



## *The ADA in Legal Writing Courses*

By *Suzanne E. Rowe*  
Section Secretary  
*University of Oregon*

The Americans with Disabilities Act (ADA) was a great step forward in ensuring that students with disabilities have an equal opportunity to succeed, but it challenges law school faculty and administrators. Each time a student requests an accommodation, deans and professors must determine whether an accommoda-

lines for assignments, and often missing one deadline means that a student will be unprepared to meet the next.

On January 4, 2004, at the AALS Annual Meeting in Atlanta, GA, the Section on Legal Writing, Reasoning, and Research sponsored a program targeted at the impact of the ADA on legal writing courses. A room filled with AALS members heard five panelists explain what the ADA requires and discuss how law faculty and administrators can make better judgments about which accommodations are reasonable and fair to all students. The panelists also looked at the LSAT and bar exams to see what accommodations are requested and provided at these crucial points in a student's career.

The five panelists represented a wide spectrum of expertise. Laura F. Rothstein, Dean and Professor at the Louis D. Brandeis School of Law at the University of Louisville, has written extensively in the area of disability law. She brought both a scholarly and administrative perspective. Adding to the administrative view was Richard C. Ludwick, Assistant Dean for Student Affairs at the University of Florida School of Law. Jeanne M. Kincaid, a shareholder in Shur, Sawyer & Nelson of Portland, Maine, represents universities in ADA litigation. (Ms. Kincaid appeared via

video because she had an argument before the First Circuit the following day.)

Providing insight on the students who will soon be in law school classes, Joan Van Tol, corporate counsel for the Law School Admission Council (LSAC), discussed accommodations provided for the LSAT. Then Hulett Hall (Bucky) Askew, Director of the Georgia Of-

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*Laura F. Rothstein, Dean and Professor at Louis D. Brandeis School of Law at the University of Louisville*

tion is required and, if so, what accommodation would be reasonable. Legal writing courses raise special challenges, in part because those courses teach research and writing skills in addition to analytical ability. These courses also use strict dead-

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## *Message from the AALS Section Chair: Tom McDonnell*

*By Thomas M. McDonnell  
Section Chair  
Pace University Law  
School*

The Legal Writing Section presented an excellent panel at the AALS Annual Meeting in Atlanta last January. Entitled “Can We Be Too Accommodating? Probing the Outer Limits of the ADA,” the panel analyzed the Americans with Disabilities Act and its applicability to students taking legal writing classes. Congratulations to Suzanne Rowe, Program Chair, for bringing together a superb

array of speakers on this difficult question.

Legal writing was also featured in the Women in Legal Education Section panel, entitled “Occupational Segregation by Sex in the Legal Academy.” Moderated by Sue Liemer, past president of ALWD, the speakers included Jo Anne Durako, Chair-Elect of the AALS Legal Writing Section, and Richard Neumann, legal writing text author. Jo Anne gave an impassioned and informative presentation; Richard presented dramatic statistics that he had gathered

documenting discrimination against women in the field. The other speakers – Cunyon Gordon, Marjorie Kornhauser, Nancy Levit, and Kathy Stanchi – highlighted other aspects of institutional discrimination.

Whether intentional or institutional, gender bias runs through this area. Women predominate in the legal writing faculty whereas men predominate in the doctrinal faculty at nearly every law school. An increasingly large number of legal writing teachers have gained tenure track positions and have become



*Thomas M. McDonnell, the Chair of the AALS Section on Legal Writing, Reasoning, and Research*

tenured. Yet status issues concerning both the subject and its faculty pervade our field. Unlike doctrinal faculty, the vast majority of legal writing faculty lack the protection of tenure or the status of tenure track. Although long-term contracts provide more security, they rarely add to status. I recall faculty using the phrase, “She’s a capture,” to refer to a talented woman candidate who, usually because of family obligations, did not have the possibility of working for a major law firm; however, she would be willing to teach legal writing, with its relatively flexible schedule, for a modest salary.

Some other stated and unstated rules of the legal academy tend to operate harshly against women. Unlike most successful

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**Editor’s Note:** *In this issue, we continue two important themes from the AALS meeting in Atlanta. The cover story highlights the Section’s panel discussion on the Americans with Disabilities Act, “Can We Be Too Accommodating? Probing the Outer Limits of the ADA.” The Message from the Section Chair continues the theme of the panel presented by the Section on Women in Legal Education, “Occupational Segregation by Sex in the Legal Academy.” This newsletter also includes a special photo gallery from the reception of our sister organizations, the Legal Writing Institute and the Association of Legal Writing Directors. In Atlanta, LWI awarded its Golden Pen to Judge Robert E. Keeton and ALWD/LWI recognized Professor Pamela Lysaght as the recipient of the Thomas F. Blackwell Memorial Award. Photos by Carolyn Wright from the AALS reception are featured.*

*This issue also looks at the importance of conferences to the legal writing community. Susan Hanley Kosse and Terry Seligmann outline the exciting LWI conference planned for Seattle in July. Judy Stinson’s essay extols the benefits of regional conferences and the ease of how to make one happen at your school.*

*In addition to publishing exciting news about individual publications and accomplishments, this issue celebrates the granting of tenure to many of our colleagues in legal writing.*

*– Suzanne Rowe, Section Secretary & Editor of AALS Section Newsletter, Assistant Professor and Director, Legal Research and Writing, University of Oregon*

## Legal Writing Institute Presents Its Fourth Golden Pen Award to Judge Robert E. Keeton

On January 3, 2004, at the AALS meeting in Atlanta, the Legal Writing Institute presented its Fourth Golden Pen Award to Judge Robert E. Keeton, from the federal district of Massachusetts. Judge Keeton was honored for his work in creating the Style Subcommittee that reviews all federal court rules.



*Guest speaker Bryan Garner; LWI President Steve Johansen; Judge Keeton, recipient of LWI's Golden Pen Award; Joe Kimble, Chair of the LWI Outreach Committee.*

Steve Johansen, LWI President, made the presentation. The language on the hand-lettered plaque stated: *In 1991, as chair of the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Judge Keeton had the wisdom to create the Committee's first Style Subcommittee. He recognized that clarity promotes accuracy and that sharpening the drafting style in the federal rules would sharpen their content. His decision has led directly to the greatly improved Rules of Appellate and Criminal Procedure and to the current restyling of the Rules of Civil Procedure.*

Judge Keeton's decision was revolutionary. For the first time, the draft-

ers of the federal rules acknowledged what legal writing teachers have long known: legal drafting is a special discipline that requires special expertise.

Shortly after he created the Style Subcommittee, Judge Keeton wrote, "Federal Rules of Practice and Procedure ought to be . . . easy to read and understand – as clear in content and meaning as it is possible to make them, and as crisp and readable as clarity permits. . . . Having a consistent drafting style in all the rules carries major benefits. Foremost among these, of course, is that clear expression promotes clear thought."

After accepting the Golden Pen Award, Judge Keeton said that in the years since his work on the federal rules, he has continued to think not only about drafting but also about interpreting. He then held up his book, *Guidelines for Drafting, Editing, and In-*

*terpreting*, published by Lexis-Nexis. When he first saw the cover, he noticed with dismay that the serial comma after "Editing" was missing. (That tells you something about his concern for style!) But the publisher generously produced another version. Judge Keeton said that when you know you're right, persistence does sometimes pay off. He expressed his deep gratitude to the Legal Writing Institute for the Golden Pen Award.

Bryan Garner, author of many influential books and articles on legal writing, was a guest speaker for the event. In introduc-

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*Judge Keeton receives congratulations from Judge J. Garvan Murtha. Looking on is Judge Thomas Thrash.*



*Professor Pamela Lysaght of University of Detroit Mercy Law School received the Thomas F. Blackwell Memorial Award. An article highlighting her many contributions to the field appeared in the Fall 2003 Section newsletter.*



*Jo Anne Durako, President of ALWD; Pamela Lysaght, Blackwell Award recipient; and Steve Johansen, President of LWI.*

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ing Garner, Joe Kimble noted that the next edition of *Black's Law Dictionary* (for which Garner is the editor-in-chief) will include entries for the Association of Legal Writing Directors, the *ALWD Citation Manual*, and the Legal Writing Institute.

Garner had the highest praise for Judge Keeton. He said that Judge Keeton was a "madman" in the best sense – a brilliant and inventive legal mind. Garner said that because of Judge Keeton's foresight, the Appellate Rules and Criminal Rules are now in tip-top shape. Garner also complimented the Legal Writing Institute on the two latest volumes of *Legal Writing: The Journal of the Legal Writing Institute*. And he thanked the Institute for inviting him to share in honoring Judge Keeton.



*Applause for the special guests*

The ceremony was the best attended of the Golden Pen events to date. About 60 persons, including two other federal judges, were present to see Judge Keeton receive the award.

*Joe Kimble, Chair of the LWI Outreach Committee, contributed to this article. The Section appreciates the permission of Carolyn Wright to include her photographs from the reception. Additional photos are posted on <http://www.cwrightphoto.com/GoldenPen/gindex.html>*



*Past Section Chairs: Joan Blum and Dan Barnett, both of Boston College*

## *The Pros of Regional Legal Writing Conferences*

*By Judy Stinson  
Arizona State University*

Regional legal writing conferences have increased in popularity in recent years, and with good reason. First, they are relatively easy to host; second, they provide numerous benefits to the participants, their institutions, and the profession.

Although national conferences require a great deal of preparation and time, regional conferences can be put together in just a few months and with a few main coordinators. Each of those coordinators needs a supportive network, but there never seems to be a shortage of helping hands when it comes to the legal writing field. The coordinators can spread the workload broadly, such as by having conference co-chairs, program co-chairs, etc. The regional conferences are easy to host for a number of reasons. They tend to be short (often less than two days), so there is much less to plan. They tend to be free or have a very minimal registration fee, so the attendees do not expect all the frills that come with a major national conference. Significantly, the vendors often donate meals or snacks to make the conference inexpensive for attendees and the host institution. Law schools tend to willingly offer space and materials, including office supplies or copies.

The benefits of a regional conference are enormous. Participants receive fantastic programming, often with nationally recognized speakers. For example, at the recent Fourth Annual Rocky Mountain Regional Legal Writing Conference at the William S. Boyd School of Law (UNLV) in Las Vegas, chaired by Terrill Pollman, attendees had the opportunity



*Judy Stinson*

to hear two remarkable plenary speakers: Terry Phelps and Suzanne Rowe. Other speakers included Terri LeClercq, Becky Cochran, and Amy Sloan, along with a whole host of excellent presenters on a wide variety of topics.

In addition, regional conferences are inexpensive, making it easier to attend. Usually only one or two hotel nights are required, along with either a drive or short plane ride. Because the conferences are short, it is easy to attend even during the busy semester. Regional conferences also provide

the opportunity to present a session on the topic of the presenter's choosing – and the resume line is helpful as well. Finally, the networking opportunities are unmatched, as the relatively small number of people present allows participants to get to know the majority of attendees.

Regional conferences benefit law schools by increasing their exposure through the publicity related to the conference and the opportunity to bring professors to the campus. Regional conferences also provide invaluable opportunities to highlight the reputation of the host school's writing program and personnel.

Perhaps most important, however, is that regional conferences are beneficial to the profession. They create a forum – during sessions, breaks, and dinners, as well as over coffee – where we can share our ideas with colleagues. That exchange of information with other writing faculty benefits the profession in terms of our teaching, our scholarship, and our status.

### *Nominations Sought for Section's Legal Writing Award for 2005*

The AALS Section on Legal Writing, Reasoning, and Research asks for nominations for the Legal Writing Section Award for 2005. The award goes to an individual who has made a significant contribution to the field of legal research and writing.

Past recipients include Laurel Currie Oates, Helene Shapo, Ralph Brill, Mary Lawrence, and Marjorie Rombauer.

*Nominations should be sent by November 1, 2004, to Suzanne Rowe, Secretary, AALS Section on Legal Writing, Reasoning, and Research, University of Oregon School of Law, Eugene, Oregon 97403-1221 or by e-mail to [srowe@law.uoregon.edu](mailto:srowe@law.uoregon.edu).*

## *Message from the Chair, Thomas McDonnell (cont.)*

*(Continued from page 2)*

companies, law schools generally discourage individuals from working their way up within the institution. If one is working as a contract professor or instructor, virtually the only way to advance is to go to another law school. Getting in the “backdoor” is considered anathema. After practicing in Los Angeles, I started in full-time law teaching as a legal writing instructor at the University of Puget Sound in Tacoma, Washington (before it became Seattle University). Because of the possibility of advancement and because of UPS’s then two-year term limit, I moved to California Western in San Diego in the following year. After two years at Cal Western, which effectively imposed a term limit, I moved to University of Florida. And after six years there, I moved to Pace, in New York, which offered a tenure-track position.

I think most women who are married and have children would have a most difficult time moving

their family all around the country as I did to advance their careers. The academy’s perceived need for a national search and its prejudice against hiring from within generally has a discriminatory effect against women in our field. Such policies are demoralizing not only to individual legal writing faculty members, but ultimately to law students and law schools themselves.

Law schools are rich enough and should be aware enough to do better. Such institutional barriers to women need to be fought both on moral and legal grounds.

\* \* \*

We have an exciting panel for the January 2005 meeting in San Francisco. Susan Hanley Kosse from Brandeis is the 2005 Legal Writing Section Program Chair. The theme of the Section panel is: “Developing the Fifth MacCrate Skill – The Art of Storytelling.” The storytelling tradition has much to contribute to law-

yers and law professors in general and to professors of legal writing in particular. It dovetails neatly with classical rhetoric, and it humanizes both law and legal education. Many in the academy have embraced storytelling, and there has been a growing amount of legal scholarship on storytelling and narrative. I think we in legal writing can benefit from tapping into this tradition.

Susan has assembled an interesting panel. They complement each other, giving theoretical as well as practical approaches to incorporating storytelling into our work, both as teachers and scholars. The speakers include two professional storytellers, Linda Gorham, from Chicago, and Joel ben Izzy, from Berkeley, and two law professors, Steven H. Hobbs, from University of Alabama, and Philip N. Meyer, from Vermont Law School.

Looking forward to seeing you at the LWI conference in Seattle.

### ***Nominations for 2005 AALS Section Secretary Sought; Proposals for 2006 AALS LR&W Program Requested***

The Section on Legal Writing, Reasoning, and Research seeks nominations for Secretary for 2005. The Secretary prepares the AALS section newsletter, which is published twice annually. Nominations are due November 1, 2004.

The Section is also requesting proposals for the 2006 AALS Legal Writing Section Program, which will be presented at the AALS Annual Meeting in January 2006 in New Orleans. Generally, the individual chosen as Program Chair is elected in the following year as Secretary of the Section.

Nominations for Secretary and program proposals should be sent to Suzanne Rowe, Secretary, AALS Section on Legal Writing, Reasoning, and Research, University of Oregon School of Law, Eugene, Oregon 97403-1221 or by e-mail to [srowe@law.uoregon.edu](mailto:srowe@law.uoregon.edu).

## National Conference Celebrates Legal Writing Institute

Susan Hanley Kosse  
*Louis D. Brandeis School of Law  
 at the University of Louisville  
 and Terry Seligmann  
 University of Arkansas School  
 of Law (Fayetteville)*

The 2004 Conference (July 21-24) marks the Legal Writing Institute's twentieth anniversary. Seattle University School of Law, this year's Conference location, served as the Institute's host school from its founding until July, 2003. The theme of this twentieth anniversary conference is "Horizons." The presentations offer much for exploration. Teachers, whether new or experienced, program directors, and writing specialists will find an abundant choice of stimulating programs.

### Conference Highlights

**Keynote Address – *Knowing the Place for the First Time: An Essential Look at the Legal Writing Institute.*** George D. Gopen will deliver the Conference's keynote address. He is recognized as one of the country's leading legal writing consultants, having served over 100 clients in a 26-year consulting career.

He is Professor of the Practice of Rhetoric at Duke University, where for 15 years he directed the University Writing Program. He is also Adjunct Professor of English at Duke and Senior Lecturing Fellow in the School of Law, as well as Adjunct Professor of Pharmaceutical Science at Campbell University. He holds both a J.D. and a Ph.D. in English from Harvard. He has taught legal

writing at Duke, at Loyola University of Chicago, at the University of Maryland, and at Harvard Law School.

### Basics Track, including the Workshop on Critiquing Student Work.

The 2004 Conference will include a series of presentations addressing the "basics" of teaching legal reasoning, research, and writing. These sessions will be of particular interest to newer teachers. The sessions may also appeal to experienced teachers seeking fresh ideas on creating research problems, holding student conferences, and other issues that challenge every LRW teacher.

**Workshop on Critiquing Student Work** – Designed by Daniel L. Barnett, the Workshop on Critiquing Student Work will be part of the Basics Track again this year. The workshop will include a session on providing effective written feedback and small group break-out sessions where participants will work together on critiquing student samples. This workshop is especially designed for newer teachers looking for hands-on suggestions from some of the Institute's most experienced teachers. Participants will receive materials to prepare for the workshop before the Conference. *Space is limited and advance registration is required.*

**Focus on Scholarship** – In a plenary session on Saturday morning, Professors Linda Edwards and Terrill Pollman will showcase the quantity and variety of scholarly contributions to the academy made by legal writing professors across the nation. The

focus on scholarship will continue throughout Saturday with presentations including *Scholarship Guides: Journals, Passports, Roadmaps; Recognizing the Value of Producing Scholarship*; a discussion group on *Scholarship: After the Draft is Written*; and a panel, *Getting Published*.

**Moderated Discussion Groups** – Some of the best ideas come from informal discussions with others interested in the subject. The Conference schedule includes moderated discussion groups during Thursday's lunch and at other points in the program on topics including *Teaching Legal Research; Directorless Programs; Parental Leave; Helping Troubled Students; Teaching*

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*Views of Seattle*



## *ALWD Announces Scholarship Grant Recipients for 2004*

The Association of Legal Writing Directors (ALWD) recently announced five recipients of ALWD Scholarship Grants for 2004. These five scholars will research and write articles on a wide range of topics, beginning in the summer of 2004.

Two professors will receive awards of \$5,000. Professor Marilyn Preston, University of Toledo, will examine the need to integrate appellate mediation skills into appellate advocacy programs. Professor Adam Todd, Northern Kentucky University, will explore theories of modernism and postmodernism and their relationship to the work of legal writing professionals.

Three authors will receive \$2,000 incentive scholarship grants for 2004. Awarded for the first time this year, these grants are designed to help LRW professors begin their scholarship projects. Professor Chris McNeil, Capital University, will write on the role of the executive branch adjudicator in post-9/11 government, with a focus on the trend of legislatures ceding judicial functions to the executive branch. Julie Spanbauer, John Marshall Law School,

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## *National Conference Celebrates Legal Writing Institute (cont.)*

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*Disabled Students; Legal Writing Specialists; and Bringing Diversity and Social Justice Issues into the Classroom.*

The registration fee includes entrance to all meetings; all social events; breakfast, lunch and dinner on Thursday; and breakfast and lunch on Friday and Saturday. Friday's luncheon will celebrate the twentieth anniversary of the Institute, honor the individuals who have helped the Institute begin and thrive, and recognize Seattle University School of Law's contributions as host school for the past two decades. The Conference offers several social events: an opening reception on Wednesday night; a dinner cruise for conference participants on Thursday night; and a closing reception on Saturday. Friday evening is free for attendees to explore and enjoy Seattle.

We are very excited about the twentieth anniversary and all the wonderful sessions that will be offered this year. We hope to see each of you in Seattle in July.

### **For more information:**

Go to <http://www.lwionline.org>, where you can see information about the program, hotels, on-campus housing, and Seattle. You will also find the registration form there. You may also contact the co-chairs at:

Professor Susan Hanley Kosse: [susan.kosse@louisville.edu](mailto:susan.kosse@louisville.edu)

Professor Terry Seligmann: [seligman@comp.uark.edu](mailto:seligman@comp.uark.edu)

### **A few reminders:**

- Reserve your hotel rooms EARLY. The blocks of rooms will be released 30 days before the Conference.
- Stay until the very end of the Conference because there are some excellent presentations you won't want to miss on Saturday.
- Send in your Idea Bank problem materials. Information on how to do that is also posted on the web.

### *Calendar of Events*

May 21, 2004

Great Lakes Legal  
Writing Consortium  
East Lansing, MI

June 11, 2004

New England Legal  
Writing Consortium  
Springfield, MA

June 24-26, 2004

Workshop for New Law  
Teachers, Washington, DC

July 21-24, 2004

Legal Writing Institute  
Conference  
Seattle, WA

November 4-6, 2004

Faculty Recruitment  
Conference  
Washington, DC

January 4-8, 2005

AALS Annual Meeting  
San Francisco, CA

## News from Section Members

**Diane Dimond** (Duke) has received the Duke Bar Association's Distinguished Teaching Award. This award is presented each year by the DBA, the student bar association, in recognition of teaching excellence and service and dedication to students, through mentoring, classroom teaching, and extracurricular support of student activities.

**James D. Dimitri** (Indiana University School of Law – Indianapolis) presented his article, *Brutal Choices in Curricular Design – Reusing Writing Assignments*, at the 2003 Central States Legal Writing Conference in St. Louis, Missouri. The article was published in the Fall 2003 edition of *Perspectives – Teaching Legal Research & Writing*, at 12 *Persp.* 27 (2003). In November 2003, Professor Dimitri served on the faculty for a continuing legal education workshop called *Developing Appellate Skills*. The workshop was an interactive learning session designed to give new lawyers experience in appellate brief writing and appellate oral advocacy.

**James Levy** (Nova Southeastern) has been elected to the Executive Committee of the AALS Teaching Section. He will serve as the Treasurer for 2004 and the Secretary for 2005.



Above -Diane Dimond

Right - Michael Murray



**Molly Lien**, former director of the legal writing program at Chicago-Kent College of Law, has accepted the full-time faculty position of Director, Lawyering Skills Program, at John Marshall Law School in Chicago. Professor Lien, who is currently visiting at John Marshall, brings with her many years of directing experience and a national reputation. Professor Lien will replace Maureen Straub Kordesh, who is in her eighth year at John Marshall. Professor Kordesh will remain on the full-time faculty and continue to teach both lawyering skills and property courses.

**Adam Milani** (Mercer) was elected to the American Law Institute (ALI) in December 2003. In addition, Professor Milani's undergraduate alma mater, the University of Notre Dame, has named him the 2004 recipient of the Rev. John J. Cavanaugh, C.S.C. Award. Professor Milani was chosen for his work in the area of disability law and as an advocate for persons with disabilities. He is the co-author of several books, including *The Law of Disability Discrimination* (with Ruth Colker and Bonnie Poitras Tucker) (4th ed., Anderson 2003) and *The Law of Disability Discrimination Handbook: Statutes and Regulatory Guidance* (with Ruth Colker and Bonnie Poitras Tucker) (4th ed., LexisNexis 2003).

**Michael Murray** (Illinois) will publish *Art Law: Cases and Materials* with William S. Hein in 2004. He has signed contracts with Thomson West to produce two books in 2005: *Jurisdiction, Venue and Limitation* and *Civil Rules Practice*. Recently, Professor Murray accepted offers to

publish two articles in Spring 2004: *Jurisdiction Under the Foreign Sovereign Immunities Act for Nazi War Crimes of Plunder and Expropriation* in the N.Y.U. Journal of Legislation and Public Policy, and *Stolen Art and Sovereign Immunity: The Case of Altmann v. Austria* in the Columbia Journal of Law and the Arts.

**Sheila Simon** (Southern Illinois) is publishing both legal scholarship and upbeat blues. First, the Southern Illinois University Law Journal has published her "Survey of Illinois Law: Family Law – The Illinois Domestic Violence Act" at page 719 of Volume 27 (Summer 2003). Second, her band, Loose Gravel, has produced a CD. Professor Simon wrote five of the fifteen songs on the CD, and she performs in most of them as either a singer or instrumentalist (banjo and bassoon). She describes the CD as a "garage band level enterprise," so the CD is unfortunately not available at national outlets. You can get your copy through her.

### Section Officers for the AALS Section on Legal Writing, Reasoning, and Research

Chair: Thomas M. McDonnell  
Pace University School of Law  
Chair-Elect: Jo Anne Durako  
Georgetown University Law Center  
Secretary: Suzanne E. Rowe  
University of Oregon School of Law  
Past Chair: Daniel L. Barnett  
Boston College Law School  
Program Chair: Susan Hanley Kosse  
University of Louisville,  
Louis D. Brandeis School of Law

# Tenure Tipping Point?

By Jo Anne Durako  
Section Chair-Elect

The 2003-04 academic year has been a busy one for promotion and tenure committees with legal writing candidates. This year law faculties have held 9 favorable tenure votes for legal writing teachers – that’s 9 more tenured and clinical tenured writing faculty in just one year!

Our heartiest congratulations go to: Mary Beth Beazley (Ohio State), Kristin Gerdy (Brigham Young), Molly Lien (John Marshall), Laurel Currie Oates (Seattle), Penny Pether (American), Terrill Pollman (University of Nevada at Las Vegas), Suzanne Rabe (Arizona), Robin Wellford Slocum (Chapman), and Nancy Soonpaa (Texas Tech).

Last year’s annual ALWD/LWI national survey of legal writing programs counted 26 tenured

faculty whose primary responsibility is directing legal writing programs, with 22 untenured faculty on tenure track, and 8 faculty with clinical tenure or on clinical tenure track. With this year’s changes, there are now 34 tenured writing directors, 14 on tenure track and 8 either clinical tenured or on clinical tenure track (note: one of the newly tenured teachers was granted clinical tenure).

The tenure trend continued when two law schools made their directors’ positions tenure-track: Syracuse and the newly established University of Charleston law schools will have tenure-track directors for 2004-05. If this trend continues, we will soon reach the 1/3 mark of the 189 legal writing programs offering job security, a voice in faculty governance, and adequate academic freedom protection.

This sea change resulted from years of hard

work. All the newly tenured teachers are known for their extraordinary teaching, important scholarship, and valuable service to their schools and the legal writing community.

The group is as talented and diverse as the legal writing community itself. Some have been teaching for over 20 years. Others have taught in non-legal fields. Some have written an important book. Others have written many important books. Some write exclusively in legal writing. Others write interdisciplinary articles. It is truly a banner year worthy of a special celebration. Congratulations to all!



Kristin Gerdy



Laurel Currie Oates



Penny Pether



Left - Terrill Pollman  
Above - Nancy Soonpaa  
Right - Suzanne Rabe



Robin Wellford Slocum



Above - Mary Beth Beazley  
Right - Molly Lien



| 2003-04 Newly Tenured LRW Directors |
|-------------------------------------|
| Mary Beth Beazley – Ohio State      |
| Kristin Gerdy – Brigham Young       |
| Molly Lien – John Marshall          |
| Laurel Currie Oates – Seattle       |
| Penny Pether – American             |
| Terrill Pollman – UNLV              |
| Suzanne Rabe – Arizona              |
| Robin Wellford Slocum – Chapman     |
| Nancy Soonpaa – Texas Tech          |

## *Upcoming Regional Events*

The **New England Legal Writing Consortium** will be held at Western New England College School of Law in Springfield, Massachusetts on Friday, June 11, 2004. The theme of the meeting is “Incorporating Professionalism and Service into the LRW Classroom and Curriculum.” For more information contact Professor Beth D. Cohen at [bcohen@law.wnec.edu](mailto:bcohen@law.wnec.edu).

The first meeting of the **Great Lakes Legal Writing Consortium** will take place on Friday, May 21, 2004, at Michigan State University-DCL College of Law. This first meeting of the consortium is co-sponsored by MSU-DCL and University of Detroit Mercy School of Law. The program committee has chosen interesting topics for the day, including Strategies for Dealing with Special Needs Students; Collaborative Learning Among Students; and Alternatives to Individual Written Feedback. A number of experienced legal writing professors will lead discussions on these topics. This meeting is open to all legal writing and research professors. For further details and to register, please go to <http://www.law.msu.edu/gllwc>.

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### *The ADA in Legal Writing Courses (cont.)*

*(Continued from page 1)*

office of Bar Admissions, explained the process of determining accommodations on bar exams. (Paul D. Grossman, of the Office of Civil Rights in the Department of Education, was unable to attend due to illness.)

The panelists implicitly agreed that some law students do have learning disabilities or attention deficit problems. Thus, there was no discussion of whether these “hidden disabilities” exist, though some faculty and administrators may not yet understand them or be comfortable with them. Exploring these conditions was beyond the scope of the panel discussion.

The following report is based on the panelists’ comments as they addressed the topic, “Can We Be Too Accommodating? Probing the Outer Limits of the ADA.” Because the AALS no longer records programs at the annual meeting, this report will serve as a summary to those who attended and a brief overview for those who were unable to be in Atlanta. Any inaccuracies should be attributed to this author, not the panelists.

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#### **Law School Accommodations**

Three panelists, Dean Rothstein, Ms. Kincaid, and Dean Ludwick, explained the process for a student to request and receive accommodations under the ADA. They

noted the need for appropriate documentation of a disability, and they discussed scenarios in which schools would not be required to provide the requested accommodations.

The initial burden for requesting accommodations lies, as Dean Rothstein explained, with the student. The student must first prove the existence of a disability, defined by the ADA as “a physical or mental impairment that substantially limits one or more of the major life activities . . . ; a record of such an impairment; or being regarded as having such an impairment.” Reading, for example, has been held to be a major life activity.

It is legal and appropriate for schools to require students to prove their disabilities through documentation. That documentation should be provided by a qualified evaluator (not the family dentist!) and then should be reviewed by an evaluator on campus who has experience with the ADA. Documentation should be recent, but three years should be viewed as a benchmark, not a rigid rule. The student is also responsible for notifying a

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*The following website contains biographies of the panelists, Dean Rothstein’s outline, Ms. Van Tol’s overhead slides, handouts, and a copy of Louisville’s Handbook for Applicants and Students with Disabilities:*  
<http://www.law.uoregon.edu/faculty/srowe/ada/>

## *The ADA in Legal Writing Courses (cont.)*

*(Continued from page 11)*

school of the need for a particular academic adjustment and supporting documentation for that accommodation.

Once a request has been made, the burden shifts to the administration to determine whether the accommodation should be granted. Dean Rothstein explained that, to receive accommodations, disabled students must be otherwise qualified to meet the essential requirements of the course of study. Accommodations provided to disabled students must not lower academic standards or fundamentally alter the program. Accommodations are not required if they would place an undue administrative or financial burden on the school.

All schools should have an established process for determining whether a student is entitled to an accommodation and what accommodations are reasonable. The process may differ from school to school, and each school may have a different philosophy toward granting requests, noted Dean Ludwick. At the extremes, a litigation-adverse school may provide every accommodation requested, while another school may deny most requests. Ms. Kincaid stated that, so long as there is a process for making the decision, courts have deferred to academic decision makers in determining whether accommodations are reasonable. The school must carefully consider each disabled student's particular limitations and analyze whether and how it might accommodate that student in a way that would allow the student to complete the school's program without lowering academic standards or otherwise unduly burdening the institution. Schools that do so should be able to uphold their standards without worrying about judicial second-guessing.

Whether an accommodation would lower academic standards or fundamentally alter the program is one of the difficult questions that must be addressed in the decision-making process. Ms. Kincaid advised that the first step is to determine the essential elements of each course. With

respect to legal writing courses, she suggested essential elements might include analytical ability, research skills, synthesis, organizational skills, persuasiveness, editing, proofreading, and timeliness.

After determining the essential elements of the course, professors must decide whether the requested accommodation would lower standards or fundamentally alter the program. The example Ms. Kincaid used involved a student whose accommodation requests included (1) having someone else break complex ideas into simple elements and (2) providing only an outline rather than a full brief. Such accommodations are not required by the ADA.

***With respect to legal writing courses, essential elements might include analytical ability, research skills, synthesis, organizational skills, persuasiveness, editing, proofreading, and timeliness.***

Dean Rothstein also provided an example of an unreasonable request. In her example, a student claimed to have a learning disability and asked to simply provide notes and have someone else write the paper for him. The professor did not believe that request was reasonable. The dean and professor went through a brief but thorough process of demonstrating

that the relevant officials (those teaching the course) thought that the accommodation would lower academic standards and not meet the essential goals of actually writing a paper.

One frequent request that may be reasonable is for more time to complete assignments. Dean Rothstein noted that some professors are reluctant to give students extra time; she challenged those professors to demonstrate that a goal of the assignment is to test speed. If so, then no student should receive extra time. Although allowing more time is often an appropriate accommodation, she explained that it would never be reasonable for a student to receive unlimited time to complete an assignment. That would never happen in law practice, and it would place undue administrative burdens on the school.

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## *The ADA in Legal Writing Courses (cont.)*

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In addition to considering whether the accommodation would undermine the goals of the program, schools should also consider fairness in the competitive law school environment. Ms. Kincaid pointed out that students are becoming increasingly aggressive in seeking a diagnosis of disability and in requesting accommodations. Faculty and administrators have to ask whether the playing field is tipping too far in favor of the student who claims a disability. As an attorney with visual disabilities, Dean Ludwick emphasized that members of the disabled community favor strict application of the ADA. They want the ADA to do no more than level the playing field for those with true disabilities, enabling them to be evaluated and to succeed on the same basis as all other students.

Some panelists recommended that faculty and administrators also consider whether the accommodation would actually harm the student later in his or her career. Ms. Kincaid stated that if a student is over accommodated in law school, but not on the bar exam or in practice, the student may have been better off learning to perform without the accommodation in law school. Thus, when providing an accommodation, the faculty and administration might also consider giving a disclaimer that accommodations are not guaranteed after law school.

### **The LSAT and Bar Exams**

Decisions about accommodations are made not only during law school, but also when students apply to law school and when they apply to take the bar exam. Joan Van Tol and Bucky Askew described the accommodations made at each of those stages.

With respect to the LSAT, Joan Van Tol explained that the total number of students requesting accommodations on the LSAT continues to rise, though it is still between one and two percent of all test takers. Two categories account for a large majority of the requests for accommodations on the LSAT: students with learning disabilities and students with attention deficit disorders. Other reasons for requesting accommodations include visual and hearing impairments, neurological conditions

(e.g., cerebral palsy), physical conditions (ranging from back injuries to brain tumors), and psychological conditions.

LSAC typically grants about fifty percent of the accommodations requests it receives. Most of the granted accommodations are for more time, varying from a few minutes to four times the regular time allotted per test section. Other accommodations include more rest breaks, alternative test formats (e.g., large print, Braille, or audio), and the use of highlighters or overlays.

LSAC flags the scores of candidates who receive extra time, as those scores are not considered comparable to the scores of candidates working under regular time. Schools may not give different weight to standardized tests given under non-standard conditions, however. Accordingly, Ms. Van Tol recommended that professors review all student admissions files completely, both for candidates who do not receive extra time and for those candidates with flagged scores.

The percentage of accommodations granted nationally to candidates for bar exams is similar to the percentage granted by LSAC. Mr. Askew explained that on the Multi-state Professional Responsibility Exam (MPRE), less than one percent of those taking the exam nationally receive accommodations. Most of these people receive additional time. On the Multi-state Bar Exam (MBE), nationally about one percent of takers receive additional time. Cognitive disabilities (e.g., learning disabilities, ADHD) are the primary reason for accommodations on both exams.

Mr. Askew also outlined the process examiners in Georgia use for determining disabilities and reasonable accommodations; this process is similar to the process in other states. An applicant must provide a petition that lists the applicant's disabilities, evaluators who have assessed or treated the applicant, and schools that have accommodated the applicant. With the petition, the applicant must provide forms from each evaluator that certify the authority of the evaluator, the assessment of disability, and the link between the disability and the recom-

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## *The ADA in Legal Writing Courses (cont.)*

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mended accommodations. The bar examiners also ask schools the applicant attended to outline the accommodations the applicant received.

The Office of Bar Admissions sends the documentation to an outside expert, who provides his own evaluation and recommendation. The bar examiners review the expert's recommendations and offer appropriate accommodations. Because this process is thorough, rarely is an applicant who completes the process on time found not to have a disability or determined not to deserve accommodations. Recently, there have been fewer situations in which law schools provided accommodations that the bar examiners decided were not reasonable.

Mr. Askew concluded that the bar examiners in Georgia are likely not over or under accommodating ADA requests, though he recognized that this will continue to be an issue.

While the panelists provided extensive information and answered many questions, unresolved issues remain. During the question/answer period, for example, audience members asked about pop quizzes, coordination between law schools and disability offices on campus, and the limits of accommodations for students with learning disabilities. The program was part of an important discussion that needs to continue among administrators, faculty, students, practitioners, and advocates for the disabled.

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### *ALWD's Scholarship Grants (cont.)*

(Continued from page 8)

will compare legal writing courses for international students and those for U.S. students in first-year programs, with a focus on the transition process for both groups of students. Kathleen Elliott Vinson, Suffolk, will write on why improving legal writing is a life-long learning process, and why the legal profession needs to share the responsibility to improve legal writing skills.

*Jo Anne Durako, President of ALWD, contributed to this article.*

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