

PREFACE

The overarching theme of Volume 19 of *Legal Communication & Rhetoric: JALWD* is how legal communication shapes the law, and how doers of legal writing can use their resources to make it better. The volume begins with a fascinating article from Aaron Kirschenfeld and Alexa Chew, “Citation Stickiness, Computer-Assisted Legal Research, and the Universe of Thinkable Thoughts.” In their article, Professors Kirschenfeld and Chew shed light on whether the switch from print research to digital research has changed the way that law students and lawyers conduct research. To do so, the article uses the “citation stickiness” metric, which analyzes whether a citation appears in at least one party’s brief and again in the court’s opinion. Professors Kirschenfeld and Chew used citation stickiness to study how often parties to an appeal and judges hearing that appeal agreed on the relevant cases to resolve the issues presented, focusing on cases from 1957, 1987, and 2017. Their research shows, surprisingly, that citation stickiness increased over time, meaning that there was less coherence and agreement between advocates and courts in the pre-digital era, not more, as predicted by earlier scholarship.

Next, in “Dimensions of Being and the Limits of Logic: The Myth of Empirical Reasoning,” Kenneth Chestek takes on the common misperception that the law should be purely objective, logical, and rule-bound. Rather, law is a human institution that must respond to human needs to maintain its relevance. Professor Chestek identifies human interests, or “dimensions of being,” and explains how each of these dimensions might become the subject of a legal dispute that courts must be prepared to account for in the cases before them. To make decisions that serve the needs of the litigants as well as society in general, judges must appreciate all of these dimensions of being.

In “Reclaiming the Singular They in Legal Writing,” Robert Anderson challenges the labeling of the singular “they” as ungrammatical, concluding this labeling is a sexist attempt to institute the use of the masculine “he.” Professor Anderson substantiates his argument by tracing the history of the use of the singular they, which predates the emergence of modern English. Professor Anderson argues that today’s legal writing authorities perpetuate efforts to subordinate females to the role of second-class citizens within their own language by refusing to adopt the singular they. Ultimately, Professor Anderson concludes that the singular they is not only grammatical, but simple and inclusive.

In the volume's final article, Jacob Carpenter explores passive voice and nominalizations in a depth that style guides, textbooks, and speakers have not. Professor Carpenter uses interdisciplinary linguistics and cognition studies to explain how passive voice and nominalizations impede readers and weaken writing. To further flesh out the nuance of passive voice, the article also examines how passive voice can be used effectively to create flow and help focus readers. Professor Carpenter concludes that attorneys can become more effective advocates when they learn to control passive voice and nominalizations in their writing.

Next, noteworthy practitioners Raffi Melkonian and Tiffany Graves contribute invited essays that examine the impact of COVID-19 on lawyers' work. First, in "Thoughts and Worries About Appellate Practice Post-Pandemic," Melkonian, in a beautifully written piece, asks whether, and if so, how and why the pandemic will change legal writing, appellate work in court, attorney development, or the collegiality of the appellate bar. He offers ways he thinks the readers have changed, and the impact those changes should have on attorney writing. Melkonian concludes that while we will likely remember these years as world-changing, attorneys can manage these changes in a way that makes the profession a better one. This essay is not to be missed.

In "Remote Legal Services in the Age of COVID: How Legal Services Organizations Adapted to the Pandemic to Serve Pro Bono Clients," Graves, law firm pro bono counsel, explores how the pandemic disrupted pro bono work by legal services organizations. Graves highlights the monumental work that legal services organizations did to continue serving their clients throughout the pandemic, focusing first on how legal services organizations, in general, were able to adapt to serve clients with civil legal needs. Graves then explores specific challenges and solutions in the areas of domestic violence and immigration cases. Graves concludes that the lessons learned in the pandemic can continue to increase access to justice and offers a list of specific services that she hopes organizations will maintain even after the pandemic.

Amy Griffin's essay, "If Rules They Can Be Called," asks who gets to decide what counts as law in the U.S. legal system, which is governed almost entirely by unwritten rules. In 2016, Bryan A. Garner and twelve judges published *THE LAW OF JUDICIAL PRECEDENT*, which essentially codified unwritten rules related to the operation of precedent. That text has since become a source of authority on legal authority. Professor Griffin's essay asks for further discussion as to whether this pseudo-codification of norms should be appropriately presented as definitive blackletter law. Professor Griffin notes, for example, that textualization may cement norms prematurely, inhibiting their evolution. In addition, it reduces

many of the most frequently cited blackletter principles, the result of complex tools of judicial reasoning, to a rule format to which they are not well suited.

The volume continues with two annotated bibliographies, sure to be extremely useful to anyone wanting to read or write in these areas. First, Barbara Gotthelf compiles resources on oral argument: why it is important; how to do it; how to teach it; what judges think about oral argument; and how bias affects oral advocacy. Second, Margaret Hannon contributes a comprehensive bibliography of scholarship that involves legal writing “mechanics”: grammar, usage, and punctuation; plain language; and citation. We have heard a great deal of positive feedback from our readers about these bibliographies, and we are pleased that we can continue to offer entries in this genre.

The volume concludes with book reviews that provide a range of different resources for improving teaching and writing. Ashley B. Armstrong reviews *SMALL TEACHING: EVERYDAY LESSONS FROM THE SCIENCE OF LEARNING*, by James M. Lang, which describes small things that educators can do to improve learning outcomes in their classrooms. In his review of *NOISE: A FLAW IN HUMAN JUDGMENT*, by Daniel Kahneman, Olivier Sibony, and Cass R. Sunstein, Patrick Barry focuses on the distinction between bias and noise, and how failing to recognize and separate the two leads to flawed decisionmaking. Ian Gallacher reviews George Saunders’s *A SWIM IN A POND IN THE RAIN: IN WHICH FOUR RUSSIANS GIVE A MASTER CLASS ON WRITING, READING, AND LIFE*, in which Saunders presents and dissects seven short stories from Russian nineteenth-century literature. Anne E. Mullins reviews *THE LEGAL SCHOLAR’S GUIDEBOOK*, by Elizabeth Berenguer, an outstanding resource for newcomers to scholarly legal writing. Todd M. Stafford reviews James Boyd White’s *KEEP LAW ALIVE*, in which Boyd calls on all of us to defend and preserve the rule of law. DeShayla M. Strachan reviews *RHETORIC, PERSUASION, AND MODERN LEGAL WRITING: THE PEN IS MIGHTIER*, by Brian L. Porto, which enhances our understanding of classical rhetorical techniques through the words of five Supreme Court justices. The volume’s book reviews conclude with Carolyn V. Williams’s review of *HER HONOR: MY LIFE ON THE BENCH . . . WHAT WORKS, WHAT’S BROKEN, AND HOW TO CHANGE IT*, by Judge LaDoris Hazzard Cordell, which uses personal narrative, statistics, and history, to explain why diversity in the law matters.

Finally, we must say farewell to two of our editorial board members: Jeffrey Jackson, lead editor, to serve as Interim Dean of Washburn University School of Law; and Abigail Patthoff, associate editor, to create space to focus on other projects. We were incredibly lucky to have

someone with Jeff's expertise and experience to provide guidance not only to our authors but also to the board itself. Jeff has served as a lead editor for the journal for nine years and as an associate editor prior to that. Jeff is a scholar in his own right who has written on, among other topics, the history of legal writing and legal education. Abby was the journal's first social media editor and we are deeply grateful to her for the time and effort that she put into setting the foundation for the journal's social media presence. Even when Abby transitioned into an associate editor role, she continued to provide invaluable support for subsequent social media editors. In addition to being a valued member of our journal, Abby is also a wonderful teacher and scholar who was recently awarded Chapman University's Faculty Excellence Award in recognition of her exceptional service in the areas of scholarly and creative activity, teaching, and service.

We also send our heartfelt thanks to Dr. JoAnne Sweeny, Co-Editor-in-Chief, who will be transitioning to the role of Editor-in-Chief Emeritus. JoAnne has been a valued member of our Editorial Board for seven years and Co-Editor-in-Chief for the last six. In that time, she has been an outstanding leader and a relentless advocate for the journal, and a joy to have as a colleague. We're delighted that she'll remain a member of the board in the Emeritus role and are very grateful for the support that she will continue to offer to the journal.

One last note from Margaret, on behalf of the entire Board: a huge thank you to Editor-in-Chief Emeritus Ruth Anne Robbins, who stepped in this year as Co-Editor-in-Chief while JoAnne was on leave. We're so lucky to have Ruth Anne's leadership and are incredibly grateful for her continued dedication to the journal.

Margaret Hannon & Ruth Anne Robbins (2022)