April 19, 1989

The Honorable Roger J. Miner
United States Circuit Court Judge
United States Court of Appeals
Second Circuit
United States Post Office and Courthouse
Albany, N.Y. 12201

Dear Judge Miner,

This short note is to acknowledge that you will be receiving the Froessel Award at the Annual Law Review Banquet. As you already know, the banquet will be held at the Grand Hyatt on Thursday, April 27, 1989. Cocktails will begin at 6:30, with dinner following at 7:30 p.m.

Both Dean Simon and Bernard Mendik will make opening remarks. Following their remarks, I will introduce you.

We have reserved a space in Volume 34-1 for publication of your Froessel Award Acceptance Address. If the address is written on a disk, could you please provide that along with the hard copy of the speech? Finally, Brian has agreed to give us a copy of any sources which we may have difficulty locating.

I look forward to seeing you on April 27.

Sincerely,

[Signature]

W. Berkman
or-in-Chief

Do Not separate this packet -- Original speech as delivered.
I am happy to accept this award, not for myself, but on behalf of all those who have served on our law review during the 34 years of its existence. I am, of course, very proud to have served as managing editor of Volume 1, Number 1, which made its appearance in March of 1955. Many wonderful people devoted their time and talents to the publication of that first issue, and many, many more have contributed over the years to making our law review the outstandingly successful journal it is today. I therefore take this opportunity to salute all the alumni of the New York Law School Law Review, as well as the present staff, for a job well done! The Froeschel Award belongs to all of you!

I am most heartened by the prospect of modern facilities for the law review in the new Mandell Library Building. Proper quarters and equipment are essential if a law review staff is to function effectively. Though the mists of memory, I still see those dank, poorly-lit rooms in the basement...
of 244 William Street, next to the Bookstore, when Issue Number 1 was born. The offense provided to the Law Review since my day hasn't been all that much better, and it is high time that the situation is corrected. We who are the Law Review alumni should make sure that the needs of our Law Review always are met. We should also bear in mind that a Law School is known by the Law Review it helps.

Looking back at the first issue of the New York Law Forum, our journal that was named, one is reminded of the ancient paradox: "The more things change, the more they stay the same." Consider some of the topics covered in the student pieces: the right to a public trial; the interpretation of a restrictive clause in an insurance policy; the rights of witnesses in legislative investigations; the liability of a state hospital for an assault committed by a released patient; the rights of dissenting shareholders; and compensation negligence. There was an article
On choice of law by Professor Jutema of the University of Michigan Law School and an article dealing with evidence of the character of an accused by Dean Prince of Brooklyn Law School. A section of the journal entitled "The Progress of the Law" noted then-current studies in court delay, criminal law reform, and the future of the legal profession. All these topics are just as timely today as they were 34 years ago!

One student piece seems strangely out-of-date, however. It revolved around a 1957 ruling of a Superior Court in Cook County, Illinois that artificial insemination of a wife by a man other than her husband constituted adultery and that the resulting child was illegitimate. The note has stuck in my mind all these years because I remember the first line of the piece as it was originally handed in. It read: "Artificial insemination has only lately come into the public eye." I decided to perform some editing on that first line.
Among the book reviews printed in that first issue was the review of a brand new hornbook published by the Foundation Press called *Harmen on Trustees*. The review was written by one of our young Associate Professors at New York Law School -- Milton Silverman. The lead article was written by that great lion of American law, Roscoe Pound, then Dean Emeritus of Harvard Law School. The article entitled “The Judicial Process in Action” came to me in a form all too familiar to law review editors -- all messed up, and with muchcite and substance work required. “The Judicial Process in Action” I have returned to that article time and time again during the last 34 years -- not because it has always remained interesting and timely -- not because it has provided me with valuable insights into my work as a judge -- and not because it is a classic of legal literature. I have returned to that article time and time again because I have understood the damn thing!!
And that, of course, leads nicely to my topic for this evening: "Confronting the Communication Crisis in the Legal Profession." I have been concerned for many years with the fact that lawyers of every variety are becoming more and more unintelligible -- to their clients, to the Court, to the general public and to each other. I therefore have written an article on the subject which will be published in Vol. 24 No. 1 of the New York Law School Law Review. All 105 footnotes in the article already are in proper form, and no editing will be necessary -- or permitted. I shall not read the article to you. I once read, as a lecture, a law review article I had written, and my wife made me promise never to do it again. I therefore shall send you a (partial) review of some of my thoughts on the subject, and refer to you to Vol. 24 No. 1 if you really are interested in the topic.

First of all, I think that the communication profession merely reflects a communication crisis
in the general society. For one thing, we are surround by doubletalk. Consider these examples recently collected from newspaper reports:

- Doctors at a Philadelphia hospital described a patient's death as a "diagnostic misadventure of a high magnitude."

- 5,000 workers at a Chrysler plant found out that a new "career enhancement program" meant the plant was closing and they were out of jobs.

- A stockbroker referred to the October 1987 stock market crash as a "fourth quarter equity retreat."

- United States Senator Orrin Hatch of Utah referred to capital punishment as "our society's recognition of the sanctity of human life."

What I do not understand is why lawyers tolerate doubletalk and inarticulateness in speech and writing. Twenty years ago, the National District
Attorney's Association, of which I then was a member, held its annual conference in New York City. During the conference, we had a luncheon speaker who was introduced as a member of the United Nations legal staff specializing in criminal matters. I recognized him as a local comedian and double talk artist. About 10 minutes into his meaningless spiel, a prosecutor from Georgia sitting next to me leaned over and said: "Ah can't understand a lot of what that feller is sayin'." I replied: "You can't understand anything of what he is saying, because he is speaking doubletalk. "Isn't that somethin'," he said, "Ah just that real New York accent."