

From the Editor

In February 2022, I got a call from the indefatigable Mark Cooney that changed my life: the Scribes Board had selected me to serve as the fourth editor of the *Scribes Journal*. I've been immersed in the world of legal writing for more than 15 years, and my work in this field has defined my academic career and led to opportunities, including this one, that I could not possibly have imagined. To say that I am honored and thrilled to take on this role would be an understatement.

One reason that I love the study of legal writing is its dynamism — there is always something new. The latest innovation in legal writing, and in law practice generally, is the use of artificial intelligence. For years, lawyers have relied on computer programs, like Ross Guberman's BriefCatch, to help them improve their legal writing. But the use of language-model-based chatbots like ChatGPT to write motions and briefs, rather than simply improve what's already on the page, is a new development, and one that lawyers should be cautious about.

At least in its current form, the publicly available AI isn't quite ready for prime time in legal writing. We've seen horror stories of lawyers' being sanctioned when their AI-generated briefs went astray. In the most infamous case to date, a New York lawyer used ChatGPT to generate a response to a motion to dismiss, which the lawyer filed without checking the validity of the citations.¹ It turns out that those citations were all made up — not only did the cases not say what the lawyer said they did, but they didn't exist at all. As a legal-ethics expert noted, one of the major problems with AI isn't the programs themselves, but the users: "the vast majority of people who are playing with [AI programs]

¹ Benjamin Weiser & Nate Schweber, *The ChatGPT Lawyer Explains Himself*, New York Times, June 8, 2023, <https://www.nytimes.com/2023/06/08/nyregion/lawyer-chatgpt-sanctions.html>.

and using them don't really understand what they are and how they work, and in particular, what their limitations are."²

As lawyers, though, we must begin to grasp how these programs work because AI is here to stay. Biglaw firms have successfully been using AI to speed up the due-diligence period in M&A deals for several years,³ and over the last few months, firms including Dentons have announced that they will use proprietary AI programs to assist in conducting legal research, writing legal content, and analyzing legal arguments.⁴ We are just starting to think about the implications of AI in legal writing, and I look forward to robust discussions in the coming years about harnessing the power of AI to improve the lawyering process in ways that evince our high ethical standards and are consistent with our duties to clients.

AI is new, but sometimes what's old becomes new again. Starting with this volume, 21, we're bringing back the "How I Write" series, which began in the early days of the *Journal*. The "How I Write" essays, short musings from practitioners, judges, and academics, are intended to inspire readers and get them thinking about their own writing processes. I think you'll greatly enjoy the pieces from Dean Erwin Chemerinsky of UC Berkeley School of Law, novelist and law professor Lance McMillian, and appellate practitioners Ruthanne Deutsch and Hyland Hunt.

This volume also includes one of the most fascinating studies I've seen recently. In his article *Judging Readability*, Mike Madden takes an empirical look at the readability of judicial opinions from

² *Id.*

³ Sindhu Sudar, *As Big Law Looks to Tech to Help Draft Legal Briefs and Log Billing Hours, Top Firms like Orrick and Shearman & Sterling Are Using AI to Fast-Track Work on M&A Deals*, Oct. 20, 2022, <https://www.businessinsider.com/big-law-firms-using-ai-fast-track-ma-deals-work-2022-10>.

⁴ *Dentons to Launch Client Secure Version of ChatGPT*, Aug. 1, 2023, <https://www.dentons.com/en/about-dentons/news-events-and-awards/news/2023/august/dentons-to-launch-client-secure-version-of-chatgpt>.

judges in five countries, including the United States, using new, comprehensive criteria. The results are interesting, to say the least.

The structure of writing — especially legal writing — can be just as important as the content. Ian Lewenstein explains how plain language encompasses not just the terms used but the structure of the writing, and Karin Mika shows us how brain science can and should guide our drafting decisions.

Contract guru Ken Adams, author of *A Manual of Style for Contract Drafting*, demonstrates why the common contract term *material* is ambiguous and provides ways to remove that ambiguity.

Then Patrick Barry provides some amazing insights into one of the most difficult things to do: write about ourselves!

Professor Suzanne Rowe shares a behind-the-scenes look at the way that many legal-writing professors are hired, that is, through programs called *visiting assistant professorships*. She explores how these programs generally function and some of the pitfalls that both hiring committees and applicants should consider.

Brian Potts offers us *40 More Writing Hacks for Appellate Attorneys*, and Fred Frost, who has spent his career working in-house for a large corporation, shows how executive summaries are key to effectively communicating key points to busy executives.

For citation nerds, Jennifer Romig introduces the second edition of *The Indigo Book*, an entirely open-source citation manual designed to provide practical, easy-to-understand advice for citation questions. And we close out this volume with a book review by Steve Leben of Irish Judge Max Barrett's *The Art and Craft of Judgment Writing: A Primer for Common Law Judges*, which offers some excellent advice on the importance of plain language in judicial opinions.

It's been an honor and privilege to engage with these authors and our amazing editorial staff throughout the production of Volume 21. I owe special thanks to past editors Mark Cooney and Joe Kimble, who have been invaluable sources of institutional knowledge and practical advice. I'm proud of this volume and

look forward to continuing the *Journal's* mission of providing readers with first-rate scholarship on all things legal writing.

— Megan E. Boyd