



## The Lawyer's Voice

Lawyers write *to* compulsory audiences and *about* legal subjects. Clients, judges and opposing counsel actually want to hear from us. We do not write for entertainment, intellectual thrill or emotional satisfaction. But we do often write in an *institutional* voice. This is partly because we must write the truth, and our truth—the *law.ed* version—is rough-sawn, unvarnished and sold by the board foot. And we suffer an age-old cultural bias favoring a writing style handed down from the gods of our profession—appellate judges. Though there are exceptions, most appellate judges are strict utilitarians. They write opinions to “hand down” the law, not to inspire us about the law.

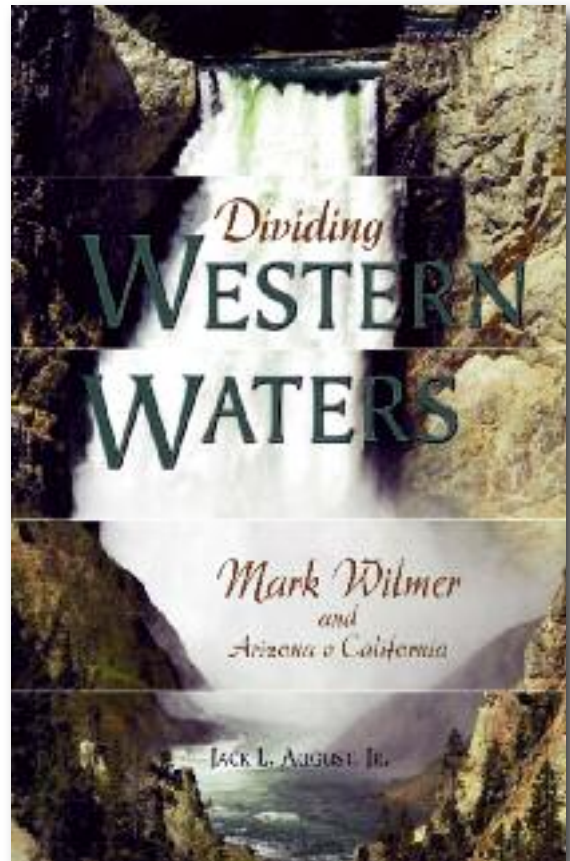
Too bad—we all need inspiration from time to time.

Speaking of a lawyer's voice, Mark Wilmer's was singularly distinctive. Judge Simon Rifkind, himself a famous lawyer, described Wilmer as, “That attorney from Arizona, Mark Wilmer, [he] is the guy who ... changed the course of the history of the American West.”

Wilmer's legendary trial skills and his soaring intellect come to life in Jack L. August, Jr.'s book *Dividing Western Waters*. It is a great read and a fine contribution to the elusive subject of voice in legal writing. August manages to make one of Arizona's most complex cases understandable (the opinion is at 373 U.S. 546 (1963); find the decree at 376 U.S. 340 (1964)). He also digs deeply into Wilmer's personal and professional life. It is the story of the far-reaching victory Wilmer won in Arizona's life-or-death struggle with California over millions of acre-feet of water in the Colorado River.

Among the hundreds of letters, telegrams and phone calls praising Wilmer for his leadership, August focuses on one that speaks to Arizona's future: “We thank you, our children thank you, and our children's children thank you. ... You are certainly the Hero of the Future for Arizona. May our small voice be heard amongst all the shouting.” Wow, don't we all wish we had a voice like Mark Wilmer had.

Wilmer's intensely focused voice came out in many ways, including his dry sense of humor. That humor resulted in any number of *Wilmerisms*, which punctuated his legacy. August,



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### Dividing Western Waters: Mark Wilmer and Arizona v. California by Jack L. August, Jr.

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the executive director at the Arizona Historical Foundation at Arizona State University, recalls one of the most oft-cited: “Blessed is he who has nothing to say and can't be persuaded to say it.” John Bouma's foreword to this book is itself a reassuring voice: “The good Mark Wilmer did certainly lives after him and will remain a monument to his skill, courage, and character for generations to come.”



PHOTO: KAREN SHELL



Gary L. Stuart is a 40-year member of the Arizona bar, a seasoned trial lawyer and a prolific author. He has written six books and scores of law review articles, CLE monographs, essays, op-ed pieces, and short stories. He is on the adjunct faculty of two Arizona law schools and may be best known for his writings, lectures and presentations on ethics, trial advocacy and “Creative Writing for Lawyers” (which he insists is not oxymoronic).

## WRITING TIP

Elmore Leonard's *10 Rules of Writing* originally appeared in the *New York Times* as an essay titled “Easy on the Adverbs, Exclamation Points, and Especially Hooptedoodle.” Lawyers cozy up to adverbs, salt their exclamation points, and hooptedoodle all over the page. Elmore's sparse—just-tell-the-story—style of writing is artfully followed in his paltry little 998-word book. He says he wrote the book “to help me remain invisible when I'm writing a book.”

He may think he is invisible, but his voice is recognizable everywhere in the literary world. For lawyers, Elmore's Rule Number 2 (*Avoid Prologues*) means avoiding useless citation of authority before getting to the legal meat of the brief. His Rule Number 6 (*Never Use the Words “Suddenly” or “All Hell Broke Loose”*) translates from English to Law as a directive to give up boring language (“Therefore”) and legal cliché (“The plaintiff suffered personal injury, pain and permanent impairment.”).

Elmore knows that when you write to a client who has inquired about her case, she is not looking for information. She wants to know how you feel about her case. If you answer in an institutional voice instead of your own, she will probably dump you and find a lawyer with a voice she can hear.

