

# REINVIGORATING THE 1L CURRICULUM: SEQUENCED “WRITING ACROSS THE CURRICULUM” ASSIGNMENTS AS THE FOUNDATION FOR PRODUCING PRACTICE- READY LAW GRADUATES

Suzanne J. Schmitz and Alice M. Noble-Allgire\*

## I. INTRODUCTION

Spurred in large part by the Carnegie Foundation’s influential study of 2007<sup>1</sup> and its precursor, the American Bar Association’s “MacCrate Report,”<sup>2</sup> law schools around the country have begun placing new emphasis on “experiential learning” to prepare “practice-ready” graduates. While some might dismiss this trend as a passing fad, the movement is likely to gain traction under proposed ABA accreditation standards that focus on the

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\* Schmitz is the former Director of the Academic Success Program, Southern Illinois University School of Law. Noble-Allgire is a Professor of Law, Southern Illinois University School of Law, and one of the Property professors who participated in this program. The authors wish to acknowledge the contributions of all SIU faculty members who collaborated on the development of this experimental program and wish to especially thank their colleagues Sue Liemer, Christopher Behan and Michele Mekel for thoughtful comments on drafts of this article. The views expressed in this article are those of the authors and should not be attributed to all faculty involved in the program.

1. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW—SUMMARY (2007) [hereinafter CARNEGIE SUMMARY], available at [http://www.carnegiefoundation.org/sites/default/files/publications/elibrary\\_pdf\\_632.pdf](http://www.carnegiefoundation.org/sites/default/files/publications/elibrary_pdf_632.pdf). This two-year study, conducted under the auspices of the Carnegie Foundation for the Advancement of Teaching, examined the strengths of the traditional law school curriculum in teaching students to “think like a lawyer” but suggested that legal education should be improved by seeking to “unite the two sides of legal knowledge: formal knowledge and experience of practice.” *Id.* at 4, 8 (“The dramatic results of the first year of law school’s emphasis on well-honed skills of legal analysis should be matched by similarly strong skill in serving clients and a solid ethical grounding.”).
2. AM. BAR ASS’N, SECTION OF LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereinafter MACCRATE REPORT]. In this three-year study of legal education, an ABA task force chaired by Robert MacCrate identified the fundamental skills and values with which “a well-trained generalist should be familiar before assuming ultimate responsibility for a client.” *Id.* at 125. While the task force report recommended that law schools use the statement of skills and values as an aid to curricular development, it emphasized that the statement was not intended as a “standard for a law school curriculum” or “a measure of performance in the accrediting process.” *Id.* at 131-32.

“learning outcomes” that law schools should pursue to ensure that graduates have certain minimum proficiencies required of an entry-level practitioner.<sup>3</sup>

As law schools re-examine their programs in pursuit of this “practice-ready” vision, one of the most important, and most fruitful, avenues of change lies within the first-year curriculum. The traditional 1L program has focused largely upon training students to “think like a lawyer” through Socratic dialogue,<sup>4</sup> with only limited instruction in how to translate those thoughts into a practical work product. At many schools, skills development in the first year has been segregated into a stand-alone legal writing or lawyering skills course, where students typically learn to draft

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3. ABA Proposed Standard American Bar Association, Section of Legal Education and Admissions to the Bar Standards Review Committee (May 5, 2010), *available at* [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/legal\\_education/committees/standards\\_review\\_documents/comment\\_outcome\\_measures\\_sc\\_on\\_professionalism\\_june\\_2010.aut\\_hcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/comment_outcome_measures_sc_on_professionalism_june_2010.aut_hcheckdam.pdf)

Standard 302. LEARNING OUTCOMES

(a) A law school shall identify, define, and disseminate each of the learning outcomes it seeks for its graduating students and for its program of legal education.

(b) The learning outcomes shall include competency as an entry-level practitioner in the following areas:

(1) knowledge and understanding of substantive law and procedure;

(2) competency in the following skills:

(i) legal analysis and reasoning, critical thinking, legal research, problem solving, written and oral communication in a legal context;

(ii) the ability to recognize and resolve ethical and other professional dilemmas; and

(iii) a depth and breadth of other professional skills sufficient for effective, responsible and ethical participation in the legal profession.

(3) knowledge and understanding of the following values:

(i) ethical responsibilities as representatives of clients, officers of the courts, and public citizens responsible for the quality and availability of justice;

(ii) the legal profession's values of justice, fairness, candor, honesty, integrity, professionalism, respect for diversity and respect for the rule of law; and

(iii) responsibility to ensure that adequate legal services are provided to those who cannot afford to pay for them.

(4) any other outcomes the school identifies as necessary or important to meet the needs of its students and to accomplish the school's mission and goals.

4. CARNEGIE SUMMARY, *supra* note 1, at 5:

Law schools are impressive educational institutions. In a relatively short period of time, they are able to impart a distinctive habit of thinking that forms the basis for their students' development as legal professionals. . . . Within months of their arrival in law school, students demonstrate new capacities for understanding legal processes, for seeing both sides of legal arguments, for sifting through facts and precedents in search of the more plausible account, for using precise language, and for understanding the applications and conflicts of legal rules. Despite a wide variety of social backgrounds and undergraduate experiences, they are learning, in the parlance of legal education to “think like a lawyer.”

one or more objective memos and an appellate brief.<sup>5</sup> Professors in other first-year courses customarily require written exams, which, in theory, can give students practice in expressing their legal analysis and problem-solving skills in writing. But few professors offer instruction on how to draft the analysis or give formalized feedback other than a final course grade.<sup>6</sup> Thus, students get few opportunities to hone these basic skills that are critical to every law practice.<sup>7</sup>

With a willing faculty, some effort and minimal financial support, law schools can multiply the opportunities for students to develop their lawyering skills in their first year. This article offers one model for systematically reinforcing practice-ready writing skills in traditional doctrinal courses through a “sequenced” Writing Across the Curriculum program that encourages (but does not require)<sup>8</sup> 1L faculty collaboration, thereby preserving faculty autonomy. Part II of this article discusses the proposed “learning outcomes” that faculty seek to achieve through this model. Part III discusses the components of this model and how they are woven together in an integrated program. Parts IV and V discuss, respectively, some of the benefits and challenges of the program.

## II. LEARNING OUTCOMES FOR 1L STUDENTS

The first year of law school is the foundation of every lawyer’s training. Delivered at a time in which students are most impressionable and eager to learn, the 1L curriculum should teach not only the fundamental building blocks of substantive law (as developed in courses like Contracts, Criminal Law, Property and Torts) and Civil Procedure, but core

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5. See CARNEGIE SUMMARY, *supra* note 1, at 7 (observing that law schools have taken a piecemeal or “additive” approach to including lawyering and professionalism as separate components to the curriculum rather than trying to blend the components together in an integrative way).
  6. A familiar student criticism is the apparent disconnect between the daily reading of cases, briefing, and class discussion and what is expected on the final exam. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 237 (2007) [hereinafter BEST PRACTICES].
  7. “Legal writing is at the heart of law practice, so it is especially vital that legal writing skills be developed and nurtured through carefully supervised instruction.” COUNCIL OF THE SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, LONG-RANGE PLANNING FOR LEGAL EDUCATION IN THE UNITED STATES 29 (1987); see also Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469, 471-74 (1993) (in a survey of new lawyers at major Chicago firms in the early 1990s, more than 80% of the respondents identified oral and written communication as one of the most important skills required of a lawyer); see also Justice Elizabeth Lacy et al., *Law School Curriculum, Training Law Students and the Vitality of the Profession: The Judicial Perspective*, 1 J. ALWD 297 (2002) (panel discussion in which judges express disappointment with writing deficiencies of many lawyers).
  8. This program began as a voluntary faculty experiment and was still operating in that capacity as this article went to press. Although not mandated by a faculty rule, it garnered voluntary participation by all but one member of the 1L faculty in its first year. See *infra* notes 23 and 40.

professional values and lawyering skills as well. The concept of integrating skills and values into the traditional curriculum is recommended by both the Carnegie Report<sup>9</sup> and the Clinical Legal Education Association's "Best Practices" guide that came soon after the Carnegie Report.<sup>10</sup>

Within a year after these two reports were published, the Southern Illinois University School of Law faculty began a self study as part of its reaccreditation process. In conducting that assessment, the faculty identified several over-arching goals for its 1L curriculum and a list of minimal competencies that students should achieve by the end of the first academic year. These goals and competencies are similar to those endorsed

9. The report observed that the traditional case-dialogue method of teaching has considerable value in teaching students to "think like a lawyer." But the report found two "major limitations" to this approach:

1. Most law schools give only casual attention to teaching students how to use legal thinking in the complexity of actual law practice. Unlike other professional education, most notably medical school, legal education typically pays relatively little attention to direct training in professional practice. The result is to prolong and reinforce the habits of thinking like a student rather than an apprentice practitioner, conveying the impression that lawyers are more like competitive scholars than attorneys engaged with the problems of clients. Neither understanding of the law is exhaustive, of course, but law school's typically unbalanced emphasis on the one perspective can create problems as the students move into practice.

2. Law schools fail to complement the focus on skill in legal analyses with effective support for developing ethical and social skills. Students need opportunities to learn about, reflect on and practice the responsibilities of legal professionals. Despite progress in making legal ethics a part of the curriculum, law schools rarely pay consistent attention to the social and cultural contexts of legal institutions and the varied forms of legal practice. To engage the moral imagination of students as they move toward professional practice, seminaries and medical, business and engineering schools employ well-elaborated case studies of professional work. Law schools, which pioneered the use of case teaching, only occasionally do so. Both of these drawbacks, lack of attention to practice and inadequate concern with professional responsibility, are the unintended consequences of reliance upon a single, heavily academic pedagogy, the case-dialogue method, to provide the crucial initiation into legal education.

CARNEGIE SUMMARY, *supra* note 1, at 6. To address these shortcomings, the report recommended that law schools should offer an integrated, three-part curriculum:

(1) the teaching of legal doctrine and analysis, which provides the basis for professional growth; (2) introduction to the several facets of practice included under the rubric of lawyering, leading to acting with responsibility for clients; and (3) exploration and assumption of the identity, values and dispositions consonant with the fundamental purposes of the legal profession. Integrating the three parts of legal education would better prepare students for the varied demands of professional legal work.

*Id.* at 8.

10. BEST PRACTICES, *supra* note 6, at 94 (recommending that law schools "provide students coordinated educational experiences that progressively lead them to develop the knowledge, skills, and values required for their first professional jobs"); *id.* at 97-100 (recommending that law schools "integrate teaching of theory, doctrine, and practice").

by most other law schools. As such, they are discussed here not for their novelty, but merely as a baseline for examining the methodology discussed in Part II for achieving those goals. The goals are also significant for the commitment the faculty made to embrace them as a guide to decisions about day-to-day classroom activities.

#### A. Goals

As a primary objective, the SIU faculty desire that 1L students have a solid foundation in the basic principles of the law, the basic skills of legal analysis, research and writing, oral communication, and an introduction to the core values of the legal profession. The faculty's secondary, but more practically stated, goal is to ensure that students are adequately prepared to work during their first summer as law clerks for judges, law firms, or government agencies, and to competently perform the tasks normally undertaken by those law clerks.<sup>11</sup>

#### B. Competencies

In pursuit of those over-arching goals, the faculty expects students to achieve specific competencies. During the first year of law school, students should develop a fundamental knowledge of the following: The state and federal court systems and the common law underpinnings of the American legal system; the lawyer's role within the legal system and the fundamental values and ethical norms of the legal profession, with an emphasis on the core values of competence, diligence, loyalty, confidentiality, and civility; the basic principles of torts, crime, contracts, and property; the learning styles, skills, and strategies for being an "expert learner;"<sup>12</sup> the process through which statutory and administrative law is developed; the interrelationship between courts, legislatures, and administrative agencies; the introductory principles of the procedural rules governing civil litigation; and legal careers and career development strategies.

Further, students should also develop a minimum level of competence in the following: Basic legal analysis and problem-solving, including analysis and synthesis of judicial opinions, application of the law to new facts, and predicting outcomes; basic skills of legal research and writing, with an emphasis on drafting objective legal memoranda; interviewing clients to identify legal issues and gather relevant facts; organizing and managing law-related work, including multiple assignments with

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11. S. ILL. UNIV. SCH. OF LAW, 2008 SELF STUDY (Oct. 2008).

12. See MICHAEL HUNTER SCHWARTZ, EXPERT LEARNING FOR LAW STUDENTS (2005).

concurrent due dates; written and oral advocacy skills, with an emphasis on drafting persuasive trial and appellate briefs and making effective oral arguments; basic interpretation and analysis of statutes and regulations; basic negotiation skills; and basic career development strategies, including drafting effective resumes and cover letters.

### C. Methodology

A traditional 1L curriculum, with its focus on large “doctrinal” classes supplemented by smaller Legal Writing/Lawyering Skills courses, does an excellent job of imparting “fundamental knowledge” and teaching students to “think like lawyers.”<sup>13</sup> But mastery of research, writing, and other skills listed above suffers when those skills are taught solely through a standalone Legal Writing or Lawyering Skills course. These skills can be better mastered when reinforced in other settings, including doctrinal courses. At the same time, students’ mastery of doctrine is enhanced when students are forced, early and often, to articulate their understanding of the rules, the application of those rules to new problems, and the policies underlying those rules. Moreover, as the Carnegie Report suggests, students also benefit from an early introduction to professionalism.<sup>14</sup>

Recognizing these benefits, the SIU law school instituted several academic initiatives designed to implement the “skills and values” recommendations of the MacCrate Report<sup>15</sup> through the integrative method recommended by the Carnegie study. The components of SIU’s first year program are discussed in the following section, with an emphasis on SIU’s integration of writing and analysis into traditional doctrinal courses through a “sequenced” Writing Across the Curriculum program.

### III. AN INTEGRATIVE APPROACH TO DEVELOPING 1L KNOWLEDGE, SKILLS AND VALUES

In many respects, SIU’s program still looks like the traditional model, with four doctrinal courses and one Lawyering Skills course each semester. As discussed below, however, the Lawyering Skills course itself takes an integrative approach to research, writing, and analysis. This basic skills instruction is supplemented by a Writing Across the Curriculum (WAC) program in the doctrinal courses as well as a comprehensive Academic

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13. See *supra* note 4.

14. CARNEGIE SUMMARY, *supra* note 1, at 9 (recommending that law schools “Join ‘Lawyering,’ Professionalism and Legal Analysis from the Start”); see also DEBORAH L. RHODE, PROFESSIONAL RESPONSIBILITY—ETHICS BY THE PERVASIVE METHOD (2d. ed. 1998).

15. MACCRATE REPORT, *supra* note 2.

Success program that employs a “structured study group” methodology to help 1L students become “expert learners.”

In assessing the 1L curriculum as part of its recent self-study, the SIU faculty was generally pleased with each of the components standing alone, but concluded that the program could be improved by combining the individual components into a better-integrated, systematic approach to skills development. Through a collaborative process, the 1L faculty developed a simple, but effective tweak. The majority of the doctrinal faculty voluntarily agreed to sequence their individual WAC assignments by level of difficulty to help students systematically build their writing and analysis skills over the course of a semester. The Academic Success Director then pulled everything together by coordinating the assignments and reinforcing the lessons through the structured study groups.

Woven together in this manner, the program successfully integrates fundamental legal theory with the basic skills students require to be successful in their first summer law job, most notably, analysis and writing skills. At the same time, however, the curriculum preserves each faculty member’s autonomy to develop assignments that serve the skills training goals while furthering the faculty member’s doctrinal teaching agenda. Each component of the program is discussed in further detail below.

#### A. The Lawyering Skills Course

The cornerstone of the 1L curriculum is a year-long Lawyering Skills course. Inaugurated in 1998, this program combined the two traditional legal writing and legal research courses into a single course that offers an integrated approach to research, writing, and analysis, as well as an introduction to client interviewing, counseling, oral advocacy, and negotiation. The course is taught by full-time faculty, with library faculty who teach the research component working side by side with the faculty teaching writing.<sup>17</sup>

The primary goal of the program is to teach research, writing, and analysis in a lawyering context. Thus, students conduct their own mock interviews of clients to gather facts for the second of two office memos they write in the first semester. After learning the basics of legal research, they use those skills to identify the legal authorities relevant to their analysis of the client’s case. During the second semester, students draft a trial brief, try to negotiate a settlement, then draft an appellate brief, all for the same case.

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17. The Lawyering Skills Director and the Library Director are both tenured members of the School of Law faculty. The library faculty are tenured within the law library. Two Lawyering Skills faculty members, who focus on legal writing and the other lawyering skills, are non-tenured but have continuing five-year contracts.

If time permits, they also conduct a mock counseling session for a “client” with another problem requiring knowledge of the same area of law.

While the program introduces students to other skills, the primary emphasis is on research and writing, and the Lawyering Skills faculty employs a methodical, incremental approach to the research and writing assignments. During the first semester, for example, students draft their first memo in segments (issue statements, facts, discussion) over the course of several weeks. With each segment, students are required to meet in conferences with the faculty and their teaching assistants to receive extensive feedback on organization, analysis, and writing style, as well as grammar and citation. Because the emphasis is on quality rather than quantity, however, students have only a limited number of opportunities<sup>18</sup> to practice their writing skills, which is a limitation that the doctrinal faculty attempted to address with the WAC requirement.

#### B. Sequenced Writing Across the Curriculum Assignments in Doctrinal Courses

The SIU faculty adopted a WAC requirement in 2004 based upon its belief that when students are required to write throughout the semester, they better master the doctrinal material and identify their weaknesses, as well as improve their writing and analytical skills.<sup>19</sup> This reasoning is consistent with the Carnegie Report, which explains that “writing makes language observable. Writing instruction—more accurately, the use of writing as a means of instruction—allows the communication process to be stopped for a while to enable students to observe and analyze the discourse being developed.”<sup>20</sup> Also, the WAC requirement recognizes that the first year writing course is an introduction, providing a foundation of basic skills that needs to be further developed as the student progresses through law school.

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18. The typical Lawyering Skills class is twenty-five students. Given the limits of school resources, there is a limit as to the number of assignments and conferences students received in Lawyering Skills. Thus, students gain when those skills are re-enforced by the WAC assignments in substantive courses.

19. In explaining the purpose of the WAC requirement, the law school rule observes:  
Lawyers in every type of practice must express their legal analysis in a wide variety of written forms. The skill is best acquired in an environment that provides not only multiple opportunities in which it may be used and practiced, but also substantial constructive comment on its execution. The requirements of the Writing Across the Curriculum program are designed to establish such an environment by ensuring that appropriate opportunities to use and assess this skill are provided in every course in the curriculum.

Rules of the Southern Illinois University School of Law, Academic Year 2010-2011, at 28 [hereinafter *Law School Rules*].

20. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 110 (2007) [hereinafter *CARNEGIE REPORT*].



Under the law school's rules, every law school course, with a few exceptions, is required to provide at least one substantial writing exercise, other than a final exam, for which the student receives timely and effective feedback.<sup>21</sup> Through a collaborative process, the 1L faculty took this program one step further by agreeing to sequence their respective WAC assignments in a way that would systematically develop students' writing and analysis skills. The following discussion highlights the three main ingredients of this program: writing assignments sequenced to build skills incrementally; prompt and consistent feedback based upon a competency standard; and transparency in setting forth the professors' expectations, both in advance of the exercise and in the feedback.

### 1. *Types of Writing Assignments*

SIU's rules give faculty members wide discretion in the timing and substance of the WAC assignments for their particular courses.<sup>22</sup> Some faculty have used the tried-and-true approach of midterm exams or practice exams as their writing assignment, while other faculty developed writing assignments that are indicative of the type of work that a new lawyer might be asked to do in that substantive area, such as memos, briefs, client letters, complaints, motions, closing arguments, contract clauses, or portions of statutes.

Beginning in 2009, most of the faculty teaching in the first year program<sup>23</sup> voluntarily agreed to coordinate and sequence their assignments as a way to systematically develop students' analytical and writing skills. To encourage faculty participation and to ensure maximum freedom to the faculty participating, each faculty member was free to identify the particular legal skills to be mastered in the context of his or her particular

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21. Law School Rules, *supra* note 19, at 28-30. The exceptions include clinics and seminars, which naturally have a writing component.

22. The rules provide that the writing exercise may include, but is not limited to: (1) legal memoranda; (2) trial briefs or notebooks or appellate briefs; (3) client letters; (4) opinion letters; (5) contracts or contracts clauses; (6) documents specific to the areas of practice covered by the course (e.g., wills, patent applications, leases, etc.); (7) legislation; (8) administrative regulations; (9) mediation summaries; (10) pleadings; (11) investigation plans; (12) discovery documents; (13) motions and briefs in support of motions; (14) closing arguments; (15) jury instructions; (16) judicial opinions; (17) case notes or comments; (18) essay-type mid-term or practice examinations; (19) Multistate Performance Test-type exercises; and (20) essays on legal topics relevant to the areas of practice covered by the course. Law School Rules, *supra* note 19, at 29.

Because the instructor must give feedback prior to the final exam, a final examination does not satisfy the requirements of the rule. *Id.* at 29-30. The assignment may be done individually or as a group and the assignment may be a graded or ungraded component of a course. *Id.* at 29.

23. Of the eleven doctrinal faculty teaching in the first year, ten participated in some way. All of the Lawyering Skills professors (library and writing) participated, as did the Academic Success Director.

course, to design an assignment that allowed the student to demonstrate mastery of those skills, and to identify the method of evaluating that mastery. Through some dialogue, the 1L faculty reached agreement on the sequencing of their assignments. Although each professor typically gave only one assignment,<sup>24</sup> the coordination of assignments across the curriculum resulted in a series of writing exercises of progressive difficulty.<sup>25</sup>

For purposes of illustration, in the fall of 2009, all of the 1L professors participating in the program gave WAC assignments focused upon exam-type essay questions in which faculty encouraged students to use the IRAC (Issue, Rule, Application, and Conclusion) structure. During the first week of the semester, the Property professors required students to write a simple, one-issue IRAC essay based upon the capture rule from the venerable case of *Pierson v. Post*.<sup>26</sup> During the second week of the semester, Property professors assigned a second IRAC essay, this one applying the three-element rule of inter vivos gifts. In week four, students moved onto a more complex assignment (in either Criminal Law or Torts class, depending upon which section the student was enrolled), employing the IRAC analysis to a problem involving multiple issues as well as multiple parties. By mid-semester, students were ready for a typical law school midterm examination (in Contracts and Torts), again employing the IRAC structure. Thus, within two months of beginning law school, students had practice writing at least five IRAC essays of progressive difficulty, with feedback from most of their 1L doctrinal professors. A sample lineup of assignments for the first semester is indicated in the following chart:

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24. The Property professors gave two of the early assignments as part of the formal coordinated program. In addition, several of the 1L professors gave additional writing assignments over the course of the semester that were not part of the coordinated program. One of the Contracts professors, for example, had students do multiple problems over the course of the semester, as did one of the Property professors. These assignments, like the others that were part of the formal coordinated program, were typically exam-type essay questions.

25. The writing assignments in the doctrinal courses reinforce, but are not completely synchronized with, the Lawyering Skills lesson plans. In fact, a couple of the early writing exercises precede the Lawyering Skills faculty's discussion of IRAC in their course. Thus, doctrinal faculty provided the preliminary instruction about IRAC when preparing students for the writing assignment in their course, and Lawyering Skills faculty reinforced this instruction soon thereafter. In addition, while Lawyering Skills faculty emphasize all aspects of writing, doctrinal faculty focus on the content and organization of the analysis and give less, if any, attention to grammar, spelling, punctuation, and other mechanics. While there is room for greater coordination between Lawyering Skills and doctrinal writing assignments, students are benefiting from multiple opportunities to practice writing and the exercises are carefully timed to avoid scheduling conflicts.

26. 3 Caines 175 (N.Y. Sup. Ct. 1805).

<b>Week 1</b>	1-issue IRAC Essay (Property)
<b>Week 2</b>	3-element IRAC Essay (Property)
<b>Week 4</b>	Multiple issues/parties (Criminal Law)
<b>Week 6</b>	Midterm Exam (Torts)
<b>Week 8</b>	Midterm Exam (Contracts)

In addition to reinforcing basic writing and analysis skills through repetition, the sequenced assignments fostered the “transfer of knowledge,” a critical component of the educational process.<sup>27</sup> By focusing on legal analysis using the IRAC method, students learned that this basic structure could be transferred from one course to another and from the Lawyering Skills program to the doctrinal classes and back again. While faculty members had a shared view about IRAC organization in general, however, each added his or her own style regarding legal analysis. As a result, students soon learned to adapt the IRAC structure to meet the demands of the various assignments or the preferences of the professors.

During the second semester, faculty developed writing and other assignments that showed students how the basic skills they had learned in the first semester could be applied to different types of writing projects or lawyering exercises. These assignments included persuasive writing and argument in Lawyering Skills, drafting of a statute in the Legislative and Administrative Process course, drafting of a complaint or motion to dismiss in Civil Procedure, and negotiation of an easement in one of the Property classes.

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27. “Knowledge transfer” refers to the process of applying skills or knowledge beyond the context in which those skills or knowledge were first acquired. See David A. Binder & Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 CLINICAL L. REV. 191, 197-202 (2003) (citing NATIONAL RESEARCH COUNCIL, HOW PEOPLE LEARN 51 (John D. Bransford, Ann L. Brown & Rodney R. Cocking eds., expanded ed. 2000); Anthony Marini & Randy Genereux, *The Challenge of Teaching for Transfer*, in TEACHING FOR TRANSFER 2 (Anne McKeough, Judy Lupart and Anthony Marini eds., 1995)).

## 2. *Feedback on Assignments*

As allowed by the law school's rule,<sup>28</sup> faculty members in the coordinated 1L program used a variety of techniques for providing feedback. Some gave individualized feedback, using a rubric that permitted students to see what the faculty member desired by way of issue identification, statement of the law, application of the law to facts, policy discussion, and conclusions, as well as the ideal manner of organizing the material. Each student received a copy of the rubric, with check marks or some indication of the areas where he or she had achieved a level of competent performance.<sup>29</sup> Although some professors "graded" their own assignments, other faculty members were assisted by the study group leaders employed by the Academic Success program (known as Taylor Mattis Fellows).<sup>30</sup> Where Fellows were used, they read the student papers under the supervision of the faculty member and used a rubric that the professor had designed. In addition to giving individualized feedback, most of these faculty members also followed up with a class discussion of the assignment, identifying areas where the class as a whole performed well and common areas where improvement was needed.

In other cases, faculty members did not give individualized feedback, but provided students with a model answer or rubric, as well as a class discussion of the assignment (or sometimes a model answer without a discussion). Nonetheless, even where no individual feedback was given, students had the option of seeing the professor individually for further input

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28. The rule provides:

The instructor shall provide feedback in a form consistent with the size of the class and the nature and complexity of the writing exercise. Feedback may take the form of: (1) individual written comments on each written submission; (2) sample documents or answers; (3) students exchanging and critiquing each other's work; (4) leading class discussions on the components of an appropriate written submission; (5) individual conferences with students; and/or (6) any other effective method of feedback.

Law School Rules, *supra* note 19, at 29.

29. This methodology is consistent with the Best Practice guide's recommendation that teachers use criteria-referenced, rather than norm-referenced, assessments. BEST PRACTICES, *supra* note 6, at 243-45. Norm-referenced assessments "are based on how students perform in relation to other students in a course," while criteria-referenced assessments "rely on detailed, explicit criteria that identify the abilities students should be demonstrating . . ." *Id.* at 243-44. "Norm-referenced evaluations inform students how their performance relates to other students, but they do not help students understand the degree to which they achieved the educational objectives of the course." *Id.* at 243.

30. The law school employs twelve upper-class students as Fellows in the Academic Success program. *See infra* notes 35-36. Although they are called study group leaders or Fellows, their responsibilities with respect to the Writing Across the Curriculum program were similar to those of a teaching assistant. The Lawyering Skills program also has teaching assistants who assist the Lawyering Skills faculty and assisted students as well.

or seeking input from their Taylor Mattis Fellow, who was familiar with the problem and the professor's expectations.

Consistent with the Carnegie Report's recommendation that law schools should rely primarily upon "formative assessments" rather than "summative assessments," the first year faculty strove for a competency model of "grading" the writing assignments.<sup>31</sup> Typically, students were not assigned a numerical or letter grade; instead, they received some type of feedback as to how their performance compared with the faculty member's expectation of "competent" performance.<sup>32</sup> Thus, for example, students might be told that their performance "met expectations," "exceeded expectations," or "failed to meet expectations." Most important, students whose performance fell below the minimum level of competence were required to rewrite the assignment.<sup>33</sup> This rewriting requirement served two purposes: (1) to ensure that all students met minimal competency standards before moving on to the next assignment; and (2) to ensure that all students took these ungraded assignments seriously. In some classes, the professors also provided students with a raw score for the assignment, coupled with the range of scores for the class overall, thus providing students with a

31. CARNEGIE SUMMARY, *supra* note 1, at 7:

In its familiar summative form, assessment sorts and selects students . . . Summative assessments are useful devices to protect the public, for they can ensure basic levels of competence. But there is another form of assessment, formative assessment, which focuses on supporting students in learning rather than ranking, sorting and filtering them. Although contemporary learning theory suggests that educational effort is significantly enhanced by the use of formative assessment, law schools make little use of them. Formative assessments directed toward improving learning ought to be a primary form of assessment in legal education.

32. The Best Practices guide describes the levels of competence as:

*Limited Proficiency*: overly simplistic, incomplete analysis that misses key issues and fails to use relevant legal rules, facts and policy;

*Basic Competence*: formalistic analysis that recognizes many issues, distinguishes relevant and irrelevant principles, and makes substantial but incomplete use of relevant rules, facts and policy;

*Intermediate Competence*: integrated analysis that addresses nearly all issues, focusing on and developing relevant rules, facts and policy in a meaningful way that reflects conceptual understanding rather than a formulaic approach, and spots but does not work extensively or effectively with issues involving substantial uncertainty or novelty;

*Advanced Proficiency*: demonstrates characteristics of intermediate proficiency, but also considers implications of analysis more fully, brings to bear sound and creative approaches, works extensively and effectively with issues involving substantial uncertainty or novelty.

BEST PRACTICES, *supra* note 6, at 245 (citing Judith Wegner, *Thinking Like a Lawyer About Law School Assessment* (Draft 2003) (unpublished manuscript)).

33. For some of the early assignments, faculty reported that they required up to 20% of the class to rewrite the assignments. Fewer rewrites were required on later assignments.

summative assessment of where they stood in relation to the class as a whole.<sup>34</sup>

#### *4. Transparency in Expectations*

As indicated above, faculty strove for transparency in the feedback process, using some combination of rubrics, model answers, or class discussions to help students visualize where they had met expectations and where they could improve. Faculty learned that it was equally important to give clear guidance at the front end of the assignment. With the first two writing assignments, for example, students were provided with an instruction sheet that explained the basic IRAC structure (for the first assignment) and how that structure could be modified for a multiple element rule (for the second assignment).

The value of this transparency was highlighted by the experience of one professor. When reading the students' papers, she quickly realized that they were unable to transfer the skills of analysis learned on the earlier assignments to one requiring students to analyze multiple issues and multiple parties. The professor gave a new presentation on the topic, required the entire class to re-do the assignment, and reported much improvement in the students' understanding of the material on the second effort. In this case, transparency came after the first attempt at writing the essay and before the second.

#### *5. Significant Benefits with Minimal Burdens*

The end result of the first year faculty's collaboration was a series of well-sequenced assignments in which students had the opportunity to practice the basic skills they were learning in *Lawyering Skills* in a variety of doctrinal contexts. Although professors provided students with some type of feedback on the writing assignment, the burden on each individual professor was minimal because most professors had only one assignment in each of their respective courses. Moreover, because each professor had the freedom to design assignments and provide feedback appropriate for his or her individual course, there was minimal intrusion upon the faculty's academic autonomy.

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34. See *supra* note 31 (discussing summative versus normative assessments).

### C. Academic Success Program and Structured Study Groups

SIU's Academic Success program combines several separate, but interrelated, services designed to enhance student performance in law school and on the bar exam.<sup>35</sup> This discussion focuses on the first year program, which is designed to ensure that all law students develop the skills necessary to be successful law students and lifelong "expert learners," and its symbiotic relationship with the WAC program.

"Structured study groups" are the heart of the first-year Academic Success program, serving as both a source of knowledge and support. Every first year student is assigned to a group led by an upper-class student leader, known as a Taylor Mattis Fellow. The Fellows meet weekly with the groups to help orient students to the law school and support them as they develop their skills as expert learners. Lesson plans focus on topics such as case briefing, classroom note-taking, and outlining and other exam preparation. During the last few weeks of the first semester, Fellows provide the first year students with practice questions so they can prepare for final exams. Although participation in the study groups is required of all first-year students during the first semester, they do not receive academic credit for the program. Some study groups are also available during the second semester, but are typically limited to "at risk" students who need additional assistance with exam-writing or study skills.

The Academic Success Director offered several ways in which the structured study groups could support the WAC program. As indicated above, the Fellows helped faculty review and "score" the writing assignments. In addition, through study group discussions after the assignments were completed, the Fellows reinforced the feedback that students received from the professors and, in some cases, provided individual assistance to students who were required to rewrite their assignments. Finally, because of the rapport that develops in the small groups, the Fellows were in a unique position to identify students who were struggling with basic understanding of the IRAC method, with substantive law, or with other issues such as time management. The Fellows passed this information along to the Academic Success Director, who was then able to offer timely assistance.

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35. The Academic Success program includes bar support services, including informational programs for first- and third-year students about bar admission, planning sessions for third year students about the bar, and services during the bar review course. Professors offer workshops on exam-writing, exam-taking, and time management and read and critique essay exams. The Academic Success program also includes support to second- and third-year students who request academic assistance or are on probation.

The Academic Success Director also provided valuable assistance to the WAC program. Because the Director is familiar with the first-year faculty and curriculum, she was able to assist with administrative matters, such as facilitating faculty discussions, coordinating the scheduling of assignments, and overseeing the Fellows who helped professors review the assignments. She was also the contact person for receiving data, from both the Fellows and the faculty, about students who needed individual assistance.

### III. ASSESSMENT OF THE OUTCOMES AND BENEFITS

Although the faculty did not conduct a formal analysis of the integrated program after its first year, both faculty and students observed a number of tangible benefits. As the faculty had hoped, one of the primary benefits was improvement in the critical skill of written legal analysis, as evident from student performance on final exams and other WAC assignments. Another was the corollary ability to provide early intervention for struggling students. Beyond these anticipated outcomes, however, faculty also observed a number of secondary benefits from the collaborative process, including the development of a shared language, common expectations for students' performance, and a sense of team effort.

#### A. Early Appreciation of Differing Expectations

One of the faculty's first observations about the program came in early October, when students began to voice complaints that each professor had slightly different approaches and expectations for their writing assignments. Indeed, even though all of the participating professors expected students to employ the basic IRAC structure, there were small differences in how each professor applied it. While these complaints might have been a cause for concern, the faculty viewed them as a sign of significant progress. The complaints demonstrated not only that students had learned the basic IRAC structure, but that they were now learning how to adapt it to each faculty member or to each course or to particular types of exam scenarios. The good news was that most students had this moment of enlightenment in mid-semester, when there was time to adapt study habits and writing style, rather than discovering this distinction for the first time after taking a full set of exams at the end of the semester.<sup>37</sup>

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37. Some of the students responded to this knowledge by seeking additional practice questions to write for each professor before the final exam period. Others discussed with their study group Fellow how the faculty expectations differed.



Faculty also learned to articulate, for each other and for the students, the differences in expectations of written legal analysis for the Lawyering Skills course and those for the substantive courses, and the reasons those differences exist. In this way, students perceived the faculty as working together rather than in isolation from each other. Students sensed an organized effort to help them learn the skills of legal analysis.

This benefit was readily apparent to the students themselves. In their student evaluations of faculty and in individual meeting with faculty or study group Fellows, a number of students expressed gratitude for the multiple opportunities to practice writing before the final exam.<sup>38</sup> Because most of the assignments did not count toward their semester grades, many students viewed the assignments as an opportunity to receive feedback and improve their skills rather than as a burden on their time. One student told his mentor that as he shared his law school experience with friends at other schools, they were initially shocked that he had periodic assignments. As they realized that he was receiving feedback, however, they became envious.

#### B. Early Intervention for “At Risk” Students

The sequenced WAC program also allowed faculty to identify, and provide assistance to, students who were struggling to master basic writing skills. As early as October 1, students had completed two or three WAC assignments and by November 1, they had completed all but one of the writing assignments, as well as the series of short writing assignments and the closed office memo and part of the open memo required for Lawyering Skills. Thus, by mid-semester, the Academic Success Director was able to identify students who were falling below competence on multiple assignments and could provide those students with timely assistance.

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38. Some of the following comments, taken from the student evaluations of a faculty member who provided multiple writing exercises as part of her doctrinal course, are indicative of student response to the exercises:

- “[The assignments were h]elpful to my understanding of the law and how to write exams.”
- “The writing assignments helped in refining writing skills involved with memos and IRACs.”
- “They were essential in our growing understanding of the IRAC style of analysis and helping us understand what professors expect of us.”
- “Extensive but excellent practice. Maybe have more? (I should shoot myself for saying that!)”

Another faculty member similarly reported that while he had initially feared that the program would overwhelm students, he was pleasantly surprised by comments in his student evaluations indicating that students were grateful for the assignments and the feedback they received.

The assistance offered varied. In some cases, the Fellow, a faculty member, or the Academic Success Director met individually with a student to offer additional practice questions or to re-write, for practice, an already scored assignment. Occasionally, the Academic Success Director made referrals to counseling for assistance with stress management or to identify a possible learning disability. In some cases, however, students declined assistance. Some of those students improved significantly on later assignments, suggesting that they had indeed figured things out on their own or that they may not have exerted the best effort until the student realized what effort was required.

When students were told they were not meeting expectations or they needed to improve in specific ways, they were less able to ignore this feedback because it came from multiple sources—their Lawyering Skills professors and one or more substantive course professors. Receiving the message from several sources was the “wake up” call some students needed.

Without these early efforts at identifying students performing below par, it is likely that many of these students would have performed poorly on their final exams—so poorly that they could not remain in law school even with substantial improvement during the second semester. In fact, anecdotal evidence suggests that a number of students experienced marked improvement from their early assignments to the final exam. In one of the Property courses, twenty students who had scored below the median on the first two writing assignments were above the median on the final exam,<sup>39</sup> which suggests that these twenty students unlocked the secret of law school exam performance early on. Another professor, as discussed earlier, saw marked improvement in student performance when she asked the entire class to rewrite an assignment that the class as a whole had not handled well on the initial effort. Without the additional instruction the professor provided and a second effort at writing, those students may have been overwhelmed by the final exam that presented a similar scenario.

### C. Improved Writing on Final Exams

The most common outcome observed by several faculty members on their final exams was improved organization of student exam answers. Of the seven participating doctrinal faculty in the first semester, four reported a sense that the class as a whole wrote better-organized exams. In comparing exam scores from a previous year, one doctrinal faculty member observed a

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39. This faculty member awarded points on the two papers, even though they did not count toward the final grade.

noticeable difference in the points she awarded for having a well-organized answer. While 39% of the class (21 of 53 students) earned the top score for organization in the year prior to the start of this program, 91% (61 of 67 students) earned the top score during the first year of this program.<sup>41</sup>

A few faculty members also reported improvements in the overall quality of the exams. One of the doctrinal faculty members observed that the students in the top half of the class performed better than did past classes. Two others reported awarding fewer grades below the good standing grade point of 2.3. Other faculty, however, reported that they did not see any marked improvement in the legal analysis on the exam. Indeed, for a few students, especially the lower-performing students, IRAC seemed to be a crutch that they clung to even without knowing how to use it. These students appeared to think that if they wrote in what they believed was IRAC format, they had mastered legal analysis even if they failed to understand the law or how to apply it.

Nonetheless, even if these professors did not perceive any improvement in the quality of the exam, the improved organization of the students' answers permitted faculty, and students, to narrow down their exam-writing problems and more clearly identify what was lacking. Working on the quality of the analysis and mastery of the substantive doctrine will be a goal for future years of the program.

#### D. Benefits of Collaboration

The 1L faculty held several meetings in advance of the school year, as well as periodic meetings during the year, to collaborate on the content and sequencing of assignments and to discuss the progress students were making. During one of these early meetings, the Lawyering Skills faculty shared with the doctrinal faculty their approach to teaching legal analysis and the terminology they used. At the same time, doctrinal faculty discussed the objectives of their writing assignments, as well as any differences in their terminology or approach.

The benefits of these faculty discussions were multi-fold. The primary benefit was a shared language and, with slight differences, a shared approach in using the IRAC structure for legal analysis. This shared language and approach gave faculty greater confidence that when they discussed legal analysis, they were reinforcing and building on the work of each other. Even when they differed, they could point to the shared base

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41. The professor awards 0, 0.5 or 1.0 points for organization on a "performance essay portion" of the exam. In 2008, four students earned no points, twenty-eight earned 0.5 point and twenty-one earned 1 point. In 2009, one student earned 0 points; five earned 0.5 and sixty-one earned the full point.

and explain the differences. The collaborative discussions also helped faculty appreciate each other's deadlines, giving them confidence that they could make assignments without fear that they were overwhelming students at certain stressful times of the semester. Finally, but not insignificantly, faculty enjoyed a sense of being a team, guiding first year students toward competence in an agreed set of outcomes.<sup>42</sup>

#### E. One Final Observation

Several faculty members reported one additional phenomenon that coincided with the introduction of the integrated curriculum: fewer students used their "note out" privilege to come to class without being prepared.<sup>43</sup> One faculty member reported that she had virtually no "note outs" in the final week of class, as compared with the 20% to 40% percent she had typically received during that week in prior years. Of course, there is no evidence to suggest that this phenomenon is directly attributable to the integrated curriculum. But, viewing this fact in an optimistic light, one might hope that the increased emphasis on mid-semester assessments, coupled with a competence-based performance standard, might be encouraging students to take their preparations more seriously.

### V. CHALLENGES OF DEVELOPING A COORDINATED PROGRAM

Notwithstanding the benefits described in the previous section, a law school desiring to adopt a coordinated program will face several challenges to creating and sustaining the program. For faculty members, the primary challenge is the time and emotional energy required to develop effective writing assignments, collaborate with colleagues, and provide meaningful feedback to students. Institutionally, the law school faces several challenges with respect to resource allocation and program management, as well as developing faculty commitment to the program in the first place. A discussion of those challenges and suggestions for overcoming them are given below.

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42. See CARNEGIE SUMMARY, *supra* note 1, at 8 ("In order to produce such integrative results in students' learning, however, the faculty who teach in the several areas of the legal curriculum must first communicate with and learn from each other.").

43. Many, but not all, professors allow students a limited number of opportunities to come to class unprepared and place a note on the lectern to indicate that the professor should not call on the student. The student is counted absent for the day, but does get the benefit of listening to the class discussion.

### A. Faculty Challenges

Developing a sequenced WAC program requires time and effort beyond what has been traditionally required of “doctrinal” faculty who teach in a lecture or Socratic method style. Faculty may also feel that a WAC requirement threatens their autonomy and some may not welcome the emotional drain of providing constructive feedback to students in mid-semester. These are legitimate concerns, and while some can be diminished with sufficient institutional support, there are some bottom line “costs” for this type of teaching. Nonetheless, if a law school is committed to preparing “practice-ready” graduates, this type of program offers substantial gains with relatively minimal faculty investment.

#### 1. *Course Coverage*

Giving writing assignments and discussing them in class necessarily reduces the amount of class time devoted to coverage of a wide variety of topics each semester. The SIU law faculty recognized this “depth vs. breadth” trade-off, but determined that teaching skills and analysis is as important, if not more so, than coverage of the material. Moreover, faculty have discovered that students are better able to master substantive legal issues when they are forced to articulate their understanding of the material in a written form, just as they would in a law practice. In addition, by ensuring that first year students are equipped with these skills, along with a baseline of doctrine and policy, they are better able to learn and master other substantive topics in the future. Conversely, there is little benefit in “covering” a vast amount of material if students are not actually learning the material. On the costs/benefits ledger, therefore, sequenced writing assignments are a plus.

#### 2. *Faculty Autonomy*

Some faculty members may view a collaborative curriculum as a threat to their ability to control the substance and methodology of their respective courses. In developing the sequenced WAC program, the SIU law school respected faculty choice by asking each instructor to propose the assignments and the timing that would best fit their particular courses. Through some discussion and minor give-and-take, the faculty were able to

determine how to sequence the assignments to achieve the program's and their own pedagogical objectives.<sup>44</sup>

### 3. *Faculty Preparation*

In addition to foregoing some course coverage, faculty must be willing to commit the time required to develop pedagogically sound writing assignments for their respective courses, as well as a grading rubric and/or a sample answer to help students identify the strengths and weaknesses of their work product. Faculty also must be willing to commit the time to give feedback on the written assignments and to meet with each other to develop the program and coordinate their assignments.

Because SIU had a WAC requirement for some years, the 1L faculty already had a solid base of writing assignments designed for their courses. A law school starting this program would need to make conscious choices about their objectives and then design writing assignments that meet those objectives. In many instances, however, designing a writing assignment is not all that different from designing a final exam question. Indeed, some professors may use their backlog of old exams as a resource. For others, the task may be as easy as selecting a hypothetical question in the textbook; indeed, many textbooks today now include problems designed specifically for experiential learning.

The amount of time required to provide feedback may also be minimized. Although individualized feedback provides the greatest educational benefit to students, other forms of feedback also can be effective. As indicated earlier in the article, feedback can be as simple as holding a class discussion of the assignment or providing a model answer or a rubric that allows students to score their own papers (or the work of another student).<sup>45</sup> The SIU School of Law attempted to ease the burden of providing feedback in two ways. First, because faculty had coordinated their assignments into a sequenced program, most faculty members had only one assignment to review each semester. Second, faculty could use a Fellow to make the initial review of individual papers, with faculty

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44. This grassroots approach is well-suited to effecting curricular change in an academic environment where instructors typically enjoy great autonomy. While it is possible for a law school to make even greater strides in a more expeditious fashion under a dean or a majority of the faculty willing to impose change, that process is likely to be less palatable to most law professors.

45. There is, in fact, significant educational benefit for students to "grade" each other's work, as evidenced by the comments from SIU's Taylor Mattis Fellows after they had reviewed 1L writing assignments. Two such comments are notable. First, they experienced firsthand the time and energy involved in grading, which gave them a greater appreciation of faculty work. Second, and most important, they learned how to improve their own writing and analysis by observing both good and bad examples in the papers they reviewed.

members reserving their time to review and comment upon the weakest papers.<sup>46</sup> Although faculty members had sole responsibility for determining which papers met the basic competency standard or had to be rewritten, the time required for that task was significantly less than the time required to review every paper. Nonetheless, additional time was required to train the teaching assistants to grade the papers. In most cases, this consisted of a half hour of discussing the expectations for the assignment and another half hour consulting with teaching assistants as they began grading to help them calibrate the scoring process.

To properly coordinate the program, faculty must also commit time to meet with each other. To design the program, SIU's 1L faculty met approximately six times (about one hour each meeting) over the course of a year. The first task discussed in those meetings was to identify the specific legal skills the faculty believed first year students should master, as set forth in Section II of this article, and the order in which the skills were to be mastered. The second task involved faculty suggesting assignments that would fit the objectives. The third task was to coordinate and schedule the writing assignments, the grading, and the identification of those performing below competency level. Once the program was operational, faculty continued to meet two to three times per semester to discuss how the program was proceeding, trends that faculty were noticing, and any other curricular matters of common interest.

#### *4. Emotional/Professional Tolls of Providing Midterm Feedback*

Judging another person's performance is never easy, particularly if the performance is falling below expectations. The difficulty of this task is multiplied when the judgment concerns something as personal as an individual's thoughts and the way in which those thoughts are expressed. Thus, some faculty members, as well as their teaching assistants, may feel considerable discomfort in giving midterm assessments of students' writing assignments.

Midterm assessments can be more stressful than final grades for a number of reasons. First, under the traditional model, in which a faculty member gives only one exam at the end of the semester, the faculty member may simply assign a grade and have no further contact with the student. Even in cases where a course continues from one semester to the next, there is some distance between the grading and the faculty member's next contact

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46. About half of the faculty completed their own reviews of student papers while the other half used the services of the Fellows. One faculty member who did multiple assignments in her own course had the Fellows review the first assignment, but completed her own review of the second assignment and then provided rubrics and sample answers for later exercises.

with the student the following semester. Second, there is safety in numbers with final exam grades because all faculty members' grades are generally delivered at the same time; thus, assuming a student's grades are fairly consistent, no individual professor's grades stand out. Finally, with relatively few exceptions, students generally do not take the opportunity to review their final exams; most simply accept their grades and move on to the next semester's course work. With midterm assessments, by comparison, the faculty member has an ongoing relationship with students in the class and students have a heightened interest in their performance on a midterm review because of the ramifications it can have for their performance on the final exam. Moreover, in a sequenced writing program, each professor's review is delivered independently of the others, losing the "safety in numbers" effect. Each of these factors can contribute to a sense of vulnerability for professors who give midterm assessments.

In addition to the emotional discomfort of delivering unwelcome news, faculty members have legitimate fears of backlash in student evaluations of the professor. Most law students are accustomed to receiving good grades in college and, therefore, are often not prepared for the shock of their first "average" grade in law school. As Legal Writing/Lawyering Skills faculty have long been aware, disgruntled students may take their revenge in their evaluations of the course and the professor, often under the assumption that the student's lower-than-expected midterm grade was the fault of the professor's incompetence in grading or teaching.<sup>47</sup> Doctrinal faculty members have largely escaped this backlash because students typically complete the evaluations of those courses before the final exam is administered. They may lose this privileged status, however, under a sequenced writing program in which they join legal writing faculty in giving midterm assessments. To address this challenge, law schools should prepare participating faculty for the emotional energy that may be needed to deal with student backlash. They should also ensure that tenure and promotion committees are aware of the potential for student backlash and take this factor into consideration when reviewing student evaluations of faculty who participate in the program. Faculty teaching substantive courses may also consult with their legal writing colleagues to learn ways in which the legal writing faculty have dealt with this backlash.

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47. "Research confirms the suspicion of legal writing instructors that their early and frequent evaluation of students impacts their teaching evaluations more directly and negatively in comparison to their colleagues who do not distribute grades until after student evaluations are completed." Barbara Glesner Fines, *Competition and the Curve*, 65 UMKC L. REV. 879, 889 (1997); see also Melissa J. Marlow, *Blessed Are They Who Teach an Upper-level Course, For They Shall Earn Higher Student Ratings*, 7 FLA. COASTAL L. REV. 553 (2006).



It is possible, of course, that a sequenced WAC program may blunt student backlash. If students receive consistent feedback from most, if not all, of their professors before completing their student evaluations, they are less likely to assume that the negative feedback they received of their work was due to incompetence of the professors. There is also room to hope that with multiple midterm assessments, students will learn the value of the feedback, even when unpleasant for them to hear. Also worth noting is that when the students learn to receive feedback and use it constructively, they are preparing for practice.

A competency-based assessment may be particularly helpful to creating a positive mind-set regarding midterm assessments. First, in a competency-based assessment, faculty evaluate students against specific criteria and can explain their assessment by pointing out specific areas of strength and weaknesses in relation to the student's mastery of the knowledge or skill.<sup>48</sup> Thus, a competency-based assessment builds student confidence in the feedback because it is based upon their actual performance, rather than upon their performance in relation to the class curve. Second, and perhaps more important, a competency-based model promotes student confidence in their own abilities because even if they are at the bottom of the class but still performing at a basic competency level, they can assess their performance as meeting professional expectations.<sup>49</sup>

##### 5. *Increased Student Demand*

This challenge may come under the “no good deed goes unpunished” category. Once faculty began giving writing assignments with individualized feedback, students wanted more. They expressed a desire for more assignments, for individualized assessments on each written assignment (as opposed to just oral discussion of the assignment in class), and for personal meeting times with faculty to discuss ways to improve. To address this demand, SIU faculty members typically insisted that students independently consult study aids or seek assistance from the study group Fellows before approaching a faculty member.<sup>50</sup> This technique resolved the vast majority of cases, reserving faculty time for where it was needed most. Moreover, as a practical matter, the fact that students had a

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48. See *supra* note 29 (discussing criteria-referenced grading).

49. “Criteria-referenced assessments rely on detailed, explicit criteria that identify the abilities students should be demonstrating (for example, applying and distinguishing cases) and the bases on which the instructor will distinguish among excellent, good, competent, or incompetent performances.” BEST PRACTICES, *supra* note 6, at 244.

50. Students, of course, would prefer personal attention from the faculty member. Such demands are unrealistic, however, when there are sixty-five to seventy students in the class (as at SIU), much less in classes of ninety to one-hundred or more.

continuing series of assignments throughout the semester limited the amount of time they could spend on writing outside assignments for faculty to review. As a result of this combination of factors, the SIU faculty did not perceive any serious discontent among students when their requests were redirected. If such requests did result in overt dissatisfaction, however, a law school should support the decisions that faculty members make in balancing student requests for more feedback with other faculty obligations.

## B. Institutional Challenges

In addition to the individual challenges that faculty members must confront, institutional challenges exist for a law school considering a coordinated writing program. As discussed in further detail below, these challenges include securing faculty “buy in,” as well as the ever-present issue of resource allocation.

### 1. *A Common Purpose*

The first challenge that law schools face in developing a collaborative curriculum is securing faculty commitment to the program itself. To overcome the challenges that individual faculty members face, the faculty must have a shared vision of the program’s benefits and objectives, as well as an institutional climate that encourages cooperation.<sup>51</sup> Simply put, the faculty must determine that advancing students’ writing and analysis skills is worth the time and energy taken from other faculty pursuits and from class time that could be devoted to broader coverage of the substantive material. The periodic self-study process is an excellent time to develop or solidify the common purpose.

Because SIU is a relatively small school with a congenial faculty, it is perhaps a little easier for this school to secure consensus about trying new things.<sup>52</sup> Larger schools, with divided faculties, may find institutional consensus to be more elusive. It is not necessary, however, to have the approval or participation of every member of the faculty, or every member of the 1L faculty, for that matter, to develop a sequenced writing program.<sup>53</sup>

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51. See CARNEGIE SUMMARY, *supra* note 1, at 10 (stating that “the formation of competent and committed professionals deserves and needs to be the common, unifying purpose”).

52. Indeed, even within a congenial faculty, instituting curricular change is not without friction and cannot be accomplished overnight. The points of friction need not derail the process, however, if the faculty anticipates this challenge and takes the time to work through disagreements by focusing on the common purpose.

53. As indicated earlier, SIU’s 1L faculty members participated in varying degrees, with one faculty member declining to participate at all.

Indeed, one faculty member alone could develop a sequence of assignments to build student writing and analysis skills within the confines of his or her own course.

It is helpful, however, to have a critical mass of faculty participate in the program for several reasons. The first reason relates to workload: preparing and giving feedback on sequenced writing assignments is less onerous if several instructors share the burden. Second, faculty-wide support demonstrates to students the importance that the faculty places upon these essential skills. Third, students cannot discount the constructive criticisms they are receiving if the feedback is consistent among several professors. Finally, as indicated above, providing feedback from several professors early in law school helps students learn to adapt their writing to different expectations from each instructor. Nonetheless, these benefits can be achieved with less than 100% participation by 1L faculty.

## 2. Allocation of Resources

The most significant resource required for a coordinated writing program is faculty teaching and planning time. If a law school is committed to a coordinated writing program, therefore, it may have to adjust its expectations in the areas of scholarship and service to account for faculty time and effort given to designing assignments, reviewing student work product, and providing feedback. Law schools interested in this coordinated writing program must ensure that they credit teaching in their allocation of resources such as course assignments.

Other resources that are helpful to such a program include the costs of hiring teaching assistants, encouraging faculty development, and administrative needs. As discussed above, SIU used student teaching assistants (Fellows), who were paid to help faculty review the 1Ls' written exercises. Thus, money<sup>54</sup> had to be budgeted for the Fellows' salaries and resources to train them for this task.<sup>55</sup> A law school considering this program might also want to offer additional training for faculty regarding effective student assessment and feedback.<sup>56</sup> This training could come from

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54. For example, our costs were less than \$3,600 for twelve Fellows (paid \$12 per hour for five hours work on each of the five assignments for which professors sought their assistance). Because we have about 140 first year students, the costs average less than \$28 per student.

55. That training should prepare them for the task of reading and critiquing student work, as well as the negative feedback they may receive as the first persons to give potentially negative feedback to the first year students. *See supra* note 47 and accompanying text.

56. For a discussion of effective assessments and feedback, *see generally* BEST PRACTICES, *supra* note 6, at 235-63; CARNEGIE REPORT, *supra* note 41, at 162-84; Beryl Blaustone, *Teaching Law Students to Self-Critique and to Develop Critical Clinical Self Awareness in Performance*, 13 CLINICAL L. REV. 143 (2006).

in-house workshops or by encouraging faculty to attend teaching conferences such as the Section on Teaching Methods programs offered at the annual conference of the Association of American Law Schools<sup>57</sup> or the summer conference offered by the Institute for Law Teaching and Learning.<sup>58</sup>

### 3. *Program Management*

In a very simple model, faculty members could collectively administer the program by simply coordinating assignments among themselves and scheduling them within their regular class times. The SIU faculty found it helpful, however, to have a point person for the program. By silent consensus of the 1L faculty, the Academic Success Director assumed responsibilities for scheduling and facilitating the faculty discussions. She also met individually with faculty to determine their scheduling and administrative needs and offered the services of her teaching assistants to help faculty develop their assignments and grading rubrics. The Academic Success Director also coordinated the administration of the assignments, supervised teaching assistants as they reviewed assignments for some professors, and resolved scheduling difficulties as they arose.

Management of the program also requires some form of record-keeping to serve two main purposes. One purpose is to identify struggling students and to provide early intervention to get them back on track. In this regard, the SIU faculty found it helpful to inform the Academic Success Director how each student performed on each faculty member's assignments. By seeing the results of each assignment, she was able to track students who were having difficulty and offer appropriate one-on-one assistance. The second purpose is to assess the outcome of the coordinated writing program. By comparing student performance from assignment-to-assignment, the faculty can determine whether the program is achieving its basic goal. Similarly, faculty members may be able to compare student performance on final exams after initiating a coordinated program with the performance on exams prior to the program.<sup>59</sup> Thus, some of the information SIU has found useful include: a shared list of students needing to rewrite assignments because they failed to meet the minimum competency standard; a comparison of the scores of students on early assignments with their final grades; and a comparison of final exam grades both pre- and post-inauguration of the writing program.

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57. Association of American Law Schools, [www.aals.org](http://www.aals.org).

58. Institute for Law Teaching and Learning, <http://lawteaching.org/>.

59. See *supra* note 25 and accompanying text.

## VI. CONCLUSION

As law schools embrace the concept of producing practice-ready graduates, a prime place to begin this process is in the first year curriculum. This article offers a modest proposal for enhancing student mastery of all facets of lawyering by integrating a sequenced WAC program into traditional 1L doctrinal classes. This proposal requires minimal effort on the part of faculty members and minimal school resources, but can produce substantial benefits as faculty members collaborate toward the common goal envisioned in the Carnegie Report: a “dynamic curriculum that moves them back and forth between understanding and enactment, experience and analysis.”<sup>60</sup>

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60. CARNEGIE SUMMARY, *supra* note 1, at 8.

