

ON SCOLES

Wayne R. LaFave

It is indeed fitting and proper that this issue of *The Elder Law Journal* should be dedicated to my former colleague Eugene F. Scoles, for he is without question an elder. I do not mean to suggest by this that Gene, affectionately known as “Skippy” by his legion of friends, is a presbyter, a caprifoliaceous tree, or the udder of a cow (to mention but a few of the various meanings of “elder” put forward by the lexicographers). I am thus tempted to more precisely describe Scoles by use of the appellation “geezer,” except that such a politically incorrect term, commonly used when making sport of the chronologically challenged,¹ would surely raise the hackles of the editors of this upstanding journal.

Not only that, but to use only the g-word to characterize Gene would not do justice to the man, as he is that and much, much more.

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1. Just type the word “geezer” into your Internet browser, and you will see what I mean. Three examples will suffice here:

- (1) GEEZER (speaking to friend): I just got a brand new hearing aid.
FRIEND: What kind is it? GEEZER: About 4:30.
- (2) GEEZER (speaking to his doctor): Are these pills for impotency safe? DR.: Just one problem: swallow them real fast or you’ll get a stiff neck.
- (3) On a lark the geezer’s friends dispatched a “lady of the evening” to his chambers. She boldly entered and declared, “I’m here to give you super sex”; the geezer thought a moment and replied, “I’ll have soup.”

I hasten to add that none of these stories has anything to do with Scoles. He purports that all his equipment is intact, and that he doesn’t like soup!

On the basis of my association with Gene during the many years we were colleagues on the Illinois law faculty, another word I would use to describe Scoles is *persistent*. He simply doesn't know the meaning of failure.² Just one example, if I may. Back in the '60s, Gene and I and several other members of the meager band which then made up the law faculty were rather frequent luncheon companions. Several days a week, we would together make the rounds of Champaign-Urbana's finest eating establishments (and, because that list is quickly exhausted, many that were not so fine). It only took a few of these engagements before I became convinced, as later turned out to be the case, that each session would conclude in exactly the same way. The waitress would come by to ask if anyone would like dessert, Gene would ask the waitress if the establishment was serving Nesselrode pie, the waitress would answer in the negative, and we would then pay the bill and depart. My bafflement about that ceremony continues to the present day. I mean, just what is Nesselrode pie? And why did Gene always ask if they had it? And, for that matter, had he received an affirmative response would he have ordered a piece? Or, did he think that the query and his air of disappointment at the negative answer would somehow justify the modesty of his tip?

Another word I would use to describe Eugene Scoles is *practical*, provided of course that the word is immediately followed by another, to wit: jokester. Gene has a great sense of humor, and could not resist the temptation to put something over on his Illinois colleagues whenever the opportunity presented itself. I was the victim on many occasions, and only now am able to even the score ever so slightly. But as an example, I would prefer to mention a trick played on someone else, the inestimable John Cribbet, who after the events set out below accepted the deanship at the College of Law so that he could hand Scoles his walking papers.³ The Cribbets were having a party at their lovely, well-appointed home in Champaign. They had a striking sunken bath in their beautiful main floor *salle de bains*, and it was their custom to fill the tub and float some flowers in it for the gala parties which were a frequent occurrence at the Cribbet manse. They had done so again for a soiree to which all the law faculty, their spouses,

2. I was tempted to conclude this sentence with the phrase "or, for that matter, untold thousands of other words," but resurrection of that hoary chestnut, no matter how apt in this instance, is beneath me.

3. As he ultimately did. Scoles' story is that he left to assume a deanship, but who in their right mind would do something like that voluntarily?

and numerous campus and community dignitaries were invited. Shortly after the arrival of the Scoles at the party, a school of goldfish were discovered swimming in the aforementioned tub by a startled dowager who had stepped into the chamber to powder her nose. I'm not sure whether Gene ever confessed to this prank, but no confession was necessary, as his colleagues to a man (yes, back then they were only men) knew to a certainty the source of the ichthyoid intruders, especially when Scoles tried to cover his tracks with a decidedly piscine alibi. (I must add that this event occurred about a year prior to my arrival at Illinois, but I am confident of the accuracy of the aforementioned account in light of the frequency with which I have heard the story from a great variety of reliable sources.)⁴

Still another word that can properly be used to describe Gene Scoles is *Waltonian*, by which I mean Izaak rather than Sam, for I doubt whether Gene has ever set foot in a Wal-Mart. But his love for the out-of-doors is unparalleled; indeed, Gene never misses a chance to spend time in the wide open spaces, not just communing with nature but interacting with it in a more aggressive fashion. For one thing, Gene enjoys hunting, especially with bow and arrow, and he has bagged a great many deer over the years while at the same time reducing the bovine population only slightly. But Scoles even more so fancies himself a piscatorialist, and with good reason, for on many occasions he has "laid aside business, and gone a-fishing."⁵ Indeed, he seems to have patterned himself after the central character in Walton's *The Compleat Angler*, who, we are told, "is not simply a champion and expositor of the art of angling but a man of tranquil, contented temper, pious and sententious, with a relish for the pleasures of friendship, verse and song, good food, and drink."⁶

Gene Scoles' skills with the fly-rod are themselves legendary. One incident, related to me by Scoles confidant and bon vivant Richard Surles, deserves to be reported here, for it aptly illustrates just how dedicated a fisherman he really is. Gene was off in the wilderness, alone but for his trusty rod and flies, casting again and again into the stream in an effort to attract the fish he just knew were there. Zing, splash; zing, splash; zing, splash; zing, splash, but then just zi—. Scoles had apparently moved his arm inward ever so slightly, just

4. The stories have been essentially identical, although sometimes the fish have been represented as being capacious carp worthy of an emperor's moat.

5. IZAAK WALTON, *THE COMPLEAT ANGLER* 20 (The Ecco Press 1995) (1653).

6. 12 *ENCYCLOPEDIA BRITANNICA* 482 (15th ed. 1997).

enough so that this time he did not cast by his head, but instead whipped the hook into his right ear with tremendous force. The hook was embedded in his ear to such an extent that he could not remove it (the hook that is, not the ear). After a bloodcurdling scream so intense that birds for miles around took wing, Gene becalmed himself and contemplated his course of action. He then drove into town, but passed right by the medical clinic and traveled on to the general store where, line in hand, he hoisted himself by the ear onto the scales and registered his catch with the impressed storekeeper. He was a shoo-in for the "Catch of the Season" award, and the trophy still graces his mantel today.

So, the picture of Scoles which has emerged thus far is that of a persistent, practical (jokester), Waltonian geezer. This is an accurate albeit admittedly incomplete portrait, for I am reasonably confident that the aforementioned attributes do not entirely account for the decision of the editors of this august journal to dedicate an issue of the periodical to him.⁷ Although many other adjectives that could fairly be applied to Gene readily come to mind,⁸ there is but one other that I, as designated panegyrist, shall mention in this encomium: *scholarly*. Over the course of more than four decades in the professorate,⁹ Scoles has attained preeminence in two challenging fields: conflict of laws; and trusts and estates. His many writings and other work in these two areas are of the finest quality, and are justifiably highly regarded by the professors, students, lawyers, and judges who have occasion to use the products of his labors.¹⁰

7. No one, I am sure, would confuse *The Elder Law Journal* with *Field and Stream*.

8. Don't bother looking down here, as I am not going to mention them, even in a footnote. I have no intention of testing the limits of Scoles' sclerodermatousness.

9. Scoles received the J.D., LL.M., and J.S.D. degrees from Iowa, Harvard, and Columbia law schools, respectively. He began his law teaching career in 1946 at Northeastern, moved on to the University of Florida in 1948, and then came to Illinois in 1956, where he remained until he assumed the deanship at the Oregon law school in 1968. He served as dean until 1974 and then remained on the Oregon faculty until his return to Illinois in 1982, where a year later he was named the Max L. Rowe Professor of Law. Scoles "retired" in 1989, and that word needs to be in quotes, as he thereafter taught part-time at Oregon and other schools and has continued his other professional activities.

10. For one thing, Scoles' work is very frequently relied upon by appellate courts. I know this to be so, as I did a "Scoles" search in a computerized legal database, taxing that service to such a degree in uncovering hundreds upon hundreds of cases that smoke began pouring out of my computer.

the way from President of the American Association of Law Schools to grand poo-bah of the Champaign County chapter of the Izaak Walton League. But I wish to give particular mention to one other accomplishment of Eugene Scoles, for it exemplifies perhaps better than anything else the bringing to bear upon a series of difficult issues his vast knowledge in *both* the conflicts and estates fields. I refer to his service as U.S. Delegate to The Hague Conference on Private International Law Special Commission on Decedents' Estates. Gene attended meetings at the Hague in November 1986, March-April 1987, September-October 1987, and finally the three-week plenary session in October 1988 at which the thirty-three participating nations approved without dissent the Convention on the Law Applicable to Succession to the Estates of Deceased Persons. The Convention serves to provide practical and predictable rules for determining the applicable law to avoid the costly confusion and delay incident to settling estates of decedents who die leaving assets in different countries. Scoles played a major role in this urgently needed reform; two drafting committees were involved in this endeavor, and Gene served as chairman of the Federal Clauses Committee and sat on the General Drafting Committee.

Well done, Gene Scoles. These are extraordinary accomplishments, and especially so for a fisherman, for if we are to believe Izaak Walton, there is

No life, my honest scholar, no life so happy and so pleasant as the life of a well-governed angler, for when the lawyer is swallowed up with business, and the statesman is preventing or contriving plots, then we sit on cowslip banks, hear the birds sing, and possess ourselves in as much quietness as these silent silver streams, which we now see glide so quietly by us.¹⁵

I am thus delighted to join the editors of *The Elder Law Journal* in saluting Eugene F. Scoles for his many years of outstanding achievements.

And one final thing: I was just kidding about the "Skippy" nickname.

15. WALTON, *supra* note 5, at 114.

Gene's accomplishments in the area of conflict of laws are many indeed, starting with a dazzling array of articles which have graced the pages of law reviews all across the country. This is particularly impressive when one takes account of the fact that conflicts is the most perplexing of all the legal labyrinths, and, indeed, as Walton said of angling, is a subject that "can never be fully learnt."¹¹ He (Scoles, not Walton) wrote the fourth edition of *Goodrich on Conflict of Laws*, published in 1964, which later became the Scoles and Hay *Conflict of Laws Hornbook*, a joint effort by Gene and his Illinois colleague Peter Hay,¹² and it has since been published in two editions. And then there is Scoles' *Cases and Materials on Conflict of Laws*, which he coauthored with Russell Weintraub. It was Justice Frankfurter, I believe,¹³ who once observed that "the most constructive way of resolving conflicts is to avoid them."¹⁴ Scoles obviously subscribes to this axiom, for he has long endeavored to prevent conflict of laws problems from arising by ensuring the uniformity of legislation in various fields. He was a commissioner on Uniform State Laws for nearly fifteen years, and, as will be mentioned more particularly below, played a critical role in the development of several uniform laws in the trusts and estates field.

Speaking of which, it may be said that in this latter area as well Scoles has been a prolific and influential scholar. In the law reviews and in other fora, Gene has produced commentary on a variety of problems having to do with estate planning, the administration of estates, and other aspects of the geezer-postgeezzer transition. He is the coauthor with Ed Halbach of *Problems and Materials on Decedents' Estates and Trusts*, now in its fifth edition if I haven't lost count, and also *Problems and Materials on Future Interests*. Especially noteworthy is Gene's work with the Commissioners on Uniform State Laws; he served as Reporter-Draftsman for the Uniform Probate Code (and has since served on the Joint Editorial Board for that Code), for the Uniform Succession Without Administration Act, and (I am wearing myself out merely listing them) the Uniform Custodial Trust Act.

Along the way, Scoles has been engaged in a great variety of other activities and has occupied an interesting array of positions, all

11. WALTON, *supra* note 5, at 21.

12. To the best of my knowledge, they had an excellent working relationship, though I have heard it rumored that one of them viewed the other as cunctatious. Because that is only a rumor, I shall not pass it on here.

13. Which means I have looked it up.

14. See *Western Pac. R.R. Corp. v. Western Pac. R.R. Co.*, 345 U.S. 247, 270 (1953).