

# The Role of Legal Writing Faculty in an Integrated Curriculum

## Reporter's Notes on "The Integration of Theory, Doctrine, and Practice in Legal Education"

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Professors Cooper, Fine, and Hurt invited their audience to think in detail about the pedagogical possibilities offered by integrated law school curricula. Each speaker put forth intriguing ideas regarding course sequences, assignments, assessment techniques, and classroom activities that could expose students to theory, skills, and doctrine as interdependent components of a legal education. In the context of this broad topic, Professor Hurt noted that if the law school curriculum is to change, then members of the law school faculty—including Legal Research and Writing (LRW) faculty<sup>2</sup>—must change as well. Specifically, Professor Hurt noted that LRW faculty should set higher standards for themselves by preparing to teach doctrine and theory along with the practical skills of legal analysis, research, and writing.<sup>3</sup>

Professor Hurt's comments inspired an important question at the close of the very brief group-wide discussion: What will be the role of LRW faculty in an integrated curriculum? Because time constraints prevented the group from examining this issue in detail, this essay will pick up where the discussion left off in an attempt to invite further contemplation of this aspect of curricular reform. Specifically, it will discuss the need for LRW faculty to broaden their pedagogical

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2. This essay assumes that after the implementation of an integrated curriculum, those who currently teach LRW will continue to be recognized as faculty experts in this field. Therefore, even though an integrated curriculum may disperse the teaching of LRW skills across many first-year courses and may thus eliminate LRW as a discrete course, this article will refer to those faculty members with experience and interest in teaching LRW skills as "LRW faculty."

3. While many law schools continue to call their first-year skills courses Legal Research and Writing, these courses devote as much time to teaching fundamental legal analysis as they do to teaching research and writing skills. A sampling of titles of the textbooks used in such courses reflects this emphasis upon legal analysis. *E.g.* Richard K. Neumann, Jr., *Legal Reasoning and Legal Writing: Structure, Strategy, and Style* (4th ed., Aspen Law & Bus. 2001); Linda Holdeman Edwards, *Legal Writing: Process, Analysis, and Organization* (2d ed., Aspen Law & Bus. 1999); Deborah A. Schmedemann & Christina L. Kunz, *Synthesis: Legal Reading, Reasoning, and Writing* (Aspen Law & Bus. 1999); Helene S. Shapo et al., *Writing and Analysis in the Law* (4th ed., Foundation Press 1999); Laurel Currie Oates et al., *The Legal Writing Handbook: Analysis, Research, and Writing* (2d ed., Aspen Law & Bus. 1998).

horizons by teaching more doctrine and theory, and the need of law schools to recognize the value of LRW-related expertise.

### **I. Broadening Pedagogical Horizons**

Recent survey data indicate that many LRW faculty are already branching out in their teaching beyond required first-year LRW courses. Seventy-one directors, in response to the 2001 Association of Legal Writing Directors (ALWD) and Legal Writing Institute Survey reported teaching courses other than LRW during the 2000-01 academic year.<sup>4</sup> In addition, sixty-three directors reported that non-directing LRW faculty at their schools had taught these types of additional courses during the 1999-2000 academic year.<sup>5</sup> Presumably, LRW faculty have taken on these teaching assignments to pursue additional academic interests,<sup>6</sup> to fill immediate staffing needs, to earn additional income,<sup>7</sup> or to meet some combination of these goals.

This broadening of teaching activities is a positive development that should assist LRW faculty in becoming valued contributors to any law school implementing an integrated curriculum. By teaching either advanced writing electives or courses outside the LRW curriculum, LRW faculty both expose themselves to new thinking regarding theory and doctrine and also give themselves an opportunity to contemplate familiar concepts from a different perspective. In addition, to the extent that these courses differ in content, format, and class size from typical first-year LRW courses, they allow LRW faculty to master new teaching techniques appropriate to these new settings<sup>8</sup> and to experiment with importing familiar

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4. ALWD & LWI, *2001 ALWD/LWI Survey Report* questions 55(a)-(b) (available at <[http://alwd.org/resources/survey\\_results.htm#2001](http://alwd.org/resources/survey_results.htm#2001)>). Sixty-five of these instructors reported that the non-LRW courses they taught were independent of academic support programs. *Id.* at question 55(b).

5. *Id.* at question 85. No reliable data are available on this issue for the 2000-01 academic year. *Id.*

6. Fifty-seven directors indicated that during the 1999-2000 academic year, they taught from one to three courses outside the areas of legal research, legal writing, drafting, and oral advocacy. *Id.* at question 56(c). No reliable data are available on this issue for the 2000-01 academic year. *Id.*

7. The need of LRW faculty to supplement their incomes is very real. Although the average LRW director in 2000 had eleven years of law school teaching experience, forty directors reported that their salaries during the 1999-2000 academic year were lower than the salaries paid to brand new tenure-track faculty members at their schools. *Id.* at question 51(c). The average discrepancy reported by these directors was \$18,057. *Id.* Fourteen directors reported having received additional compensation, averaging around \$7,000, for teaching courses outside the required LRW curriculum in 1999-2000. *Id.* at question 56(f)-(g). Non-directing LRW faculty have an even greater need to supplement their incomes, which tend to fall well below the incomes of directors. *Compare id.* at question 49(b) (reporting the average 2000-01 director's salary as \$79,209) with *id.* at 32 (reporting the average 2000-01 non-directing, non-tenure-track instructor's salary as \$42,433). Non-directing LRW faculty at fifty-seven law schools received extra compensation for teaching outside of the required first-year LRW curriculum. *Id.* at question 85.

8. Non-LRW faculty have long been experimenting with, and writing about, teaching techniques in the context of substantive courses. For a bibliography of 204 pedagogical articles, arranged by course content, from Administrative Law to Wills and Trusts, see Arturo Lopez Torres & Mary Kay Lundwall, *Moving Beyond Langdell II: An Annotated Bibliography of Current Methods for Law Teaching*, Special Edition on Current Methods for Law Teaching, *Gonz. L. Rev.* 1

techniques into new substantive contexts.

By expanding their teaching areas, LRW faculty may also be able to overcome the “us versus them” mentality that has often characterized their real and perceived relationships to colleagues who teach primarily doctrine and theory.<sup>9</sup> This division has been fueled by the relatively low status of LRW faculty, who have historically received less institutional respect than their doctrinally-focused colleagues.<sup>10</sup> However, as Professor Hurt noted in her comments, if LRW faculty wish to be accepted as full contributors to an integrated curriculum, they must rise to this occasion by preparing themselves to teach doctrine and theory with greater breadth,<sup>11</sup> and sometimes in greater depth,<sup>12</sup> than they currently do. Part of this preparation necessarily includes the adoption of a self-image emphasizing membership in a broader faculty community over membership in a skills camp (as opposed to a doctrinal camp). To the extent that two distinct camps have ever really existed, neither has ever had all of the answers regarding how best to teach law. Therefore, just as LRW faculty have much to impart to their colleagues about teaching analytical, research, and writing skills, they must recognize that they may have something to learn from these same colleagues about teaching theory and

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(2000).

9. For a fascinating first-hand account of the schism between those who teach LRW and those who teach traditional doctrinal courses, see Ilhyung Lee, *The Rookie Season*, 39 Santa Clara L. Rev. 473 (1999). See also Lisa Eichhorn, *Writing in the Legal Academy: A “Dangerous Supplement”?*, 40 Ariz. L. Rev. 105 (1998) (explaining how the theoretical opposition of speech and writing relates to modern perceptions regarding LRW faculty and doctrinal faculty in law schools).

10. See e.g. Toni M. Fine, *Legal Writers Writing: Scholarship and the Demarginalization of Legal Writing Instructors*, 5 Leg. Writing 225, 227 (1999) (“In most cases, the perception of legal research and writing teachers still is that they lie at the edge of the academic faculty in their institutions.”); Jan M. Levine, *Leveling the Hill of Sisyphus: Becoming a Professor of Legal Writing*, 26 Fla. St. U. L. Rev. 1067, 1073 (1999) (“Many [law professors and deans] believe that writing courses and professors are not worthy of full membership in the academy.”).

11. First-year LRW courses typically encourage students to perform very deep analyses of a limited number of narrow issues raised through specific writing assignments. In an integrated curriculum, many courses will have to balance breadth of doctrinal coverage with depth, and LRW faculty may find themselves for the first time contemplating issues such as whether an effective contracts course must expose students to the concept of liquidated damages; whether an effective civil procedure course must enable students to understand the difference between a motion for a rehearing and one for a new trial; or whether an effective property course should devote a substantial amount of class time to future interests, if that topic has figured prominently on past state bar exams.

12. While first-year LRW courses may cover narrow issues in great depth, they tend to do so within the practical context of memo and brief-writing. Specialized elective courses may cover issues in a different, theoretical depth, as when a seminar invites students to consider a mass tort problem from the perspective of several different theoretical schools. Other upper-level courses may necessitate a certain “real world” depth, as when an advanced Corporations course invites students to consider antitrust, labor, tax, and insurance issues as they draft documents to implement the negotiated merger of two companies. Unless taught in an integrated manner in conjunction with a substantive course, an LRW course will have great difficulty constructing this level of contextual depth. See Joseph W. Glannon, Terry Jean Seligmann, Medb Mahony Sichko, & Linda Sandstrom Simard, *Coordinating Civil Procedure with Legal Research and Writing: A Field Experiment*, 47 J. Legal Educ. 246, 248 (1997) (noting that first-year LRW assignments seldom present legal questions “in the context of an actual case: students research and argue an isolated issue based on a short fact pattern, without understanding why the issue might be important to a client.”)

doctrine.<sup>13</sup> Of course, if LRW faculty will be teaching more theory and substantive law, they will also need to acquire thorough familiarity with at least one or two specific doctrinal areas. A number of LRW faculty members across the country are already immersing themselves in specific areas of substantive law, as is evident from their scholarship,<sup>14</sup> but in the context of an integrated curriculum, such immersion will no longer be optional.

## **II. Employing Existing Expertise**

While an integrated curriculum will require faculty members to achieve a higher level of pedagogical flexibility, the real value of each professor will likely continue to lie in his or her hard-earned expertise in a given area of law. After all, faculty experts, through their scholarship, can best advance current legal thought and can best assist fellow scholars, students, and members of the bench and bar who wish to apply, assess, change, or critique the law. Further, at a law school adopting an integrated curriculum, an expert is in the best position to become a curricular consultant regarding his or her chosen area; he or she will be best able to decide how the curriculum could best cover the given area and to ensure that the teaching material regarding that area is appropriate and up-to-date.

Members of the national community of LRW faculty are experts in the pedagogy of legal analysis, research, and writing,<sup>15</sup> and law schools should therefore allow them a corresponding amount of authority regarding the planning and teaching of courses within an integrated curriculum. Nevertheless, depending upon large-scale course structuring, the work of an LRW expert within an integrated curriculum risks becoming a mere add-on to an otherwise traditional doctrinal course. Specifically, if a given school decides to integrate its curriculum by having doctrinal and skills faculty team-teach various courses, its LRW faculty could, unfortunately, be merely plugged into existing courses as assignment-drafters, paper-critiquers, and conference-holders whose work is largely directed by the doctrinal halves of the teaching teams.

To avoid this fate, LRW faculty will have to convince their colleagues that their expertise in legal writing and its pedagogy can be used in more productive ways. One successful experiment has involved LRW faculty and doctrinal faculty coordinating their own courses, rather than team-teaching a single course.<sup>16</sup> The

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13. Almost every issue of the *Journal of Legal Education* contains at least one article, authored by a “doctrinal” faculty member, discussing innovative methodologies to be used in teaching doctrinal courses. See e.g. Robert M. Lloyd, *Investigating a New Way to Teach Law: A Computer-Based Commercial Law Course*, 50 J. Legal Educ. 587 (2000); Edith R. Warkentine, *Kingsfield Doesn't Teach My Contracts Class: Using Contracts to Teach Contracts*, 50 J. Leg. Educ. 112 (2000). See also Torres & Lundwall, *supra* n. 8 (citing numerous pedagogical articles focusing on non-LRW courses).

14. Professor Linda Edwards of Mercer University Law School has been gathering citations to articles written by LRW faculty, and her preliminary research—admittedly incomplete at this stage—has uncovered 151 articles on doctrine or legal history. Notes from Prof. Edwards (Oct. 17, 2001) (on file with author).

15. Well-attended biennial conferences of the Legal Writing Institute provide an excellent forum for the sharing of teaching expertise, as do very active listservs for both directors of LRW programs and legal writing faculty in general.

16. At Suffolk University Law School, two Civil Procedure teachers invited LRW faculty

coordination, which involved first-year Civil Procedure and LRW courses, benefited students because it required them to *use* the procedural concepts in the skills course as they learned them in the doctrinal course. In addition, the students had the advantage of receiving doctrinal and skills instruction from teachers who had free reign to employ their own pedagogical expertise.<sup>17</sup> Coordinated courses could therefore play an important role in an integrated curriculum, as could single courses devised by LRW faculty who have acquired expertise in specific doctrinal areas.

Further, the expertise that LRW faculty possess uniquely qualifies them to serve as curricular consultants with respect to the curricular coverage of analytical, research, and writing skills. Because most full-time teaching positions in this field are no longer limited by employment caps,<sup>18</sup> many LRW faculty have acquired a great deal of first-hand knowledge regarding what works—and what does not—when it comes to teaching students to research, analyze, and write about the law. Therefore, LRW faculty are most likely to understand what kinds of integrative frameworks will best allow students to master these skills, and what levels of competence students should achieve as they progress through a three-year curriculum.

In sum, LRW teachers, like all law school teachers, will need to master new material and new pedagogical skills if they wish to become respected faculty members in a world of integrated curricula. This challenge is a formidable one, but to the extent that LRW faculty are able to meet it, they will earn themselves greater respect in the academy and will do a great service to legal education.

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to participate in a “field experiment” in which the teachers coordinated their two courses so that students would be using the subject matter of the Civil Procedure course to draft assignments in LRW. See generally Glannon et al., *supra* n. 12. Fortunately, the Civil Procedure teachers respected the expertise of their legal writing colleagues in planning the coordination, and each teacher, of course, retained authority with respect to his or her own course. As a result, the “collaboration developed well beyond the fairly narrow goal that had led [the Civil Procedure teachers] to propose it.” *Id.* at 248.

17. See *id.* at 252-53 (describing students’ positive responses to the teaching occurring in the coordinated courses).

18. Of ninety-two schools whose LRW instructors are on contracts, eighty-five reported having no “caps” or restrictions on the number of years those contracts may be renewed. ALWD & LWI, *supra* n. 4, at question 66.