

THE CONSCIOUS CURRICULUM: FROM NOVICE TOWARDS MASTERY IN WRITTEN LEGAL ANALYSIS AND ADVOCACY

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INTRODUCTION

In recent years, law schools have been barraged by education-reform proposals with ideas for producing practice-ready lawyers. Just as forcefully, the bench and bar have beseeched law schools to produce better legal writers. They lament that law graduates still write as beginners, without a hint of the expert technique or sophistication that should be on display after three years of law school.¹

The reformers are right. Currently the law school curriculum works well for specialization and subject-matter mastery, but not for lawyering or legal-writing mastery. Accepted in word, but not in deed, the calls for reform along lawyering lines in the ABA's 1992 *MacCrate Report*,² the 2007 *Carnegie Report*,³ and the 2007 Clinical Legal Education Association's *Best Practices Report*⁴ have been perceived by many faculties as too ambitious, too expensive, or unnecessary.⁵ And so change has been sluggish, at least when held up against the reports' urgent tone and strong merits.

This Essay proposes a mastery-based curriculum. In contrast to the three reports' broader emphasis on practice readiness, the mastery at play

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¹ See Erika Abner & Shelley Kierstead, *A Preliminary Exploration of the Elements of Expert Performance in Legal Writing*, 16 J. LEGAL WRITING INST. 363, 364 n.5 (2010) (collecting articles and surveys that prove this point).

² A.B.A. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (1992) [hereinafter *MACCRATE REPORT*].

³ WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 9 (2007) [hereinafter *CARNEGIE REPORT*] (“The task of professional education is to facilitate novices’ growth into . . . competence, moving toward expertise.”).

⁴ ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 3–4 (2007) [hereinafter *BEST PRACTICES*], available at http://www.cleaweb.org/Resources/Documents/best_practices-cover.pdf.

⁵ See, e.g., Gary Shaw, *A Heretical View of Teaching: A Contrarian Looks at Teaching, the Carnegie Report, and Best Practices*, 28 *TOURO L. REV.* 1239 (2012); Brian Leiter, “*Training Law Students for Real-Life Careers*” . . . or *Deja Vu All Over Again*, BRIAN LEITER’S LAW SCHOOL REPORTS (Nov. 2, 2007, 10:54 AM), <http://leiterlawschool.typepad.com/leiter/2007/11/training-law-st.html>.

here centers on a core competency of lawyering: an amalgam of logical analysis, creative and ethical problem solving, and these ideas' effective communication.⁶ By focusing on written legal analysis and advocacy—skills universally agreed to be vital⁷ but too often lacking in law graduates—this Essay provides a launching point for curricular planning. It proposes a three-year integrated cognitive and social apprenticeship that coordinates its three curricular strands—doctrinal, clinical, and legal writing—to broaden the cognitive dimension and to reclaim the social dimension. And as discussed below, this apprenticeship can be implemented rather easily and inexpensively, so long as faculty agree to collaborate across curricular lines and to make deliberate choices about ordering students' education.

Part I of this Essay examines how legal education is misaligned with the multidisciplinary research on expertise. This Essay then discusses the broad outlines of a mastery curriculum that properly weights the cognitive and social dimensions of expertise and better balances law schools' three curricular strands. Using the legal research and writing (LRW) curricular strand as a case study, Part II continues with a blueprint for implementing the integrated apprenticeship for written legal analysis and advocacy in a realistic way.

I. THE PROBLEM OF MASTERY IN LEGAL EDUCATION

During the last 140 years, law schools have not reliably produced practice-ready lawyers or proficient legal writers. This Part explores why outdated curricular design impedes law schools from promoting mastery in written legal analysis and advocacy. In short, law schools elevate a narrow cognitive apprenticeship over social-discourse acquisition, when an integrated cognitive–social apprenticeship is what promotes mastery.

A. *The Reality of Legal Education*

Legal education has lost sight of its roots in apprenticeship and law practice's social character. The legal profession is a highly conventionalized discourse community⁸ that can be entered only after intense socialization in

⁶ This Essay's proposals are geared towards litigation-based writing, rather than transactional lawyering, because law school curricula remain heavily focused on lawyers as litigators. *See, e.g.*, A.B.A. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, A SURVEY OF LAW SCHOOL CURRICULA: 2002–2010 (Catherine L. Carpenter ed., 2012) [hereinafter ABA SURVEY]. However, the principles could be applied to wide swaths of skills courses and substantive law classes. It boils down to making efficient and deliberate choices about core courses. *See infra* Part II.E.

⁷ Abner & Kierstead, *supra* note 1, at 363–64; *see also* CARNEGIE REPORT, *supra* note 3, at 106–11.

⁸ J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 60 (1994). A discourse community is a “dynamic, collective entity of practitioners bound by an intricate, socially constructed web of beliefs and common disciplinary practices.” Huiling Ding, *The Use of Cognitive and Social Apprenticeship to Teach a Disciplinary Genre*, 25 WRITTEN COMM. 3, 5 (2008).

the ways of its expert members.⁹ Discourse community socialization is best gained through a sustained apprenticeship¹⁰ between aspiring and experienced members. Experienced members model expert techniques in authentic social roles—roles that real lawyers play—and the newcomers imitate these techniques until they too master them.¹¹ Law schools used to meld apprenticeship and discourse socialization. Indeed, the foundation for early American legal training was the English apprenticeship model.¹² Under that model, aspiring lawyers were brought into law’s discourse community as clerks and spent years learning from the practitioners.¹³ But when Christopher Langdell took the helm at Harvard Law in 1869, legal education via law practice was replaced with law science and the case method.¹⁴ The case method elevated formal knowledge gleaned from the objective study of appellate cases over socialization through real-life lawyering and working with clients.¹⁵ Most schools embraced the case method, sounding the death knell for apprenticeships.¹⁶

Still wedded to Langdell’s conceptions,¹⁷ today’s legal education is neither structured as an intensive apprenticeship nor grounded in discourse socialization. Instead, legal education is one-sided,¹⁸ relying heavily on a narrow cognitive apprenticeship that teaches legal analysis from a top-down perspective.¹⁹ The case method is linear, primarily oral, and a-contextual; it

⁹ See Joseph M. Williams, *On the Maturing of Legal Writers: Two Models of Growth and Development*, 1 J. LEGAL WRITING INST. 1, 13, 16 (1991) (characterizing law as a discourse community where learners acquire expertise from fully “socialized” members who, in real-life settings, “show concretely . . . how we want them to behave so that they will behave like us”).

¹⁰ James Paul Gee, *Literacy, Discourse, and Linguistics: Introduction and What Is Literacy?*, in LITERACY: A CRITICAL SOURCEBOOK 525, 527 (Ellen Cushman et al. eds., 2001).

¹¹ See Ding, *supra* note 8, at 5.

¹² David S. Clark, *Tracing the Roots of American Legal Education—A Nineteenth-Century German Connection*, 51 RABELS ZEITSCHRIFT FÜR AUSLÄNDISCHES UND INTERNATIONALES PRIVATRECHT 313, 317 (1987).

¹³ See Ralph Michael Stein, *The Path of Legal Education from Edward I to Langdell: A History of Insular Reaction*, 57 CHI.-KENT L. REV. 429, 440, 444–45 (1981).

¹⁴ *Id.* at 448. Langdell believed that “[w]hat qualifies a person, therefore, to teach law is . . . not experience, in short, in *using* law, but experience in *learning* law . . .” *Id.* (emphasis added).

¹⁵ See CARNEGIE REPORT, *supra* note 3, at 4–6.

¹⁶ See Mary Beth Beazley, *Better Writing, Better Thinking: Using Legal Writing Pedagogy in the “Casebook” Classroom (Without Grading Papers)*, 10 J. LEGAL WRITING INST. 23, 23 (2004).

¹⁷ See Edward Rubin, *What’s Wrong with Langdell’s Method, and What to Do About It*, 60 VAND. L. REV. 609, 610 (2007) (arguing that “the basic educational approach that law schools use remains essentially unchanged from the one” Langdell introduced).

¹⁸ See CARNEGIE REPORT, *supra* note 3, at 186 (“Compared to other professional fields, which often employ multiple forms of teaching through a more prolonged socialization process, legal pedagogy is remarkably uniform across variations in schools and student bodies.”).

¹⁹ See *id.* at 60–78. Analyzing a contracts class dialogue, the *Carnegie Report* observes four core components of a cognitive apprenticeship: (1) modeling, where the professor demonstrates the cognitive process of legal analysis; (2) coaching, or giving students guidance and feedback on their analysis; (3) scaffolding, or supporting students who are struggling through the analysis; and (4) fading, or stepping

is not iterative, writing-intensive, or tied to a practice setting.²⁰ It moves through oral analysis of cases in doctrinal chunks rather than improving thinking and writing through a law-practice-bound cycle of rehearsal, analysis, criticism, and revision.²¹ According to cognitive researchers, this iterative, socially situated cycle is vital to improving novices' thinking and writing in a professional discipline and is "at the center of core legal practices."²² But the 1L year is dominated by case-method courses, with just LRW offering the only iterative and socially situated course.²³ The second and third years of law school continue the steady diet of doctrinally centered case-method courses.²⁴ Although upper-level doctrinal courses progress in specialization, these courses typically continue to use the case method to promote *subject* mastery, not *lawyering* mastery. The clinical and skills training courses that foster discourse socialization and offer an intensive apprenticeship with writing experiences²⁵ remain "mere[] adjuncts"²⁶ to the dominant casebook learning approach. They are taught as separate electives that a minority of students take.²⁷ So the dominant narrative of legal education remains what it was over a century ago: a

back and letting students perform analysis on their own. *Id.* at 61. This apprenticeship is narrow not just because it is cognitive and not social, but also because the cognitive work centers on analytical thinking that distills facts and law into "controlled components" abstracted from the complexity of legal problems in practice settings. *Id.* at 81.

²⁰ The Langdellian model has been criticized since its inception as impractical and not representative of law practice. *See, e.g.*, Kara Abramson, "Art for a Better Life:" *A New Image of American Legal Education*, 2006 BYU EDUC. & L.J. 227, 234–35.

²¹ *See* CARNEGIE REPORT, *supra* note 3, at 98.

²² *Id.*

²³ *Id.* at 104–05. In most law schools, required practical (as opposed to academic) legal writing courses are limited to the first year, and in overall curriculum they remain "marginal and peripheral" as compared to their case-method brethren. *See, e.g.*, David S. Romantz, *The Truth About Cats and Dogs: Legal Writing Courses and the Law School Curriculum*, 52 U. KAN. L. REV. 105, 133–35 (2003).

²⁴ ABA SURVEY, *supra* note 6, at 33–34 (noting that 50% of respondents required students to take Evidence, 25% required Business Organization, 21% required Criminal Procedure; only 3% required clinical courses); Tonya Kowalski, *Toward a Pedagogy for Teaching Legal Writing in Law School Clinics*, 17 CLINICAL L. REV. 285, 295–96, 310 (2010) (in a clinician survey about collaboration, the "great majority reported a one-year 'standard' curriculum, with some variations as to upper-level electives," and only two schools with respondents in this survey had three or more required semesters of legal writing).

²⁵ Bryan L. Adamson et al., *The Status of Clinical Faculty in the Legal Academy: Report of the Task Force on the Status of Clinicians and the Legal Academy*, 36 J. LEGAL PROF. 353, 364–67 (2012) (describing how clinics offer social apprenticeships deeply embedded in authentic practice situations).

²⁶ CARNEGIE REPORT, *supra* note 3, at 191. Although most law schools have in-house legal clinics, very few devote the resources that would enable the clinic to serve all of the students in a law school. *See* Elliott S. Milstein, *Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations*, 51 J. LEGAL EDUC. 375, 380–81 (2001).

²⁷ In a 2010 National Association for Law Placement (NALP) survey of young associates, only 30% of them had participated in a clinic while in law school and a majority of those for only one semester. NALP FOUND., 2010 SURVEY OF LAW SCHOOL EXPERIENTIAL LEARNING OPPORTUNITIES AND BENEFITS 6, 10 (2011), available at <http://www.nalp.org/uploads/2010ExperientialLearningStudy.pdf>.

narrow cognitive apprenticeship in which most of the curriculum remains divorced from law's social practices.

B. Learning Theories Conflict with the Reality of Law School Curriculum

Other disciplines tell a very different story about how learners develop mastery. The cognitive psychologists, linguists, and composition theorists who study the phenomenon of mastery agree that there are not one but two interrelated dimensions to expertise: the cognitive *and* the social.²⁸ The social dimension of mastery is critical, for no matter what the discipline, expertise “does not exist in a vacuum.”²⁹ Likewise, mature learning happens through partnership with others, and it is socially cast by the learning situation and the culture.³⁰ In the cognitive dimension, mastery is not simply reusing the cognitive apprenticeship's four basic tools—modeling, scaffolding, coaching, and fading³¹—again and again in different contexts. Rather, mastery in the cognitive dimension requires using these four tools progressively to *increase* the challenge over time.

Turning to the discourse community of law,³² a long-term active “master-apprentice relationship in a social practice” is an *absolute prerequisite* to achieving expertise.³³ The linguist James Paul Gee calls this concept “acquisition,” and he contrasts it with “learning.” Acquisition means “acquiring something subconsciously by exposure to models and a process of trial and error.”³⁴ In contrast, learning is “conscious knowledge gained through teaching . . . [that] involves explanation and analysis.”³⁵ Acquisition occurs organically, in socially authentic settings, and from the bottom up; learning is taught, top-down, and its primary role is to impart knowledge that allows students to explain, analyze, and critique what they have learned.³⁶ Although learning aids intellectual understanding, only acquisition is critical to expertise.³⁷ Gee summed up the difference: “[W]e are better at what we acquire, but we consciously know more about what we

²⁸ See, e.g., Michael Carter, *The Idea of Expertise: An Exploration of Cognitive and Social Dimensions of Writing*, 41 C. COMPOSITION & COMM. 265, 274–85 (1990); Williams, *supra* note 9, at 9.

²⁹ Williams, *supra* note 9, at 13.

³⁰ This is a precept of Lev Vygotsky, the influential social constructivist whose ideas contributed heavily to social apprenticeships, see SHARAN B. MERRIAM ET AL., *LEARNING IN ADULTHOOD* 292 (3d ed. 2007), and cognitive apprenticeships, see Ding, *supra* note 8, at 5.

³¹ For an explanation of each tool, see *supra* note 19.

³² See Rideout & Ramsfield, *supra* note 8, at 58, 60. Law is a “dominant secondary discourse” as opposed to a primary discourse, like one's native language. Gee, *supra* note 10, at 530–33. A dominant secondary discourse is learned later in life, and its mastery gives the user access to “social ‘goods,’” such as money, prestige, and status. *Id.* at 528.

³³ Gee, *supra* note 10, at 530.

³⁴ *Id.* at 539.

³⁵ *Id.*

³⁶ *Id.*; see also *id.* at 532, 540.

³⁷ *Id.* at 542.

have learned.”³⁸ In other words, expert performance in a discourse cannot be taught solely—or even mostly—through overt instruction or learning.³⁹ The acquirers, who have apprenticed with masters in the discourse and been exposed to models in natural, meaningful, and functional settings, will outperform learners nearly every time.⁴⁰ Classroom learners may still engage in what Gee calls “mushfake” discourse, which requires cobbling together bits of experience and bits of classroom learning in order to “make do.”⁴¹ But mushfakers never attain expertise and never enter the discourse community. And given today’s legal practice demands, graduating mushfaking lawyers and legal writers is not an option.

As for cognitive development, according to the major developmental theories that influence curricular planning,⁴² mature learners’ intellectual development progresses in distinct and upward-moving stages. The novice stages are marked by yearning for concrete knowledge, looking for the one “right” answer to a question or problem, and deference to authority.⁴³ In the middle stages, the learner questions and reflects on what she has learned, begins to manage higher levels of abstraction, accepts multiple “right” views and answers, and becomes comfortable with ambiguity.⁴⁴ Approaching expertise, the learner becomes an autonomous, fluid performer.⁴⁵ She accepts the legitimacy of conflicting positions but can commit to one; she has freed herself from concrete “rules” and operates using higher order principles; she applies knowledge creatively, able to choose from multiple approaches to solve problems without clear goals or paths to resolution.⁴⁶ But these phases are not self-executing; they must be facilitated through conscious curricular design.

*C. Reconciling Learning Theory with Legal Education’s Reality:
Emphasize Acquisition and Deliberately Structure the Cognitive
Apprenticeship as a Progression*

In law schools today the cognitive and social aspects are imbalanced; the social apprenticeship is shunted to the side and the cognitive apprenticeship is underdeveloped. But law schools can improve the balance

³⁸ *Id.* at 540.

³⁹ *Id.* at 539.

⁴⁰ *Id.* at 532, 540.

⁴¹ *Mushfake* is prison lingo for “making do with something less when the real thing is not available.” *Id.* at 533.

⁴² I.e., Perry’s cognitive constructivism and Kohlberg’s theory of moral development. MERRIAM ET AL., *supra* note 30, at 326–35; Williams, *supra* note 9, at 4–7.

⁴³ See Williams, *supra* note 9, at 3–6.

⁴⁴ See *id.*

⁴⁵ See Carter, *supra* note 28, at 272.

⁴⁶ Williams, *supra* note 9, at 4–6; see also MERRIAM ET AL., *supra* note 30, at 332–35; Abner & Kierstead, *supra* note 1, at 366.

to promote mastery in two ways. First, they can recalibrate the curriculum to stop marginalizing the social dimension of expertise. Second, they can transform the one-dimensional cognitive apprenticeship into a robust, phased three-year apprenticeship that better accounts for how novices develop expertise in the cognitive dimension.

First, to promote socialization, law schools should decrease the proportion of top-down learning courses and increase the proportion of acquisition courses with practical writing components. No matter how artfully structured, the case-method approach is no substitute for the acquisition courses so vital to the development of lawyering expertise. Even if doctrinal courses offer snippets of social apprenticeship, they do not offer enough for mastery.⁴⁷

Consistent with a social discourse model, then, doctrinal courses should not dominate the curriculum. At a minimum, such courses should taper off—or be integrated with acquisition courses.⁴⁸ Assuming a more prominent place in the curriculum, the acquisition courses should, over time,⁴⁹ incrementally usher students into law’s discourse community. These courses should replicate expert-generating “communities of practice,” which pair novices and experts in authentic settings to solve real-life (or life-like) problems.⁵⁰ Students can then invest sustained effort, earn more responsibility, take on “more difficult and risky tasks,” and gain identities as “master practitioner[s].”⁵¹

Second, in addition to shunting socialization to the margins with too much doctrinal learning, law school’s cognitive dimension only scratches the surface of how novices become experts. The multidisciplinary research on expertise shows that novices should be brought along in consciously designed phases.⁵² But law schools currently offer uncoordinated instruction in different subject matters that use the four cognitive apprenticeship tools at essentially the same level of difficulty. To promote mastery, these tools should not be used unsystematically within separate courses, but progressively over time, across many courses. Within this coordinated cognitive apprenticeship, professors and students should also assume complementary learning and teaching roles, with the professor

⁴⁷ See CARNEGIE REPORT, *supra* note 3, at 56–57, 76–77, 188.

⁴⁸ See *infra* Part II; CARNEGIE REPORT, *supra* note 3, at 8 (Because law is a “social practice that includes particular habits of mind,” legal education “loses a key dimension” unless it offers “an understanding of legal practice from the inside.”).

⁴⁹ See Rideout & Ramsfield, *supra* note 8, at 77 (“Socializing students into legal discourse requires considerable time, usually more than one year.”).

⁵⁰ Abner & Kierstead, *supra* note 1, at 373–74 (Communities of practice are a “set of relations among persons, activity, and the world” Members observe and participate; newcomers are gradually drawn over time into the community as they undertake authentic activities.” (quoting JEAN LAVE & ETIENNE WENGER, SITUATED LEARNING: LEGITIMATE PERIPHERAL PARTICIPATION 98 (1991))).

⁵¹ *Id.* at 374.

⁵² CARNEGIE REPORT, *supra* note 3, at 116–18.

pulling back gradually until students become capable of reflective judgment, and of managing indeterminacy and complex problem solving.⁵³

Balancing and reconciling the cognitive and social dimensions of expertise yields the outlines of a mastery-based curriculum. Over three years, law school should offer an integrated cognitive and social apprenticeship in written legal analysis and advocacy by decreasing learning courses, increasing acquisition courses, and calibrating the cognitive apprenticeship's tools to create a phased challenge. The next task is to coordinate and capitalize on all three of law school's curricular strands to achieve these goals.

1. *The Integrated Apprenticeship: An Attainable Curricular Collaboration Among Strands.*

a. *Doctrinal strand.*—In a more measured proportion than now, law schools should continue to offer doctrinal courses, for they provide a powerful (though narrow) cognitive apprenticeship in the ability to analyze, explain, and criticize the law; isolate and apply facts; and abstract general principles that can be applied to later situations.⁵⁴ Scholarly seminars also can advance the cognitive apprenticeship when they involve an in-depth dialogue that challenges black-letter principles,⁵⁵ accompanied by an iterative writing and feedback process. But these upper-year courses should have components that place students squarely in authentic practice scenarios and require them to confront and write about three-dimensional messy and dynamic client problems. For example, a one-credit brief-writing option could be appended to a handful of core, upper-level doctrinal courses—Criminal Procedure, Evidence, Jurisdiction, and Administrative Law, to name a few. For a stipend and teaching credit (or CLE credit for practitioners), clinicians, LRW professors, and alumni could develop a bank of topic-specific brief problems and comment on 2Ls' discrete brief-writing assignments.⁵⁶ Not only must the cognitive apprenticeship be supplemented with aspects of authentic practice, but it must also be consciously designed

⁵³ See Steven D. Schwinn, *Developmental Learning Theory and the American Law School Curriculum*, 3 J. MARSHALL L.J. 33, 37–39 (2009) (using William Perry's developmental stages and Lawrence Kohlberg's theory of moral development to argue that law teaching should move students into the "final stage" of independent reflection and commitment).

⁵⁴ CARNEGIE REPORT, *supra* note 3, at 75, 81.

⁵⁵ See Philip C. Kissam, *Seminar Papers*, 40 J. LEGAL EDUC. 339, 339–42 (1990).

⁵⁶ Currently, LRW and doctrinal professors collaborate on assignments in only 25% of law schools, and only an average of 24% of upper-level doctrinal courses have a practical writing component. See ASS'N OF LEGAL WRITING DIRECTORS & LEGAL WRITING INST., REPORT OF THE ANNUAL LEGAL WRITING SURVEY, at v, 30 (2012) [hereinafter ALWD SURVEY], available at <http://www.alwd.org/wp-content/uploads/2013/02/2010-survey-results.pdf>. But 58% of LRW faculty members teach upper-level writing courses and 86% teach courses beyond LRW as part of their regular teaching load. See *id.* at xi. The brief-bank work could be credited towards that upper-level load or could be compensated as a cost-effective overload, and a professor could reserve excess teaching credits for teaching relief in later years.

to operate at increasingly higher levels over the three years. As discussed below, whereas modeling and scaffolding are more appropriate in 1L case-method courses, upper-level courses should employ coaching and fading. For example, under this model a first-year Civil Procedure professor would not only introduce the concept of jurisdiction and its foundational cases, but would also provide models of briefs that analyze real jurisdictional disputes. Doing so is a form of scaffolding that ratchets up the level of legal analysis. Then, in a Civil Procedure II or Federal Courts course offered in the second or third year, the professor would introduce more advanced and thorny jurisdictional problems, but then step back—fading, as it is called—and give students free rein to analyze and solve them.

b. LRW strand.—First-year LRW courses already provide situational instruction for the first stages of the social apprenticeship. They are designed to offer extensive expert feedback and early opportunities for reflection, two cognitive apprenticeship features absent from their 1L doctrinal counterparts.⁵⁷ But these courses vary in quality across schools, and some try to cram into a single year the entire writing and advocacy apprenticeship along with other lawyering skills.⁵⁸ Advanced legal writing courses also may be acquisition courses that generate expertise, but only if they eschew rote repetition of beginner paradigms and embrace meaningful simulations that mirror the legal and factual complexity in authentic practice settings. Therefore, LRW professors should coordinate first-year and upper-level legal writing coursework (and offer more of it) to foster expertise in both cognitive and social dimensions.⁵⁹

c. Clinical strand.—Clinical courses are essential to mastery because they best replicate the social apprenticeship, fully steeped in the acquisition model. Scholars have described clinical pedagogy as a “Prepare-Perform-Reflect” methodology.⁶⁰ Students actively prepare their representation of a live client and then perform that service under a faculty member’s supervision. Afterwards, the student and supervising clinical faculty member reflect on the experience. “[I]n every sense, the nature of clinical teaching connects the cognitive, practical, and ethical aspects of lawyering, and provides students opportunities to apply their knowledge . . . and to develop their professional identities.”⁶¹ But because live-client clinics cannot be controlled and planned out as other courses can, they are not as easy to mold to the cognitive apprenticeship. Again, partnership

⁵⁷ See Beazley, *supra* note 16, at 40–41 (In legal writing courses, “students work from the bottom up instead of from the top down” with teachers “guiding them along the way through in-class workshops, written critiques, and individual conferences.”).

⁵⁸ See Wayne Schiess, *Legal Writing Is Not What It Should Be*, 37 S.U. L. REV. 1, 3–5 (2009).

⁵⁹ Part II details how the integrated apprenticeship can work in the LRW strand.

⁶⁰ Adamson et al., *supra* note 25, at 364–67.

⁶¹ *Id.* at 366.

among strands is critical. For example, LRW and doctrinal faculty could guest lecture at strategic times in a clinic semester. Using the legal issues in a current clinic case, they could model writing about and scaffold facility with the law's substance. Because modeling and scaffolding are the most difficult cognitive apprenticeship tools to employ in dynamic live-client situations, the LRW and doctrinal faculty's input here would be invaluable. Conversely, clinicians can visit doctrinal classrooms to demonstrate how the course's theory and doctrine propel their clinic practice—a potent form of modeling.

Coordinated and recalibrated, each strand makes vital contributions to the integrated apprenticeship's greater emphasis on acquisition courses and a more robust cognitive dimension. But this ideal will never work if it runs up against the institutional and economic obstacles that have hampered the earlier, more comprehensive reform efforts of *MacCrate*, *Carnegie*, and *Best Practices*.⁶²

2. *Overcoming Institutional and Economic Obstacles to Reform.*—

The authors see three main obstacles to the changes proposed in the *MacCrate*, *Carnegie*, and *Best Practices* reports. First, it may be that these reports' excellence also undermines their implementation. The panoply of options creates too many paths for curricular innovation, and the result is an incremental, scattershot hodgepodge⁶³ of new courses without a deliberate choice about what courses (and when they are taken) actually move students towards mastery.⁶⁴

Second, institutional homogeneity and resource scarcity hamper change. The vast majority of new hires at law schools are traditional

⁶² Despite strong statements of support from law deans and a flurry of strategic plans stemming from the calls of the *MacCrate*, *Carnegie*, and *Best Practices* reports, real and effective curricular changes are slow in coming. For example, though all three reports recommend a significant increase in clinical education for law students, *CARNEGIE REPORT*, *supra* note 3, at 194–97; *BEST PRACTICES*, *supra* note 4, at 188; *MACCRATE REPORT*, *supra* note 2, at 237–38, in the most recent ABA Survey on Law School Curricula, just three years ago, only 3% of schools required students to take clinical courses, *ABA SURVEY*, *supra* note 6, at 33. These reports also recommend collaboration among the three curricular strands, *CARNEGIE REPORT*, *supra* note 3, at 194–97; *BEST PRACTICES*, *supra* note 4, at 71; *see also* *MACCRATE REPORT*, *supra* note 2, at 332, but this goal too remains elusive, *see, e.g.*, Kowalski, *supra* note 24, at 294 (reporting survey results showing that 93% of responding clinical programs have “no planned or uniform approach to supervising legal writing”).

⁶³ *See, e.g.*, AALS COMM. ON CURRICULUM, *SURVEY OF INNOVATIONS IN LAW SCHOOL CURRICULA* 16–18 (2006), available at <http://www.aals.org/documents/curriculum/Survey.pdf> (describing over thirty different specialties law schools offer); *see also id.* at 31–33 (providing over thirty discrete examples of post-1L curriculum changes schools have made in recent years); *id.* at 36–39 (describing several dozen different ways in which such changes came about or are in development).

⁶⁴ Peter Toll Hoffman, *Teaching Theory Versus Practice: Are We Training Lawyers or Plumbers?*, 2012 MICH. ST. L. REV. 625, 637 n.66 (describing law schools' efforts at curricular change as mere “window dressing”).

doctrinal professors, rather than those who teach clinical or LRW courses.⁶⁵ And innovation can be seen as too expensive, especially if it involves more experiential learning, which some view as more costly than large doctrinal courses. As discussed in this Essay, however, experiential learning in written legal analysis and advocacy can be made cost-effective through creative partnerships, a willingness to step away from the status quo, and a sensible allocation of resources.

Third, these reports have not accounted for the haphazard evolution of legal education, which might explain half-hearted, disorganized, or unsuccessful innovation efforts. Having replaced the apprenticeship model two centuries ago, Langdell's case-method model of doctrinal teaching has been around since 1869. Legal writing as a discipline steeped in New Rhetoric⁶⁶ did not develop until much later in the twentieth century. Clinics, too, are a twentieth-century development, emanating from the 1930s' legal realist movement,⁶⁷ and maturing along with social justice concerns in the 1960s.⁶⁸ It is no wonder that curricular innovation efforts are infected by a similar haphazard approach—and by jockeying for position when collaboration should happen instead.

This Essay's phased three-year integrated apprenticeship addresses these obstacles. It promotes mastery by adjusting and pulling the three strands together in a more balanced manner. Its proposed deliberate progression is founded on faculty coordination and partnership and incremental change, not a new faculty composition or sweeping directives. The integrated apprenticeship will require planning, open-mindedness, and some resource reallocation. But it will not demand curricular overhaul, massive expenditures, or, at the other one-dimensional extreme, turning law schools into pure authentic practice laboratories.

The next Part uses a LRW curricular case study as a more concrete example of how law schools can accomplish this three-year integrated social and cognitive apprenticeship through curricular design and faculty partnership.

⁶⁵ See *id.* at 638 & n.69; David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES (Nov. 19, 2011), <http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html> (“[H]alf of a law school's budget is spent on faculty salary and benefits, and . . . tenure-track faculty members consume about 80 percent of the faculty budget . . .”).

⁶⁶ See generally Linda L. Berger, *Applying New Rhetoric to Legal Discourse: The Ebb and Flow of Reader and Writer, Text and Context*, 49 J. LEGAL EDUC. 155 (1999).

⁶⁷ Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 FORDHAM L. REV. 1929, 1932 (2002).

⁶⁸ Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1465 (1998).

II. A LRW CASE STUDY IN THE INTEGRATED COGNITIVE AND SOCIAL APPRENTICESHIP

Legal education's mastery project can take its first step with the LRW strand, and this Part sets up the framework. Because LRW courses already target this key element of lawyering and are a first-year staple, it makes sense to study the integrated cognitive and social apprenticeship through the LRW lens. LRW is also a good case-study subject because its signature pedagogy⁶⁹ lends itself to the integrated apprenticeship. Done well, LRW pedagogy simulates authentic writing tasks calibrated in difficulty, guided by experts through an iterative process of definition, demonstration, performance, feedback, reflection, and revision.⁷⁰ The apprenticeship has four phases: two in the first year, and one each in the second and third years.

Currently, most law schools follow a standard model for first-year LRW.⁷¹ In semester one, the professor tackles objective legal writing, often in the legal memorandum format. The first semester leans heavily on the ingrained⁷² IRAC (Issue, Rule, Analysis, Conclusion) organizational-analytical paradigm or one of its variants.⁷³ In the same semester, the professor introduces the class to legal authorities, the basics of legal research, and citation. The second semester shifts the genre and rhetorical context to persuasive writing and oral argument with more complex problems. The students act as advocates, writing briefs to courts.

As explained in more detail in the suggestions and proposals section below, the existing first-year LRW course should remain intact, with two caveats. First, the course should tailor and streamline instruction to the core competency, rather than injecting other lawyering and drafting skills. Second, first-year LRW should do a more effective job pacing and pushing analytical and writing sophistication. As for instruction beyond the first

⁶⁹ Carol McCrehan Parker, *The Signature Pedagogy of Legal Writing*, 16 J. LEGAL WRITING INST. 463, 466 (2010); see CARNEGIE REPORT, *supra* note 3, at 107–09 (describing the expert-generating benefits of legal writing pedagogy).

⁷⁰ Parker, *supra* note 69, at 466; CARNEGIE REPORT, *supra* note 3, at 109.

⁷¹ Beneath the surface, though, first-year programmatic quality varies widely, dependent on LRW resources, faculty status, teaching quality, and institutional commitment. Even though this Essay makes generalizations about LRW teaching and curricula, the authors realize that this is an oversimplification, a footing from which to argue an ideal model.

⁷² See Tracy Turner, *Finding Consensus in Legal Writing Discourse Regarding Organizational Structure: A Review and Analysis of the Use of IRAC and Its Progenies*, 9 LEGAL COMM. & RHETORIC: JALWD 351, 352–53 (2012) (“Many legal writing scholars believe that novice legal writers need a paradigm structure like IRAC to get them started on mastering the skill of effective organization and analysis. . . . Currently, most textbooks teach a set structure, whether or not they label it with an acronym.” (footnote omitted)).

⁷³ See Terrill Pollman, *Building a Tower of Babel or Building a Discipline? Talking About Legal Writing*, 85 MARQ. L. REV. 887, 898 (2002). Many of the professors interviewed use alternative formulations of IRAC, usually either to add an additional element of explanation to the rule statement or to adapt the format to persuasive writing.

year, the integrated apprenticeship should continue in Phases 3 and 4 with a coordinated, consciously designed upper-division curriculum that extends beyond LRW courses. These phases should be implemented through an acquisition-heavy slate of upper-level courses that draw on all three curricular strands, because no single type of course can provide the integrated apprenticeship students need. With coordination among LRW faculty, clinical faculty—and ideally, doctrinal faculty and practitioners—law schools will not need to add a host of new courses or hire new faculty. Instead, faculty can alter teaching methods and partner in strategic ways to implement the integrated apprenticeship, moving students towards mastery in written legal analysis and advocacy.

A. Phase 1—First Year, First Semester: Knowledge, Modeling, Approximating, and Basic Socialization

The goals in Phase 1's integrated apprenticeship, linked to the first semester, should be modest and well-defined. Law school is jarring for new students, who are oblivious to the legal discourse community that they are about to enter.⁷⁴ On top of that, the cognitive overload is staggering.⁷⁵ As a result, even the most proficient prelaw writers regress before they get better.⁷⁶ Students must be eased into the integrated apprenticeship, with an eye towards situating these novices in the discourse community.⁷⁷

The students' objective in Phase 1, then, is basic socialization into the genre known as legal writing. The professor aims to establish context, impart basic knowledge and "rules" about the discourse, and model a host of simplified tasks. Thus, this earliest phase includes more learning time and less acquisition time because novice law students must first build a robust, discourse-specific knowledge base on which they can later draw.⁷⁸ Fundamentally, students must know how to analyze legal authorities and use that knowledge to solve a client's problems. The intensive instruction that LRW professors already provide on these subjects remains critical: cases versus statutes, understanding and analyzing them both, and learning when to turn to secondary sources for guidance. Phase 1 should also continue to teach the mainstay modes of legal reasoning, such as synthesis and analogical reasoning, to name a few. Discussing audience and rhetorical context is crucial to socialization, so professors must address them. Finally, Phase 1 should still teach the key sections and purposes of the standard analytical legal documents, geared towards novices. To that end, IRAC and its variants can play a role. But instead of leaving the organizational instruction at IRAC, which is the norm right now, the professor should

⁷⁴ Williams, *supra* note 9, at 14.

⁷⁵ *Id.* at 15.

⁷⁶ *Id.*

⁷⁷ See CARNEGIE REPORT, *supra* note 3, at 117.

⁷⁸ See Carter, *supra* note 28, at 274–75.

frankly acknowledge that the IRAC “rules” will eventually be replaced with more flexible and sophisticated approaches to organization⁷⁹ as students advance in the discourse.⁸⁰

On the social-apprenticeship front, LRW professors should continue to design realistic client problems. The students’ writing tasks should be at the novice level: simple analytical documents with determinate law and facts.⁸¹ Students’ roles in the assignments should also be tailored to the novice stage; playing the junior writer on a routine analytical matter is appropriate.

Integrating the cognitive apprenticeship, the professor’s most potent Phase 1 device is modeling—demonstrating how to perform a task through a detailed analysis of representative work.⁸² Here, LRW professors have a deep well to draw from—and many already do. They can show prewriting strategies: how an expert analyzes authorities, sifts facts, and thinks about how the authorities might work together to produce an answer. The professor can also explain and model the overall writing process, though in a simplified, Phase-1 way. Turning to the end game of audience-centered writing, professors can display fairly simple, and thus relatable, models of effective and ineffective analytical writing. This modeling of prewriting and writing tasks is powerful: it shows novices what works, what does not, and how to emulate expert writing strategies.⁸³

Just as important in Phase 1 is the cognitive apprenticeship tool of scaffolding. Here, professors push novices up the mastery continuum using writing models that prompt students to assess them against the foundational rules they have learned.⁸⁴ This exercise yields strategies that students carry with them as they begin to write on their own.⁸⁵ Professor support during the writing process should be strong and explicit to counteract students’ cognitive overload and lack of socialization. Concrete criteria, detailed comments on multiple drafts, and frequent conferences throughout allow professors to assess students’ work against the “rules” for improved performance.⁸⁶ The professor’s feedback should also point out typical novice shortfalls and suggest strategies for improvement.⁸⁷ These forms of scaffolding promote nascent mastery because they make expert practices

⁷⁹ See Turner, *supra* note 72, at 354 n.10 (cataloging IRAC critiques in the LRW literature).

⁸⁰ CARNEGIE REPORT, *supra* note 3, at 116.

⁸¹ See Kristen Konrad Robbins-Tiscione, *From Snail Mail to E-Mail: The Traditional Legal Memorandum in the Twenty-First Century*, 58 J. LEGAL EDUC. 32, 49 (2008) (discussing the benefits of introducing “[s]hort form memoranda” and “substantive e-mail[s]” rather than teaching 1Ls exclusively through the medium of traditional, lengthier memos).

⁸² Ding, *supra* note 8, at 5.

⁸³ *Id.* at 26.

⁸⁴ See *id.* at 25.

⁸⁵ CARNEGIE REPORT, *supra* note 3, at 109.

⁸⁶ See Ding, *supra* note 8, at 28.

⁸⁷ CARNEGIE REPORT, *supra* note 3, at 109–10.

visible and help students approximate those practices with close guidance.⁸⁸ Intense scaffolding prepares students for the next phase, which adds social and rhetorical context, complexity, uncertainty, and critical reflection.

B. Phase 2—First Year, Second Semester: Variety, Reflection, Better Approximation, and More Socialization

Phase 2 should start in the second semester,⁸⁹ and its goals are to introduce a variety of authentic writing projects, critical reflection, and more community-of-practice elements. Explicit modeling and scaffolding remain important teaching tools, but they should encompass more complex, higher stakes writing tasks with compelling social purposes.⁹⁰ Phase-2 writing tasks may introduce new audiences and genres (courts and clients, briefs and letters) and new purposes and rhetorical contexts (writing to persuade, writing to inform clients). These tasks should inject new categories of legal questions (questions of pure law, rather than law–fact application) and new modes of analysis (interpreting indeterminate statutory language). Writing from these many angles gives students a chance to adapt the relatively context-free “rules” they applied in first-semester analytical writing tasks to more context-bound tasks.

To advance socialization, professors can assign students more demanding, simultaneous, and authentic roles.⁹¹ Students should serve not only as advocates within their own assignments, but also as analysts, editors, and revisers of their colleagues’ work.⁹² Students should engage in realistic writing collaboration⁹³ and start peer teaching. At this stage, though, peer review should be highly structured, and tied to specific expert-approximating goals.⁹⁴ Whatever the form, these community-of-practice elements should be tailored to these advanced beginners and be as authentic as the context allows.

On the cognitive side, critical reflection and shifting away from the rote disciplinary rules of Phase 1 move the students up the novice–expert continuum during Phase 2. As an example, the professor may model and critique alternative arrangements for a legal issue with a more complex internal structure. She may show how and why expert brief writers sometimes “break the rules” of basic organization—omitting introductory roadmaps, for instance. Or she may openly criticize the use of stock

⁸⁸ Ding, *supra* note 8, at 29.

⁸⁹ Students’ abilities to move through the phases will doubtless vary across institutions. Schools can account for these differences by timing each phase to match student-body needs.

⁹⁰ See Anne Beaufort, *Learning the Trade: A Social Apprenticeship Model for Gaining Writing Expertise*, 17 WRITTEN COMM. 185, 207–13 (2000).

⁹¹ *See id.*

⁹² *See id.*

⁹³ *See, e.g.*, Schwinn, *supra* note 53, at 45–46.

⁹⁴ Ding, *supra* note 8, at 26–27.

paradigms like IRAC when the writing task or legal question is not suited to it.⁹⁵ She will also show how different kinds of cases demand different kinds of reasoning and structure. These, in turn, become the new, less rigid “rules” that students apply to become more nimble and independent in the discourse.⁹⁶ By its end, Phase 2 should reveal enough “insider knowledge” and expert technique to move novices into an “advanced beginners” category, where they can better approximate expert writing.

C. Phase 3: Competence, Coaching, Fading, and Shedding

Unlike the raw learning and formalism in Phases 1 and 2, Phase 3 requires less teaching. Now the push towards expertise should be experiential, where, in authentic practice settings, students encounter real legal problems rich in variety and complexity. At this stage, the cognitive and social apprenticeships are deeply entwined in every task. Here, with light-handed expert guidance, students can start to recognize recurring patterns in different dimensions of legal problems and develop strategies to manage them. Once they become adept at pattern recognition, the students, working cooperatively with guiding experts,⁹⁷ can develop their own “rules” and their own voice.⁹⁸ Specifically, students can develop and internalize reliable strategies to think about, organize, and write—in their own language—about ill-formed legal problems. Take, for instance, a brief with a complex statutory interpretation issue: the student must draw on her earlier experience to advocate for a certain and concrete solution to an indeterminate question.

Starting in law school’s second year, Phase 3 deploys the cognitive apprenticeship tools of coaching and “fading,” where the expert teacher gradually removes close support and explicit guidance as the student becomes more proficient.⁹⁹ In the coaching role, experts work with students as “partners, not authorities”¹⁰⁰ to handle legal problems in socially authentic settings. The shift to a more dominant coaching role means that the expert no longer didactically imparts knowledge; instead, while performing authentic legal writing tasks, she makes explicit her insider knowledge and the expert writing strategies she uses to handle the ill-formed legal problems that authentic cases breed.¹⁰¹

⁹⁵ CARNEGIE REPORT, *supra* note 3, at 117.

⁹⁶ *Id.* (Competent writers, in contrast to novices, can “judge that when a situation shows a certain pattern of elements, it is time to draw a particular conclusion . . . [and] act in a certain way to achieve the selected goal.”).

⁹⁷ See Ding, *supra* note 8, at 44 (discussing how professors “gradually removed instruction and assistance” as students gained competence in NIH grant-writing tasks).

⁹⁸ CARNEGIE REPORT, *supra* note 3, at 117.

⁹⁹ Ding, *supra* note 8, at 44–45; see also CARNEGIE REPORT, *supra* note 3, at 61.

¹⁰⁰ Schwinn, *supra* note 53, at 46.

¹⁰¹ Abner & Kierstead, *supra* note 1, at 366.

Students can be coached to legal writing competence in at least two ways: (1) assuming more complex writing tasks in a live case; or (2) taking a lead role in a simulated case while studying experts' creative solutions in order to spark their own imagination. In live cases, the student can witness a full-blown expert writing process, with its recursive fits and starts and distinct cognitive stages. Brainstorming meetings where students observe and participate in the idea-generating stage of a writing project will implant expert prewriting habits into the developing writer's mind. By collaborating on multiple drafts of a writing project, students can observe what rewriting *really* means in the practice world.¹⁰² In a simulation course, this work could dovetail with reflection questions and classroom discussion about writing models that display organizational and analytical flaws.

In upper-level clinic and simulation courses, legal issues defy the neat packaging that professors create for students in their first-year writing problems. No longer able to simply plug in a law/fact-application model, a student must begin abstracting from the early rules to create new flexible ones in order to tackle these novel legal problems.¹⁰³ For example, IRAC simply will not work with a narrative-based argument that has little law, and it is an equally poor fit for law-based arguments of any kind. Here, the expert can coach the student through strategies for tailoring her organization to a complex legal issue. She can help students discover that all legal arguments require three things: premises, proof, and progression. In Phase 3, the student has enough context-bound knowledge to isolate premises and envision an audience-friendly, persuasive arrangement of them. With expert coaching, the Phase-3 student should also be able to construct the proof for each premise. Expert brief study and reflection remains important, as students begin to recognize an argument's metastructure when they pinpoint and critique the expert's underlying choices.

If the phases have progressed well, whether in the live-client or simulation context, two important steps towards mastery now occur, one by the student and the other by the professor. Just as the student begins to shed attachments to his beginner ways, the professor will start to fade by withdrawing heavy coaching. As the expert fades, the student assumes more diverse and challenging writing roles that the expert no longer occupies.¹⁰⁴ Thus, at the same time the student experiences the loss of heavy coaching with the cognitive apprenticeship phenomenon of fading, he gains from his social apprenticeship a higher status writing role. The student should begin to feel as though he "owns" his writing again. Through coaching, fading,

¹⁰² *Id.* at 370, 391 (describing revision as a way to "clarify . . . and generate legal arguments," and to "examine content, structure, and voice").

¹⁰³ CARNEGIE REPORT, *supra* note 3, at 116–18.

¹⁰⁴ See Beaufort, *supra* note 90, at 190–203 (studying how acquisition of writing expertise in a nonprofit institution's community required, over time, progressively sophisticated writing roles, genres, and responsibility and exposure to insider knowledge).

shedding, and ramping up writing roles, Phase 3's integrated cognitive and social apprenticeship brings students competence and confidence.

D. Phase 4: Expertise, Self-Direction, and Fluid Performance

Third-year law students will not become true legal writing experts. But they may become subexperts if the integrated apprenticeship has progressed well. Because of broad exposure to indeterminate legal problems in Phase 3, the Phase-4 student starts to see underlying structural analogies between prior legal problems and the problem at hand.¹⁰⁵ By virtue of Phase-3 experiences and writing responsibilities, patterns emerge more quickly. The student may even reach the stage called “expert intuition or judgment”;¹⁰⁶ it is the end goal of the integrated apprenticeship.

The expert teacher's role is much different in Phase 4. Though less front and center, it is hardly passive, especially in the live-client context where the lawyer's ethical obligations demand no less. He could variously be described as a safety net, a sounding board, a shadow, a cheerleader, and a facilitator. He will urge students to formulate their own strategies and refer them to their peers for support, but he will guide them when they falter. He will introduce and then shape the situations that push students towards fluid writing performance.¹⁰⁷ One of his most important roles is in assigning the “imperfect case”—the case that seems a certain loser and hits dead ends at every turn. Even practicing lawyers balk in the face of these obstacles. But the expert knows that with tenacity and perseverance there is usually a way, and it is this task that the expert sets for the subexpert student in Phase 4. An equally important role, then, is guiding the student to strike the balance between her ethical obligations to the court and client and ensuring that she finds her own best solution. By this stage, the student should be able to draw on—and abstract from—her much wider knowledge base to generate multiple paths towards a favorable resolution. She will, by this time, realize that the fruits of this exercise could extend far beyond a favorable judicial opinion: upholding first principles, shaping the law, fighting for the client, or forcing a settlement.

Because subexperts must be self-directed, they must also learn to spot missing or flawed elements in their own work. These are among the most difficult writing tasks of all because the writer must stand directly in her audience's shoes and predict the reader's skepticism. The writer must then imagine the many ways she might satisfy the reader and choose the best among them. Phase 4 is the time to develop this skill, for the student should

¹⁰⁵ CARNEGIE REPORT, *supra* note 3, at 116. These traits capture the expert's ability to “see analogies, to recognize new situations as similar to whole remembered patterns, and, finally, as an expert to grasp what is important in a situation without proceeding through a long process of formal reasoning.” *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Ding, *supra* note 8, at 44–45.

now be able to “see what is absent in a bad argument: sufficient evidence, a clear point, consistent logic.”¹⁰⁸

The Phase-4 student should now have a firm grasp on discourse basics; therefore, Phase 4 is the right time to cultivate the student’s voice and style. Here, the expert can name and illustrate sophisticated writing and analytical techniques for the student’s own experimentation, while the student taps into her own cadence, syntax, and creative approaches to problem solving. This is the more solitary endeavor of the emerging expert and the capstone of the skills slowly acquired over three years. Peers, too, can play an important role by challenging the writer to explain and defend her position in clear prose and compelling arguments.¹⁰⁹ Reviewing peers’ writing also shows how good writing is *not* formulaic and frees students to explore their own voices in their writing. As such, for-credit peer writing groups, where an expert facilitates interaction but the students decide on the writing content and the discussion’s direction, can be a Phase-4 capstone experience.¹¹⁰

E. Suggestions and Proposals for Implementing the Four Phases During Law School

Phases 1 and 2 incorporate much of what LRW professors already do: authentic case problems and roles, modeling and scaffolding, introducing complexity, and encouraging reflection. But apprenticeship Phases 1 and 2 would recalibrate first-year LRW teaching to march towards mastery in a controlled upward trajectory. Mainly, the integrated apprenticeship counsels not to do too much too soon on genre-and-lawyering skills, or too little too late on reflective-judgment and context-based writing. In favor of the integrated apprenticeship, first-year legal writing should drop contract drafting, specialized genres like the appellate brief, and other lawyering skills such as interviewing and counseling. Dumping all practical skills training into one first-year analytical and persuasive writing course confuses the course objectives, compounds students’ cognitive overload, and interferes with building mastery, which begins in earnest in Phases 3 and 4.

It is in this critical push towards mastery in Phases 3 and 4 where law schools usually falter. After 1L year, the typical legal writing requirement combines a scholarly paper, a journal piece, or a moot court experience, but little or no mandatory *practical* writing instruction.¹¹¹ In 2010–2011, although over a quarter of schools required a third semester of practical

¹⁰⁸ Williams, *supra* note 9, at 9.

¹⁰⁹ Ding, *supra* note 8, at 26–27, 45–46.

¹¹⁰ See Linda H. Edwards, Law School Writing Without Teachers: Participating in an Advanced Writing Group (unpublished manuscript), available at <http://www.law.mercer.edu/sites/default/files/files/advancedwritinggroup.pdf>.

¹¹¹ See *supra* notes 23–24.

writing (an increase of over 2% in the last ten years), only 8% extended the curriculum to the spring of 2L year and less than 5% carried it through to 3L year.¹¹² Schools without upper-level practical writing requirements tend to offer an array of targeted, but uncoordinated, electives.¹¹³ Thus, most law schools do not follow a three-year legal writing mastery process that tracks developmental stages and intensifies socialization. And most do not methodically fix the ratio of acquisition to learning activities in the upper division. Only one category of upper-level LRW course, the “vertical advancement approach,” consciously pushes students towards mastery.¹¹⁴ But just introducing more vertical advancement LRW courses cannot alone accomplish the systematic integrated apprenticeship that Phases 3 and 4 require.

Mastery of written legal discourse requires mindful practice and concentrated effort over long time periods, with challenging work in demanding and varied writing roles, in a variety of courses.¹¹⁵ The key element here is practice, and that is Phase 3 and 4’s emphasis.

The authors envision a combination of clinical courses,¹¹⁶ externships, simulation courses, practitioner-shadow experiences,¹¹⁷ practice-writing add-ons¹¹⁸ to doctrinal courses, and peer-writing groups that will flexibly deliver a variety of opportunities for students to attain mastery. The second year would require two to four credits of advanced writing-based coursework, but a student’s upper-level writing requirement would be satisfied by this work, freeing up at least one seminar’s worth of credits. These credits could be allocated between an advanced writing simulation course, a clinic with writing emphasis, a practitioner shadow, or a doctrinal

¹¹² See ALWD SURVEY, *supra* note 56, at 24–25.

¹¹³ See *id.*

¹¹⁴ Michael R. Smith, *Alternative Substantive Approaches to Advanced Legal Writing Courses*, 54 J. LEGAL EDUC. 119, 128 (2004). The “vertical advancement approach” aims to “present[] more sophisticated aspects of a genre to which the students have already been exposed” by “go[ing] deeper.” *Id.* The “horizontal approach” introduces new types of documents and genres, but is by design introductory. *Id.* at 132. The “survey course approach” aims for breadth on an array of advanced topics, but only “scratch[es] the surface” of each—again not promoting mastery. *Id.* at 133–34. The “integrative approach,” which integrates lawyering skills with doctrinal subjects, has some promise; depending on the teacher and course structure, mastery may be a byproduct, but it is not the primary aim. *Id.* at 134.

¹¹⁵ See CARNEGIE REPORT, *supra* note 3, at 118 (Lawyering expertise is “well grounded in subtle, analogical reasoning achieved through a *long* apprenticeship to more expert practitioners.” (emphasis added)).

¹¹⁶ Clinical courses should include mandatory practice writing elements with professor feedback.

¹¹⁷ Schools could recruit alums to allow students to shadow their actual writing projects in exchange for continuing legal education credit.

¹¹⁸ I.e., one-credit supplements to a doctrinal course where students write a brief or memorandum and receive feedback from a LRW professor and, ideally, the doctrinal professor or a practitioner in the substantive area of law. Brief banks, where students could submit their writing anonymously for peer and faculty feedback, would also easily (and inexpensively) allow a law school to achieve progress towards mastery in its LRW curriculum.

practice-writing add-on. In the third year, students could gain practice through clinics, externships, or an advanced practitioner shadow experience, again using existing courses and credit allocations or relatively inexpensive additions to the curriculum. Additional experiential electives should be encouraged in both years.

Law schools should not underestimate the wealth of resources they have for this integrated apprenticeship. Clinics already offer vibrant social apprenticeships, doctrinal courses excel at key aspects of the cognitive apprenticeship, and LRW simulation courses incorporate elements of both. Faculty leadership, vision, collaboration, and curricular coordination are what is needed, not unlimited resources, more credits, or new courses. For example, even if they do not take on clients and cases, doctrinal faculty can teach or partner with others in subject matter-oriented add-ons that model and scaffold expert features of practice writing, then coach and fade. LRW faculty can do the same in advanced persuasion and appellate advocacy courses, or in courses drawing on their practice expertise. Clinic faculty's first obligation is to their clients—and the social apprenticeship fits squarely with that requirement—but they can incorporate doctrinal and LRW faculty approaches to sweep in cognitive apprenticeship elements. Professors must, of course, receive teaching-load credit for this work. Indeed, law schools could use teaching-load credit to encourage faculty to engage in acquisition teaching rather than just learning-oriented courses or subject-matter seminars devoid of strategies towards writing mastery. Finally, if law schools seek to differentiate themselves with joint-degree programs, globalization programs, concentrations, or particular skills offerings, they can do so in conjunction with this core mastery-based curriculum. With deliberate planning, Phase 3 and 4's practice orientation can be achieved without undue expense, and without abandoning other valued initiatives.

CONCLUSION

As this Essay explains, the main obstacles to a mastery-based curriculum are surmountable. This Essay proposes a two-part solution. First, recalibrate and coordinate the teaching and writing components in the existing curriculum—especially in the upper years—to offer a phased, progressively more advanced three-year integrated apprenticeship that pulls in the social dimension of expertise and broadens the cognitive dimension. Second, tap the existing faculty to collaborate with each other, and to broaden their teaching vision to consciously, deliberately move students up the novice–expert continuum. Students must be given opportunities to practice socially authentic writing settings, messy legal problems, and writing roles, while mindfully using the cognitive apprenticeship tools. As a blueprint for parallel initiatives, this Essay offers the integrated apprenticeship LRW case study with specific teaching, curricular, and implementation suggestions.

Law schools must be realistic about the enterprise of producing experts, of course. True mastery in written legal analysis and advocacy will take years of practice—perhaps ten or more.¹¹⁹ But a consciously designed curriculum will move students towards becoming bona fide members of the legal discourse community, equipped with the expert's tools.

¹¹⁹ Abner & Kierstead, *supra* note 1, at 371 (applying the ten-year rule to writing).