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LEGAL WRITING PROGRAMS AND PROFESSIONALISM: LEGAL WRITING PROFESSORS CAN JOIN THE ACADEMIC CLUB

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I. INTRODUCTION: RELEVANCE, SCHOLARSHIP, AND PEDAGOGY

Sociological jurisprudence has been a major factor in legal interpretive schemes for over a century,[1] but this has not been reflected in most legal writing programs. These programs must produce legal writers who not only are competent writers, but are also competent legal theorists who know the difference between classical rule-based reasoning and modern interpretive methods.[2] Concomitantly, legal writing professors must produce scholarship that reflects the diversity of these more complex schemes, rather than just writing about writing. This article will first describe the current condition of legal writing programs, and then suggest changes that more thoroughly introduce students to the classical logic paradigm. Finally, this article will examine the shift to the modern logic paradigm and explain how legal writing programs and scholarship can become relevant to these constantly changing and evolving interpretive methods.

II. PEDAGOGY AND PROFESSIONALISM – ARE THEY ANTITHETICAL?

Legal writing professors and instructors are struggling for acceptance within the legal academic community in order to attain tenure-track status, and also to gain respect for legal writing as a discipline within law school

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1. *See generally* Karl Llewellyn, *Some Realism About Realism – Responding to Dean Pound*, 44 HARV. L. REV. 1222, 1222; John C.H. Wu, *Realistic Analysis of Legal Concepts: A Study in the Legal Method of Mr. Justice Holmes*, 5 CHINA L. REV. 1 (1932), *in* Frederick R. Kellog, *Holmes, Common Law Theory, and Judicial Restraint*, 36 J. MARSHALL L. REV. 457, 501 (2003).

2. *See* Lisa Eichhorn, *Writing in the Legal Academy: A Dangerous Supplement?*, 40 ARIZ. L. REV 105, 135 (1998).

curricula.[3] There is no question that progress is being made in both of these areas, but the battle is by no means won.[4] A 2002 survey[5] of legal writing programs illustrates "that the academy continues to view legal writing courses as anti-intellectual, practical (in a pejorative sense), and separable."[6] Legal Writing Programs are not accepted in the mainstream of academic life of law school programs.

Essentially, the issue of acceptance within the academy is merely a symptom of an underlying problem. Legal writing faculty must demonstrate to so-called doctrinal faculty that the legal writing discipline is not anti-intellectual even though it is a practical course and hence different from doctrinal courses. "[L]aw school deans and tenured faculty members . . . tend to see only the 'writing,' and not the analysis, in legal writing programs."[7] Legal writing professionals need to show relevance beyond the obvious need to teach students the essentials of writing quality memoranda and briefs. They must also demonstrate more clearly that legal writing involves not only thinking and logic, but also a type of thinking and logic that is relevant to the broad spectrum of legal academic scholarship, not just to the narrow task assigned to instructors of first year writing students. No one would deny that logic, broadly speaking, is the basis of all legal thought, i.e., the foundation of what doctrinal faculty claim as exclusively their turf. However, legal writing professors can claim a piece of that turf and be in a unique position to demonstrate intellectual rigor, and perhaps even become arbiters who critique the logical consistency of disputes within areas of doctrinal law.

Mary Beth Beazley believes that a revolution is coming within the law school curriculum with "a move forward to an apprenticeship method

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3. *See id.* at 106, 113 ([I]nstitutional investment today in terms of funding and administrative support for writing programs remains relatively low.); *See also* David S. Romantz, *The Truth About Cats and Dogs: Legal Writing Courses and the Law School Curriculum*, 52 U. KAN. L. REV. 105, 106 (2003)

> While traditional doctrinal courses, including Contracts, Torts, Property, and Criminal Procedure, enjoy contemporary relevance because of their Langdellian Pedigree, legal writing courses . . . are maligned and overshadowed largely because they developed long after Langdell first established the now static quality of modern legal education, and because they more closely resemble the law apprenticeships that Langdell sought to replace.

Id.

4. *See, e.g.*, Peter Brandon Bayer, *A Plea for Rationality and Decency: The Disparate Treatment of Legal Writing Faculty as a Violation of Both Equal Protection and Professional Ethics*, 39 DUQ. L. REV. 329, 363-64 (2001).

5. *See* Jo Anne Durako et al., 2002 Survey Results 13, Ass'n of Legal Writing Dirs,. Legal Writing Inst., *available at* www.alwd.org/alwdResources/surveys/2002survey/2002survey.pdf.

6. Romantz, *supra* note 3, at 136.

7. Eichhorn, *supra* note 2, at 115.

in law school teaching."[8] She states, "[t]he revolution will be complete however, only when Legal Writing faculty and legal writing courses are fully integrated into the law school curriculum. Only after this integration will the goal of integrating Legal Writing teaching methods into the rest of the curriculum be possible."[9]

It is possible she is correct, that the revolution is coming, but I doubt if faculty who teach doctrinal courses, and who also control the curriculum, are quite as sanguine on this point. I wrote an article[10] two years ago in *Education and Practice*, the newsletter for the Education of Lawyers Section of the Virginia State Bar, which encouraged faculty to begin incorporating written assignments within their substantive class curricula. I received no response from the article, either positive or negative, even from colleagues on my own faculty. Doctrinal faculties appear not to be convinced that legal writing programs have a great deal to offer, substantively or intellectually. Even if by some miracle, doctrinal faculty begin to cooperate in fully integrating legal writing courses into the law school curriculum, this still does not address the inescapable fact that these same faculty dismiss legal writing scholarship based on legal writing pedagogy as anti-intellectual.

Professor Stewart Harris of Capital University Law School agrees that "[l]egal writing professors get no respect."[11] He argues that this lack of respect results from the fact that most legal writing programs are still teaching writing per se, i.e., grammar, punctuation etc., and not primarily legal analysis.[12] However, this characterization is not accurate. While it is true that most legal writing text books contain a "writing section," most deal quite extensively with legal analysis, assuming legal analysis primarily involves (but I will argue below, should not be limited to) teaching IRAC.[13] Legal Writing Programs have moved well beyond merely teaching grammar and composition, although this certainly is a component of most

8. Mary Beth Beazley, *Better Writing, Better Thinking: Using Legal Writing Pedagogy in the "Casebook" Classroom (Without Grading Paper)*, 10 JOURNAL OF THE LEGAL WRITING INSTITUTE 23, 24-25 (2004).

9. *Id.* at 26.

10. James M. Boland, *Legal Writing Classes and the Substantive Law Curriculum: Do Law Schools Need to Re-think the Relationship?* 12 EDUCATION & PRACTICE 3 (2004).

11. Stewart Harris, *Giving Up Grammar and Dumping Derridia: How to Make Legal Writing a Respected Part of the Law School Curriculum*, 33 CAP. U. L. REV. 291, 293 (2004).

12. *Id.*

13. Law students from time immemorial have been taught that IRAC stands for Issue, Rule, Analysis, and Conclusion. There are variants of IRAC, i.e, IRAAC (Issue, Rule, Analogous cases, Application of facts, and Conclusion), as well as CREXAC (Conclusion, Rule, Rule Explanation, Analysis, and Conclusion). My use of the term IRAC will be inclusive of various forms of IRAC.

legal writing curricula. Therefore, at least part of the battle for respect that legal writing professors are waging is a battle against ignorance concerning the content of most programs.

But to increase their standing within law school faculties, legal writing professors must change the focus, not necessarily the content, of first year legal writing courses, and concomitantly change the focus of their scholarship from pedagogy to substantive legal analysis. Legal writing scholarship, however, has primarily been focused on legal writing pedagogy, and Beazley admits that "pedagogy has not been a traditional focus for casebook faculty scholarship. *In fact, it has been a given that scholarship about pedagogy would hurt rather than help chances for tenure.*"[14] The traditional view is that "[t]eaching legal writing is anti-intellectual."[15] J. Christopher Rideout and Jill J. Ramsfield explain the impact of this view:

> These traditional views that legal writing is a skill, that it cannot be taught, and that it is divorced from analysis suggest another traditional view: Teaching legal writing is not intellectual. Some go so far as to say that it is anti-intellectual because it distracts students from the real business of learning substantive law . . . . As a consequence of this traditional view, those who teach writing in law schools are regarded as anti-intellectuals who should be excluded from the academy.[16]

Even though Rideout and Ramsfield wrote over a decade ago, this view remains widely held in the legal academia.[17] On the other hand, this emphasis on pedagogy in legal writing scholarship has been a very helpful guide to many legal writing professors who were given the task of constructing legal writing programs from the ground up. But to remain stuck in the ghetto of mere pedagogical scholarship is counterproductive.

Rideout and Ramsfield identify an important aspect of legal writing programs that may lead doctrinal faculties to dismiss the legal writing discipline as anti-intellectual. They point out that the formalist perspective[18] "underlies the traditional view of legal writing and its instruction."[19] They assert:

> The formalist perspective focuses on the formal features of legal writing texts – that is, on their formats, organization, and language and

14. Beazley, *supra* note 8, at 36 (emphasis added).

15. J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 47 (1994) (emphasis added).

16. *Id.*

17. *See* Harris, *supra* note 11, at 293.

18. PETER GOODRICH, READING THE LAW 21-60 (1986) *in* Rideout & Ramsfield, *supra* note 15, at 49.

19. *Id.*

> style. In it, the primary concern of the writer is with the subject, and with a text that communicates that subject well. It is based on an unproblematized view of language – *that language does not contribute to the construction of meaning, but rather is a transparent medium for meaning.* Thus the primary formal concern in the writing of the text is with clarity – in organization, in style, in word choice – and with accuracy .... [This approach] "is evidenced by the popularity of such legal writing textbooks as .... *Plain English for Lawyers*[20]

It is clear that the vast majority of doctrinal law school faculty do not value this emphasis.[21] But legal writing professors continue to make the emphasis of their scholarship pedagogy, i.e., how to better communicate to their students the basics of this formalistic approach: formats, organization, language and style. Why then is it a surprise when doctrinal faculties refuse to respect this type of scholarship and subsequently grant tenure or tenure-track status to legal writing professors?

Again, it is possible that doctrinal faculty will experience an epiphany and move in the direction of accepting legal writing instructors as full-fledged law faculty. But it is more likely that legal writing professors will gain full acceptance only if legal writing scholarship diversifies beyond the pedagogy of legal writing into a form that is esteemed by doctrinal faculty members. This can be accomplished, but the legal writing community must reassess and broaden the parameters of what they are and should be trying to accomplish, and make adjustments in the foundational pedagogy of first-year legal writing courses. This somewhat different take, while not drastically changing the content of first year legal writing classes, will allow legal writing scholarship to move beyond pedagogy and into a critique of substantive legal issues. This can be done from the unique perspective of professors of legal reasoning and analysis, thus presenting a different and more sophisticated academic face to the world of legal scholarship. Professor Harris, while somewhat mischaracterizing the content of most legal writing programs, makes a valid point when he writes:

> For if Legal Writing teachers concentrate more on teaching law and producing legitimate scholarship – in other words, if they act more like traditional law professors – they will no longer be square pegs trying to fit into the round holes of the legal academy. Eventually, they may even earn their rightful place among their peers.[22]

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20. Rideout & Ramsfield, *supra* note 15, at 38-39 (referring to RICHARD C. WYDICK, PLAIN ENGLISH FOR LAWYERS (2d ed. 1985)).

21. *See* Beazley, *supra* note 8, at 36. Pedagogy based on this or any other model is not valued by academics.

22. Harris, *supra* note 11, at 293-94.

The revolution that Professor Beazley hopes to see (i.e. integration of legal writing into the law school curriculum as an equally important component[23]) is probably not going to happen if legal writing professors continue on the same course. Professor Harris further states:

> Another fundamental reality of law school life is that there is a pecking order among law professors, and it is based primarily upon perceptions of scholarly accomplishment. Professors who have written widely-used case books, no matter how tiny or esoteric, professors who sit on lots of important-sounding panels at important-sounding symposia are at the top of this pecking order. Professors who devote themselves to teaching win lots of awards and are denied tenure. In the face of these stark realities, many Legal Writing professors have . . . proudly refused to adapt. They sit in faculty common rooms and vainly attempt to impress their "doctrinal" peers with complaints about how late they had to stay up the night before to finish commenting on student memoranda. Their scholarship often focuses not on law, but on how to better teach Legal Writing, and sometimes on how unfairly they are treated by their doctrinal colleagues.[24]

The first thing that legal writing professionals need to do to overcome the perception (and all-too-often unfortunate reality) that they are at the bottom of the academic pecking order, is to admit that scholarship by legal writing professionals has in fact not been particularly intellectual. Writing about pedagogy rarely is. After all, legal writing professors teach at law schools, not departments of education within universities. Therefore, the legal writing profession must move beyond the island they have constructed for themselves.

In order to present a viable alternative to this legal writing intellectual cul-de-sac, I will first summarize what most legal writing professors and first-year legal writing text books emphasize, and then suggest that a key component of legal analysis is missing or under-emphasized even in excellent text books. That component is the syllogism. While this will appear to be just more writing on pedagogy, it has a broader point which I will make below.

Traditionally, "all legal argument [has been] in the form of [a] syllogism[],"[25] but legal writing text books and legal writing programs either neglect or completely ignore the syllogism, not recognizing that it is the best vehicle through which to base legal analysis pedagogy, and that it can become a sword for legal writing professors to penetrate the all-to-

23. *See* Beazley, *supra* note 8.

24. Harris, *supra* note 11, at 294-95.

25. JAMES GARDNER, LEGAL ARGUMENT: THE STRUCTURE AND LANGUAGE OF EFFECTIVE ADVOCACY 3 (1993).

often closed world of tenured professorship. If we base analytical instruction on the syllogism we are then in a position to produce scholarship that will be accepted as intellectual and relevant to the broader legal community. I will argue that legal writing pedagogy and scholarship based on the syllogism is the key to unlocking the door to the next step in the professionalism of the legal writing discipline. Without this new perspective I fear that legal writing professors will continue to be talking merely to themselves on e-mail list serves and bi-annual conferences about legal writing pedagogy. Also, they will have very little impact on the wider law school curriculum, and concomitantly, make very little progress in improving the status of legal writing programs and their professors.

III. THE SYLLOGISM: STEP-CHILD OF FIRST-YEAR LEGAL WRITING PEDAGOGY

Lawyers make legal arguments. They should not be merely just applying IRAC. But I fear that first-year legal writing programs unconsciously encourage this truncated form of legal reasoning. After ten years as a legal writing professor, I know what first-year legal writing professors teach and what first-year legal writing texts contain. All first-year legal writing programs teach the basics – research, citations, conventions of legal memoranda and briefs, and some grammar. However, unlike Professor Harris' assertion[26] that this is the full complement of first year legal writing pedagogy, legal analysis and argument are at the core of what most legal writing programs are attempting to communicate;[27] i.e., thinking like lawyers.

Doctrinal law faculties also emphasize the task of teaching students to "think like lawyers," but it is my experience that it is in legal writing classes where a great deal of the useful analytical training takes place.[28]

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26. *See generally* Harris, *supra* note 11.

27. *See* Beazley, *supra* note 8, at 43.

> Although some think writing as inevitably distinct from thinking, it is difficult to separate writing from thought. In fact, there is an increasing recognition that a Legal Writing course is a particularly good place for students to learn the process of analytical thought at the heart of "thinking like a lawyer." . . . Thus . . . "effective writing instruction means teaching students how to perform rigorous analysis." . . . The Honorable Kenneth Ripple has noted that "writing is for most legal ventures the primary engine that drives the legal reasoning process," seeing it as a "necessary tool for thinking through the most difficult problems."

Id.

28. *See* Romantz, *supra* note 3, at 137-38.

> Even Langdellian purists could appreciate the role of legal writing courses in the curriculum. . . . Only instead of discovering "the law" through the assimilation and integration of doctrine-specific cases, students in legal writing courses discover the resolution of a legal problem through the application of legal premises grounded in

When I first began grading poorly written first year legal memoranda and briefs, I wondered if some of the convoluted and obtuse sentence structures contained therein were the result of a basic inability to write coherently, or whether dense and sometimes incomprehensible sections were due to bad "thinking." At the risk of stating the obvious, after years of wading through these first year writing efforts, I have formulated the premise that it is impossible to write coherently when one does not know what one is talking about,[29] or to structure complex legal concepts into readable and persuasive briefs based on relatively shallow readings of cases that occur in doctrinal classes. At the risk of offending my doctrinal colleagues, I would remind them that students are being taught to analyze the content of cases from highly edited textbooks, as if in the practice of law the heart of the legal issue at hand will be discerned from a neatly edited source. Bryan Garner, a guru of plain writing style, states that the biggest challenge for a writer is figuring out, from the mass of things you might possibly mention, precisely what your points are – and then stating them cogently, with adequate reasoning and support. Although this advice seems obvious, legal writers constantly ignore it. The result is a mushy, aimless style.[30]

If mushy and aimless arguments are a problem for experienced legal writers, how much more so for first-year law students whose initial law school experience can be a nightmarish blur? Most first-year students

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> research, rule synthesis, analysis, and writing. . . . Through this deductive top-down model, legal writing courses help students assimilate doctrine, theory, process, and practice; doctrinal courses may help assimilate doctrine or theory, but they are poorly designed to integrate process or practice into the curriculum.

Id.

29. This is not to denigrate the importance of good sentence structure, paragraph organization, and a myriad of other details that add to the professionalism of a brief. *See* Judith D. Fischer, *Bareheaded and Barefaced Counsel: Courts React to Unprofessionalism in Lawyers' Papers*, 31 SUFFOLK U. L. REV. 1, 20-21 (1997). Fischer gives some stark examples of the dangers of poor writing skills:

> [A] Vermont lawyer had filed briefs that, in addition to other problems, "were generally incomprehensible," and "presented no substantial legal structure to the arguments. . . ." The lawyer had entered into a stipulation with the Vermont Professional Conduct Board that he would obtain tutoring "to develop skills in legal analysis, persuasive writing techniques, writing organization, and use of legal authority, proper citation form, and proper formatting for memoranda and briefs." He failed to obtain the tutoring, and was suspended until he could demonstrate fitness to practice law. An Illinois lawyer who "lacked the fundamental skill of drafting pleadings and briefs" was placed on inactive bar status until he could come up with a plan, to include "teachers or other professionals," to remedy his lack of skill.

Id. Obviously then, technical writing skills are important and should be taught in legal writing programs, but I have noted through years of teaching Legal Analysis and Writing that undergraduate English majors, and even some English teachers, produce some very convoluted writing until they grasp the essence of legal analysis.

30. BRYAN A. GARNER, LEGAL WRITING IN PLAIN ENGLISH: A TEXT WITH EXERCISES 3 (2001).

realize quickly that legal analysis is based on a rule of law, and that somehow they must reach a legal conclusion. But, the journey from rule to conclusion is often a very bumpy ride. As the first year progresses, the light begins to dawn somewhat more brightly for many; but for too many, the path to cogency remains trapped somewhere between dim and dimmer. Students know they must apply IRAC but their understanding of the analytical legal construct remains shallow. Not only are doctrinal classes based on edited cases which do not force students to dig deeply into the primary sources, but first-year legal writing instructors and textbooks also are failing by simply using IRAC as the pedagogical model for teaching legal analysis. This is a problem not only for legal writing instructors, but also for doctrinal faculty who frequently cannot understand why students when answering exam questions are able to spot the issue and spit out the rule, but then merely jump to the conclusion without sufficient analysis.

The IRAC model, while helpful in providing a superficial template for legal analysis, is simply not enough. Legal analysis and argument must be grounded in the legal syllogism, and IRAC placed within the syllogistic context. If students understand the syllogism, then all possible forms of IRAC can be placed within that context, so that the syllogism becomes a roadmap to guide the students through the analytical process. But the syllogism can actually be much more than that. It can be the basis for clear and logical thinking, the antecedent to good reasoning, and eventually, good writing. Unfortunately, most first-year legal writing texts give the syllogism very truncated coverage, if any at all. No first-year legal writing textbook that I have reviewed has consistently linked IRAC to the basic syllogistic form and used it as the basis for teaching analysis. Legal writing programs must dispel the myth that teaching legal writing is simply a clinical exercise, not an academic one. Writing entails thinking. Legal writing entails legal analysis, an academic discipline.

Like most legal writing professors, publishers frequently send me new first-year legal writing textbooks. A review of these texts supports my contention that the syllogism gets short shrift. Some texts do not even mention the syllogism.[31] Some do, but then abort the process. In an

31. *See, e.g.*, DAVID MELLINKOFF, LEGAL WRITING: SENSE AND NONSENSE (1988); LAUREL OATES ET AL., THE LEGAL WRITING HANDBOOK (3d ed. 2002); RICHARD K. NEUMANN, JR., LEGAL REASONING AND LEGAL WRITING: STRUCTURE, STRATEGY, AND STYLE (5th ed. 2002); HELENE S. SHAPO ET AL, WRITING AND ANALYSIS IN THE LAW (4th ed. 2003). I would like to add that I have used the LEGAL WRITING HANDBOOK by Oates et. al. for years, and have found it to be excellent. This is not a critique of the value of these texts, but rather a gentle critique of what could make them better.

otherwise very good text, Charles Calleros[32] states that the syllogism is a "rough organizational framework for most legal analysis in office memoranda, answers to essay examinations, and briefs."[33] But then the author discounts its usefulness as a legal reasoning paradigm, stating, "[t]he usefulness of the syllogism in legal reasoning, however, is limited by the flexibility and uncertainty in legal analysis."[34] Rather than using the syllogism as the bedrock of legal analysis, Calleros falls back on legal reasoning based on IRAC alone, leaving the syllogism behind.[35] A text that does present the syllogism in a form that is useful as an analytical template is *Legal Writing by Design*,[36] but even this text does not make full use of the syllogistic template, although it is more helpful than most. One text that uses the syllogism as a comprehensive overview of legal reasoning is *Logic for Lawyers: A Guide to Clear Thinking*.[37] However, this text is aimed at upper level law students and while it clearly explains the syllogism, inductive and deductive reasoning, and fallacious use of premises, it is much too sophisticated for the first-year student. Similarly, *Legal Argument: The Structure and Language of Effective Advocacy*,[38] is a cogently written explanation of legal analysis based on the syllogism, but again, it is not a first-year legal writing text, and as such, there is a high likelihood that most students are never exposed to it, and therefore never understand the intrinsic value of the syllogism in legal arguments.

So we are left with two extremes. Most first-year law students are given virtually no grounding in the use of syllogistic reasoning, and texts intended for upper level students (and practicing lawyers) are quite theoretical and are unlikely to be used by students who have had no introduction to it. First-year legal writing professors who do not base their instruction of legal analysis on the syllogism are missing an opportunity to give students the analytical template on which all legal argument, both deductive and inductive reasoning, as well as analogical, can be grounded and readily understood.

But before presenting the syllogism in a simple construct that students are likely to find helpful in their first year, as well as useful as a building

32. *See generally* CHARLES R. CALLEROS, LEGAL METHOD AND WRITING (1998).

33. *Id.* at 72.

34. *Id.*

35. *Id.* at 72-74. .

36. TERESA J. REID RAMBO & LEANNE J. PFLAUM, LEGAL WRITING BY DESIGN (2001). *See generally* chapters 1 & 2.

37. *See generally* RUGGERO J. ALDISERT, LOGIC FOR LAWYERS: A GUIDE TO CLEAR THINKING (1997).

38. *See generally* GARDNER, *supra* note 25. *See also* STEVEN J. BURTON, AN INTRODUCTION TO LAW AND LEGAL REASONING (2d ed. 1995).

block for more sophisticated logical analysis, I would like to add another word of support for one of my central theses, i.e., that legal reasoning (and writing) is much more useful and likely to be cogently done if based on the syllogism rather than simply on IRAC.

"Common wisdom has it that legal reasoning proceeds by analogy."[39] However, the syllogism consists of a major premise, the minor premise and the conclusion. The basic legal argument is based on syllogistic logic, not on argument by analogy. Argument by analogy is merely a tool in support of one of the syllogism's premises, but is not the core of the argument itself. Gardiner writes:

> While analogies are . . . useful in legal *reasoning,* they play a more limited role in legal *argument.* The obvious inadequacy of the use of analogy in constructing a legal argument is an analogy's inability to answer the question, "so what?" Suppose I tell you: "A wood stove is more like a bathtub than it is like a table." You say: "All right, but so what?" The analogy itself supplies no answer to this challenge. Of course, the answer is clear enough: the fact that a wood stove is more like a bathtub than it is like a table is legally significant because it means that a wood stove is a fixture that the law presumes is sold along with the house. Notice, however, that the relevant legal *argument* does not derive from the analogy, but from the implicit syllogism:
>
> Fixtures stay with the house.
>
> A wood stove is a fixture.
>
> Therefore, a wood stove stays with the house.
>
> It takes a syllogism to answer the so what challenge.[40]

Just as the analogy does not answer the "so what" question, students who rely on the IRAC template, which forms the basis for most first-year legal writing courses, may not even realize the importance of the "so what" question. While IRAC can be useful in organizing legal briefs, it does not adequately convey the core of what lawyers do, i.e., make legal arguments.

This does not mean, however, that first-year law students should be subjected to all the intricacies of syllogistic reasoning. In fact, new law students can only absorb the basic tenets of the syllogism. Legal writing professors should not attempt to plumb the depths of all forms of syllogistic logic and their fallacious pitfalls, but merely give students an adequate foundation on which they can build so as to eventually achieve a higher level of logical thinking and argument. The syllogism is the vessel that

39. GARDNER, *supra* note 25, at 10.
40. *Id.* at 11.

contains IRAC, not the other way around. IRAC is a form of legal organization. The syllogism is the basis of legal argument and if presented early in a student's career can be the template for future and more sophisticated legal analysis – deductive and inductive reasoning, policy arguments, and analogical reasoning. This template not only provides the roadmap to navigate the IRAC organization scheme, it also gives students the ability to remain fixed on the broader legal argument.

I can attest from personal experience that many attorneys and even law professors are not quite sure how the syllogism fits into legal argument. A few years ago a colleague of mine sat in on a class in which I happened to be teaching the syllogism as the basis of legal argument. Somewhat surprisingly, after class he pulled me aside and thanked me for the content of the class because he admitted he had never understood how the syllogism fit into legal reasoning. Actually, this in fact would probably be the experience of most attorneys. In fact, even after I completed law school and passed the bar, I had no idea that the basis of my writing should be grounded in syllogistic logic. It was not until I began teaching legal writing and contemplating and researching the pedagogy of legal analysis, that the importance of thinking in terms of making legal arguments as opposed to rigidly applying IRAC, became clear.

For those who may be somewhat fuzzy about the syllogism, it is the basis of all logical deductive reasoning.[41] The classic syllogistic example is as follows. All men are mortal (major premise). Socrates is a man (minor premise). Therefore, Socrates is mortal (conclusion). The major premise is a statement of general applicability, the minor premise is a concrete and specific statement, and the conclusion is a logical outflow of application of the minor to the major premise.[42] At this level (for first-year students), it is enough for students to know that in order for a syllogism to reach a logical and correct conclusion, both the major and the minor premise must be true.[43]

It is possible to write reams explaining the full implications of major and minor premises.[44] But for first-year legal writing students, the most important concept to grasp is that the major premise states the rule of law, the minor premise states the facts relevant to the major premise, and the conclusion flows logically from the premises. To give a simple example, a

41. *See* GARDNER, *supra* note 25.

42. *Id.* at 5.

43. *See* DAVID CRUMP, HOW TO REASON ABOUT THE LAW: AN INTERDISCIPLINARY APPROACH TO THE FOUNDATIONS OF PUBLIC POLICY 35-33 (2001). This book gives an extensive discussion of fallacy, false reason, inquiry and the limits of logic.

44. *See, e.g.*, ALDISERT, *supra* note 37.

person who drives over thirty-five miles per hour in New York is breaking the law (major premise/rule of law). John was driving forty miles per hour in New York (minor premise/factual statement). Therefore, John was breaking the law (conclusion). This simple syllogism can be used as the basis from which to teach nearly all that a first year legal writing student needs to understand about legal argument, and in the future can be the springboard for understanding much more complicated arguments.

At first glance, one might ask why bother to teach the syllogism when the basics of the syllogism look remarkably like the IRAC organizational scheme. When struggling to learn legal analysis, students often lose the forest for the trees. The forest is the legal argument (the syllogism), and the trees are the building blocks (IRAC). Students easily forget they are making an argument, and appear to believe that using case law to make a point is the object of legal writing, rather than understanding that the case is merely a tool within a distinct part of the overall argument.

Presenting the rule within the context of the major premise allows the student (and any legal writer for that matter), to keep her eye on the ball, i.e., the argument leading to the conclusion. This context then allows the professor to instruct on the various forms a rule can take: statutory law, case law, or a combination of the two. If students are aware that they are searching for a rule within the context of the major premise, they will never confuse the use of case law when it is being used to argue by analogy. This confusion will not occur because they will know that analogical reasoning occurs only when applying the facts found in the minor premise to the rule in the major premise.

Similarly, teaching inductive reasoning is most easily presented when placed in the context of the major premise of the syllogism. "[I]n the law, when we reason from the particular to the general we call it inductive generalization."[45] In first-year legal writing classes, when we teach students to synthesize a number of cases to form a rule based on the issue presented, we are asking them to do a form of inductive generalization. Presented as a theoretical concept, it is very difficult to grasp. On the other hand, presented as a search for the major premise of a concrete syllogism, inductive generalization has meaning. Students then understand that they are looking at prior court decisions based on a narrow set of facts, and from those decisions inducing a rule, their major premise. In this context, students will not mix up use of cases used analogically with use of case law to find the statement of their major premise (the rule in the IRAC format).

45. *Id.* at 91.

In the same way, the minor premise is the best context for teaching application of law to facts. In the syllogistic example above,[46] the application of the law to the facts was quite simple. The speed limit was thirty-five. John was driving forty-five. A simple application of the fact that John was driving forty-five in a thirty-five mile per hour zone leads to the simple conclusion that John was breaking the law. Once a student has absorbed this simple syllogism, the instructor can introduce analogous reasoning by changing the major premise to, "[a] person who drives at a speed that is faster than what is reasonable under the circumstances is breaking the law." The minor premise then becomes, "John was driving faster than what was reasonable under the circumstances." And logically then the conclusion is, "John was breaking the law." At this point, students are introduced to the use of analogical case law in the minor premise as an aid to applying the law to the facts. They must find cases that applied the same rule in which the facts are arguably similar. In the context of the minor premise, cases with facts similar to the facts of the instant case must then lead to the same conclusion (or holding). By using the syllogistic method, it becomes much less likely that students will confuse use of case law to find and articulate a major premise with use of case law analogically to support or attack the minor premise. Students then know why they are using a case and where the case fits within their syllogistic argument. Simple use of IRAC – Issue, Rule, Application, Conclusion – while a helpful organizational scheme, is not helpful unless students are clear what part of the legal argument they are making, i.e., whether the point they are making is contained in the major or minor premise, and whether it logically supports the conclusion for which they are arguing. The syllogism is the roadmap that keeps them on course.

This is nearly the extent of syllogistic reasoning and its relationship to IRAC that should be introduced to first year law students. However, adding one more step aids in making sense of a multi-element rule. For instance, negligence has four elements: duty, breach, causation and damages. There is a meta-syllogism which encompasses all four elements. A negligence meta-syllogism is as follows:

Major Premise: In order to be found liable for negligence, the defendant must have a duty to the plaintiff, must have breached that duty, the harm must have been caused by the defendant's breach, and damages must have resulted from that breach.

46. *See supra* pp. 638-39.

Minor Premise: The defendant had a duty to plaintiff, breached that duty, caused the harm, and damages resulted.

Conclusion: Defendant is liable for negligence.

The meta-syllogism helps the student keep her eye on the ball, i.e., the fact that the reason for writing the brief is to argue that the plaintiff is negligent. My experience is that students again tend to lose the forest for the trees. In this instance, the forest is proving negligence; the trees are the individual elements.

Each element is then presented as a mini-syllogism.

Mini-Major premise: Shopkeepers have a duty of due care to their customers

Mini-Minor Premise: Defendant is a shopkeeper.

Mini-Conclusion: Defendant has a duty of due care to her customers.

Each element is conceptualized in this manner. This forces students to make logical legal arguments within the larger context of the conclusion they are ultimately trying to prove. Each element must reach an internally consistent syllogistic conclusion to reach the meta-conclusion presented by the meta-syllogism. When students understand the basic legal argument and the mini-arguments within the meta-argument, then IRAC can be introduced as the organizational structure, but not as the basis for logical legal argument.

The syllogistic structure is also very useful in helping students understand substantive courses and what doctrinal professors are expecting them to discern from the cases they have been assigned to read. I have noticed over the years that students do not make the connection between their substantive courses and legal writing. In fact, many students tend to see legal writing as less important because it is in effect the odd man out. Law school curricula generally contain four or five substantive courses per first-year semester, and one legal writing course. If one merely does the math, when comparing four or five substantive courses to one legal writing course (which may even contain less credit hours than the others), a logical inference would lead to the conclusion that substantive courses are four or five times more important than legal writing courses.

However, all legal writing professors (and practicing attorneys) know the opposite is true, if the object is to teach students how to make legal arguments and not just pass the bar.[47] The syllogism is vital in helping

47. *See e.g.*, Bryn Vaaler, *Compositional Practice: A Comment on "Liberal Education in Law,"* 1 J. ASS'N LEGAL WRITING DIRS. 148, 148-49 (2002).

students make the link between substantive and legal writing courses. When students are reading cases in substantive courses, they are in effect searching for the major premise (rule of law) that covers that topic. While professors through the time-honored Socratic Method make yeoman efforts to push and prod students to look beyond just finding the rule into the deeper waters of rationale and application of the rule to other factual situations, we all know that students are just trying to find out what to put into their outlines. Since the magic bullet for the outline is usually the rule, students in substantive courses rarely think in terms of full legal arguments, but rather are content to simply find the rule. As noted above, this may explain why doctrinal professors frequently complain that the weakest part of answers to their exam questions is the analysis, the application of the rule to the facts. Many students' answers just leap from the rule to the conclusion with no significant argument. Essentially what is missing is the minor premise and showing its relationship to the major premise. First-year students are simply not thinking syllogistically, and thus logical reasoning based on finding not just the rule, but also on applying the law to the facts, is frequently lacking.

At this point, the reader might be applying the "so what" question to this article. It may appear that I am doing what I criticized above – just putting forth another form of legal writing pedagogy that is of interest only to other legal writing faculty. However, even though adding syllogistic pedagogy is ipso facto important in the content of legal writing curricula, doing so also has the benefit of a collateral goal, i.e., allowing legal writing professionals to penetrate the broader legal academic community.

In order to do this, the next step is to demonstrate how the syllogism has been manipulated by legal scholars over the past one hundred years so as to change the face of legal reasoning. This is not to imply a clandestine scheme by these legal scholars, but rather an attempt to shed light on the changing face of modern interpretive reasoning and methods. And I will argue that placing the syllogism at the center of legal analysis pedagogy will concomitantly introduce a method to place the legal writing community at the center of the legal reasoning and interpretive debate. This debate, by the way, which most lawyers, including legal writing professors, do not seem to know, has revolved around the classical

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> Without a doubt, writing is the Number One lawyer skill. . . . Lawyers in practice are generally judged by the final product they produce: the written negotiated text. Clearly in my firm, the first thing new lawyers will be judged upon is their writing. The fastest way to get ahead as a new lawyer is to be an able writer. The fastest way to fail is to be a poor writer.

Id.

syllogism. If legal writing professors understand this, they will be in a position to influence the debate.

IV. IS THE CLASSICAL SYLLOGISM STILL THE BASIS OF LEGAL REASONING?

In the late nineteenth century a monumental revolution occurred in legal reasoning. The revolution was based upon changes in the classical means of dealing with truth and logical deduction, which were anchored in nearly universally accepted major premises. In 1930, Karl Llwellyn declared:

> Ferment is abroad in the law. The sphere of interest widens; men become interested again in the life that swirls around things legal. Before rules were facts; in the beginning was not a Word, but a Doing. Behind decisions stand judges; judges are men; as men they have human backgrounds. Beyond rules, again lie effects; beyond decisions stand people whom rules and decisions directly or indirectly touch. The field of Law reaches both forward and back from the Substantive Law of school and doctrine. The sphere of interest is widening; so, too, is the scope of doubt. *Beyond rules lie effects* – but do they? Are some rules mere paper? And if effects, what effects? Hearsay, unbuttressed guess, assumption unchecked by test – can such be trusted on this matter of what law is *doing?*[48]

At first glance one might not recognize this as a frontal attack on reasoning based on classical syllogistic logic, but it has that effect. Essentially, Llwellyn is postulating that rules per se should no longer be the primary concern of legal thinking, but the effects should. Similarly, Oliver Wendell Holmes was central to the introduction of this new kind of logic to legal analysis. One commentator states:

> The important point to note is the complete departure from the way the old Classical Jurisprudence defined things. Hostile as he was to the traditional logic, Holmes touched the springs of the neo-realistic logic in his analysis of legal concepts. He departed entirely from the subject-predicate form of logic, and employed a logic of relations. . . . In short, by turning the juristic logic from a subject-predicate form to an antecedent-consequent form, *Holmes virtually created an inductive science of law.* For both the antecedent and the consequent are to be proved and ascertained empirically.[49]

John Dewey attacked classical logic much more directly. He writes,

48. Llewellyn, *supra* note 1, at 1031 (emphasis added).

49. Felix S. Cohen, *Transcendental Nonsense and the Function Approach*, 35 COLUM. L. REV. 809, 826 (1935) (quoting John C.H. Wu, *Realistic Analysis of Legal Concepts: A Study in the Legal Methods of Mr. Justice Holmes*, 5 CHINA L. REV. 1,2 (1932)) (emphasis added).

> [There is a] need of another kind of logic which shall reduce the influence of habit, and shall facilitate the use of good sense regarding matters of social concern.
>
> In other words, there are different logics in use. One of these, the one which has had greatest historic currency and exercised the greatest influence on legal decisions, is that of the syllogism.... For it purports to be a logic of fixed forms, rather than of methods of reaching intelligent decisions in concrete situations, or of methods employed in adjusting disputed issues on behalf of the public and enduring interests. Those ignorant of logic, the logic or abstract relations of ready-made conceptions to one another, have at least heard of the standard syllogism: All men are mortal; Socrates is a man; therefore, he is mortal. This is offered as the model of all proof or demonstration. It implies that what we need and must procure is a first fixed general *principle*, the so-called major premise, such as "all men are mortal;" then in the second place, a fact which belongs intrinsically and obviously to a class of things to which the general principle applies: Socrates is a man. Then the conclusion automatically follows: Socrates is mortal. According to this model every demonstrative or strictly logical conclusion 'subsumes' a particular under an appropriate universal. It implies the prior and given existence of particulars and universals....
>
> The problem is not to draw a conclusion from given premises; that can be best done by a piece of inanimate machinery by fingering a keyboard. The problem is to *find* statements, of general principle and of particular fact, which are worthy to serve as premises. As a matter of actual fact, we generally begin with some vague anticipation of a conclusion ..., and then we look around for principles and data which will substantiate it or which will enable us to choose intelligently between rival conclusions.[50]

H.L.A Hart in his seminal work on the *Concept of Law*[51] added to the revolution in legal interpretive methods when he distanced fixed meanings of language from classical logic and fixed forms of truth by adding the concept of the uncertainty of language within the new definition of syllogistic logic introduced by John Dewey.[52] Hart writes:

> At this point, the authoritative general language in which a rule is expressed may guide only in an uncertain way much as an example does. The sense that the language of the rule will enable us simply to pick out easily recognizable instances, at this point gives way; subsumption and *drawing of syllogistic conclusion* no longer characterize the nerve of the reasoning involved in determining what is the right thing to do.... The discretion thus left [to the interpreter] by

50. John Dewey, *Logical Method and Law*, 10 CORNELL L. Q. 17, 21-23 (1924).
51. H.L.A HART, THE CONCEPT OF LAW 124 (1961).
52. *See* Dewey, *supra* note 50.

> language may be very wide; so that if he applies the rule, the conclusion even though it may not be arbitrary or irrational, may be a choice.[53]

Hart further explains that no matter what method is chosen to communicate a standard of behavior, its application will "prove indeterminate" based on the "irreducibly open-textured" nature of language.[54]

David F. Chavkin[55] picks up this concept of Hart's opened-textured nature of language and develops the theory of fuzzy thinking, first introduced by Lofti Zadek[56] and appears to have coined the term "fuzzy lawyering."[57] Chavkin quotes Leo Kosko:

> How does a judge decide a case? Does she follow the letter or the spirit of the law . . . ? The letter and spirit of the law arise from the split between rules and principles. Rules are precise, black and white, all or none. They have no exceptions. They change slowly with time as culture evolves. . . . The new view in law is that rules sit in a nest of principles. The rules come and go as the times change. . . . The judge may work with some clear rules but this is rare. The hard part is matching fuzzy facts to all "relevant" principles . . . [and] gives what looks a lot like a fuzzy weighted average.[58]

It is impossible to overestimate the breathtakingly audacious step that Dewey, Llwellyn, Holmes and other early twentieth century legal pragmatists were proposing. And adding Hart's concept of the indeterminacy of language to the evolving principles proposed by the pragmatists further hastened the disintegration of the classical syllogistic model as the basis for legal reasoning. These new methods of dealing with language and logic have impacted the interpretive methods of legal academicians and judges ever since.[59] In effect these men were arguing that there should be no fixed major premises, and Hart implies that even if there were, language is so indeterminate as to make syllogistic logic at best

53. HART, *supra* note 52, at 124 (emphasis added).

54. *Id.* at 124-25.

55. David F. Chavkin, *Fuzzy Thinking: A Borrowed Paradigm for Crisper Lawyering*, 4 CLINICAL L. REV. 163, 170, 172 (1997).

56. Lofti Zadek, *Fuzzy Sets*, 8 INFORMATION AND CONTROL 338 (1965) (cited in David Chavkin, *Fuzzy thinking: A Borrowed Pardigm for Crisper Lawyering*, 4 CLIN. L. REV. 163, 167 (1997-98).

57. Chavkin, *supra* note 55, at 167-68.

58. BART KOSKO, FUZZY THINKING: THE NEW SCIENCE OF FUZZY LOGIC 140-54 (1993) in Chavkin, *supra* note 55, at 171.

59. For a discussion of the effect of the rejection of the classical syllogistic analytical method on Constitutional Interpretation, see James M. Boland, *Constitutional Legitimacy and the Culture Wars: Rule of Law or Dictatorship of a Shifting Supreme Court Majority?*, 36 CUMB. L. REV. (forthcoming 2006).

inconclusive. Dewey stated it best by admitting that to reach the desired effect, the law is beyond static rules, and an accepted legal method can begin with a conclusion and work its way back to the principles (or major premise) that will support that conclusion.[60] It is simply impossible to understand the last one hundred years of the evolution from classical reasoning to modern methods of interpreting the common law, statutes, and the Constitution, without understanding how pragmatists like Dewey and "fuzzy language" proponents have stood the syllogism on its head. Without understanding the classical syllogistic method of logic, it is impossible to make sense of any of these new interpretive methods.[61]

Do our legal writing programs give students the intellectual tools to understand this analytical revolution? One legal writing instructor appears to fundamentally misunderstand the changing syllogistic foundations of legal reasoning as she advocates abandoning traditional attempts to teach students to think like a lawyer.[62] She writes:

> Too often, in a rush to teach elementary, rule-based reasoning, legal writing texts employ formulas that themselves become the subject of the law. IRAC, CIRAC, CRAC, and a host of other acronyms dictate the placement of the issue, the rule, the application of the rule to the facts, and the conclusion, but in doing so, they shut off the use of analytical styles other than rule-based reasoning. Deviations from these formulas are handled as dangerous supplements; legal writing would prefer not to go down those paths. Thus, the message to students is clear: legal writing does not care what you think unless you are using the rules and thinking like a lawyer. Legal writing text are only now beginning to recognize that lawyers think in many ways, and that the many types of legal reasoning – rule-based, analogical, narrative, policy-driven are interdependent. This area of research enriches the substance of legal writing. . . . [I]t demonstrates that rule-based reasoning alone cannot explain the complexity of the law.[63]

Professor Lisa Eichhorn is unwittingly making my point. She is calling for release from the rule-based structures of the IRAC form. In fact there has already been a break from rule-based reasoning, i.e., the new logic paradigm introduced by Dewey.[64] As Professor Eichorn suggests, IRAC and other such formulas are based on traditional, classical, rule-

60. *See* Dewey, *supra* note 50.

61. *See generally* JEFFREY A. BRAUCH, IS HIGHER LAW COMMON LAW? (1999) (giving an overview of legal interpretive schools of thought that have sought to replace classical jurisprudential analysis, and a summation of Legal Positivism, Legal Realism, Critical Legal Studies, and Law and Economics).

62. Eichhorn, *supra* note 2, at 166-67.

63. *Id.* at 135-36.

64. *See* Dewey, *supra* note 50.

based reasoning. Professor Eichhorn appears to be lamenting that rule-based reason (i.e., thinking like a lawyer), upon which legal writing programs base their pedagogy, is a straight-jacket that squashes students from the opportunity to write in some kind of exercise in "free" legal thinking. What Eichhorn does not seem to understand is that legal scholars deviated over one hundred years ago from what she considers a rigid rule-based straight jacket. There are no boundaries to break through, only new frontiers to understand. However, Eichhorn is correct in the sense that most legal writing programs do not reflect these less rigidly rule-based analytic methods introduced by the early twentieth century pragmatists. If traditional methods of legal reasoning (the IRAC method) were taught within the syllogistic framework as I have suggested, students of legal writing would be prepared to recognize and deconstruct methods that deviate from this strict rule-based analytical methods.

Lawyers (especially legal writing professors) should be interested in deconstructive techniques for a least three reasons. First, deconstruction provides a method for critiquing existing legal doctrines; in particular, a deconstructive reading can show how arguments offered to support a particular rule undermine themselves, and instead support an opposite rule. Second, deconstructive techniques can show how doctrinal arguments are informed by and disguise ideological thinking. This can be of value not only to the lawyer who seeks to reform existing legal institutions, but also to the legal philosopher and the legal historian. Third, deconstructive techniques offer both a new kind of interpretive strategy and a critique of conventional interpretations of legal texts.[65]

I am not suggesting that first year legal writing students be instructed in all the intricacies of deconstructive techniques. But I am suggesting that without knowledge of classical legal theory based on the syllogism, they will not be properly prepared to interpret deviations from it. Deviations from classical analytical methods flourished throughout the twentieth century. It is incumbent upon legal writing programs to continue to teach classical methods of "thinking like a lawyer" (i.e., IRAC), while simultaneously providing students at least a nascent understanding of methods they will need to detect and deal with modern interpretive methods.

Whether one thinks that these new interpretive methods are an improvement over the classical syllogistic method based upon fixed premises is not the subject of this article. What is primarily important is

65. J. M. Balkin, *Deconstructive Practice and Legal Theory*, 96 YALE. L.J. 743, 744 (1987) (parenthetical added).

that we give students the analytical tools to understand these modern analytical methods. These methods are a fixture in modern legal analysis.[66] Therefore, it is within the pedagogy of legal writing programs that students should be provided with these analytical tools. Modern methods were a departure from the classical syllogistic analytical paradigm; teaching students how to think only in IRAC terms is simply insufficiently rigorous. In order to detect and understand the new logic paradigm, students must be taught to think syllogistically. It is only from this base that deviations from classical syllogistic reasoning can be recognized and critiqued. The legal academic community as a whole, not just legal writing professors, must understand this foundational approach to understanding classical and modern legal reasoning.

It therefore logically follows that legal writing professionals must not only teach legal analysis syllogistically, but base a portion of their scholarship on a critique of modern interpretive schemes and court opinions that are based on post-classical syllogistic methods. Legal writing professors have the potential to be in a unique position in relation to their colleagues who teach substantive law. If legal writing professors teach logic syllogistically, then legal writing professors could and should be critiquing court opinions and substantive legal scholarship to test the logical consistency of the arguments or opinions. For instance, legal writing scholarship should be asking questions such as: what was the writer's major premise? Has she proved it? Was the premise from which the conclusion reached taken from a legitimate source? Is the deviation from the former major premise justified? What are legitimate sources of new major premises? Is the argument logically consistent and if not, why not? Is foreign law a legitimate source to find a major premise when interpreting the United States Constitution? The possibilities for scholarship from this perspective are virtually unlimited.

Let me give a simple example of how teaching logic syllogistically can be used to explain and understand court opinions based on manipulation of the classical syllogism. Policy arguments have become increasingly favored in legal arguments, especially when arguing before a court of last resort. Probably not one student (or lawyer) in a hundred realizes that a policy argument, syllogistically speaking, is actually an argument to disregard the major premise that has been established by inductive reasoning or by statutory or constitutional provisions. The attorney who makes a policy argument is asking the court to set aside a

66. For an analysis of the effect of legal pragmatism on constitutional interpretation, see Boland, *supra* note 59.

legally established major premise and substitute one based on a public policy to which she thinks that court will be amenable. Policy arguments are essentially an end run around established sources of major premises derived from statutes, constitutions, or established from common law cases through inductive generalization, and subsequently established as precedent through stare decisis. If policy arguments are accepted by a court, then a new major premise is established, and the minor premise and conclusion are applied in the normal syllogistic style. Most lawyers, if asked, probably would not know where policy arguments fit within the larger legal argument structure. Do legal writing professors know? Do doctrinal law professors? Whether one thinks policy arguments are a good or bad method of reaching a legal conclusion, all attorneys, judges and law professors should be aware of exactly what the court is being asked to do, i.e., formulate a new major premise outside of traditional analytical methods. Therefore, if first year law students are taught to analyze arguments syllogistically, it is possible to raise up a generation of lawyers who are fully capable of understanding the implications of the arguments they are making. Similarly, if legal writing professors become the caretakers (academically speaking) of the syllogism, the critique of substantive law topics from that perspective will logically follow. Thus legal writing professors will be capable of producing scholarship that is relevant to doctrinal faculty, thus making legal writing scholars an integral part of the larger doctrinal debate over the future shape of the law.

V. A NEW FOCUS ON LEGAL WRITING SCHOLARSHIP: WHAT I AM NOT SUGGESTING.

Professor Harris'[67] solution for legal writing programs gaining acceptance within the doctrinal faculty is to recommend that legal writing professors shift their scholarly focus so as to have the effect of becoming doctrinal professors who also teach legal writing. He writes:

> I suggest that professors who teach writing classes shift their scholarly focus. I suggest that we act more like our doctrinal colleagues. That means that we should develop an area of expertise in the law and write about it. It does not need to have anything to do with Legal Writing. Ideally, it should not have anything to do with Legal Writing. When you are sitting in the faculty common room, you want to be talking about your new, paradigm-shifting legal theory, not about teaching, and certainly not about teaching English composition. Then after you have written six articles about, say, the Rule Against Perpetuities, your colleagues may decide to take you seriously. Then they may invite

67. *See* Harris, *supra* note 11, at 307.

> you to speak at an important-sounding symposium. And one day, your Dean might even let you teach a section of Property.[68]

The basic assumption in the above statement by Harris is fundamentally incorrect, even though he has not totally missed the mark. The fundamental mistake Harris makes is to assume that legal writing professors are dissatisfied with merely teaching legal writing and would jump at the chance to teach property, torts or other doctrinal courses. This again emphasizes the dilemma that legal writing professors are trying to escape – that legal writing is a second class subject within the law school community and even professors who have devoted their whole career to the discipline, do not *really* want to teach it. However, becoming an expert in an area of doctrinal law is a laudable goal for all legal writing professors if they also want to bring their analytical legal writing techniques to bear on that doctrinal subject. It is important to penetrate the scholarly world of doctrinal faculty, but not at the expense of denigrating the importance of teaching legal writing.

However, as Professor Eichhorn points out, scholarship is invaluable in breaking into the hierarchy of the legal academy. She writes, "Scholarship offers an opportunity to break this pattern. If the legal academy values writing only in the traditional form of legal scholarship, then those who teach legal writing should use scholarship as a means . . . to increase their own status within the academy."[69]

This is precisely the reason that I have emphasized the importance of the syllogism. If legal writing professionals use it as the basis for legal analysis, we have the opportunity to bring to bear a legal writing method upon the scholarship of doctrinal faculty. Thus legal writing scholarship will not only have an impact on doctrinal scholarship, but also remain securely anchored within the parameters of the legal writing perspective. We can sit in faculty common rooms and not only discuss a new, paradigm-shifting legal theory, but also critique that theory from the perspective of whether it is logically consistent with the classical logic paradigm or whether it fits within the new logic paradigm introduced by Dewey, Holmes *et al.* I submit that doctrinal faculties are not accustomed to defending their new paradigm-shifting legal theories from this perspective.

68. *Id.*
69. Eichhorn, *supra* note 2, at 140.

VI. CONCLUSION

Professors of first-year legal writing students must rescue the syllogism from the arcane world of abstract logic and introduce it very early into first-year legal writing curricula. If taught and understood before the introduction of IRAC, the syllogistic basis of legal argument will be fixed in student's minds rather than a partially understood IRAC organizational scheme. If the syllogism is introduced first, then IRAC will take its necessary and natural place in the writing and analysis pedagogy of first-year law students. The lawyers thus produced will naturally make legal arguments, not just "write" briefs, and the legal writing professors who become steeped in this pedagogical method will naturally infuse their scholarship with it.

It is highly unlikely that doctrinal legal faculty will abandon the century-old Socratic method of teaching law and welcome an apprenticeship model in law school teaching.[70] But without abandoning the fifteen to twenty years of developing pedagogy that has vastly improved legal writing programs, legal writing professionals must teach material relevant to doctrinal law issues. I believe by embracing the syllogism as an integral part of their pedagogy, legal writing professors can also use it as the basis on which the doctrinal legal academy will value their scholarship, and in fact, cannot ignore it. They will be playing on doctrinal faculty turf, but grounded in the essence of legal writing pedagogy. This is the revolution that is needed in legal writing to upgrade the professionalism of the legal writing discipline and banish the view of the academy that legal writing scholarship is anti-intellectual. This will improve the status of legal writing professors. Equality and tenure-track positions will follow.

70. *See* Beazley, *supra* note 8, at 23, 28.