

But Who Will Teach Legal Reasoning and Synthesis?

Kate O'Neill*

Introduction

Would legal education be improved by integrating the first-year legal writing course with an upper-level clinical course? That was the core question posed to a diverse panel at the 2007 Annual Section Program on Legal Writing, Reasoning and Research. The basic idea is deceptively simple and attractive: first-year students would develop their analytic, research, and writing skills by working on live issues from real cases in a law school clinic. First-year students would benefit from seeing legal issues in full context, interacting with more advanced students and clinical faculty, and knowing that their law school colleagues and the clients were relying on them for timely, sound advice. The clinic's work could be advanced by having more research help, and upper-level students could improve their own planning and communication skills in the process of "supervising" the first-year students.

Despite these apparent virtues, I'm not convinced an integration is a good idea — but it is a very provocative one. If carefully presented, it could provoke a very interesting conversation about the *rest* of the first-year curriculum at many schools. On the other hand, I think it naïve for legal writing and clinical faculty to attempt an integration that does not first involve serious discussions with and some commitments from the faculty who teach doctrinal courses; without such commitments, the integration may not endure beyond the personal commitments of its initial proponents. Nevertheless, I think this is an idea worth pursuing, even though an integration will be hard to implement and even harder to sustain without a substantial change in the first-year doctrinal curriculum at most schools — which I think unlikely. If nothing else, the discussions among legal writing, clinical, and doctrinal faculty that should precede any attempted integration — even if it never happens — could be immensely productive for the curriculum and for collegiality.

In a nutshell, my concern about integration is the effect on students' legal reasoning skills. Any curricular change should be supported by evidence that the change is likely to improve student learning of something students should learn without impairing their learning of something important they learn now. It's pretty clear that some exposure to reality would help most first-year law students learn to integrate doctrine, theory, practice skills, and professional responsibility and to feel better about themselves and their educations. My concern is with the

* © Kate O'Neill 2007. Director, Basic Legal Skills (1993-2006), and Associate Professor, University of Washington School of Law.

possible decrease in the quality and time devoted to instruction and practice in legal reasoning that might be the unintended consequence of integrating. Unless legal writing courses get some more credit hours, it's not clear that legal writing faculty can incorporate even little bits of clinical reality in most first-year legal writing courses without impairing instruction and learning of reasoning skills.

In this essay I argue that primary responsibility for teaching these skills now rests with first-year legal writing faculty and not with doctrinal faculty, as I think is widely supposed. I also argue that a likely unintended consequence of using clinical cases will be that legal writing faculty will lose both time and sophisticated materials with which to teach these skills — time that is already too short and materials that represent more than 30 years of increasing sophistication about law and learning. On the other hand, an integration could be a good outcome for students, for curricular coherence, and for faculty collegiality, if doctrinal faculty can be persuaded to re-assume primary responsibility for teaching reasoning skills and to integrate into their courses some of what legal writing faculty know and do now.

Discussion

This essay depends on three related points. I'll begin supporting my thesis by defining which reasoning skills I mean and suggest some historical reasons why instruction in those skills has moved out of the doctrinal curriculum and into the legal writing curriculum. Then I will discuss why it may be difficult for legal writing teachers to use issues from clinic cases to teach those same skills as effectively or as efficiently. I wrap up my argument by describing the evolution in casebooks as a way of documenting my (I suspect controversial) claim that doctrinal courses don't teach much about legal reasoning. Finally, I conclude with a brief plea that whatever faculties decide to do, they commit to assessing the results systematically.

In discussing the kind of thinking that legal writing courses teach a lot and doctrinal courses teach just a little, I am referring to what legal historians might call "neoclassical legal reasoning." In practical terms, I mean the work-a-day techniques of interpretation of and reasoning from positive law that one would expect to observe in a competent intermediate appellate opinion in a case in which there was no significant dispute over which legal authorities were applicable. These techniques involve: close reading of positive law sources, especially statutes and appellate opinions, the ability to extract holdings from an opinion, the ability to infer or "synthesize" common principles from multiple sources of positive law, and the ability to reason deductively from those sources to determine a party's legal obligations in particular factual circumstances.

In my experience, this kind of reasoning is taught systematically in first-year legal writing and not much in other first-year classes. (I have taught legal writing for over two decades and first-year contracts for almost a decade.) As I discuss in more detail below, neoclassical reasoning is on display, if you will, in the

casebooks now used in doctrinal courses, but it is not their focus. It would be nigh on impossible to learn to synthesize multiple cases or a statute and cases from the contemporary casebook. In contrast, over the past decades legal writing textbooks have increased explicit instruction in exactly these kinds of skills, and they do so through highly structured, carefully sequenced exercises that require analysis of multiple authorities within a jurisdiction.

Don't mistake me here: I'm not advocating neoclassical reasoning as the *sine qua non* of lawyering skills, much less as a jurisprudential ideal; in advocating for systematic instruction in neoclassical legal reasoning techniques, I don't mean to minimize other approaches to understanding and practicing law. In fact, I have long felt that the early and relatively exclusive focus on neoclassical reasoning in most first-year legal writing courses is unfortunate,¹ but the uneasy cohabitation of academic and professional perspectives in U.S. law schools helps explain why neoclassical reasoning ended up in the writing curriculum. Fervent academic debates about the source, validity, and meaning of legal rules and about the objectivity, consistency, or purpose with which they are or should be applied date at least from the Legal Realists in the early 20th Century and have persisted through the Legal Process movement, the Critical Legal Studies movement, into contemporary debates about economic analysis of law and about the relative merits of textualism, original intent, or instrumentalism in statutory and constitutional interpretation. This intellectual history is beyond the scope of my essay, except to the extent that it helps to explain why explicit instruction in the kind of reasoning that most lawyers and judges persist in using most of the time has shifted to the "skills" portion of the first-year curriculum. There, in legal writing classes, it can be segregated and taught as a necessary but insufficient tool — a means to the end of being employed in practice. This history may also help explain why all law faculty genuinely and correctly believe they teach legal reasoning; it's just that they may not be teaching the same kinds of legal reasoning.

Even if my evolutionary theory about legal curricula is all wet, I think my point that neoclassical reasoning must be taught is not. Every graduate who hopes to practice law will have to demonstrate competence in both its form and the substance, if only to pass a bar exam. Over the past 50 years or so, explicit instruction in this kind of reasoning has been assigned, or relegated, to legal writing courses. If faculties can ensure that students will still learn to reason credibly in the profession, and they can simultaneously enhance student learning in other respects by integrating clinical and legal writing courses, then they should integrate. That means, as a practical matter, that legal writing courses will either need to get more credit hours or that the doctrinal courses will have to take over some of what legal writing courses teach now.

¹ See e.g. Kate O'Neill, *Formalism and Syllogisms: A Pragmatic Critique of Writing in Law School*, 20 *Legal Stud. F.* 51 (1996).

On a side note, there may still be tough logistical issues in any integration that involve coordinating, sequencing, and timing work to meet both the client's needs for timely representation and the diverse first- and upper-level students' needs for appropriately sequenced lessons. I do not address those issues here except to comment that clinicians and legal writing faculties are particularly skilled at collaborative problem solving and can surmount the challenges, if anybody can. As an added benefit, perhaps legal writing and clinical faculty could unite at last in this common educational cause, realizing an affinity that many feel but few have realized.

Personally, I find the integration idea especially provocative because it provides an opportunity to stimulate a really important, and overdue, discussion at most schools about the rest of the first-year curriculum, whose substantial credit hours should not be overlooked in any discussion of how to improve student learning. Specifically, it could start a discussion about whether "doctrinal" faculty could "take back" primary responsibility for teaching neoclassical legal reasoning techniques along with other forms of analysis, history, doctrine, and theory in their subject areas. I think that could make a lot of sense and could improve both the legal writing and the doctrinal courses.

I would caution against legal writing and clinical faculty investing a lot of energy in an integrated program without the support of the doctrinal faculty. Indeed, even if an integration could work without any support from doctrinal faculty, legal writing and clinical faculty should reflect carefully on whether they inadvertently undermine the caliber of the overall curriculum if an otherwise worthwhile innovation in skills instruction further insulates doctrinal pedagogies from appropriate improvements. It can be argued that the growth in legal writing programs and clinics has simply relieved pressures to reform the courses that still comprise the bulk of credit hours in most law schools. Maintaining a divide between the skills and doctrinal curricula also perpetuates personnel hierarchies, whether legitimate or not. While the division probably arose for sound institutional reasons to insulate some teachers from especially time-consuming forms of teaching so that they can engage in research, I would prefer to see law schools use more forthright ways to protect productive scholars' time. I imagine that law schools would be better learning environments if the only goal in curriculum design were to promote student learning, and tools like release time were used to promote research. As a result, I think one of the most intriguing aspects of this proposal to integrate legal writing and clinical work is that, if carefully crafted and articulated, it could help "bridge the gap" between doctrinal and skills teachers and create some constructive pressure on doctrinal teachers to take more responsibility for teaching professional legal reasoning techniques within a sophisticated context of doctrine, history, policy, and theory. In the process, they might generate materials and a market for more coherent teaching materials than contemporary casebooks now provide.

Before I get into a discussion of what current doctrinal casebooks do and don't teach, however, I need to support my second basic point: that it will be

more difficult and time consuming for legal writing teachers to teach legal reasoning with issues from real clinical cases. To do so, I will briefly summarize how legal writing courses now teach neoclassical reasoning. Legal writing faculty know this, but other readers may not.

Substituting “real” legal issues from clinic cases for the fictional ones generally used by legal writing courses will not be an easy swap. Treating real legal issues and constructed ones as functional equivalents is naïve; it fails to recognize that legal writing teachers construct fictions not because they lack access to real cases, but because issues in real cases do not necessarily lend themselves to teaching the components of neoclassical reasoning in any systematic way. Real client issues no doubt require the use of some such reasoning, but not necessarily in an accessible, progressive sequence from simple to complex. That is, real issues may require the deployment of neoclassical reasoning, but they may not teach transferable or generalizable lessons about such reasoning.

The random sequence of issues that real cases generate wouldn’t be a problem if first-year doctrinal courses were teaching students to reason with and from authority systematically. Of course, those courses do teach about legal reasoning inevitably as a consequence of the readings and class discussions, but, depending on the particular teacher and the casebook used, the lessons in legal reasoning may not be explicit or organized in such a way that students can extract the technique from the doctrinal substance and transfer the technique to a different issue. As I discuss below, a survey of contemporary first-year casebooks makes plain that contemporary doctrinal courses do not even try to teach students to reason from, much less synthesize, multiple primary authorities. Instead, legal reasoning is incidental as students progress through material that is generally organized to illustrate major doctrinal principles efficiently.

Faculty who have no experience teaching legal writing, including many clinicians, may assume that the legal writing course is simply a practicum in which students learn to research and to articulate in professional form the results of reasoning skills principally developed through use of the “case method” in doctrinal courses. If that assumption were accurate, then legal writing assignments drawn from reality should be acceptable or even superior substitutes for assignments generated by fictions because the substance and sequence of the embedded legal issues would not matter. Instead, the lessons in such a practicum would mainly derive from doing the acts, and reflecting upon the process, of research, factual analysis, application, and writing. The content or process involved in the analysis of positive law would not be the principal focus of study or learning.

Most legal writing courses do not function as this kind of practicum, however. Instead, the course is often the only first-year course in which students are systematically exposed to and drilled in neoclassical legal reasoning techniques. If those techniques are worth learning, it may be very hard to teach them in a reality-based clinical–legal writing integrated course unless you have a

lot of credits and a lot of time. It is very hard to derive from reality the types and sequence of “legal method” lessons that legal writing faculty now teach. Every major contemporary first-year legal writing textbook devotes considerable space and explanation to presenting progressively more sophisticated legal analytic exercises. These exercises are framed in suitable fictions designed to make relevant legal authorities of which the instructor is already aware. The fictions are constructed carefully to invite the desired legal analyses and deter unwanted ones. If the fictions or simulations are realistic and so provide some “context” for the abstract lessons in reasoning from authority, that is a plus, but the principal goal remains the same — to teach the steps in neoclassical analysis and then the communication of that analysis.

The data supports this analysis of legal writing curricula. ALWD’s annual surveys of legal writing programs, and a casual perusal of the leading textbooks for first-year legal writing courses, confirm that a principal instructional goal of most first-year legal writing courses is legal method, and most of that is what I have labeled “neoclassical reasoning.” The goals do not generally include any serious instruction in the various other lawyering skills necessary for dealing with clinical reality, such as the ability to interview and hear the client to determine if the client has a “legal” problem, form or advise on alternative strategies, or even extract and construct the “facts” from unreliable, indeterminate or mutating sources and develop “a theory of the case.” Of course, skilled faculty in good legal writing programs, and in doctrinal courses, will try to preview for students the richer, more complex reality that awaits them and hint at some of the additional lawyering skills they will need, but I am not aware of any first-year legal writing course that teaches those skills ahead of neoclassical reasoning. For example, even the Lawyering Program at New York University (NYU), which devotes the second semester to sophisticated simulations that expose students to multiple other skills, such as interviewing and negotiation, begins with legal method and legal writing in the fall semester.

Thus, a clinical–legal writing integration would entail quite a radical change in the first-year curriculum. If factual reality and client needs (rather than legal reasoning techniques) were to drive legal writing assignments, they would look very different from what we have now. It will be a radical change not only for first-year legal writing courses but also for the whole first-year curriculum. If I am right that instruction in the neoclassical forms of legal reasoning in doctrinal courses has steadily declined and if neoclassical reasoning ceases to be an explicit component of first-year writing courses, it will mean that, for the first time since Langdell dreamed up the “case method,” systematic instruction in neoclassical legal reasoning techniques will have no dedicated place in the curriculum — unless the doctrinal courses take back the job.

That’s why I think this proposal is radical, not in a pejorative sense, but in a fundamental sense, and that’s why I think legal writing and clinical faculty who are contemplating an integration need to start talking with other faculty. The proposal has the potential to liberate legal writing courses from the present

intense focus on neoclassical reasoning techniques (symbolized by organizational devices like “IRAC”) and to extend those courses into a richer study of professional rhetoric, fact investigation, and other lawyering skills. It also could motivate all first-year faculty to reflect on their goals and pedagogies. This proposal could spark a wonderful, productive conversation — if introduced carefully. If clinical and legal writing faculty wanted to initiate that conversation, they might begin by inviting first-year doctrinal faculty to engage in a discussion of casebooks as a way of examining what is being taught and by whom.

That brings me to the third and final element of my argument — that doctrinal courses don’t teach much neoclassical reasoning anymore. My evidence is the content of doctrinal casebooks. My point is not that the change in doctrinal casebooks is a good thing or a bad thing; my point is that the change has had significant implications for legal writing course content — a reasoning content that I think is poorly understood outside legal writing faculties.

A brief description of the evolution in casebooks will illustrate my point that doctrinal courses are not vehicles for learning neoclassical reasoning anymore — although arguably that was one of their original purposes. When, in 1871, Langdell compiled the first edition of his casebook — *A Selection of Cases on the Law of Contracts* — his preface made clear that the book’s purpose was to support his use of the “case method” in a classroom with a fairly large number of students. Although Langdell is now mostly remembered for arguing that law was as susceptible to study as science and for his related success in persuading Harvard to add a law school, the preface makes relatively modest claims about the nature of law and the goals of legal study. Instead, it reads as a teacher’s logical explanation for his adoption of an innovative pedagogy to deal with the consequences of his success at Harvard: a relatively large group of students expecting classroom instruction in the law. I ask readers’ patience for a fairly lengthy quote from Langdell’s preface because so many of the notes he strikes resound today and help explain a great deal about why contemporary casebooks and doctrinal instruction have evolved as they have:

I was expected to take a large class of pupils, meet them regularly from day to day, and give them systematic instruction in such branches of law as had been assigned to me. To accomplish this successfully, it was necessary, first, that the efforts of the pupils should go hand in hand with mine, that is, that they should study with direct reference to my instruction; secondly, that the study thus required of them should be of the kind from which they might reap the greatest and most lasting benefit; thirdly, that the instruction should be of such a character that the pupils might at least derive a greater advantage from attending it than from devoting the same time to private study. How could this threefold object be accomplished? Only one mode occurred to me which seemed to hold out any reasonable prospect of success; and that was, to

make a series of cases, carefully selected from the books of reports, the subject alike of study and instruction

I was first led to inquire into the feasibility of preparing and publishing such a selection of cases as would be adapted to my purpose as a teacher. The most important element in that inquiry was the great and rapidly increasing number of reported cases in every department of law. In view of this fact, was there any satisfactory principle upon which such a selection could be made? It seemed to me that there was. Law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer; and hence to acquire that mastery should be the business of every earnest student of law. Each of these doctrines has arrived at its present state by slow degrees; in other words, it is a growth, extending in many cases through centuries. This growth is to be traced in the main through a series of cases; and much the shortest and best, if not the only way of mastering the doctrine effectually is by studying the cases in which it is embodied. But the cases which are useful and necessary for this purpose at the present day bear an exceedingly small proportion to all that have been reported. The vast majority are useless, and worse than useless, for any purpose of systematic study. Moreover, the number of fundamental legal doctrines is much less than is commonly supposed; the many different guises in which the same doctrine is constantly making its appearance, and the great extent to which legal treatises are a repetition of each other, being the cause of much misapprehension. If these doctrines could be so classified and arranged that each should be found in its proper place, and nowhere else, they would cease to be formidable from their number. It seemed to me, therefore, to be possible to take such a branch of the law as Contracts, for example, and, without exceeding comparatively moderate limits, to select, classify, and arrange all the cases which had contributed in any important degree to the growth, development, or establishment of any of its essential doctrines; and that such a work could not fail to be of material service to all who desire to study that branch of law systematically and in its original sources.²

Langdell's materials were perfectly suited to his theory of how to teach doctrine and his method for doing so. This first casebook had no table of contents; the preface indicates only three general topics: Mutual Consent,

² Christopher C. Langdell, *A Selection of Cases on the Law of Contracts* v-vii (Little, Brown 1871).

Consideration, and Conditional Contracts; and the appellate opinions are not edited. (By the second edition, in 1879, Langdell had fallen from case method purity and included — at the end — a “summary of the topics covered by the cases.”) Langdell’s students were expected to prepare their cases for detailed recitation and to attend class in which a few were exposed to the hazards of what we call a “Socratic dialogue” in which Langdell would expect them to recite the opinion’s key elements and then respond to a series of challenging questions about the opinion’s meaning and scope. Presumably, except to the extent that Langdell led them in class or helped them with his “summary of topics,” his students were left to infer the “essential doctrines” that (Langdell thought) bound one case to the other. In short, they were learning to interpret individual cases and then to infer or “synthesize” general principles that presumably could, among other things, be used to advise future clients. While little may remain of Langdell’s specific principles and few might accept all the elements of his formal reasoning techniques, it is clear that Langdell’s materials were designed to teach legal reasoning as well as doctrine because a student could not discern the doctrine — or “principles” — without first exercising the interpretative and reasoning techniques.

Contemporary casebooks don’t require students to engage in so much legal reasoning — formal, neoclassical, critical, or theoretical — to extract the lessons the authors and editors want them to learn. Contemporary casebooks for the first-year doctrinal courses have largely abandoned the Langdellian collection of largely unedited, appellate opinions loosely associated under a relatively broad topic in favor of a carefully organized selection of relatively few cases that are often heavily edited. While some of the new editorial features may result from explicit disenchantment with case method itself, most authors’ and editors’ introductions profess a continuing commitment to education through cases, but indicate that competing educational goals require trimming the cases presented. Since at least the 1970s with the trend increasing through the present, editors and authors have expressed a need to broaden the topics (and of course decades) covered; to provide “problems” to help students engage actively with the abstract legal principles; and, in a small but growing number of casebooks, to present theoretical perspectives. At the same time, nearly all editors and authors retain the old chestnut cases — the *Hadley v. Baxendales* — harkening back to Langdell’s point that some understanding of the historical development of contemporary doctrines is important. In some casebooks, significant attention may now be devoted to legislation that postdated Langdell’s era, such as the Uniform Commercial Code, and there is a trend to mention, if not explore, international sources of law, such as the Convention on the International Sale of Goods. These are the principal reasons for a steady reduction in the total number of cases, a reduction in the number of cases addressed to any one doctrinal area or issue, and rigorous editing of opinions to present the point for which the case

was included as efficiently and clearly as possible.³

To fill in the gaps and to promote efficiency, the diminished case selections are accompanied by an increase in supporting, expressly didactic materials: notes, mini-essays, and article excerpts on topics that may range from the goals of legal education, the types of legal reasoning, summaries of legal history to summaries of theoretical or interdisciplinary perspectives, and narratives or cross-references to narratives recounting the events leading to or resulting from the subject case.

The opinions that remain are chosen to satisfy diverse pedagogical goals — a diversity about which the casebook authors and editors are generally quite frank. A given opinion may be allotted space to highlight a doctrinal turning point in the development of common law, provide an example of particularly ingenious opinion-writing by a now-famous judge in a classic “hard” case, fill in one of the basic elements of a claim, or expose one or more relatively “hot,” unresolved issues in contemporary litigation.

Prior to 1950 or so, authors and editors of casebooks clearly intended them as supporting materials for instruction in the case *method*. And the contents of the casebooks make it obvious that *case method* meant not only a rigorous dissection of single cases through a classroom dialogue but also required students to organize the materials and infer overarching principles for themselves. The simple fact that older casebooks — including some that survived into the late 1970s when I went to law school — typically included multiple cases (or at least excerpts) on a single doctrine provides evidence that doctrinal teachers then viewed as among their course goals the ability to compare and contrast case holdings and to extract and defend a common principle, if possible. They must have been teaching students to synthesize cases, and if they were, they were necessarily teaching a fair amount about legal reasoning from primary authorities. Nowadays, however, I see very few casebooks that could support much teaching or learning about reasoning from or about multiple authorities on the same issue.

Because of these changes in doctrinal courses, I think that many contemporary law schools have largely consigned instruction in neoclassical legal reasoning skills, and in particular, instruction in synthesis of primary authorities, to the legal methods course, if separate, or to the legal writing course, if not. I do not mean to impute intent, whether malign or benign. Nor can I say whether pressures on the doctrinal curriculum or the steady expansion and improvement of first-year skills programs since the 1970s caused the shift. It seems likely that each is, in part, a function of the other.

Despite a fairly constant barrage of criticism since the legal realists in the early part of the 20th Century, it’s remarkable how enduring are casebooks and the case method — at least at a surface level. Indeed, the recent report from the

³ For some vivid examples of the evolution of casebook coverage, see the Additional Sources cited at the end of this essay.

Carnegie Foundation for the Advancement of Teaching, *Educating Lawyers*, includes an extended paean to the virtues in the first year of the “case-dialogue method” (properly conducted, of course). The authors describe the method as legal education’s “signature pedagogy.” Notably, however, I could not find in their discussion a single reference to synthesis. Instead, they extol the virtues of the case-dialogue method for, among other skills, helping students to see how clients’ problems may be constructed by lawyers into legal categories for purposes of remedy. The book is notable for its silence about how students learn to discern the categories for themselves.⁴

In any event, whether in response to the barrage or not, casebooks and classroom discussions have changed substantially, if one looks beneath the surface, since the middle of the last century. Many of these changes seem quite wonderful; the point for now, however, is that the net effect seems to be a noticeable diminution in the opportunities for students to learn legal reasoning skills in their doctrinal classes — precisely the place where I think most doctrinal teachers assume those skills are being learned for the most part.

As early as 1970, with the publication of *Legal Analysis and Research*, the text that became *Legal Problem Solving* (2d ed., West 1973), Marjorie Rombauer addressed the need for explicit instruction in legal reasoning from cases and statutes, as well as the need for students to develop those skills through writing analyses of hypothetical problems. The success of her text in the 1970s and 80s and the rapid expansion of legal writing courses proved her prescience. It is fairly common to read in the discussions of legal education that the need for legal writing courses and their great proliferation is the consequence of changes in the demographics of law students — from the classically trained, affluent gentlemen of Langdell’s day to the GIs returning from World War II through the diverse student bodies of today. But Marjorie thought differently, arguing cogently that the principal need for legal method instruction was to teach students explicitly to use legal authorities to solve problems, and the principal need for legal writing instruction was not to remediate composition skills, but to develop and reinforce legal problem-solving skills — as well as to teach professional rhetorical conventions.⁵ Interestingly, she locates the first significant legal method and writing course at University of Chicago Law School in the 1940s, and she notes several interesting coincidences. In the same year, 1947, the Directory of Law Teachers, published by the Association of American Law Schools (AALS), included for the first time two new categories: legal writing and legal method. In that same year, the first major, widely distributed legal methods casebook was published.⁶ In light of this data, I found it particularly interesting when, in researching for this essay, I came upon a soul-searching essay about the case

⁴ See William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* 47-86 (Jossey-Bass 2007).

⁵ See Marjorie Dick Rombauer, *First-Year Legal Research & Writing: Then and Now*, 25 J. Leg. Educ. 538 -552 (1973).

⁶ *Id.* at 542.

method by the renowned Columbia Law Professor (and colleague of realist Karl Llewellyn), Edwin W. Patterson.⁷ The article recounts all the obstacles to preserving a Langdellian casebook, noting that even by the 1950s, casebook editors were making hard choices between cases and coverage, and predicting exactly what has happened: that is, that the expansion of legislation, the role of administrative agencies, and the need to provide students with some overview of history and theory, not to mention the incursion of student study aids, all mitigate against inclusion in casebooks of sufficient cases on any one topic to permit close comparison, much less synthesis. In the bibliography to this essay, I have included citations to the prefaces of several older and current editions of well-known Contracts casebooks that document the shift from case study and synthesis to historical and topical coverage, including legislation, problem sets, and theoretical perspectives.

A Concluding Plea

In conclusion, whatever choices faculties may make about integration, I hope they will make a concerted effort to assess the results systematically. As this journal's readers know, a movement to assess "outcomes" in education has recently gained some traction in legal education, and I think that curricular innovators ought to include explicit goals and assessment criteria in new programs if they hope to make the innovations stick beyond the term of their own personal commitment. For example, *Educating Lawyers*, the study of legal education published by the Carnegie Foundation for the Advancement of Teaching, devotes a chapter to the topic of assessment (concluding that most law schools do a poor job of it) and includes useful references to major reports, studies, and monographs that address assessment, or its absence, beginning with the 1992 MacCrate Report.⁸ Until multiple schools implement integrated curricula, ideally while maintaining non-integrated curricula as controls, and then assess and compare student learning in each, we will be consigned to making curricular decisions based on our own experiences and intuitions as students and teachers. I hope that any school that does experiment with integration — or any other good idea — will make a serious effort to specify some goals and undertake to measure how well the experiment achieves them.

My intuition is that integration would be enormously helpful to first-year students and to their legal writing teachers at least in four respects: first, adult learners will likely feel that they are valued members of a community of practice if their (presumably) legal-research-and-analysis issues are "real"; second, the fact that students and faculty in a clinic will read and rely upon their work will help novices understand and write for a practice audience rather than the teacher; third, the reactions of those clinical readers and the ultimate outcome of the

⁷ Edwin W. Patterson, *The Case Method in American Legal Education: Its Origins and Objectives*, 4 J. Leg. Educ. 1 (1951).

⁸ Sullivan, *supra* n. 4, at 162-184, 203-211.

client's case will be the most useful feedback for aspiring professionals that I can imagine; and fourth, working for a client, rather than a legal writing teacher, will provide a first, good lesson in professional responsibility.

So, if we can figure out how to teach neoclassical reasoning efficiently and well, then let's integrate and let's assess the outcomes!

Additional sources

For provocative books with particular relevance to my essay's themes about the content and pedagogy of legal writing, legal reasoning, doctrinal, and clinical courses, see Philip C. Kissam, *The Discipline of Law Schools: The Making of Modern Lawyers* (Carolina Academic Press 2003); Gregory S. Munro, *Outcomes Assessment for Law Schools* (Inst. for L. Sch. Teaching 2000); and William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* 99 (Jossey-Bass 2007). *Educating Lawyers* also provides a short overview of and references to the major previously published studies of the curriculum of law schools in the United States.

For some vivid examples of the evolution of casebook coverage, compare the prefaces or introductions to the following Contracts casebooks. The later editions of each report the authors' deletions. A comparison of the three shows the range of agendas in contemporary casebooks, none of which have much to do with legal reasoning, per se:

Compare John P. Dawson & William Burnett Harvey, *Cases and Materials on Contracts and Contract Remedies* (Foundation Press 1959) with John P. Dawson, William Burnett Harvey, & Stanley D. Henderson, *Contract: Cases and Comment* (8th ed., Foundation Press 2003);

Compare Charles L. Knapp, *Problems in Contract Law: Cases and Materials* (Little, Brown 1976) with Charles L. Knapp, Nathan M. Crystal, & Harry G. Prince, *Problems in Contract Law: Cases and Materials* (5th ed., Aspen Publishers 2003);

Compare Robert E. Scott & Douglas L. Leslie, *Contract Law and Theory* (Michie Co. 1988) with Robert E. Scott & Douglas L. Leslie, *Contract Law and Theory* (LexisNexis Matthew Bender 2002).

For an older, but nevertheless relevant and interesting discussion of similar coverage challenges in Torts casebooks, see Victor E. Schwartz, *Torts Casebooks on Parade: The Authors Meet the Users*, 25 J. Leg. Educ. 4-25 (1973).