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Now is the time to bring scholarly attention to a new genre of legal writing: the blog posts, tweets, updates, and other writing on social media that many lawyers generate and many others would consider generating, if they had the time and skill to do so.

This article describes the genre in the broadest terms as "public legal writing": writing by lawyers not for any specific client but for dissemination to the public or through wide distribution channels, particularly the internet. Examples, roughly in order of estimated average length, would include bar-journal articles; white papers and client alerts; email newsletters; blog postings; demand letters intended to go viral; postings to LinkedIn groups and profiles; Facebook updates; tweets; and captions on platforms such as Pinterest, Instagram, and perhaps even Tumblr. Legal blogging advocates[1] encourage lawyers that they can blog and they should blog and they will receive great benefit from blogging; similar advocacy-tinged advice touches on writing for other social-media platforms such as Twitter and LinkedIn.[2]

Public legal writing is not new. In 1876, lawyer and legal publisher Carl Jahn published the first issue of the *Weekly Cincinnati Law Bulletin*, a

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1 *E.g.*, Kevin O'Keefe, *3 Keys to Being the Best Law Blogger in Your Niche*, REAL LAWYERS HAVE BLOGS (Aug. 22, 2014), http://kevin.lexblog.com/2014/08/22/3-keys-to-being-the-best-law-blogger-in-your-niche/; Sam Glover, *Blogging 101: Why Blog?*, LAWYERIST (Oct. 29, 2008), http://lawyerist.com/779/blogging-101-why-blog/.

2 *E.g.*, Nancy Myrland, *12 Twitter Tips for Lawyers*, MYRLAND MARKETING (Jan. 28, 2014), www.myrlandmarketing.com/2014/01/12-twitter-tips-for-lawyers/.

precursor of the *Ohio State Bar Journal*, and solicited Ohio lawyers to submit "law points of general interest."[3] Law blogging is certainly not new, either, dating to approximately 1998, when the first legal blog was launched.[4] But the "public" part of public legal writing has never been easier: technology enables lawyers and everyone else to readily, and with no technology expertise needed, start a blog, set up a Twitter or LinkedIn or Facebook account, or otherwise find an outlet to distribute one's work on social media.[5]

Public legal writing is also important because it plays a significant role in how lawyers interact with the public and with one another. According to a 2012 study by LexisNexis, 58 million U.S. consumers searched for an attorney in 2013, and 76% of those consumers used online resources to do so.[6] According to a 2012 survey of in-house lawyers, 55% said blogs can influence their hiring decisions when choosing outside counsel.[7] The 2014 ABA Legal Technology Survey reported that 74.6% of lawyers are on LinkedIn for professional purposes,[8] and 23.9% of law firms have blogs, ranging from 15.7% for solo practitioners to 62.3% for law firms of 500 or more attorneys.[9]

Apart from statistics on actual use, public legal writing has the potential to generate a variety of qualitative benefits. It helps lawyers in private practice express themselves and develop expertise in a chosen topic, as well as build their reputations among other lawyers and with clients. For pro bono lawyers, publicly discussing their work can build reputation and goodwill. For government lawyers, various goals such as

3 Carl G. Jahn, WEEKLY CINCINNATI L. BULL. (Feb. 12, 1876), at 1. There may be older examples as well, but this makes the point that public legal writing has roots in relatively ancient legal publications.

4 Robert Ambrogi, *The First-Ever Law Blog (Reconsidered)*, LAWSITES: TRACKING NEW AND INTRIGUING WEBSITES AND PRODUCTS FOR THE LEGAL PROFESSION (Nov. 20, 2013), http://www.lawsitesblog.com/2013/11/first-ever-law-blog-reconsidered.html; Bob Ambrogi, *Is Blogging Dead? Think Again*, 67 BENCH & BAR OF MINN., Sept. 2010, at 14.

5 *See* CAROLYN R. MILLER & DAWN SHEPHERD, *Questions for Genre Theory from the Blogosphere*, in GENRES IN THE INTERNET: ISSUES IN THE THEORY OF GENRE 267 (Janet Giltrow & Dieter Stein, eds., 2009) (describing how the debut of readymade blogging platforms facilitated an explosion in personal blogging in 1999). *But see* GUY ALVAREZ, BRIAN DALTON, JOE LAMPORT, & KRISTINA TSAMIS, THE SOCIAL LAW FIRM: AN ASSESSMENT OF THE USE OF SOCIAL TECHNOLOGIES AT AMERICA'S LEADING LAW FIRMS 7 (2013) (published by Good2BSocial and Above the Law), available by download at http://good2bsocial.com/the-social-law-firm-white-paper/ ("Most [AmLaw 50] firms are devoting resources toward the creation of substantive, non-promotional content. However, they are doing little or nothing to make that content appealing, usable and shareable in the social media environment.").

6 LexisNexis, *How Today's Consumers Really Search for an Attorney*, available at cdn.lawyerist.com/lawyerist/wp-content/uploads/2012/11/How_Todays_Consumers_Really_Search_for_an_Attorney_102312.pdf (visited Mar. 11, 2015).

7 Greentarget, *2012 In-house Counsel New Media Survey*, available at http://www.greentarget.com/wp-content/uploads/2012/01/2012GTZGICSurveyReportFinal-WebsiteVersion.pdf, cited in Alvarez, *supra* note 5, at 7.

8 Joshua Poje, ed., 2014 *American Bar Assn. Legal Technology Survey Report*, VOLUME IV WEB AND COMMUNICATION TECHNOLOGY, at IV-38.

9 *Id.* at IV-32.

transparency, education, and advocacy can be served in part through public legal writing.[10]

The perceived importance and value of public legal writing—especially online in social media—deserve critical attention in the way that all media usage deserves critical attention: perhaps the expanding resources on social media for lawyers do not satisfy demand but rather create it.[11] The perceived obligation to use social media manifests in attorneys attempting to use social networks because they are "supposed" to do so,[12] and may be partly to blame for abandoned law blogs.

While resisting an uncritical embrace of public legal writing and social media (and indeed pointing to some of their downsides[13]), this article emphasizes their pragmatic importance. For lawyers and law students, having demonstrable skills in public legal writing should provide an advantage, all other things being equal, over others lacking those skills.[14] Conversely, lawyers and law students who are unfamiliar with public legal writing or who perform poorly on this kind of work may be at a disadvantage. Thus, in light of the history of public legal writing, its current importance, its value, and its risks, public legal writing is worthy of study by legal writing professors and worthy of consideration as an option in the law-school curriculum. One goal of this article is to ask whether public legal writing should be a core competency of legal education.

Practical advice on public legal writing is emerging. The ABA has served the legal profession in this area, publishing books such as *Social Media for Lawyers: The Next Frontier*,[15] *Blogging for Lawyers*[16] (as well as

10 *See, e.g.,* Cliff Villa, *Sampling the Garden* Soil, ENVIRONMENTAL JUSTICE IN ACTION: BLOGGING ABOUT EFFORTS TO ACHIEVE ENVIRONMENTAL JUSTICE IN OVERBURDENED COMMUNITIES (Nov. 24, 2014), http://blog.epa.gov/ej/2014/11/sampling-the-garden-soil/ (author is Assistant Regional Counsel for EPA Region 10 as well as an adjunct law professor).

11 *See* MILLER & SHEPHERD, *supra* note 5, at 281 ("The affordances of blog hosting sites led many people to believe that they really did want to create public online diaries, a conclusion that few might have reached in the absence of the technology."); ABA Law Practice Management Section, *Between Lawyers Roundtable: The Future of Legal Blogging,* LAW PRACTICE: THE BUSINESS OF PRACTICING LAW 44 (July/Aug. 2005), available at http://www.americanbar.org /publications/law_practice_home/law_practice_archive/lpm_magazine_articles_v31is5an4.html (in which pioneer legal bloggers express differing opinions on whether every lawyer and law firm actually should blog).

12 Kristina Marlow, *LinkedIn for ~~Dummies~~ Lawyers: More Associates Are Using LinkedIn, But Not Well*, ABOVE THE LAW (Aug. 21, 2014), http://abovethelaw.com/2014/08/linkedin-for-dummies-lawyers-more-associates-are-using-linkedin-but-not-well/.

13 *See infra* notes 184–86, and accompanying text on how lawyers may be judged harshly for poor public legal writing just as they are judged for poor traditional legal writing.

14 Carolyn Elefant, *Open Letter to Law Schools: What Law Students Need to Learn to Be Hired by Tomorrow's Largest Legal Employer—Solos & Smalls*, MY SHINGLE (Oct. 17, 2013), http://myshingle.com/2013/10/articles/trends/open-letter-law-school-need-teach-students-make-employable/.

15 CAROLYN ELEFANT & NICOLE BLACK, SOCIAL MEDIA FOR LAWYERS: THE NEXT FRONTIER (2010).

16 ERNIE SVENSON, BLOGGING IN ONE HOUR FOR LAWYERS (2012).

Twitter for Lawyers,[17] *Facebook for Lawyers*,[18] *and LinkedIn for Lawyers*[19]) and *The Legal Side of Blogging for Lawyers*.[20] The writing advice in these sources tends to be encouraging and fairly general, giving sound advice but also emphasizing that blogging has low barriers to entry and "no hard-and-fast rules."[21] Blogs on law blogging and legal technology are also useful sources, offering many advice posts on writing well for blogs and other social media.[22] *The Post* is an online journal, part of the larger online Journal of Law project, that curates excellent legal blogging.[23]

Running parallel to this burgeoning literature for lawyers, public legal writing (especially online in social media) has also made inroads into legal education. Some law professors and externship directors are using blogging to enhance their classes.[24] Some career-services departments advise students not only to remove embarrassing social-media content but to affirmatively establish a positive web presence.[25] And of course law professors have been blogging and debating the merits of blogging as legal scholarship for many years.[26] This article focuses on blogging by practicing lawyers and law students seeking a career in law practice as writers, rather than on blogging by law professors. Doing so, though, implies no

17 JARED CORREIA, TWITTER IN ONE HOUR FOR LAWYERS (2012).

18 DENNIS KENNEDY & ALLISON C. SHIELDS, FACEBOOK IN ONE HOUR FOR LAWYERS (2012).

19 DENNIS KENNEDY & ALLISON C. SHIELDS, LINKEDIN IN ONE HOUR FOR LAWYERS (2d ed. 2013).

20 RUTH CARTER, THE LEGAL SIDE OF BLOGGING FOR LAWYERS (2014).

21 *E.g.,* Svenson, *supra* note 16, at 83–84 (section titled "Write Well" with five paragraphs of advice such as choosing an interesting topic, avoiding jargon, and crafting a punchy headline).

22 *See, e.g.,* O'Keefe, *supra* note 1; *see also* Sam Glover, *Write a Compelling Opening Line for Blog Posts*, LAWYERIST (July 25, 2014), http://lawyerist.com/75443/write-compelling-opening-line-blog-posts/; Kellie Pantekoek, *How to Write Effective Blog Posts for Lawyers (Part 1)*, THOMSON REUTERS LEGAL SOLUTIONS BLOG: SMALL FIRMS LAW BLOG (July 13, 2012), http://blog.legalsolutions.thomsonreuters.com/small-law-firms/how-to-write-effective-blog-posts-for-lawyers-part-1/.

23 THE POST: GOOD SCHOLARSHIP FROM THE INTERNET, available at http://journaloflaw.us/5%20The%20Post/The%20Post%20home.html (accessed Mar. 4, 2015); *see also* Anna Ivey, *An Introduction to* The Post, 1 J. OF LAW (1 THE POST) 367 (2011), available at http://journaloflaw.us/5%20The%20Post/1-1/JoL1-2,%20TP1-1,%20Ivey.pdf.

24 *E.g.*, Robert J. Ambrogi, *Law Schools Continue to Innovate Online*, OR. ST. B. BULL. (June 2009) (describing various innovations including topical blogs launched by several law schools); Kevin O'Keefe, *Teaching Law Students to Blog: Interview of Law Professor Dr. Silvia Hodges Silverstein*, REAL LAWYERS HAVE BLOGS (Sept. 2, 2014), http://kevin.lexblog.com/2014/09/02/teaching-law-students-to-blog-interview-of-law-professor-dr-silvia-hodges-silverstein/; Juliana Siconolfi, *Tweets, Tags 'n' Trolls: The Role of Social Media in Law Students' Professional Development*, Externships 7 Concurrent Session Handout, on file with the author; Stephanie Kimbro, *Teaching eProfessionalism to Law Students with Social Media*, LEGAL TECHNOLOGY BLOG (Sept. 29, 2014). http://lawprofessors.typepad.com/ legaltech/2014/09/teaching-eprofessionalism-to-law-students-with-social-media.html; Jodi Balsam, Sports Law Blogging Instructions and Assessment Rubric, on file with the author.

25 *E.g.,* University of Texas at Austin School of Law Career Services Office, *Social Media Tips*, available at http://www.utexas.edu/law/career/resources/branding.html (last visited Mar. 4, 2015); *see also* Kevin O'Keefe, *Law Students Using LinkedIn: It's a No-Brainer*, REAL LAWYERS HAVE BLOGS (Apr. 11, 2009), http://kevin.lexblog.com/2009/04/11/law-school-students-using-linkedin-its-a-no-brainer/.

26 For example, in 2006, Harvard Law School sponsored a conference about how legal blogging affects legal scholarship, and Washington University Law Review published a symposium issue resulting from that conference. *See* Paul L. Caron, *Are Scholars Better Bloggers? Bloggership: How Blogs Are Transforming Legal Scholarship*, 84 WASH. U. L. REV. 1025 (2006).

formal distinction between blogs by law professors and those by practicing lawyers, nor between the audiences and purposes of their blogs. These of course overlap, and such overlap is part of the strength of legal blogging.[27]

Despite these inroads, legal education lacks a well-developed pedagogy about how law students can develop their skills at public legal writing.[28] Legal-writing textbooks do not address this kind of writing,[29] nor do advanced legal-writing textbooks.[30] This article aims to start a conversation on whether public legal writing should be included in the legal-writing curriculum, and to serve as a resource for professors and students interested in studying it.

From Bryan Garner to Anne Lamott, legal writing has a great tradition of celebrating books of writing advice. In that spirit, section I begins by briefly reviewing two relatively new writing books focused on writing well in an information-saturated world. In 2011, linguist and naming consultant Christopher Johnson published *Microstyle: The Art of Writing Little*.[31] In 2013, author and writing coach Roy Peter Clark published *Writing Short: Word Craft for Fast Times*.[32] These books are not specific to the legal industry, but they include law-related examples.[33] More importantly, they give useful, detailed advice for anyone who wants to write short pieces that stand out in an online environment.[34] These

27 Douglas A. Berman, *Scholarship in Action: The Power, Possibilities, and Pitfalls for Law Professor Blogs*, 84 WASH. U. L. REV. 1043, 1049 (2006) ("More than any other form of communication, blogs enable a law professor to reach and interact as cyberpeers with an extensive and extraordinarily diverse audience. My blog work facilitates the exposure and scrutiny of my legal ideas to a national and international readership that includes not only judges, policymakers, and practitioners at all levels in many jurisdictions, but also academics from other disciplines, journalists of all stripes, many nonlawyers interested in criminal justice issues, and also—perhaps most valuably—the real people whose lives are most impacted by the policies and doctrines that I discuss.").

28 At the college level, this discussion about the "literacy revolution" facilitated by the internet has been ongoing for quite some time and is reflected in new types of textbooks such as the composition textbook *Everyone's an Author* (2012), by Andrea Lunsford, et al.

29 *E.g.*, CHRISTINE COUGHLIN, JOAN MALMUD ROCKLIN, AND SANDY PATRICK, A LAWYER WRITES: A PRACTICAL GUIDE TO LEGAL ANALYSIS (2d ed. 2013) (focusing on office memos, email, and persuasive briefs).

30 *See, e.g.,* MARY BARNARD RAY & BARBARA J. COX, BEYOND THE BASICS: A TEXT FOR ADVANCED LEGAL WRITING 453 (3d ed. 2013) This textbook covers such legal documents as jury instructions, statutes, email, and opinion letters, but only alludes to public legal writing in the chapter on "Scholarly Articles and Other Research Papers," suggesting that research work may take the form of "an informative report explaining an area of law to a firm's client [or] an update on a change in law for an agency newsletter." *See also e.g.* WAYNE SCHEISS, WRITING FOR THE LEGAL AUDIENCE chs. 10, 13 (2014) (covering writing to consumers such as writing web disclaimers, and writing for screen readers enumerated as "judges, lawyers, supervisors, and clients").

31 CHRISTOPHER JOHNSON, MICROSTYLE: THE ART OF WRITING LITTLE (2011).

32 ROY PETER CLARK, HOW TO WRITE SHORT: WORD CRAFT FOR FAST TIMES (2013).

33 *E.g.*, *id.* at 27 (discussing author Dave Eggers' playful use of the space normally reserved for a standard copyright posting on his novel's copyright page); *id.* at 208 (discussing the value of concision in the legal definition of death); JOHNSON, *supra* note 31, at 106 (discussing the rhetorical impact of the magazine *Sue*, with a target audience of women litigators).

34 Related—and highly worthwhile—books within the new subgenre of short-writing-advice books include Stanley Fish, *How to Write a Sentence: And How to Read One* (2011) and Verlyn Klinkenborg, *Several Short Sentences about Writing* (2012). Their linguistic focus on the sentence as the key to good longer writing, as well as their lack of any particular care for social media as a platform or genre, set them slightly apart from Clark's and Johnson's books.

books are the right starting point for this article because they provide comprehensive, focused, organized, cohesive advice. Whereas law-blogging resources generally advise lawyers to write in a friendly, attention-grabbing style, *Microstyle* and *How to Write Short* give hundreds of examples of what that means and how to do it. Both are candidates to become the Strunk and White of short online writing.

Section II of this article then explores the genre of public legal writing through two case studies of legal blogs. Blogging is the chosen focus because the legal blog stands in the center of the varying lengths, styles, and platforms of public legal writing today. It is neither too long nor too short, and neither excessively formal nor informal. And of course it is subject to great variation depending on the writer, topic, platform, time-sensitive nature of the situation, and other factors. Truly representing all blogs' styles is an impossible task given the proliferation of legal blogs. Blogging itself has experienced several waves of development, yielding somewhat distinct subgenres within the general blogging umbrella,[35] and legal blogging likewise demonstrates evolution and fragmentation.[36] Despite these variations, legal blogging as essentially a subgenre of public legal writing is a sufficiently distinct category to generate a worthwhile discussion.

The method for this exploration is two brief case studies. The first case study is an analysis of various lawyers' and law firms' blogs about the 2014 Supreme Court case of *Clark v. Rameker*,[37] which addresses whether inherited IRAs are exempt from a debtor's bankruptcy estate under the exemption for retirement funds. The second case study deals with a very different issue, namely "the" hot intellectual-property debate of summer 2014: If a monkey takes a selfie, who owns the copyright?

This section loosely applies the "genre-discovery approach" recently recommended by Professor Katie Rose Guest Pryal to help law students prepare for writing documents that they have never before encountered.[38] Professor Pryal defines genre as "a set of communications that share certain, predictable conventions."[39] The genre-discovery approach works so well for this inquiry because by finding examples of a genre and

35 *See* Miller & Shepherd, *supra* note 5, at 266–71.

36 *See* Max Kennerly, *The Three Types of Practicing Lawyer Blogs*, LITIGATION & TRIAL: THE LAW BLOG OF PLAINTIFF'S ATTORNEY MAX KENNERLY (Sept. 29, 2011), http://www.litigationandtrial.com/2011/09/articles/the-business-of-law/the-three-types-of-practicing-lawyer-blogs/ (describing the mainstream blogs such as SCOTUSBlog, the personality-driven blogs featuring lawyers' distinct voices, and the marketing blogs reaching potential clients).

37 Clark v. Rameker, 134 S. Ct. 2242 (2014).

38 Katie Rose Guest Pryal, *The Genre Discovery Approach: Preparing Law Students to Write Any Legal Document*, 59 WAYNE L. REV. 351 (2013).

39 *Id.* at 354.

studying its features, writers can construct their own knowledge about the essential qualities of a genre and that genre's flexibility; writers therefore become more prepared to produce their own writing in that genre than if, for example, they received and tried to follow a generic template or checklist for how lawyers blog.[40]

The writing guides *Microstyle* and *How to Write Short* serve as valuable priming mechanisms for this genre investigation. They provide context for and examples of short online writing that inform the exploration of legal blogging. Section II provides highlights from the case studies and concludes that legal blogs do, to a degree, practice the playfulness and technical expertise with language recommended in *Microstyle* and *How to Write Short*.

What is most important about section II is its method. The method of exploring how legal blogs work is worth the effort for scholars seeking to further examine the blogging genre, for professors planning to teach blogging or other forms of public legal writing, and for law students, lawyers, and law professors who want to write.

Section III concludes by connecting public legal writing to various threads of legal-writing scholarship and pedagogy on traditional legal writing. By "traditional legal writing," this article refers primarily to memos, briefs, and email, three genres taught as foundational for professional legal writing on behalf of clients. Traditional legal writing comes into existence solely because of the client's needs.[41] It is subject to additional professional duties and protections, and its rhetorical choices must be guided by the client's needs and not the legal writer's own agenda.

Despite the lack of a client in public legal writing, one reason to explore it is that some of the methods of good public legal writing overlap with those of good traditional legal writing—for example, a shared interest in conciseness and in the use of headings for visual accessibility. On a more negative note, traditional legal writing has always suffered criticism for being too wordy, too laden with jargon, and too boring. Legal-writing scholars and teachers have long fought against verbosity and jargon.[42] The new genre of public legal writing could provide additional motivation for and practice with cutting unneeded words and jargon.[43]

40 *Id.* at 371 (critiquing the pedagogy of providing templates and checklists before or instead of providing adequate exploration of the genre).

41 *See* RUTH ANNE ROBBINS, STEVEN JOHANSEN, AND KEN CHESTEK, YOUR CLIENT'S STORY: PERSUASIVE LEGAL WRITING 11 (2013) ("In the beginning, there is the client."); posting of Ruth Anne Robbins to LRW-PROF@iupui.edu, *Legal writing—what is it?* (Apr. 10, 2013, 8:36 PM) (on file with the author) ("I define legal writing as the written communication of legal analysis for the specific purpose of representing a client. If there is no client, then it's not legal writing.").

42 *See, e.g.*, Richard C. Wydick, *Plain English for Lawyers*, 66 CAL. L. REV. 727 (1978), available at http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2362&context=californialawreview.

In short, traditional legal writing offers many promising jumping-off points for teaching transfer of skills into public legal writing. Likewise, studying the context and techniques of public legal writing can enhance the quality of traditional legal writing.

I. The new literature of short writing

A. Christopher Johnson, *Microstyle* (2011)

Microstyle is an excellent and creative overview of short writing, defined as anything from one word or web domain name to a couple of sentences, including blog headlines and status updates, although not multi-paragraph analyses.[44] What Johnson is interested in is "language at play," as distinguished from the "Big Style" typical of many places of work and generally associated with high-stakes evaluation.[45] People are writing much, much more than they did twenty-five years ago, generating a new kind of writing Professor Andrea Lunsford calls "life writing."[46] This kind of writing is generated "not to be evaluated, but to communicate, to entertain, to persuade, to get attention."[47] The "rules" of life writing are not recorded in any one place but embodied in the peer response to this kind of writing such as comments, criticisms, and sending something viral. In fact, "[p]rescriptive rules are among the least interesting things about language."[48] A key concept of microstyle, according to Johnson, is that the reader participates in making the message's meaning: "A successful message sends people in the right direction but allows them to use their wits and the cues provided by context to get there."[49]

Johnson celebrates the fact that everyone is writing, but he points out that it comes with a price—information overload. If everyone is writing, then who is reading? Today's reader is "guarded" by necessity because there are just too many messages for people to cope.[50] Thus messages need to stand out in order to be noticed.

Johnson has many specific, practical tips for writing with microstyle so as to be noticed, but he mixes in theory as well. For example, Charles

43 *See* Sarah Mui, *Has Social Media Tightened Your Writing Style*, ABA J. (Mar. 30, 2011), http://www.abajournal.com/news/article/has_social_media_tightened_your_writing_syyle/.

44 JOHNSON, *supra* note 31, at 1 (defining micromessages as messages "of just a word, a phrase, or a short sentence or two").

45 *Id.* at 2.

46 *Id.* at 24.

47 *Id.*

48 *Id.* at 12.

49 *Id.* at 34.

50 *Id.* at 20.

Sanders Peirce taught that messages can be visual, indexical, or symbolic.[51] Messages can be iconic, which essentially means visual representation such as maps, diagrams, and computer icons. (Johnson doesn't extend the argument, but iconic messages would include lists of bullet-points as a quasi-diagram. On the more-intense end of the iconic spectrum, tech-savvy experts have invited lawyers to try infographics as well.[52]) Messages can also be indexical, based on a real-world connection such as pointing. Using <== to point to one's Twitter photo in a tweet—as a Texas Supreme Court Justice has done on Twitter—is an example of repurposing punctuation to create an indexical message.[53]

Most of all, language depends on the symbolic level, namely, the social conventions of language itself.[54] These include the conceptual metaphors that undergird the way we understand and process meaning such as the idea of progress as moving forward, dirt as bad, and organization as physical structure.[55] Notwithstanding Ernest Hemingway's apocryphal story "For sale: baby shoes, never worn," one or a few sentences are too short to embody true storytelling. These micromessages are so short they can "hint at a story" but generally do not serve as an entire story.[56]

Some aspects of microstyle could be directly grafted into a traditional legal-writing course. Johnson's work in metaphor echoes the work done by many legal-writing scholars, discussed below in section III. At a more pedestrian level, Johnson's first chapter is titled, "Be Clear," a maxim Johnson links to modes of writing such as email subject lines.[57] With examples of concise and wordy slogans, Johnson gives advice any legal writer should heed as well: "Clarity means finding the right level of detail for the circumstances,"[58] and "[a]ny negative or irrelevant interpretation that seems unintentional reflects badly on the person who created the message, and that detracts from the message itself."[59]

51 *Id.* at 37 (attributing the framework to Charles Sanders Peirce).

52 *See* Allison C. Shields, *Infographics for Lawyers*, LEGAL BY THE BAY: THE BAR ASSN. OF SAN FRANCISCO'S BLOG (May 26, 2013), http://blog.sfbar.org/2013/05/26/infographics-for-lawyers/ (originally published at Slaw.ca, Canada's online legal magazine on Feb. 7, 2013, www.slaw.ca/2013/02/07/infographics-for-lawyers).

53 Texas Supreme Court Justice Don Willett, Twitter, https://twitter.com/justicewillett/status/522383846235717632 (Oct. 15, 2014 6:49 AM) (using arrow <== and words "always trustworthy" to point to his Twitter profile photo visible in the standard Twitter feed, in response to an earlier conversational tweet).

54 Johnson, *supra* note 31, at 37.

55 *Id.* at 94–96.

56 *Id.* at 79.

57 *Id.* at 42–43.

58 *Id.* at 47.

59 *Id.* at 51.

Another chapter discusses the power of parallel language. Beyond good examples from the world of slogans, *Microstyle* delves into why parallel language works:

> [I]t can be the verbal equivalent of making a tipping-scale gesture with your hands. That makes it a kind of syntactic iconicity. The similarity in structure of the two (or more) parts in a case of parallelism shows a kind of equivalence or comparability in meaning . . .
>
> Parallelism is usually accompanied by a key semantic relationship between contrasting words.[60]

Although parallelism is powerful and satisfying, so is the opposite: violating readers' expectations.[61] Doing so makes readers participate in the punchline and thus in making the meaning. Violating the reader's expectations can also include what the writer doesn't say. Johnson offers the "classic example" that may be familiar to many professors: "the hypothetical professor who writes a letter of recommendation praising a student for being punctual and having excellent handwriting. The information that's missing from the recommendation—anything that would bear on the student's intellect or other abilities—says more than the information presented."[62]

Johnson's lack of interest in prescriptivism shines through in his section on structure. He explores idioms that defy usual grammar rules[63] (my example: "There's only so many times you can use the word 'clearly.'") and recommends breaking rules for expressive purposes.[64] As far as the descriptive–prescriptive debate, he recommends a middle path tilted toward the descriptivist side: "We don't worship our own prejudices, and we're more curious than censorious."[65]

This approach ties into the distinction between short writing and what Johnson calls "Big Style."[66] Big Style is formal, longer writing, often for evaluation and for work. It carries big stakes, in contrast to microstyle, in which a mistake, for example, might require a jokey self-correction.[67] But that's not to say Big Style is bad; Johnson argues we need both—but frankly he's not interested in Big Style.

It's also not to say that microstyle is just for play and for personal expressive writing. Finding a "microvoice" means considering a conversa-

60 *Id.* at 189.

61 *Id.* at 111.

62 *Id.* at 114.

63 *Id.* at 150.

64 *Id.* at 180.

65 *Id.* at 155 (quoting Mark Liberman, a linguist and blogger for LANGUAGE LOG).

66 *Id.* at 13.

67 *Id.* at 25.

tional, playful approach to language—crucially, even for work.[68] And since work isn't quite what it used to be—almost no one now expects a career at just one employer—developing one's microstyle helps with networking and building a "personal brand."[69] In this sense, Johnson presages a comment skeptical of why law firms should train lawyers to blog: what if they develop a personal brand and then leave the firm?[70] This is either a feature or a bug of having a good online presence for lawyers as for everyone else.

B. Roy Peter Clark, *How to Write Short: Word Craft for Fast Times* (2013)

Roy Peter Clark is a "senior scholar and vice president" at the Poynter Institute and a writing teacher and coach as well as a prolific author.[71] *How to Write Short: Word Craft for Fast Times* draws on his life's work, but puts it in the context of the busy, crowded nature of everyone's attention these days. More than ever, he points out, good short writing today must stand out, and it can do that by achieving the broad goals of "focus, wit, and polish."[72] More specifically, writers wishing to write well while writing short can learn a set of techniques for doing so: "Remember that great writing in an informal style is the product of a set of formal practices, including the intentional deletion of function words; the use of contractions and other abbreviations; and the employment of slang, dialect, and other idioms."[73]

To set out on a path of learning how to write well in a short and informal style, Clark's first recommendation is to collect great short writing.[74] Annotate good short writing.[75] Experiment with moderately short writing to make it shorter.[76] (Any lawyer who has condensed an argument to a brief answer and then even further to a series of headings will already have experience with this technique.) Look at writing in a glance, on a screen.[77]

Because readers are inundated with so many messages, truly good short writing stands out: "We need more good short writing—the kind that makes us stop, read, and think—in an accelerating world. A time-

68 *Id.* at 216–22.

69 *Id.* at 14.

70 Adrian Dayton, *Do Blogging Lawyers Leave Law Firms?*, MARKETING STRATEGY AND THE LAW: SOCIAL MEDIA EDITION (June 11, 2014) http://adriandayton.com/2014/06/do-blogging-lawyers-leave-law-firms/ (describing a senior lawyer's objection to blogging because "'If you show the lawyers how to build their individual reputation so that they can bring in their own clients, what do they need the law firm for?'").

71 Bio, ROY PETER CLARK: AMERICA'S WRITING COACH, http://www.roypeterclark.com/bio/ (accessed Mar. 4, 2015).

72 CLARK, *supra* note 32, at 7.

73 *Id.* at 63.

74 *Id.* at 15–21.

75 *Id.* at 47–52.

76 *Id.* at 118–26.

77 *Id.* at 35.

starved culture bloated with information hungers for the lean, clean, simple, and direct."[78] Clark's snappy chapter headings themselves are an exercise in practicing what he preaches: "Tap the power of two"; "Give weight to one side"; "Hit your target"; "Inject the juice of parallels."

With a fairly expansive definition of short writing—anything up to 300 words—Clark has room to explore logic, analysis, story, and design principles more than Johnson does in *Microstyle*. Clark's chapter 3 on reading for focus is essentially a creative take on the value of the topic sentence, with some examples of focused writing and other examples of problematic topic sentences that are too wide or cluttered.[79] Likewise, in advising writers to "tap the power of two," Clark recommends what he calls a "one-two chart"—which sounds a lot like what legal-writing professors may call a T-chart[80]—to brainstorm the attributes of each item in the comparison. "Giv[ing] weight to one side" relates to popular advice in legal-writing textbooks about placing unfavorable facts in dependent clauses and more favorable facts in independent clauses.[81]

Like Johnson[82], Clark recommends using parallel language[83] as well as defying expectations by "tweak[ing] the predictable."[84] This is harder than it sounds because of the paradox he points out: "[W]e want great writing to be unpredictable and predictable at the same time."[85] (This also seems quite an apt observation for legal writing.) Tweaks to comfortable idioms make language more entertaining and even lovable, as in the play title *Once Upon a Mattress*.[86]

How to Write Short embraces all styles of writing, from tattoos to conversational texts, to the "classic style" of the Audubon guide which "declines to acknowledge it is a style" and claims to be transparent.[87] (The idea of a transparent, authoritative style suggested similarities to voice in

78 *Id.* at 4.

79 *Id.* at 32–33.

80 *E.g.*, DEBORAH A. SCHMEDEMANN & CHRISTINA L. KUNZ, SYNTHESIS: LEGAL READING, REASONING, AND WRITING 181 (1999) (showing a T-chart of assertions); M.H. Sam Jacobson, *Taskus Interruptus: Good Writing Requires Concentration*, 70 OR. B.J. 13 (May 2010), available at https://www.osbar.org/publications/bulletin/10may/legalwriter.html (recommending a T-chart for mapping analysis).

81 *Compare* CLARK, *supra* note 32, at 78 (describing the structure of subordinate and main clauses as that of a "parent and child on a seesaw") *with* LINDA H. EDWARDS, LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION 348 (5th ed. 2010) ("Place favorable facts in main clauses and unfavorable facts in dependent clauses").

82 JOHNSON, *supra* note 31, at 186 ("A common way to give messages balance and rhythm is to repeat phrasal structures.").

83 CLARK, *supra* note 32, at 99.

84 *Id.* at 103.

85 *Id.* at 104.

86 *Id.*

87 *Id.* at 197–98 (quoting Francis-Noël Thomas & Mark Turner, *Clear and Simple as the Truth: Writing Classic Prose 11* (2011), reviewed in this volume *infra* at 282).

traditional legal writing.[88]) Clark also explores the possibilities of including hybrid visual and textual material.[89] Regarding visuals, he advises that text and imagery should "hold hands" rather than compete.[90] Lists, sidebars, checklists, and other "nonverbal streamlining" are all important parts of a good short writer's skill set, as well.[91]

How to Write Short is grounded in the historical tradition of proverbs and classic American texts such as the Gettysburg Address. It also delves into the history of the English language, with its Anglo-Saxon and French–Latin roots. Clark points out that writers can control their tone by choosing simple words from the "hard" Anglo-Saxon vocabulary or more urbane, abstract, Latinate vocabulary.[92] He doesn't say not to use both redundantly—that's too legalistic and amateurish a writing technique to even address. Instead, *How to Write Short* analyzes examples that use one or the other type of language, or a sophisticated and contrasting mix.[93]

Despite the fun with snarky titles and lowbrow examples, Clark makes serious claims that what "enables the craft of short writing" is critical thinking itself,[94] and that good short writing is actually the key to longer writing.[95] He ends the book optimistically, noting that short writing does not have to be a compromise forced by technology but rather can draw from and contribute to the great traditions of short writing.[96]

C. Takeaways

Through these books' reverence for old forms and their enthusiasm for new, they can help lawyers freshen their writing. Some general themes the two books share are apt for both traditional and public legal writing:

- We're all "adrift in a jet stream of information"[97] and competing for readers in the "attention economy."[98]
- Therefore writing should deliver a high ratio of content for the space it takes up.[99]

88 *See infra*, section III. D. Classic style is explored in further detail in Steven Pinker, *The Sense of Style: The Thinking Person's Guide to Writing in the 21st Century* (2014), which had just been released as this article was going to publication and which deserves further exploration by legal writing scholars. *See also* Lisa Eichhorn, *infra* at 277, reviewing *The Sense of Style*.

89 CLARK, *supra* note 32, at 196–203.

90 *Id.* at 202 (quoting Jill Geisler).

91 *Id.* at 214.

92 *Id.* at 109–10.

93 *Id.* at 111.

94 *Id.* at 42.

95 *Id.* at 18.

96 *Id.* at 239.

97 *Id.* at 4.

98 JOHNSON, *supra* note 31, at 4.

99 *Id.* at 10; *accord* CLARK, *supra* note 32, at 122 ("A good short writer must be a disciplined cutter, not just of clutter, but of language that would be useful if she had more space. How, what, and when to cut in the interest of brevity, focus, and precision must preoccupy the mind of every good short writer.").

- Meaning doesn't travel through language separately like a conduit, but is embodied and generated by the form of the language itself.[100] Changing the language changes the meaning.
- Language should not be approached with an anxious, counter-productive focus on prescriptive rules, but rather with curiosity and experimentation.[101]
- Whether a message is successful depends on the reader's response to it.[102] Thus, agility with language leads to agility with expressing various shades of an idea in a way the reader will comprehend. Conversely, when the reader does not understand an attempted effect, detects an unintentional effect, or senses extraneous information in the message, the message is not successful.[103]
- A writer's stylistic choices are a function of the writer's purpose and the audience's needs, and also the writer's own voice.[104]
- Historical examples of excellence remain an important source of writing inspiration today.[105]
- Clark explicitly claims that good short writing demonstrates and requires critical thinking.[106] Good short writing also provides the building blocks of good long-form writing.[107]

II. Case studies in short writing on law blogs

With Johnson's and Clark's advice in mind, this article now turns to a descriptive exploration of what public legal writing looks like, as it is currently being practiced. The goal is to understand how lawyers actually perform public legal writing and, for the purposes of this article, the specific subset of writing on law-related blogs. The brief case studies below are a small sample of legal blogs addressing recent developments.

100 JOHNSON, *supra* note 31, at 34–35.

101 *Id.* at 31 (describing an approach to reading and writing that asks not "is it correct?" but rather "how does it work?"); CLARK, *supra* note 32, at 80, 101, 113 (various references to fun with language).

102 *Id.* at 34 ("A successful message sends people in the right direction but allows them to use their wits and the cues provided by context to get there.").

103 *Id.* at 102 (ambiguity "often happens by accident, and when it does, it can undermine our communicative intent, sometimes with comical results"); *id.* at 39 (citing the work of linguist Paul Grice and stating, "we always interpret a conversational partner's behavior as being relevant in some way to the ongoing interaction").

104 CLARK, *supra* note 32, at 128.

105 *E.g., id.* at 101 (citing maxims coined by Baltasar Gracian, Benjamin Franklin, Ludwig Wittgenstein, and Mark Twain); JOHNSON, *supra* note 31, at 130–31 (discussing the poetry of W.B. Yeats as well as the slogans "Fifty-four forty or fight" and "Loose lips sink ships").

106 CLARK, *supra* note 32, at 42.

107 *Id.* at 18.

The method of inquiry here draws in part on the specific writing advice found in Johnson's and Clark's books, but it also applies a broader theoretical approach, loosely following Katie Rose Guest Pryal's article *The Genre Discovery Approach*.[108] Professor Pryal defines a genre as "a set of communications that share certain, predictable conventions."[109] She reviews rhetorical theory to point out key ideas about how genre works and to combat simplistic notions of genre in exploring its value for legal-writing pedagogy. Genre is not a neoclassical taxonomy of document types; rather, contemporary genre theory recognizes that genres evolve from other genres: "'A new genre is always the transformation of an earlier one, or of several: by inversion, by displacement, by combination.'"[110]

Moreover, a genre is, to evoke rhetorician Lloyd Bitzer, "an invited response to a rhetorical situation."[111] Genres are defined by (1) the "exigence," or need, to respond, (2) the audience (and constraints the writer–rhetor wants to place on that audience), and (3) the constraints faced by the rhetor–writer.[112]

Professor Pryal points out the evolution of genre theory to include not only these dimensions but also the action the utterance accomplishes.[113] Within this broad framework, genres recur over time; when the situation is faced by a group of people who adapt common mechanisms for handling the exigence, audience, and constraints, that group forms a discourse community, and each writer's response doesn't just participate in the genre but helps to shape the genre itself.[114] From this background on genre theory, Professor Pryal recommends "discovery pedagogy,"[115] asking "students to encounter new genres and decipher them (as readers) and to encounter new genres and write them (as rhetors)—without a teacher or guidebook."[116]

The case studies here are, in essence, an attempt at discovering the genre—or genres—of legal blogging. A close reading of the selected posts works toward a better understanding of the legal-blogging genre that these posts both represent and influence. This close reading also models a potential pedagogy for a legal-blogging class.

The study below lightly draws upon Johnson's *Microstyle* and Clark's *How to Write Short* to highlight certain characteristics found in the blog

108 Pryal, *supra* note 38.

109 *Id.* at 354.

110 *Id.* at 358 (quoting TZVETAN TODOROV, GENRES IN DISCOURSE 15 (Catherine Porter, trans. 1990)).

111 *Id.* at 360 (Lloyd Bitzer, *The Rhetorical Situation*, 1 PHIL & RHETORIC 5 (1968) ("Let us regard rhetorical situation as a natural context of persons, events, objects, relations, and an exigence which strongly invites utterance.")).

112 *Id.*

113 *Id.* at 361 (citing Carolyn R. Miller, *Genre as Social Action*, 70 Q. J. SPEECH 151, 151–52 (1984)).

114 *Id.* at 360, 363.

115 *Id.* at 367.

116 *Id.* at 371.

posts. This method does not violate Professor Pryal's advice to encounter the genre without a guidebook. *Microstyle* and *How to Write Short* are informative, entertaining, detailed primers on effective online writing; they are far from being guides to legal blogging in the way that a legal-writing textbook is a guide to writing a memo or brief. Rather, these books serve to prime the discovery. In that sense they enlighten the discovery of this genre without attempting to bound—or having the effect of bounding—the genre's characteristics and flexibility.

The first case study deals with an important, if perhaps dry, topic. The Supreme Court decided *Clark v. Rameker*[117] on June 12, 2014: the question was whether inherited IRAs (Individual Retirement Accounts) qualify as bankruptcy assets. The second case study deals with a narrow intellectual-property topic, but one that generated significant amounts of commentary in 2014 from lawyers and nonlawyers alike:[118] If a monkey takes a selfie, who owns the copyright?

The posts selected for the case studies below were found, essentially, by Google searches. An alternative method for these case studies would have been to find the posts that most exhibit stylistically distinct short writing—perhaps blogs selected for inclusion in the American Bar Association's Blawg 100[119]—and to hold them up as examples. These case studies seek a broader and more descriptive cross-section addressing two representative topics.

Sections A and B below summarize the findings of these case studies. Appendix A and B to this article summarize the individual posts included in the case studies of *Clark v. Rameker* and the monkey-selfie, respectively.

A. Overview of *Clark v. Rameker* posts

This case study is important because it reflects a quintessential method for generating blog posts: writing about a very recent legal authority and its impact. The question raised in *Clark v. Rameker*, whether inherited IRA funds are exempt from a debtor's bankruptcy estate, stands at the crossroads of financial planning and bankruptcy law and could be relevant to anyone with an IRA designating a beneficiary and anyone designated as a beneficiary in an IRA. Due to its broad relevance to wealth planning and its immediate interest to bankruptcy management, many lawyers' blog posts address this case's impact.[120]

117 Clark v. Rameker, 134 S. Ct. 2242 (2014).

118 A Google search on August 8, 2014, for "monkey selfie copyright law blog" generated 77,500 results. As of Mar. 4, 2015, there were 12,100,000 results.

119 *ABA Journal Blawg 100*, ABA JOURNAL, http://www.abajournal.com/blawg100 (visited Mar. 4, 2015).

120 A Google search on August 11, 2014, for "Clark v. Rameker lawyer blog post" generated 4,200 results.

This case study is centered on ten posts informing readers about the *Clark* case and its implications. The method for finding blog posts was a Google search for "Clark v. Rameker law blog post" conducted on August 11, 2014. This search was then filtered down to blog posts that appeared to be written by practicing lawyers, not journalists or financial planners. The search also generated multiple posts by several aggregation services for legal blogs, particularly *JD Supra* and *LexBlog Network*. The top two most recent posts from each of these services were included, so as to reduce the risk of skewing the case study toward a particular aggregation service's style of blog post.

Overall, these posts averaged 510 words each and six paragraphs each. These posts were all published relatively close to the Supreme Court's decision on June 12, 2014, with one published the same day and the latest post in the sample set published less than two months later (on August 7, 2014).

Headlines were largely descriptive, such as "Supreme Court Decides Clark v. Rameker."[121] Two headlines were oriented in the form of actual or implied questions: "How to Protect Inherited IRAs After the Clark v. Rameker Decision"[122] and "Are Inherited IRAs Protected From Bankruptcy Creditors?[123] One post used a somewhat suspenseful approach in creating uncertainty: "Inherited IRAs May Not be Protected from the Reach of Creditors."[124]

The Supreme Court's opinion in *Clark* enunciated a three-prong test for deciding whether inherited IRAs in fact are included in a bankruptcy estate, and several of the *Clark* posts used three bullet points or tabulated numbers (1) through (3) to reflect that test.[125] The tabulated numbers were sometimes set off from the paragraphs and other times embedded within the regular flow of the paragraphs.

Some of the posts used questions to advance the analysis. One asked, "What Can Be Done to Protect Inherited IRAs From Creditors?"[126] This

121 Dustin R. DeNeal and Charles F. Webber, *Supreme Court Decides* Clark v. Rameker, FAEGRE BAKER DANIELS UPDATES & EVENTS (June 12, 2014), http://www.faegrebd.com/21673.

122 Altman & Associates, *How to Protect Inherited IRAs After the Clark v. Rameker Decision,* BLOG - ALTMAN SPEAKS (July 2, 2014), http://altmanassociates.net/2014/07/protect-inherited-iras-clark-v-rameker-decision/.

123 Christine Kingston, *Are Inherited IRAs Protected from Bankruptcy Creditors?,* L.A. BANKR. L.MONITOR (July 28, 2014), http://www.losangelesbankruptcylawmonitor.com/2014/07/articles/uncategorized/are-inherited-iras-protected-from-bankruptcy-creditors/.

124 Barbara Simanek, *Inherited IRAs May Not Be Protected from the Reach of Creditors*, JD SUPRA BUSINESS ADVISOR (Aug. 7, 2014) http://www.jdsupra.com/legalnews/inherited-iras-may-not-be-protected-from-30158/.

125 *E.g.*, Hallock & Hallock, TODD'S ESTATE AND BUSINESS PLANNING BLOG, *Clark v. Rameker—Supreme Court Rules that Inherited IRAs Are Not Protected from Creditors* (June 20, 2014), http://hallock-law.com/blog-121-Clark+v.+Rameker+–+Supreme+Court+Rules+that+Inherited+IRAs+are+Not+Protected+from+Creditors (using bullets); Simanek, *supra* note 124 (using numbers in text); Kingston, *supra* note 123 (using bold "First" and "Second" and "Third" in a block quote drawn from another web article).

technique seems useful in projecting what the reader could be thinking, or perhaps should be thinking. Questions were also a way of transitioning between points without overly formal language.

Some of the sentences used figures of speech or clichés, depending on one's opinion, such as the idea of "shock waves"[127] running through the community after the decision, and the rejection of a "one-size-fits-all"[128] approach for individual planning.

Several posts addressed the reader directly as "you" in describing "your beneficiaries" affected by the decision.[129] Rather than involve the reader directly in an illustration, one post used a simple hypothetical with an empathic all-caps conclusion:

> For example, Sam and June are married. Sam had $2.0 million in his IRA. Sam dies leaving his IRA to June. Prior to the *Clark* case the $2.0 million would be safe from creditors, but now it is NOT.[130]

Using all caps is not something either *Microstyle* or *How to Write Short* delves into, but its use at the end of a linguistic unit like this is a way of using the ending position of emphasis for rhetorical effect.

Some of the *Clark* posts used sentence structure and repetition to reinforce the message, as in this lead sentence:

> The already complicated subject of how to handle Individual Retirement Accounts following the death of an IRA holder just got a little more complicated with the recent Supreme Court decision in *Clark v. Rameker.*[131]

One post used an exclamation point in suggesting that the financial-planning community is now telling clients to "safeguard your IRAs!"[132] Another post used a bold, italicized ***not*** to emphasize what the Court held, namely that inherited IRAs are not exempt.[133]

126 Altman & Associates, *supra* note 122.

127 *Id.*

128 Robert Lowe, *Bankruptcy Protection for Inherited IRA,* JD SUPRA BUSINESS ADVISOR (June 30, 2014), http://www.jdsupra.com/legalnews/bankruptcy-protection-for-inherited-ira-11996/.

129 Hallock & Hallock, *supra* note 125.

130 Matsen, Miller, Cossa & Gray PLLC, *Supreme Court Ruling in Clark v. Rameker* (June 24, 2014), ESTATE PLANNING BLOG, http://www.mmcglaw.com/blog-53Supreme+Court +Ruling +in+Clark+v.+Rameker.

131 Lowe, *supra* note 128.

132 Kingston, *supra* note 123.

133 Tuggle Duggins, *Clark v. Rameker—Inherited IRA and Exemption*, http://blog.tuggleduggins.com/business-law/clark-v-rameker-inherited-ira-and-exemption/ (visited Aug. 13, 2014; no longer available online; copy on file with the author).

As a group, the posts made very modest use of links. The average number of hyperlinks per post in these ten posts was less than one (0.8). The posts also made modest use of headings, averaging less than one per post, as well.

One particular challenge of these posts was how much detail to include about the case citation and relevant bankruptcy and tax statutes. Collectively, the authors' choices about citations and links suggest they were not attempting to reach an audience who would be interested in actually seeing the law itself, or at least not trying to serve that particular need. One post referred to a "special rule" in the Internal Revenue Code.[134] On the other hand, another post gave almost the entire standard citation for the case, including the Latinate extension "*Clark et ux*" in the case name.[135] The posts were evenly divided on including statutory citations or not. One post block-quoted a particularly vivid passage from the opinion about debtors' possibly using these inherited IRA funds for vacation homes rather than for the bankruptcy estate.[136] Thus, although the author of this post used primarily just descriptive language, the vivid language in the opinion added interest to the post.

Another blog post in the case study block-quoted a separate news article that itself summarized the case before returning to brief analysis and a recommendation of legal services.[137] This block quote was set off by large, dominant quotation marks in an accent color, which was one of the few uses of graphic-design elements found in the *Clark* posts. One post included a graphic-design element in the form of a cube labeled "IRA."[138]

The apparent purpose of the posts ranged from strictly informative (at least facially) to soft-selling legal services, to more of a direct selling appeal. Signaling an informative purpose, one post ended by noting variations in state law: "It is important to note that some states have specific statutes that currently continue to protect inherited IRAs from creditors' claims."[139] The majority of the posts appealed indirectly or, more commonly, directly to readers to contact the lawyer or law firm for assistance. In one case, the post suggested a trademarked type of planning instrument: "In addition to the asset protection that was not available to the Clarks, establishing a Retirement Plan Legacy Trust™ and naming it as

134 Lowe, *supra* note 128.

135 Altman & Associates, *supra* note 122.

136 Bryan Fears, *Inherited IRA Not Protected in Bankruptcy*, TEXAS BANKRUPTCY BLOG (June 18, 2014), http://www.txbankruptcyblog.com/2014/06/articles/bankruptcy-news/inherited-ira-not-protected-in-bankruptcy/.

137 Kingston, *supra* note 123.

138 Duggins, *supra* note 133.

139 Simanek, *supra* note 124.

the beneficiary of an IRA or qualified plan can provide a number of benefits."[140]

Overall, these posts were short and readable. They used a few visual features that broke up the content, but not many. They did not take many stylistic risks with writing. Overall, this group of posts was informative and seemingly accurate yet stylistically conservative.

B. Overview of posts on the curious case of the monkey that took a selfie

The second component of the case study focuses not on a case but on a legal controversy that generated a lot of public discussion in summer 2014: the rights of photographer David Slater after he set up a photo shoot in Indonesia, stepped away for a moment, and came back to find hundreds of shots taken by an intrepid macaque monkey, including a particularly striking photo that Slater sought to control for licensing purposes.[141] Tens of thousands of internet webpages appear to address this controversy, many of them from professional media sources.

The blogs in this article's case study were found primarily through two Google Blog searches as of August 2014.[142] The searches were for "monkey selfie law blog sites" and "monkey selfie copyright law blog." Several hits near the top of these search results were law blogs, but the content of the relevant post consisted of little more than links to other, more-substantive posts or articles. These very short, link-style posts were excluded from the case study, although they do represent a subgenre of law blogging. Blogs with a focus other than U.S. law were also not included. The Google Blog searches generated seven of the nine posts included here. To reach a sample of nine posts, two additional posts by law firms were located through Google searches. The reason for this two-step method in selecting the posts was not a problem with finding enough posts but rather the challenge of filtering only for law blogs by practicing lawyers. In general the method of both case studies was to focus on practicing lawyers as authors, not journalists, financial planners, or law professors. In the monkey-selfie subset, the blog posts do include two posts that appear to be the product of paid writers for FindLaw. These posts were included because the writers also appear to be practicing lawyers. Their posts were not stylistically atypical within the group.

Overall, these posts averaged 700 words and 11 paragraphs each.

140 Hallock & Hallock, *supra* note 125.

141 *Animal-Made Art,* Wikipedia (last modified Feb. 18, 2015, 10:54), http://en.wikipedia.org/wiki/Animal-made_art.

142 The searches were performed on Google's Blog search function at www.google.com/blogsearch. Google Blog searching was discontinued as of September 2014 and merged into general Google searches.

The monkey-selfie posts used headings and block-quoted graphic-design elements to break up the text more than the *Clark* posts did. Both of the Findlaw posts included in the case study made noticeably heavy use of headings (compared with the other posts), such as "What is a copyright?"[143] The *Art Law Journal* blog also used a bold headline inset in white against a banner photo of the macaque monkey, as well as headings such as "Why Is the Telegraph's Article Wrong?" and "Copyright Law, a Primer."[144]

The monkey-selfie posts were informal and creative in their wording and punctuation choices. Using a technique that Christopher Johnson in *Microstyle* and Roy Peter Clark in *How to Write Short* would both approve of, lawyer and professor Jonathan Turley tweaked the expected with this lead: "It may be the best picture British nature photographer David Slater never took."[145] Another post used a sentence fragment for contrasting effect.[146] Intentional use of sentence fragments should not be considered erroneous or mistaken, because these choices contribute to the voice and style of the text, and they are typical of other kinds of blog writing, as both *Microstyle* and *How to Write Short* recognize and recommend.[147]

The blog posts used informal language in a variety of other ways as well. One transition into background information began, "Anyway, as a refresher . . . ."[148] Others used contractions ("Something isn't right here")[149] and, in one case, the profane yet widely used acronym "SOL."[150] The posts used additional creative language such as figures of speech and a seemingly endless supply of monkey jokes and puns such as the inevitable "monkey's uncle" and "monkey business"[151] as well as a shameless (in a

143 Daniel Taylor, *Legal Battle over 'Monkey Selfie': Wikipedia Drives Photog Bananas,* LEGALLY WEIRD: THE FINDLAW LEGAL CURIOSITIES BLOG (Aug. 7, 2014), http://blogs.findlaw.com/legally_weird/2014/08/legal-battle-over-monkey-selfie-wikipedia-drives-photog-bananas.html.

144 Steve Schlackman, *The Telegraph is Wrong About the Monkie Selfie.,* ART L.J. (Aug. 7, 2014), http://artlawjournal.com/telegraph-wrong-monkey-selfie/.

145 Jonathan Turley, *"Monkeys Don't Own Copyrights": Wikimedia Denies Claim of British Photographer to Monkey Selfie,* RES IPSA LOQUITUR ("THE THING ITSELF SPEAKS") (Aug. 8, 2014), http://jonathanturley.org/2014/08/08/monkeys-dont-own-copyrights-wikimedia-denies-claim-of-british-photographer-to-monkey-selfie/.

146 *E.g.*, Kevin Underhill, *Fight Continues Over Right to Monkey Selfie*, LOWERING THE BAR (Aug. 7, 2014), http://www.loweringthebar.net/2014/08/fight-continues-over-right-to-monkey-selfie.html (referring to the monkey's act of taking hundreds of photos and then stating, "Several of which were particularly great.").

147 JOHNSON, *supra* note 31, at 156 (discussing breaking the rules with an example of the "unfinished message" trope: "The three worst mistakes you can make are overpromising and underdelivering"); CLARK, *supra* note 32, at 82–84 (describing sentence fragments as a way of artfully breaking the rules in contrasting with an earlier longer sentence).

148 Underhill, *supra* note 146.

149 Matthew David Brozik, *Macaques and Men: [obligatory monkey- pun subtitle here]*, LIKELIHOOD OF CONFUSION®: RON COLEMAN'S BLOG ON TRADEMARK, COPYRIGHT, INTERNET LAW AND FREE SPEECH (Aug. 7, 2014), http://www.likelihood-ofconfusion.com/of-macaques-and-men-obligatory-monkey-pun-subtitle-here/.

150 Underhill, *supra* note 146; *see* SOL, URBAN DICTIONARY (May 1, 2002), http://www.urbandictionary.com/define.php?term=SOL&defid=1697.

good way) ending to one article, "Now, orange you glad I didn't say 'banana'?"[152]

The posts also used very short paragraphs, including one-sentence paragraphs. Like the *Clark* posts, they made heavy use of questions to the reader, as in this lead: "The general rule is that the person taking a picture owns the copyright to it. So, if a monkey takes a picture, who owns it?"[153] Another example drove the point home (two sentences, two different paragraphs to start the post): "Is photography nowadays really so easy even a monkey can do it? What about a caveman?"[154]

The posts referred to the readers directly, to an extent. The *Lowering the Bar* blog took the tone of a continuing conversation with readers: "As some of you may recall (although it's been three years, which doesn't seem possible), in 2011 we discussed an intellectual-property dispute involving pictures taken by a monkey."[155] And the *Art Law Journal* blog referred to readers of the blog directly: "Sure, the law can be dry and uninteresting, at times. However, there are many who want to know more, like the readers of this blog."[156]

These posts included a much higher rate of hyperlinks than the posts on *Clark v. Rameker*: more than six hyperlinks per post on average for the monkey-selfie posts, as compared to less than one for the *Clark* posts. One of the monkey-selfie posts explicitly expressed agreement with and linked to one of the other posts independently located for the case study.[157]

The posts delved into fairly detailed legal analysis at times, as in this passage:

> But still, the problem here is that you could certainly argue that the work *does* "owe its origin to a human being," at least in part. I mean, the monkey didn't buy a camera, take it out there, and set it up in a particular spot. David Slater did that. He didn't frame the shot and he didn't push the button. But Rule 202.02(b) goes on to say that "[m]aterials

151 Steve Baird, *Monkey See, Monkey Do Selfie?,* DUETS BLOG: COLLABORATIONS IN CREATIVITY & THE LAW (Aug. 8, 2014), http://www.duetsblog.com/2014/08/articles/law-suits/monkey-see-monkey-do/.

152 Brozik, *supra* note 149.

153 Mandour & Associates, *Monkey Business: Who Owns the Copyright to a Selfie Taken by a Monkey?*, MANDOUR & ASSOCIATES INTELLECTUAL PROPERTY LAW (Aug. 14, 2014), http://www.mandourlaw.com/blog/copyright-infringement/monkey-business-who-owns-the-copyright-to-a-selfie-taken-by-a-monkey/.

154 Baird, *supra* note 151.

155 Underhill, *supra* note 146.

156 Schlackmann, *supra* note 144.

157 Baird, *supra* note 151 ("I tend to agree with Matthew David Brozik—over at Likelihood of Confusion yesterday . . . ." including a link to Brozik, *supra* note 149).

> produced *solely* by nature, by plants, or by animals are not copyrightable." Emphasis added.[158]

This passage is a good example of blogging style applied to legal content because it demonstrates a mix of plain-language analysis, conversational discourse (contractions and "I mean"), and quasi-formal legal-citation practice ("Emphasis added").

Not unexpectedly, these posts were visually interesting, due at least in part to the subject matter of the posts themselves: Five of the nine posts included the image of the monkey selfie itself. One post pointed out that by using the monkey selfie, it was expressing its position on a related copyright doctrine, fair use.[159] This reference to the blog's own position about its message seemed to be a linguistic event of the type contemplated in Johnson's *Microstyle*, possibly the idea of language's poetic function in which the language highlights its own form.[160] Here, the blog highlights its own legal position by embodying an action consistent with that position, and explicitly calling attention to its own action in doing so. Taking a more conservative approach, another monkey-selfie post used a different monkey photo while providing the text URL link to the selfie in question on another site.[161]

Finally, the posts reflected a willingness to express opinions and arguments about whether the monkey selfie should be in the public domain or should be awarded to the photographer because of his efforts in traveling to Indonesia and preparing the conditions for the shot. Most posts cited the Copyright Act and the regulation regarding works by nonhuman actors, and two posts cited or referred to the Supreme Court case of *Feist Publications* holding that the phone book is not copyrightable.[162]

In sum, the monkey-selfie posts were humorous, often opinionated, sometimes visually distinctive, and at times quite detailed in their legal analysis. The rhetorical need that prompted these posts (in genre terms, their exigence) appeared to be the writers' desire to participate in the ongoing conversation about the monkey selfie. Unlike the situation with the *Clark* case, the monkey-selfie situation continued to unfold and

158 Underhill, *supra* note 146.

159 *Id.* ("Whether posting a sample like this one is 'fair use' is a different question, one I obviously resolved in favor of yes.")

160 JOHNSON, *supra* note 31, at 39 (citing Roman Jakobson).

161 Mandour & Associates, *supra* note 153.

162 *E.g.*, Mark Wilson, *Who Owns the Monkey Selfie? (Spoiler Alert: Probably Not the Human)*, TECHNOLOGIST: THE FINDLAW LEGAL TECHNOLOGIES BLOG (Aug. 7, 2014), http://blogs.findlaw.com/technologist/2014/08/who-owns-the-monkey-selfie-spoiler-alert-probably-not-the-human.html.

indeed was clarified in the Copyright Office's new *Compendium of U.S. Copyright Office Practices* issued in draft form on August 19, 2014, giving rise to another wave of posts about the monkey selfie.[163]

C. Conclusion: The Genre of the Law Blog

The similarities and differences in the posts below leads to the suggestion that there is a recognizable—but very flexible—"genre of the law blog." Quantitatively, its characteristics include relatively brief posts and short paragraphs. The overall average for the length of posts was 600 words.

More qualitatively, this genre includes a strong practice, across both content areas studied, of attention-getting yet pragmatic opening sentences. These sentences were generally clear and helpful, designed to draw in the reader, whether the intended audience was consumer or lawyer.

Posts in this genre used headings to break up the text into small segments. They made frequent use of questions for transitions between points. Posts made heavy use of one-sentence paragraphs, creating significant white space breaking up the text. They used other visual setoffs such as block quotes, bullet points, and tabulated lists.

Posts accurately described the law in accessible, readable language. They used terms of art with italics or parenthetically defined terms (similar to traditional legal writing).[164] Posts generously quoted from relevant legal sources, citing the law unobtrusively in journalistic, textual attributions.[165]

Posts also exhibited an effective and disciplined approach to paragraphing, with short paragraphs hitting on just one topic. The blog posts' organization varied by topic, but generally followed a useful and traditional pattern of setting up a legal issue, giving the relevant factual and legal background on point, and then discussing implications or recommendations.[166]

In general, the posts displayed impeccable grammar and punctuation. Overall the blog posts had a very small number of typos and apparently

163 U.S. Copyright Office, COMPENDIUM OF COPYRIGHT OFFICE PRACTICES § 306 (public draft dated Aug. 19, 2014), at 8 (stating, "[t]he Office will not register works produced by nature, animals, or plants" and giving several examples including "[a] photograph taken by a monkey"). This section was later moved to section 313.2 in the final COMPENDIUM OF COPYRIGHT OFFICE PRACTICES (Dec. 22, 2014), http://copyright.gov /comp3/chap300/ch300-copyrightable-authorship.pdf.

164 *E.g.*, Altman & Associates, *supra* note 122.

165 *E.g.*, Brozik, *supra* note 149 ("Is it possible that Wikimedia and some lawyers have not heard of joint authorship? It's in the Copyright Act. According to 17 U.S.C. § 201(a): . . . ." The introduction led to a graphically set-off block quote).

166 *E.g.*, Underhill, *supra* note 146; Fears, *supra* note 136.

unintentional grammatical errors, approximately five by the author's count in a collected text of more than 10,000 words.

Although the two sets of posts did share similarities, they also demonstrated a number of differences. To apply Professor Pryal's genre method above, the need ("exigence") for the posts differed. The *Clark* posts ran closer to traditional legal advice. Individuals who have IRAs to bequeath or are the recipients of inherited IRAs face a specific, potentially high-stakes legal issue: would this IRA be subject to the bankruptcy estate if the IRA beneficiary declared bankruptcy? Flowing from this issue are questions such as what individuals in these positions can do as a result of the *Clark v. Rameker* ruling. The audience would seem to be individuals affected by this issue on a one-time basis, either the decision to name an IRA's beneficiary or the legal implications from a discrete bankruptcy event (filing or observing a beneficiary file). As a result, the *Clark* posts were more stylistically conservative. That is particularly fitting for a topic in which some readers are no doubt pondering or already involved in personal bankruptcies, or other family difficulties regarding inheritances. The financial seriousness of their situation leads to a serious writing style; analogously, Roy Peter Clark generally recommends liberal use of contractions except in gravely serious short messages such as World War II telegrams informing citizens of lost loved ones.[167]

In contrast, as a group, the monkey-selfie posts seemed more like a group of lawyers talking and perhaps even arguing at an IP workshop over who should get the photo—the photographer, the monkey, or the public? The general sentiment was a free-floating interest in finding out what will happen: "Slater is promising to fight the claim and this could make for an interesting legal opinion."[168] These posts seemed to be driven by a need to assert a voice on this interesting (if incredibly narrow) legal issue. IP lawyers with engaging posts on the hot issue of the monkey selfie could, presumably, generate interest with peers and potential clients who might think highly of them for being part of this conversation. Also IP lawyers might just enjoy writing about this issue because it poses a unique opportunity to explore the boundaries of what is copyrightable. Another rhetorical aspect here is the nature of the audience: photographers and media managers might not be lawyers, but they are repeat players in the business of using photographs and thus could be expected to know and care about technical copyright issues on an ongoing basis.

Yet another factor that may distinguish the *Clark v. Rameker* posts from the monkey-selfie posts is competition for the reader's attention. For

167 CLARK, *supra* note 32, at 130.

168 Turley, *supra* note 145.

the inherited IRA issue, an individual affected by the case would need that information and would perhaps be pragmatically driven to attend to it. In contrast, some of the monkey-selfie posts may have been more stylistically aggressive because the issue was more of a luxury than a necessity and because readers had so many choices for where to get their news about monkeys and copyright. Bloggers' stylistic choices ran from mostly serious to (more commonly) jam-packed with puns. In defense of the serious posts, using a descriptive, serious voice with perhaps only one monkey pun could distinguish the author by suggesting an efficient, focused style of practicing law.

A more specific difference in the two groups was the relative dearth of hyperlinks in the *Clark* posts versus the monkey-selfie posts. The *Clark* posts averaged less than one link per post, and the monkey-selfie posts averaged 6.5 links per post. One explanation for the difference in link rates is that posting about *Clark v. Rameker* is really just a case brief: readers need to know what this one particular case says and how to deal with it. The lawyers writing about *Clark* did not need to criticize it or engage in a broader analytical discussion but just to inform by introducing its basic meaning, leading to pragmatic recommendations.

A related explanation for the difference in link rates is that the lawyers writing the *Clark* posts may have hoped to keep their readers from following links away from their blogs. Lawyers posting to reach potential clients may not want to direct those clients to other sources, but rather keep them on the law firm's blog website and increase the chance they click on "contact us" or a similar link. Using the methods of genre discovery recommended by Professor Pryal, the rhetorical needs of the *Clark* post (informing the public, including potential clients, about a new case and its effects) are different from the rhetorical needs of a lawyer writing about the monkey selfie. Perhaps that is because lawyers writing about the monkey selfie did not envision clients thinking, "I, too, have an animal-copyright issue, and this website will help me seek this lawyer's help." Rather the rhetorical need of the writer is to create and be part of the conversation on an arcane and unusual yet fun and fascinating topic of general interest. This observation about the consumer-driven versus informative purposes of the two groups of posts is consistent with legal blogger Max Kennerly's observation that legal blogs tend to fall in three groups: mainstream, personality-driven, and marketers.[169] Mainstream blogs tend toward an informative, journalistic style; personality-driven

169 *See* Kennerly, *supra* note 36; *cf.* Christine Hurt & Tung Yin, *Blogging While Untenured and Other Extreme Sports*, 84 WASH. U. L. REV. 1235, 1241–42 (2006) (categorizing types of legal blogs that law professors participate in from "single-purpose legal blog[s]," "legal blog[s] with personality," "personality blog[s] with legal aspects," and—rarely—nonlegal blogs).

blogs use a distinctive voice and frequently link to other blogs; and marketing blogs rarely go into depth or link out.[170] Here, the monkey-selfie posts tended more towards a mix of the mainstream and personality-driven blogs suggested by Kennerly, and the *Clark* posts were more characteristic of the mainstream to marketing blogs.

These differences show that legal blogging is essentially an umbrella genre with subgenres. Recognizing the common ground and differences so that writers can adjust to new situations is exactly the type of genre discovery Professor Pryal recommends. It is also the type of examination that law students and lawyers need to make when they are faced with an assignment to write a blog post. Thus, the true value of these case studies should be as an introductory model of other case studies that professors, students, and lawyers may create. This approach is a worthy investigation into the rhetoric and practice of public legal writing, both generally as an academic inquiry and pragmatically for anyone starting a blog or writing a blog post.

III. Connections to Traditional Legal Writing Scholarship and Pedagogy

Public legal writing both draws upon and turns away from the conventions of traditional legal writing. Professors of traditional legal writing can use these conventions to help law students and lawyers transfer their skills and adapt them to the needs of public legal writing.

The most striking overlap is the shared interest in concise writing. Roy Peter Clark's *How to Write Short* has a wonderful chapter on concision, "Cut it short."[171] Both genres, when practiced in their most classic and satisfying form, deliver a lot of meaning in relatively few words. Clark also ends the book with an ethical appeal about short writing that should resonate with the ethics of legal writing. Clark's chapter on "protect[ing] against the misuses of short writing" includes a digression on the politics of tort reform and rhetorical choices about the labels "trial lawyers" versus "personal injury lawyers."[172] Clark's point is that language can be used for political manipulation; he exhorts readers to use short writing for good, not evil. Within the definition of good, he excludes propaganda but includes "positive, rational propaganda" which he then shortens to "advocacy."[173]

170 Kennerly, *supra* note 36.

171 CLARK, *supra* note 32, at 118–26.

172 *Id.* at 230.

173 *Id.* at 232–33.

In between these poles—the most concrete recommendation to be concise and the most abstract recommendation to be ethical—lies a vast middle ground of rhetoric in which legal writing and public legal writing (especially online, such as blogging) share important similarities and differences. The analysis below of connections focuses on issues such as how the reader relates to the writer, organizational choices, the use of metaphor, and voice.

A. The Writer's Relationship with the Reader

The nature of the relationship between reader and writer is a critical inquiry. Traditional legal-writing scholarship has an ongoing discussion about the "law-trained reader" as skeptical, distracted, impatient, and even "hypercritical," or a little more forgiving than that.[174] With public legal writing, the readers may be the same individuals who consume traditional legal writing, but they act differently when encountering public legal writing. They are saturated with information and are busy (just as with traditional legal writing), but paired with their busy-ness is the fact they have no professional obligation to read the public legal writing that anyone produces. Professor Higdon writes that the law-trained reader approaches legal writing as "something that she would rather not have to read at all."[175] In contrast, the reader of public legal writing—whether a lawyer or a nonlawyer—does not even have to persist in reading something that is less than informative or otherwise gratifying. The reader need not push through a post or feel even a moment of skepticism and impatience. The reader will just close the browser and do something else.

The impatient and skeptical nature of the law-trained reader engaging with traditional legal writing may also emerge from the law-trained reader's vulnerability in relying on delegated traditional legal writing. As Professor Higdon points out, "the stakes are usually quite high for all involved."[176] To state the proposition in extreme terms, if a senior attorney–legal reader's law license and reputation with a client depend on what a junior lawyer has written, then yes, that senior lawyer is going to be skeptical and impatient while also slogging through the document to minimize risk. In contrast, the lawyer reading a blog post is not directly relying directly on that post for further action. The post is a form of optional professional information, and even entertainment, that poses no

174 *Compare* Michael J. Higdon, *The Legal Reader: An Exposé*, 43 N.M. L. REV. 77 (2013) *with* Jessica E. Price, *Imagining the Law-Trained Reader: The Faulty Description of the Audience in Legal Writing Textbooks*, 16 WIDENER L.J. 983, 1009–10 (2007).

175 Higdon, *supra* note 174, at 84.

176 *Id.* at 106.

obligation, no risk, no real cost to the law-trained reader other than a few minutes of reading time.[177]

The engagement with the reader is also affected by the mode of delivery of public legal writing, particularly blogging and social media. Media theory helps to put the reader's engagement into context, as Professor Kristin Robbins Tiscione has done in her analysis of how readers actually encounter client-based legal writing in the form of traditional memos as contrasted with email.[178] She cites Marshall McLuhan in exploring the differences between "hot" and "cool" media:

> A hot medium is one that "extends one single sense," such as sight or hearing, in "high definition." To be in high definition is to be "well filled with data" and requires little participation from the audience in terms of needing to fill in missing information.
>
> In contrast, email is a "cool" medium of "low[,] [or at the least, lower] definition." A cool medium is "high in participation or completion by the audience" and "has very different effects on the user." McLuhan considered the telephone a cool medium "because the ear is given a meager amount of information," and the listener needs to pay close attention to participate in the conversation.[179]

If email is cool and traditional memoranda are hot, then what is public legal writing? The "heat" of traditional legal writing needs to be very hot indeed, anticipating the reader's questions and answering them at every moment along the way.[180] Similarly, an in-depth blog post can function like a memo, leaving the reader feeling "well filled with data" and respecting the lawyer's expertise. Professors Ray and Cox implicitly anticipate this possibility in their recent edition of *Beyond the Basics*, which highlights that scholarly writing techniques can be used to generate "an informative report explaining an area of law to a firm's client [or] an update on a change in law for an agency newsletter."[181] This approach would be more characteristic of other forms of public legal writing such as bar-journal articles and white papers distributed to certain valued clients.

177 *See* Farhad Manjoo, *You Won't Finish This Article: Why People Online Don't Read to the End*, SLATE (June 6, 2013), http://www.slate.com/articles/technology/technology/2013/06/how_people_read_online_why_you_won_t_finish_this_article.html (opening the article: "For every 161 people who landed on this page, about 61 of you—38 percent—are already gone. You 'bounced' in Web traffic jargon, meaning you spent no time 'engaging' with this page at all.").

178 Kristen K. Tiscione, *The Rhetoric of E-mail in Law Practice*, 92 OR. L. REV. 525 (2013).

179 *Id.* at 528 (footnotes omitted).

180 *See* Higdon, *supra* note 174, at 77–78 (analogizing legal writers to the "'perfect servant'" in the movie *Gosford Park*, whose claimed perfection derived from her ability to anticipate the needs of those she served) (quoting *Gosford Park* (USA Films 2001)).

181 RAY & COX, *supra* note 30, at 453.

Yet it is also common for legal blogs to draw upon the characteristics of a "cool" medium. As one blunt example, blog posts may use questions to entice the reader to keep reading, and may in fact end the post on a question posed directly back to the reader. This is a participatory technique, giving the "meager" information in the form of a question and asking the reader to pay attention and learn the answer. Law blogs are making increasing use of video, which requires the reader to click to play and then listen.

On the whole, public legal writing encompasses a variety of nodes along McLuhan's "heat spectrum," but is probably more cool than hot. Christopher Johnson in *Microstyle* did not use the heat-spectrum analogy but was very clear that the reader plays a critical, active role: "A successful message sends people in the right direction but allows them to use their wits and the cues provided by context to get there."[182]

The relationship between writer and reader is different in traditional legal writing and public legal writing in another way as well: the consequences when the reader perceives the writing as erroneous or unskilled. Johnson distinguishes microstyle from "Big Style."[183] Big Style is a high-stakes kind of formal writing, often long and often for high stakes such as a job offer. Traditional legal writing fits squarely within this conception of Big Style. The stylistic conventions of traditional legal writing are a kind of performance of the discourse conventions. This performance provides the reader with a heuristic for judging the worthiness of the substance or—and this is problematic—the writer, personally. As a law-firm hiring partner once stated to this author at a cocktail party, "When a summer associate writes a memo to me, the first thing I look at is the citations. If they are poor, then I assume the content of the memo is poor too."[184]

In contrast, Johnson claims that for the kind of writing he's talking about (the opposite of Big Style), the consequences of mistakes are low—perhaps necessitating "quick correction and maybe . . . a little self-deprecating joke."[185] This is where the culture of law and the culture of the internet may diverge. Depending on what the reader is doing with a piece of public legal writing such as a blog post, this forgiving ethos may or may not prevail. A reader who encounters a blog post in the flow of everyday web surfing and who notices a substantive error or weakness in technical writing may simply click away and disregard the post. But if the

182 JOHNSON, *supra* note 31, at 34.

183 *Id.* at 2, 13, 16, 25, 27, 154.

184 *Cf.* Kyle Wiens, *I Won't Hire People Who Use Poor Grammar. Here's Why*, HARVARD BUSINESS REVIEW BLOG (July 20, 2012), http://blogs.hbr.org/2012/07/i-wont-hire-people-who-use-poo/.

185 JOHNSON, *supra* note 31, at 25.

reader comes across the blog in searching for a particular person—a lawyer he or she is considering hiring, or a law student who is a candidate for a job—then the consequences may be higher. The hypothesis here is that as the reader's projected reliance on the writer increases (as a client, or as a potential employer), the high-stakes consequences inherent in what Johnson says about Big Style will begin to apply to the public legal writing as well.[186]

The email medium draws on the expectations of "Big Style" as well as more informal style practices. A lawyer who reads an email and suspects its legal analysis is wrong or incomplete may respond with an informal question to correct the analysis. This type of response is typical of a low-stakes, participatory communication environment. But that informal question is likely not the end of the reader's response; the reader is also likely to form a judgment against everything else in the email, and perhaps the writer personally as well, consistent with the high stakes of Big Style.

Whatever the form of legal writing—formal memo, email, blog post, or anything else—readers will use heuristics or shortcuts for making quick judgments about what they are reading and who is writing it.[187] For public legal writing, the heuristic is unlikely to be citation form, as there does not seem to be an established citation form, at least not for blogging. To the extent the reader is making meaning out of citation form in legal blogging, formal citations are likely to have the exact opposite effect as they do in traditional legal writing. A blog post formatted in 14-point Times New Roman (or Courier) with perfect *Bluebook* citations seems likely to drive away readers. This effect might not take hold if the reader were able to perceive that the blogger was actually using this format in an ironic way to call attention to the fussiness and formality of the message, and if the writer could successfully communicate the ironic intent before the reader clicked away from the page.

For public legal writing distributed on a screen, visual layout seems a more likely heuristic. As Roy Peter Clark wrote, writers should practice encountering texts on a screen and "at a glance" because that is how many readers will encounter them.[188] Accordingly, length and other visual char-

186 Analogously, a recent study showed that real-estate advertisements with strong grammar sold premium real estate faster than error-ridden ads. Sanette Tanaka, *Grammar Rules in Real Estate*, WALL STREET JOURNAL (May 8, 2014), available at http://www.wsj.com/articles /SB10001424052702304677904579537701330465152 (citing a study by the brokerage Redfin and online grammar business Grammarly, available at Leah L. Culler, *Beware the 'Walking Closet': Mistakes in Home Listings Bother Buyers*, REDFIN BLOG (Mar. 4, 2014), http://www.redfin.com/blog /2014/03/grammar-matters.html#.VPffXvnF-So).

187 *See* Lawrence M. Solan, *Four Reasons to Teach Psychology to Legal Writing Students*, 22 J.L. & POL'Y 7, 15 (2013) ("When a passage is more difficult to process than we believe it should be, we react negatively to the author."); Julie A. Baker, *And the Winner Is: How Principles of Cognitive Science Resolve the Plain Language Debate*, 80 UMKC L. REV. 287, 288 (2011) ("[T]he more 'fluent' a piece of written information is, the better a reader will understand it, and the better he or she will like, trust and believe it.").

acteristics play a crucial role. In this way, the legal-writing scholarship on typography and graphic design[189] is evolving toward a new scholarship of graphic design for legal readers who read not on hard copy but on screens such as iPads.[190]

B. Organizational Choices

Even though the reader acts differently when reading public legal writing as compared to traditional legal writing, legal writers should consider similar organization techniques for respecting the reader's needs.

Because the traditional legal reader is impatient, traditional legal writing puts its conclusions first. Likewise, because the reader of public legal writing will click away if he or she begins to feel an inkling of boredom or frustration, authors of this kind of writing should try very hard to start the post vividly and effectively.[191] This does not mean a "CREAC" structure in blog posts, but it does mean paying extra attention to beginnings to hold readers' interest. Likewise, every respectable book of legal-writing advice tells writers to use headings to break up logical or persuasive segments of text. The same holds for public legal writing, even more so.

Traditional legal writing encourages heavy use of roadmaps. In public legal writing, particularly online such as blogging, explicit roadmaps may backfire. They may create an overwhelming sense that the document is long and does have many parts. Consider these hypothetical variations on roadmaps near the beginning of a blog post on *Clark v. Rameker:*

> This post will address the facts and holding of *Clark v.* Rameker and then its implications for individuals.

Although the *Clark* posts studied above did take a relatively serious tone, none of the *Clark* posts used an explicit roadmap like this. A second variation could deliver the same explicit roadmap but with a more personal tone:

188 CLARK, *supra* note 32, at 35.

189 *See, e.g.*, Derek H. Kiernan-Johnson, *Telling through Type: Typography and Narrative in Legal Briefs*, 7 LEGAL COMM. & RHETORIC: JALWD 87 (2010); Ruth Anne Robbins, *Painting with Print: Incorporating Concepts of Typographic and Layout Design into the Text of Legal Writing Documents*, 2 J. ALWD 108 (2004).

190 *E.g.*, Ellie Margolis, *Is the Medium the Message? Unleashing the Power of E-Communication in the Twenty-First Century*, *supra* at 1.

191 *See* Glover, *supra* note 22.

> This post will address the facts and holding of *Clark v. Rameker* and will then walk you through some options you may want to consider in financial planning related to your IRA.

Still, none of the *Clark* posts in the case study above explicitly referred to their structure in this way. Stopping to "tell them what you're going to tell them while telling them that you're telling them what you're going to tell them" just delays the actual act of telling them.

Instead, more-subtle implicit roadmaps may be more appropriate for blogging and other relatively short public legal writing, as in this hypothetical:

> *Clark v. Rameker* clarified the answer to whether inherited IRAs are included in a bankruptcy estate, creating a new set of planning considerations for managing IRAs.

A sentence like this is implicitly a kind of roadmap, though it does not call attention to the document's organization as such; rather, it delivers content that implicitly creates a framework for what follows.

That is not to say that blogging never explicitly refers to its length, organization, or content. Quite the opposite; in rare cases a blog post might address the reader in friendly language directly calling attention to its length: "This post is long-ish but important, I promise." Anticipating the reader's reaction to a long post is related to a subtle aspect of microstyle: using the form to make a statement about the form.

Public legal writing seemingly lacks a formative organizational concept like IRAC in traditional legal writing. Writers instead resort to general writing principles such as the idea that the organization of the writing should fit the logic of the message.[192] Roy Peter Clark's *How to Write Short* offers helpful chapters on comparison–contrast pieces and topic sentences. The case studies above show a general organizational strategy that is a cross between journalism and traditional legal writing: a catchy lead, background in law or fact (or both), analysis, implications, and some sort of closing, however informal.

C. Metaphor

Johnson encourages writers to draw on primary metaphors. In this way his advice connects with the legal-writing scholarship on metaphor by

192 STEPHEN V. ARMSTRONG & TIMOTHY P. TERRELL, THINKING LIKE A WRITER: A LAWYER'S GUIDE TO EFFECTIVE WRITING AND EDITING 85 (3d ed. 2009) (recommending that the organization of the writing should match the logic of the message).

Professor Michael Smith and many others.[193] In *Advanced Legal Writing: Theories and Strategies in Persuasive Writing*, Smith provides an extensive overview of types and examples of metaphors that can persuade readers, as well as examples of clichéd, mixed, and overused metaphors that do not persuade.[194] Similarly in *Microstyle*, Christopher Johnson explores metaphor because "it packs a lot of idea into a little message" and "adds vividness to otherwise drab messages."[195] Metaphor aids thinking because it "activates rich patterns of reasoning";[196] metaphor aids persuasion because "[a] good metaphor leads people to make the inferences you want them to make."[197]

Smith and Johnson disagree in one area, regarding inherent (or primary) metaphors such as health being up ("the peak of health") and sickness being down ("declining health"). Smith suggests that these metaphors are so pervasive they "do not implicate specific rhetorical strategies for legal advocates as do the other levels of metaphor" such as doctrinal metaphors (the "alter ego" issue in corporations law), legal-method metaphors (such as characterizing a legal issue as having "elements" test or "balancing test"), and stylistic metaphors (for example suggesting an area of law is a "lawless frontier").[198] Johnson, on the other hand, sees these inherent metaphors as more than pervasive background; he treats them as a priority in crafting short writing.[199] The differences may arise from the extended length of appellate briefs. In a thirty-page brief, a lawyer could create and extend a metaphor at strategic moments throughout; since the canvas is larger, perhaps the rhetorical effect must be more explicit. In a one-sentence heading, on the other hand, a lawyer might be happy to invoke an inherent metaphor such as the spatial reference in this hypothetical heading: "Opponent's damages claim is far outside the spectrum of awards this Court has ever approved."

But Johnson and Smith are in accord on another aspect of metaphor, which is the ineffectiveness of clichéd metaphors. Smith points out that

193 *See, e.g.*, Linda H. Edwards, *Once Upon a Time in Law: Myth, Metaphor, and Authority*, 77 TENN. L. REV. 883 (2010); Julie A. Oseid, *The Power of Metaphor: Thomas Jefferson's "Wall of Separation Between Church and State*," 7 J. ALWD 123 (2010); Linda L. Berger, *What is the Sound of a Corporation Speaking?: How the Cognitive Theory of Metaphor Can Help Lawyers Shape the Law*, 2 J. ALWD 169 (2004).

194 MICHAEL R. SMITH, ADVANCED LEGAL WRITING: THEORIES AND STRATEGIES IN PERSUASIVE WRITING 199–248 (2d ed. 2008) (chapters 9–10).

195 JOHNSON, *supra* note 31, at 97.

196 *Id.* at 100.

197 *Id.* at 99.

198 SMITH, *supra* note 194, at 208 (metaphor of corporate "alter ago," "alias," and "dummy"); *id.* at 212 (elements of a rule as legal metaphor); *id.* at 215 (metaphor of a "lawless frontier" to describe labor relations) (quoting CHARLES R. CALLEROS, LEGAL METHOD AND WRITING 328 (5th ed. Aspen 2006)).

199 JOHNSON, *supra* note 31, at 90–100.

overused clichés such as "face the music" and "hands are tied" are not originally crafted metaphors and thus outside the scope of what he recommends.[200] Similarly, Johnson recommends creatively recycling clichés to make them original and surprising, citing one example that may dispirit readers of this article: "'The creative department giveth, and the legal team taketh away.'"[201] Johnson also warns against "forbidden blogging clichés" such as the faux-conversational use of "Um . . . " to suggest hesitation as well as the overused fragmentary "Best. ____. Ever," as in "Best. Memo. Ever."[202]

But effective idioms can be hard to distinguish from ineffective clichés. Legal blogging and legal discourse in general may lag behind experimental, bleeding-edge, general internet discourse. Consider the terms "fail" and "epic fail." These have been around for years[203] and may seem overused and just plain over in the internet world. Yet in the genre of traditional legal writing, they are an edgy and unusual choice. A Westlaw search for "epic fail" in briefs revealed one brief that used this term as a rhetorical device, an amicus brief filed in 2013 by Texas lawyer J. Patrick Sutton.[204] The issue was whether illegal mortgage liens are subject to a four-year statute of limitations. The term "epic fail" can be found at the end, but the entire passage would meet Christopher Johnson's approval as an example of "microstylish" writing:

> **III. Time doesn't heal all loans**
>
> *Priester* asks: when does a lien spontaneously come into being after a botched attempt to create one? Section 50(c) answers: *never.* The facts of reported cases illustrate why.
>
> Immediately after *Priester* was decided, a loan that cannot legally exist under Section 50—a second home equity loan on the same property—was validated by a federal district court bound by the *Priester* precedent. *See McDonough v. JPMorgan Chase Bank, N.A.,* 2013 WL 1966930 (S.D. Tex. May 13, 2013); *see also In re Lovelace,* 443 B.R. 494, 498–500 and fn. 5 (Bankr. W.D. Tex. Jan. 28, 2011) (examining how lender's alternative theory would invite abuse) (lender forfeited loan). In *McDonough*, the borrower went to refinance and could not because of what had been done more than four years before—the issuance of a

200 SMITH, *supra* note 194, at 219–20.

201 JOHNSON, *supra* note 31, at 196 (quoting @scarequotes, Twitter, Feb. 2010).

202 *Id.* at 200.

203 Christopher Beam, *Epic Win: Goodbye, Schaudenfreude; Hello, Fail.*, SLATE (Oct. 15, 2008), http://www.slate.com/articles/life/the_good_word/2008/10/epic_win.html.

204 Brief of Amici Curiae Garry Mauro and J. Patrick Sutton in Support of Petitioners 18, Priester v. JP Morgan Chase Bank N.A., 134 U.S. 196 (2013), available at 2013 WL 3338742 (June 27, 2013).

> second home equity loan that failed to pay off the first. The borrower filed suit to clear the impossible lien after the lender refused to. Since the *McDonough* court couldn't act in light of *Priester*, the seemingly impossible situation of two home equity loans on the same property is now a reality. *See* Section 50(a)(6)(K) (one home equity loan at a time). Title companies and lenders can only scratch their heads. In a fundamental sense, this cannot happen under Section 50, yet *Priester* has made it happen.
>
> There will be more head scratching in the months and years to come. The strangeness can go existentially deeper, like the loan-on-a-cocktail-napkin problem. One lender in a pre-*Priester* case, for instance, so completely botched the refinance of a home equity loan that it structured the deal as the refinance of a purchase money loan. *In re Adams,* 307 B.R. at 551–552. In the context of Texas lending, that's an epic fail.[205]

This passage uses a surprising twist on the cliché "time heals all wounds." It presents a rhythmic balance in the question and answer at the outset, and it claims the high ground of reason by ending the lead on an emphatic "why." After a fairly traditional overview of several cases—made more readable through the use of dashes to break up the sentences—it contrasts the long analysis with the pragmatic reactions of lenders who can "only scratch their heads." It uses balance again: "this cannot happen . . . yet *Priester* has made it happen." And all of this occurs before the emphatic ending gambling on the term "epic fail."

As an amicus rather than party brief, perhaps this brief had more leeway to take linguistic risks. Still, it demonstrates that traditional legal writing can be effective using vivid, even conversational and informal language, just as public legal writing should.

Concluding this section, it is worth noting that judges write in "micro-stylish" ways as well. Johnson would likely be enthralled and simultaneously (appropriately) disgusted with this standard-of-review passage quoted by Mary Beth Beazley in her book's chapter on standards of review: "To be clearly erroneous, a decision must strike us as more than just maybe or probably wrong; it must, as one member of this court recently stated during oral argument, strike us as wrong with the force of a five-week-old, unrefrigerated dead fish."[206]

205 *Id.* (footnote omitted).

206 Mary Beth Beazley, A Practical Guide to Appellate Advocacy 16 (3d ed. 2010) (quoting *Parts & Elec. Motors, Inc. v. Sterling Elec., Inc.*, 866 F.2d 228, 233 (7th Cir. 1988)).

D. Voice

Traditional legal writing has a complex relationship with voice, well fleshed out in Christopher Rideout's *Voice, Self, and Persona in Legal Writing*.[207] Ultimately, traditional legal writers use a "discoursal" voice that exists primarily in the social sphere of legal-writing conventions.[208] Learning the genre of traditional legal writing raises troubling questions about what happens to the writer's real voice.[209] Must it be eradicated for the writer to become an acceptable "legal writer"? Rideout delves deeply into composition theory to explain how legal writing mediates between the writer's real self, the writer's projected persona, and the voice of the law.[210] It's a well-articulated balance, but one that is subtle and difficult for novice students to manage.

Public legal writing provides a promising alternative. This kind of writing is, in general, less formal and more stylistically creative than traditional legal writing. It is a genre where personal pronouns are not only tolerated but welcomed. On a personal note, the author once practiced law with a senior partner who shared some advice he had received from an even more senior partner: "Anything that reads as if you had fun writing it—take it out." That kind of approach is somewhat parodic, but the grain of truth is that traditional legal writing should use style and voice in service of the client. Creativity for the sake of creativity and indulging one's own impulse to speak, write, and be heard are not values of the legal system.

In contrast, with public legal writing the writer is not bound to a particular client and thus can explore style and voice much more freely. When choosing the genre of legal blogging, lawyers have even more expressive opportunities than in a CLE paper or bar-journal article because personal expression is one of legal blogging's legitimate goals and values.[211] In this sense it exemplifies—partially—one of the original definitions of a blog by one of the fathers of blogging, Dave Winer: "A blog is the unedited voice of a person."[212]

207 J. Christopher Rideout, *Voice, Self, and Persona in Legal Writing,* 15 LEGAL WRITING 67 (2009).

208 *Id.* at 74.

209 Kathryn M. Stanchi, *Resistance is Futile: How Legal Writing Pedagogy Contributes to the Law's Marginalization of Outsider Voices*, 103 DICK. L. REV. 7, 10 (1998).

210 Rideout, *supra* note 207, at 106–07.

211 *See, e.g.*, Tim Baran, *Why Do You Blog? 23 Lawyers Weigh In*, LEGAL PRODUCTIVITY (Oct. 7, 2014), http://www.legalproductivity.com/legal-marketing/why-lawyers-blog/ (comment by attorney Jeffrey Taylor: "I write blog posts because they give me a creative outlet and a chance to research areas of information I'm not often involved in.").

212 Dave Winer, *I Know What a Blog Is*, SCRIPTING NEWS (June 27, 2014), http://scripting.com/2014/06/27/iKnowWhatABlogIs.html (linking to Dave Winer, *What Makes a Weblog a Weblog?*, WEBLOGS AT HARVARD LAW: HOSTED BY THE BERKMAN CENTER FOR INTERNET & SOCIETY AT HARVARD LAW SCHOOL (May 23, 2003), http://blogs.law.harvard.edu/whatmakesaweblogaweblog.html).

The legal blogs studied here may have been unedited by third parties, and many of them did suggest aspects of personal voice. Yet they did not offer rough, stream-of-consciousness, overly personal, uncensored thoughts. They were more consistent with the admonition of Roy Peter Clark in *How to Write Short*: "No dumping."[213] This means "whether the writing is formal or informal, whether it appears as a tome or a paragraph, the writer has the duty to perfect, polish, and revise, even if that work needs to be done in a minute or less."[214]

Moreover, just as with traditional legal writing, the public legal writer is constructing a self and projecting it through the writer's chosen voice. Professor Rideout quotes composition scholar Jane Danielewicz on the concept of a "public voice," which she defines as

> that quality of writing that conveys the writer's authority within a community and ensures a place of participation: when located, the writer assumes an invested position, confident of having equally invested readers. In other words, I'm interested in voice as a social phenomenon with rhetorical effects and social recognition, not as a private, internal, or authentic experience.[215]

Thus, even a blog post that seeks to project a personal, confessional air is constructing a voice of a personal, confessional persona. And while public legal writing, especially in a genre such as legal blogging, does create more space for creative, exploratory writing, and while it can help students write more freely within a less imposing genre, it should not be presented to students—and should not be viewed by lawyers—as a complete escape from the difficulties of voice and persona that lawyers face when they write for a professional purpose.

E. Conclusion

Public legal writing is important for many lawyers, and therefore it is important for law students and law professors. Guidance from general writing authorities such as *Microstyle* and *How to Write Short* is an excellent starting point for lawyers who write well for the public, particularly on blogs and other social media. To the extent lawyers want their public legal writing to show a creative voice and distinctive personality, different from the client-driven stylistic practices of traditional legal writing, these sources are particularly on point. Yet these sources' advice actually also reinforces some of the classic lessons of traditional legal

213 CLARK, *supra* note 32, at 58.

214 *Id.* at 59.

writing, revealing that public legal writing bears a more complex relationship to traditional legal writing.

A crucial method for understanding the broad genre of public legal writing and the subgenres included within it is to collect and critically examine examples. The case studies in this article focused on legal blogging, a middle ground between footnoted bar-journal articles and tweets. The case studies investigated the features of the genre, as displayed by the examples, to generate insight into the rhetorical situation of these legal bloggers: the bloggers' reasons for writing, their audiences, and, implicitly, their rhetorical constraints as well as the attention span of the audience and the need to write short posts due to other pressing needs such as billable work.

By studying not only legal blogging but other forms of public legal writing in this way, law students, lawyers, and legal writing professors can build their knowledge and skills in this rhetorical practice. They can build upon what they already know about traditional legal writing, potentially becoming stronger traditional legal writers through their study of public legal writing. And they can contribute to the genre of public legal writing by continually practicing and redefining what it really is, how it works, and what it can become.

Appendix A: Posts on *Clark v. Rameker*

1. How to Protect Inherited IRAs After the *Clark v. Rameker* Decision[216]

This post appears on the blog Altman Speaks, which is part of the website for the Maryland law firm of Altman & Associates. This post, dated July 2, 2014, was 1,443 words long, with 16 paragraphs. (In several instances, a block quote introducing bulleted or numbered points with a colon was counted as one paragraph.) The post used 4 internal headings and provided no hyperlinks to other websites.

The post used a series of headers in the form of pragmatic questions readers might be asking, for example, "What Can Be Done to Protect Inherited IRAs from Creditors?" It contained two separate numbered lists using parallel grammar, as well as one bullet-point list also using parallel grammar.

215 Rideout, *supra* note 207, at 104 (quoting Jane Danielewicz, *Personal Genres, Public Voices*, 59 COLLEGE COMPOSITION & COMMUN. 420, 422 (2008)).

216 Altman & Associates, *How to Protect IRAs After the Clark v. Rameker Decision,* BLOG—ALTMAN SPEAKS (July 2, 2014), http://altmanassociates.com/2014/07/protect-inherited-iras-clark-v-rameker-decision/.

The post used some vivid colloquial language such as referring to the "shock waves" of the decision through the financial-planning community. It stated that "planners have got to become adept" at dealing with these types of issues. One of the concluding sentences stated, "This is certainly not one-size-fits-all planning and can only be done on an individual, case by case basis." Thus, the reference to the concept of "one-size-fits-all" draws on a stock story of American English. The reference to a "case by case basis" draws on a stock story of American legal thought.

Several aspects of the post were very traditionally legal: It gave a citation to *Clark* in something very close to standard legal form:

> (See *Clark, et ux v. Rameker*, 573 U.S. (2014)).

Also the post used defined terms fairly heavily and in a traditional format with parenthetical definitions:

> A See Through Trust insures that the required minimum distributions can either remain inside the trust (an "*accumulation* trust"), or be paid out over the oldest trust beneficiary's life expectancy (a "*conduit* trust").

2. Supreme Court Decides *Clark v. Rameker* [217]

On June 12, 2014, two attorneys (Dustin DeNeal and Charles Webber) from the Midwestern and international law firm of Faegre Baker Daniels published "Supreme Court Decides Clark v. Rameker." This post was 425 words long, with 5 paragraphs.

This post's sentences were easy to read and provided a clear, reader-friendly brief of the case. The writing hewed closely to the opinion itself, quoting key language such as "retirement funds." In visual impact, the post used five paragraphs and no bullet-points or visually delineated lists. It outlined the three-part test articulated in the case and used "First . . . Second . . . And third, . . . " within a paragraph to do so. The most stylistically aggressive aspect of the post was starting that ultimate sentence in the list with the conjunction "And."

3. Inherited IRAs May Not be Protected from the Reach of Creditors[218]

On August 7, 2014, Barbara Simanek of K&L Gates LLP published "Inherited IRAs May Not be Protected from the Reach of Creditors." This

217 Dustin R. DeNeal and Charles F. Webber, *Supreme Court Decides* Clark v. Rameker, FAEGRE BAKER DANIELS UPDATES & EVENTS (June 12, 2014), http://www.faegrebd.com/21673.

218 Barbara Simanek, *Inherited IRAs May Not Be Protected from the Reach of Creditors*, JD SUPRA BUSINESS ADVISOR (August 7, 2014) http://www.jdsupra.com/legalnews/inherited-iras-may-not-be-protected-from-30158/.

post was 3 paragraphs and 228 words long. The post did not use citations for the case and did not link to the opinion.

The post followed a recognizable structure, moving from summary to reaction to qualifications. The first paragraph summarizing the case, including a tabulated list in sentence form (using small roman numerals) of the three-part test the Court articulated in its holding. The second paragraph provided general implications including one type of trust that would protect inherited IRAs from creditors. The third paragraph (consisting of one sentence) qualified the above by noting that state law may create different rights.

4. Bankruptcy Protection for Inherited IRA[219]

On June 30, 2014, Robert Lowe of Mitchell, Silberberg & Knupp LLP published "Bankruptcy Protection for Inherited IRA." This post was 654 words long, with 8 paragraphs. Lowe's first sentence began with the problem:

> The already complicated subject of how to handle Individual Retirement Accounts following the death of an IRA holder just got a little more complicated with the recent Supreme Court decision in *Clark v. Rameker.*

Within this opening, the echoing of "already complicated . . . just got a little more complicated" provided a form of balance within the sentence.

Lowe did not cite or link to *Clark* and kept statutory cites to a bare minimum. For example, the following passage refers to a "special rule" with no link or precise citation:

> An inherited IRA generally does not exist if the surviving spouse is the beneficiary because, under a special rule in the Internal Revenue Code, the surviving spouse can designate the IRA in that case as the spouse's own IRA as though the spouse had contributed to it.

Lowe's first citation to any statute actually was embedded within a quotation about what the plaintiff argued:

> The daughter's position was based on a provision of the federal bankruptcy law that provides that "retirement funds" are excluded from the bankruptcy estate "to the extent those funds are in a fund or account that

219 Robert Lowe, *Bankruptcy Protection for Inherited IRA*, JD SUPRA BUSINESS ADVISOR (June 30, 2014), http://www.jdsupra.com/legalnews/bankruptcy-protection-for-inherited-ira-11996/.

> is exempt from taxation under section 401, 403, 408, 408A, 414, 457 or 501(a) of the Internal Revenue Code."

The conclusion invoked a cliché that was also found in the Altman & Associates blog post referenced above: "As with most issues in this area, there is no 'one size fits all' solution and the IRA holder should discuss these issues with family members and advisers."

5. Are Inherited IRAs Protected from Bankruptcy Creditors?[220]

On July 28, 2014, Christine Wilton published Are Inherited IRAs Protected From Bankruptcy Creditors? on the blog Los Angeles Bankruptcy Law Monitor: Protecting Your Rights When You Need It Most. This post comprises 386 words in 7 paragraphs. It contains a 152-word block quote from another source cited with a link. The block quote makes up 39 percent of the post's total word count.

The post began with a legal-sounding summary of the case but then, within the first paragraph, delved into more vivid language including even an exclamation mark:

> The financial and estate planning communities are scrambling to provide critical warnings to their clients, "safeguard your IRAs!" My colleague and estate planning lawyer, Anna Serrambana, Esq. suggests IRA owners may want to reconsider their beneficiary designations. Despite the added cost and complexity, leaving your IRA to a trust can be a safe move.

Following this advice, the post provided the block quote from a NASDAQ post summarizing the case's reasoning and the three-part test at the heart of its holding. Then after the block quote, it returned to an advice mode, using several sentences written in the first person such as this: "From a bankruptcy standpoint, I advocate to protect my client's assets while eliminating debt, to the fullest extent to the Bankruptcy Code."

6. Inherited IRA Not Protected in Bankruptcy[221]

On June 18, 2014, Bryan Fears published "Inherited IRA Not Protected in Bankruptcy" on the Texas Bankruptcy Blog. This post comprises 431 words and 4 paragraphs.

220 Christine Wilton, *Are Inherited IRAs Protected from Bankruptcy Creditors?*, LOS ANGELES BANKRUPTCY LAW MONITOR (July 28, 2014), http://www.losangelesbankruptcylawmonitor.com/2014/07/articles/uncategorized/are-inherited-iras-protected-from-bankruptcy-creditors/.

221 Bryan Fears, *Inherited IRA Not Protected in Bankruptcy*, TEXAS BANKRUPTCY BLOG (June 18, 2014), http://www.txbankruptcyblog.com/2014/06/articles/bankruptcy-news/inherited-ira-not-protected-in-bankruptcy/.

The post begins with an 18-line paragraph. It looks fairly long, but the main reason it appears long is the adjacent graphic of a jar full of coins labeled "retirement." The text begins with an easily accessible sentence: "The Supreme Court recently decided a bankruptcy issue that has caused confusion in the lower courts." The post does not cite or link the case but does italicize its name. It provides a block quote in standard legal-citation form from the Supreme Court's opinion that is both citation-heavy and more stylistically vivid than the lawyer's own writing in this descriptive post:

> For if an individual is allowed to exempt an inherited IRA from her bankruptcy estate, nothing about the inherited IRA's legal characteristics would prevent (or even discourage) the individual from using the entire balance of the account on a vacation home or sports car immediately after her bankruptcy proceedings are complete. Allowing that kind of exemption would convert the Bankruptcy Code's purposes of preserving debtors' ability to meet their basic needs and ensuring that they have a "fresh start," Rousey, 544 U.S., at 325, into a "free pass," Schwab, 560 U.S., at 791. We decline to read the retirement funds provision in that manner.

The post ends by noting that this result is "unfortunate for bankruptcy debtors seeking a fresh start," but it goes on to suggest "proper estate and bankruptcy planning" and gives a general example involving a spendthrift trust.

7. Supreme Court Ruling in *Clark v. Rameker* [222]

On June 24, 2014, the firm of Matsen, Miller, Cossa & Gray PLLC published "Supreme Court Ruling in Clark v. Rameker" on its firm website blog. This post comprises 275 words and 4 paragraphs. It provided 1 hyperlink to an earlier post.

The post begins with a common scenario: "Many individuals leave their retirement plans to a spouse or their children." Then it presents the holding of the case and the three-part test articulated by the Court:

> The Supreme Court said an inherited IRA is not the same as an individual's IRA because the person who inherits it cannot put more money into it, the person has to withdraw money from it, and if he/she chooses to he/she can take all of the money out of it.

The post then gives a hypothetical:

222 Mattson, Miller, Cossa & Gray PLLC, *Supreme Court Ruling in Clark v. Rameker* (June 24, 2014), ESTATE PLANNING BLOG, http://www.mmcglaw.com/blog-53-Supreme+Court+Ruling+in+Clark+v.+Rameker.

> For example, Sam and June are married. Sam had $2.0 million in his IRA. Sam dies leaving his IRA to June. Prior to the *Clark* case the $2.0 million would be safe from creditors, but now it is NOT.

The post concludes with advice about two particular kinds of trusts that would work around the result in *Clark*.

8. *Clark v. Rameker*—Supreme Court Rules that Inherited IRAs are Not Protected from Creditors[223]

On June 20, 2014, the Hallock & Hallock law firm published "Clark v. Rameker—Supreme Court Rules that Inherited IRAs are Not Protected from Creditors" on the Hallock & Hallock blog. The post consists of 512 words and 6 paragraphs.

This blog has a static (constant) banner across the top: "Welcome to the Hallock & Hallock Blog. We intend to use this as a forum to bring you news and updates from the Estate Planning and Business Planning world. We hope you find it generally thought provoking and at least occasionally, a bit humorous."

In the specific post on *Clark* began with a note of suspense about the "long awaited" decision in *Clark*. After summarizing the issue the Court addressed, this post then used the pronoun "you" to address the reader at the end of the first paragraph. It also introduced a contrast between settled law and unsettled law addressed in *Clark*:

> Generally, your own retirement account (Traditional IRA, Roth IRA, 401K, 403B and the like) is exempt from the claims of creditors, meaning it cannot be seized by judgment creditors or lost in a bankruptcy. However, it has been unclear whether this same protection is available to retirement accounts you inherit from another.

The post then summarized the facts of the case in a paragraph. In the next paragraph it gives the Court's reasoning, with the three-part test set off in a bullet-point list of parallel language. The remainder of the post is a recommendation of the firm's services to set up a specific kind of trust (with a trademarked name):

> This decision makes clear what we have been advising our Clients for some time, if providing asset protection to your beneficiaries is important, the Retirement Plan Legacy Trust™ is an important tool for you.

223 Hallock & Hallock, Clark v. Rameker—*Supreme Court Rules that Inherited IRAs Are Not Protected from Creditors*, TODD'S ESTATE AND BUSINESS PLANNING BLOG, (June 20, 2014), http://www.hallock-law.com/2014/06/.

9. *Clark v. Rameker*—Inherited IRA and Exemption[224]

On June 25, 2014, the law firm of Tuggle Duggins in Greensboro, N.C., posted "Clark v. Rameker—Inherited IRA and Exemption" on the blog associated with its law-firm website. This post comprises 335 words and 3 paragraphs.

The beginning of the post refers (without linking) to an earlier post on the same topic: "Last year in this blog we reported on a decision by the United States Court of Appeals for the Seventh Circuit finding that inherited IRAs were not 'retirement funds' exempt from claims of creditors in bankruptcy."

The second paragraph summarized the case, using italics for the case name but not citing or linking to the case. The sentence stating the case's holding did boldface and italicize the key word "not": "Under this decision, an inherited IRA is ***not*** exempt from the claims of creditors in bankruptcy under the Bankruptcy Code exclusion for "retirement funds." This paragraph stating the holding was also offset by a graphic image of a cube labeled with the word "IRA." The third and final paragraph of the post addressed North Carolina's state bankruptcy exemption for inherited IRAs. The post ended with a sentence linking to the attorney authors' names.

10. *Clark v. Rameker* and Inherited IRAs[225]

On June 19, 2014, Don Meyer of Bose McKinney & Evans LLP wrote "Clark v. Rameker & Inherited IRAs." This posts consists of 414 words and 4 paragraphs. It has 1 hyperlink.

The lead sentence linked to the opinion on the Supreme Court's website and emphasized the decision's relevance and importance: "The recent Supreme Court ruling in *Clark v. Rameker* will have a lasting impact on one of the most prominent ways of saving for retirement." After another paragraph summarizing the circuit split on the issue, the third paragraph summarized the case's holding, including the three-part test for why the Court ruled as it did. To present this test, the blog post tabulated parallel language with numbers (1) through (3) within a standard paragraph of text. The final paragraph presented implications of the decision, giving general examples of what IRA owners might want to do with their beneficiary designations and what they may wish to consider, as in this example:

224 Tuggle Duggins, Clark v. Rameker—*Inherited IRA and Exemption*, http://blog.tuggleduggins.com/business-law/clark-v-rameker-inherited-ira-and-exemption/ (last visited August 13, 2014; no longer available online; copy on file with the author).

225 Don Meyer, Clark v. Rameker *and Inherited IRAs,* BOSE EMPLOYEE BENEFITS BLOG (June 19, 2014), http://employeebenefitsblog.boselaw.com/2014/06/19/clark-v-rameker-and-inherited-iras/.

> This ruling has significant implications for IRA holders concerning how they plan for both their own future and the future of their potential beneficiaries. While this ruling will not impact a spouse that inherits an IRA and otherwise characterizes the inherited IRA as his/her own, it will impact other recipients inheriting IRAs.

Appendix B: Posts on copyright issues surrounding the monkey's famous selfie

1. Fight Continues Over Right to Monkey Selfie[226]

Lowering the Bar is a law-humor blog published by Kevin Underhill, a partner in the San Francisco office of Shook, Hardy & Bacon. His post on the monkey-selfie case, dated August 7, 2014, is 8 paragraphs and 635 words long. It contains 8 hyperlinks to other websites. (An update with an additional 108 words and 4 links was added later but is not included in the calculations here.)

This post used a number of stylistic writing techniques to achieve an informal tone: a casual, long parenthetical aside in the middle of a sentence; the use of "we" for the blogger's voice; contractions; ironic asides; and a mix of grammatically correct sentences and an intentional sentence fragment for emphasis. The post also used connectors such as "anyway," "basically," and "I mean." It italicized words for emphasis and also used the acronym "SOL" for "sh*t out of luck," referring to the photographer.

Borrowing from legal style, the post included an italicized signal *See* and then the equivalent of a string cite, with two links to past related stories included in hyperlinked form and joined by a semicolon.

Here is one of the key passages with writing techniques described above:

> Anyway, as a refresher, the issue arose because the monkey did not own the camera, nor was he authorized to use it (so it wasn't a "work for hire"). The photographer, David Slater, had set his camera on a tripod and then walked away for a minute, and when he did a monkey hijacked it and took "hundreds" of unauthorized pictures. Several of which were particularly great.

This post was also fascinating in its self-referential language about the blog itself. The following text appearing very close to the reproduced photo of the monkey selfie that may be copyrighted by the photographer:

226 Kevin Underhill, *Fight Continues Over Right to Monkey Selfie*, LOWERING THE BAR (August 7, 2014), http://www.loweringthebar.net/2014/08/fight-continues-over-right-to-monkey-selfie.html.

(Whether posting a sample like this one is "fair use" is a different question, one I obviously resolved in favor of yes.)

2. "Monkeys Don't Own Copyrights": Wikimedia Denies Claim of British Photographer to Monkey Selfie[227]

This post is found on Res Ipsa Loquitur ("The Thing Itself Speaks") by Jonathan Turley. Jonathan Turley is a chaired professor at George Washington Law School and also a practicing lawyer in a variety of high-profile cases, according to his blog bio.[228]

His post on the monkey-selfie case (dated August 8, 2014) is 4 paragraphs and 152 words long. The post itself does not provide hyperlinks, but it credits the ABA Journal after the conclusion. The opening line uses a style that fits neatly into one of the techniques for microstyle recommended by Christopher Johnson: surprising the reader by changing an expected element. Here is Turley's opening line: "It may be the best picture British nature photographer David Slater never took."

This post uses a one-sentence paragraph emphasizing the assertion that if the monkey took the photo, it—rather than the photographer—would own the copyright. The last sentence of the post is a one-sentence paragraph as well.

The post also uses vivid language that demonstrates microstyle in contrasting the photographer's rights against the monkey's hypothetical legal rights: "In other words, if the Monkey would hold the copyright, no one holds the copyright. The monkey gets bananas and Slater gets bupkus [sic]."

The ending of the post is a one-sentence paragraph as well, but not as vivid or interesting as earlier portions of the post, essentially ending on the idea that this dispute could lead to an interesting judicial opinion.

3. Legal Battle Over 'Monkey Selfie': Wikipedia Drives Photog Bananas[229]

This post, published on August 7, 2014, contains 9 paragraphs and 437 words. It used 3 internal headings, and it provided 9 hyperlinks to other websites including 5 in the main post's text and 4 immediately after. The author is Daniel Taylor, a lawyer and writer with a surrogacy practice

227 Jonathan Turley, *"Monkeys Don't Own Copyrights": Wikimedia Denies Claim of Photographer to Monkey Selfie,* RES IPSA LOQUITUR ("THE THING ITSELF SPEAKS") (Aug. 8, 2014), http://jonathanturley.org/2014/08/08/monkeys-dont-own-copyrights-wikimedia-denies-claim-of-british-photographer-to-monkey-selfie/.

228 Jonathan Turley, Biographical Information, http://jonathanturley.org/about/.

229 Daniel Taylor, *Legal Battle over 'Monkey Selfie': Wikipedia Drives Photographer Bananas,* LEGALLY WEIRD: THE FINDLAW LEGAL CURIOSITIES BLOG (August 7, 2014), http://blogs.findlaw.com/legally_weird/2014/08/legal-battle-over-monkey-selfie-wikipedia-drives-photog-bananas.html.

and a position writing for FindLaw. The post contains five hyperlinks and three internal headings.

This post appears to be aimed at a non-lawyer reader, as evidenced by its explanation of what the terms public domain and licensing mean. The use of an adjective phrase set off by em dashes is one way this post does it, although in this post the em dash is presented in the old-school typographical format of a double-hyphen:

> When Slater discovered that the monkey photo had been added to Wikipedia as a photo in the public domain—meaning it's free for anyone to use in any way they see fit—he requested they remove it.

In several places, the post uses questions to advance the analysis:

> But one of the internet's largest websites is now claiming that the monkey selfie actually belongs to everyone. What gives?
>
> * * * * *
>
> If copyright comes down to who took the picture, shouldn't that mean the monkey owns the copyright? Unfortunately for monkeys, animals are not legally considered "persons" and are typically treated more like property. That's why you can't leave your house directly to your dog in your will. And that's why animals, even monkeys, can't hold copyrights.

It ends in a news-like fashion, with the photographer's response to the controversy, urging people to stop using Wikipedia.

4. Who Owns the Monkey Selfie? (Spoiler Alert: Probably Not the Human)[230]

This blog post dated August 7, 2014, also by the FindLaw group, is 9 paragraphs and 540 words long (not including the text of an ad embedded into the second half of the post). It contains 8 hyperlinks (including 4 embedded in the main post's text and 4 related resources at the conclusion) and 2 internal subheadings. The author is Mark Wilson, who according to his LinkedIn bio[231] is a criminal appellate attorney and blog writer.

230 Mark Wilson, *Who Owns the Monkey Selfie? (Spoiler Alert: Probably Not the Human)*, TECHNOLOGIST: THE FINDLAW LEGAL TECHNOLOGIES BLOG (Aug. 7, 2014), http://blogs.findlaw.com/technologist/2014/08/who-owns-the-monkey-selfie-spoiler-alert-probably-not-the-human.html.

231 *Id.* (linking to Mark Wilson bio found at https://www.linkedin.com/in/fitzador).

The post uses the em dash (formatted as two hyphens) for informal emphasis:

> While Slater claims that he owns the rights to the photograph, Wikimedia insists that the work isn't owned by anyone—because it was taken by a monkey.

The post contains a mini-brief of a Supreme Court case, with the issue, facts, holding and reasoning conveyed in a four-sentence paragraph using non-specialized language (e.g. no use of the word "holding.") It goes on to offer opinion, couched in language that uses the short-writing technique of grammatical contrast, as well as italics for emphasis:

> It would appear, then, that if the monkey snapped the picture, then the monkey is the author. Or, at the very least, David Slater isn't the author.

Although this post doesn't use traditional full legal citation format, it does use traditional formatting for quotations, with brackets indicating omitted letters in a quote from case law. It also uses a semicolon to separate two independent clauses, in one of the more formal sentences found within the monkey-selfie blog posts. But it also uses contractions and parenthetical asides throughout the post, creating an informal tone. One of the headings uses the informal ellipses to create a mock feeling of suspense: "The Answer Is . . ."

5. Monkey See, Monkey Do Selfie[232]

This post, dated August 8, 2014, is from DuetsBlog: Collaborations in Creativity & the Law. The blog description says it is "our effort to facilitate a more ambidextrous approach and promote early—and very graceful—collaborations among legal and marketing teams." The contact page leads readers to the name and address of Winthrop & Weinstine, a law firm in Minneapolis.

The post contains 21 paragraphs and 1,229 words. It has 19 hyperlinks and no internal headings. It contains four pull-out block quotes marked with a large open-quote graphic on the left side.

This post uses questions including two rhetorical questions as the lead:

> Is photography nowadays really so easy even a monkey can do it?
> What about a caveman?

232 Steve Baird, *Monkey See, Monkey Do Selfie?,* DUETS BLOG: COLLABORATIONS IN CREATIVITY & THE LAW (Aug. 8, 2014), http://www.duetsblog.com/2014/08/articles/law-suits/monkey-see-monkey-do/.

The post uses puns and humorous references such as the idea of a "monkey's uncle" and "monkey business." It calls the monkey's best selfie the "money shot" but then notes that the camera owner pursuing the copyright has only earned enough from the photo "to buy a few loaves of monkey bread."

The post also interacts with other posts, quoting and agreeing with an argument from the well-known Likelihood of Confusion blog. This post notes that the other argument could "throw a monkey wrench" into the public-domain argument about this post.

The post includes four block quotes from the photographer's own website to describe the work he put in before the monkey actually snapped the selfies. The post intersperses these quotes with its argument that the monkey was the photographer's amanuensis akin to a photographer's assistant.

6. Of Macaques and Men: [obligatory monkey pun subtitle here][233]

This post is found on the blog Likelihood of Confusion: Ron Coleman's blog on trademark, copyright, internet law and free speech. The author of this particular post is Matthew David Brozik, a writer and adjunct professor at the University of New Hampshire Law School, and contributing editor for Likelihood of Confusion.[234] The post has 11 paragraphs and 619 total words. It contains 2 hyperlinks.

This post uses humor quite a bit, explicitly signaled by its opening: "Have you heard the one about the monkey who stole the wildlife photographer's camera and took a picture of herself?" And its closing line reiterates the joking theme of the post: "Now, orange you glad I didn't say 'banana'?" It also contains a photo of the post's author, Brozik, with the caption "Man or monkey?" along with the macaque selfie and a caption "No relation."

The joking tone is used for a contrasting effect when the post introduces the legal dispute and states it is "no joke." It also uses Latin to restate Wikimedia's position that the photo is in the public domain "*ab initio*."

This post also takes a position, gently disagreeing with the proposition that only the photographer's manipulation of a photo after the shot is snapped should create give copyright. Using intentionally stilted language

233 Matthew David Brozik, *Macaques and Men: [obligatory monkey pun subtitle here]*, LIKELIHOOD OF CONFUSION®: RON COLEMAN'S BLOG ON TRADEMARK, COPYRIGHT, INTERNET LAW AND FREE SPEECH (Aug. 7, 2014), http://www.likelihood-ofconfusion.com/of-macaques-and-men-obligatory-monkey-pun-subtitle-here/.

234 http://law.unh.edu/about/personnel/adjunct-faculty/matthew-david-brozik.

it states, "The author is of the opinion that some legal professionals don't know enough about photography." It then goes on to a very short paragraph (one line, consisting of two sentences that together comprise 14 words) saying "[s]omething isn't right here."

The post also uses a rhetorical question to advance the analysis and a pull quote (i.e. a quote set off from the rest of the text, in this case with the graphic design of large quotation marks) from the Copyright Act. Toward the end of its argument that the photographer should be a joint owner, the post contains a 70-word sentence that is essentially a small "IRAC" unit with the statutory language and a factual argument about the photographer's work with the monkey in Indonesia in 2011.

7. The Telegraph Is Wrong About the Monkey Selfie. The Copyright Is in the Public Domain[235]

This post, dated August 7, 2014, appears on the Art Law Journal: For Those in the Business of Being Creative. This blog is the work of attorney Steve Schlackman and his eponymous firm; the "Have a Question" area of the blog directs reader to contact information for the firm of Schlackman Intellectual Property Law PLLC in Miami, Florida.

The post consists of 1,410 words and 24 paragraphs (many of them one line or one sentence.) It contains three headings and eight hyperlinks.

The post begins with a rather large (about 4x6 inch) photo of the macaque. The text then starts with storytelling about the scene in Indonesia when the monkey pushed the camera's button, causing the initial viral controversy in 2011 as many websites posted the monkey selfie and the photographer began sending takedown notices. The *Telegraph* restarted the controversy in 2014 when its reporter Mathew Sparks publicized Wikimedia's report about legal issues surrounding the selfie. After this storytelling segment, the post states its thesis in a short paragraph: "The article is wrong. So [it's] time to set the record straight, once again, and provide an analysis of the reasons behind Sparks, Slater and the public's misunderstanding of this issue."

The post then contrasts two statements from Wikimedia's documentation and the Telegraph's article about the issue, and leads into a section of the Copyright Act with the statute for works not originated by a human author.

The next section of the post addresses "educational failure" caused by copyright experts' way of describing copyright with the public. This section uses three rhetorical questions to transition into the analysis of

235 Steve Schlackman, *The Telegraph is Wrong About the Monkey Selfie.*, ART LAW JOURNAL (August 7, 2014), http://artlawjournal.com/telegraph-wrong-monkey-selfie/.

how experts "dumb down" copyright law and lead to misunderstandings. This section then refers to readers and their goals and understanding of the law:

> If the public learned the underlying concepts rather than a series of memorable disparate rules, they could analyze the legal issues for themselves. Sure, the law can be dry and uninteresting, at times. However, there are many who want to know more, like the readers of this blog.

The next section is "a primer" on copyright law. This section uses a series of paragraphs to run through copyright concepts. It italicizes legal terms. It uses contractions and more rhetorical questions to create an informal tone. It uses the second-person pronoun to address readers: "Fixed in a tangible medium means the work is not just in your head. Your artistic work has been put to paper or imprinted onto film, a digital sensor, or computer memory chip." It also uses a hypothetical in which "you" are at the Museum of Modern Art photographing people viewing Van Gogh's *Starry Night*.

The post concludes by circling back to the macaque and the conclusion that the macaque itself does not own the copyright and no one does. It asks the question whether the Telegraph should actually retract the article suggesting that the macaque holds the copyright. And it qualifies this analysis as specific to U.S. law only, linking to an article on international copyright law. The closing line is an invitation: "*Do you have a different take on the monkey selfie issue? Let us know.*"

8. Copyright Ownership is Not Monkey Business: Wikimedia and Slater Fight Over Selfie Photographs[236]

This post, dated August 7, 2014, appears on Copyright and Trademark Matters: Insights and Developments in Trademark Law. The blog's banner title also contains name of the law firm that publishes the blog, Mintz Levin. The author of the blog post is Susan Neuberger Weller. The post consists of 858 words and 6 paragraphs. It contains no headings and seven hyperlinks.

The first paragraph sets out the facts of how the monkey took the selfie in 2011. The second paragraph transitions with a phrase "[t]o begin the discussion" and then summarizes relevant copyright law. The third paragraph states Wikimedia's position and continues the analysis, linking

236 Susan Neuberger Weller, *Copyright Ownership Is Not Monkey Business: Wikimedia and Slater Fight Over Selfie Photographs*, COPYRIGHT & TRADEMARK MATTERS: INSIGHTS AND DEVELOPMENTS IN COPYRIGHT AND TRADEMARK LAW (August 7, 2014), http://www.copyrighttrademarkmatters.com/2014/08/07/copyright-ownership-is-not-monkey-business-wikimedia-and-slater-fight-over-selfie-photographs/.

to the relevant section of the Compendium of Copyright Office's Practice regarding works by non-humans. The fourth paragraph states the photographer's position and then analyzes it by linking to a Supreme Court case, *Feist Publications v. Rural Telephone Service Co.* Within this analysis the post uses some vivid language such as "The Court shot down the 'sweat of the brow' or 'industrious collection' doctrine put forth by the publisher of the original directory as irrelevant . . . ."

The post ends with a paragraph creating broader context, noting other animal-generated artwork posted on YouTube which apparently leads to a "workable business model for this type of media." The conclusion takes a reader-service tone including a pun: "It is doubtful Slater will monkey around with this for too much longer before taking legal action. As always, we will keep you apprised of all developments[.]"

9. Monkey Business: Who Owns the Copyright to a Selfie Taken by a Monkey?[237]

This post is dated August 14, 2014, and appears on the blog area of the website for Mandour & Associates Intellectual Property Law. It consists of 387 words in 5 paragraphs. It contains one hyperlink in the main post's text as its conclusion, and 4 related links after the post's concluding text.

The post begins with an issue-spotting paragraph anchored around a question: "The general rule is that the person taking a picture owns the copyright to it. So, if a monkey takes a picture, who owns it? This is the hot debate that is brewing . . . ."

The post then outlines the factual narrative of the photograph and the photographer's legal efforts to control it. It concludes with the current state of the dispute, which is the possibility that the photographer will file a lawsuit.

This post begins with a generic photograph of a smiling monkey (not the macaque selfie). The end of the post links to the selfie on a different site: "The actual selfie can be seen here: http://www.bostonglobe.com/opinion/editorials/2014/08/08/photographer-should-have-rights-monkey-selfie/twpCD7fNWkrHhqdeJtRjiL/story.html"

237 Mandour & Associates, *Monkey Business: Who Owns the Copyright to a Selfie Taken by a Monkey?*, MANDOUR & ASSOCIATES INTELLECTUAL PROPERTY LAW (August 14, 2014), http://www.mandourlaw.com/blog/copyright-infringement/monkey-business-who-owns-the-copyright-to-a-selfie-taken-by-a-monkey/.