ESSAY

Reflecting on 20 Years of *Legal Communication & Rhetoric: JALWD*

To celebrate the twentieth volume of *Legal Communication & Rhetoric: JALWD*, the editorial board invited former Editors in Chief to speak about the articles they have found to be the most impactful, interesting, and influential on the discipline and practice of legal writing. In the conversation that follows, our speakers are:

Linda L. Berger, Professor of Law Emerita, William S. Boyd School of Law at the University of Nevada, Las Vegas.

Ruth Anne Robbins, Associate Professor of Law, Rutgers Law School.

Dr. JoAnne Sweeny, Associate Dean for Academic Affairs and Professor of Law, Louis D. Brandeis School of Law, University of Louisville.

Genevieve Tung: Linda, you are one of the co-founders of what is now *Legal Communication & Rhetoric*. Could you tell us just a bit about your experience launching the journal and the role you had envisioned for it as part of the discipline and practice of legal writing?

Linda Berger: First of all, I'm grateful that you asked us to do this because it encouraged me to go back through all the volumes of the journal, and that was very interesting and very rewarding. I was delighted all over again to see what has been done since I left as well as what was done while I was there.

In 2002, ALWD had created a volume of conference proceedings on the theme of its biennial conference, *Erasing Lines: Integrating the Law School Curriculum*. To follow up, then-ALWD President Amy Sloan asked Michael Smith and me to come up with a proposal for a continuing journal that would be published regularly. She asked us because Michael had been banging the drums for what he called scholarship focusing on

the substance of legal writing, and I had been lucky enough to become one of a group of people introduced to the world of law and rhetoric scholarship by the Notre Dame Colloquia on Legal Discourse, organized by Terry Phelps and Linda Edwards and held at Notre Dame in 1998, 2000, and 2003. Michael had joined Linda Edwards at Mercer, and Linda had championed the concept that legal writing had a doctrine of its own. And because of the Notre Dame colloquia and the Mercer-Temple connection, there were these serendipitous occurrences which meant that Michael and I—along with Amy Sloan, Terry Phelps, Linda Edwards, Terrill Pollman, Jan Levine, Ellie Margolis, Kathy Stanchi, and others I have forgotten—got involved in discussing what kind of scholarship legal writing professors should be working on and what kind of scholarship this new journal should publish. Michael is, I think, primarily responsible for the specific details of the journal's mission that emerged, which I will talk about in a little bit when I talk about his article.

After the ALWD Board approved the proposed new journal late in 2002, I became the editor. Michael wisely declined the editor's role, but agreed to remain on the editorial board, and we recruited Terry Phelps, Carol Parker, and Marilyn Walter to join the editorial board.[1] So, I was the editor starting in 2002. We produced our first volume in 2004, which became volume two of *J. ALWD*.

From 2002 to 2009, I was editor-in-chief, and then I was very lucky to persuade Ian Gallacher to join me as a co-editor in 2009. Sue Painter-Thorne became the first managing editor at the same time. In 2010 we added a professional designer, primarily because of Derek Kiernan-Johnson's article about fonts,[2] and that was really terrific, as far as I was concerned, to have a co-editor-in-chief, a managing editor, and a designer. After stepping down as EIC in 2010, I stayed on the editorial board until 2012, and I've been watching the journal with awe and respect ever since.

We thought of the founding of the journal as a political act. Just like ALWD was founded as a political act. We thought that it was a declaration of how we were going to broaden and deepen the work already going on to advance the discipline and the profession of legal writing.[3] About that time there had been some changes that encouraged us to make that

1 M.H. Sam Jacobson of Gonzaga and Danielle Istl of Detroit-Mercy joined us in drawing up the proposal that went to the ALWD Board.

2 Derek H. Kiernan-Johnson, *Telling Through Type: Typography and Narrative in Legal Briefs*, 7 J. ALWD 87 (2010).

3 *Legal Writing*, the journal of the Legal Writing Institute, was founded in 1991. In its inaugural issue, editor Chris Rideout called for more fundamental inquiry into legal writing, research, and analysis. J. Christopher Rideout, *Editor's Note*, 1 Legal Writing v (1991). At the time of the founding of *J. ALWD*, most articles published in *Legal Writing* addressed the teaching of legal writing, thus complementing a journal that would focus on the study and practice of legal writing. *See* Michael R. Smith, *The Next Frontier: Exploring the Substance of Legal Writing*, 2 J. ALWD 1, 6–7 & n.13 (2004).

kind of a bold political move. Finally, a few people were getting tenure based on their legal writing scholarship. (When I went up for tenure in 2000, it was hard to identify scholars who focused on legal writing to be my peer reviewers.) But tenure-track positions were slowly opening up, and as schools began to move away from very short-term contracts and caps on employment, people were staying around longer. More of them were interested in researching and writing about the field that they were working in. Starting around 2002, Linda Edwards and Terrill Pollman began to collect this huge bibliography of the scholarship produced by legal writing professors, and they found that only 25% of the scholarship of legal writing professors was on topics encompassed within the field of legal writing.[4] In their article, they warned that continuing that state of affairs might threaten the future expansion and development of the field of legal writing. So those things, plus the Notre Dame Colloquia, which introduced us to each other and to a whole bunch of rhetoric and rhetoric-related scholars,[5] persuaded us that there was this new kind of scholarship—or new for legal writing teachers—a kind of scholarship that would look beyond composition into interpretation of the law and interpretation of legal documents.

So we thought we were doing something radical. We thought we were building legal rhetorical knowledge and contributing to the professional development of the people who were teaching legal rhetoric.

Ruth Anne Robbins: What drew me to the journal? I was instructed that I would be joining the journal.

I had just become the president of the Legal Writing Institute in July of 2008, and I was approached by Linda, and I believe Terrill Pollman and Judy Stinson, and maybe Melissa Weresh at the biennial conference I was co-chairing. My name had been put forward to join the editorial board, and it had been approved. I had never applied, but they voted me in anyway, and then they came up to me and said, "Congratulations! You are a member of the editorial board."

And I was told, "Don't worry. We won't make it too hard a job for you, because we know you're busy being president." I joined the editorial board as a lead editor, and then, two years later, Linda said she was going to be stepping down, and she sent me milk chocolate sea salt caramels, which

4 *See* Linda H. Edwards & Terrill Pollman, *Scholarship by Legal Writing Professors: New Voices in the Legal Academy*, 11 Legal Writing 3, 10 (2006) ("The bibliography reveals that approximately 75% of the law review articles legal writing professors have published are about topics in areas other than legal writing, while only approximately 25% are about legal writing topics.").

5 The invited speakers included James Boyd White, Peter Goodrich, Steven Mailloux, Marianne Constable, and Martha Nussbaum.

are a weakness of mine, and said, "Congratulations! Now you're going to be the editor-in-chief." Fortunately, Joan Magat had also applied and the Board, in its infinite wisdom, decided we would be co-editors-in-chief, and I thought that was really the right move. I was really glad to form that partnership. Joan has experience editing a journal at Duke and her technical skills and knowledge of, you know, how the English language works was a really wonderful balance to me (who does not really know how commas work), and so we worked on it together.

One of the first things we thought we needed to do was change the name of the journal. Volume eight became the first volume where the name changed from *J. ALWD* over to *Legal Communication and Rhetoric*, and that was quite a production. We didn't really think it would be as hard as it was. We went through many iterations; the ALWD board was very *energetic* in its involvement in helping rename the journal. We went back and forth—should the word persuasion appear? Should the word rhetoric appear? Was persuasion a synonym for rhetoric? When we finally agreed on *Legal Communication and Rhetoric* we considered it a compromise. But looking back, it was the right call because the name says very much what we are. Honestly, it's a better name for the field in general. And so we went forth!

Volume eight was also the first volume without a stated theme. We decided that we had enough submissions at that point in a variety of areas that we didn't have to ask for themes.

I was the editor-in-chief through volume sixteen. (Then I came back for volume eighteen and part of nineteen.) Joan stepped down after volume fifteen, and JoAnne became editor-in-chief with me, and that has also been a really great partnership. I've enjoyed working with JoAnne a lot. Having two editors-in-chief has been really valuable and important, because things go wrong in people's lives.

JoAnne Sweeny: I'm trying to recreate my own timeline. I think I just applied to be an associate editor. The first time I applied I was rejected. I applied again, and I got in as an associate editor, and had a very interesting experience my first year. And then I was volun-told by Ruth Anne that I should apply for the EIC position. I questioned whether that was appropriate—to go from the bottom rung to jump like that—and I was told, "Yes, that's fine." And so I became co-EIC with volume fifteen (2018).

Ruth Anne showed me the ropes, and then we did that for two years together, and then I did a year after she transitioned off, and then we volun-told Margaret Hannon into the co-EIC role, in keeping with tradition. That year it was. . . . We were still dealing with Covid, and then I became Academic Dean. I just didn't have the bandwidth, and I felt like

I needed to step back because I wasn't able to give this the time that it deserves. Fortunately, Ruth Anne was able to pitch in, and we decided to see what would happen in a year, and then, when we talked in a year, nothing had changed with my workload. So I did not have a long tenure, unfortunately, because I really enjoyed the work. I very much enjoyed it, and I still read it, I would love to still be involved. It's a lot of fun.

Genevieve Tung: Thank you all so much! Now that we have sketched out a timeline, I want to ask for your perspectives on the work published in the journal. Are there articles that you have found to be particularly influential to the development of the discipline and the profession of legal writing?

Linda Berger: So, you know, I didn't exactly follow the directions. Because I kept finding so many articles I really liked, I came up with some criteria for articles that I decided were models of the habits of mind of the authors that are contributing to building knowledge about legal writing, developing rhetorical knowledge. I'll tell you what those are, and then later, I'll bring up an article or two that fit into some of the categories.

The habits,[6] I think, are:

1. Curiosity. Looking at the material you're teaching and asking yourself, how does this work? Does this work? Why are we doing this? Should we be doing something else?
2. Questioning accepted wisdom. Taking the conventional formats and methods, and asking why not do this instead?
3. Openness. The willingness to consider new ways of being and thinking, but without forgetting about the context.[7]
4. Engagement. Does the author show a sense of investment and involvement in the topic? Are they saying, this is important, and worth studying seriously, and in depth?
5. Engagement again, this time with audiences other than ourselves.
6. Creativity. Using novel approaches to generate ideas and to research and write about them.[8]

6 This list is adapted from *Framework for Success in Postsecondary Writing*, from the Council of Writing Program Administrators & National Council of Teachers of English National Writing Project (available at https://archive.nwp.org/cs/public/download/nwp_file/15188/Framework_For_Success_in_Postsecondary_Writing.pdf?x-r=pcfile_d).

7 An example comes from Kate O'Neill, *But Who Will Teach Legal Reasoning and Synthesis?*, 4 J. ALWD 21 (2007), reflecting on how changes in legal education more generally would affect proposals to merge legal writing and clinical courses.

8 Ruth Anne's *Painting with Print* article models a creative approach to writing a law review article: entertaining and accessible. 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).

7. Metacognition. Reflecting on the author's own thinking and the cultural processes used to structure knowledge.[9]
8. Ambition. Was the article ambitious? Did I learn something new? Either new information or a new way of looking at things?

My first influential article, I think is—I hate to say the word no-brainer—but this has got to be a no-brainer. It's Michael Smith, *The Next Frontier: Exploring the Substance of Legal Writing*.[10]

He puts flesh on the bones of what we had been advocating. He tells us what kinds of articles fit within this notion of the substance of legal writing—what it means to write about the practice of legal writing rather than the teaching of legal writing—and he points out that that kind of scholarship will, first, build knowledge by expanding legal writing doctrine, and second, send the message to the rest of the academy and to practitioners that legal writing has substance, and that the substance is intellectually rich and challenging. This kind of scholarship also allows us to reach beyond ourselves, beyond the pedagogical articles which I love and which I've written, but which are really talking to an internal audience.

To fall within the category of the scholarship the journal would nurture and support, Michael designated three criteria. First, is it about the substance of legal writing? Second, is it based on legal doctrine, empirical research, or interdisciplinary theory? That criterion helps support the argument that this kind of scholarship is intellectually rich and challenging. And then number three, is it helpful and accessible to all *doers* of legal writing? Here, Michael reminds us that legal scholars are doers of legal writing as are practitioners, judges, and law students.

Genevieve Tung: Thank you so much for that opening article, and for the framework. Ruth Anne, can I ask the same question of you?

Ruth Anne Robbins: Michael's piece absolutely sets the stage. So, I have to join Linda's nomination. I also love that my article was selected for that volume, and Michael was my mentor. I was terrified about this new article that was on a topic that nobody had ever liked.[11] I got laughed at whenever I presented on it, and Michael just kept telling me to keep going with it, and now I know why. He mentored *Painting with Print*, I think,

9 Douglas M. Coulson, *Legal Writing and Disciplinary Knowledge-Building: A Comparative Study*, 6 J. ALWD 160 (2009) is a literal example, reporting on his study of how text practices affect disciplinary knowledge building.

10 *See* Smith, *supra* note 3.

11 *See* Ruth Anne Robbins, *supra* note 8.

because he saw it as fitting within his idea of something other than work on pedagogy.

I have so many articles that I want to nominate for different reasons, so this question has been difficult for me—to be honest, I have been debating it since you asked us to sit down for the interview. After volume two, we started receiving submissions—categories—of articles that are really groundbreaking. We've got our metaphor articles, of which Linda's article kicks us off,[12] storytelling articles, rhetorical analysis articles, interdisciplinary articles across a host of areas, and even some empirical studies.

Thinking of the criteria Linda offered, I think that they dovetail with the bibliographies that have been produced so far. From the very beginning, the journal started not only creating knowledge in legal writing, but also collecting the knowledge of legal writing. And I do believe that, as we're trying to build a discipline, the existence of the bibliographies both *prove* the discipline and *further* the discipline.

Michael Smith wrote one,[13] and Kathy Stanchi wrote one[14] which was later updated by Kristen Murray.[15] Chris Rideout wrote one on storytelling and then updated it.[16] Ellie Margolis has written one on visual legal writing.[17] Margaret Hannon wrote one recently.[18] I just think that the fact that we're producing these bibliographies of our own work is important to the discipline and important to the people writing in it.

There are also so many great storytelling articles. I really think applied legal storytelling got a foothold in part because so many were published in *LC&R*. (Also in *Legal Writing* and *The Clinical Law Review*.) But in every volume since volume seven there has been at least one storytelling article.

The other category that I think we've really made a name for ourselves is with the "non-verbals." We've got *The Lawyer's Guide to* Um.[19] But we also have Michael Higdon talking about vocal fry,[20] and we have Karen DaPonte Thornton's article about parsing the visual rhetoric of dress

12 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).

13 Michael R. Smith, *Rhetoric Theory and Legal Writing: An Annotated Bibliography*, 3 J. ALWD 129 (2006).

14 Kathryn Stanchi, *Persuasion: An Annotated Bibliography*, 6 J. ALWD 75 (2009).

15 Kristen E. Murray, *Persuasion: An Updated Bibliography*, 19 Legal Comm. & Rhetoric 205 (2021).

16 J. Christopher Rideout, *Applied Legal Storytelling: A Bibliography*, 12 Legal Comm. & Rhetoric 247 (2015); J. Christopher Rideout, *Applied Legal Storytelling: An Updated Bibliography*, 18 Legal Comm. & Rhetoric 221 (2021).

17 Ellie Margolis, *Visual Legal Writing: A Bibliography*, 18 Legal Comm. & Rhetoric 195 (2021).

18 Margaret Hannon, *Legal Writing Mechanics: A Bibliography*, 19 Legal Comm. & Rhetoric 185 (2022).

19 Barbara K. Gotthelf, *The Lawyer's Guide to* Um, 11 Legal Comm. & Rhetoric 1 (2014).

20 Michael J. Higdon, *Oral Advocacy and Vocal Fry: The Unseemly, Sexist Side of Nonverbal Persuasion*, 13 Legal Comm. & Rhetoric 209 (2016).

codes.[21] I know that all of these have been part of my thinking of what's out there. I'm sure that I'm missing a bunch of articles.

Then we have the articles that are doing comparative studies. I know that I point to Kyle Velte's work. That work opens up a whole new world of ways that we could intersect with more "traditional" legal scholarship.[22] That is a piece that could have been placed anywhere, but she chose to place it in the world of legal writing and storytelling. It is comparing two narratives in the Colorado school-funding cases. It's an education law piece and it's also a narrative piece, and she just chose to see it as a narrative piece. I think that there are other articles across the volumes that do kind of like that. But it jumps out at me as a crossover piece that I really enjoyed.

Genevieve Tung: JoAnne—may I turn to you now?

JoAnne Sweeny: I have to be a little, I don't know, personal or selfish with my choice. One I would suggest is *The Potemkin Temptation*.[23] That was one of the first ones I worked on as EIC. What I really enjoyed about it was that it was unexpected—to take an area that you wouldn't expect to be about rhetoric at all—but it was so hands-on and practical. There are pictures of whiskey labels in the article. There were a lot of visuals, which I thought was very cool, and it was interdisciplinary. It was history, it was, you know, dealing with court cases, but also visual rhetoric, and then it was a really important primer on what whiskey is, and how you make it, etc. So that one I really like, because it's in a middle ground between some of the really practical articles, getting into the minutia of pronouns and things like that, but it also had some, you know, broader concepts in it. I really enjoyed the history lesson, and it was just fun to read.

Ruth Anne Robbins: I've actually recommended that article to non-lawyers, who have recommended it to other non-lawyers. It's such a fun topic.

21 Karen DaPonte Thornton, *Parsing the Visual Rhetoric of Office Dress Codes: A Two-Step Process to Increase Inclusivity and Professionalism in Legal-Workplace Fashion*, 12 Legal Comm. & Rhetoric 173 (2015).

22 Kyle C. Velte, *A Tale of Two Outcomes: Justice Found and Lost for Colorado's Schoolchildren*, 12 Legal Comm. & Rhetoric 115 (2015).

23 Derek H. Kiernan-Johnson, *The Potemkin Temptation or, The Intoxicating Effect of Rhetoric and Narrativity on American Craft Whiskey*, 15 Legal Comm. & Rhetoric 1 (2018).

JoAnne Sweeny: It's the kind of thing I could see a podcast being about.[24]

Another area of articles I like a lot are the ones that talk about cognitive science. Those ones I find really interesting, like Lucy Jewel's article about rhetoric and cognitive science.[25]

Linda Berger: May I talk about a couple other examples that fit into those categories that I proposed before?

Because it exhibits the role of the author's curiosity among other wonderful attributes, I would nominate the Betsy Fajans and Mary Falk article *Hendiadys in the Language of the Law*.[26] I liked it because they very explicitly say, you know, we were sitting around talking about the literary use of hendiadys, and we asked ourselves, hey, how might this apply to the law? So then they did the research, and they wrote this article. I like the fact that it was curiosity about this concept—this literary concept—that led them to write the article. And in doing so they became convinced, basically, that the one leading article on this literary trope was wrong.[27] In fact, they call the article in question "the poster-child for inter-disciplinary misalliance."[28] I think that was an interesting lesson that *I* should take to heart from time to time, because I write about metaphor and analogy and storytelling and other rhetorical things, without really seriously saying to myself, "is there something different about this within the context of the law?" So the article was a good model because their curiosity led them to researching and writing this article, which then led them to make a very informed criticism of the use of this literary device in legal interpretation.

And since I'm on curiosity, I'll just mention another article about questioning received wisdom, Christy DeSanctis's *Narrative Reasoning and Analogy: The Untold Story*.[29] When Christy wrote this, I think some storytelling advocates were arguing that stories were better than logical reasoning. They were more concrete, they were more true, they were more real to life, and therefore they were better. Now, the conventional wisdom about the relationship between storytelling and logic has gone

24 Derek was interviewed on a podcast about this article. *See* Derek Kiernan-Johnson on Potemkin Distilleries, Ipse Dixit, Season 1, Ep. 64 (Dec. 16, 2018), https://shows.acast.com/ipse-dixit/episodes/derek-kiernan-johnson-on-potemkin-distilleries.

25 Lucille A. Jewel, *Old-School Rhetoric and New-School Cognitive Science: The Enduring Power of Logocentric Categories*, 13 Legal Comm. & Rhetoric 39 (2016). This article won the 2018 Teresa Godwin Phelps Award for Scholarship in Legal Communication from the Legal Writing Institute.

26 Elizabeth Fajans & Mary R. Falk, *Hendiadys in the Language of the Law: What Part of "and" Don't You Understand?*, 17 Legal Comm. & Rhetoric 39 (2020).

27 *See* Samuel L. Bray, *"Necessary and Proper" and "Cruel and Unusual": Hendiadys in the Constitution*, 102 Va. L. Rev. 687 (2016).

28 Fajans & Falk, *supra* note 26, at 40.

29 Christy H. DeSanctis, *Narrative Reasoning and Analogy: The Untold Story*, 9 Legal Comm. & Rhetoric 149 (2012).

back and forth. But Christy says that thinking in terms of opposition and dichotomy is wrong, and she illustrates how narrative works alongside and with analogical reasoning. I actually think most people agree with that now, but there was this strand of argument, where, I think, because stories were accused of being emotional and not logical, storytelling advocates were defensively saying, "No, no, no, we're better. We're better than your reliance on so-called logic." And I thought it helped advance our understanding when Christy said, "Let's look at this, and just see how it's all intertwined."

Ruth Anne Robbins: At the time, there was an idea being floated that pathos and logos were both different strands of a double helix of argumentation. And Christy was saying, "No, there's a difference between narrative persuasion versus syllogistic persuasion, and I don't think that's the same thing as saying stories versus logic. . . ."

Linda Berger: I'll just mention one more related to questioning now-conventional wisdom: Teri McMurtry-Chubb's *There Are No Outsiders Here,* rethinking intersectionality.[30] So many of us, including me, discovered intersectionality and thought wow, this explains how to take into consideration the multiple ways in which some individuals are oppressed. But as Teri points out, if the analysis that follows doesn't look at the underlying forces that have created the culture that we live in, the analysis that follows is still based on dichotomy and hierarchy. The Black woman is being evaluated as a Black person against white persons and as a woman against male persons. So, basically, you just get two slices of the same old analysis. She points out different ways of thinking about these issues, and I highly recommend reading her analysis.

And one more! I'm sorry, and then I'll stop. Christine Venter's *Case Against Oral Argument*.[31] She suggests that the questions the judges ask during oral argument often confirm their pre-existing biases, and so maybe we should all rethink whether or not we should ask for oral argument. I like the fact that she did this study, she listened to 100 randomly selected oral arguments, and she analyzed the questioning in great depth, and then came to the conclusion that perhaps oral arguments serve only to confirm rather than change people's minds.

30 Teri A. McMurtry-Chubb, *There Are No Outsiders Here: Rethinking Intersectionality as Hegemonic Discourse in the Age of #MeToo*, 16 Legal Comm. & Rhetoric 1 (2019).

31 Christine M. Venter, *The Case Against Oral Argument: The Effects of Confirmation Bias on the Outcome of Selected Cases in the Seventh Circuit Court of Appeals*, 14 Legal Comm. & Rhetoric 45 (2017).

Ruth Anne Robbins: I love that one, too. I've made my career challenging the conventional wisdom, so that kind of approach always appeals to me. Should we double space? Should we use Times New Roman? Should we ask for oral arguments?

Linda Berger: Look at what we're doing now and say, you know what if we did it otherwise? That question becomes the idea for an article, I think, no matter what the convention is, what if we did it some other way.

Ruth Anne Robbins: I think of Steve Johansen's article as well—*Was Colonel Sanders a Terrorist?*— about the ethical limits of storytelling.[32] There's ongoing and plentiful debate about the ethical limitations in storytelling. Steve disagrees with people who say the existing rules somehow require special ethical limitations. In his article he explored the topic and concludes that there are no different ethical boundaries compared to anything else in the practice of law. There's nothing special and ethically dangerous about storytelling as a framework for the facts in a record. When he walked through the rules, saying, "I'm looking for it, and I don't see it." I do think that he actually challenged himself, I think he expected to find more than he found. Because of the ongoing debate even after his article, he and other scholars have engaged in a thought process about what a model rule might look like.

Linda Berger: I love the Steve Johansen article because it gives you, I think, a pretty good answer to the people who say, "Well, wait a minute. Stories are just emotional. You're just misleading people with stories. You're not really being ethical with that. Why don't you just tell the truth?"

Okay, tell the truth without telling you a story? Tell me how I could make something coherent without telling you a story? And I think Steve made the point, *what's the difference with statistics?*[33] If you lie when you're using statistics, it's the same thing. *Don't lie.* And beyond that, treat your client and the judicial world with some respect.

Ruth Anne Robbins: Those are the same ethical rules that apply when you're making a logical fallacy argument. Look at not the ethics of storytelling, but the ethics of how memory works, and whether the facts that are going into the stories themselves have problems to them. So it's not

32 Steven J. Johansen, *Was Colonel Sanders a Terrorist? An Essay on the Ethical Limits of Applied Legal Storytelling*, 7 J. ALWD 63 (2010).

33 *See id.* at 84 ("Stories, like statistics or other persuasive tools, can be abused. But that potential for abuse does not make storytelling any less legitimate than the truism that 'liars can figure' makes the use of statistical evidence illegitimate.").

about how we string material together in a cause-and-effect narrative way, but about whether the things themselves that we're stringing together have problems associated with them. The ethical boundaries are really about fabrication or fallacious reasoning or unreasonable inferences.

Linda Berger: Or if it's just that we remember things differently. I think that's a really interesting thing. That literary narrative theory differentiates between what happened and the story of what happened. You're always aware that those are two different things. You know we're never going to know what actually happened because there's a lot of versions of what people say happened.

Ruth Anne Robbins: There's also a lot of distortion in what our brains make of something because we give it an outsized importance, so our minds don't remember things exactly. But we remember our impressions of a thing. We might not accurately talk about how big the gun was, or how big the gun wasn't—our memories assign importance to a scene, which plays with our impressions and therefore our sense of proportion of an object. That is, our memories are not necessarily linear, which can lead to what some people think are "ethical issues." There are some people who go further with criticisms, though, and have accused the applied legal storytelling scholars of pushing story even if the facts are fabricated, or that storytelling is somehow "cheating" at persuasion by going beyond the syllogistic. There's been a lot of that kind of debate. At least in the early years of the storytelling scholarship.

Linda Berger: Yes, that all you have to do is just find the facts and follow them along, and then we have the answer, and that's different somehow than arguments that are messy and human and complex.

Ruth Anne Robbins: Well, of course we all agree that they're wrong. We're all storytelling people.

JoAnne Sweeny: Another thing I would like to mention about the storytelling articles that I read in *LC&R*—they have helped me develop my own scholarship in the area and showed me an area of legal scholarship that I didn't know existed. It's something that I've been paying forward ever since and showing it to other people. This work, and particularly the bibliographies, were very helpful to me as a researcher. I want to highlight their value.

Linda Berger: And I think JoAnne also illustrates this in her article on *The Language of* Love v. Beshear, in the civil rights context. She illustrates this point about how the ethics in some cases are much more complicated.[34] It's not just your client, it's future clients. If you're trying to make human rights or civil rights arguments, you need to consider how the story affects future clients as well as your current client, and I think that's really helpful context. I had this vague notion that yes, in civil rights cases people were a little bit more careful about how they picked clients and that sort of thing, but I wasn't aware of all the ramifications of that. So, I learned something new from the article.

Ruth Anne Robbins: This is interesting, because in the same volume you have Jessica Lynn Wherry's work about storytelling in the military.[35]

JoAnne Sweeny: Yeah, there's a relationship to that. It gets back to what you were talking about—story versus truth and whether that's a dichotomy, and it really is, and it really isn't. But also, whose story is being told? I think that shows up in a lot of articles that we've published in *LC&R*. It's the "negative narrative" story. How do we do this work when there are real people involved and people are complex? How do you boil down their lives to something that's "legally relevant"?

As *The Language of* Love v. Beshear article discusses, when you have multiple clients, it starts to become a question of *whose* story is being told, not just what parts of their story get told. And it gets more complicated when you're representing these clients, but *they* represent something else, some bigger issue. And then that article also points out that when the judicial opinions came out, those stories were whittled down even further, and the judges get to pick whose stories they told, and what parts of the stories they told, and it all comes back to persuasion. But as Linda pointed out, there's ethics involved with this, too. When you represent these people, you want to do right by them. But you know, and they know, that they represent something else, too, and that their case is going to have this huge impact. Potentially it gets very complicated, and it's a very tight, difficult line to walk to serve all the interests.

These are the kinds of choices that you make when you're telling a story.

34 Dr. JoAnne Sweeny & Dan Canon, *The Language of* Love v. Beshear*: Telling a Client's Story While Creating a Civil Rights Case Narrative*, 17 Legal Comm. & Rhetoric 129 (2020).

35 Jessica Lynn Wherry, *(Not the) Same Old Story: Invisible Reasons for Rejecting Invisible Wounds*, 17 Legal Comm. & Rhetoric 15 (2020).

Ruth Anne Robbins: But I was just recently looking at volume fifteen, several articles of which I just assigned to my students, and noting how the journal turns that year into what I call the "dark side" of persuasion. The *Potemkin Temptation* is one.[36] Terri LeClercq's *Rhetorical Evil*.[37] Mel Weresh on the power of distraction or redirection.[38] It was just this interesting year on the journal for all the negative stuff.

Genevieve Tung: Even though it wasn't a themed issue.

Ruth Anne Robbins: It was not. In volume sixteen we saw *Negative Narrative* from Helena Whalen-Bridge,[39] and it was all work from the same storytelling conference.

JoAnne Sweeny: Well, that's the other thing. When you're the editor-in-chief you have to write the preface, and you have to find something to connect everything together. So, there's not a theme but we have to really think about how do we tell the story of this volume, with all of these articles that came from a general call for papers? And how do we connect them all?

It's kind of a fun little exercise, actually, especially when it's towards the end of the process, when you have read all of them repeatedly at different stages. And to that, is there a connection between these articles? We have to find one because we have to be able to talk about the volume as a whole.

Ruth Anne Robbins: That is something that worries me about the journal. The pounding of the pavement that we've had to do to get people to pay attention to this journal. Someday we might not succeed if people don't engage with and believe in the discipline.

Linda Berger: So that handily engages one of my remaining categories: What about engagement with audiences other than ourselves? And I know that's only tangentially related to what Ruth Anne is talking about. Because from the very beginning, you know, people were not writing this kind of scholarship. That's why we started the journal, I think, and why

36 Kiernan-Johnson, *supra* note 23.

37 Terri LeClercq, *Rhetorical Evil and the Prison Litigation Reform Act*, 15 Legal Comm. & Rhetoric 47 (2018).

38 Melissa H. Weresh, *Wait, What? Harnessing the Power of Distraction or Redirection in Persuasion*, 15 Legal Comm. & Rhetoric 81 (2018).

39 Helena Whalen-Bridge, *Negative Narrative: Reconsidering Client Portrayals*, 16 Legal Comm. & Rhetoric 151 (2019). This article won the 2019 Teresa Godwin Phelps Award for Scholarship in Legal Communication.

we thought we had to explain it. We thought we had to explain it in such detail because people were not writing this kind of scholarship, and now many people are.

But there were a couple of examples in the journal that I thought showed this kind of engagement with outside audiences, which I think is helpful for its own sake, as well as helpful for getting more authors interested in publishing in the journal to the extent that they may be able to influence audiences outside of legal writing. We've always had the notion that we want to influence practitioners and judges. I thought that Amy Griffin's essay about the law of judicial precedent[40] was directly aimed at the judicial audience. She's challenging this kind of accepted wisdom that what we need is black letter law on all kinds of rules, including the rules of precedent. And she points out that black letter *rules* about the laws of precedent are sort of contrary to the whole idea of precedent, which is contingent and contextual, and evolves over time. That is the kind of article that really reaches out to legal scholars as well, and makes an impact, because she's criticizing, very adeptly, a book that was written by some very influential people and has been cited by, I think, 150 courts at the time that she wrote it. So, I thought that was an excellent example of engaging audiences other than ourselves.

The other one is one Ruth Anne just mentioned, the Terri LeClercq article, which is about evil rhetoric, and I think she's very specifically going after legislators, and saying, "Hey, this is why you shouldn't have done this, and this is what you should do." We don't do a lot of advocacy scholarship, I don't think, in that direct a manner in the journal. At least I can't remember another example quite as *direct* as advocacy specifically addressed to legislators. It is an interesting sub-genre that's connecting with other audiences in a different way, directly trying to say: do this instead of that.

Genevieve Tung: Do you have any other favorite pieces, perhaps that you produced during your tenure, that we would be remiss not to talk about?

Linda Berger: Volume two, the first after the ALWD Board established *J. ALWD*, is my personal favorite. We were all jumping off this high dive, with no knowledge whatsoever of how to swim, or whether there was any water in the pool. I know that Ruth Anne said she was nervous. I think every one of us—with the possible exception of Michael Smith and Dan Hunter—I think the rest of us were kind of going, "*I don't know about this.*

40 Amy J. Griffin, *"If Rules They Can Be Called": An Essay on* The Law of Judicial Precedent, 19 Legal Comm. & Rhetoric 155 (2022) (analyzing Bryan A. Garner et al., The Law of Judicial Precedent (2016)).

Is this really what we're intending to write? Is this really a new genre of scholarship? And is it really going to be helpful and useful?" So, it's my personal favorite, even though it was scary.

Ruth Anne, can you talk about the reception of your piece in volume two?

Ruth Anne Robbins: When volume two came out, it started in the west coast and came east, as I recall it. Wherever it was being mailed from, I was the last to see it in print. I hadn't seen it yet, and it was not online. It was only in print. So before I'd seen it, I received an email saying, "I read your article. I like it. Can I put it on the Seventh Circuit website?" signed Frank Easterbrook—just like that. It was in late October, and it was the day that my kids' elementary school Halloween parade was happening, and I was too busy getting them ready for it—they were at that perfect age and I really love Halloween school parades—so I forwarded it to my husband, with a quick line, "Well, this seems kind of cool. I guess the article is out." And I forwarded it to Linda Berger, saying, "I think I need your permission for this."

Luckily my husband called me and said, "Before you write back, professor, you do remember this is Judge Easterbrook, right? Not Mr. Frank Easterbrook." And he woke me up from my Halloween reverie very fast. Oh my gosh, it would never have occurred to me that a renowned federal appellate judge might read it! I could have ruined my moment. That moment certainly launched my career—it certainly got my dean's and faculty's attention. The judges modified the Seventh Circuit rules and their typography advice, and I believe Colorado courts may have also changed their rules. New Jersey finally just changed twenty years later—although only to [sigh] Times New Roman. I love the New Jersey courts, but they might never stop disappointing me typographically speaking.

Genevieve Tung: Any final thoughts as we come to a close here?

Ruth Anne Robbins: One thing I also noticed is that the volumes got pretty big for a while. Volume nine was a big volume, volume twelve, volume fifteen. But seventeen, eighteen, and nineteen have been smaller. I know that Covid had something to do with it. But I continue to worry. I hope that the dovetailing of more legal writing professors having access to tenure will invite more dialogue in our field rather than deter it. I hope that other legal scholars will encourage professors in legal writing to explore our own field and to award status for doing so. I sometimes wonder aloud if our discipline building might die out with Gen X—I really want to be proven massively incorrect.

JoAnne Sweeny: To what Ruth Anne is saying, I think another piece of it is that perhaps as more legal writing programs go to a tenure track, and it becomes more mainstream to write about rhetoric and communication, we lose some of our authors to flagship law journals and law reviews. I can see why we may be losing authors. Because I know we have lost some.

The thing to think about is that the purpose of the journal is a good purpose. When we're speaking to a practitioner audience we are asking: what is it that practitioners need? What do they want? And you know, I'm just waiting for this whole thing to turn into a podcast. That's what the future is, baby. [Everyone chuckles]

I think that this has a place, even if it changes a little in the format. Maybe there is more practitioner work, or a few more shorter pieces, but I don't see this going away anytime soon. It is something that people hopefully know more about, and that will help on both the supply and the demand side for these articles. Especially with the rise of publicly engaged scholarship counting towards tenure.

Linda Berger: I hope that Ruth Anne's concerns about the future are swept aside by a wave of discipline-building scholarship. And I foresee that wave based on the many curious and creative people who study and teach legal communication and rhetoric.

Genevieve Tung: Thank you all so much for joining this conversation!