

## HOW IS LEGAL WRITING READ AND WRITTEN?

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This question posed by Chris Rideout is as salient today as it was almost thirty years ago. When Chris asked this question in 1991,<sup>1</sup> legal writing scholars were just beginning to realize that we could turn a scholarly eye to questions about how the writing process affected the product of legal writing, and how understanding the legal reader's perspective could inform our approach to legal writing. Scholars of legal writing had so much to explore about the underlying substantive questions—how does the legal writer go about creating various documents? How does the process of legal writing contribute to constructing meaning? Do the approaches taken in other disciplines work just as well with legal writing? What style is effective with judges? Do different techniques work with different readers? What rhetorical techniques are most useful in legal analysis? All of these questions and more were begging to be addressed by the growing legal writing discipline.

While early volumes of the *Legal Writing Journal* focused primarily on questions of pedagogy and legal writing program structure, articles exploring the substance of how legal writing is written and read began to appear. In the years since, scholarship on these topics has blossomed. Looking to fields of study such as composition and rhetoric theory, legal writing scholars including Anne Ruggles Gere,<sup>2</sup> Laurel Oates,<sup>3</sup> and Linda Berger<sup>4</sup> helped us to learn more about the ways we

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<sup>1</sup> J. Christopher Rideout, *Research and Writing about Legal Writing: A Foreword from the Editor*, 1 LEG. WRITING v (1991).

<sup>2</sup> Anne Ruggles Gere, *Narratives of Composition Studies*, 3 LEG. WRITING 51 (1997).

<sup>3</sup> Laurel Currie Oates, *Beyond Communications: Writing as a Means of Learning*, 6 LEG. WRITING 1 (2000).

<sup>4</sup> Linda Berger, *A Reflective Rhetorical Model: The Legal Writing Teacher as Reader and Writer*, 6 LEG. WRITING 57 (2000).

write and read as lawyers and teachers.<sup>5</sup> Other scholars like Kristen Tiscione began to do empirical work, surveying practicing lawyers and judges to learn more about their preferences, which writing techniques worked, and which didn't.<sup>6</sup> Both in the *Legal Writing Journal* and in other publications, legal writing scholars turned their eye towards the question of how we read and how we write, and developed a strong body of scholarship that has enriched the discipline and supported how we teach legal writing in the classroom.

In 1991, we were also at the cusp of the digital revolution that would usher in major changes to the way lawyers read and write. Just as legal writing scholars were beginning to answer the complex questions of how we read and write legal writing, technology added a whole new set of questions. We had to think about how writing on a keyboard using software with increasingly sophisticated word processing capabilities affected the writing process, and whether the ease of composing on-screen changed the writer's relationship to the text.<sup>7</sup> We had to confront the ways digital technologies change the way we read and process information.<sup>8</sup> As email became ubiquitous, we had to think about how the speed of that type of communication affected the writing process, and what new forms legal analysis could take when delivered via email.<sup>9</sup> As technology simplified the process of embedding images into documents and made possible incorporation of video and other interactive elements, whole new areas of scholarly inquiry have opened up.<sup>10</sup> We have started to address these

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<sup>5</sup> Author's note: in mentioning particular scholars and articles in this essay, I intend only to provide a representative sample, and in no way intend to suggest that they are more significant than the many other excellent scholars & articles in the field.

<sup>6</sup> See, e.g., Kristen K. Robbins, *The Inside Scoop: What Federal Judges Really Think About the Way Lawyers Write*, 8 LEG. WRITING 257 (2002).

<sup>7</sup> Kirsten K. Davis, "The Reports of My Death Are Greatly Exaggerated": Reading and Writing Objective Legal Memoranda in A Mobile Computing Age, 92 OR. L. REV. 471 (2013)

<sup>8</sup> Mark Yates, *Text is Still a Noun: Preserving Linear, Text-Based Literacy in an E-Literate World*, 18 LEG. WRITING 119 (2010).

<sup>9</sup> Kristen Konrad Robbins-Tiscione, From Snail Mail to E-Mail: The Traditional Legal Memorandum in the Twenty-First Century, 58 J. LEGAL EDUC. 32, 32-33 (2008).

<sup>10</sup> See, e.g., Ruth Anne Robbins, *Painting with Print: Incorporating Concepts of Typographic and Layout Design into the Text of Legal Documents*, 2 J. Ass'n Legal Writing Directors 109 (2004), Ellie Margolis *Is the Medium the Message? Unleashing the Power of E-communication in the Twenty-First Century*, 12 LEGAL COMMUNICATION & RHETORIC: JALWD 1 (2015).

questions, but we still have so much to learn about how technology impacts how we go about writing legal documents.

The digital revolution has also affected how legal writing is read, opening yet another avenue for scholarly inquiry. How does reading on screens affect the perception of the information being read? How does the size of the screen change the reader's experience of reading? Does including visual components in documents make them easier for the reader? Do legal readers like interactive documents with embedded video and hyperlinks? Scholars working in this area have employed empirical methods, and looked to fields such as cognitive psychology to understand more about how lawyers and judges read.<sup>11</sup> Legal writing scholars have just begun to mine the territory of the ways in which digital technologies have affected both writing and reading, and there is still much to explore.

Looking through back volumes of the *Journal*, one can trace the growing body of scholarship on how legal writing is read and written. Articles by Steve Johansen, Ruth Anne Robbins,<sup>12</sup> and Michael Murray<sup>13</sup> address some of the questions regarding the use of visual images. Anne Sinsheimer and David Herring<sup>14</sup> use empirical methods to study both how lawyers write and read. Andrea McArdle<sup>15</sup> and others have explored the concept of "voice" in legal writing. Legal writing scholars have developed a robust body of scholarship, spanning disciplines and methodologies, publishing in mainstream journals as well as legal-writing-specific publications. Our articles explore multiple aspects of how legal writing is written and read, and our scholarship has evolved as we have moved into the twenty-first century.

The discipline of legal research and writing has come a long way since the *Journal* began and the perception of legal writing professors was that we taught grammar and

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<sup>11</sup> See, e.g., Mary Beth Beazley, *Writing (and Reading) Appellate Briefs in the Digital Age*, 15 J. APP. PRAC. & PROCESS 47 (2014), Michael Murray, *The Ethics of Visual Legal Rhetoric*, 13 LEGAL COMMUNICATION & RHETORIC: JALWD 107 (2016).

<sup>12</sup> Steve Johansen & Ruth Anne Robbins, *Art-iculating the Analysis: Systemizing the Decision to Use Visuals as Legal Reasoning*, 20 LEG. WRITING 57 (2015).

<sup>13</sup> Michael D. Murray, *Visual Rhetoric: Topics of Invention and Arrangements and Tropes of Style*, 21 LEG. WRITING 185 (2016).

<sup>14</sup> Ann Sinsheimer & David J. Herring, *Lawyers at Work: A Study of the Reading, Writing, and Communication Practices of Legal Professionals*, 21 LEG. WRITING 63 (2016).

<sup>15</sup> Andrea McArdle, *Understanding Voice: Writing in a Judicial Context*, 20 LEG. WRITING 189 (2015).

punctuation. We have shown that legal writing is a rich discipline, worthy of scholarly study. We have developed whole bodies of literature on both the pedagogy and the substance of legal writing. Our scholarship spans educational theory, communication and rhetoric, narrative theory, and social science. We have made great strides in understanding how lawyers write and read since Chris Rideout posed this question in 1991. But legal writing is not static. “How is legal writing read and written?” Our understanding continues to evolve along with the means by which writing is produced and consumed. Chris’s question continues to be an important one for legal writing scholars and should inform our work going forward.