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Foreword

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

Amy E. Sloan
University of Baltimore School of Law, asloan@ubalt.edu

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FOREWORD

Eric B. Easton† and Amy E. Sloan††

Over the past twenty-five years or so, serious, high-quality scholarship on the pedagogy of legal analysis, research, and writing has expanded exponentially. Stimulated by the formation of the Legal Writing Institute in 1988 and the Association of Legal Writing Directors in 1995, this scholarship has found outlets in the venerable *Journal of Legal Education*, the *Journal of the Legal Writing Institute*, and the *Journal of the Association of Legal Writing Directors*, among other specialized publications. Today, this work is also appearing in the principal law reviews of law schools around the country.

This issue of the *University of Baltimore Law Review* features two articles that reflect several themes that run through this growing body of literature. In this brief introduction, we would like to discuss two of them: integration and problem-solving.

In her article entitled *Legal Research as a Fundamental Skill: A Lifeboat for Students and Law Schools*,[1] Professor Sarah Valentine calls for the integration of legal research instruction throughout the first-year curriculum. Such integration, "us[ing] the cases taught in doctrinal classes, buil[t] around the authorities used in legal writing, and referenc[ing] the issues other courses are discussing," she says, "creates a synergy that supports student learning."[2] At the University of Baltimore School of Law, we have taken this kind of integration to heart in our Introduction to Lawyering Skills program, by marrying legal analysis, research, and writing instruction with doctrinal courses in contracts, torts, and civil procedure.

This view of integration comports with the findings of two highly regarded recent studies of legal education, commonly referred to as

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†   Professor of Law & Co-Director, Legal Skills Program at the University of Baltimore School of Law (B.S. in Journalism, Northwestern University; J.D., University of Maryland).

††   Associate Professor of Law & Co-Director, Legal Skills Program at the University of Baltimore School of Law (B.A., University of Texas; J.D., George Washington University).

1.   Sarah Valentine, *Legal Research as a Fundamental Skill: A Lifeboat for Students and Law Schools*, 39 U. BALT. L. REV. 173 (2009).

2.   *Id.* at 224.

the *Carnegie Report*[3] and *Best Practices*.[4]   Professor Valentine's study supports our own conviction—now backed by four years' experience—that students learn both doctrine and skills more deeply when the two aspects of legal education are fused in the classroom. The *Carnegie Report* indicates that students appreciate this as well: "[S]tudents suggested that writing should be 'more integrated into courses on doctrine' in order to speed up students' learning of legal reasoning."[5]

Professor Valentine also believes, as do we, that students who receive an integrated education are better prepared, sooner, to practice law in the real world, where the line between doctrine and skills disappears when the first client walks through the door. According to *Best Practices*, "[l]aw schools cannot prepare students for practice unless they teach doctrine, theory, and practice as part of a unified, coordinated program of instruction."[6]

Integration of a different sort figures prominently in Professors Lisa McElroy and Christine Coughlin's article, *The Other Side of the Story: Using Graphic Organizers to Counter the Counter-Analysis Quandary*.[7]   Their article demonstrates how tools borrowed from other disciplines can be integrated with traditional legal writing pedagogy to facilitate student learning.   In this article, the authors borrow from social science and educational psychology theory to explain why students have so much trouble with "counter-analysis," the art of presenting alternative arguments and outcomes in predictive memoranda.[8]   Then they borrow "graphic organizers" from cognitive learning theory to help students learn the fundamentals of counter-analysis.[9]

The second theme that runs through these articles is problem solving. Lawyering is essentially a problem-solving profession.[10] As Richard Neumann has pointed out, however, legal education too often overlooks the problem-solving aspect of practicing law because

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3.   WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

4.   ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007).

5.   SULLIVAN ET AL., *supra* note 3, at 104.

6.   STUCKEY ET AL., *supra* note 4, at 99.

7.   Lisa T. McElroy & Christine N. Coughlin, *The Other Side of the Story: Using Graphic Organizers to Counter the Counter-Analysis Quandary*, 39 U. BALT. L. REV. 227 (2009).

8.   *Id.* at 229–35.

9.   *Id.* at 239–53.

10. At least when it is not a "problem-preventing" profession. *See* THOMAS D. BARTON, PREVENTIVE LAW AND PROBLEM SOLVING: LAWYERING FOR THE FUTURE (2009).

the academy is so overinvested in doctrinal interpretation.[11] "Endeavors of construction," Neumann says, "such as the creative processes of developing factual and legal theories, are treated in much of legal education as afterthoughts."[12]

Professors McElroy and Coughlin tackle that problem head on in their counter-analysis article. They point out that once students get attached to a position dictated by their initial assessment of the law, they face a variety of psychological and cognitive obstacles to putting their conclusions aside and thinking seriously and creatively about how the other side will approach the problem—especially during their first semester.

The problem is more easily dealt with in advocacy mode. Like many moot court competitions, the curriculum of the Legal Analysis, Research, and Writing course at the University of Baltimore School of Law requires students to switch sides at some point during their spring Introduction to Advocacy course. By adjusting the incentive structure in this way, we help students overcome their natural reluctance to question their own conclusions. McElroy and Coughlin have now provided us with a pedagogical tool for eliciting good counter-analysis even in the predictive writing that students typically undertake in the fall semester.

Professor Valentine's article also looks upon the work of the lawyer—and legal research—as "creative problem solving."[13] For too long, research instruction focused solely on the bibliographic details of research sources that students need to generate and evaluate solutions to research problems. The proliferation of research sources now makes it impossible to instruct students in the bibliographic features of every source they use, so focusing on research as a problem-solving process is a way of giving students the skills they need to survive in an ever-changing information environment.

Moreover, as Professor Valentine says, "[t]eaching legal research as a series of discrete legal tools or tasks . . . fails to present legal research as a complex problem solving skill interconnected with issue spotting, legal analysis, synthesis of information, and application of law to facts."[14] Teaching legal research as a problem

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11. Richard K. Neumann, Jr., *Donald Schoën, The Reflective Practitioner, and the Comparative Failures of Legal Education*, 6 CLINICAL L. REV. 401, 405 (2000).
12. *Id.*
13. Valentine, *supra* note 1, at 200 (quoting Gordon A. MacLeod, *Creative Problem-Solving for Lawyers?!*, 16 J. LEGAL EDUC. 198 (1963–1964)).
14. Valentine, *supra* note 1, at 200.

solving process, on the other hand, "is yet another way to reinforce the problem-solving skill sets students are learning."[15]

We are delighted to see these articles in the *University of Baltimore Law Review* and commend the editors for their recognition of the importance of this pedagogy. We look forward to seeing more of these articles published here in the future.

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15.   *Id.* at 218.