



2010

LRW Program Design: A Manifesto for the Future

Eric Easton

University of Baltimore School of Law, eeaston@ubalt.edu

Follow this and additional works at: http://scholarworks.law.ubalt.edu/all_fac



Part of the [Legal Education Commons](#), and the [Legal Profession Commons](#)

Recommended Citation

LRW Program Design: A Manifesto for the Future, 16 Legal Writing: J. Legal Writing Inst. 591 (2010)

This Article is brought to you for free and open access by the Faculty Scholarship at ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in All Faculty Scholarship by an authorized administrator of ScholarWorks@University of Baltimore School of Law. For more information, please contact snolan@ubalt.edu.

LRW PROGRAM DESIGN: A MANIFESTO FOR THE FUTURE

Eric B. Easton*

All of us have, at one time or another, had occasion to consider, or reconsider, our program model. The trigger may have been a new dean; the prospect of a sabbatical inspection; a budget crisis or financial windfall; a faculty champion or saboteur; something we learned at a Legal Writing Institute (LWI) or Association of Legal Writing Directors conference; or merely the cycle of bureaucratic reorganization. Those reconsiderations have led to a great diversity of Legal Research and Writing (LRW) program models: two-, three-, four-, and all-semester programs;¹ adjunct-, contract-, and tenure-track staffing;² and directors, co-directors, and no directors.³ Reconsiderations have also lead to discussions

* © 2010, Eric B. Easton. All rights reserved. Professor of Law and Co-Director Legal Skills Program, University of Baltimore School of Law.

1. According to the most recent Association of Legal Writing Directors (ALWD) and Legal Writing Institute (LWI) survey,

Virtually all writing programs (163 out of 166) extend over the first two semesters of the first year, averaging 2.40 credit hours in the fall and 2.26 hours in the spring (comparable to the 2008 averages). 45 programs have classes in the fall of the second year, averaging 2.02 credits. 16 programs have classes in the spring of the second year, averaging 2.19 credits. 6 programs have classes the fall of the third year, averaging 2.33 credits. 4 programs have classes in the spring of the third year, averaging 2.00 credits.

ALWD & Leg. Writing Inst. *2009 Survey Results* ii (2009) (available at <http://lwionline.org/uploads/FileUpload/2009SurveyResults.pdf>) [hereinafter *2009 Survey Results*].

2. “For the 2008–2009 academic year, as in past years, most programs continued to use full-time non-tenure-track teachers (73 programs or 43.9% of those responding to this question) or a hybrid staffing model (58 respondents or 34.9%), 17 programs reported using solely adjuncts (10.2%); 11 programs used solely tenured or tenure-track teachers hired specifically to teach LRW . . . ; and another 11 programs used such teachers in hybrid programs.” *Id.* at i.

3. In 2009, 134 programs reported having a director, that is, “a person with direct responsibility for the design, implementation, and supervision” of the writing program. *Id.* at 31 (question 44). The trend towards directorless program is accelerating, with 32 schools reporting no program director in 2009, compared to only 27 schools in 2008, when 15 more schools responded. *Id.* Thirty-one programs reported having an associate or assistant director, down from thirty-nine in 2008. *Id.* (question 46).

about how to use writing specialists,⁴ teaching assistants,⁵ teaching librarians,⁶ and post-graduate fellows in LRW programs.⁷

Our curricula reflect fresh thinking as well, with the introduction of more and varied practice skills: interviewing, counseling and negotiation;⁸ drafting⁹ and client communications;¹⁰ and especially professional responsibility.¹¹ Some of us have ventured even further away from the traditional model to integrate our programs with first-year¹² or upper-level courses,¹³ to champion or

4. In 2009, fifty law schools employed a full-time or part-time writing specialist, compared to forty-three in 2008. *Id.* at 15; see also C. B. Bordwell, *A Writing Specialist in the Law School*, 17 J. Leg. Educ. 462 (1964–1965); Susan Dailey, *Writing Specialist as Pariah: Reflections on My First Year*, 9 Second Draft (Bull. Leg. Writing Inst.) 8 (May 1995); Chris Rideout, *Creatures from the Black Lagoon—They’re Nice, or What Writing Specialists Can Offer Legal Writing Programs*, 13 Second Draft (Bull. Leg. Writing Inst.) 16 (May 1999); Lynn B. Squires, *A Writing Specialist in the Legal Research and Writing Curriculum*, 44 Alb. L. Rev. 412 (1980).

5. In 2009, 104 programs used teaching assistants in the required program, with the vast majority providing 25 percent or less of the instruction. *2009 Survey Results*, *supra* n. 1, at 73.

6. Librarians taught or participated in teaching legal research at 102 law schools in 2009. *Id.* at 8.

7. Established fellowship programs include the Harry A. Bigelow Teaching Fellowship at the University of Chicago, the Harvard Law School First-Year Legal Research and Writing Program Climenko Fellowships, the Lawyering Program at New York University, Law Fellows at Stanford University, and the Abraham L. Freedman Teaching Fellowship at Temple University Beasley School of Law. Newly announced programs have appeared at Thomas Jefferson School of Law and Stetson University College of Law. E-mail from Linda M. Keller to LWI Discussion List, *Legal Writing Positions at Thomas Jefferson School of Law* (July 31, 2009, 7:30 p.m.) (copy on file with Author); e-mail from Kirsten K. Davis to LWI Discussion List, *Stetson University College of Law Announces Jacob Fellows Program Opportunities* (Oct. 13, 2009, 9:00 a.m.) (copy on file with Author).

8. See Commun. Skills Comm., Sec. Leg. Educ. & Admis. to B., *Sourcebook on Legal Writing Programs* 33–35 (Eric B. Easton ed., 2d ed., ABA 2006) [hereinafter *Sourcebook*]; see also Debra Harris & Susan D. Susman, *Toward a More Perfect Union: Using Lawyering Pedagogy to Enhance Legal Writing Courses*, 49 J. Leg. Educ. 185 (1999).

9. See *Sourcebook*, *supra* n. 8, at 178–183; see also Reed Dickerson, *Teaching Legal Writing in the Law Schools (with a Special Nod to Legal Drafting)*, 16 Idaho L. Rev. 85 (1979); Joseph Kimble, *Teaching Legal Drafting*, 3 Scribes J. Leg. Writing 148 (1992).

10. See *Sourcebook*, *supra* n. 8, at 21. Eighty-eight programs assigned client letters in 2009. *2009 Survey Results*, *supra* n. 1, at 10 (question 20).

11. See *Sourcebook*, *supra* n. 8, at 10–11, 35–38; see also Beth D. Cohen, *Instilling an Appreciation of Legal Ethics and Professional Responsibility in First-Year Legal Writing Courses*, 4 Persps. 5 (1995); Judith D. Fischer, *The Role of Ethics in Legal Writing: The Forensic Embroider, The Minimalist Wizard, and Other Stories*, 9 Scribes J. Leg. Writing 77 (2003–2004); Judith D. Fischer, *Bareheaded and Barefaced Counsel: Courts React to Unprofessionalism in Lawyers’ Papers*, 31 Suffolk U. L. Rev. 1 (1997); Margaret Z. Johns, *Teaching Professional Responsibility and Professionalism in Legal Writing*, 40 J. Leg. Educ. 501 (1990).

12. For example, the University of Baltimore’s Introduction to Lawyering Skills course integrates basic legal analysis, research, and writing instruction with doctrinal instruction in Contracts, Civil Procedure, Criminal Law, or Torts. See U. of Balt. Sch. of L., *Legal*

at least support writing-across-the-curriculum,¹⁴ and to acknowledge the phenomenon of globalization by exporting our teaching¹⁵ or importing our students.¹⁶

We have been guided in these innovations by a variety of studies, among them the *MacCrate Report* in 1992,¹⁷ the *Sourcebook* in 1997¹⁸ and 2006,¹⁹ *Carnegie Report*²⁰ and *Best Practices*²¹

Skills Program, <http://law.ubalt.edu/template.cfm?page=756> (accessed May 3, 2010). University of Detroit Mercy's Applied Legal Theory & Analysis (ALTA) program integrates legal analysis, research, and writing with Contracts. See U. of Detroit Mercy Sch. of L., ALTA, <http://www.law.udmercy.edu/academics/courses/description.php?number=1080> (accessed May 3, 2010); see also Michelle S. Simon, *Teaching Writing through Substance: The Integration of Legal Writing with All Deliberate Speed*, 42 DePaul L. Rev. 619 (1993) (integrating legal analysis, research, and writing with Criminal Law at Pace University Law School).

13. Several of DePaul University Law School's Legal Analysis, Research & Communication courses are specialized by subject matter.

First-year, full-time day division students have the option of applying for a seat in one of four special sections focusing on child and family law, health law, intellectual property law (including traditional intellectual property, information technology and cultural property/art law) and public interest law. Students in these specialized sections complete the same course requirements as students in the general legal writing sections, but many of their assignments are drawn from the particular area of law. Admission to these special sections is very competitive; applicants may apply to only one section at the time they apply for JD admission. Applicants are notified of their acceptance into the special LARC sections after receiving their letters of admission to the College of Law.

DePaul College of L., *Academic Programs, Legal Analysis, Research & Communication, Required First-Year Coursework*, http://www.law.depaul.edu/programs/larc/course_work.asp (accessed May 3, 2010); see Susan E. Thrower, *Teaching Legal Writing through Subject-Matter Specialties: A Reconciliation of Writing Across the Curriculum*, 13 Leg. Writing 3 (2007).

14. See e.g. Pamela Lysaght, *Writing across the Law School Curriculum in Practice: Considerations for Casebook Faculty*, 12 Leg. Writing 191 (2006); Pamela Lysaght & Cristina Lockwood, *Writing-across-the-Law-School Curriculum: Theoretical Justifications, Curricular Implications*, 2 J. ALWD 73 (2004); Carol McCrehan Parker, *Writing Is Everyone's Business: Theoretical and Practical Justifications for Teaching Writing across the Law School Curriculum*, 12 Leg. Writing 175 (2006); Carol McCrehan Parker, *Writing throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 Neb. L. Rev. 561 (1997).

15. Seattle University's legal writing faculty has been teaching in Africa since 2003. See e.g. Seattle U. Sch. of L., *Legal Writing in Africa*, http://www.law.seattleu.edu/Academics/Legal_Writing_Program/Teaching_in_Africa.xml (accessed May 3, 2010).

16. See Mark E. Wojcik & Diane Penneys Edelman, *Overcoming Challenges in the Global Classroom: Teaching Legal Research and Writing to International Law Students and Law Graduates*, 3 Leg. Writing 127 (1997); see generally, *Sourcebook*, supra n. 8, at 199–212 (discussing English-as-a-Second-Language students).

17. ABA. Sec. Leg. Educ. & Admis. to B., *Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (ABA 1992) [hereinafter *MacCrate Report*].

18. ABA Sec. Leg. Educ. & Admis. to B., *Sourcebook on Legal Writing Programs* (Ralph L. Brill et al. eds., ABA 1997).

19. *Sourcebook*, supra n. 8.

in 2007, and outstanding new studies that seem to appear every day.²² And we have freely shared our ideas and experiences among ourselves, at national, international, and regional conferences;²³ and in journals and law reviews,²⁴ listservs,²⁵ and blogs.²⁶

My purpose today is to step back from the detail and take a long look at where we are headed. My central thesis is simply this—the time for reconceptualizing and reinventing LRW programs is ending; the time to destroy them is coming. And we must take the lead in that enterprise. I know that sounds subversive. I hope, when I have finished, you find it realistic enough to be merely provocative.²⁷

Since Langdell's day, legal education has straddled the divide between the academy and the profession.²⁸ And since Langdell's day, the academy has had the upper hand.²⁹ The introduction of

20. William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (Josey-Bass 2007).

21. Roy Stuckey et al., *Best Practices for Legal Education: A Vision and a Road Map* (Clin. Leg. Educ. Assn. 2007).

22. See e.g. Thomas D. Barton, *Preventive Law and Problem Solving: Lawyering for the Future* (Vandeplas Publ. 2009); Michael Hunter Schwartz et al., *Teaching Law by Design: Engaging Students from Syllabus to Final Exam* (Carolina Academic Press 2009); David I. C. Thompson, *Law School 2.0: Legal Education for a Digital Age* (LexisNexis 2009).

23. A sampling of such conferences appears at the following web pages: Leg. Writing Inst., *Other Conferences*, http://lwionline.org/other_conferences.html; Leg. Writing Inst., *Biennial Conference*, http://lwionline.org/biennial_conference.html; and ALWD, *Previous Events*, <http://alwd.org/events/previous.html>.

24. Including, of course, *Legal Writing: The Journal of the Legal Writing Institute* and the *Journal of ALWD*.

25. Such as lrwprof-l@listserv.iupui.edu and dircon@lists.washlaw.edu.

26. Such as the *Legal Writing Prof Blog*, available at <http://lawprofessors.typepad.com/legalwriting/2009/08/lrw-profs-balance-blog.html>.

27. I leave this sentence intact, despite my embarrassment at listening to speaker after speaker at the Mercer Symposium offer similar prescriptions, see especially Carol McCrehan Parker, *Signature Pedagogy of Legal Writing*, 16 *Leg. Writing* 477 (2010).

28. For a particularly good analysis on this point, see James R. Maxeiner, *Educating Lawyers Now and Then: An Essay Comparing the 2007 and 1914 Carnegie Foundation Reports on Legal Education* (Vandeplas Publ. 2007) (including a reprint of Josef Relich's 1914 report entitled *The Common Law and the Case Method in American University Law Schools*).

29. Sullivan et al., *supra* n. 20, at 4 (discussing how "as American law schools have developed, their academic genes have become dominant"). Additionally, Thompson explains,

Most law schools draw their academic legitimacy from being parts of larger universities. The academic model therefore will always tend to hold sway. And the academic model simply does not have the same values as the values championed by the crit-

clinics and professional skills courses is a comparatively recent development;³⁰ many were taught by adjunct practitioners,³¹ or, more recently still, by undervalued clinicians³² and legal writing teachers.³³ Over the past twenty-five years, which we are celebrating today, we have professionalized our programs, our curricula, and, by adopting and adapting academic scholarship as a value, our own status.³⁴

ics of legal education. What universities prize is scholarship. Scholarship requires by its very nature some distance from the day-to-day grind of law practice. Thompson, *supra* n. 22, at 57.

30. Recent, that is, since the demise of apprenticeship-based legal education in favor of academic-based law schools. See generally Amy M. Colton, *Eyes to the Future, Yet Remembering the Past: Reconciling Tradition with the Future of Legal Education*, 27 U. Mich. J.L. Reform 963 (1994) (tracing the history of American legal education from the earliest apprenticeship-based models to the present); Leonard D. Pertnoy, *Skills is Not a Dirty Word*, 59 Mo. L. Rev. 169 (1994) (same). Colton points out that “[a]lthough clinics slowly began finding their way into law school curricula by the 1950s, they were often greeted with a skeptical eye. It was not until the late 1960s that a new and much stronger clinical movement began.” Colton, *supra* n. 30, at 977–978.

31. The statistics on faculty status in skills courses included in the *MacCrate Report* show that part-time or non-permanent faculty taught 59 percent of 9,230 skills courses surveyed. Full-time permanent faculty taught a majority of courses only in first-year “Introduction to Lawyering” courses (56 percent); advanced research, writing, or drafting (52 percent); interviewing and/or counseling (74 percent); negotiation and/or alternative dispute resolution (67 percent); non-litigation, substantive lawyering courses (55 percent); and clinics and other (65 percent). *MacCrate Report*, *supra* n. 17, at 246–247. Part-time and non-permanent faculty taught the majority of first-year research, writing, or drafting (64 percent); trial practice/trial advocacy (75 percent); pretrial litigation practice (64 percent); appellate advocacy, including moot court (67 percent); certain combinations, including INC (interviewing, counseling, and negotiation) and trial and appellate practice (53 percent); and externships and internships (68 percent). *Id.*

32. Colton writes about the “disdain” with which academics have tended to look upon skills training courses, relegation of clinical studies to the “second tier” of legal education, Colton, *supra* n. 30, at 976–978, and the preference of law schools for “real” professors who can “teach substantive courses, publish journal articles, give the school prestige, and therefore, be a profitable return on the school’s investment.” *Id.* at 978.

33. The undervaluing of legal writing teachers is well documented. See e.g. Jan M. Levine, *Legal Research and Writing: What Schools Are Doing and Who Is Doing the Teaching*, 7 Scribes J. Leg. Writing 51 (1998–2000); Jan M. Levine & Kathryn M. Stanchi, *Women, Writing & Wages: Breaking the Last Taboo*, 7 Wm. & Mary J. Women & L. 551 (2001); Susan P. Liemer & Jan M. Levine, *Legal Research and Writing: What Schools Are Doing and Who Is Doing the Teaching (Three Years Later)*, 9 Scribes J. Leg. Writing 113 (2003–2004).

34. Any surrogate that might be used for professionalization is bound to be controversial. To Sue Liemer and Jan Levine, professionalization equates to the combination of program design and faculty status. See Liemer & Levine, *supra* n. 33, at 119 (stating that “the professionalization of legal-writing teaching is continuing steadily”). For a thorough analysis of the credentials of legal writing teachers today, see Susan P. Liemer & Hollee S. Temple, *Did Your Legal Writing Professor Go to Harvard? The Credentials of Legal Writing Faculty at Hiring Time*, 46 U. Louis. L. Rev. 383 (2008).

As a consequence, we may have become complacent. Some of us are deans and associate deans,³⁵ some of us are acknowledged faculty stars.³⁶ Many more of us are tenured, full professors or well on the way.³⁷ And, with clinicians and other supportive faculty, at least a few of us have the numbers to win faculty votes in our institutions. Yet we continue to work in an academic world that takes its priorities from more than a century ago, in the face of documented demands to the contrary by the principal consumers of our labor.³⁸

Again and again, we are told that our students are not ready for practice when they graduate from law school. Is that not the message of the new apprenticeships?³⁹ Again and again, their

35. To name just a few, Dean Ellen Suni at University of Missouri-Kansas City; Dean Darby Dickerson at Stetson University College of Law; Dean Michelle Simon of Pace Law School; Dean Daisy Hurst Floyd of Mercer University's Walter F. George School of Law; Associate Dean Susan Richey of Franklin Pierce Law Center; former Associate Dean Nancy Soonpaa of Texas Tech University School of Law; and former Associate Dean Susan Brody of John Marshall Law School—all of whom began their careers as legal writing teachers.

36. Again, to name just a few, consider Burton Award winners Ralph Brill of Chicago-Kent College of Law (2006); Laurel Oates of Seattle University School of Law (2007); Mary Beth Beazley of Ohio State University's Michael E. Moritz College of Law (2008); and Richard K. Neumann of Hofstra Law School (2009). Every day, the legal writing listserv reports major faculty awards won by our colleagues.

37. Liemer and Levine point out the growth in tenured and tenure-eligible program directors increased dramatically between 2000 and 2003, from "44 to 69 [or 24%], or from 24% to 36%[, which is] a 50% increase over three years." Liemer & Levine, *supra* n. 33, at 121. Subsequent ALWD-LWI surveys show a steady decline in that number, presumably attributable to a decline in the number of programs with directors. *E.g.* 2009 Survey Results, *supra* n. 1, at 31.

38. "While practicing lawyers undoubtedly appreciate the value of the law school experience to their own careers, surveys understandably indicate that practicing lawyers believe that their law school training left them deficient in skills that they were forced to acquire after graduation." *MacCrate Report*, *supra* n. 17, at 5. "In legal education . . . the primary emphasis on learning to think like a lawyer is so heavy that school wide concern for learning to perform like one is not the norm." Sullivan et al., *supra* n. 20, at 22.

39. To be sure, the new apprenticeship movement can be partly attributed to the downturn in the economy and concomitant desire to reduce charges to clients and salaries for associates. *See e.g.* Steven T. Taylor, *Starting Salaries Stalled or Slashed, While a New Trend Emerges: Apprenticeships*, 28 *Of Counsel* 1 (2009). Nevertheless, deferring the hiring of new associates or the date they report to work was always a viable alternative. Those firms that developed apprenticeship programs certainly saw the need for enhanced skills training. "Why is Ford & Harrison doing something different? To close the gap between what law schools teach and what clients demand." Ford & Harrison, *Year One Associate Development Program*, <http://www.fordharrison.com/Files/Year%20One%20Flyer.pdf> (accessed May 3, 2010). "All of the First Years will attend the core curriculum coursework for the first six weeks of the program. . . . There will be instruction and interactive presentations, as well as exercises in writing, ethics, negotiation, presentation skills, problem-solving, teamwork and collaboration." Drinker Biddle, News Release, *Lis-*

deficiencies are identified and solutions suggested. Does anyone read the *MacCrate Report*, *Carnegie Report*, or *Best Practices*? Again and again, the advice is ignored. Why? Because the academic tail still wags the professional dog.⁴⁰ It is time to reverse the emphasis in law school, and it will be up to us to lead the way. It is time to take charge of legal education, and program design is our Archimedean fulcrum.

I am not advocating that we abandon our struggle for status within status quo; scholarship remains the “coin of the realm,”⁴¹ and I do not suggest we return to the day when we were neither expected nor encouraged to write. Certainly our students have benefited, albeit indirectly and to some extent incidentally, from much of our research.⁴² Nor am I asking anyone to jeopardize job security or career advancement; on the contrary, the more deans and tenured professors we produce, the easier our revolution will be.

I am charging those of us with clout, whether pervasive or situational, to take program design restructuring and other opportunities to advance three specific goals:

1. Take over the first-year doctrinal curriculum as the opportunities arise.⁴³

tening to Our Clients, Adding the Value They Want: Drinker Biddle Launches Much-Heralded Training Program for First Year Lawyers, http://www.drinkerbiddle.com/files/News/9a2d0264-3922-4812-8d3d-03a3c588ab0a/Presentation/NewsAttachment/c1f40422-1778-428a-a835-0c595107a07d/First_Year_Associates.pdf (Sept. 29, 2009) (news release); see also *What to Expect in the Decade Ahead*, Natl. L.J. S10 (Nov. 9, 2009) (“For Baker & McKenzie Chairman John Conroy Jr., successful firms a decade from now will . . . train associates in apprentice-like programs. . . . Law firms and law schools are going to have to get a ‘cold shower’ and retool training of would-be lawyers, putting more focus on practical project management, client development and budgeting skills, Conroy said.”).

40. See Plenary Session, *Is the Tail Wagging the Dog?: Institutional Forces Affecting Curricular Innovation*, 1 J. ALWD 184 (2002) (panel discussion at the 2001 ALWD conference, “Erasing Lines: Integrating the Law School Curriculum”; panelists included Mary Beth Beazley, Elliott Milstein, John Seibert, and E. Thomas Sullivan).

41. Kathryn M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law Schools’ Dirty Little Secrets*, 16 Berkeley Women’s L.J. 3, 22 (2001).

42. I hasten to exclude most of my own oeuvre, which was launched well before I knew enough, or had the courage, to push the envelope.

43. I add the word “doctrinal” here to distinguish torts, contracts, property, etc., from the theoretical and perspective courses finding their way into the first-year curriculum. I am encouraged by and fully support this trend, which ranges from the new Harvard curriculum, see Harvard Law School, *HLS Faculty Unanimously Approves First-Year Curricular Reform*, http://www.law.harvard.edu/news/2006/10/06_curriculum.php, to the University of Baltimore’s decision to add electives in Law & Economics, American Legal History, Critical Legal Studies, Jurisprudence, or Comparative Law to the first-year curriculum, see University of Baltimore School of Law, *Law in Context Requirement*, <http://law.ubalt.edu>

Teachers must teach the core curriculum. At many schools, “teachers” means us, the clinicians, and other conscientious faculty members. Many fine legal scholars are also outstanding teachers;⁴⁴ others are not.⁴⁵ Teaching in the first-year curriculum must not be a chore expected of all faculty, regardless of their teaching skills. Let us replace those who would prefer and excel in an upper-level seminar course. The introduction of outcome assessments will help us along the way.⁴⁶

It will not be as hard as you might think. Some of your doctrinal faculty colleagues would much rather teach their upper-level specialty courses anyway. And chances are you have already taught first-year doctrine in connection with memo and brief assignments.⁴⁷

There are a variety of ways to do this. You may be able to structure your program so that each LRW teacher can teach one doctrinal course every semester or every other semester. You may be able to integrate your LRW course with one or more doc-

.edu/template.cfm?page=1282.

44. Many of the best scholars at my own law school are also among the best teachers. Michael Hunter Schwartz has launched a major project for Harvard University Press to identify the best law teachers in the country and report on what makes them so; nominees so far include all categories of law teachers. See Washburn U. Sch. of L., *What the Best Law Teachers Do*, <http://washburnlaw.edu/bestlawteachers/> (accessed May 3, 2010).

45. Kent Syverud has described the “Brahmins” of legal education as rarely changing what they teach or how they teach it. “[T]hey like teaching really good students (like the ones on the law review), but they abhor grading and, except in seminars, rarely evaluate and correct written work.” Kent D. Syverud, *The Caste System and Best Practices in Legal Education*, 1 J. ALWD 12, 14 (2002).

46. See Susan Hanley Duncan, *The New Accreditation Standards Are Coming to a Law School Near You—What You Need to Know to Be Ready for Them*, 16 Leg. Writing 619, 644 (2010). The kind of formative assessment that a learning-centered model requires is common in the skills classroom, and rare in the doctrinal classroom, putting us far ahead of that curve already. See Gregory S. Munro, *Outcomes Assessment for Law Schools* 16 (Inst. for L. Teaching 2000) (“This formative dimension of assessment is limited in most American law schools to the clinical and legal writing programs.”).

47. Do not for a minute think you cannot teach doctrine—though some faculty colleagues may have their doubts. I have now taught contracts and torts in both stand-alone courses and courses integrated with LRW; if I can do it, you can do it.

That we are not always highly regarded by our doctrinal colleagues is nothing new, but was brought home recently when Professor Charles E. Rounds, Jr., called in-house clinics and legal writing programs “politicized bureaucracies [that] behave like labor unions. They are great at self-promotion and forging national networks. They are labor-intensive and thus frightfully expensive. At best, these programs are pedagogically inefficient; at worst they are pedagogically cancerous.” Charles E. Rounds, Jr., John Williams Pope Ctr. for Higher Educ. Policy, *Bad Sociology, Not Law*, <http://www.popecenter.org/commentaries/article.html?id=2281> (Jan. 4, 2010).

trinal courses, following the late, lamented Pace model,⁴⁸ as we have done at Baltimore.⁴⁹ You may even be able to bring some doctrinal teachers into the conspiracy, at least temporarily.⁵⁰

That model has worked well for us in Baltimore, and we are gradually turning our faculty and administration into believers. We still have our problems—classes are too large, continuation classes pose coordination problems, the faculty is not quite stable from year to year—but we seem to have solid support behind the changes we want to make.

Of course, this is not the integrated program some of us may remember from law school. My writing “class” was an appendage of a property class.⁵¹ The property professor (whom I quite like

48. The Pace model is discussed in Simon, *supra* n. 12, but was abandoned there in 2009. An insider told me that the program worked very well for almost twenty years, and its demise was more political and ideological than substantive or pedagogical. While the faculty supported it, as time went on, they recognized that it cost a lot of resources. Newer faculty, with higher pedigrees, didn't support the program; ultimately, the faculty voted with its feet by refusing to teach in the program. There are lessons to be learned from the Pace experience, not least of which is combating the perception that criminal law doctrinal coverage was getting short shrift.

49. In early 2005, the dean at that time asked Amy Sloan and me, as co-directors, to come up with a proposal for moving Baltimore's legal writing program from an adjunct-taught model, which it had been for twenty-five years or so, to full-time, professor-taught model. Our original plan was to phase in a course that integrated legal writing and torts in a seven-credit course, Introduction to Lawyering Skills/Torts, with a section size of about twenty-five students. We would hire two experienced, tenure-track legal writing professors each year until we had enough to deliver instruction to all of our 370 first-year day and evening students. The faculty approved our proposal, and we taught in that form during the fall of 2006 and 2007, while our second and third semesters continued to be taught by adjuncts. We were also able to hire two terrific teachers in each of those years, although one has since left us. The arrival of a new dean, however, coincided with a growing chorus of complaints from the students who could not be accommodated in the new curricular model. The new dean was agnostic toward our program, but he insisted that we roll it out in the fall of 2008 to all first-year students. We altered the plan to comply. In addition to torts, we added sections of ILS/Contracts and ILS/Civil Procedure, to maximize our flexibility. We increased average class size from twenty-three to thirty-seven, and we persuaded a few doctrinal professors (including the former dean who inspired the course) to teach in the program. Our ability to hire experienced legal writing teachers was formally ended, but the needs of the program were taken into account in hiring new tenure-track junior faculty. It is working well, and the students are generally very pleased, but we are taking steps to stabilize the faculty and reduce class size.

50. One of our senior doctrinal professors at Baltimore even attended an LWI summer conference and has gone on to write an article about his experiences. See generally John A. Lynch, Jr., *Teaching Legal Writing after a 30-Year Respite: No Country for Old Men?* 38 Cap. U. L. Rev. 1 (2009).

51. See *Sourcebook*, *supra* n. 8, at 104 (“Generally, traditional doctrinal tenure-track or tenured professors do not want to teach legal writing and know little about developments in the field of legal writing. Therefore, even when they are assigned to teach legal writing, they may have neither the commitment nor expertise to do so and fail to put the

and respect) gave us a dog-bite scenario and told us to go write a memo. And we got handouts from the law librarians to help us. Mine came back marked “good,” and I was actually quite pleased. It did not have any other marks on it, so I figured, “Well, I’m done with that.” But I digress.

2. However you manage to seize control of the first-year doctrinal curriculum, refocus the curriculum to reduce reliance on reading cases and increase the time spent on preventive law—such as drafting contracts;⁵² on problem solving—such as drafting settlement agreements;⁵³ and on litigation process—such as drafting pleadings, discovery documents, and motions.⁵⁴

We know from experience that our students never forget the doctrine they learn from researching and writing memoranda and briefs,⁵⁵ especially when they work collaboratively in a moot court

necessary time or energy into the legal writing course.”).

52. See generally Barton, *supra* n. 22. It may be self-evident that contract drafting is a pre-eminent form of preventive law. As Charles Fox writes,

The time to anticipate and resolve potential issues is before the parties have bound themselves to the transaction, when deal momentum and mutual interest in completion greases the skids. Among the lawyer’s most important functions are to help orchestrate this process, to identify issues, to propose solutions, to help identify workable compromises and to put it all into words that clearly express the parties’ intent.

Charles M. Fox, *Working with Contracts: What Law School Doesn’t Teach You* 34 (Practising L. Inst. 2002). Integrating drafting into a traditional contracts course is difficult, see e.g., Eric Goldman, *Integrating Contract Drafting Skills and Doctrine*, 12 *Leg. Writing* 209 (2006), but much easier in a six-credit course like Baltimore’s ILS/Contracts, see *supra* n. 49.

53. Problem solving is the *MacCrate Report’s* very first “Fundamental Lawyering Skill,” and the report devotes ten pages to it. *MacCrate Report*, *supra* n. 17, at 141–151. Maxeiner points out that, by the late 1970s, the “problem method” had insinuated itself into many first-year casebooks. Maxeiner, *supra* n. 28, at 44; see also Gregory L. Ogden, *The Problem Method in Legal Education*, 34 *J. Leg. Educ.* 654 (1984); Susan Kurtz et al., *Problem-Based Learning: An Alternative to Legal Education*, 13 *Dalhousie L.J.* 797 (1990); Myron Moskowitz, *Beyond the Case Method: It’s Time to Teach with Problems*, 42 *J. Leg. Educ.* 241 (1992); Myron Moskowitz, *From Case Method to Problem Method: The Evolution of a Teacher*, 48 *St. Louis U. L.J.* 1205 (2004); Steven J. Shapiro, *Teaching First-Year Civil Procedure and Other Introductory Courses by the Problem Method*, 34 *Creighton L. Rev.* 245 (2000). The settlement agreement, of course, is only one manifestation of a “solution” that lends itself to a writing exercise as part of a doctrinal course.

54. Many of us have added such documents to our stand-alone writing courses. The 2009 Survey shows forty-six programs include “drafting documents” in their curriculum. *2009 Survey Results*, *supra* n. 1, at 10. My first assignment in an integrated ILS/Torts class has been to draft a simple battery complaint.

55. This experience is supported by observations reflected in both *Best Practices* and the *Carnegie Report*:

Principle: The program of instruction integrates the teaching of theory, doctrine, and practice.

* * *

context.⁵⁶ How better to teach doctrine than to borrow from the doctors' motto, "see one, do one, teach one"?⁵⁷ It is the other doctrine that flies out of their heads the minute the bar exam is over. We need to incorporate more of that, even at the expense of coverage, and we have to get over the "whole-book" attitude.

But we need the teaching materials to do that. With all due respect to the authors of our current array of fine LRW books, we now need contracts books, torts books, criminal law books, property books, and civil procedure books for integrated courses.⁵⁸ Give those hoary cases new life by creating and integrating, not only discussion problems, but also writing assignments such as memos, client letters, pleadings, motions, briefs, and transactional documents.⁵⁹

One of the impediments to merging instruction in theory and practice has been the perception that context-based learning is useful for teaching "practical skills" but not substantive law or theoretical reasoning associated with "thinking like a lawyer." In fact, the opposite is true. . . .

* * *

Law schools cannot prepare students for practice unless they teach doctrine, theory, and practice as part of a unified, coordinated program of instruction.

Stuckey et al., *supra* n. 21, at 97–99.

[S]tudents suggested that writing should be "more integrated into courses on doctrine" in order to speed up students' learning of legal reasoning.

Sullivan et al., *supra* n. 20, at 104.

We believe legal education requires not simply more additions, but a truly integrative approach in order to provide students with broad-based yet coherent beginning for their legal careers.

Id. at 59.

56. See Barbara Bennett Woodhouse, *Mad Midwifery: Bringing Theory, Doctrine, and Practice to Life*, 91 Mich. L. Rev. 1977, 1989 (1993) (explaining that despite law students' penchant for forgetting doctrinal learning from one semester to the next, "they tend to remember with crystal clarity the doctrines they mastered for their first-year moot court arguments"). Byron Cooper, who quoted the Woodhouse article, adds that "[n]ot only do they remember what they learned for their moot court problems, but most of their knowledge of the law used for those problems was acquired with little expenditure of class time." Byron D. Cooper, *The Integration of Theory, Doctrine, and Practice in Legal Education*, 1 J. ALWD 50, 57 (2002).

57. See Christine Nero Coughlin et al., *See One, Do One, Teach One: Dissecting the Use of Medical Education's Signature Pedagogy in the Law School Curriculum*, ___ Ga. St. U. L. Rev. ___ (forthcoming 2010) (available on SSRN); see also Plenary, *Models from Other Disciplines: What Can We Learn from Them?* 1 J. ALWD 165 (2002) (panel discussion at the 2001 ALWD conference, "Erasing Lines: Integrating the Law School Curriculum"; panelists included Thomas R. Fisher and Daniel B. Hinshaw).

58. Michael R. Smith, *Alternative Substantive Approaches to Advanced Legal Writing Courses*, 54 J. Leg. Educ. 119 (2004) ("[No] textbooks are available at present for the integrative approach. While there are some helpful articles, many teachers may feel the need for a truly comprehensive textbook.").

59. There is certainly precedent for adapting course books to suit contemporary instructional needs. Maxeiner cites a 1908 article on point, "If the object of the three years

Writing-across-the-curriculum may be a viable substitute for integration in some institutions, but the “declining culture” will be resistant.⁶⁰ It requires more time and effort than many of our colleagues are willing or able to expend on the teaching,⁶¹ and it may be more difficult to inculcate professional values where professors only grudgingly accept the requirement. But that does not mean that we shouldn’t keep the pressure on to incorporate writing-across-the-curriculum wherever we can.

3. Insinuate yourself, your colleagues, and your program into the upper-division, using whatever entrée you can find or create:⁶² advanced writing courses,⁶³ writing centers for scholarly writing⁶⁴ and job-oriented writing samples;⁶⁵ bar preparation and pre-bar preparation courses;⁶⁶ and pre-clinic, externship, or clerkship boot camps.⁶⁷

course is to equip the graduate for the actual work of his profession, why not substitute for books of pre-selected opinions, books of concrete facts or skeleton cases raising the important and crucial issues of the different topics of the law.” Maxeiner, *supra* n. 28, at 45 (quoting Henry Winthrop Ballantine, *Adapting the Case-Book to the Needs of Professional Training*, 2 Am. L. School Rev. 135, 137 (1908)).

60. Lysaght points out that doctrinal faculty may have developed an “intellectual distance” from practice; some are “openly hostile” to skills education. Lysaght, *supra* n. 14, at 196.

61. *Id.* at 195 (“[T]he time it takes to evaluate a writing assignment, which is considerably more than the typical essay exam, can act as a restraint for many casebook faculty with healthy scholarship agendas.”).

62. See generally Suzanne E. Rowe & Susan P. Liemer, *One Small Step: Beginning the Process of Institutional Change to Integrate the Law School Curriculum*, 1 J. ALWD 218 (2002).

63. In 2009, 106 law schools reported offering advanced legal writing courses covering general writing skills, drafting of all kinds of legal documents, advanced advocacy, scholarly writing, or judicial opinion writing. *2009 Survey Results*, *supra* n. 1, at 21–24.

64. In 2009, thirty-three law schools reported having a formal writing center. *Id.* at 20. All reported at least one part-time professional on staff; most (twenty-four) were also staffed by teaching assistants. *Id.* That leaves a lot of room for development: sixty-eight schools were served by a university writing center, while fifty-seven schools reported none at all. *Id.*; see Susan R. Dailey, *Linking Technology to Pedagogy in an Online Writing Center*, 10 Leg. Writing 181 (2004); Terrill Pollman, *A Writer’s Board and a Student-Run Writing Clinic: Making the Writing Community Visible at Law Schools*, 3 Leg. Writing 277 (1997).

65. See K.K. DuVivier, *Reviewing Writing Samples*, 35 Colo. Law. 87 (2006). Or create student guides, such as Herbert N. Ramy, *Creating a Writing Sample* (Suffolk U. L. Sch. Leg. Stud. Research Paper Series, Research Paper 09-25, Apr. 23, 2009) (available at <http://ssrn.com/abstract=1393906>). Or suggest how practitioners should regard the writing samples. Mary Beth Beazley, *Getting the Writing Sample You Need*, 87 Ill. B. J. 557 (1999); Mary Beth Beazley, *How to Read a Writing Sample*, 87 Ill. B. J. 615 (1999).

66. “Legal writing faculty are sometimes consulted about the design of [a bar preparation] course or are asked to teach it because of their specialized knowledge related to the Multi-State Performance Test, which tests legal writing directly.” *Sourcebook*, *supra* n. 8, at 197 (citing Maureen Straub Kordesh, *Reinterpreting ABA Standard 302(f) in Light of*

Those of us who also teach upper-level specialties, and write conventional navel-gazing law review articles, can assuage our guilt by introducing the skills and values of the “emergent culture” into those courses.⁶⁸

Find common ground with clinicians and externship supervisors,⁶⁹ consistent with confidentiality, and get involved in career services programs.⁷⁰ Stake out permanent seats on appointments, curriculum, and other key committees.⁷¹ Above all, make sure that promotion and tenure policy committees recognize our scholarship and our peer-reviewed journals.

Bring practitioners into the planning and implementation of your integrated courses; they have a stake in the success of your efforts, and they can help you overcome some of the likely resistance to it.⁷² Get involved in bar exam administration, lobby for changes that emphasize practice skills and, in so doing, exert external pressure for change on the law school.⁷³

By now, you may be thinking that I probably have too much time on my hands if I can expect you to do all or any of this while you are grading a hundred-plus memos during a semester. We work harder than anyone else, and we will keep working hard. But we must add change to our workload.

This kind of systemic change, however, requires more than just hard work from us. We have to have smaller classes. We have to have more faculty members. The hundred-student doc-

the Multistate Performance Test, 30 U. Mem. L. Rev. 299 (2000).

67. See Larry Cunningham, *The Use of “Boot Camps” and Orientation Periods in Externships and Clinics: Lessons Learned from a Criminal Prosecution Clinic*, 74 Miss. L. J. 983 (2005). Thirty-one law schools offered judicial opinion writing courses in 2009, with an average enrollment of more than sixteen students, many of whom presumably had clerkships in mind. *2009 Survey Results*, *supra* n. 1, at 26.

68. See *Sourcebook*, *supra* n. 8, at 193.

69. See e.g., Angela J. Campbell, *Teaching Advanced Legal Writing in a Law School Clinic*, 24 Seton Hall L. Rev. 653 (1993); Rowe & Liemer, *supra* n. 62, at 221.

70. See *Sourcebook*, *supra* n. 8, at 198; Louis Sirico, *Getting Respect*, 3 Leg. Writing 293, 295 (1997) (“Assist in student placement efforts. Run workshops on such topics as composing résumés, drafting cover letters, and excelling in interviews.”).

71. Rowe and Liemer call it “Act like a Duck.” Rowe & Liemer, *supra* n. 62, at 224–225.

72. *Id.* at 226 (“The local bench and bar can help provide real impetus for change in the law school curriculum. To tap into this source, you have to be part of the legal community outside of the law school.”); see also Sirico, *supra* n. 70, at 296.

73. With two Multistate Performance Test questions, the proposed Uniform Bar Examination may be a cause worth lobbying in some jurisdictions. For more views on the UBE, see *Essays on a Uniform Bar Examination*, B. Exmr. (Feb. 2009).

trinal class should have been jettisoned a long time ago, and that has to be part of the change too. If the profession wants practice-ready graduates, they have to help us with the resources to do it.

This may not be the year for your school to change. It is not easy to ask for more resources in this economy. But sooner or later, change is going to come. Ultimately, your program will cease to be a program and will become the dominant culture of the law school. And, ultimately, preparing our students for practice will become the dominant culture of legal education. I'm seeing signs all around the country that law schools are taking seriously their mission to ready their students for practice.⁷⁴

As my grandmother might have said, "Come the revolution"

74. Consider, for example, Suffolk University Law School's Legal Education and Practice Partnership (LEAPP), <http://www.law.suffolk.edu/academic/lps/leapp>, or Franklin Pierce Law Center's Daniel Webster Scholar Honors Program, <http://www.piercelaw.edu/websterscholar>, and others.