Preface

This Volume 9 of *Legal Communication & Rhetoric: J. ALWD* is one of our most ambitious to date. The articles in this volume demonstrate the spectrum of what we mean by communication and rhetoric—sometimes simultaneously—in the context of both legal academia and legal practice. As in our prior volumes, these articles reflect this journal's longstanding mission to be an exchange between legal practitioners and the academy.

Articles in This Volume: Rhetoric and Communication

In the lead article, *The Count's Dilemma: Or, Harmony and Dissonance in Legal Language.* Ian Gallacher examines the word "harmony" as it is used metaphorically and how its use differs—and might even conflict—with its meaning in music. In music, "harmony" does not mean what most of us think it does nor what those of us who use it metaphorically mean by it. In flagging the mismatch between the intended image and what it in fact represents, Gallacher asks us to be sensitive to the meanings of our metaphors and to use them consciously and precisely.

Just as Ian Gallacher asks us to think critically about our use and misuse of language, Betsy Lenhart offers a more-critical approach to primary sources—particularly those found increasingly online. In *The Seventeenth Century Meets the Internet, Using a Historian's Approach to Evaluating Documents as a Guide to Twenty-First Century Online Legal Research*, Lenhart demonstrates the multifaceted model of a historian's scrutiny of her sources as one after which to fashion lawyers' and scholars' research. Lenhart does this through describing a few fascinating lessons she has taught her students in their responses to historical documents and offers an enlightening methodology of testing what any primary source has to offer.

Julie Oseid follows with the next in her series on persuasion techniques used by our founding American Presidents, *The Power of Clarity: Ulysses S. Grant as a Model of Writing "So That There Could Be No Mistaking It."* In turning unexpectedly to Grant, Oseid illuminates a master of a clear and to-the-point style of writing. Because success on the battlefield required unmistakable orders, Grant's writing was a paradigm

of clarity: crisp, direct—its message unmistakable. Although many of us might remember President Grant for his other contributions to American history, his bottom-line-up-front and no-nonsense style of writing provides some important lessons for legal writers.

The next several articles in the volume fall into the growing Applied Legal Storytelling (AppLS) genre. In *A Shift to Narrativity*, Derek Kiernan-Johnson argues that the phrase "storytelling" may be inadequate, given the scope of the work being done by scholars, teachers and practitioners, to study the impact of story and story elements on the practice of law. After reviewing the different definitions of "story," "storytelling," and "narrative," he concludes that only the word "narrativity" best captures the many facets that the AppLS scholars and teachers are focusing upon. If you have not yet joined the Applied Legal Storytelling conversation, this is a fine entry point. Kiernan-Johnson provides illumination in a strong piece of writing.

Continuing the conversation about storytelling—or narrativity—Kenneth D. Chestek, in *Competing Stories: A Case Study of the Role of Narrative Reasoning in Judicial Decisions* provides an engaging analysis of the story techniques used by the attorneys in several of the legal challenges to President Obama's healthcare plan. Starting at the trial level, Chestek filters the arguments and theories of each case through a filter of heroic archetypes. In so doing, he offers a rationale for the individual case outcomes that differs intriguingly from the political explanations offered by some legal analysts.

In the next essay, *A Picture Is Worth a Thousand Words: How Wordle™ Can Help Legal Writers,* Allison D. Martin provides a visual analysis of the same cases, using word clouds. The images she generates suggest that advances in technology offer more than just ways to create computer graphics. Instead, word clouds, still in their nascent form in both technology and use, may become a format for lawyers to assess the weight of their document's theory and theme by illustrating the frequency of words used by their visual size in a word cloud.

Andrea McArdle, like Chestek, approaches judicial writing with a narrative perspective. Her focus, though, is judicial empathy. McArdle notes that meaning of empathy has shifted from a focus on emotional and cognitive human connection to a "multidimensional concept" embracing as well a person's knowledge, identity, and experience. With this broader definition in mind, McArdle studies the narratives of majority and dissenting opinions in two cases notable for their emotionally compelling facts. In so doing, she illustrates how empathy—a judge's knowledge, identity, experience, *and* feeling—is expressed not only in the judicial

narratives of the cases' facts but in the scope and structure of their reasoning.

In *Narrative Reasoning and Analogy: The Untold Story*, Christy DeSanctis surveys the literature of narrative reasoning and storytelling and notes distinctions in terminology that are helpful and those that are not. Of the latter, DeSanctis acknowledges the persuasive pull of the narrative, but criticizes the inclination to see it divorced or isolated from the *logos* appeal of an argument. Narrative reasoning does not stop at the structural door of an argument's analysis, but weaves its way throughout that analysis as analogy. Analogical reasoning rests on both *pathos* and *logos*; narrative reasoning as analogy is—and always has been—indispensable to the logic of argument.

DeSanctis shares the view with our next author, Melissa Weresh, that rhetoric is much more than its isolated elements. In *Morality, Trust and Illusion: Ethos as Relationship*, Weresh argues that morality and the appearance (or not) of good will in legal writing are both products achieved through the use of at least two of the traditional canons of rhetoric: arrangement and style. The arrangement includes structural organization and organizational signals, syllogisms and enthymemes, priming towards the preferred client outcome, and, yes, narrative lines and storytelling delivery. Second, a writer's *ethos* depends on the stylistic choices including tropes, literary references, and source connection. Weresh and DeSanctis together provide the reader with a fresh approach to relearning the why's behind the lawyer's tasks and responsibilities.

In her essay, *Rhetoric, Referential Communication, and the Novice Writer*, Barbara Blumenfeld reminds her readers that an awareness of audience is critical to effective rhetoric. Because the audience of legal writing is remote, as opposed to present and immediate, the writer must deliberately think through the needs of each particular audience. She urges novice legal writers, in particular, to be deliberate and concrete in their conceptualizing the multiple audiences for any one piece of writing.

Like the artificial distinction between *pathos* and *logos* that Christy DeSanctis worries can blind us to the role of narrative in analogical reasoning, the "theory–practice" divide in legal scholarship occludes the scholar's best approach to exploring legal issues. Will Rhee, in *Law & Practice*, observes that the legal-doctrine "framing" of issues affects the nature and quality of their solutions. He urges a broader approach—a legal framework uniting normative theory, whose focus is on how to act, with practical lawmaking, which describes how legal actors in a democracy actually create and revise legal doctrine—to probe legal issues and produce enlightening scholarship.

In the context of creating the scholarship itself, Associate Dean Judy Stinson at Arizona State offers an encouraging view of how anyone can get that article written in *Generating Interest, Enthusiasm, and Opportunity for Scholarship: How Law Schools and Law Firms Can Create a Community and Culture Supportive of Scholarship*. Using ideas and suggestions from the trenches, Stinson nudges lawyers and academics to participate in legal scholarship and flags three ways to promote a culture in which scholarship can flourish: interest, as through institutional incentives, enthusiasm, as by encouraging colleagues to pursue a scholarly passion, and opportunities for the writer to actually find the time to write.

Finally, we end our ambitious volume with two shorter pieces, each of which discusses the role of basic legal writing paradigms developing the legal writer and his or her style. In *Text Work as Identity Work for Legal Writers: How Writing Texts Contribute to the Construction of a Professional Identity*, Shelley Kierstead and Erika Abner, two professors in Ontario, analyze the most common legal writing texts—written for either the student or practitioner audience—and connect a legal writer's composition to the "distinctive elements of writing in practice." The authors conclude that there are two different approaches to developing the legal writer's professional identity. The first is an approach to legal writing as a technical skill set; the second is process-based and set in a context that reveals the underlying social and doctrinal underpinnings of legal writing as a genre.

The next, and last, piece, *Finding Consensus in Legal Writing Discourse Regarding Organizational Structure: A Review and Analysis of the Use of IRAC and Its Progenies,* by Tracy Turner, looks at the central interpretation of the logical syllogism that appears in legal writing as IRAC and its many variations. Turner's article analyzes the justifications and methodologies that the various authors use—in thirty-five books and dozens of articles—to explain the paradigm. Turner is concerned that a dogmatic adherence to the IRAC paradigm can lead to formulaic writing. But, she suggests, by isolating the core principles upon which a syllogism is based, legal writers can move towards a more flexible use and communication of their legal analysis.

Heartfelt Thanks to the Hard Work of Our Editors

This volume is the result of unbounded dedication by professionals with whom we are so fortunate to be working. These editors donate time they seldom have during some of the most demanding, spasmodic stretches of the legal writing calendar. The editors somehow balance teaching, meetings with students, and, for many, the active practice of law with the gift of their unstinting labor on this journal. We have the deepest respect and gratitude for the editorial capabilities and determined work ethic of each member of our editorial board. We thank each deeply.

Joan Ames Magat & Ruth Anne Robbins
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