Poetry*.

Wolters Kluwer published a new judicial writing textbook by Jill Barton, a Scribes member and journal editor. The book offers guidance on writing common judicial documents, including bench memos, trial court orders, jury instructions, appellate opinions, dissents, and concurrences. *So Ordered: The Writer’s Guide for Aspiring Judges, Judicial Clerks, and Interns*, uses more than 100 annotated examples from the nation’s best judicial writers. The concise, well-organized advice is helpful to both student clerks and seasoned judges alike. The book is available from major online booksellers and well worth a look!