

Legal Writing,
Reasoning,
and Research

***Developing the 5th MacCrate Skill – The Art of Storytelling
2005 AALS Section Program***

*By Susan Hanley Kosse
Section Program Chair
Louis D. Brandeis School of Law
University of Louisville*



Steven Hobbs, Professor at the University of Alabama School of Law.

The heart of persuasive writing and oral argument centers on the ability to create a compelling story about the client or issue. The elements that define a good story – characters, conflicts, and resolution – are also central facets to a convincing legal argument. To explore this issue, the Section will present a program at the Annual Meeting in San Francisco entitled “Developing the 5th MacCrate Skill: The Art of Storytelling.”

Recognizing the importance of storytelling in legal education, law schools have recently explored how best to incorporate development of this skill into the traditional legal education curriculum. For example, NYU Law School committed to this goal by hiring Anna Deavere



Susan Hanley Kosse, Section Program Chair, will moderate the panel discussion in San Francisco.

Smith, a playwright and actress (*West Wing*), to help teach the lawyering program. NYU’s lawyering program teaches students how to think and write critically. According to a *New York Times* article, educators at NYU “believed that traditional legal education focused too narrowly on legal reasoning and analysis of legal texts.” To counter this, NYU created its innovative lawyering program to help teach students “a broader variety of skills.” NYU has brought in not only storytellers but a number of other nonlawyers, including two Harvard psychologists.

NYU is not the only institution that has embraced the notion that lawyers should be good storytellers. Much has been written on this topic and the growing academy-wide interest makes it ripe for our Section to host a session on storytelling and the law.

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***AALS Annual Meeting Highlights
January 5-8, 2005, San Francisco, CA***

- Thursday, January 6
 - 7:00-9:00 p.m. Gala Event
- Friday, January 7
 - 7:00-8:30 a.m. Women in Legal Education Breakfast
 - LWI Board Meeting
 - 10:30 a.m.-12:15 p.m. LWRR Section Program and Business Meeting
 - 7:00 p.m. LWI/ALWD Awards Reception
- Saturday, January 8
 - 7:30-8:30 a.m. ALWD Board Meeting
 - 12:15-1:30 p.m. LWRR Section Luncheon
 - 3:30-5:15 p.m. Program on Canadian research (co-sponsored by LWRR Section)

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Message from the AALS Section Chair: Tom McDonnell

The Legal Writing Institute's Twentieth Anniversary Conference, held in Seattle in July, was notable not only for the smoothness of its organization and the quality of its speakers, but also for the number of participants and of law schools represented. Over 400 law teachers attended from over 135 law schools, including a fair number of elite ones. Congratulations go to Susan Kosse and Terry Seligmann, co-organizers of the Conference; all the presenters; Lori Lamb, who worked with nearly everyone; Seattle University School of Law; and all others who helped put the conference together.

I vividly remember 20 years ago when Chris Rideout, Laurel Oates, and Anne Enquist were considering starting the Institute. Chris so earnestly discussed the need for an organization to bring legal writing faculty together to strengthen teaching and scholarship. Laurel and Anne immediately embraced the idea and lent their considerable talent and energy to the effort. The recent Conference signals how much our field has matured. We have garnered an increasing number of tenure track positions and long term contracts, fairly broad faculty voting rights in many schools, increased credit allocation for our courses, and an increas-

ing number of required and elective courses in legal writing. The amount of scholarship on legal writing has risen by quantum leaps; the number of textbooks in our field is beginning to rival that of constitutional law.

Despite these many successes, the status issues concerning legal writing and its faculty continue to challenge the field. The fact remains that the vast majority of legal writing faculty are in contract positions, not tenure accruing positions¹ and that the status, salary, and perquisites of doctrinal faculty generally far greatly exceed that of legal writing faculty.



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

In addition, the teaching and grading load of legal writing faculty is usually far more burdensome than that of doctrinal faculty even considering publication requirements expected of the latter.² Furthermore, we have yet to achieve parity with clinical faculty.

The difference in status sends a message to students that legal writing is not as important as, for example, torts or contracts. Additionally, many schools assign legal writing fewer credits than any other course or fewer credits in the first year than other courses. Some schools rely heavily on second and third year students to teach legal writing. All such policies and practices likewise reinforce the message that legal writing is a second-class subject.

Editor's Note: *This issue highlights some of the important events that will take place at the AALS Annual Meeting in San Francisco. The cover story introduces the topic of our Section's program on storytelling, organized by Professor Susan Kosse of Louisville. A box on the cover page lists some of the activities and meetings that you won't want to miss. For example, the Legal Writing Institute and the Association of Legal Writing Directors will hold a joint reception to honor recipients of the Golden Pen Award and the Thomas Blackwell Award.*

In addition to our impressive list of accomplishments by Section members, this issue also highlights awards made recently to Dan Barnett, Ralph Brill, Brad Clary, and Sophie Sparrow, recognizing their contributions in teaching, service, or scholarship.

Recognizing the importance of scholarship for our emerging discipline, Ruth Anne Robbins has written an essay about the recent writing workshop that was sponsored by the Legal Writing Institute.

Finally, I am grateful for the contributions of Donna Williamson, LRW Program Assistant at the University of Oregon, in designing and editing this issue of the Section's newsletter.

- Suzanne E. Rowe, Section Secretary & Editor of AALS Section Newsletter, Assistant Professor and Director, Legal Research and Writing, University of Oregon

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LWI Sponsors Writers Workshop

By Ruth Anne Robbins
Rutgers-Camden

The first Legal Writing Institute Writers Workshop took place July 18-20, 2004 at the beautiful Port Ludlow Inn in Port Ludlow, Washington. Thanks to the financial support of LWI, ten legal writing professors had the opportunity to work on their academic writing projects, to obtain feedback from peers, and to improve their scholarly skills overall. The workshop was the brainchild of three experienced legal writing scholars: Louis Sirico (Villanova), Steve Johansen (Lewis & Clark), and Jill Ramsfield (Georgetown). These three professors organized and facilitated the workshop and led small group peer review discussions of the individual works-in-progress.

The ten writers were selected on the basis of a national application process. The selected group included: Cynthia Adams (Indiana-Indianapolis), Jeff Malkan (Buffalo), Tracy McGaugh (South Texas), Debby McGregor (Indiana-Indianapolis), Terrill Pollman (UNLV), Ruth Anne Robbins (Rutgers-Camden), Judy Rosenbaum (Northwestern), Suzanne Rowe (Oregon), Andrew Solomon (South Texas), and Susan Wawrose (Dayton).

I was fortunate to be one of the selected writers. Several weeks before the workshop, the facilitators divided us into three groups and we forwarded a draft of our work to the other people in our small group. The scholarship projects largely related to legal writing doctrine or legal writing pedagogy, although that was not a requirement. At the workshop, each group devoted 90 minutes to each individual scholarship project. The facilitators also led guided discussions for all partici-



Workshop organizers and facilitators Lou Sirico, Steve Johansen, and Jill Ramsfield.

pants about issues related to scholarship such as refining and narrowing the scope of the article, fusing research and argumentation, and dealing with editors and law reviews.

These guided discussions occurred during meals or right afterwards, and thus we did not have much downtime to enjoy the setting. Nevertheless, the Inn and Port Ludlow were spectacular – remote enough to keep us focused on our intensive workshop, yet peaceful and relaxing. Moreover, the facilitators were so encouraging and provided so much feedback that the workshop truly felt like an enjoyable colloquium of scholars. And in addition to going outside for pictures, we did have time to take one short hike during the workshop plus a short moonlight walk to the Inn's totem pole. Port Ludlow is on the Olympic peninsula, about two hours northwest of Seattle.

Perhaps most importantly, each writer left the workshop knowing that at least three other people now know enough about the work-in-progress that the writer can count on these people for ongoing feedback and support. Everyone who participated agreed that the initial workshop experiment was a resounding success, and many of us hope to repeat the experience. LWI has agreed to sponsor future workshops, and some writers have started a scholarship fund (supported by sales of legal writing merchandise) to encourage more professors to participate.



Participants and facilitators in Port Ludlow for the first LWI Writers Workshop.

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After attending this program, participants will have a greater appreciation for what makes a good story and will know how to create and effectively communicate a compelling and engaging story. They will also understand ways to incorporate storytelling into traditional law school classes.

The outstanding panel members include two professors who use narrative in their classes and two storytellers:

Professor Steven Hobbs (Alabama) has written on this subject and uses professional storytellers often in his law classes in addition to being a storyteller himself. Professor Hobbs teaches Professional Responsibility, Family Law, and a series of classes that focus on the development of small businesses.

Philip N. Meyer (Vermont) teaches Criminal Law and directs the Legal Writing Program. He has written extensively in the areas of Law and Narrative, Law and Storytelling, and Law and Popular Culture.

Linda Gorham is a storyteller from Chicago, Illinois. She was the co-chair of the National Storytelling Conference in Chicago in July 2003. She will share with participants the elements of a good story and techniques for telling stories.



Linda Gorham is a storyteller from Chicago, Illinois.



Joel ben Izzy, storyteller and former trial consultant.

Joel ben Izzy has traveled the globe, gathering and telling stories since 1983. His work as a trial consultant began in 1991, leading to workshops and trial consultation with clients including the United States Attorney's Office, the Office of the California Attorney General, and many private law firms.

Mark your calendars now to join us on Friday, January 7, 2005 at 10:30 a.m. for what is sure to be one of the most entertaining sessions of the Annual Meeting.

Selected Bibliography

- Stephen V. Armstrong and Timothy P. Terrell, *Organizing Facts to Tell Stories*, 9 Perspectives 90 (2001).
- Karen W. Arenson, *The Fine Art of Listening*, N.Y. Times 4A (Jan. 13, 2002).
- Roger C. Cramton and Susan P. Koniak, *Rule, Story, and Commitment in the Teaching of Legal Ethics*, 38 William & Mary Law Review 145 (1996).
- Brian J. Foley and Ruth Anne Robbins, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Facts Sections*, 32 Rutgers Law Journal 459 (2001).
- Susan Hanley Kosse, *Buffalo Creek Prevents Legal Writing Class Disaster*, vol. X(2) The Law Teacher 14 (Spring 2003).
- Gerald P. Lopez, *Lay Lawyering*, 32 UCLA Law Review 1 (1984).
- Thomas A. Mauet, *Trial Techniques* 45-47 (Little, Brown & Co. 1996) (storytelling in opening statements).
- James W. McElhaney, *Hit Themes*, ABA Journal 88 (Aug. 1998).
- Carrie Menkel-Meadow, *Forward Telling Stories in School: Using Case Studies and Stories To Teach Legal Ethics*, 69 Fordham Law Review 787 (2000).
- Philip N. Meyer, *The Darkness Visible: Litigation Stories and Lawrence Joseph's Lawyerland*, 53 Syracuse Law Review 1311 (2003).
- Philip N. Meyer, *Making the Narrative Move: Observations Based Upon Reading Gerry Spence's Closing Argument in The Estate of Karen Silkwood v. Kerr-McGee, Inc.*, 9 Clinical Law Review 229 (2002).
- Teresa Godwin Phelps, *No Place to Go, No Story to Tell: The Missing Narratives of the Sanctuary Movement*, 48 Washington & Lee Law Review 123 (1991).
- Laura Gardner Webster, *Telling Stories: The Spoken Narrative Tradition in Criminal Defense Discourse*, 42 Mercer Law Review 553 (1991).

The LWI/ALWD reception for the Golden Pen Award and Thomas Blackwell Award will take place Friday, January 7, 7:00-9:00 p.m. in the Renaissance Hotel, Corintia Room, Second Floor.

Teaching, Service, Scholarship: Section Members Receive Special Recognition

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

Four members of the AALS Section on Legal Writing, Reasoning, and Research – Daniel L. Barnett, Ralph Brill, Bradley G. Clary, and Sophie Sparrow – have recently received special awards in recognition of their outstanding teaching, service, or scholarship.

Daniel L. Barnett

Professor Daniel L. Barnett received the Boston College Distinguished Teaching Award in June. He was one of just three professors recognized with the university-wide award this year. Professor Barnett has taught Legal Reasoning, Research, and Writing at Boston College for fourteen years, receiving high praise from his students. “Excellent,” “wicked smart,” “the best,” and “superstar” are among the laudatory comments that pepper his student evaluations. Students and colleagues note that Professor Barnett sets rigorous standards for classroom participation, but his students also have a strong sense that he has their best interests at heart. This combina-



Dan Barnett, Boston College

tion of rigor and caring makes students willing to take on the intellectual challenges he requires.

Professor Barnett’s excellence in teaching has benefited many new teachers nationally who have participated in his Workshop on Critiquing Student Work. This workshop premiered in 2000 at the biennial conference of the Legal Writing Institute; since then it has been repeated at subsequent LWI conferences and at the AALS Conference for New Teachers in 2003.

Professor Barnett is a past chair of the AALS Section on Legal Writing, Reasoning, and Research, and he currently serves on the LWI board.

Ralph Brill

The ALWD and LWI boards announced in July that Ralph Brill (Chicago Kent) is the 2004 recipient of the Thomas Blackwell Award. The award criteria include: (1) the ability to nurture and motivate students to excel, (2) the willingness to help other legal writing educators

improve their teaching skills or their legal writing programs, and (3) the ability to create and integrate new ideas for teaching and motivating legal writing educators and students.

For over three decades, Professor Brill has done whatever was necessary to promote the field of legal writing and those who work within it. He has mentored countless LRW teachers and students. His selfless actions in support of legal writing programs and the people who labor within those programs make him an ideal recipient of the Blackwell

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Ralph Brill, Chicago Kent

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.

Message from the Chair (cont.)

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What can be done to redress these issues? As Frederick Douglass said, “If there is no struggle, there is no progress.” We all have to use every means at our disposal to advance the status of legal writing faculty and of the course itself. We have to strategize as Ralph Brill, Richard Neumann, and others have so ably demonstrated. We also need to educate doctrinal faculty, the ABA, the AALS, students, alumni, and deans, so 20 years hence we will be able to look back at achievements that at least equal those attained by the unheralded work of so many in the last 20 years.

Our Section program for the AALS January meeting in San Francisco is excellent. Susan Kosse, Program Chair, has assembled an exciting array of speakers around the theme, “Developing the 5th MacCrate Skill – The Art of Storytelling.” The program features two professional storytellers, Linda Gorham, from Chicago, and Joel ben Izzy, from Berkeley, and two law teachers, Steven H. Hobbs, from University of Alabama, and Philip N. Meyer, from Vermont Law School. The program is scheduled for Friday, January 7, at 10:30 a.m., and the Legal Writing Section luncheon is set for the following day, Saturday, January 8, at 12:15 p.m. You can get more information about the program from our new Section website at www.law.pace.edu/aals.

See you in San Francisco.

¹ For example, according to the 2004 ALWD/LWI Survey, 84 law schools put legal writing faculty on short-term contracts of two years or less (60 schools use one year contracts and 24 two year contracts).

² The gender bias implicit in the way law schools have dealt with legal writing faculty was discussed in my last column.

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

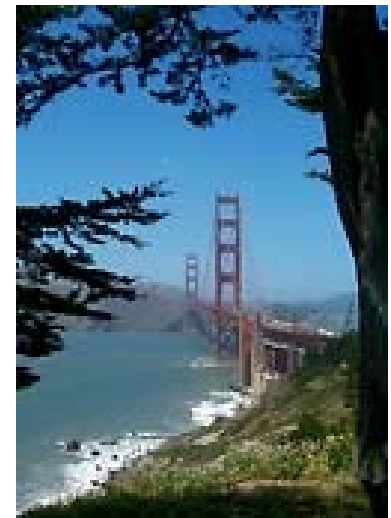
The Section on Legal Writing, Reasoning, and Research seeks nominations for Secretary for 2005. The Secretary prepares the AALS section newsletter, which is published twice annually. Nominations are due November 1, 2004.

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.



Views of San Francisco



News from Section Members



Mary Garvey
Alegro



Elizabeth
Fajans



Helene Shapo



Cliff
Zimmerman



J. Lyn Entrikin
Goering



Joan Leary
Matthews

Mary Garvey Algero (Loyola, New Orleans) spoke on "The Value of Precedent in Louisiana: A Contemporary Examination" on September 8, 2004, at the Conference on the Bicentennial of the French Civil Code. The conference, which was held at the Louisiana Supreme Court, was sponsored by Loyola's School of Law, the French Ministry of Justice, and the Louisiana Supreme Court.

Elizabeth Fajans (Brooklyn), **Mary Falk** (Brooklyn), and **Helene Shapo** (Northwestern) have published an upper level text entitled *Writing for Law Practice*.

Scott Fruehwald (Hofstra) has published two articles recently: *The Rehnquist Court and Horizontal Federalism: An Evaluation and a Proposal for Moderate Constitutional Constraints on Horizontal Federalism*, Denver University Law Review (forthcoming 2004), and *Judge Weinstein on Personal Jurisdiction in Mass Tort Cases: A Critique*, 70 Tennessee Law Review 1047 (2003).

J. Lyn Entrikin Goering has been appointed Director of Legal Analysis, Research, and Writing at Washburn University School of Law in Topeka, Kansas. Previously, Washburn's legal writing program operated without a director, but the school plans significant enhancements to the program this year, including hiring additional faculty for the 2005-06 academic year.

Rebekah Hanley has joined the Legal Research and Writing faculty at Oregon following a clerkship with the Ninth Circuit and litigation practice at Munger, Tolles & Olson.

Joan Leary Matthews (Albany) has been promoted to Lawyering Professor.

Michael D. Murray (Illinois) and **Christy Hallam DeSanctis** (George Washington) have a contract with Foundation Press to publish *Legal Research and Writing* in June 2005. This combined legal research, legal writing, and legal analysis text will be available as a complete first year text, or in two parts as a first semester LRW text and a second semester advocacy and oral argument text.

Wayne Schiess (Texas) has been named Director of Legal Writing, effective Fall 2004.

Adam Todd (Northern Kentucky) has been awarded a Fulbright Scholar award to lecture in the field of comparative law and American legal methods at Palacky University in the town of Olomouc in the Czech Republic during the 2004-2005 academic year.

Stetson University College of Law announces a number of promotions and new appointments. **Darby Dickerson** was named Vice President and Dean in February 2004. **Jo Anne Durako** has joined the law school as an Associate Professor and Director of Legal Research and Writing. **Joan Catherine Bohl**, **Catherine Cameron**, and **Jennifer E. Murphy** have joined as Instructors of Legal Research and Writing. **Carol McCrory** has joined as a Visiting Instructor of Legal Research and Writing.

Suffolk University's writing program reports that **Kathy Vinson** was elected to the Board of Directors of the Legal Writing Institute. Also, **Samantha Moppett** was chosen as an assistant editor for the LWI journal.

Cliff Zimmerman (Northwestern) has been appointed Interim Associate Dean for Student Affairs.



Adam Todd



Darby
Dickerson



Jo Anne
Durako



Joan Bohl



Carol McCrory



Catherine
Cameron



Christy Hallam
DeSanctis



Wayne Schiess



Michael
Murray



Samantha
Moppett



Kathy Vinson



Jennifer E.
Murphy

Awards (cont.)

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Award. As one nominator wrote, Professor Brill “always asks himself what he can do for other people whose situations in life are less secure than his own.”

In addition to serving as a past chair of the AALS Section on Legal Writing, Reasoning, and Research, Professor Brill is a former board member of both LWI and ALWD. He has served on the ABA Communication Skills Committee, where he was the “source” for the idea – and much of the content – of the ABA Sourcebook on Legal Writing Programs.

Bradley G. Clary

Professor Bradley G. Clary (Minnesota) has been appointed to the Vaughan G. Papke Clinical Professorship. The professorship recognizes a clinical faculty member with a substantial body of published works indicating an interest in and commitment to dissemination of the discoveries, insights, and analysis of the clinical professor. Professor Clary has published four books: *Successful Legal Analysis and Writing: The Fundamentals* (2003) (with Pamela Lysaght); *Successful First Depositions* (with Sharon Reich Paulsen and Michael Vanselow) (2001); *Advocacy on Appeal* (with Sharon Reich and Michael Vanselow) (2001); and *Primer on the Analysis and Presentation of Legal Argument* (1992). He has also published a number of articles on topics including antitrust and legal writing. The Papke professorship is awarded for two years; Professor Clary will be the Papke professor through June 30, 2006.

Professor Clary directs the Legal Research and Writing Program at Minnesota. He is currently the president of ALWD, and he has been active in the ABA and the Minnesota State Bar Association, co-chairing the State Bar Association’s Antitrust Section from 1990-92. He is a member of the governing council of the State Bar Association’s Appellate Practice Section. Before teaching, Professor Clary was a partner with Oppenheimer Wolff & Donnelly, specializing in antitrust and litigation.

Sophie Sparrow

Professor Sophie Sparrow (Franklin Pierce) received the Inaugural Award for Innovation and Excellence in Teaching Professionalism in January. This award was co-sponsored by the ABA Standing Committee on Professionalism and the Conference of Chief Justices; it received additional support from the W. Lee

Burge Endowment at the Georgia State University College of Law.

Three finalists were chosen for the award: Professor Sparrow, Professor Leary Davis (founding dean of Campbell), and Professor James Moliterno (Director of Professional Skills at William and Mary). The three made presentations in Atlanta and answered questions about teaching professionalism. The selection committee included John T. Berry (Chair, ABA Standing Committee on Professionalism), Clark D. Cunningham



Professor Bradley G. Clary,
University of Minnesota



Professor Sophie Sparrow,
Franklin Pierce

(Georgia State), Paula J. Frederick (Deputy General Counsel, State Bar of Georgia, ABA Board of Governors), David Stern (Michigan Medical School), E. Norman Veasey (Chief Justice, Delaware Supreme Court), and Judith Wegner (North Carolina).

Professor Sparrow is the Director of Legal Skills at Franklin Pierce and a frequent speaker at national conferences.

Rebecca Cochran and Jane Gionfriddo contributed to this article.

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