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Individuals and Community, Discipline Building and Disciplinary Values: The First Twenty-five Years of the Legal Writing Institute

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The Legal Writing Institute: Celebrating 25 Years of Teaching & Scholarship

**A Symposium of the
Mercer Law Review
November 6, 2009**

Luncheon Speech

JILL RAMSFIELD: It was our esteemed speaker and awardee, Professor Chris Rideout, who had the original idea to apply for a grant in 1984 and to use that funding to establish two entities: the Legal Writing Institute and the *Journal of the Legal Writing Institute*. Both are thriving, both are an integral part of our profession, and both reflect the nature of this exceptional man.

Chris is, of course, a scholar. That scholarship is what started the Legal Writing Institute and has infused our profession with a sense of quality and depth, something we need individually and collectively. It was his thinking about writing across the curriculum that started our intellectual conversations, and he has continued to be a scholar of high quality. Whenever I get some wonderful idea that I think is so great, I'll talk with Chris and he'll say, "Oh, yes, that was so-and-so in 1974, or that's so-and-so in 1985." That is one of the many reasons we can all appreciate Chris: there is so much that we can continue to learn from

him and from scholars across the disciplines. He personifies quality, reflection, and scholarship.

Another thing that really comes to mind about Chris is how much he appreciates working with students, colleagues, and all of us in this profession. That first conference was a grassroots conference. Chris and I have had many conversations about how it felt to be coming together as a group with a common goal—and Laurel described it so well—this reaching out to each other and realizing you're not alone. I remember being on the boat with Joseph Williams at that first conference. We were sailing out into Puget Sound, and it was cold. The wind was blowing in our ears, we were shivering—and yet we were talking heatedly about writing. That excited atmosphere of working together on common issues has come full circle in our summer writing workshops, where once again Chris creates that grassroots atmosphere of learning by exchanging ideas on how we think, teach, and write.

Chris is a scholar, a grassroots organizer, and an innovator. It's hard to do them all. It took me a while to figure that out. I always thought education was supposed to be innovative, but in fact ours is a reactive profession. Business people innovate, and we try to stop them. That attitude can translate into reactive and overly cautious legal educators. Yet Chris imported writing across the curriculum to law in 1984, and continues to introduce us, through his scholarship, to concepts and scholars from a range of disciplines, including composition theory, linguistics, and anthropology. As an innovator, he has always said that some of the work done in composition theory and in other disciplines does not work in law. He exhorts us, then, to interpret that carefully and deeply—and then to make up our own minds. It's a worthy challenge.

I just want to end this introduction by sharing the feeling that Chris has always engendered in those of us who know him and work with him. That feeling is one of searching at all times, thinking at all times, being welcomed at the intellectual table at all times, and being liberated. We talk about liberatory writing; in fact, he has liberated all of us who work in teaching legal writing. It is certainly fitting that he should receive the first Mary Lawrence Award. Mary is a scholar, innovator, and interdisciplinary whiz. She set for us all the original, high standards of careful teaching, thorough thinking, detailed preparation, and strong political savvy. She always kept her sense of humor and her unwavering diligence and decorum while working earnestly to liberate the minds of those of us who have chosen this profession. We thank her profoundly for that.

Scholar, grassroots organizer, and innovator, we thank you: Chris Rideout.

CHRIS RIDEOUT: Thank you so very much, Jill, for that introduction. There are actually a lot of thanks, and I want to give all of them.

First of all, I want to thank Brittany and Ryan and the members of the Mercer Law Review for generously hosting this symposium. And I also want to thank David and Linda and the other members of the Mercer Law School Legal Writing Department for their generosity in hosting this. And then, of course, Daisy Floyd, dean of the Mercer Law School, for hosting this event. This is a wonderful occasion for all of us in legal writing, and we owe you a lot.

I would also like to thank the Legal Writing Institute and the *Journal of the Legal Writing Institute*; and, specifically, I'd like to thank Kristin and Pam for their work and support in putting this together.

And last, but not least, I would like to thank everyone in this room for being here on this wonderful occasion marking the twenty-fifth anniversary of the Legal Writing Institute. I can't tell you what a deep honor it is for me to be standing here and what a warm pleasure it is to be doing so with all of you.

The title of my remarks today is "Individuals and Community, Discipline Building and Disciplinary Values: The First Twenty-five Years of the Legal Writing Institute." I know it's a mouthful, but because it forms a kind of outline of what I want to talk about, it has a colon in there. I hope the Law Review approves. The body is in three parts, so it follows the rule of threes.

The first and last parts of the title aren't too difficult, nor is what I have to say about them. Individuals and community lie at the beginning of the first twenty-five years of the Legal Writing Institute and at the end. It shouldn't be very difficult to make the connection between those two parts, especially for those of you sitting here today. In the past twenty-five years, those of you who teach and write in the discipline of legal writing have seen a unique and remarkable profession continue to grow, one that has not only guided us and sustained us professionally, but that has been a source of outstanding colleagues and good friends. This community of legal writing professionals has been as strong, as capable, and as creative as the individuals who belong to it. And because these individuals, you and your legal writing colleagues, are dedicated, talented, and generous people, this has been a professional community that has thrived.

Most of the people in this room are on a first-name basis with everyone else in the room. Almost everyone in this room has received professional advice, guidance, or mentoring from someone else in this room, either directly through personal contact or indirectly through the contributions that we have all made to our discipline in our papers, articles, books, and teaching materials. Everyone in this room has given

something professionally to his or her colleagues. If a community is only as strong and rich as the individuals who compose it, the community of legal writing has been, and is, a strong and rich community indeed. I'm sure you feel as I do that it has been both a great pleasure and a privilege to spend my professional life in this community.

Although the legal writing community is fortunate to have been sustained by so many worthwhile individuals, I have to note that from the very beginning some of these individuals have been exemplary, and one of these is Mary Lawrence, whom we are also here today to honor. Mary has been exemplary from the very earliest days of the formation of the Legal Writing Institute. I know it because I was there, along with Laurel Oates, in 1984, when Mary contacted us after learning about our first conference. Mary generously shared her ideas and offered her help. Twenty-five years later, Mary continues to guide us, instruct us, cajole us, and delight us. She is a model for all of us.

Mary, I have to thank you for today because in preparing these remarks, I wasn't sure where to begin, and then the obvious occurred. I should start with you, and my opening theme of individuals and community. So, I have to thank you yet again because, in addition to acting for me in the roles of colleague, mentor, and friend, you have also been a valuable heuristic device. (I bet you didn't see that one coming.)

As important as the contributions of all the many talented individuals have been to our professional legal writing community, and after twenty-five years there are too many people to name or acknowledge, I think the discipline of legal writing also embodies something larger and more constitutive, and that is what I want to explore with the middle term of my title: *discipline building and disciplinary values*. If I'm successful with this, I hope to describe something else that we are doing that is also important and that moves us in the direction of our connection to the larger legal profession and, perhaps, our contribution to that profession.

If you have listened carefully so far, I have referred several times to legal writing not only as a professional community, but also as a discipline. So the question for my talk today is this: What is it that we have been doing for the last twenty-five years that constitutes us as a discipline? Or, put another way, in what ways have we been building a discipline and what characterizes those efforts? Finally—and where I hope to go with this talk—what are some of the values of this discipline of legal writing?

Certainly there is more than one way to answer these questions. One way is to simply say that for the last twenty-five years, we have been very busy, because we have. If you look at the program for today's Symposium, you get an overview of some of the important things that

we've been doing for the last twenty-five years in teaching, in program design, and in scholarship. Those are all very important things.

But I think we've also been doing something else. We have been building our discipline, not only as a professional community, but also as a discourse community—one with its own situated practices, practices that we have developed and that, in turn, embody our disciplinary knowledge and our disciplinary values. These practices are “situated” in that they are situated within the discourse community that forms our discipline; and, in turn, they are informed by some of the underlying features of our discipline, including the values of our discipline of legal writing. What I hope to do today is to identify a few of those disciplinary values. That is where I am headed—to our disciplinary values—but by way of some recent work on disciplinarity, professional discourse communities, and genre analysis. Please try to bear with me; it's a little abstract.

My guide for this inquiry is a work by Lisa Ede, from Oregon State, who also spoke at our 1988 conference. Lisa has a recent book out called *Situating Composition*, in which she starts by asking a question similar to mine.¹ Lisa's question, at the beginning of her book on composition studies, is “What are we talking about when we talk about composition?”² So my question is “What are we talking about when we talk about legal writing?” (I mean the discipline of legal writing, not, of course, what lawyers do in law practice.) In pursuing the answer to her question, Lisa somewhat inevitably looks to studies of academic disciplines and what she calls their “disciplinarity.”³ Here's what Lisa notes in her book: as academics, “[s]ocially and conceptually, we are disciplined by our disciplines.”⁴ That is, our disciplines and their practices constitute who we are, academically and professionally. Then she lists four features of these disciplines.⁵

First, academic disciplines help us produce our world. They specify the objects we can study. She mentions, among other things, genres,⁶ which are certainly something we study and teach, and the discipline allows us to examine the relations that obtain among those objects of study. Call this first feature of disciplines “disciplinarity.”

1. LISA EDE, *SITUATING COMPOSITION: COMPOSITION STUDIES AND THE POLITICS OF LOCATION* (2004).

2. *Id.* at 5.

3. *See id.* at 19.

4. *Id.* at 161.

5. Here I am paraphrasing Ede, who in turn is quoting from *KNOWLEDGES: HISTORICAL AND CRITICAL STUDIES IN DISCIPLINARITY* vii–viii (Ellen Messler-Davidow, David Shumay & David Sylvan, eds.) (2002).

6. *See EDE, supra* note 1, at 199.

That's what disciplinarity, which I have mentioned several times in this talk, is. Our disciplinarity produces the professional world that we know as legal writing.

The second feature of disciplines is that they produce practitioners. Here I'm going to read from her book: "[They] produce practitioners, orthodox and heterodox, specialist and generalist, theoretical and experimental. They beget the tweedy dons and trendy young turks, plodders and paradigm-smashers, crackpots and classicists, who populate the academic bestiary."⁷ Call this second feature "practitioners." In legal writing, that is all of us.

For the third feature, she says, "disciplines produce economies of value."⁸ She means that disciplines produce things. She observes that disciplines manufacture discourse,⁹ and she's right: conference papers, articles, monographs, books, and lots of good talk, like the talk we're having at this Symposium today. Disciplines also produce jobs, chairs, lectureships, and chairs of professional organizations. They create funding, research grants, scholarships, and salaries. So, call the third feature of disciplines "economies of value." We certainly produce these things in legal writing, this somewhat tangible stuff that results from our labor. (Note that "economies of value" is not the same thing as "values," the endpoint of my talk today.)

And finally, the fourth feature of disciplines: they produce the idea of progress.¹⁰ They do this in lots of ways. They proliferate objects to study, provide explanations, and devise notions about things that command assent from the other members of their discipline. Call this feature of academic disciplines "progress." Does legal writing partake in the idea of academic progress? Stay tuned.

Of these four features—disciplinarity, practitioners, economies of value, and progress—the one I want to start with is also the most abstract and invisible, and that's disciplinarity. There is a body of literature out there about the relationship between disciplinarity and disciplines. Much of that literature comes from English studies, partly because English departments, starting around the early nineties, had an identity crisis. They weren't sure who they were any longer. A great milestone, but also a marker for their identity crisis, was the fact that the Modern Language Association (MLA) started allowing people who taught composition and rhetoric to give talks at MLA conferences. There had previously been a long-standing split in English departments

7. *Id.* at 161.

8. *Id.*

9. *Id.*

10. *See id.*

between people who teach writing and people who teach literature, even though they've usually both been housed in the same department—almost always, an English department. If that split—which had previously protected departmental boundaries—was beginning to unravel, then what was an English department any more?

Another thing that caused a kind of identity crisis for some in English studies was writing-across-the-curriculum programs. A lot of schools think those are a good idea these days but have difficulty settling the question of who “owns” the writing-across-the-curriculum program. Is it the composition people who own the writing-across-the-curriculum program? Or is it the English department at large? Or, as happens at some universities, what about when the writing-across-the-curriculum program is taken out of the English department and put into a writing center, or maybe someplace else, maybe under the purview of a dean's office? Would that program still be a part of English studies?

So there has been some recent uncertainty in English studies about what English studies are. One way out of the uncertainty has been to contemplate how English studies form a discourse community. Thus, the notion of discourse communities has become an important piece of the disciplinarity of English studies. If you were around in the eighties, you know that *discourse communities*, a term that was borrowed partly from linguistics, is a bit of a nebulous concept. So English studies began looking for a way of grounding the concept of discourse communities. That way was through something called “genre analysis,” which came from discourse linguistics. (I know I am going fast here over some complicated material.)

One of the things that defines an academic discourse community is its genres. The next question, then, is what is meant by *genre*? That might seem obvious. Genres—tragic and comic, lyric and epic—go back before Aristotle. But the people looking at genres in the 1990s were trying to look beyond the written, textual forms of genre to the practices that create genres—the underlying language practices. As soon as you start looking at genres in terms of their being a language practice, then all of the things that are embedded in the language practices are also embedded both in the genres and in the community that uses those genres.

This brings me back to us in legal writing. In the field of legal writing, we operate in a discourse community, and we deal with genres. We're somewhat interesting in that we both have our own genres and also teach genres. I think that from both sides, from that of our own genres—our papers, articles, and books—and from the other side, the genres that we teach—trial briefs, appellate briefs, drafted wills and contracts, and office memos—there are elements embedded in our

language practices that we take into our discipline. One of the most important of these elements is an embedded epistemology—our way of knowing and understanding the world. Embedded within the discipline of legal writing is a specific epistemology—one related to the larger epistemology of the law, and along with it, an accompanying ideology. There is a very good book on this by a researcher named Elizabeth Mertz called *The Language of Law School*, in which she talks about the epistemologies and ideologies embedded in the language practices of law school.¹¹ I only have time today to make reference to the book. (Those of you here from the Law Review should wait until you get out of law school before you read it because you might be quite upset if you look at it while you are still in school.)

A third embedded element is values, and that's what I ultimately want to reach today—the values that are embedded in the language practices that constitute the discipline of legal writing. I am leapfrogging over embedded epistemologies and ideologies and headed to the values that are embedded in our disciplinarity and our disciplinary practices. So, after some abstraction, this talk will become concrete again (I hope). There are numerous disciplinary practices in legal writing, all with accompanying values embedded in them. Here I offer two quick examples of these disciplinary practices and their embedded values.

The first practice has to do with the writing of issue statements, whether for an office memorandum or a brief. I mention this because there has been discussion on the legal writing listserv recently on the question of whether multiple-sentence issue statements are allowable or whether issue statements should be limited to one sentence.

My personal memory of this question and other questions about issue statements goes back much farther for me—to the early 1980s—where initially, at least in my teaching, it seemed that the form of an issue statement was a given. An issue statement always started with *whether*. The burning question was, “Do you put a question mark after it—because, on the one hand, it's a question, even though, on the other hand, it's a sentence fragment?” Do you dare to dignify a sentence fragment with end punctuation? On the third hand, the form of an issue statement was a convention, a practice—it was what we did. But uncertainty existed about this small part of the practice—about the question mark—so this became a burning question.

A year or two later, I was sitting in a classroom with Laurel and Jill, and we were conducting our annual August instructor training. We started talking about how to teach issue statements, and in doing so, we

11. ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO 'THINK LIKE A LAWYER'* (2007).

started talking about the idea of an “under-does-when” paradigm. This seemed like a way of teaching students how not only to organize an issue statement, but also to make sure the key elements were included. So we all started teaching issue statements using the “under-does-when” paradigm.

Because legal writing was still highly conventionalized, however, we were still tied to one-sentence issue statements. The “under-does-when” paradigm did not challenge the one-sentence convention. But inevitably the next question arose: “Are multiple-sentence issue statements allowable?” I think that around this time, Bryan Garner weighed in, during the 1990s, with his idea of deep issues, challenging the convention of one-sentence issue statements. And just this fall, in *JALWD: Journal of the Association of Legal Writing Directors*, Judith Fischer came out with some guidelines for issue statements that raise again these very questions about the convention.¹²

So, if I have it right, this long-standing conversation about issue statements represents one of our disciplinary practices. What are the values that I think are embedded in it?

A first value I detect is that we are professionally progressive. We are looking for ways to improve the drafting of issue statements. And a second value is that we are pedagogically innovative. We are looking for better ways to teach the drafting of issue statements. So, quickly, the two values that I pull out from this disciplinary practice are that we are professionally progressive and pedagogically innovative.

The second disciplinary practice that I want to mention, a fairly recent one for the Legal Writing Institute, is the movement within the Institute to explore applied legal storytelling. I think most of you know the story of applied legal storytelling through the story Ruth Anne Robbins tells. Ruth Anne, Steve Johansen, and Brian Foley were at a conference in 2005 at the University of Gloucester. A question arose during one of the panels: What is the nature of narratives and their persuasiveness in the law?

Responding to that question has led so far to two conferences on applied legal storytelling—the first one in London in 2007,¹³ and the second one in Portland in 2009.¹⁴ It has led to one symposium volume

12. Judith Fischer, *Got Issues? An Empirical Study about Framing Them*, 6 J. ALWD 1 (2009).

13. The conference was held at the City Law School in London, United Kingdom, from July 18–20, 2007, and was entitled *Once Upon a Legal Time: Developing the Skills of Storytelling in Law*.

14. The conference was held at the Lewis & Clark Law School, Portland, Oregon, from July 22–24, 2009, and was entitled *Applied Legal Storytelling Conference—Chapter Two*:

of *Legal Writing: The Journal of the Legal Writing Institute*,¹⁵ and I believe there are two more symposium volumes on the way, one from *Legal Writing* and one from *JALWD*.

I pulled out the conference brochure from last summer's Applied Legal Storytelling conference in Portland and skimmed it quickly for the kinds of papers that were written.¹⁶ They fall into several different categories. Some of the papers were theoretical. We started out the conference with a talk on *The Science of Storytelling*.¹⁷ Some were empirical. We listened to another talk, on *An Empirical Study of Storytelling in Appellate Brief Writing*.¹⁸ Some of the papers on storytelling were, in part, a matter of storytelling itself. For example, one was called *Post-Disaster Narrative and Litigation: Reflections on Storytelling and Social Justice from the Gulf Coast*.¹⁹ Some were practice-based. For example, *Lawyer as Storyteller: The Role of Empathy and Compassion in Telling Effective Client Stories*.²⁰ And some of them I would say were explicitly pedagogical: for example, *Telling the Client's Story Effectively: A Model for Direct Examination Preparation for Law Clinic Students*.²¹

So, I just offered applied storytelling as the second example of a disciplinary practice within our community of legal writing. Now I'll try to pull some values out of it. First of all, we are, again, professionally progressive. One of the papers that was read at the 2007 London conference, on exceptions to the hearsay rule,²² directly challenges an

Once Upon A Legal Story.

15. The Legal Writing Institute published a symposium issue on applied storytelling in volume 14 of the *Journal of the Legal Writing Institute* (2008).

16. For a complete list of the articles from the Legal Writing Institute conference at Lewis & Clark Law School, see <http://lawlib.lclark.edu/podcast/?format=print&p=1712> (last accessed Mar. 24, 2010).

17. Ruth Anne Robbins & Steve Johansen, *The Science of Storytelling*, Speech at the Applied Legal Storytelling Conference (July 23, 2009).

18. Kenneth Chestek, *Argumentation & Narration=Persuasion (An Empirical Study of Storytelling in Appellate Brief Writing)*, Speech at the Applied Legal Storytelling Conference (July 23, 2009).

19. Davida Finger, *Post-Disaster Narrative and Litigation: Reflections on Storytelling and Social Justice from the Gulf Coast*, Speech at the Applied Legal Storytelling Conference (July 23, 2009).

20. Kristin Gerdy, *Lawyer as Storyteller: The Role of Empathy and Compassion in Telling Effective Client Stories*, Speech at the Applied Legal Storytelling Conference (July 24, 2009).

21. Angela McCaffrey, *Telling the Client's Story Effectively: A Model for Direct Examination Preparation for Law Clinic Students*, Speech at the Applied Legal Storytelling Conference (July 24, 2009).

22. Brian J. Foley, *Applied Legal Storytelling, Politics, and Factual Realism*, 14 J. LEGAL WRITING INST. 17, 23 & n.28 (2008) (citing Marianne Wesson, *The Hillmon Case*, Speech at the Once Upon a Legal Time Conference (July 19, 2007)).

earlier ruling of the U.S. Supreme Court, and it may be that the Court rethinks its ruling in part as a result of that paper.

The second value, a repeat again, is that we are pedagogically innovative. In many of these presentations, we are looking for ways to explain how to use storytelling in law school teaching or to tell our students how to use storytelling in the practice of law.

I have two more values here. The third value is that we are interpretive and hermeneutic. Our papers and articles analyze, or offer frameworks for analyzing and understanding, the ways in which narratives and storytelling operate in the law. And finally, we are political and reformist. That's the fourth value. Brian Foley notes this in his article on the first applied legal storytelling conference.²³ Although the conference was not designed to be even covertly political, implicitly it was.

So I have chosen two recent examples of disciplinary practices in legal writing and then tried to identify, embedded within them, some of our disciplinary values. I came up with four: professionally progressive, pedagogically innovative, at times interpretive and hermeneutic, and at times political and reformist. In looking at our many other disciplinary practices, I'm sure you could identify other values, and no doubt you will.

But here is what I think is important about this. In our work in legal writing, along with creating a professional community, we are also creating a discipline—one that has its own practices and that has its own embedded epistemologies, ideologies, and values. I am calling attention to the third of these, our values—not only because they are an important part of our disciplinarity, but also because they contribute to the last of Lisa Ede's four features of a discipline, its progress.²⁴ I think we should celebrate this. Our underlying values constitute us as a discipline—of legal writing—one that we can fairly call progressive.

So these four values embedded within our discipline (as well as others) should allow us to be justly proud of the work that we have been doing for the last twenty-five years. On the strength of that, we should look forward to the work that lies before us for the next twenty-five years—not only to the practices in which we will be engaged but to the values those practices will embody. In that way, as in other ways, we have every reason to be proud to belong to this professional community and to this discipline that we call legal writing. I know that I am. Thank you very much for allowing me the honor of speaking to you about this today.

23. *Id.*

24. See EDE, *supra* note 1, at 161.

KRISTIN GERDY: The Legal Writing Institute's *Journal* is very proud to announce today the creation of the Mary S. Lawrence Award for Excellence in Legal Scholarship. Mary became the director of the University of Oregon's first legal writing program in 1978 and served for twenty-two years in that capacity. She technically retired in 2000, but I'm not sure that really works since she is still one of the most vibrantly involved people that I know. I have been honored to have Mary serve as a senior editor on our editorial board for the last two years. I have been overwhelmed by her insight, her mentoring, and everything that she has done for us. So, we are very proud to announce this award. I would like Mary to come up and be recognized.

In the *Journal* volume that will contain the proceedings of this Symposium from the Legal Writing Institute side, we have a series of tributes that have been written about Mary by people who have known her over the years and we've been happy to memorialize her with that. I'd like to bring Mary and Ruth Anne Robbins, the president of the Legal Writing Institute, up to the front.

PAMELA LYSAGHT: We have this award that we've named after Mary, so we should bestow it upon the person who we think is very appropriate, and Mary believes this as well. The first recipient of the Mary Lawrence Award is Chris Rideout.

Chris is a wonderful scholar who personifies many of the things that this award symbolizes. I have benefitted from Chris's scholarship, and I have also benefitted from his work in the writer's workshops he has facilitated. I've also had the privilege of editing his work, including his most recent, "Voice, Self, and Persona in Legal Writing," in Volume 15 of the *Journal of the Legal Writing Institute*.²⁵ It is always a pleasure to edit the work of someone who produces such thorough scholarship. We are very proud to bestow this award on Chris.

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