

TEACHING LEGAL WRITING THROUGH SUBJECT-MATTER SPECIALTIES: A RECONCEPTION OF WRITING ACROSS THE CURRICULUM

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I. INTRODUCTION

As long as formal education has existed, educators have pondered how to better engage their students and produce deeper, longer-lasting learning—learning that sparks more learning and leads to proper execution of the learned subject. In the last century, professional educators and psychologists have studied ways that humans learn and have described those ways in a body of learning theory that continues to develop and inform all pedagogy. Most recently, legal educators have struggled with the proper content of legal education. Should instruction be limited to theory and doctrine that focuses students on the sources and rules of law? Should law schools emphasize skills that prepare students to enter the practice world? Should law schools develop a mix and, if so, what should the balance be? Writing-across-the-curriculum programs, embraced by many, yet viewed with suspicion by equal numbers, attempt to achieve that balance.

As these questions have inspired academic debate, individual legal educators have quietly gone about the business of blending both theory and skills into their course offerings. Some of these educators have been primarily doctrinal teachers who have assigned writing projects to their students. Others have been doctrinal professors who have collaborated with their school's legal writing faculty to create joint assignments. Others have been legal writing faculty who have taught practicum courses as an accompaniment to upper-level doctrinal courses. All could characterize their initiatives as "writing across the curriculum."

Efforts to increase and integrate skills instruction with doctrinal information have been, at the least, efforts to increase student learning. Even so, these efforts largely have emphasized doc-

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trine, with skills instruction as the adjunct in the form of some required writing assignments inserted into the syllabus of a doctrinal course. This model—writing within the doctrinal course—has become the standard model of writing-across-the-curriculum efforts, which likely has more to do with situational factors than with learning theory. Any law school usually has comparatively many more doctrinal courses than skills courses, so it would be only natural to suggest that all those doctrinal professors pick up a laboring oar and help increase skills training. There is another way.

Educators can, and have, shifted the focus from importing written skills into the doctrinal course to exporting doctrine into the legal writing classroom. Some have taught legal writing skills with a purposeful doctrinal focus: to make one area of law the basis for all or most of the assignments for the entire writing course. Without a designated subject matter, most legal writing courses involve assignments from many subject areas. Students may start out the school year working on a torts problem; their second assignment might be a criminal matter; and their final assignment might involve constitutional law. At DePaul University College of Law, however, some legal writing sections are purposely specialized: they are populated with students who have identified an interest in a particular area of law; they are staffed with legal writing professors who have practice experience in that area of law; and they involve assignments that feature that specialized topic. Thus, students learn the skills of writing and analysis while working through the nuances of a legal specialty to which they anticipate a long-term commitment. The purposeful specialization continues in DePaul's upper-level writing curriculum, allowing students to continue their focused curricula after their first year. Complementing this system, professors of the first-year specialized writing sections often teach upper-level doctrinal electives, an outlet that both informs and improves the professors' legal writing instruction.

Exporting doctrine into the legal writing classroom is an innovative way to achieve writing-across-the-curriculum goals to enhance and increase student learning of skills, particularly the skill of writing. In addition, the union of doctrine and writing within the confines of the legal writing classroom is congruent with, and extends, current learning theory. That body of work focuses on using social interaction to encourage students' modification of their ideas; using authentic learning tasks to increase students' sense of

realism; and using topics in which students have a high interest in order to produce their best writing. Assigning subject matter specific work to students who have an interest in those subjects creates micro-social discourse communities within the legal writing classroom; this dynamic increases both students' active engagement in their work and their learning. Accordingly, this instructional model is a subset of the *learning to write in the discipline* approach to the writing-across-the-curriculum movement. It is the next logical step, if an untraditional-looking one, in legal education.

This Article explores the methods of, and reasons for, teaching legal writing through specialized sections. It first explains DePaul's writing program and the way that DePaul's specialized writing sections fit into that program. It then explores the theoretical basis for specialized instruction, explaining the learning theories that inform and support it. It details the multiple justifications for specialized instruction, both theoretical and practical, and concludes with an exploration of practical benefits and burdens for professors who may wish to adopt the model at their law schools.

II. INSTRUCTION AT DEPAUL UNIVERSITY COLLEGE OF LAW

A. The Legal Writing Program

At DePaul, students take a required three-semester course in Legal Analysis, Research, and Communication (LARC). LARC I and II, which students take during the first year, are taught in small sections of twelve to fifteen students. These sections are either "general" or "specialized." Students in "general" sections work on assignments in a variety of subject areas, often tackling issues drawn from contracts, torts, criminal law, and civil procedure. Students in "specialized" sections work on assignments that are drawn primarily from a particular area of law, such as intellectual property or family law.¹ LARC I and II faculty are full-time professors, and LARC III faculty are adjunct professors. All teachers use a uniform syllabus. Faculty members may create their own assignments, but each faculty member must deploy assignments

¹ *Infra* sec. II(E)(1) (discussing first-year LARC curriculum at DePaul).

over the course of the year that cover programmatic requirements.² All sections of LARC III are general sections.

In addition to requiring three semesters of LARC, DePaul offers a wide menu of upper-level writing electives. These electives include both general and specialized courses.³ Over the last several years, DePaul's LARC program has evolved in response to a combination of market pressure, student demand, and pedagogical need. The result is a purposeful curriculum that unites current learning theory with practical approaches to instruction and that stretches over all three years of a student's legal education.⁴

B. Creation of the Certificate Programs

In the 1990s, wanting to attract students who had a particular interest in specific areas of law and identifying a potentially successful recruiting approach to law student admissions, administrators at DePaul explored the possibility of offering certificate programs. Through what would become its current program, DePaul offered its students the opportunity to specialize in a particular area of law, akin to the way undergraduate students major in a field of study. The faculty approved the initial certificate program in intellectual property law during the 1999–2000 academic year as a corollary to the creation of the Center for Intellectual Property Law and Information Technology.⁵ Certificate programs in health law, international law, tax law, criminal law, and family law quickly followed.⁶ A program in public interest law was launched in 2003, rounding out a law school program with opportunities for seven specialties.⁷

DePaul is in good company: many law schools have programs by which students can earn a certificate in various fields of law.⁸

² *Infra* sec. II(E)(1).

³ *Infra* secs. II(E)(2)–(3).

⁴ For information on the initial evolution of DePaul's legal writing course, see Margit Livingston, *Legal Writing and Research at DePaul University: A Program in Transition*, 44 Alb. L. Rev. 344 (1980).

⁵ E-mail from Mark Weber, Prof. of L., DePaul U. College L., to Susan Thrower, Assoc. Prof. & Dir. Leg. Analysis, Research & Commun., DePaul U. College L. (April 25, 2006) (copy on file with Author).

⁶ *Id.*

⁷ E-mail from Steven Greenberger, Associate Dean for Academic Affairs, DePaul U. College L., to Susan Thrower, Assoc., Prof. & Dir. Leg. Analysis, Research & Commun., DePaul U. College L. (July 31, 2006) (copy on file with Author).

⁸ "Law schools, themselves, have not escaped the tendency toward hyper-

These programs take many forms. Some are fully developed programs administered by institutes or centers and culminating in the award of a graduation certificate memorializing the accomplishment.⁹ Others are formal tracking models¹⁰ or less formal curricular offerings that permit students to concentrate in particular fields of study.¹¹ Certificate programs and concentrations are now common in the fields of labor law,¹² health law,¹³ intellectual property,¹⁴ dispute resolution,¹⁵ criminal law,¹⁶ and social justice.¹⁷

specialization that has characterized the profession for at least a generation.” Larry Cata Backer, *Toward General Principles of Academic Specialization by Means of Certificate or Concentration Programs: Creating a Certificate Program in International, Comparative and Foreign Law at Penn State*, 20 Penn St. Intl. L. Rev. 67, 69 (2001). Certificate programs increased by 82% in the 1990s. *Id.* at 71 n. 4.

⁹ See e.g. Richard A. Matasar, *The Rise and Fall of American Legal Education*, 49 N.Y. L. Sch. L. Rev. 465, 481 (2004) (noting the creation of specialty and certificate programs in an effort to distinguish one school from others); Stacy A. Tovino, *Incorporating Literature into a Health Law Curriculum*, 9 J. Med. L. 213 (2005) (urging law schools to incorporate the law and literature movement into their specialized health law curricula). For an argument that these programs should be promoted when appropriate, see Backer, *supra* n. 8 at 67–68.

¹⁰ E-mail from Maria Crist, Prof. Lawyering Skills & Dir. Leg. Profession Program, U. Dayton Sch. L., to Susan Thrower, Assoc. Prof. & Dir. Leg. Analysis, Research & Commun., DePaul U. College L. (June 16, 2006) (copy on file with Author) (describing the University of Dayton School of Law’s system under which students choose a track at the beginning of the school year. The track guides the students’ instruction and curricular choices, though students may opt out of their chosen track. The three tracks are transactional/general practice, advocacy/litigation, and intellectual property law.).

¹¹ E.g. Ann M. Griffin, *What’s Your Major?—A Question for Law Students in Michigan?* 80 Mich. B.J. 72, 72 (Jan. 2001) (In Michigan, Michigan State University-Detroit College of Law offers concentrations in international and comparative law and in tax law; Thomas M. Cooley Law School offers concentrations and certificate awards in four areas of law.).

¹² E.g. Heather Nolan & Ethan Zelizer, Student Authors, *Practice Areas in Demand in the Chicago Legal Market*, 16 CBA Rec. 42, 43 (Apr. 2002) (noting the Chicago-Kent College of Law’s certificate program in labor and employment law).

¹³ E.g. Linda C. Fentiman, *A Distance Education Primer: Lessons from My Life as a Dot.Edu Entrepreneur*, 6 N.C. J.L. & Tech. 41 (2004) (describing Pace University Law School’s distance learning program in health law).

¹⁴ E.g. Thomas F. Cotter, *Introduction to IP Symposium*, 14 Fla. J. Intl. L. 147 (2002) (marking the beginning of the certificate program in intellectual property law at the University of Florida College of Law); Robert W. Gomulkiewicz, *Getting Serious about User-Friendly Mass Market Licensing for Software*, 12 Geo. Mason L. Rev. 687, 708 n. 92 (2004) (listing seventeen law schools that offer LL.M. degrees in intellectual property law).

¹⁵ E.g. Sharon Press, *Institutionalization of Mediation in Florida: At the Crossroads*, 108 Penn St. L. Rev. 43, 56–57 nn. 94–95 (2003) (noting that, at the time of publication, twenty-four law schools provided dispute resolution programs and that *U.S. News and World Report* included a ranking of dispute resolution programs in its list of “America’s Best Graduate Schools”).

¹⁶ See e.g. Michael Ariens, *Law School Branding and the Future of Legal Education*, 34 St. Mary’s L. J. 301, 350 n. 223 (2003) (St. Mary’s University School of Law offers students a certificate of concentration in criminal law.).

¹⁷ E.g. Kevin R. Johnson & Angela Onwuachi-Willig, *Cry Me a River: “The Limits of a*

Part of this trend toward specialization, and likely predating it, is the targeted approach that some law schools take of offering students the opportunity to acquire a deeper experience in an area of law through “cornerstone” and “capstone” courses. A cornerstone subject provides foundational knowledge.¹⁸ Courses such as corporate law and estate planning target second-year students and attract both the “generalist” who wants a survey course and the “specialist” who pursues an in-depth experience.¹⁹ A “capstone” course is a cross-disciplinary course that students take after learning the basics of a doctrine or theory. It builds on and expands that knowledge by permitting students to apply it in actual practice.²⁰ A capstone course empowers the student “to manage the complete representation of a client’s complex matter within the student’s area of concentration.”²¹ Two types of capstone courses have been previously studied: (1) those that build on doctrinal knowledge, with a capstone evaluation product focused on one subject or on cross-disciplinary subjects; and (2) those that emphasize skills and values development and are evaluated by incremental practice exercises and written work.²²

DePaul’s formal certificate programs require students to complete both cornerstone and capstone classes. Students who successfully complete the program requirements receive a certificate noting that accomplishment. Certificate programs are organized and administered by faculty members. Program heads, with the approval of the law school’s curriculum committee, determine the number of credit hours and the particular course offerings, including cornerstone and capstone courses, that students must complete in order to receive the certificate upon graduation.

Systemic Analysis of Affirmative Action in American Law Schools, 7 African-Am. L. & Policy Rep. 1, 1–2 (2005) (University of California at Los Angeles School of Law offers a certificate program in critical race studies.).

¹⁸ John C. Kleefeld, *Rethinking “Like a Lawyer”: An Incrementalist’s Proposal for First-Year Curriculum Reform*, 53 J. Leg. Educ. 254, 256–258 (2003) (discussing Canadian legal education).

¹⁹ *Id.* at 256–257.

²⁰ Bryan D. Cooper, *The Integration of Theory, Doctrine, and Practice in Legal Education*, 1 J. ALWD 51, 54 (2002).

²¹ Matthew C. Cordon, *Beyond Mere Competency: Advanced Legal Research in a Practice-Oriented Curriculum*, 55 Baylor L. Rev. 1, 33 (2003).

²² Kleefeld, *supra* n. 18, at 256–257; see also William R. Trail & William D. Underwood, *The Decline of Professional Legal Training and a Proposal for Its Revitalization in Professional Law Schools*, 48 Baylor L. Rev. 201, 243–244 (1996) (discussing the role of capstone course in a fourth and fifth semester of a proposed program of study).

C. The Birth of Specialized Legal Writing Sections

At the inception of DePaul's first certificate program, the legal writing course was not part of the certificate landscape. Soon thereafter, Professor Roberta Rosenthal Kwall²³ suggested to Professor Maureen Collins, Director of Legal Writing,²⁴ that DePaul create a legal writing section that consisted entirely of students interested in studying intellectual property law. Working together, the two professors conceived a course that would follow the traditional legal writing curriculum but that would focus its assignments on topics integral to intellectual property law. They styled the section "Intellectual Property/Legal Writing" or "IPLW." Professor Collins, a copyright attorney, taught the class.

After only a couple of years, the number of applicants for IPLW had increased sufficiently to warrant multiple sections of the course. In response, DePaul hired a legal writing professor with an undergraduate degree in engineering and practice experience in patent law. She taught the students who had engineering or hard science backgrounds, and Professor Collins taught the artists. Participation in IPLW was not a prerequisite for earning a certificate in intellectual property; correspondingly, students who enrolled in IPLW and later decided to abandon the study of intellectual property law were not obligated to pursue a certificate.

The IPLW sections were roundly considered a success by both faculty and students, and others quickly followed. DePaul now has specialized legal writing courses in family law, health law, and public interest law, in addition to the groundbreaking offerings in intellectual property law. Writing faculty with experience in the relevant legal fields teach these specialized sections, which have been a big boost to the certificate programs' recruiting efforts.²⁵

The certificate programs appeal to prospective students because of their reasonable expectation that certificate programs will lead to employment in areas of the specialized interest. The intellectual property program, in particular, has been quite successful in working with the Chicago bar to place the IPLW students in intellectual property-related jobs during their first summers. The

²³ Roberta Rosenthal Kwall is the Raymond P. Niro Professor of Intellectual Property Law at DePaul University College of Law.

²⁴ Maureen B. Collins is an Instructor of Lawyering Skills at John Marshall Law School in Chicago, Illinois.

²⁵ Cf. Matasar, *supra* n. 9, at 479–482 (discussing the prestige sought by students during the law school application process, including specialty and certificate programs).

family law certificate program has an employment component as well.

D. Acceptance to a Specialty

DePaul has seen an impressive increase in the number of students who seek acceptance to a specialty LARC section.²⁶ The DePaul law school admissions application includes an itemized box that students may check to indicate that they want to apply to a specialized LARC section in intellectual property law, family law, health law, or public interest law. For the first few years after the adoption of this admissions procedure, applicants could check only one box. Some of the certificate programs later required an essay through which the applicants elaborated on their interest in a specialized section.

Once DePaul admits an applicant, admissions administrators review his application for interest in a specialized section. If that admitted student has checked a specialty box, DePaul sends the student brochures describing the certificate program. In addition, in a personalized recruiting effort, an admissions officer or faculty member contacts the student to describe the program and the specialized LARC section. Simultaneously, admissions administrators forward information on all interested applicants' LSATs, GPAs, and prior work experience to the certificate program heads, who determine which applicants to accept into a specialized section. Once the program heads have admitted particular students to a specialized section, recruitment efforts continue in those cases in which the admitted students have not yet committed to DePaul. The program heads have systems in place to alert an admitted student that he has been accepted not only to DePaul but also to the specialized LARC section. They use this acceptance to the spe-

²⁶ For the 2006 entering class, DePaul received approximately 5,000 applications; 70% of those applicants requested acceptance into one or more specialized sections. For that class, the admissions office had changed the application to permit applicants to check as many specialty areas as they wished. Admissions administrators and certificate program heads initially thought that this change would lead to a better yield, as students might not be accepted into their first choice for a specialty section but might still choose to attend DePaul if they were accepted to one of their choices. The 2006 application also dispensed with the essay requirement. Both decisions led to an undesired super-abundance of applicants to specialty sections, leaving administrators no clear way to determine authentic applicant interest in one area of law over another. For the 2007 entering class, the admissions application re-instituted the one-box option, and some of the certificate programs have re-instituted the essay requirement.

cialty class as a recruitment tool to encourage the admitted students to select DePaul for their legal education. For exceptional candidates, scholarship inducements are available.

The intellectual property certificate program was the first at DePaul to capitalize on the recruitment incentives inherent in the specialized LARC section. Its success in attracting well-qualified candidates to DePaul quickly led the three other certificate programs to recruit students in a comparable manner.

E. The LARC Curriculum

1. First-Year Course

DePaul's LARC curriculum is a unified curriculum in which faculty teach skills on the same schedule, following departmental requirements and guidelines. Accordingly, faculty who teach specialized sections coordinate their instruction, with the program director's help, to achieve important programmatic and pedagogic goals. Teachers of specialized sections also integrate ideas and inspiration from doctrinal faculty and sometimes collaborate with doctrinal faculty when preparing and executing their LARC assignments.

In the specialized LARC sections, students do not study intellectual property law or family law or any other type of law in the same substantive manner that they would study it in a copyright or adoption law course; rather, they focus on learning the skills and doctrine of legal writing: synthesis of multiple authorities, legal analysis, research, and legal citation. The difference between the specialized sections and the general legal writing sections is that the specialized students learn legal writing doctrine through assignments, class exercises, and hypotheticals that focus on their specialty areas. The substantive law that students learn is an adjunct to their research and writing, which are the primary programmatic goals of learning legal method and legal writing.

Specialized writing faculty ground as many exercises and assignments as possible in the specialty field. Because DePaul's LARC program is a unified one, assignments of writing faculty must meet certain requirements so that students—no matter their specialty designation—get a firm grounding in the basics. To this end, each faculty member incorporates assignments over the course of the year that cover state law and federal law, common law and statutory law, and civil law and criminal law. In supply-

ing the legal writing doctrine, some assignments, class exercises, and hypotheticals focus on the core principles of legal analysis and may take the specialized students to non-specialized content areas to ensure that programmatic requirements are met. To illustrate, the field of intellectual property is entirely statutory. Under departmental requirements, however, the IPLW professors must create an assignment using common law and, thus, cannot use intellectual property as the legal basis for at least one assignment. The benefits to students who learn the tools of common law analysis are indisputable and far outweigh the countervailing content concern to cast each assignment as one in intellectual property.

2. Upper-Level Elective Courses

In addition to specializing some of its first-year LARC classes, DePaul now also specializes its upper-level elective courses. DePaul has, in a long tradition, offered a rich menu of upper-level elective courses in writing.²⁷ For many semesters, the law school offered courses in advanced legal writing, general transactional drafting, appellate brief writing, and judicial and scholarly writing. With the success of the specialized first-year LARC classes, the school added drafting courses in patents, copyright and trademark, health law, and family law. By 2004, the certificate programs were drawing a considerable number of applicants who were serious about pursuing a particular field of study. To better support these students in their pursuits, DePaul multiplied its offerings of the existing drafting courses and added sections of drafting in civil litigation and criminal law.

Many factors warranted these changes, including high student demand for more practice in writing and high student interest in learning how to draft legal documents by focusing on a particular subject matter. The changes, in turn, benefit both the students and the school. Students in a first-year specialty class can continue the specialization they begin as first-year students. Students who were not accepted into one of the specialized first-year sections may elect to take a drafting course in the specialty area of their choice; moreover, the upper-level courses dovetail with the certificate programs, giving DePaul another recruiting tool focused on its goal of comprehensively educating its students.

²⁷ Upper-level courses are capped at twelve students.

3. *The Required Third Semester of LARC*

Two years after improvements to its upper-level curriculum, DePaul was ready for an even bigger innovation: its faculty voted to require a third semester of LARC. This addition resulted in a tripling of the number of assignments, giving students a much deeper experience with the core skills of writing and analysis. Correspondingly, the new LARC III course absorbed the advanced legal writing and appellate brief writing courses. After several years of evolution, DePaul now has a writing curriculum in which a student must take three semesters of writing and analysis courses and may take up to three additional semesters of writing electives, some of which are specialized. If a student takes a writing course in all six semesters, that student may enroll in as many as five specialized writing courses—deep study in a specific area of law, even before the serious student’s doctrinal elective courses are taken into consideration.

III. THE THEORETICAL BASIS FOR SPECIALIZATION

DePaul’s move toward offering specialization in a field of study roughly tracked two events in legal education: the publication of the American Bar Association’s *MacCrate Report* and the growing call among many educators for a greater incorporation of skills training—particularly writing—into all courses offered by law schools. The *MacCrate Report* was the American Bar Association’s 1992 review of legal education and included its recommendations for the legal profession. It identified “fourteen fundamental skills and values that every lawyer should acquire before assuming responsibility for the handling of a legal matter.”²⁸ The *MacCrate Report* has been widely perceived as a call for law schools to increase their skills course offerings and to better integrate the teaching of theory and skills training in the classroom.²⁹ Prior to

²⁸ ABA Sec. Leg. Educ. & Admis. to the B., *Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* 7 (ABA 1992) [hereinafter *MacCrate Report*].

²⁹ See *id.* at 128 (stating law schools could “use [the *MacCrate Report*] as a focus for examining proposals to modify their curricula to teach skills and values more extensively or differently [and that] such modifications might include . . . revisions of conventional courses and teaching methods to more systematically integrate the study of skills and values with the study of substantive law and theory . . .”); see e.g. Maureen E. Laflin, *Toward the Making of Good Lawyers: How an Appellate Clinic Satisfies the Professional Objectives of the MacCrate Report*, 33 *Gonz. L. Rev.* 1 (1997–1998); Alice M. Noble-Allgire, *Desegregating the*

the publication of the *MacCrate Report*, a movement had been making its way across American secondary education to incorporate writing into all aspects of instruction; this movement is known as “writing across the curriculum.” A major impetus for law schools to adopt writing-across-the-curriculum approaches was, largely, an underground impetus embraced by legal writing faculty, clinical faculty, and a few others. The *MacCrate Report* provided these groups with the support they needed to take their argument public, and the movement became a viable and enduring force in legal education.³⁰

A. *The Assumption behind Writing across the Curriculum*

Scholars and educators posit many justifications for a *MacCrate*-style integration of law school through the writing-across-the-curriculum model, but one assumption underlies all of those calls: that doctrinal, or casebook, faculty should import legal writing skills into their classrooms by incorporating writing assignments into their courses.³¹ For example, in explaining the differences between “instrumental writing” and “critical writing,” Professor Kissam explained the writing-across-the-curriculum movement as an expansion of clinical instruction methods and suggested three ways that faculty could incorporate more writing into their classrooms: take-home exams, short writing exercises, and

Law School Curriculum: How to Integrate More of the Skills and Values Identified by the MacCrate Report into a Doctrinal Course, 3 Nev. L.J. 32 (2002).

³⁰ See Pamela Lysaght & Cristina D. Lockwood, *Writing-across-the-Law-School Curriculum: Theoretical Justifications, Curricular Implications*, 2 J. ALWD 73, 74 n. 4 (2004); Carol McCrehan Parker, *Writing throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 Neb. L. Rev. 561 (1997).

³¹ See e.g. Toni M. Fine, *Do Best Pedagogical Practices in Legal Education Include a Curriculum That Integrates Theory, Skill, and Doctrine?* 1 J. ALWD 66, 76–77 (2002) (“[W]riting across the curriculum programs are an outstanding way to create a truly integrated program of study.”); Philip C. Kissam, *Lurching towards the Millennium: The Law School, the Research University, and the Professional Reforms of Legal Education*, 60 Ohio St. L.J. 1965 (1999); Melissa A. Moodie & Brette S. Hart, *The Missing Link: The Need for Good Writing Programs in Law Schools*, 74 J. Kan. B. Assn. 9 (Jan. 2005); Robert J. Morris, *Globalizing & De-Hermeticizing Legal Education*, 2005 BYU Educ. & L.J. 53, 72–73 (“Were I the King of the University, this would be my edict to the teachers: ‘You and each of you are ever and always co-equally responsible to ensure that each student becomes a competent reader, writer, and converser. This is as much a part of your substantive curriculum and classroom endeavor as the ‘doctrinal’ subjects you teach.”); Parker, *supra* n. 30; Jill J. Ramsfield, *Legal Writing in the Twenty-First Century: A Sharper Image*, 2 Leg. Writing 1, 24 (1996); J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 Wash. L. Rev. 35, 45–46 (1994); Bryn Vaaler, *Compositional Practice: A Comment on “A Liberal Education in Law”*, 1 J. ALWD 148 (2002).

ungraded first drafts.³² Likewise, Professor Beazley encouraged casebook faculty to incorporate legal writing pedagogy—if not actual writing assignments—into their courses.³³ Professor Vinson encouraged the legal academy and the legal profession to unite to provide a “life-long learning process.”³⁴

B. Implementation of Writing across the Curriculum

Responding to this assumption, a rich scholarship has developed describing ways that law school faculty members have incorporated skills pedagogy into their classes and ways that they have imported writing assignments into their coursework. Some of this literature predates the *MacCrate Report*, revealing that at least individual professors—if not law schools—recognized the vital importance of blending practice skills and doctrine. Before the publication of the *MacCrate Report*, Professor Abrams canvassed law school efforts to integrate practical skills components into “traditional” courses.³⁵ He identified three ways that a civil procedure professor could integrate writing into a doctrinal classroom.³⁶ Two ways involved the civil procedure professor deploying writing assignments in class.³⁷ The third was to have doctrinal and legal writing professors collaborate to develop a topical problem for the legal writing course.³⁸ Professors Busharis and Rowe have described their combination of doctrinal courses in employment discrimination and taxation with concurrent one-hour practicum courses.³⁹ A quartet of professors at Seattle University’s law school have described a similar curriculum involving one-hour, live-client components and “labs” in conjunction with upper-level substantive courses.⁴⁰

³² See Philip C. Kissam, *Thinking (By Writing) about Legal Writing*, 40 Vand. L. Rev. 135, 136–138, 159–160 (1987).

³³ See Mary Beth Beazley, *Better Writing, Better Thinking: Using Legal Writing Pedagogy in the “Casebook” Classroom (Without Grading Papers)*, 10 Leg. Writing 23 (2004).

³⁴ See generally Kathleen Elliott Vinson, *Improving Legal Writing: A Life-Long Learning Process and Continuing Professional Challenge*, 21 Touro L. Rev. 507 (2005).

³⁵ See Douglas E. Abrams, *Integrating Legal Writing into Civil Procedure*, 24 Conn. L. Rev. 813, 813–816 nn. 2–9 (1992).

³⁶ See *id.* at 819.

³⁷ *Id.* at 819–827.

³⁸ *Id.* at 819, 827–828.

³⁹ See Barbara J. Busharis & Suzanne E. Rowe, *The Gordian Knot: Uniting Skills and Substance in Employment Discrimination and Federal Taxation Courses*, 33 John Marshall L. Rev. 303, 305, 339–341 (2000).

⁴⁰ See John B. Mitchell et al., *And Then Suddenly Seattle University Was on Its Way to*

These professors described their vision and their efforts, and they demonstrated both the willingness and relative ease with which faculty have integrated substance and skills and the success that comes from doing so. Examples from other law schools abound. One school's Integrated Transactional Practice course combined instruction in estate planning, professional responsibility, interviewing, counseling, negotiating, and drafting.⁴¹ Another offered an integrated course in environmental law with a goal of introducing students to advanced legal research tools, leading its students to "realize the connections between research skills and substantive law."⁴² At least one law professor has asserted publicly that law schools can help students become better legal writers through clinics that focus on teaching more sophisticated legal writing techniques, ones that ensure that the finished product can be used in representing a real client, rather than the fictional ones often used in legal writing courses.⁴³

Envisioning a full integration of legal research and writing into substantive first-year courses, Professor Greenshaw suggested a wholesale return to the "Iowa approach," named for the University of Iowa College of Law.⁴⁴ Prevalent until the early- to mid-1990s, the Iowa approach fully integrated legal writing and doctrine by using casebook faculty to teach legal writing through their courses.⁴⁵ To support her thesis, Greenshaw quite accurately ar-

a Parallel, Integrative Curriculum, 2 Clin. L. Rev. 1 (1995).

⁴¹ See Eleanor W. Myers, *Teaching Good and Teaching Well: Integrating Values with Theory and Practice*, 47 J. Leg. Educ. 401 (1997).

⁴² Christine A. Corcos et al., *Teaching a Megacourse: Adventures in Environmental Policy, Team Teaching, and Group Grading*, 47 J. Leg. Educ. 224 (1997); see also Barbara Bennett Woodhouse, *Mad Midwifery: Bringing Theory, Doctrine, and Practice to Life*, 91 Mich. L. Rev. 1977, 1982-1993 (1993) (describing her "Child, Parent, and State" course, in which students explore child protective services through simulations and writing assignments).

⁴³ Angela J. Campbell, *Teaching Advanced Legal Writing in a Law School Clinic*, 24 Seton Hall L. Rev. 653, 666-669 (1993).

⁴⁴ Leigh Hunt Greenshaw, "To Say What the Law Is": *Learning the Practice of Legal Rhetoric*, 29 Val. U. L. Rev. 861, 865-867 (1995). Interestingly, after more than twenty years of integrating legal writing with doctrinal courses, the faculty of the University of Iowa College of Law voted to create a separate legal writing program for first-year students. E-mail from Caroline Sheerin, Prof., U. Iowa College L., to Leg. Writing Inst. Discussion List, *Eliminating Legal Writing* (Sept. 27, 2007) (copy on file with Author).

⁴⁵ See also James D. Gordon III, *An Integrated First-Year Legal Writing Program*, 39 J. Leg. Educ. 609 (1989) (describing the then-used method at Brigham Young University's J. Reuben Clark Law School of conjoining legal writing instruction to a substantive law course); Michelle S. Simon, *Teaching Writing through Substance: The Integration of Legal Writing with All Deliberate Speed*, 42 DePaul L. Rev. 619, 620 (1992) (describing Pace Law School's integration of criminal law, legislative process, and legal analysis and writing; "[t]he students do not take any other course in legal writing or criminal law").

gued that students improve their legal writing when they understand the law about which they are writing. Of course, understanding the underlying substance of their writing is not the only need that students have in order to become competent legal analysts and legal writers. The article offered no evidence or argument that the Iowa model satisfies the many other needs that students have in their acquisition of competent legal writing skills—as the *MacCrate Report* envisioned. Indeed, the fact that a majority of schools have turned away from the Iowa model, some in order to satisfy the demands of the *MacCrate Report*, suggests that the Iowa model is not effective at communicating the essential core skills and concepts underlying legal writing doctrine. While some law schools do formally couple legal writing instruction with another first-year course, only a few still use the Iowa model.⁴⁶ Still, Greenshaw had it right when she argued that “[l]egal composition and legal subject matter interact in ongoing rhetorical activity and are . . . best understood and best studied together.”⁴⁷

Five years after the published suggestion that civil procedure and legal writing professors collaborate,⁴⁸ four professors described their successful experiment doing just that.⁴⁹ Their experiment represented a step forward in the evolution of the writing-across-the-curriculum movement: they reached beyond the assumed vision of importing writing into the doctrine classroom and *exported* doctrine to the legal writing classroom. Their classroom initiatives and publication of their ideas foreshadowed more recent scholarly and classroom efforts to promote the integration of skills and substance. Whatever led them to combine skills and doctrinal instruction—intuition, reliance on trial-and-error, or insistence on disproving the falsity of the “dichotomy between skills and substance”⁵⁰—these educators and their efforts had sound grounding in learning theory, based as they were on sound theoretical justifications for uniting writing and substance.

⁴⁶ See Joseph W. Glannon et al., *Coordinating Civil Procedure with Legal Research and Writing: A Field Experiment*, 47 J. Leg. Educ. 246, 246 n. 1 (1997).

⁴⁷ Greenshaw, *supra* n. 44, at 867.

⁴⁸ Abrams, *supra* n. 35.

⁴⁹ See Glannon et al., *supra* n. 46.

⁵⁰ Norman Brand, *Legal Writing, Reasoning & Research: An Introduction*, 44 Alb. L. Rev. 292, 295 (1980) (quoted in Rideout & Ramsfield, *supra* n. 31, at 44 n. 27).

C. Writing to Learn, Learning to Write

In their recent, comprehensive article analyzing the theoretical and curricular justifications for writing across the curriculum, Professors Lysaght and Lockwood identify two approaches to the movement: *writing to learn*, through which students use writing to discover and refine what they think,⁵¹ and *learning to write in the discipline*, through which students use “the features of written communication in a specific discipline to enter that discipline’s discourse community.”⁵² Both approaches ultimately derive from the three major branches of learning theory: behaviorism, cognitivism, and constructivism.⁵³

1. The Three Major Learning Theories**a. Behaviorism**

Behaviorism is the theory that students can be taught to alter their behavior through exposure to various stimuli.⁵⁴ Behaviorists believe that learning is a behavior that can be accomplished independently of the internal workings of the brain.⁵⁵ The behaviorist learning process is the repetition of desired behavior by the student, accompanied by positive and negative stimuli from the teacher.⁵⁶ Behaviorism incorporates the sub-theory of “mastery learning.”⁵⁷ As a teaching theory, mastery learning assumes that a student enters the classroom with an already existing base of knowledge and that the student’s success in the classroom is partly dependent on that knowledge base.⁵⁸ To help him succeed, the teacher gives the student the individualized time and attention

⁵¹ See Lysaght & Lockwood, *supra* n. 30, at 74 nn. 8–9 (highlighting Janet Emig’s work in composition theory).

⁵² *Id.* at 74–75.

⁵³ A full explication of the various learning theories and their historical development is beyond the scope of this Article. For an excellent synthesis of learning theories and their development, see Beazley, *supra* n. 33, at 47–53; Lysaght & Lockwood, *supra* n. 30, at 76–92; Terrill Pollman, *Building a Tower of Babel or Building a Discipline? Talking about Legal Writing*, 85 Marq. L. Rev. 887, 896–905 (2002).

⁵⁴ Lysaght & Lockwood, *supra* n. 30, at 78–83.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 81–83.

⁵⁸ *Id.*

that he needs and, in so doing, employs a variety of teaching techniques, sequenced exercises, and timely feedback.⁵⁹

b. Cognitivism

In time, behaviorism gave way to cognitivism, the theory that students learn by interpreting new information and placing it within existing information structures stored in the brain. Like behaviorism before it, cognitivism values a student's pre-existing knowledge but places greater emphasis on the cognitive processes through which a student interprets and fits the new information with the old.⁶⁰ Adherents of cognitivism identified several sub-theories to explain the ways in which the human brain performs this process of interpreting and fitting: "information processing approach," schema theory, and metacognition are three.⁶¹ Cognitivists agree with behaviorists that consistent feedback is key to a student's success, and they encourage active student participation in the learning process.⁶²

c. Constructivism

Constructivism is the most recent of the three major learning theories.⁶³ Constructivists share the cognitivist belief that the cognitive process is the seat of learning, but constructivists assert that students do not "assimilate instruction intact."⁶⁴ They find, instead, that students actually create new knowledge, interpreting instruction in the context of their own experiences and their social relationships.⁶⁵

Four characteristics mark constructivism.⁶⁶ The first two are closely connected: that a student's new learning depends on an earlier knowledge base⁶⁷ and that students create—or construct—their own understanding, rather than passively receiving new in-

⁵⁹ *Id.*

⁶⁰ *Id.* at 83–84.

⁶¹ *Id.* at 83–90.

⁶² *Id.* at 88.

⁶³ *Id.* at 90; see Elizabeth L. Inglehart et al., *From Cooperative Learning to Collaborative Writing in the Legal Writing Classroom*, 9 *Leg. Writing* 185, 189 (2003).

⁶⁴ Lysaght & Lockwood, *supra* n. 30, at 90.

⁶⁵ *Id.*

⁶⁶ *Id.* at 90–92.

⁶⁷ *Id.* at 91.

formation in already constructed forms.⁶⁸ Constructivists encourage teachers to teach in ways that legal writing professors traditionally teach: through a recursive process by which the professor visits and revisits material over the course of the year, packaging and repackaging it in different forms while employing different tools.⁶⁹ In short, the constructivist legal writing professor uses a variety of teaching techniques, over several instruction periods, sometimes using a technique in isolation and sometimes blending teaching strategies. The process of approaching skills instruction from a variety of angles and approaches, say the constructivists, helps students to process new information and connect it to their pre-existing knowledge.⁷⁰

The third characteristic of constructivism is that social interaction among students creates an environment in which students can test and modify their ideas in light of their classmates' viewpoints.⁷¹ The scholarly literature on cooperative and collaborative learning explores this characteristic.⁷²

Under cooperative learning, the teacher establishes the goal and often the particular responsibilities of the students; the students share ideas about the work, modifying it as they progress, and each student submits an individual product—shaped and revised in the process, but an individual work product nonetheless.⁷³ Collaborative learning is dominantly student-driven: students identify and divide responsibilities, and all students work toward a final product, which is, at least in part, group-graded.⁷⁴

Professor Inglehart and her colleagues identify multiple benefits to both students and teachers of these two learning approaches: increased judgment, learning, analysis, class participation, and interest; decreased fear and anxiety; and creation of “genuine, life-long, subject matter interest.”⁷⁵ They posit that the confluence of these two disciplines is the constructivist learning theory.⁷⁶ Collaboration permits students to achieve insights into

⁶⁸ *Id.* at 90.

⁶⁹ *See id.* at 91.

⁷⁰ *See id.*

⁷¹ *Id.*

⁷² A full canvass of these learning theories is provided in the existing literature on the topic. *See* Inglehart et al., *supra* n. 63.

⁷³ *See id.* at 188.

⁷⁴ *Id.*

⁷⁵ *Id.* at 187–188.

⁷⁶ *Id.* at 189.

their ideas, theories, theses, and analyses that they would not glean from independent and isolated work because the social interaction acts as a testing ground for the ideas.⁷⁷

The constructivist theory bears a fourth hallmark: the use of authentic tasks to promote learning.⁷⁸ Authentic learning tasks are those that use real-world problems as assignments.⁷⁹ Students respond best to assignments that they perceive to be grounded in reality, having some sense of reality and possible importance.⁸⁰

2. *Approaches to Writing across the Curriculum*

These four characteristics of constructivism are not mutually exclusive, nor do they belong solely to the constructivist camp; indeed, tones of both behaviorism and cognitivism echo through them. All three of the theories share many characteristics.⁸¹ Indeed, four themes are common to the three major learning theories:

- (1) instructors should begin instruction with basics already within the students' grasp and proceed from there to more complex material;
- (2) instructors should instruct through a variety of teaching methods;
- (3) instructors should increase and deepen student learning by having students apply new skills and by giving feedback on that application; and

⁷⁷ See Lysaght & Lockwood, *supra* n. 30, at 91.

⁷⁸ *Id.* at 92; see Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 San Diego L. Rev. 347, 380 (2001).

⁷⁹ Lysaght & Lockwood, *supra* n. 30, at 92.

⁸⁰ *Id.*

⁸¹ New learning depends on the student's prior knowledge base (behaviorism, cognitivism, and constructivism); teachers should begin with general, familiar material and progress to more complex ideas (behaviorism and cognitivism); teachers should divide and sequence tasks (behaviorism); teachers should move students toward autonomous learning (behaviorism/mastery learning, cognitivism); teachers should use a variety of teaching techniques (behaviorism/mastery learning, constructivism); teachers should provide feedback and should permit social interaction among students to create more feedback opportunities (behaviorism, cognitivism, and constructivism).

- (4) instructors should teach students how to become autonomous learners.⁸²

Professors Lysaght and Lockwood argue that these four themes well support the merits of the *learning to write in the discipline* approach to writing across the curriculum.⁸³ The work of other scholars supports their thesis.⁸⁴ These scholars posit that learning to write within a discipline is the approach to writing that a student must take in order to learn how to work as a particular professional.⁸⁵ This is because learning to write in the discipline requires students to identify and master techniques and forms that are particular to that discipline, thereby making the students worthy of entering a restricted community made up only of people who know the particular forms—something that is known as a “discourse community.”⁸⁶ A law student needs to learn how to write in the discipline of lawyers, as opposed to learning how to write in some other discipline—some other profession. Specifically, students need to learn the proper purposes of and audiences for legal work, the tones and formats of certain documents, and the forms of reasoning particular to lawyers.

Professors Lysaght and Lockwood differentiate *learning to write in the discipline* from *writing to learn*. When students engage in the latter, they are writing to discover what they think and to develop and refine those ideas.⁸⁷ The difference between the two approaches is the difference between rejecting old forms of thought—writing to learn—and accepting and adopting new forms—writing in the discipline.⁸⁸ They argue that learning to write in the discipline should be the primary focus of writing-across-the-curriculum programs because the approach satisfies the four themes common to the three major theories of learning.⁸⁹ This approach also finds support in the three primary theories of composition.

⁸² Lysaght & Lockwood, *supra* n. 30, at 75–76.

⁸³ *Id.* at 75.

⁸⁴ *E.g.* Busharis & Rowe, *supra* n. 39, at 315.

⁸⁵ Lysaght & Lockwood, *supra* n. 30, at 75.

⁸⁶ *Id.*

⁸⁷ *Id.* at 74.

⁸⁸ *Id.* at 75.

⁸⁹ *Id.* at 75 n. 13.

3. *The Three Composition Theories*

The three major learning theories and their common themes are not the only ways to think about teaching and learning. Devolving from the three major learning theories⁹⁰ are the three primary composition theories, all of which have greatly influenced the instruction of legal writing.⁹¹ Those three composition theories emphasize (1) the finished product,⁹² (2) the process,⁹³ and (3) the social discourse community.⁹⁴ Although the theories differ among themselves, they are united by a considerable body of common principles.

Under the product approach, teachers do not provide regular feedback to students while they are writing. Instead, all or most feedback is reserved for the grading process. This approach experienced a fall from grace with the shift in focus to process,⁹⁵ but it has lately enjoyed something of a renaissance⁹⁶ and can be a successful component of a curriculum that incorporates all three theories.

The process theory brings the timing of the feedback forward from the end of the writing process to the middle. Teachers guide students through the writing task by commenting on both the writing and the likely product and by having the students revise their work after considering the teacher's comments. In her thoughtful article about process, Professor Grearson synthesized seven assumptions that she thinks writing teachers make about the writing process.⁹⁷ These assumptions are that (1) "teachers should take individual students' writing backgrounds, histories,

⁹⁰ The three major learning theories are behaviorism, cognitivism, and constructivism. *Id.* at 78–92.

⁹¹ *Id.* at 94.

⁹² Emphasis on the product is driven by the "instrumental view" of writing or the "formalist theory" of teaching writing. See Beazley, *supra* n. 33, at 47–48; Lysaght & Lockwood, *supra* n. 30, at 95–96.

⁹³ Emphasis on the writing process is driven by the "epistemic theory" of writing. See Beazley, *supra* n. 33, at 48–49; Lysaght & Lockwood, *supra* n. 30, at 96; Rideout & Ramsfield, *supra* n. 31, at 55.

⁹⁴ For comprehensive treatments of the various learning and composition theories, see generally Pollman, *supra* n. 53, at 906–909, and Rideout & Ramsfield, *supra* n. 31, at 49–61.

⁹⁵ See e.g. Anne Ruggles Gere, *Keynote Address: Narratives of Composition Studies*, 3 *Leg. Writing* 51, 52 (1997).

⁹⁶ See e.g. Parker, *supra* n. 30, at 565; Pollman, *supra* n. 53, at 898–899; Rideout & Ramsfield, *supra* n. 31, at 50.

⁹⁷ Jessie C. Grearson, *Teaching the Transitions*, 4 *Leg. Writing* 57, 62 (1998); see Lysaght & Lockwood, *supra* n. 30, at 97.

and abilities into account when teaching writing”; (2) “writing is a way of thinking and learning, not just a means of recording thought or testing students’ [abilities]”; (3) “writers use writing at different times for different purposes and move from writer-based prose (writing used to explore and explain ideas to the self) to reader-based prose (writing used to communicate ideas to the reader)”; (4) teachers should teach writing “with some attention to the process [in which] writers engage[], not just to the documents that [students produce]”; (5) “students’ best writing comes from topics” in which they are “interested”; (6) “students’ best writing contains a strong sense of individual voice”; and (7) “writing is [a] collaborative—not a competitive—act.”⁹⁸

Dovetailing with several of these assumptions, the social discourse strain of composition theory is driven by the social context within which the writing does and must occur.⁹⁹ Emphasis here is on the “community of knowledge,”¹⁰⁰ and the teacher functions as master to the student’s novice.¹⁰¹ These three composition theories, different though they are, are united by Professor Grearson’s assumptions number four, five, and seven. These three assumptions resonate not just through the composition theories but also through the three primary learning theories. Furthermore, they form the foundation for the *learning to write in the discipline* approach to writing across the curriculum.

It is against this backdrop that the writing-across-the-curriculum movement has gained momentum, force, and support as an effective way to satisfy the *MacCrate Report* concerns and to integrate law school curricula. Instruction of legal writing through subject-matter specialties incorporates many of the characteristics and criteria of modern learning theory and is a subset of *learning to write in the discipline*.

⁹⁸ Grearson, *supra* n. 97, at 62.

⁹⁹ Lysaght & Lockwood, *supra* n. 30, at 98–99; see Beazley, *supra* n. 33, at 50–51. For comprehensive treatments of the various learning and composition theories, see generally Pollman, *supra* n. 53, at 906–909, and Rideout & Ramsfield, *supra* n. 31, at 49–61.

¹⁰⁰ Joseph M. Williams, *On the Maturing of Legal Writers: Two Models of Growth and Development*, 1 Leg. Writing 1, 13 (1991) (quoted in Lysaght & Lockwood, *supra* n. 30, at 98).

¹⁰¹ Lysaght & Lockwood, *supra* n. 30, at 98; Rideout & Ramsfield, *supra* n. 31, at 57–59.

IV. THEORETICAL JUSTIFICATIONS FOR SPECIALIZED SECTIONS

The constructivist theory of learning supports DePaul's use of specialty sections. The wisdom of grouping students with similar interests into the same legal writing classroom is demonstrated by the process, product, and social discourse brands of composition theory. Finally, specialized instruction is a category of the *learning to write in the discipline* approach to writing across the curriculum because it teaches each class of specialized students a discipline-specific discourse.

A. The Justification Based on Constructivist Theory

1. *Specialized Students Create New Knowledge More Quickly*

Constructivism is the theory that students do not receive information from their teachers and then passively take ownership of that information; rather, they create new knowledge by interpreting their instruction through the lens of what they already know and have experienced.¹⁰² Four hallmarks identify the theory: (1) new learning depends on prior knowledge;¹⁰³ (2) students create their own, individual understanding; (3) social interaction leads to thesis modification;¹⁰⁴ and (4) learning tasks are authentic.¹⁰⁵ The first two constructivist hallmarks are not unique to specialized instruction at DePaul; indeed, all of DePaul's LARC professors use these two approaches to help students learn. That new learning depends on prior learning¹⁰⁶ is the bedrock of DePaul's first semester curriculum, which follows a stepped-progression syllabus. Under this curriculum, students work on discrete skills and receive feedback on their work before rewriting the work and incorporating it into a larger project; the new learning depends on the prior learning. In so instructing their students, DePaul's LARC faculty

¹⁰² See Inglehart et al., *supra* n. 63, at 189; Lysaght & Lockwood, *supra* n. 30, at 90.

¹⁰³ This hallmark is another way of articulating the first theme common to all three major learning theories: teachers should start with familiar material and proceed to unfamiliar, more complex material.

¹⁰⁴ The social interaction is accomplished through (1) collaborative learning and (2) cooperative learning.

¹⁰⁵ Lysaght & Lockwood, *supra* n. 30, at 92.

¹⁰⁶ *Id.* at 90–91.

fulfill both the hallmarks of constructivism and the third theme common to the three primary learning theories: effective teaching includes giving students feedback on their application of new skills.¹⁰⁷

The second hallmark of constructivism—that the students create their own understanding¹⁰⁸—is a natural gradient in the process of learning the law at any school. Legal writing professors can give a student only so much help in reading and digesting the rules and reasoning of a judicial opinion; ultimately, the student must process the information and reconfigure it for himself, thereby coming up with his own synthesis of the law and prediction of how a court might rule in a similar fact situation. There being, usually, no correct answer to these questions, all of the student's answers are his own creations, quite different from questions that have objectively right and wrong answers, such as historical dates and mathematical equations.

Where specialized students benefit over students in general sections is that many of them come with some prior knowledge of the specialized area. This prior base of knowledge or interest supports their learning, resulting in the quicker creation of new understanding. The specialized LARC professors have noted that even an interest in a legal area can function as a pre-existing knowledge base when it comes to how quickly students can absorb new material.

2. *Casual and Planned Social Interaction Quickens Learning*

The specialized sections also well satisfy the third hallmark of constructivism: social interaction while learning causes students to test their assumptions and weigh their conclusions against the assumptions and conclusions of their classmates, which generally produces better conclusions, better learning, and better writing.¹⁰⁹ This hallmark of learning at DePaul has two aspects: the casual, or unsupervised, interaction and the formal, planned interaction.

The known efficacy of casual social interaction underlies DePaul's decision to permit all of its LARC students to discuss their work with each other throughout all stages of an assignment

¹⁰⁷ *Id.* at 91, 93.

¹⁰⁸ *Id.* at 91.

¹⁰⁹ *Id.*

period; they may not, however, show their written work to anyone other than their LARC professor and teaching assistant. This permitted collaboration opens the students to an almost constant conversation with each other while they work on their assignments. By explaining their ideas to a classmate, articulating how the rule works, defending their position in the face of opposition, and demanding similar justification from classmates with different ideas, students actually teach themselves. This is constructivism's third hallmark in its finest hour.

Its efficacy, though, is even greater in the specialized sections: the normal trial-and-error process, when placed against the backdrop of the ideas of similarly situated students, produces better ideas and greater learning.¹¹⁰ The ideas and challenges that come from a classmate with a shared interest in public interest law or intellectual property law resonate to a higher degree than do the ideas and challenges of a "general" LARC classmate. Difficult to identify is whether this higher resonance exists because the student on the receiving end simply respects the ideas of his specialized classmates more than he would those of other students, or because most of the specialized students feel a heightened sense of relevance and are trying harder, or because, to use the biblical phrase, "iron sharpens iron."¹¹¹ While the reason may be hard to identify, the result is demonstrable: DePaul LARC professors have seen quicker learning and better work product in their specialized classrooms.

DePaul does not rely on casual social interaction alone to accomplish constructivist hallmark number three. The mix of assignments in DePaul's curriculum requiring both cooperative and collaborative learning leads to planned social interaction between LARC students. Students accomplish some assignments individually, but they work on the majority—at least in the early to mid-stages—cooperatively. One written assignment is a fully collaborative one, and group student-teacher conferences mix cooperative and collaborative learning styles.

The mix of assignments complements the variety of teaching techniques that all LARC faculty employ in and out of the classroom—techniques that reach visual, aural, and kinetic learners. LARC faculty teach by using handouts, chalkboards, write-on-wipe-off overhead transparencies, PowerPoints, document readers,

¹¹⁰ *Id.*

¹¹¹ *Proverbs 27:17* (New Intl.).

computerized databases, lectures, class-wide exercises, in-class and out-of-class small-group exercises, pair-and-share exercises, peer critiques, student reports, one-on-one conferences, group conferences, reports to the “supervising attorney,” role-playing, hands-on exercises, and flipbooks. DePaul’s LARC faculty richly fulfill the second theme common to the three primary learning theories: use of a variety of teaching techniques. The core learning—which occurs in all LARC students through the curriculum and the teaching techniques—is enhanced in the specialized students by their particular social interaction: when they are surrounded by and working with classmates who share similar interests, they have a far higher incentive to work cooperatively and collaboratively than do the general students, who sometimes resent having to work with others and having to share their ideas with classmates for fear of having their “good ideas” stolen.

3. *Higher Authenticity*

DePaul’s LARC instruction has its foundation in the fourth constructivist hallmark: LARC faculty all use real-world legal problems to create “authentic learning tasks”¹¹² because these real-world problems better prepare students to work as lawyers than do fanciful assignments.¹¹³ The difference between the specialized students and the general students is that although all are receiving “real-type” assignments, the specialized students perceive their assignments to be more relevant to them as individuals—and, therefore, more real—than do many of the general students. They do so simply because they believe that they are about to enter the practice of that particular area of law.¹¹⁴ DePaul’s method of LARC instruction is a classically constructivist model, satisfying all four of the theory’s characteristics.

¹¹² Lysaght & Lockwood, *supra* n. 30, at 92; Schwartz, *supra* n. 78, at 380.

¹¹³ “Fanciful” is different from fictional. Many assignments are fictional, in that no real, live client supports them, but they nonetheless are real-world assignments because they involve true-to-life facts and significant legal problems. Fanciful assignments often involve neither and are more often focused on student entertainment than on learning. See Rideout & Ramsfield, *supra* n. 31, at 72 (indicating that “students will benefit most when . . . writing assignments are put into clear contexts and emerge from well-developed rhetorical situations, rather than being ‘canned’”).

¹¹⁴ The connection between the higher level of relevance and higher level of student learning is documented *infra* Section V(A).

B. The Justification Based on Composition Theory

DePaul's model also satisfies the requirements of composition theory. While the three composition theories are not mutually exclusive, the distinct branches are easily identifiable in DePaul's curriculum.

1. Process Learning

The first semester of DePaul's unified three-semester curriculum is a fully process-oriented one. All students learn legal analysis in a stepped-progression approach with the focus on the process of analysis, rather than the finished product of a legal document. Under the product-oriented approach, professors give students an assignment to prepare a legal document, with the finished project due in its entirety without any intervening steps and feedback. Under the process approach, students work their way through short assignments that teach each step of analysis: case briefing, rule outlining, synthesis, analogy and distinction, factual inferential reasoning, multiple-issue organization, questions presented, brief answers, and objective statement of facts. Only in the last assignment of DePaul's first semester do students put all of those pieces together, in a rewrite assignment, and submit the final product. By doing this, DePaul permits all of its first-semester students to focus on one discrete skill at a time, to receive feedback on it, and then to bring that knowledge base to the next skill to be learned.¹¹⁵ The curriculum also rests on the linchpin of process-oriented learning: teachers should teach writing "with some attention to the process [that] writers engage in, not just to the documents that [students produce]."¹¹⁶ This DePaul does. All of DePaul's first-semester students, whether specialized or general, receive the benefit of the process approach to learning. With respect to some of the other assumptions underlying the process approach, the general and specialized students have different experiences.

Teaching legal writing through specialized sections connects with these assumptions: that students' best writing—and, concomitantly, their best learning—comes when they write about top-

¹¹⁵ This then unites the process-composition theory with the first hallmark of constructivism and satisfies them both.

¹¹⁶ Gearson, *supra* n. 97, at 62.

ics in which they are interested.¹¹⁷ A corollary tenet on which DePaul's program rests is that "writing is [a] collaborative—not a competitive—act."¹¹⁸ All DePaul students engage in collaborative learning,¹¹⁹ and many of them serendipitously enjoy the topics on which they write. Only the students in specialized sections, though, escape the vagaries of serendipity and have a very high chance of being interested in all of their assignments. It is this high interest level that sustains them through the difficulties inherent in learning a new skill in a foreign environment. DePaul's method of instruction bears out the assumptions about the process approach to learning. This first-semester process approach to composition theory at DePaul largely gives way to a modified product approach in the second semester. The product approach, though not as favored as the process approach, still satisfies critical goals.

2. *Product Learning*

The second and third semesters of DePaul's LARC curriculum move the students from a stepped-progression, process-oriented approach to a spiraled, product-oriented approach. As they enter this product approach to learning in the second semester, the specialized students' projects continue to be mostly subject-matter specific.¹²⁰ After spending fifteen weeks intensively learning how to create legal analysis by working on small, discrete tasks and receiving copious feedback, students are ready to assume more of the responsibility for their own learning by acquiring the skill of self-evaluation. They do not forego all personalized, written feedback, but they do receive less of it before each succeeding project is due. The students must practice already-learned skills on increasingly more complex legal issues to achieve learning mastery,¹²¹ so having them rely on more generalized, oral feedback from their teachers and on their own developing professional judgment is both proper and pedagogically sound. In short, they are on their way to becoming autonomous learners.¹²²

¹¹⁷ *Id.*

¹¹⁸ *Id.*; Lysaght & Lockwood, *supra* n. 30, at 97.

¹¹⁹ *See supra* sec. IV(A)(2).

¹²⁰ To date, DePaul has no plans to offer any of the LARC III sections in a specialized form, though this would certainly be the next logical step in its program.

¹²¹ *See* Lysaght & Lockwood, *supra* n. 30, at 81–83.

¹²² *Id.* at 94. By putting students on the road to autonomous learning through the use of the product approach to composition theory, DePaul's curriculum fulfills the fourth theme

3. *Social Learning: The Micro-Social Discourse Community*

The social discourse theory of composition also undergirds DePaul's LARC curriculum. This theory recognizes the vital importance of social context to a writer's maturation within a specific discipline and the different ways that different social contexts impact both the process and the product of the writing.¹²³ Mastery learning is a key to the behaviorism theory of learning.¹²⁴ Mastery learning in the legal discourse community involves different methods and different goals than does mastery learning in many other education and professional communities. To help students enter and master the legal discourse community, legal writing professors incorporate social discourse theory into their courses by providing social context for the work that students perform.

Common methods among legal writing faculty for creating social context are grouping students into "law firms" within the class, creating realistic assignments for students to work on, and requiring simulated conferences with the "senior partner."¹²⁵ DePaul's curriculum employs all of these teaching techniques for all of its LARC students, but the students in specialized sections receive an even more intense dose of social context because their entire section is contextualized for them. By permitting them to enter a pre-existing social context of like-interested students, DePaul creates micro-social discourse communities of public interest lawyers, health law lawyers, and so on within the larger discourse community of the law, thereby maximizing the benefits of the curricular design choices that employ the process, product, and social discourse theories.

C. A Reconception of Writing across the Curriculum

Teaching legal writing through specialized sections is a non-classic, but equally effective, version of writing across the curriculum. It is a subset of the *learning to write in the discipline* ap-

common to all three major learning theories. *Id.*

¹²³ See Beazley, *supra* n. 33, at 50; Lysaght & Lockwood, *supra* n. 30, at 98; Rideout & Ramsfield, *supra* n. 31, at 56–57.

¹²⁴ See Lysaght & Lockwood, *supra* n. 30, at 81–83.

¹²⁵ See *id.* at 99.

proach to writing across the curriculum.¹²⁶ Not only do DePaul's specialized students learn to write in the legal discourse community, but they also learn the particular language, customs, and "forms of life"¹²⁷ of intellectual property law, of family law, of health law, or of public interest law. Each of these discipline-specific areas has its own dialects, forms, and shoals that students, and lawyers, must learn and navigate. DePaul's specialized students begin the process of that navigation at the earliest possible moment, apprenticed to an expert in both the specific discipline and in learning theory, in an apprenticeship that can continue and deepen—if they choose to take specialized elective writing courses—for the three years of law school.

1. An Extension of Learning Theory

DePaul has actively incorporated these learning theories into its mandatory first-year legal writing curriculum. Beyond the first year, Professors Lysaght and Lockwood advocate deploying these learning theories into a writing-across-the-curriculum program that covers not just first-year doctrinal courses but also upper-level courses,¹²⁸ and DePaul does this. These theories inform its upper-level writing courses: DePaul specializes its upper-level writing electives, just as it does its first-year mandatory course.

[P]rofessors should go beyond having students write memorandum[a] on a subject within the doctrinal class. Instead, students should draft documents unique to that subject area. Legislation, jury instructions, divorce settlement agreements, condominium documents, deeds, and administrative regulations are just a few of numerous possible examples. . . . By drafting discipline-specific documents, students acquire more skills and knowledge[] and have a better understanding of the legal discourse community.¹²⁹

These writers envision this writing occurring in upper-level doctrinal courses, but the efficacy of the teaching and the writing assignments is surely not limited to the upper-level or the doc-

¹²⁶ See *supra* secs. III(C)(1)(b)–(C)(3).

¹²⁷ James Marshall, Presentation, *Writing across the Curriculum: Two or Three Things We Know for Sure* 3 (AALS Annual Meeting, Washington, D.C., Jan. 8, 2000) (quoted in Lysaght & Lockwood, *supra* n. 30, at 75).

¹²⁸ Lysaght & Lockwood, *supra* n. 30, at 100–102.

¹²⁹ *Id.* at 102.

trinal classroom; rather, the impact of the teaching and assignments is augmented when the teaching is delivered early—in the first year—and by professional writing faculty who are immersed in the various learning theories and who can intentionally select which tools and techniques to deploy throughout the semester.¹³⁰ These “discipline-specific assignments” are exactly what is waiting for DePaul’s students when they take an upper-level writing course. Second- and third-year students are able to take their “prior knowledge base” and “progress into additional discipline-specific knowledge.”¹³¹

Instruction of legal writing through subject-matter specialties, then, incorporates many of the characteristics and criteria of modern learning theory. Beyond this pedigree to recommend it as a curricular tool, the approach finds support in both practice among other law schools and in legal writing scholarship. With respect to instructional practice, at least a few law schools offer students the opportunity to take mandatory legal writing through a specialized section.¹³² One school offers students a choice among drafting courses that focus on specific subject matters. Unlike DePaul, where the subject-matter specific drafting courses are entirely elective, this school’s drafting courses satisfy its third-semester legal writing requirement.¹³³ One school’s legal writing classes follow three “tracks”: transactional/general practice, advocacy/litigation, and intellectual property.¹³⁴ Like DePaul’s program, not all assignments are track-specific, and the professors

¹³⁰ Commun. Skills Comm., Sec. Leg. Educ. & Admis. to the B., *Sourcebook on Legal Writing Programs* 81 (Eric B. Easton ed., 2d ed., ABA 2006) [hereinafter *Sourcebook*]; Schwartz, *supra* n. 78, at 355–356.

¹³¹ Lysaght & Lockwood, *supra* n. 30, at 101–102.

¹³² A post to the LWI listserv requesting information on schools that offer legal writing through specialty sections produced five private responses. E-mail from Tracy Bach, Prof. of L., Vermont L. Sch., to Susan Thrower, Assoc. Prof. & Dir. Leg. Analysis, Research & Commun., DePaul U. College L. (June 29, 2006) (copy on file with Author); e-mail from Maria Crist, Prof. Lawyering Skills & Dir. Leg. Profession Program, U. Dayton Sch. L., to Susan Thrower, Assoc. Prof. & Dir. Leg. Analysis, Research & Commun., DePaul U. College L. (June 16, 2006) (copy on file with Author); e-mail from Diane Edelman, Asst. Dean Leg. Writing & Dir. Montreal Programs, Villanova U. Sch. L., to Susan Thrower, Assoc. Prof. & Dir. Leg. Analysis, Research & Commun., DePaul U. College L. (June 16, 2006) (copy on file with Author); e-mail from Eric Easton, Prof. L. & Co-Dir., Leg. Skills Program, U. Balt. Sch. L., to Susan Thrower, Assoc. Prof. & Dir. Leg. Analysis, Research & Commun., DePaul U. College L. (June 16, 2006) (copy on file with Author); e-mails from Rebecca Scharf, Lawyering Process Prof., U. Nev. Las Vegas, to Susan Thrower, Assoc. Prof. & Dir. Leg. Analysis, Research & Commun., DePaul U. College L. (June 18 & 25, 2006) (copies on file with Author).

¹³³ E-mails from Rebecca Scharf, *supra* n. 132.

¹³⁴ E-mail from Maria Crist, *supra* n. 132.

have practice experience in the areas, which enhances student learning.¹³⁵ As at DePaul, students at this school choose a track at the beginning of school but—unlike DePaul—may change their decision later if they desire. All students also take a substantive course in the first year within the track.¹³⁶ One school is revamping its legal writing program to follow a modified Iowa approach, with all students taking legal writing through torts classes taught by professors with experience teaching legal writing.¹³⁷

As for supportive scholarship, three articles are noteworthy. One highlights Loyola University Chicago School of Law's specialized three-year course of study in children's legal needs; the Loyola Childlaw Clinic required students to take a specialized legal writing course in the first year.¹³⁸ Another explained the way that Temple's law school satisfied the *MacCrate Report* concerns with its instruction of an Advanced Legal Writing Course through the lens of consumer bankruptcy.¹³⁹ A third encouraged first-year doctrinal professors to incorporate international law into their classes and posited that a first-year legal writing program provides "an excellent and easily adaptable venue for doing so."¹⁴⁰

These articles detail methods of exporting particularized doctrinal instruction into the legal writing classroom holistically. Other scholars have suggested increasing other considerations into the legal writing classroom in slightly more targeted ways. One author suggested that writing faculty could focus on areas of specialized research, such as tax, labor, and environmental law.¹⁴¹ Another argued for an integration of ethical considerations into legal writing instruction.¹⁴² Most recently, Professors Millemann and Schwinn advocated bringing clinical education into the first-year legal writing curriculum by having students work on real cli-

¹³⁵ *Sourcebook*, *supra* n. 130, at 81.

¹³⁶ E-mail from Maria Crist, *supra* n. 132.

¹³⁷ E-mail from Eric Easton, *supra* n. 132.

¹³⁸ Jennifer R. Gavin, *Child Welfare Law Curricula in Legal Education: Massachusetts' Untried Opportunity*, 7 B.U. Pub. Int. L.J. 9, 36 (1998).

¹³⁹ Susan L. DeJarnatt, *In re MacCrate: Using Consumer Bankruptcy as a Context for Learning in Advanced Legal Writing*, 50 J. Leg. Educ. 50 (2000).

¹⁴⁰ Diane Penneys Edelman, *It Began at Brooklyn: Expanding Boundaries for First-Year Law Students by Internationalizing the Legal Writing Curriculum*, 27 Brook. J. Intl. L. 415, 416 (2002).

¹⁴¹ Cordon, *supra* n. 21, at 31–32.

¹⁴² Melissa H. Weresh, *Fostering a Respect for Our Students, Our Specialty, and the Legal Profession: Introducing Ethics and Professionalism into the Legal Writing Curriculum*, 21 Touro L. Rev. 427, 438–439, 440 (2005).

ents' actual legal problems for their assignments.¹⁴³ Whatever form it takes, whatever subject matter is chosen, teaching legal writing with a purposeful doctrinal focus is congruent with, and extends, current educational theory and practice.

Legal writing instruction through some specialized sections is justified by all four themes common to the three major learning theories; by all four characteristics of the constructivist learning theory; by three of the seven assumptions underlying writing process; and by the *writing in the discipline* approach to writing across the curriculum. A legitimate question to ask of DePaul, then, is why not specialize all of the LARC sections? The answer is simple and in tune with the first characteristic of constructivism: not all students have self-identified with a particular area of law upon their application to law school. A significant number of students have no pre-existing knowledge of, or affinity for, a specific field of study, and they would not benefit from taking a subject-matter specific class before they are ready. On the contrary, instructors should consider students' prior knowledge base and take their teaching from there because any new learning depends on it.¹⁴⁴ The affinity for a field of study functions as a prior knowledge base; forcing students without such an affinity could violate the first rule of constructivist learning. Accordingly, a good reason will likely always exist for maintaining at least some non-specialized LARC sections.

2. *The Focusing Lens of Context*

Specialized legal writing instruction is a success in the classroom: it draws on the best, and most accessible, aspects of the writing-across-the-curriculum movement, cooperative and collaborative learning, and use of capstone courses to maximize student learning of writing and analysis. It acts not just as a viewfinder for students seeking a familiar picture in a new and confusing vista but also as a lens: something that "facilitates and influences" students' "perception, comprehension, [and] evaluation."¹⁴⁵ It functions this way by fitting squarely within current learning theory,

¹⁴³ Michael A. Millemann & Steven D. Schwinn, *Teaching Legal Research and Writing with Actual Legal Work: Extending Clinical Education into the First Year*, 12 Clin. L. Rev. 441 (2006).

¹⁴⁴ Lysaght & Lockwood, *supra* n. 30, at 91.

¹⁴⁵ *Collegiate Dictionary* 666 (10th ed., Miriam-Webster, Inc. 1995).

which emphasizes both that context is king¹⁴⁶ and the importance of integrating the instruction of all core skills.¹⁴⁷

The vital importance of context is the undercurrent of many suggestions for improvement of teaching and learning. For example, one article urges an end to the separation of research instruction from writing instruction, persuasively arguing that learning either skill in isolation deprives students of the full lawyering picture.¹⁴⁸ Another describes an idea for better integrating the delivery of research instruction with research practice.¹⁴⁹ This particular vein of learning theory is not the focus of DePaul's writing program,¹⁵⁰ but it is a useful tangent plane here because its argument highlights the wisdom of uniting writing instruction with a single doctrinal focus. When students understand the context for what they are doing—whether it is research, writing, or anything else—their overall learning quickens and steepens. That writing faculty must use *some* legal issue through which to teach the skills of analysis and writing is a truism: legal writing instruction cannot take place in a complete vacuum, but when students have a pre-existing affinity for a particular area of law, or some—even remote—idea of what the field involves, they immediately have a context for the ideas about which they will be writing. Furthermore, they feel connected to their subject matter in a way that general legal writing students either never feel or feel only through the serendipity of the teacher's choice of subject. Purposeful writing instruction through particular doctrinal viewfinders satisfies the *MacCrate Report* mandates by taking all of the learning theory about integration of skills instruction and doing exactly the obverse of the writing-across-the-curriculum vision: exporting doctrinal instruction to the legal writing classroom.

¹⁴⁶ See e.g. Ellie Margolis & Susan L. DeJarnatt, *Moving beyond Product to Process: Building a Better LRW Program*, 46 Santa Clara L. Rev. 93, 110 (2005); Cathaleen A. Roach, *A River Runs through It: Tapping into the Informational Stream to Move Students from Isolation to Autonomy*, 36 Ariz. L. Rev. 667, 672 (1994).

¹⁴⁷ See *supra* sec. III(B).

¹⁴⁸ Margolis & DeJarnatt, *supra* n. 146, at 110–111.

¹⁴⁹ James B. Levy, *Better Research Instruction through "Point of Need" Library Exercises*, 7 Leg. Writing 87 (2001); James B. Levy, *Escape to Alcatraz: What Self-Guided Museum Tours Can Show Us about Teaching Legal Research*, 44 N.Y. L. Sch. L. Rev. 387 (2001).

¹⁵⁰ The theory of integrated research instruction is not a focus of DePaul's program nor of this Article because DePaul long ago decided to integrate the instruction of research and writing.

3. *Exporting Doctrine to the Legal Writing Classroom*

Although the prevailing wisdom among legal educators is that writing-across-the-curriculum programs must take writing into the doctrinal classrooms,¹⁵¹ the same goals are just as achievable by exporting discipline-specific work to the legal writing classes. Purposely teaching analysis through specialized sections is the next affirmative step in the academy's rejection of the false dichotomy between skills and substance.¹⁵² DePaul's legal writing program falls well within the prediction that "[t]he trend is clearly toward incorporation of [comprehensive skills training] into the legal curriculum through efforts like 'Writing Across the Curriculum' and specialized legal clinics that focus on substantive law areas while building skills."¹⁵³ The exportation of doctrine to legal writing even brushes the Iowa model argument that the actual doctrinal and legal writing classes should be merged.¹⁵⁴ Focus on substantive law areas is the norm in many law school clinics; moving this model into the legal writing classroom is the next logical step in the evolution of legal skills training.

Why turn the tables? Why not just provide some writing instruction in the doctrinal classroom, rather than export it to the legal writing classroom? Reasons abound. The most pedagogically sound of those reasons is that career legal writing professors are most steeped in the knowledge of learning theory, especially as it relates to writing, conferencing, and critiquing.¹⁵⁵ They tend to be in the best position to teach students how to write.¹⁵⁶ When a teacher couples this quality with several years, or more, of practice experience in a particular area of law, he becomes a powerful tool in the delivery of writing instruction in that specific field.¹⁵⁷ Other reasons relate to the well-catalogued difficulty of incorporating writing across the curriculum: lack of class units in which to incorporate writing practice into the doctrinal classroom;¹⁵⁸ lack of

¹⁵¹ Lysaght & Lockwood, *supra* n. 30, at 104.

¹⁵² See Brand, *supra* n. 50.

¹⁵³ Maureen Straub Kordesh, *Reinterpreting ABA Standard 302(F) in Light of the Multistate Performance Test*, 30 U. Mem. L. Rev. 299, 325 (2000).

¹⁵⁴ Greenshaw, *supra* n. 44.

¹⁵⁵ See Busharis & Rowe, *supra* n. 39, at 346; Schwartz, *supra* n. 78, at 355–356.

¹⁵⁶ See *id.*

¹⁵⁷ See *Sourcebook*, *supra* n. 130, at 81; see also Busharis & Rowe, *supra* n. 39, at 342, 346–347.

¹⁵⁸ Cooper, *supra* n. 20, at 61; Schwartz, *supra* n. 78, at 357–358.

universal interest by the faculty;¹⁵⁹ lack of understanding about how to successfully incorporate writing into a doctrinal course;¹⁶⁰ and lack of time and knowledge to effectively critique writing assignments.¹⁶¹ All of these obstacles dissipate when a school turns the tables and sends doctrine to legal writing.

V. BENEFITS AND DRAWBACKS TO SPECIALIZED INSTRUCTION

Learning theory, DePaul's practical experience, and scholarship all support the teaching of legal writing through specialized sections. Over the course of seven years, students, professors, and administrators have found the system to be successful. The benefits overshadow the few inevitable drawbacks.

A. Student Benefits

1. *Higher Engagement and Better Learning*

The most immediate and visible benefit of teaching legal writing through specialized sections is that first-year students learn from it and enjoy it. They come to law school excited to learn new things; specialized sections, as their first taste of working with the law, maximize that excitement.¹⁶² The students who work on specialized assignments have a high interest level in most of the assignments and are excited to be learning some substantive law in their field of choice.

The ancillary nature of the substance of the law does not detract from the learning. On the contrary, learning a skill through an area of law to which a student feels devoted creates a synergistic effect, permitting the LARC professor to deploy increasingly more difficult assignments as the year progresses. Scholarship in this area bears out this synergistic effect. One author reported her experience that as students' understanding of the substantive law increases, so too does their ability to tackle more difficult issues in

¹⁵⁹ Fine, *supra* n. 31, at 68–69; Rideout & Ramsfield, *supra* n. 31, at 42–47.

¹⁶⁰ Fine, *supra* n. 31, at 68–69.

¹⁶¹ Busharis & Rowe, *supra* n. 39, at 346.

¹⁶² See also Weresh, *supra* n. 142, at 440 (discussing the way in which legal writing professors can marshal new-student enthusiasm to teach ethics); *id.* at 461–462 (discussing concrete ways to introduce ethics lessons into the legal writing curriculum).

a legal writing assignment.¹⁶³ Other writers have promoted the benefits that flow to students when doctrinal and legal writing teachers coordinate their courses. They wrote that students benefit from “seeing clearly the link between analysis and its application and communication” and from covering more material more deeply.¹⁶⁴ Another scholar agreed, saying that she initially incorporated writing assignments into her doctrinal classes on the basis of her “untutored intuition that students would learn material more effectively if they did so in the process of acting like a lawyer and engaging in lawyer activity.”¹⁶⁵ This is the power of context, fully documented and authenticated by the constructivist and social discourse theories.¹⁶⁶

It is the power of context that specialized students demonstrate so well: they see themselves as lawyers, even at the beginning of the year, because they are working on assignments that they find relevant to their interests and their anticipated future. “A more richly textured course increases students’ interest, because it seems more relevant and more real to them.”¹⁶⁷ When they feel like lawyers—rather than just students—they invest more of themselves in their work.¹⁶⁸

Specialized sections take all of the heuristic strategies already in place in the legal writing classroom, including the “cognitive apprenticeship,”¹⁶⁹ and make students apprentices of the expert

¹⁶³ DeJarnatt, *supra* n. 139, at 56.

¹⁶⁴ Suzanne E. Rowe & Susan P. Liemer, *One Small Step: Beginning the Process of Institutional Change to Integrate the Law School Curriculum*, 1 J. ALWD 218, 222 (2002); see Susan P. Liemer, *Many Birds, One Stone: Teaching the Law You Love, in Legal Writing Class*, 53 J. Leg. Educ. 284, 286 (2003) (“[C]onnecting instruction in the substantive law with skills training highlights the connection between the doctrine learned in law school and its use in law practice.”).

¹⁶⁵ Vaaler, *supra* n. 31, at 152.

¹⁶⁶ See *supra* secs. III(C)(2)–(3), IV(A)(2).

¹⁶⁷ Liemer, *supra* n. 164, at 287; see also Rebecca A. Cochran, *Legal Research and Writing Programs as Vehicles for Law Student Pro Bono Service*, 8 B.U. Pub. Int. L.J. 429, 445 (1999) (commenting on the importance of a realistic setting for LRW assignments); Gears, *supra* n. 97, at 62 (synthesizing the significance to learning of using authentic tasks); Lysaght & Lockwood, *supra* n. 30, at 92 (explaining that legal writing exercises that require drafting documents to solve simulated real-world problems provide a realistic learning situation).

¹⁶⁸ See Liemer, *supra* n. 164, at 287 (“Students who are interested in the subjects they are studying will throw themselves more willingly into the hard work needed to acquire their fundamental legal skills. They will be more satisfied with the course generally and with their work in it. Many students talk to friends in other sections or other law schools, and students who work on multidimensional LRW assignments often come to appreciate the extra education they are receiving.”).

¹⁶⁹ Beazley, *supra* n. 33, at 44–47; see also Brook K. Baker, *Learning to Fish, Fishing to*

legal writing professor/practitioner. The students embrace the role of apprentice in a way that general legal writing students often do not because they perceive themselves to be in a “constructive learning process[] [that is] embedded in [a] context[] that [is] rich in resources and learning materials, that offer[s] opportunities for social interaction, and that [is] representative of the kinds of tasks and problems to which [they] will have to apply their knowledge and skill in future.”¹⁷⁰ The apprenticeship model corresponds to Professors Rideout and Ramsfield’s vision of the legal writing classroom as a laboratory or workshop in which teachers employ a variety of methodologies, including collaborative learning, to teach students to write and analyze.¹⁷¹ Of the many methodologies that DePaul’s LARC professors use in their “labs,” the doctrinal viewfinder of the specialized sections provides the quickest, sharpest focus for teaching these skills.

The creation of the deeper and more stimulating learning environment finds support in other scholars’ experiences of teaching legal writing through a specialty focus. Professors using subjects related to civil procedure to teach legal writing also found that the approach created a more stimulating learning environment. Students gained an understanding of how procedure arises in practice; they became actively involved in analyzing the issues and applying the law; and they “simply learn[ed] more” about civil procedure.¹⁷² Many of the students in specialty classes become much more engaged in the learning process because they really like the topic.¹⁷³ They then can continue their learning after the first year, when they can select from among a healthy number of upper-level writing courses to deepen their specialization. Because these upper-level courses fall under the jurisdiction of DePaul’s LARC department, the LARC director hires the professors¹⁷⁴ and guides the

Learn: Guided Participation in the Interpersonal Ecology of Practice, 6 Clin. L. Rev. 1, 27 n. 96 (1999). The cognitive apprenticeship is a theory of learning that stresses the importance of authentic activity that makes use of social and physical contexts. Baker, *supra* n. 169, at 27 n. 96.

¹⁷⁰ *Id.* (quoting Erik De Corte, *Fostering the Acquisition and Transfer of Intellectual Skills*, in *Learning across the Lifespan: Theories, Research, Policies* 95, 96–97 (Albert Tuijnman & Max Van der Kamp eds., Pergamon 1992)).

¹⁷¹ Rideout & Ramsfield, *supra* n. 31, at 70–72.

¹⁷² Glannon et al., *supra* n. 46, at 248.

¹⁷³ “The analysis of the motion in Civil Procedure and its use in the LRW assignment operated symbiotically to provide a much richer appreciation for this procedural device.” *Id.* at 255; DeJarnatt, *supra* n. 139, at 56 (describing the “richer opportunity to develop [students] analytical and other skills while learning the fine points of a specific area of law”).

¹⁷⁴ All upper-level writing faculty at DePaul have multiple years of practice experience

curricula in those courses, thereby achieving a consistent delivery of instruction across all three years of a law student's education. This continuity comports with what Professors Busharis and Rowe see as one of the benefits to upper-level practicum courses:

[B]y using legal writing faculty to teach the practicum, the school takes advantage of their understanding of the analysis and writing [that] students have already learned in the first year, enabling the practicum to draw directly from that experience. Practica reinforce the standards set out in the first-year legal writing and research program and help convey the message that those standards are not artificially created for the legal writing course[] but are essential for the skillful practice of law.¹⁷⁵

2. Increase in "Value" to Students

Specialized students also have the sense that they are receiving value for their hard work. This feeling produces several collateral benefits. All legal writing students think that they are working far more than the "payment" they receive in credit hours, but students in specialty sections complain about the workload less than those in non-specialty sections. Because the workloads are identical, this perception must be based on the students' feelings that they are getting something extra for all their work. The "extra" differs among students: for some, it is the knowledge they have acquired in a certain area of law; for others, it is the more general sense that they are immersing themselves in an area of law that they love.

Even if they do not end up loving the substance of the particular area of law, they have a far higher appreciation for the work that they are doing when they can see its application in an area of law that is meaningful to them. The experience of the four professors who taught legal writing through civil procedure subjects comports with DePaul's experience on this point.¹⁷⁶

in the specialty subject that they teach.

¹⁷⁵ Busharis & Rowe, *supra* n. 39, at 346–347.

¹⁷⁶ See Glannon et al., *supra* n. 46, at 248 (“[P]roviding students more context for their LRW assignments . . . help[s] them appreciate the practical benefits of the course and encourage[s] them to engage in the work more enthusiastically.”). For the report of comments by enthusiastic students, see *id.* at 253.

3. *Networking*

One benefit to students that flows from DePaul's program is the networking that naturally occurs.¹⁷⁷ For example, students begin to make contacts with practicing lawyers in Chicago when they are introduced to guest speakers and mock judges in LARC class.¹⁷⁸ Further, writing faculty who teach specialized sections often put students in contact with their former colleagues from practice if the students want to explore certain legal questions more closely than class time permits, or if the former colleagues are seeking law clerks for the year. With or without these particular contacts, once the competitive Chicago interviewing season begins, specialized students have a head start on students from other area schools¹⁷⁹ because they can market themselves as having a specialization. The specialty class gives them something to discuss in job interviews, especially when they do not yet have legal experience as a credential.¹⁸⁰

4. *Other Benefits*

Students experience the specialized sections as a benefit for reasons other than learning and interest-fulfillment. Even though their acceptance into one of DePaul's specialty sections is not entirely within their control, students do have the sense that the class is the one elective in a sea of first-year mandates. This gives them the empowering feeling that results from having a say in their destiny in an otherwise mandated curriculum.¹⁸¹

Another benefit to some of the specialized students is both visible and lasting: the job. Even without any of the other benefits, the summer jobs component of two of DePaul's certificate programs gives many students the only incentive they need to be in, and work hard in, LARC class. Although jobs are no longer guar-

¹⁷⁷ For a brief account of practitioners' mixed reviews of their interactions with students who have specialized in an area of law, see Griffin, *supra* n. 11.

¹⁷⁸ For the benefits of having practicing attorneys and judges speak to a group of students in a practicum course, see Busharis & Rowe, *supra* n. 39, at 347, and for the double-edged sword that guest speakers can pose, see Cooper, *supra* n. 20, at 61.

¹⁷⁹ They also have a head start on their DePaul classmates from general LARC sections.

¹⁸⁰ *But see* Griffin, *supra* n. 11 (discussing perceived perils of specialization).

¹⁸¹ See Edelman, *supra* n. 140, at 416–417 (A specialized moot court program “offers variety” to students, who “relish taking control of their academic program” in “what may be their only chance to elect a course in an otherwise prescribed curriculum.”).

anteed,¹⁸² the direct connection between being in a specialized section and securing a paying job after the first year is potent and undeniable.

B. Student Drawbacks: Disappointed Expectations

For their many benefits, the specialized sections do come with some drawbacks for students. If a certificate program does not accept a student to a specialty section, the student must still take LARC, usually in a general section. Every now and then, to stabilize numbers across sections, the school has assigned a student to another specialized section. Either of these situations can produce resistance in the student. Perhaps the student is angry because he is not in his class of choice. Perhaps the student hates the specialty to which he has been assigned and does not want to work on assignments involving that topic. Of course, any student bears the risk of having to work on an assignment that he does not like. Indeed, most students find themselves in this position at least once during the year in whatever LARC section they are in—even those in a specialty section.¹⁸³ Students who are not in their specialty of choice often do not see their situations that way, though, coveting the “good” assignments of the specialized students. Correspondingly, students who are in their chosen specialty but who end up disliking it—or, more often, who discover that the area of law is simply not what they thought it would be—have no recourse: they are in that specialized LARC class until the school year ends in April.

Beyond the personal dramas of like and dislike, the limited subject-matter exposure can have a restricting effect on the students’ educations. Many students already tend to think that they know exactly what they will be doing once they leave school: what type of law they will practice and what type of assignments they will work on at their jobs. Of course, almost none of those assumptions bear out fully. Students who specialize too quickly or too nar-

¹⁸² Jobs are no longer guaranteed because the IPLW acceptance pool exceeds the number of jobs that the certificate program can line up; see *supra* Section II(C).

¹⁸³ For example, one of the family law LARC students from the 2005–2006 academic year was quite unhappy to be working on an assignment involving the Federal Parental Kidnapping Statute. Unaccountably, she thought that the entire field of family law is state-based and that family law involves only spouses, not parents and children. Such is the assumption level of brand new law students. Her professor reported that she was quite sullen throughout the eight weeks of the assignment.

rowly sometimes wish that they had exposed themselves to a broader range of ideas and fields of study while they had the chance.¹⁸⁴

Akin to this potential regret is another form of disappointed student expectation. Specialized students' ability to choose their legal writing class often leads to expectations about the class, the teacher, the assignments—even their classmates—that might not be reasonable and might not be met. For example, usually not every single assignment can be in the legal specialty. Assignments in some specialties might need to be off-topic in order to serve programmatic and pedagogic goals of comprehensive skills instruction.¹⁸⁵ For students who have their hearts set on deep, all-specialty assignments all the time, these pedagogic choices inevitably produce disappointment.

C. Faculty Benefits

Students are not the only ones on the receiving end of the joys and sorrows of specialized sections. Teaching LARC through specialties presents benefits and difficulties for writing faculty, as well. At DePaul, the benefits far outweigh the burdens.

1. *Reduced Labor, Higher Interest*

The most apparent benefit to teachers is that they can teach what they know and like; this, then, makes specialized instruction pedagogically sound from the teacher's perspective. Having practiced in the specialty field prior to joining the academy, professors of specialized sections bring their practical experience to the classroom in a way that is even more pointed than the experience that a professor brings to a general legal writing section. This practical experience almost always leads to reduced labor on, and a higher interest level in, assignment preparation.¹⁸⁶ The ability of a professor to teach in an area in which he has practiced also often leads to greater excitement in teaching individual classes and con-

¹⁸⁴ See Griffin, *supra* n. 11.

¹⁸⁵ See *supra* sec. II(E)(1).

¹⁸⁶ See Liemer, *supra* n. 164, at 290 (commenting on the way that legal writing assignments are particularly workable when the professor creates them from a well-known field).

ducting conferences on work-in-progress.¹⁸⁷ In turn, these benefits lead to lower levels of burnout.

2. *Job Fulfillment*

Professors who teach specialized sections are pleased with the greater student interest in, and enjoyment of, the legal writing course. The professors enjoy watching their students immerse themselves in the work and enjoy the progress the students make because of that interest.¹⁸⁸ Greater on-the-job fulfillment couples with the reduced labor that comes from practical experience to further decrease rates of burnout. Students who are happier with their legal writing course will assess it more positively, and positive student evaluations can enhance a professor's career.¹⁸⁹

3. *Career Development*

Outside the classroom, the benefits of specialized instruction continue to accrue to legal writing professors. The specialized sections provide writing faculty with a unique opportunity to mentor students, to counsel them as to what the field is like on a day-to-day basis, and to provide them with contacts in the working world.¹⁹⁰ DePaul's specialized LARC faculty have enjoyed an increased profile in the law school—among both students and faculty—as they have emerged as great teachers and experts in their particular fields. Other schools have witnessed this event: “word of how great the [doctrinally focused] LRW course(s) and the LRW faculty are will inevitably filter through the school.”¹⁹¹ As a result, students and faculty see these members of the writing faculty as experts in the law and experts in teaching legal writing.

¹⁸⁷ See *id.* at 288–289 (teaching in a familiar and loved subject matter is intellectually stimulating and enhances teaching through natural enthusiasm).

¹⁸⁸ See *id.* at 287.

¹⁸⁹ *Id.* at 288. Two authors have identified the downright chilling use of student evaluations in assessing the performance of legal writing faculty. To understand why this use is so disturbing, see Melissa Marlow-Shafer, *Student Evaluation of Teacher Performance and the “Legal Writing Pathology”*: *Diagnosis Confirmed*, 5 N.Y.C. L. Rev. 115 (2002), and Judith D. Fischer, *The Use and Effects of Student Ratings in Legal Writing Courses: A Plea for Holistic Evaluation of Teaching*, 10 Leg. Writing 111 (2004).

¹⁹⁰ See Liemer, *supra* n. 164, at 290 (students will recognize the writing professor as an expert in the field and the proper person in the law school to serve as an employment reference).

¹⁹¹ *Id.* at 288.

The ability of the law school's constituencies to view writing faculty through a broader lens has opened other opportunities for them; increased participation in activities of certificate programs is only one. At the same time as the advent of the specialized sections, DePaul's writing faculty started to consistently teach upper-level doctrinal classes;¹⁹² prior to the success of the specialty sections, LARC faculty had taught doctrinal courses only occasionally. In addition, faculty members and student groups have requested that writing faculty take part in symposia, conferences, and panel discussions. These parties recognized the considerable expertise that writing faculty could bring to those events.¹⁹³ All of these benefits can help writing professors feel more connected to their law schools and more like the professionals they are.

Opportunities for overseas instruction have also developed. In 2006, for the first time in DePaul's history, the dean selected the family law LARC professor to serve as the annual visiting faculty member to University College Dublin in Ireland, a highly coveted assignment at DePaul.¹⁹⁴ Advantages outside the law school's ambit have also come: after she returned from the Dublin visit in 2006, the family law LARC professor received an invitation from a neighboring law school to work on a project in Tanzania. There she conducted comparative research on substitute care systems for orphaned children. That research led to her creation of an international children's rights class, and she has returned to Tanzania to teach it.¹⁹⁵ The weight that these invitations gave to her specialty class instruction cannot be underestimated. Most of her students rightly perceived her to be a professor of substance with the credentials and experience to back up what she said in class—not just about family law, but also about writing and analysis.¹⁹⁶

These invitations did not come ten years ago, before writing faculty started teaching specialized sections and doctrinal elec-

¹⁹² The specialty LARC professors most frequently teach a doctrinal course in their particular specialty, but not always.

¹⁹³ See generally Liemer, *supra* n. 164, at 292 (writing faculty who are seen as experts may be invited to speak to their "own facult[ies], other university departments, other law faculties, the bar, or the judiciary"); *id.* at 290 (noting several effects on students of the writing professor's expertise: appreciation of realism of assignments, higher respect for the teacher, and greater feelings of importance from being instructed by an expert).

¹⁹⁴ Cf. generally *id.* at 288 (when legal writing faculty are perceived as "multidimensional in their talents," their deans and at-large faculties value them more highly).

¹⁹⁵ Professor Liemer has noted that teaching legal writing through a doctrinal focus can lead to CLE, JLE, and other consulting opportunities. *Id.* at 290.

¹⁹⁶ Cf. *id.*

tives; happily, they have not been limited to the faculty who teach specialized sections. The specialty LARC sections have benefitted all members of DePaul's writing faculty. By highlighting some professors as experts in a field, the specialized sections shine a spotlight on the talents of all writing faculty, rightly showcasing them as far more than language specialists.¹⁹⁷

Increased visibility within the school and increased credibility among the student body also come to writing faculty who teach upper-level doctrinal students. Teaching fifty to 100 upper-level students, rather than only thirty first-year students, creates a fan base for the professor. When a first-year LARC student complains about a professor to an upper-class student who has had the professor for a prior course, that upper-level student can easily correct the first-year's impression with an encouraging and credible, "I know she seems tough, but I've never learned more than when I was in her class." The accumulation of students who are able to give this type of encouragement functions as a sort of pressroom for the teacher, and the trickle-down effect is to improve the tone of LARC class immeasurably. This cannot help but make the professors better teachers and more satisfied with their work.

D. Faculty Drawbacks

The system of specialized instruction is not burden-free. DePaul's professors have experienced a variety of challenges from teaching specialty classes.

1. Human Resources

With the increased student demand for specialized LARC sections and the increased interest of doctrinal faculty in creating certificate programs, more writing faculty have to teach specialized sections than in the past. Until 2006, DePaul had writing faculty who were eager to teach a specialty class, but the need for a third IPLW class in 2006 compelled the director to ask a professor to teach a section that he had not volunteered to teach.¹⁹⁸ As more of the sections become specialized, the director may have to press more writing faculty into service to teach classes.

¹⁹⁷ See Liemer, *supra* n. 164, at 294.

¹⁹⁸ That professor graciously agreed to teach the class.

2. *Coping with Student Dissatisfaction*

Managing student expectations and handling dissatisfied students go with the legal writing territory, but when those expectations grow beyond the teacher's ability to meet them, everyone becomes unhappy. Specialized legal writing sections create more opportunities for student dissatisfaction than tend to exist in general legal writing sections. Student unhappiness comes from a variety of sources: students may not have been accepted to the discipline of their choice and sometimes exhort the specialized LARC teacher to advocate on their behalves.¹⁹⁹ Because the certificate program heads are responsible for selecting students for the specialized LARC classes, the LARC professors cannot help the students in their quest.

Some dissatisfaction grows from the very fact that DePaul recruited the students, and their expectations are high. Many come in incorrectly thinking that every assignment they work on will be in that particular field of law. They are not.²⁰⁰ Likewise, the IPLW professors do not teach students how to prosecute a patent or file a copyright claim; the family law LARC professor does not teach students how to accomplish an adoption; and the health law LARC professor does not teach students how to prevent trafficking in human organs. All LARC professors teach plain old legal writing skills, and this can be bitterly disappointing to a student who has made incorrect assumptions about the certificate program.

E. Special Challenges for Directors

A system of teaching legal writing through specialized sections presents special challenges for directors of legal writing programs. All of the challenges relate to issues of personnel and fairness.

1. *Staffing the Program*

Hiring is the first challenge a director encounters. Practical experience in the relevant field is desirable in a candidate, but so

¹⁹⁹ See *supra* sec. V(B).

²⁰⁰ See *supra* secs. II(E)(1), V(B).

is teaching experience.²⁰¹ The first-year legal writing professors do not engage in the mission of teaching highly technical aspects of substantive law, for which practice experience in the field might be paramount. Accordingly, a director may lean on the side of preferring teaching experience, if a candidate possesses only one of the two qualities. At DePaul, the certificate program heads are not formally involved in LARC hiring decisions, but trying to incorporate their wishes into hiring decisions is the right thing for a director to do from an institutional perspective.

2. *Fairness in Workloads*

The next challenge for a director is to maintain consistent LARC class sizes; from a fairness standpoint, this is a priority. Because certificate program heads use criteria to accept students into specialized sections, the numbers of accepted students are inconsistent from year to year, and they are not always congruent with the anticipated and necessary class sizes of the LARC sections.

The number of students accepted into a specialty class or program may be greater or fewer than the target number for a section. These in-between numbers inevitably lead the director to have to even out a professor's full load or to overload another professor, hence, invoking fairness issues for both professors and students. Developing good working relationships with the certificate program heads—who understandably have goals that differ from the director's—can go a long way toward helping a legal writing director work through some of these issues.

3. *Keeping the Students Happy*

Student backlash: it is a theme that every director must evaluate before beginning a program of specialized sections. It runs through every consideration of the specialized model. Directors of legal writing programs across the country daily cope with student dissatisfaction. This unhappiness almost always takes the form of students believing that they know better than the director what the goals of the legal writing department should be, but universally failing to provide any solutions for the perceived prob-

²⁰¹ *Sourcebook*, *supra* n. 130, at 81.

lems. That situation is only exacerbated when specialized sections are the focus of the complaints.

As all legal writing directors can attest, students can complain about a seemingly inexhaustible supply of topics. They may think they know what the specialized section is supposed to be and not be.²⁰² This perception of knowledge can come from impressions formed through recruiting efforts, through information from their acquaintances, through assumptions that they make based on what other law schools might be doing, or through their own wish lists. They may fallaciously think that they should be getting a substantially “better” experience than students in other specialized sections, or students in general sections, are getting. They may think that their particular professor should be doing things differently. If the class does not rise to their expectations—whatever those expectations are, and however the students may have come by them—the students complain.

Students usually take complaints first to their particular professor, but they inevitably seek a resolution from the director.²⁰³ Sometimes, the director can solve the problem. More often, the student wants something that the director cannot or will not do: switch the student to a different section,²⁰⁴ make the professor behave differently, or alter the entire curriculum to suit the student. This is a golden opportunity for the director to help the student—as a developing lawyer—understand that the way to solve a problem is not to go over the head of the person with whom he has the problem but, instead, to go directly to the source of the problem and try there first.²⁰⁵ Very often, the student wants something that has larger, certificate-wide or school-wide implications, and the director cannot satisfy the student without involving others. Sometimes, the director cannot satisfy the student at all. Whatever the combination of factors giving rise to student dissatisfaction in a legal writing program, some complaining simply goes with the territory because the school has wooed the students, and the wooing creates a sense of expectation and entitlement.

²⁰² See *supra* sec. V(B).

²⁰³ *Sourcebook, supra* n. 130, at 166–167.

²⁰⁴ DePaul’s policy is not to switch students from one section to another once the school year has started.

²⁰⁵ *Sourcebook, supra* n. 130, at 166.

4. *Fairness in Grading*

One complaint to the director that does have the ring of authenticity is related to curving the grades of students in specialized sections. DePaul mandates a curve for all first-year classes.²⁰⁶ Professors with multiple sections—a full load is two sections of approximately thirty total students—curve all students together. Admissions personnel use a variety of factors to distribute students among all sections of the class, to achieve balance. The specialized sections, of necessity, are partially exempt from this balancing. The certificate program heads select the students who will be in the specialized LARC sections based on LSAT, GPA, an essay explaining why the student is interested in the specialized section, and other factors particular to the certificate program.

Accordingly, when the specialized LARC program began, the students in specialized sections had, as a group, higher LSATs and GPAs than did students in general LARC sections. Imposing a curve on those students was possibly unfair because the groups were statistically unrepresentative. As DePaul has experienced a narrowing of the LSAT and GPA range in the accepted student pools, the argument over whether the curve should apply to students in specialized sections is becoming moot. Still, students advance the argument. To date, DePaul's faculty has declined to change the curve for first-year students, regardless of their assignment to specialized LARC sections.

VI. CONCLUSION

Whatever the difficulties, specializing the first year and upper-level LARC courses is the right thing to do for student learning and engagement. The daily and yearly challenges are manageable, and their resolution is part of what is taking DePaul's legal writing instruction in the right direction. Purposely teaching legal writing through specialized instruction is a system that is firmly rooted in modern learning theory and that enjoys support in practice—albeit in modified forms—in several law schools. It is one answer to the *MacCrate Report's* call for greater skills instruction

²⁰⁶ DePaul's law school uses a range curve. Ten to fifteen percent of the students taught by a professor must get As; twenty to twenty-five percent must get B+s; twenty-five to thirty percent must get Bs; twenty to twenty-five percent must get C+s; and fifteen to twenty percent must get Cs. DePaul's law school does not use "minus" grades.

and broader integration of law school curricula. It is a part of the writing-across-the-curriculum movement, specifically, a subset of the *learning to write in the discipline* approach. Scholars and educators almost universally assume that a writing-across-the-curriculum program looks like an importation and distribution of writing assignments by an upper-level doctrinal professor. The purposes of the movement are equally well-served—if not better served—by exporting doctrine into all levels of the legal writing curricula and having the writing professors distribute, monitor, and critique the writing assignments.

Exporting doctrine, rather than importing writing, is pedagogically sound for students and is beneficial for professors. It is not a perfect or easy path to move students from novice to law clerk/summer associate, but it can be a successful and rewarding path for everyone involved. The difficulties in offering a program of specialized instruction are resolvable and well worth the effort for the benefits that the instruction produces.

Teachers who are interested in creating a certificate program or a formal program of writing instruction through the doctrinal lens can launch their idea by preparing a proposal and sending it through the appropriate school channels for review. As with all proposals that may engender vigorous discussion, these interested teachers would be prudent to get prior approval from the deans and the support of key members of the voting faculty. Legal writing professors who teach at schools where uniform assignments are not the norm can easily create a de facto specialized section simply by creating assignments that draw from one discipline.

Unless they are planning to accomplish the placement of particular students into the specialty section by themselves, teachers will need the input and help of their school's admissions personnel. Some professors have chosen to do this labor-intensive work themselves,²⁰⁷ but seeking the help of personnel who have access to admissions data and computer sorting programs can dramatically reduce the time spent on this task. Anyone considering the institution of a specialized program should consider many factors, including the logistics of specializing the first-year class; admissions methods; the creation of new classes; the achievement of speciali-

²⁰⁷ Nancy A. Costello, Associate Clinical Professor of Law at Michigan State University College of Law, created her own specialty section by selecting students interested in intellectual property from the admitted student pool. Presentation, *Killing Three Birds with One Stone: Teaching Legal Writing from a Specialty Law Perspective* (Atlanta, Ga., June 10, 2006).

zation across the upper-level; consistency across different sections; and consistency with any non-specialized sections in the program.

Once the teachers have organized the program, the one thing they can do to pave the way for a smoothly functioning one is to meet with the heads of the certificate programs, if those programs exist, and discuss possible pitfalls, such as conflicting goals. Deciding ahead of time on a division of responsibility and a seat of decision for particular hiring and pedagogic choices can help avoid conflict. Similarly, an open conversation about topics such as grading, curving, and general support for colleagues can go a long way toward averting problems before they erupt.

Non-specialized legal writing sections will always have a place in the law school curriculum. The specialized sections, though, for the students who want them, help students become and stay excited about learning the skills of writing and analysis. Teaching writing and analysis through a particular legal subject matter turns the doctrinal subject from a viewfinder that shows students a two-dimensional picture into a lens that actually focuses their attention and facilitates and influences their comprehension. The purposeful instruction of specialized legal writing is a significant, if untraditional-looking, step forward in the development of law school pedagogy.