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STARTING FROM SCRATCH: EARLY STEPS FOR THE JOURNAL

J. Christopher Rideout*

Having a journal for legal writing scholarship was always part of the plan. At the initial organizing session for the Legal Writing Institute, in Chicago in March of 1985, those of us who began discussing the idea of the Institute envisioned a scholarly journal as part of the endeavor.¹ After a lot of work, it emerged as *Legal Writing: The Journal of the Legal Writing Institute*.

THE VISION

Legal writing was not then a fully-formed or recognized discipline, but a journal—we thought—could help provide it with a foundation for research, inquiry, and scholarly exchange in what we hoped would become an emerging and exciting field. And that field seemed wide open with possibilities.² The trick was getting a scholarly journal off the ground, especially in a field where scholarship was sporadic and those who taught had large teaching loads, not much time for writing, and little or no institutional support.

In the mid-1980's, no journal dedicated solely to legal writing scholarship existed. Individual articles could be found, but were scattered across a wide variety of law reviews and bar publications, not to mention decades. Some of these articles raised issues that an organization like LWI would be poised to address. One example was Marjorie Rombauer's piece from the early 1970's, describing in a principled way the need for reform efforts in how legal writing programs were

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¹ Mary Lawrence, *The Legal Writing Institute—The Beginning: Extraordinary Vision, Extraordinary Accomplishment*, 11 LEG. WRITING 225 (2005).

² See the call to begin this “more fundamental inquiry” into legal writing in the Foreword to the first volume of the journal, in Chris Rideout, *Research and Writing About Legal Writing: A Foreword from the Editor*, 1 LEG. WRITING v (1991).

designed and legal writing was taught.³ And by the 1980's, important changes were occurring in the way in which writing was viewed and taught at the university level, and a few people in legal writing had begun to take note of these developments and their potential for legal writing. For example, Teresa Phelps published an article in 1986 on what was then called the "new rhetoric," offering a fresh way of looking at writing and rhetoric that would have been ideal for a legal writing journal.⁴

To help in soliciting articles for the new journal, the LWI Board of Directors (which the Institute now had!) appointed a committee at its 1988 meeting.⁵ Not quite an editorial board, this group nevertheless knew that it was not only searching for articles, but also—in its choice of articles—setting a tone and standard for the journal. That tone and standard would represent the scholarly face of legal writing to the rest of legal academia, and the committee wrestled with how to garner articles that not only began a scholarly conversation, but did so appropriately. Starting from scratch—for both a journal and, to some extent, a discipline—was going to take some work.

THE ARTICLES

By 1990, five articles were in place for Volume 1 of the journal. The first article essentially presented itself. Joseph Williams, a professor in the English Department at the University of Chicago, had given plenary session addresses at two of the early legal writing conferences held at the University of Puget Sound. By the end of 1988, he was hooked on legal writing, which he saw as an emerging discipline, and he offered to write an article for LWI's journal, to help it get started.

In the mid-1980's, Joe had begun hosting a series of twice-yearly conferences at the University of Chicago on cognitive psychology and learning in the academic disciplines. Some of the sessions inevitably covered writing in the disciplines, and all of them involved learning theory, a topic that had begun to emerge in some of the early LWI

³ Marjorie Dick Rombauer, *First-Year Legal Research and Writing: Then and Now*, 25 J. LEGAL EDUC. 538 (1973).

⁴ Teresa Godwin Phelps, *The New Legal Rhetoric*, 40 SOUTHWESTERN L.J. 1089 (1986).

⁵ Lawrence, *supra* note 1, at 233.

conferences. Given Joe's interest in legal writing, he took a developmental model for the psychology of learning and applied it to the experience of law students as they learned to write for the law: "On the Maturing of Legal Writers: Two Models of Growth and Development."⁶ I still refer my students to it.

Another researcher, James Stratman, had found his way to the early legal writing conferences, which offered him a forum for research that he had started doing at Carnegie-Mellon on the reading protocols of appellate judges. Jim's article, "Teaching Lawyers to Revise for the Real World: A Role for Reader Protocols,"⁷ offered an important contribution, not only because it focused specifically on how judges read and understand briefs, but also because it implicitly nudged us away from teaching platitudes about good legal writing and more toward looking at how real readers respond to the principles of writing that we commonly teach.

George Gopen was also interested in how readers respond to legal writing, but his perspective was less empirical and more grounded in principles from rhetoric and linguistics—two fields that offered promise for further research for our discipline. George's article, "The Professor and the Professionals: Teaching Writing to Lawyers and Judges," showed how some of these principles could be useful for legal writing professionals and, by implication, for law students.⁸ Like Joe Williams, George also saw the potential for legal writing as a discipline, and with his assistant Kary Smout, he compiled a thorough bibliography of books and articles on legal writing that had been published up to the starting point of the journal—a compendium of the research and writing that had gone before.⁹

And finally, we included in that first volume a survey of legal writing programs done by Jill Ramsfield: "Legal Writing

⁶ Joseph M. Williams, *On the Maturing of Legal Writers: Two Models of Growth and Development*, 1 LEGAL WRITING 1 (1991).

⁷ James F. Stratman, *Teaching Lawyers to Revise for the Real World: A Role for Reader Protocols*, 1 LEG. WRITING 35 (1991).

⁸ George D. Gopen, *The Professor and the Professionals: Teaching Writing to Lawyers and Judges*, 1 LEG. WRITING 79 (1991).

⁹ George D. Gopen and Kary D. Smout, *Legal Writing: A Bibliography*, 1 LEG. WRITING 93 (1991).

in the Twenty-First Century: The First Images.”¹⁰ Jill had been working tirelessly on surveying the state of legal writing programs at the end of the 1980’s—including status, salaries, and job security of legal writing professionals—and her compilation and conclusions were extremely important. The journal, for which we hoped wide readership within the legal writing community, seemed a good place to publish her results.¹¹ Jill’s efforts not only gave us a synoptic view of what we were all doing, but also pointed to the important work that remained to be done. LWI and ALWD continue this survey work to the present day.

Volume 1, we thought, offered a good start. But Volume 2 loomed next, articles did not exactly come pouring in, and we were still trying to look for pieces that could help advance a scholarly agenda for both the journal and the discipline. It took a while, but we did find some articles that represented additional directions for legal writing. Terri LeClercq wrote a piece on the doctrine of the last antecedent, demonstrating the role of linguistic analysis in addressing questions of legal interpretation.¹² Michael Frost offered a piece on metaphoric reasoning that was grounded in classical rhetoric, a seemingly important area for legal writing research.¹³ And by then, Jill Ramsfield had an updated version of her survey, which not only provided new information, but also allowed for a comparative look with the first survey.

One topic that had sparked considerable debate within the editorial board was whether to publish pedagogical pieces in the journal. Pedagogy was an important topic for LWI at large, and the conferences offered many presentations on teaching practices, but the question was whether such work fit within the research agenda to which the journal was attempting to hew. In the end, the board decided to include a section in the journal called “Practices and Procedures,” where Volume 2 includes a survey piece by Anne Enquist on critiquing student writing.¹⁴

¹⁰ Jill J. Ramsfield, *Legal Writing in the Twenty-First Century: The First Images*, 1 LEG. WRITING 123 (1991).

¹¹ Remember, the internet did not exist then—at least in a form that was accessible to all.

¹² Terri LeClercq, *Doctrine of the Last Antecedent: The Mystifying Morass of Ambiguous Modifiers*, 2 LEG. WRITING 81 (1996).

¹³ Michael Frost, *Greco-Roman Analysis of Metaphoric Reasoning*, 2 LEG. WRITING 113 (1996).

¹⁴ Anne Enquist, *Critiquing Law Students’ Writing: What the Students Say Is Effective*, 2 LEG. WRITING 145 (1996).

The second volume also included a book review by Craig Hoffman, of a treatise on judicial language (the editorial board had decided to exclude reviews of textbooks).¹⁵

THE PROCESS

I cannot let this short essay end without mentioning the process for publishing the initial volumes of the journal, almost laughably antiquated by comparison with current practices.

The first challenge was communication, in an era before email, conference calls, or chatting—video or otherwise. Our primary way of communicating was by letter, sent through the U.S. Postal Service. Thankfully, we had photocopying (an improvement over mimeograph machines or carbon paper), but when we were discussing manuscripts—either with authors or editorially among ourselves—we sent the photocopied manuscripts to each other by snail mail at each step. And mail was slower then. Telephone conversations were of course quicker, but in those days long-distance calls were quite expensive, and we had to be scrupulous about the number of calls we made. No cell phones, it goes without saying. We could also confer at national conferences, but legal writing conferences or gatherings were less frequent—no regional conferences, for example.

The second challenge was publication. Our early publisher, Darby, was one of the two major publishers for law reviews, but everything had to go back and forth by snail mail to them as well. In those days, no unitary standard for word processing or file formats yet existed. The major contenders for word processing were Word, Word Perfect, and Wordstar; none was compatible with the others. For that reason, Darby requested that we send them files in ASCII format, stripped of formatting. (We sent the files, of course, by snail mail, on floppy discs.) Darby would then add its own coding for the manuscript formatting—italics, footnote superscripts, indentations, margins, etc. Inevitably there were mistakes, which meant several exchanges of snail mail and floppy discs just to get the articles to look like the original manuscript.

Joe Williams, like a number of academics in those days, proudly owned an Apple Macintosh, which was graphics-

¹⁵ Craig Hoffman, *Commenting on The Language of Judges*, 2 LEG. WRITING 213 (1996).

based (unlike computers that ran Microsoft's pre-Windows, text-based software). For his article in Volume 1, Joe took advantage not only of the Macintosh's many fonts, but also of its desktop publishing capabilities, by including graphic illustrations in his article. None of it would transfer to Darby's system. Darby was finally forced to hire a graphic designer to recreate Joe's article and its illustrations off of the paper manuscript. It took months.

Nonetheless, we muddled through. It is wonderful to see the continuing publication of the journal, now posted in digital format on a website after electronic submission. We could hardly have imagined most of it.

I also want to end by thanking a few individuals for their hard work on the initial volumes. Everyone on the editorial board offered thoughtful contributions, but in those days before assistant editors and digital everything, much of the hard work fell in particular to a few individuals: for Volume 1, especially Diana Pratt and Jill Ramsfield, and with Volume 2, the additional contributions of Katy Mercer. And to everyone since then, thanks so much for working to keep the journal alive and robust!