

PREFACE

Instead of a single theme, Volume 17 of *Legal Communication and Rhetoric* takes the reader on a journey from error to uncertainty to transformation. By immersing themselves in a wide variety of legal doctrines, the authors included in this volume bring to light themes of the malleability of interpretation and persuasion, how it can go wrong, and how it can ultimately lead to inclusion and justice.

We begin with “Reign of Error: District Courts Misreading the Supreme Court over *Rooker–Feldman* Analysis” by Thomas D. Rowe Jr. and Edward L. Baskauskas, the reviser and drafter, respectively, of Chapter 133 of *MOORE’S FEDERAL PRACTICE*, which includes coverage of the *Rooker–Feldman* doctrine. Rowe and Baskauskas bring their unique expertise to their article that delves into how several district courts have misinterpreted the Supreme Court’s decision in *Lance v. Dennis* by following lower court language that was specifically disapproved of in *Lance*. In addition to explaining the contours of the doctrine, the authors investigate how so many district courts could fundamentally misinterpret Supreme Court doctrine. Their findings serve as good warning for practitioners who may be tempted to quote judicial language without fully understanding its meaning in the context of the entire court opinion.

Moving from civilian courts to military discharge review boards, in “(Not the) Same Old Story: Invisible Reasons for Rejecting Invisible Wounds,” Jessica Lynn Wherry looks at the danger of legal misinterpretation and applies it to veterans seeking to upgrade other-than-honorable-discharges on the grounds of mental health conditions such as post-traumatic stress disorder. Wherry takes a storytelling approach to understand why military tribunals continue to reject mental health claims despite guidance requiring “liberal consideration” for these “invisible wounds” incurred during military service. Using recent cases, she shows that board members acting in a judge-like role have a habit (as all people do) of sticking to stories they are already familiar with even if doing so is contrary to current military policy and deprives deserving servicemen and women of the benefits of an honorable discharge.

Misinterpretation due to intentional ambiguity is the main theme of Elizabeth Fajans and Mary R. Falk’s article “Hendiadys in the Language of the Law: What Part of ‘and’ Don’t you Understand?” This article

examines the rhetorical device hendiadys, which is a phrase that combines two words or phrases using the word “and” instead of using one word to modify the other, such as “sound and fury” instead of “furious sound.” Hendiadys is used in literature both as emphasis and a way to create ambiguity in the text’s meaning. Ambiguity, as Fajans and Falk point out, is antithetical to good lawmaking. In their article, Fajans and Falk show how hendiadys has begun to be used by some scholars and judges when interpreting legal text despite the lack of evidence that the authors intended to use this device. Doing so, they argue, is contrary to both the purpose of hendiadys and effective lawmaking.

Ambiguity gets redeemed in “Get with the Pronoun” by Heidi K. Brown. In her article, Brown makes a case for using the singular “they,” long decried by English grammar traditionalists as imprecise and incorrect. Brown argues that “they” can enhance clarity and inclusion, particularly in legal writing involving persons of unknown gender, those whose identities require confidentiality, and those who identify as non-binary. Noting that several states have adopted the singular “they” in their legislation, Brown concludes that lawyers should likewise eschew tradition and use personal pronouns with due consideration for how these simple words can improve their writing and show sensitivity to what these words can mean for their clients and the future of the legal system.

Furthering the theme of inclusion is Stephen Boscolo’s article, “Using Judicial Motives to Persuade Judges: A Dramatistic Analysis of the Petitioners’ Brief in *Lawrence v. Texas*.” This article dives deep into the briefs submitted to the Supreme Court in the seminal case *Lawrence v. Texas* and analyzes their effectiveness using Kenneth Burke’s Theory of Dramatism. Operating as a lens to view the persuasive storytelling inherent in telling a client’s story, Dramatism breaks up stories into their dramatic parts: plot, characters, setting, etc. and uses these parts to better understand a writer’s motives. By emphasizing and deemphasizing different dramatic parts, the writer’s own worldview becomes clearer. Moreover, as Boscolo shows, when a legal writer aligns their motives with that of their judicial audience, they can be extremely persuasive.

The final article, “The Language of *Love v. Beshear*: Telling a Client’s Story While Creating a Civil Rights Case Narrative,” written by JoAnne Sweeny and Dan Canon, ties together several of the themes of this volume: inclusion, storytelling, and persuasion. *Love v. Beshear* was one of the marriage equality cases that made its way to the Supreme Court, ultimately leading to *Obergefell v. Hodges*. Sweeny and Canon combine storytelling scholarship with personal knowledge of the strategies employed by the lawyers for the Loves and other plaintiffs (Canon was one of the Loves’ attorneys) to make their clients more sympathetic to their judicial

audience. In addition to analyzing the client stories told by the plaintiffs' attorneys, which described a wide variety of plaintiff experiences, this article compares those stories to those told by the media and, ultimately Justice Kennedy in the Supreme Court opinion, which emphasized "normal" families, effectively omitting the stories of the other plaintiffs.

This volume's book reviews give readers a myriad of paths towards good writing and storytelling, including advice from judges, legal experts, and writers of popular fiction and non-fiction. For books by judges and legal experts, Maikieta Brantley reviews *LEGAL WRITING: A JUDGE'S PERSPECTIVE ON THE SCIENCE AND RHETORIC OF THE WRITTEN WORD*, by the Hon. Robert E. Bacharach; Tessa L. Dysart reviews *A REPUBLIC, IF YOU CAN KEEP IT*, by Justice Neil Gorsuch; Kristen E. Murray reviews Benjamin Dryer's *DREYER'S ENGLISH: AN UTTERLY CORRECT GUIDE TO CLARITY AND STYLE*; Tammy Pettinato Oltz reviews *DATA-DRIVEN LAW: DATA ANALYTICS AND THE NEW LEGAL SERVICES*, by Ed Walters, et al.; Elizabeth Sherowski reviews *NARRATIVE AND METAPHOR IN THE LAW*, edited by Michael Hanne and Robert Weisberg; and Sharon A. Pocock reviews *BROKE: HARDSHIP AND RESILIENCE IN A CITY OF BROKEN PROMISES*, by Jodie Adams Kirshner. For some lighter reading, Ryan D. Tenney reviews Malcom Gladwell's *BLINK*, and Pamela A. Wilkins reviews Philip Pullman's *DAEMON VOICES: ON STORIES AND STORYTELLING*.

During the transition between Volume 16 and the production process for Volume 17, two of our excellent lead editors ended their terms to create space to focus on other projects. We are saying farewell to Sarah Adams-Schoen and Jason Cohen. These two editors have a publication track record in their own right. Sarah works in and teaches environmental law, focusing most specifically on climate change. Her expertise is sought after by government agencies, national and state committees, and foundations. She is an important clinical educator and we were incredibly lucky to have someone with her expertise working with our authors to make their articles as fine as they could be. Sarah's insights into our own publication policies were always spot-on and welcomed. We will miss having her wise guidance on our editorial board. Jason's scholarship focused on public speaking, and one of his articles was published in Volume 8 of this journal: *Attorneys at the Podium: A Plain-Language Approach to Using the Rhetorical Situation in Public Speaking Outside the Courtroom*. Jason was an active and vocal member of the editorial board, letting us know where he thought we could all do better. He was also a positive voice supporting other editors' views and helping push the journal forward. Authors who worked with him often wrote in, citing his verve and wisdom as one of the positives they took away from the publishing experience. We will also miss him a great deal. To each

of these editors, we say good-bye with great regard and affection, wishing them much success in their writings and work.

Not only do we say good-bye to Sarah and Jason, but this volume marks a significant—and bittersweet—transition of the journal's decade-long Editor-in-Chief Ruth Anne Robbins to Editor-in-Chief Emeritus. Ruth Anne's impact on *LC&R* is truly immeasurable. She has been an inspiring leader, a tireless advocate, and a supportive mentor to so many of us. We will not miss her because we will hold on to her for as long as she will allow us. (We've even rewritten the bylaws to create the Emeritus role!) We will save our emotion-inducing good-bye in case she ever decides to completely leave the journal, but for now, we express our deepest gratitude and respect for all that she has done to advance the discipline.

*Dr. JoAnne Sweeny
Ruth Anne Robbins, Susan Bay, & Jessica Wherry
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