

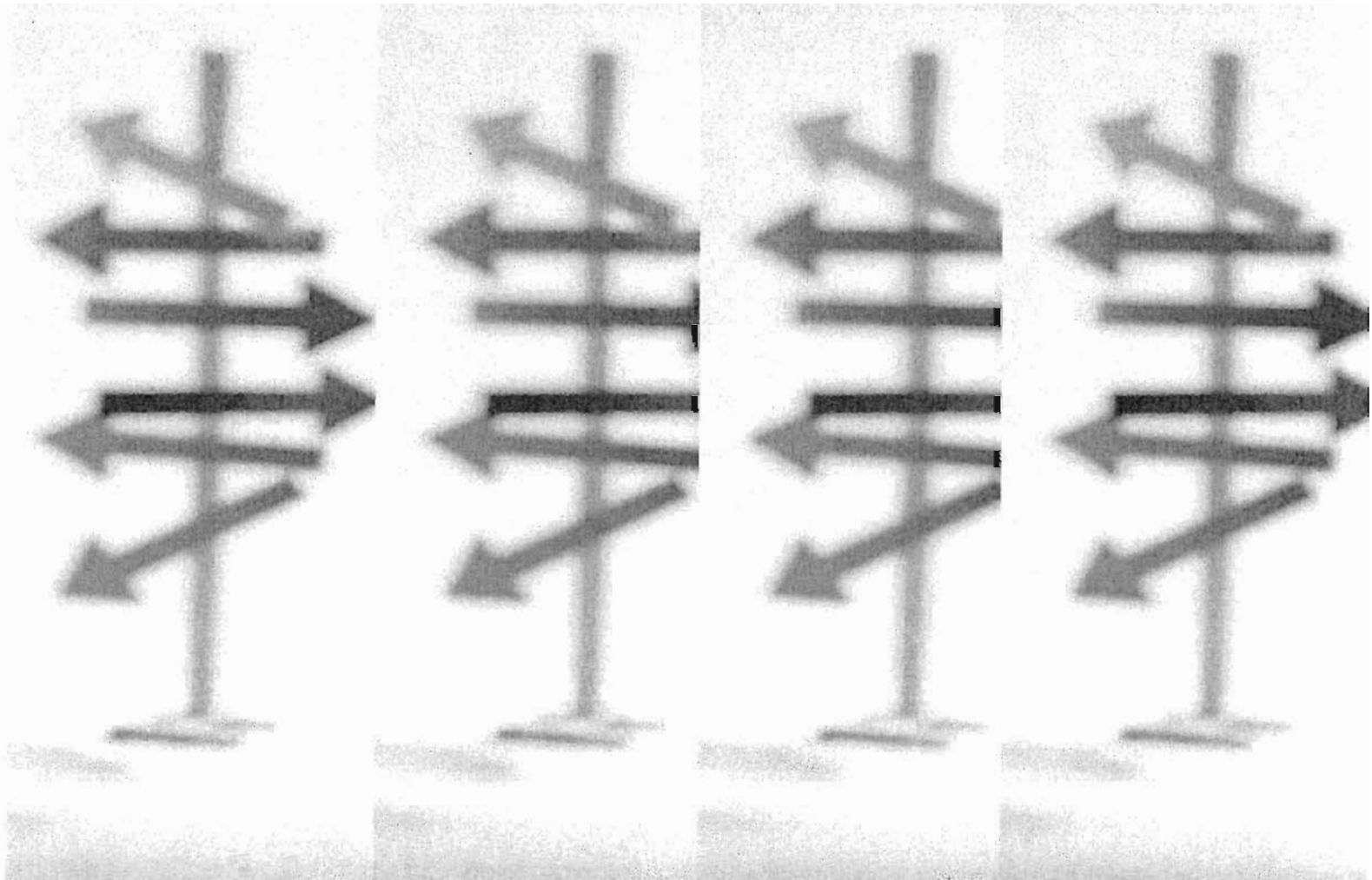
Legal Education at the Crossroads

*Ideas to Accomplishments: Sharing New Ideas
for Integrated Curriculum*

September 5-7, 2008

University of Washington, School of Law

Seattle, Washington



Legal Education at the Crossroads

Ideas to Accomplishments:

Sharing New Ideas for an Integrated Curriculum

Showcase Presentations, A.M. Session

Theme 1: Law Teacher Professional Development

Professors Jane H. Aiken and Deborah Epstein

Materials at Page 1

Georgetown University Law Center

More than Curriculum Committee Approval: Teacher Training to Support Curricular Innovation

Theme 2: Business Law Curriculum Reforms

Professors Marsha Baum and Alfred Mathewson

Materials at Page 5

University of New Mexico School of Law

The Fully Integrated and Cohesive Curriculum: Business Law,

Professor Dwight Drake, University of Washington School of Law,

Materials at Page 9

Professionals, Not Students: Structuring Upper Division Business Courses Around Advance Problems and Writing Assignments

Theme 3: First-Year Reforms Supplementing the Cognitive Apprenticeship

Professor David Schwartz, University of Wisconsin Law School

The New Case Method: Integrating First Year Legal Writing & Skills with a Large Civil Procedure Course

Professor Michael Hunter Schwartz, Washburn University School of Law

Materials at Page 13

Five days, Three Apprenticeships, One Orientation: An Integrated Model First Week Curriculum

Professor Tom Andrews, University of Washington School of Law

Materials at Page 17

The Forest Before the Trees: Using Orientation to Provide Context and Coherence for the First Year Curriculum

Professors Deborah Zalesne and David Nadvorney, City University of New York School of Law

Making Academics Explicit: An Integrated Skills/Doctrine Syllabus

Theo Myhre, University of Washington School of Law

Materials at Page 21

1L "Capstone" Legal Research and Writing Options Focused on Real Legal Problems

Professor Susan Maze-Rothstein, Northeastern University School of Law

Materials at Page 25

Northeastern's Legal Skills in Social Context (LSSC) Program

Theme 4: Multi-year Reforms Supplementing the Cognitive Apprenticeship

Professor James Moliterno, William and Mary School of Law
William & Mary Legal Skills Program

Materials at Page 29

Professors Timothy Floyd and Patrick Longan, Mercer University School of Law
Professionalism In and Out of the Classroom

Materials at Page 139

Workshop Discussions, A.M. Session

Theme 1: Law Teacher Professional Development

Three separate sessions will take place concurrently relating to this theme.

Session A:

Professors Robert Dinerstein and Elliott S. Milstein,
American University, Washington College of Law, Professor Jane Aiken, Georgetown University Law School

Materials at Page 33

Utilizing Teaching Rounds to Educate Teachers to Educate Lawyers

This workshop will be an interactive, audience-participation demonstration of "teaching rounds," a technique for professional development

Session B:

Professor Sue Bryant, City University of New York School of Law
Professor Ann Shalleck, American University, Washington College of Law

Materials at Page 37

Training Law Teachers to Teach the Apprenticeship of Professional Identity and Purpose within Individual Courses in the Formal Curriculum: A Simulation-Based Training Module

This workshop will use a series of exercises involving role-play, reflection, and discussion to help develop effective models to train teachers to address the apprenticeship of identity and purpose. The role-play will put teachers in role as students who are asked to grapple with identity and purpose issues.

Session C:

Professors Davalene Cooper & Eric Lustig, New England School of Law
Creating a Culture of Active Learning

Theme 2: Business Law Curriculum Reforms

Both of the projects listed below will be discussed in one workshop session.

Professors Ben Barton and George Siedel, University of Tennessee School of Law
A Tale of Two Case Methods: Combining the Business School and Law School Models

**Professors George W. Kuney, Joan M. Heminway and
Becky S. Jacobs, University of Tennessee School of Law**
Representing Enterprises—A Simulated Business Law Firm with Four (or more) Different Partners

Facilitator: Professor Roberto Corrada, University of Denver School of Law

**Discussants: Professor Marsha Baum, University of New Mexico School of Law and Professor
Dwight Drake, University of Washington School of Law**

Theme 3: First-Year Reforms Supplementing the Cognitive Apprenticeship

The projects described below have been subdivided into four smaller working groups.

**First-Year Projects Integrating the Cognitive, Skills and Professional Formation Apprenticeships:
Group A – Civil Procedure-Legal Writing Integrations**

Professor Ken Agran and Associate Deans Andrea Funk and Paula Manning, Whittier Law School
Integrating Civil Procedure, Academic Support, Legal Writing and Authentic Practice Experiences

Dean Robert V. Ward, Associate Dean Michael Hillinger and Professor Justine A. Dunlap, Southern New England School of Law **Materials at Page 41**
Integrating Civil Procedure, Torts and Legal Writing in the Context of a Real-World Problem

**First Year Projects Integrating the Cognitive, Skills and Professional Formation Apprenticeships:
Group B**

Reference Librarian and Lecturer Camilla Tubbs, Yale Law School
Integrating Civil Procedure, Research and Authentic Learning

Professor Howard Katz, Elon University School of Law **Materials at Page 45**
Curricular Redesign at Elon Law School: Integrating Theory and Practice with a Purpose

**First –Year Reforms Supplementing the Cognitive, Skills and Professional Formation
Apprenticeships: Group C – Legal Research-Writing**

Professor Anne Goldstein, New York Law School **Materials at Page 49**
Lawyering in the Community: Experiential Learning in the First Year as a Gateway to Pro Bono

Professors Laurel Oates and Mimi Samuel, Seattle University School of Law
Increased Authenticity in 1L Legal Writing and Second-Year Writing Follow-up Courses

Professors Faye E. Jones, Florida State University College of Law Research Center; Assistant Dean Kim Clarke, Pacific McGeorge School of Law, Professor Billie Jo Kaufman, American University Washington College of Law
Day One of Practice: Teaching Legal Research as a Lawyering Skill

**First Year Projects Integrating the Cognitive, Skills and Professional Formation Apprenticeships:
Group D – Professionalism & Legal Ethics**

Professor William Henderson, Indiana University Law School at Bloomington **Materials at Page 53**
Using Practice Settings and Career Goals to Teach Professionalism and Legal Ethics: 1L 4-Credit Legal Professions Course

Dean Ed Rubin, Vanderbilt University School of Law **Materials at Page 57**
Legal Ethics and Professional Development: A Course in Three Segments

Showcase Presentations, P.M. Session

Theme 5: Second- and Third-Year Reforms

Professor Roberto Corrada, University of Denver Sturm School of Law

Bridging the Gap Between First Year and Practice: The Promise of Whole Course Simulations for Upper Class Students

Professor Anna P. Hemingway, Widener University School of Law

Materials at Page 61

Integrating Upper-Level Legal Methods Courses Offering Skill-Based Menu Options into the Law School Curriculum

Professor Denise Roy, William Mitchell College of Law

Materials at Page 65

Building Toward Practice—William Mitchell's Pathways to the Profession and Keystone Course Programs

Theme 5: Second- and Third-Year Reforms (cont.)

Professors Robert F. Seibel and Janet Weinstein, California Western School of Law

STEPPS: Integrating Professionalism, Responsibility, Lawyering Skills, and More in a Required Second Year Course

Materials at Page 69

Dean Rodney A. Smolla, Washington & Lee University School of Law

The New Third Year at Washington & Lee

Materials at Page 73

Theme 6: Whole Curriculum Reforms

Professor Kenneth R. Margolis, Case Western Reserve University School of Law

The CaseArc Integrated Lawyering Skills Program

Materials at Page 77

**Associate Dean Susan Brooks, Professor Emily Zimmerman, and
Professor Kevin Oates, Drexel University College of Law**

Materials at Page 81

Lessons from the Front Lines of Experiential Education

Professor Gerald Hess, Gonzaga University School of Law

Materials at Page 85

Gonzaga's Skills and Professionalism Curriculum: Process and Product

Professors Nancy Cook and Brett McDonnell, University of Minnesota Law School

From Foundations through Capstones:

Materials at Page 89

The University of Minnesota's Integrative Curriculum on Identity, Role and Professionalism in the Practice of Law

Vice Dean for Academic Affairs Austen Parrish, Southwestern Law School

Materials at Page 93

Southwestern's Curricular Reform: Towards a More Dynamic Integrated Curriculum: Clinics, Externships, Intersessions, Mini-Terms, and Capstone Courses

Associate Dean Lawrence C. Marshall, Stanford University School of Law,

The Work of the Carnegie Foundation for the Advancement of Teaching's 10-School Consortium on the Future of Legal Education

Workshop Discussions, P.M. Session

Second- and Third-Year Projects: Group A

Directors Donna Petrine and Kristen Holmquist, University of California at Berkeley Boalt Hall School of Law

Reforms to Create a Unified Vision for Upper-division Skills Programming

Dean Ellen Y. Suni, University of Missouri-Kansas City School of Law
A Second Year Integrated Curriculum

Materials at Page 97

Second-and Third-Year Projects: Group B

Professor Ken Gould, University of Arkansas at Little Rock William H. Bowen School of Law

Transforming the Law Student Clerking Experience into a Reflective and Positive Learning Experience

Materials at Page 101

Associate Dean Stephen Ellmann, New York Law School
The Clinical Year

Materials at Page 105

Whole Curriculum Projects: Group A – Reforming the Curriculum at Small, Limited Resource State Law Schools

Professors Maureen Laflin and D. Benjamin Beard, University of Idaho College of Law

Weaving Professionalism, Ethics, and Skills throughout a Student's Law School Career

Materials at Page 109

Professors Patti Alleva and Margaret Moore Jackson, University of North Dakota School of Law

Implementing Carnegie and Best Practices at a Smaller School: Preliminary Ideas for Integrated Learning Opportunities and Extended Lessons in Professionalism

Materials at Page 113

Whole Curriculum Projects: Group B – The Best Practices Framework

Dean John Valery White, Professors David B. Thronson and Terrill Pollman, UNLV Boyd School of Law

Members of CLEA's Best Practices Implementation Committee: Professors Lisa Bliss (Georgia State), Carolyn Grose (William Mitchell), Carrie Kaas (Quinnipiac), and Karen Lash (EJW).

A Consultation: Best Practices Meets Reality

Materials at Page 117

Whole Curriculum Projects Group: C - Rhetoric and Process

Professors Ann Juergens and Denise Roy, William Mitchell College of Law **Materials at Page 119**
Across the Great Skills/Theory Divide: Finding New Rhetorical Ground for Curricular Change

Dean Steven Kaminshine, and Professors Andi Curcio and Douglas Yarn, Georgia State University College of Law
How to Build Consensus for Significant Curricular Reform

Leadership Education (Theme 7)

Assistant Dean Marina Hsieh and Adjunct Law Professor Robert Cullen Santa Clara University
Leadership Development for Law Students

Garry W. Jenkins, Moritz College of Law, Ohio State University
A Leadership Course for Law Students

Sunday, September 7, 2008

Plenary: Institutional Process for Making It Happen **Materials at Page 123**
This plenary will examine the processes involved in adopting and sustaining significant law school curricular reforms.

Plenary: Assessment **Materials at Page 127**
This plenary will provide a brief overview of the assessment process: What do we mean by "assessment?" How will effective assessment benefit law students? Panelists will discuss ways in which they are developing or have implemented assessment at their institutions at the individual, programmatic, and school-wide levels.

*More Than Curriculum Committee Approval:
Teacher Training to Support Curricular Innovation*

Deborah Epstein and Jane Aiken
Georgetown University Law School

The Problem: Legal education needs to change is clearly the message of both the Carnegie Report and Best Practices. Innovative curricular content requires ready and able teachers. Without that “infrastructure,” innovation is likely to fail. Law teachers come from a background with little or no training in pedagogy and who face tenure hurdles that often fail to reward excellent and innovative teaching. Even though there is little exposure to formal training about teaching and adult learning theory, law teachers are eager to learn new methods and gain insight into educational theory. We enjoy those exceptional conversations in which we take on the question of why we teach and what we really are teaching. Even though the AALS offers new teacher training and occasional experienced teacher workshops, it does not offer teachers hands-on training with specific feedback directed toward the learner’s needs. It is rare for law professors to engage in an undertaking in which we clarify our goals as clinical and non-clinical teachers, ensure that our teaching methods are consistent with our goals, and identify potential new goals and approaches to re-energize our teaching. This retooling can help us begin to incorporate all three of the Carnegie-identified apprenticeships.

The Innovation: During the summer of 2008, Georgetown University Law Center offered just such a focused teacher training workshop directed toward mid-career clinical teachers. This Institute offered participants the chance:

- To clarify their goals as clinical teachers, ensure that their teaching methods were consistent with their goals, and identify potential new goals and approaches to re-energize their teaching. Sessions engaged the question of why we teach and what we teach.
- To explore effective interventions in which to teach students to become ethical practitioners and make a smoother transition to the practice of law.
- To investigate ways in which they could inspire students to appreciate their role in the project of social justice and evaluate their clinical teaching choices in that light.
- To improve their listening skills so to identify opportunities for learning as they arise during the student’s clinical experience. We investigated classic problems that arise in clinic that get in the way of teaching and learning, including approaches to difficult conversations with students, teaching about cultural difference without assuming a majority audience, as well as unique problems that were brought by participants to the Institute.
- To develop strategies for purposeful learning in direct supervision and seminar components. The Institute drew upon experts in educational theory that trained teachers to choose teaching methods that were a function of their ultimate teaching goal to ensure that their teaching is effective and purposeful. We constantly asked the questions, “Why did you do that?”, “How did it work?” and “What would you do differently?”
- To embrace the spirit of inquiry that ensures growth and challenge in their work as clinicians. We evaluated “tried and true” teaching methodologies to assess their effectiveness. Participants became both teachers and students and had an opportunity to experience what their students experience and then look critically at that experience to determine if it actually does what they hoped it will do.
- To develop peer support and trust so to ensure effective and honest feedback during the Institute. The use of small groups of seven with two facilitators throughout the time was designed to create a

safe environment in which to explore their teaching choices and try out new approaches. Participants were assured of dedicated time for them to teach a class, review a videotape, or conduct a problem solving session on a problem of their choice within the small group session. Small group members provided feedback and suggestions to the member presenting but also received their own feedback on their critique of the presenter. This “critique of the critique” ensured that all activities were opportunities for learning no matter whether one was presenting or was presented to.

- To create a group of peers who could share the unique challenges that clinical education poses and provide each other with continuing feedback and ideas well into the future.
- To provide participants with a meaningful take-away from the experience. Participants left the week with particularized feedback on their own clinical teaching, insight into what strategies we use work and don't work and ways to improve those strategies, and materials that addressed teaching methods and theory appropriate to the clinical setting.

Process: In order to conduct such a workshop, begin planning early. There should be someone who is designated the overall director of the teaching institute to ensure that there is coherence and continuity. There should be a small group who engage in the overall planning. Planners should be particularly attentive to what appears to be the interests and concerns that would motivate teachers to want to come to such a training. The focus should be on the learner. The learning during the training should be dynamic. The design should assume that participants will learn from plenary session leaders, facilitators of small groups and each other. The design of the training should be attentive to building a sense of camaraderie through full days with some shared meals.

Identify what group of learners you are addressing: new law teachers are very different from mid-career law teachers who have considerable shared context but may have a stake in their teaching methodology. Build in plenty of time for each participant to present a teaching challenge and get feedback on it and strategies for addressing the challenge. Encourage participants to be precise about what they want feedback on. Demonstration of teaching a whole class is less amenable to getting useful feedback (and other small group members' interest) than isolating a particular challenge for presentation. Role-playing either the teacher or the student encountering (or creating) the problem engages the small group and leads to more insight. Facilitators should move participants toward role playing. Ideally this is done in small groups (7-10) with two facilitators

Facilitators should be trained and have a plan for how generally meetings will be conducted. The plenary sessions should build on one another following roughly the format of Why do we teach? What do we teach? and then How do we teach? All trainings should include at least one educational theorist who is an expert in the field of education, rather than law. We included Stephen Brookfield and Grant Wiggins. It appears that law professors are hungry for such knowledge and guidance. Presenters should be conscious that how they teach in the plenary session is a model of how to teach generally. More than one presenter in a plenary featuring law professors is ideal but effort should be made to have the presentation clearly coordinated and of a whole. Presenters in plenary sessions should have credibility among the audience.

Plenary sessions that offer participants structures, strategies and lenses through which to view their teaching are particularly effective. Invite small group participants to “deconstruct” plenary sessions for both the particularized learning about the substance that they gained from the session and the process insight they may have gained from the way that the plenary was presented. Instill in participants an awareness of “process” that can help them become more self-reflective. Critical Incident Questionnaires (Stephen Brookfield) are useful devices for ensuring and recording self-reflection and insights. Participants should have several “take-aways.” These can include teaching techniques, insight into his or her own teaching, plan of action for making change occur in their teaching and/or institution. At the

close of each day of training the facilitators should meet and discuss what occurred during the day, what ideas might be useful for each other, adjustments that need to be made in the way things are proceeding.

Evaluation: We asked participants in the training to do an evaluation of the Institute at the close of the program. We plan to follow-up midway through the Fall semester to see if the things learned in the Institute have carried over into the participants' teaching and to ask them to evaluate what they learned with the benefit of hindsight. The planners and small group facilitators met and debriefed on what went well and what could be improved. We reviewed critical incident reports created during the Institute to see what patterns emerged about effective teaching strategies.

Carnegie/Best Practices: The Carnegie Report clearly addresses the need for teacher training as a prerequisite for supporting change in legal education. Adult educational theory also identifies teacher training as essential to the educational enterprise. Despite considerable research demonstrating that lecturing is one of the least efficient means of teaching, teachers continue to embrace that method both because it is what they experienced and because they lack the confidence to engage in new teaching strategies or have no examples of alternative models. If we want change, we need to provide the support that will make change easy and fun. Educational theory often focuses on designing teaching interventions with clear goals in mind and being intentional about all teaching efforts. We often identify teaching changes that we would like to see implemented in our institution. Implementing curricular innovations is not accomplished merely by getting a course through a curriculum committee. This showcase reminds conference participants of that and provides a viable model to support innovative efforts.

Where We Are in the Process

The Summer Institute will occur on June 17-20, 2008 and thus will provide the data for this workshop presentation. The Institute has been the result of many hours of planning involving a number of skilled teachers/facilitators and two educational theorists who will be present at the training, Stephen Brookfield and Grant Wiggins. We have identified the following goals for our teacher training project that grow out of the Carnegie Report that will serve as the basis for analysis and demonstration:

- To explore effective interventions in which to teach students to become ethical practitioners and make a smoother transition to the practice of law.
- To investigate ways in which we can inspire our students to appreciate their role in the project of social justice and evaluate our clinical teaching choices in that light.
- To improve our listening skills so to identify opportunities for learning as they arise during the student's clinical experience. We will investigate classic problems that arise in clinic that get in the way of our teaching and learning, including approaches to difficult conversations with students, teaching about cultural difference without assuming a majority audience, as well as unique problems brought by participants to the Institute.
- To develop strategies for purposeful learning in our direct supervision and seminar components. The Institute will draw upon experts in educational theory that trains teachers to choose teaching methods that are a function of our ultimate teaching goal to ensure that our teaching is effective and purposeful. We will constantly be asking the questions, "Why did you do that?", "How did it work?" and "What would you do differently?"
- To embrace the spirit of inquiry that ensures growth and challenge in our work as clinicians. We will evaluate "tried and true" teaching methodologies to assess their effectiveness. Participants will become both teachers and students and have an opportunity to experience what our students experience and then look critically at that experience to determine if it actually does what we hope it will do.
- To develop peer support and trust so to ensure effective and honest feedback during the Institute. The use of small groups of seven with two facilitators throughout the time is designed to create a safe environment in which to explore your teaching choices and try out new approaches.
- To create a group of peers who can share the unique challenges that clinical education poses and provide each other with continuing feedback and ideas well into the future.
- To provide participants with a meaningful take-away from the experience. Participants will leave the week with particularized feedback on their own clinical teaching, insight into what strategies that we use work and don't work and ways to improve those strategies, and materials that address teaching methods and theory appropriate to the clinical setting.

The Institute itself will provide the data for this workshop presentation so we are well on our way toward creating a model that might be replicated in conferee's home institutions. In the presentation, we will demonstrate "backwards design," that is, we will choose one of the teaching goals for the Institute, discuss why it is important to legal education and show how an Institute exercise was designed to achieve that goal. Our challenge for the workshop will be gain enough perspective on the Institute to analyze our successes and failures. We will also want to make sure that the workshop is a model of good teaching and will make efforts to employ teaching methodology that engages the audience. We believe that at the close of this session, participants will have some tools for creating their own models of teacher training and an appreciation for the importance of providing teachers with the pedagogical knowledge and skill set that will make curricular innovation possible.

The Fully Integrated and Cohesive Business Law Curriculum
Alfred Mathewson & Marsha Baum
University of New Mexico School of law

Descriptive Title and Short Description

Our law school recently added skills and professionalism to most business and tax courses (including the basic Contracts class), attempted to integrate and coordinated its business and tax law doctrinal curriculum with its new Business and Tax Clinic, and identified specific competencies we want students to learn in our program.

The same professors who teach Contracts, Business Associations, and Tax, also supervise our Business and Tax Clinic, which is possible because our clinical model allows classroom teachers to rotate into the clinic, enhancing learning on both sides of the building. Through this synergy, we hope to get a better feel for which legal doctrine is most relevant, what skills are needed to actually practice law, and to thus design courses to ensure knowledge building based upon specific, pre-identified, competencies. Even without the clinic integration, this model can create a much more cohesive legal education within a broad subject matter.

Economic Development Team, Strategic Plan, Missions, and Outcome Based Competencies

Team

Teachers for both Business and Tax Clinic and Doctrinal Classes: Alfred, Nathalie, Sergio, Erik

Doctrinal teachers: Fred, Marsha, Jenny, Sherri, Rob

Greater Law School Community: other clinicians, Indian law faculty

Greater Outside Community: UNM, ACCION, South Valley groups, others

Typical Classes for Alfred, Nathalie, Sergio, and Erik

Alfred: bus. assn., fed tax, business tax, contracts, anti-trust, sports law, clinic

Nathalie: contracts, bankruptcy, secured trans., real estate, fin. lit, clinic

Sergio: fed tax, estate tax, business tax, contracts, clinic

Erik: bus. assn., bus. planning, law and econ., payment systems, secured trans, clinic

Selected Missions and Outcomes

- To train transactional lawyers who can competently serve small businesses, communities and tribes around the state. To meet these goals, students should be able to
 - Draft contracts
 - Negotiate deals
 - Understand business objectives of clients and work in interdisciplinary teams with business people and experts in finance, accounting and other fields
 - Understand how laws and markets interact
 - Effectively navigate federal, tribal, and state regulatory regimes, as well as diverse customs and culture
 - Provide meaningful client counseling in these contexts

- To study, both in scholarship and in classrooms, the ways in which laws, lawyers and legal institutions can promote or hinder economic development, in society in general and in underserved or disadvantaged communities, with particular emphasis on
 - Credit, finance and tax law
 - Wealth creation through savings and pensions
 - Legal framework supporting enterprise formation and investments
 - Intellectual property
- To help students actually put this knowledge and these skills to use, not just learn about them in the abstract, for the benefit of communities around the state, including those with few business lawyers (method: clinic and skills-based components in doctrinal classes).
- To somehow integrate the curriculum, contracts through clinic, to reach these competencies and find an outcome-based way to measure success

DESIRED OUTCOMES

By the time a student interested in business law graduates, she should:

- Have the following general substantive knowledge:
 - how to understand tax law, and how taxes can be minimized for the benefit of clients, both for individuals and enterprises
 - how individuals and businesses can borrow or lend money in the legal framework of credit and security interests
 - the reasons entrepreneurs should select one form of business entity over another and the basics of structuring business entities to solve problems of
 - risk
 - control
 - raising and distributing \$
 - ownership of assets
 - duties and performance
 - exit strategy
 - importance of protecting intellectual property
 - ability to work and advise clients in diverse cultural settings/environments
 - unique dimensions of ethics in business law context

(This means a student should be familiar with the following: loan agreement, pledge agreement, individual [and partnership or corporate] tax return, organizational documents of an entity, at least one UCC article. Ideally, students would learn to both interpret and to draft as many of these documents as possible while here.)

- Have the following skills:
 - ability to interpret and draft complex contracts
 - ability to negotiate and put together deals to meet objectives of risk, control, raising and distributing \$, ownership of assets, duties and performance, and exit strategy

- ability to interpret complex statutory schemes like the UCC
- ability to effectively counsel clients on these matters

Long term strategic objectives

- To develop an integrated transactional program for students, much like our 6-credit evidence and trial practice course, which merges theory and practice and which is very popular and visible to students
- To develop areas of expertise in both teaching and research in areas of law & economic development that can serve NM and be national models, including research and teaching for
 - entrepreneurship and microenterprise in underserved communities, including tribal, rural, Hispanic, immigrant and other minority communities
 - hi-tech industries, including an intellectual property and patent capability.
 - entrepreneurship in arts and entertainment industries, including digital media and film
 - microenterprise and microfinance with respect to above
 - real estate

Our Unique Position: UNM SOL can be a model for other schools

- Can develop law and economic development programs for communities that have been underserved
 - Rural communities
 - Tribal communities
 - Hispanic and immigrant communities:
 - We are a border state.
 - We are the first majority minority state in the nation.
- Explore connections between two strands of economic development:
 - Hi-tech: developing technology startups from national labs
 - Micro-enterprise, individuals and communities
 - Questions we want to explore:
 - How can law – business, creditor’s rights, tax, i.p. – develop or hinder these two strands of economic development?
 - Through new statutes and public law
 - Through development of institutions
 - Through training of transactional lawyers
 - Through specific legal strategies adopted by individuals and small businesses
 - What are the connections between these two strands?
 - How can lessons from laws or legal strategies that benefit one strand be applied to the other?
 - How can general laws or legal strategies be tailored to meet the needs of one of the strands?

- Now is the Time
 - Subprime lending crisis and change in bankruptcy laws point to need for
 - greater financial literacy programs,
 - development of other institutions to provide credit, like microfinance,
 - intensive study of laws affecting credit and finance.
 - Both NM real estate boom and subprime lending crisis and point to the need for development of expertise in real estate law.
 - Threats to National Lab funding argue for greater i.p. capability to jump start tech transfer.
 - Development of NM film industry argues for increasing capacity in arts & entertainment law.

Specific Strategies for Accomplishing our Goals

Team Building

Building a group philosophy, shared missions, and goals.

Contributing energy, making space for this work, and building group trust

The agenda-less meeting

Get the buy-in of the rest of our faculty, especially with the Business and Tax Clinic, which may be perceived as serving needs that are not part of the law school's core mission.

Strategies for the Middle Ground (the time between Contracts and clinic)

Discuss the curriculum and what each of us is doing in our own classes regularly, to see if we are doing what we say we are, particularly with skills training, which are more time – consuming for us.

Talk about and share (with each other and with other colleagues) the benefits of midterm projects, drafting projects, quizzes, and other methods for fighting the one-exam grading rubric.

**Professionals, Not Students: Structuring Upper Division Business Courses
Around Advance Problems and Writing Assignments
Professor Dwight Drake, University of Washington School of Law
a.m. Showcase Session, Theme 2: Business Law Curriculum**

Problem: Law school focuses primarily on the “Cognitive Apprenticeship,” to use the Carnegie report’s language. As a result, my students are often very assignment driven when they arrive in my class. They want to know what the requirements are: what am *I* looking for? They don’t yet see themselves as professionals who set their own standards and have an agenda for the skills they need to learn or improve.

Innovation: I ask them to make the transition to professionals. We focus on problem solving in class. The students write memos in each class and I emphasize that lawyers write constantly, often simply to understand a problem for themselves.

Assessment: I believe this integration of skills keeps all students engaged, assures that they are vested in the subject matter before it is even discussed in class, teaches them essential skills, and gives them feedback throughout the course.

Examples:

Antitrust, 4 Quarter Credits, Typical Class Size – 40 Students

The course focuses on the development of antitrust in the United States, with frequent references to the comparative experiences of other countries and the daunting challenges posed by the globalization of the world’s economy. Beyond focusing on the historic and current legal and economic challenges of antitrust, the course is structured to illustrate the potential impact of antitrust in any business practice and to facilitate the development of the students’ analytical, problem solving, writing, and fact gathering skills.

The students are divided into eight teams (average team size of five students). At the beginning of the second week of the 10 week course, a comprehensive case study problem is distributed. This problem deals with issues that will be covered in the readings and discussions that will occur during week three. One of the teams is assigned as the “Key Team” for that problem. The key team has one week to gather additional facts (via email questions to the Professor), to prepare a 12 minute class presentation (optionally, but always, supported by PowerPoint slides), and to prepare a comprehensive written memorandum (typical length – 18 pages). During this same period, each of the other students in the class is encouraged to discuss the case study with his or her teammates and submit an individual written “Observation Memo” on the case study (typical length of four pages). The third week starts with the key team’s verbal presentation and the submissions of the key team’s comprehensive memorandum (which is immediately posted to the class website) and the individual student memorandums. This work effort sets the stage for the class discussions during week three, which include an in-depth critique of the

key team's analysis. The process is repeated with seven more case studies over the remaining seven weeks of the course, with each team serving as a key team for one week.

The key team receives a grade for the quality of its performance, which accounts for 10 percent of each team member's final grade for the course. Two enticements are used to encourage students to submit individual observation memos that qualify for a "Pass" grade: (1) points are awarded for each passing memo equal to three percent of the total possible points in the course; and (2) submissions of six "Pass" observation memos guarantee the student a grade of "B" in the course and give the student the right to "opt-out" of the final exam. These enticements have resulted in over 90 percent of the students submitting all observation memos.

Advising Business Owners (Business Planning), 3 Quarter Credits, Typical Class Size – 50 Students

The course focuses on a broad range of planning challenges faced by large and small closely held businesses, including start-up and sellout issues, executive compensation, co-owner planning, fringe benefits, life insurance planning, entity conversions, family intergenerational transition planning, asset protection planning, employee challenges and risks, and diversification strategies. The course is structured to help students develop three essential planning skills: (1) the ability to help a client identify and prioritize specific business objectives; (2) the ability to evaluate and apply specific business planning strategies, and (3) the ability to effectively communicate with non-lawyers. The key to the course is 40 case study problems and related reading material in the book *Business Planning: Closely Held Enterprises, Second Edition* (Thomson/West 2008), which I originally wrote in 2005-06 from materials developed for this course. There are 54 case studies in the book, but time constrains limit coverage of only 40 in the course.

The students are divided into teams of five. For each case study problem, each team is required to have one of its members prepare to make a presentation to the class (not to exceed six minutes in length) on the assigned day that simulates how the student would discuss his or her analysis and recommendations with a business owner or executive. With forty case studies, each team member must prepare to make eight presentations during the quarter. Immediately before the commencement of each class period, a random drawing is made to determine which teams will make case study presentations that day. Although each student must prepare to make eight presentations, the number of presentations actually given by any student is determined by the luck (or un-luck) of the draw. Any team that banks on the draw to avoid preparation runs a serious risk; if the team's number is drawn and it is clear that there has been little or no preparation, each team member receives a permanent half grade drop in his or her grade for the course.

In addition to this team presentation roulette, each student is enticed to submit individual written analytical memos on the case studies. If a student submits 10 case study memos that receive a "Pass" grade, the student is ensured a grade of "B" in the course, even if the student elects to not take the final exam. The submission of 16 memos that receive a "Pass" grade guarantees a grade of "B+". No more than two cases from any single chapter may be "written up" and submitted for credit, and three specific cases (tough cases designated by me) must be included if a student wants the grade guarantee. These enticements have resulted in nearly 90 percent of the students writing and submitting written memos in advance of the class discussion. The result has been lively class discussions, better student presentations, engaged post-presentation student dialogue, higher student energy throughout the entire quarter, and very positive student feedback at the end of the course.

Corporations Law, 3 Quarter Credits, Typical Class Size – 60 Students

This is an introductory course in corporate law that surveys a broad range of state corporate statutes, select federal statutes, and numerous related cases. Beyond the substantive content, the course is structured to help develop writing, problem solving and analytical skills.

Student teams of five analyze 26 case study problems. The same team presentation roulette and individual memo enticements used in the Business Planning Course (described above) are employed in this course, with two differences. First, the focus of the presentations and the planning memos is not strategic planning based on a review and analysis of strategic options; it is analyzing and applying statutes and cases to solve corporate law problems. Second, the target recipient of the presentations and memos is not a business owner or executive; it is the senior partner of a law firm.

Business Enterprise Taxation, 4 Quarter Credits, Typical Class Size: 15 to 20

This is a JD course that focuses on the federal income taxation of C corporations, S corporations, and partnership-taxed entities. It necessarily entails the analysis of a huge volume of technical detail in a 10 week period that includes only 33 hours of class time. The challenge is to organize the course to maximize the efficiency of each class hour and the students' pre-class preparation efforts. As with most (all?) tax courses, the primary focus in this course is a broad range of tax problems that are designed to teach the law and facilitate the development of the students' ability to read and apply the Internal Revenue Code. The difference in this course is that the correct answers to the problems are not unveiled in class. In order to improve the efficiency of the class time by requiring more of the students up front, the correct answer to each problem is posted to the class website 24 hours before the class period in which the problem is to be discussed. Each student is expected to have reconciled the correct answers with his or her own answers, and thus to have experienced each problem's "teaching moment," before class begins. Class time is spent covering a great deal of ground because the focus of the discussion is clarifying questions and ambiguities to problems that all students are expected to have mastered. Students are strongly encouraged to work the problems on their own or in small study groups before reviewing the downloaded answers. All are repeatedly warned (and some, regrettably, quickly learn) that they will short-circuit the learning process and have a very difficult time keeping up in class if their front-end preparation is limited to reviewing downloaded answers.

Taxation of Corporations and Shareholders, 3 Quarter Credit Hours, Typical Class Size: 60

This is a required LL.M tax course that focuses on the federal income taxation of C corporations and S corporations. There is a heavy use of problems, and the challenge is to maximize the efficiency of the 25 hours of class time that is available over the 10 week period of the course. As described above, correct answers to the problems are posted on the class website 24 hours in advance of each class, and the students are expected to have "reconciled their answers" before each class session. In addition to clarifying ambiguities to problems that all students are expected to have "mastered," class time is spent discussing the policy issues and the all-important planning implications, traps and strategies related to the issues raised by the problems. Students who "cheat" their up-front preparation effort struggle (usually in vain) to keep up with the pace and advanced substance of the dialogue in class. Some complain that "everything is too fast" until they really get with the program. Although minds can differ, I prefer this more aggressive use of class time to the alternative of first unveiling the correct answers in class, in hopes that enough students will just "get it," with no time available to discuss the policy and important planning implications of the issues raised by the problems.

Federal Estate and Gift Taxation, 3 Credit Hours, Typical Class Size – 55 Students

This is a required LL.M tax course that focuses on federal estate, gift and generation-skipping taxes. The course is preparatory to advanced planning courses and requires that a broad menu of technical Code provisions be covered over the 10 week period of the course. Numerous problems are the focus of each class session. Again, students are provided answers to the problems (via the class website) 24 hours before each class session, with the expectation that the answers will have been reconciled and the “learning moment” will have occurred before class begins. Beyond resolving ambiguities raised by the specific problems, the class discussions focus on broader related issues and background information that are essential to the estate planning process.

***Five Days, Three Apprenticeships, One Orientation:
An Integrated Model First Week Curriculum***

Michael Hunter Schwartz, Professor of Law and Associate Dean for Faculty and Academic Development, Washburn University School of Law
(Showcase Presentation)

Perceived Problems: The curriculum described below addresses (in part) a number of troubling deficiencies in law students' first-year experiences. First, as the Best Practices study argues, law students aren't trained but need to be trained in the skills, knowledge and values characteristic of self-directed learners. Second, as both Best Practices and the Carnegie study make clear (as well as Larry Krieger's studies of law students' sense of well being), the law school experience proves painful and excessively competitive for many students. Students have little incentive and few opportunities to collaborate with their peers. Third, both Best Practices and Carnegie emphasize the troubling absence of formative assessment. Finally, first-year law school curricula, as the Carnegie Study makes clear, seldom address, much less integrate, learning experiences focused on the practice-based and the identity apprenticeships.

Innovation: Washburn set out to create a curriculum that engages all three apprenticeships, trains students to work collaboratively, builds students' self-regulated learning skills, and provides early formative assessment. The entire program is a part of one of the students' regular courses, either contracts or torts, and lasts one week-- the new students start law school a week earlier than the continuing students. The program consists of 11 hours of classroom instruction taught by one the students' regular doctrinal professors and nine or so hours of structured study group cooperative learning experiences (denominated "law firms" and led by trained upper division students—see below). The need for upper division students in this design is addressed in Barbara Glesner-Fines' UMKC Peer Teacher Manual, <http://www.law.umkc.edu/faculty/profiles/glesnerfines/bgf-ed1.htm>; and in Paul T. Wangerin, *Law School Academic Support Programs*, 40 HASTINGS L.J. 771 (1989).

Washburn immediately situates all of the students' First Week learning in the context of the students acting in role as lawyers. The first thing the entering students encounter when they arrive on the Monday morning of First Week is a memorandum from a "senior partner" letting them know that a client will be coming in for an initial interview on Thursday (the second-to-last day of the First Week Program). The memo lets the students know the general subject of the client's problem, provides some facts, and explains that the client will be expecting an analysis of the problem by the end of the day Friday.

Between Monday and Friday, all the doctrinal materials the students study on their own and in their groups and all of their class sessions use this client problem as the

rationale for learning. The students must learn the law they need to know to be able effectively to interview the client and analyze the client's problem. The law school based this choice on the research showing that, when law students read cases with a purpose, they read much more effectively and learn more. *See* Michael Hunter Schwartz, *EXPERT LEARNING FOR LAW STUDENTS*, Chapter 9 (2d ed. 2008).

The students also read excerpts from three articles addressing best practices for conducting client interviews and participate in a short class session (taught by a Washburn clinical professor) on the subject. The students also debrief the experience with the Washburn clinician.

After the interview, the students discuss the client's problem in their assigned law firms (see below), preparing themselves to write an objective analysis of the problem. The next day, the students write an objective analysis of the client's problem as an essay quiz. The facts of the client's problem, for the purposes of the quiz, are expressed in the form of a law school exam question. The students' professor provides them with written feedback on their essays.

The essay quiz is offered on a pass-fail basis. Students must perform at a B level to pass the quiz, but those who fail can raise their scores to the passing level by completing an exercise in which they reflect on their learning process and their feedback, plan how they will perform better on future tasks, and rewrite their essays.

The First Week Program emphasizes professionalism and the lawyer's role in society in other ways as well. During the First Day of First Week, the students, after completing a reading assignment on professionalism, work in their law firms to write a Professionalism Oath. On the second day of First Week, the law school selects the best oath, and a judge (this year, a justice of the Kansas Supreme Court) administers the oath to the students. The act of constructing an oath helps students inscribe themselves in their new role as professionals, and the act of taking an oath itself emphasizes their new professional status and responsibilities. Finally, at the end of the second week of class, the students attend a luncheon presentation addressing the lawyer's obligation to the community and each law firm plans a public service project.

In addition to these learning experiences, the students must complete reading assignments that address:

- basic legal civics, from a text and from various websites, addressing how civil and criminal cases move through the legal system, court structures, precedence, law-making, etc.

- everything in Michael Hunter Schwartz, *EXPERT LEARNING FOR LAW STUDENTS* (2d ed. 2008), including: self-regulated learning, the law school learning implications of students' personality type and learning styles, law school and general learning strategies, including reading and briefing cases, identifying techniques of legal reasoning, reading rules, organizational strategies, classroom note-taking, basic legal analysis, exam preparation, time management, and stress management.

These reading assignments must be completed before the first day of First Week.

To better understand themselves as learners, the students take online personality type and learning styles assessments. To help students understand the law school learning process, one doctrinal class session is taught exclusively using traditional law school Socratic method followed by what Washburn calls a "man behind the curtain" discussion of what just happened, the purposes of the questions asked, what students should be including in their notes, and why the professor used the method.

The students also read and brief five or six cases and take a 25 question multiple choice quiz testing their development of the knowledge and skills described above.

As noted above, the students are assigned to law firms consisting of an upper-division, carefully-trained and closely-supervised upper-division student and four-six entering students. These groups last throughout the students' first semester of law school, and Washburn professors also use the groups for in-class cooperative learning exercises. The group leaders are trained in cooperative learning techniques, and group sessions emphasize collaboration, professionalism, and social support. During First Week, in addition to the exercises described above, the groups negotiate the contracts by which they will operate their groups, implement efforts to engage in self-regulated learning, read and brief cases, and try to synthesize the doctrine and policy they are learning.

To further engage students in self-regulation and professional development, the students keep a journal for the entire First Week Program, in which they reflect on their learning process and on their goals for law school and the class. Support for this requirement can be found at Dale H. Schunk & Barry J. Zimmerman, *Conclusions and Future Directions for Academic Interventions in Self-Regulated Learning: From Teaching to Self-Reflective Practice* 225 (1998); Barbara K. Hofer et al., *Teaching College Students to be Self-Regulated Learners in Self-Regulated Learning: From Teaching to Self-Reflective Practice* 57, 76 (1998).

The students also complete a time management, self-monitoring log and peer review each other's logs. The logs allow students to plan and record when they will study, where they will study, how they will study (i.e., the techniques they will use), how

long they will study, when they take breaks (students who take short breaks over a 2-4 hour study period learn more than students who study without breaks), and to evaluate the effectiveness of their choices. Support for this choice can be found at Arthur L. Costa & Lawrence F. Lowery, *Techniques for Teaching Thinking* 72 (1989); Barry J. Zimmerman et al., *Developing Self-Regulated Learners: Beyond Achievement to Self-Efficacy* 19 (1996).

The students are given a detailed set of objectives for the First Week program so they know what they are supposed to be learning and can better self-regulate their learning.

Process: The design of First Week was formally assigned to Professor Schwartz when he was hired two years ago. Thus, the learning activities that occur outside the classroom are solely his responsibility (subject to faculty oversight). So far, the faculty has been very supportive of the above innovations. Professor Schwartz also teaches one of the two First Week courses. Of course, each faculty member, including Professor Schwartz, has full control over her/his classroom. Consequently, Professor Schwartz needed only to convince one colleague to adopt the program and to work with that faculty member to implement the program.

Evaluation: So far, the law school has engaged in only short-term evaluation of these changes. The law school has surveyed the students (both the entering students and the upper-division students), informally surveyed the faculty, evaluated the results of the students' performance on the multiple-choice quiz, and looked at academic attrition. The student survey revealed the need to expand the focus on professionalism (which is reflected in this year's First Week Program as described above) and decrease the workload because the students reported some burn-out. The faculty reported an improvement in student classroom performance and, in fact, academic attrition decreased by almost 50%. Students have averaged 75% correct on the multiple-choice quiz.

In the future, the law school is considering having the upper division students evaluate the students' professionalism (at least the students' professionalism during First Week and in completing their law firm assignments). In the long run, surveys of employers might yield information relevant to evaluating all of the law school's efforts at change.

*The Forest Before the Trees:
Using Orientation to Provide Context and Coherence for the First Year Curriculum*

The Foundations For Legal Study Orientation Program

Tom Andrews, Professor of Law, University of Washington School of Law
Showcase, Saturday, September 6, 2008

Theme 3: First Year Reforms Supplementing the Cognitive Apprenticeship.

Perceived Problems: Law students enter law school without a common foundation of substantive knowledge or understanding of the legal profession. Many of them have no understanding of what it is that lawyers actually do. In addition, as the Carnegie study notes, legal education has traditionally been heavily oriented toward the “cognitive apprenticeship” without attention to the apprenticeships of skills and of professional formation.

Innovation: We decided to expand our existing orientation program to include a substantive component that would trace the trajectory of an actual case from start to finish. We included simulations and demonstrations, supplemented by short lectures on substantive topics and the basic skills of case analysis and reading statutes. The following description is a modified version of one provided to the faculty.

Program Description: In September 2007 incoming 1Ls arrived two weeks early for an eight day program, titled Foundations for Legal Study (FLS) which combine the kinds of “community-building” orientation activities the law school had done in the past with a new “substantive” component. The purpose of the substantive component is to try partially to remedy the lack of anything that could be called a “pre-law” program of study that is required of all applicants to law school.

Based on a real, local environmental court case, *Bradley v. ASARCO*, 104 Wn.2d 677 (1985) & 635 F.Supp. 1154 (W.D.WA. 1986) that wended its way through both state and federal district courts in the 1980s, the program provided a rich example that can be referred to in many of the first year courses. We asked faculty teaching first year courses to draw on this example throughout the year. In addition, we invited them to explicitly reinforce the key concepts, such as “elements of a claim,” that were be introduced in the program.

A. Learning Goals

1. Provide students with a context for the appellate cases they will be reading by:
 - a. tracing a case from client interview through judicial resolution,
 - b. showing what lawyers do with case law in the course of litigating disputes,
 - c. showing how the categories of the law evolve, and
 - d. introducing key professional responsibility concerns.
2. Engage students by providing context for their studies.
3. In the course of meeting the first two goals, give students needed background information on
 - a. Structures of government, federalism, separation of powers & the modern regulatory state,
 - b. The adversary system,
 - c. The sources (texts) that make law and where to find them,

- d. How to read a statute, rule or regulation, and how to read a case,
- e. The vocabulary associated with the stages of a lawsuit,
- f. Basic business concepts relevant to suing a corporate defendant.

4. Provide a very basic introduction to legal theory

B. Overview of FLS Program Structure

The FLS program traced the evolution of the Bradley case from an initial mock client interview through its filing in state court, removal to federal court, certification of key legal issues to the Washington Supreme Court, and eventual resolution on summary judgment. The final day of the program considered the case in light of theories of justice and what a trial in the case would have looked like. In addition, the plaintiffs, their lawyer, and one of the defense counsel joined us and reflected on the case.

The program incorporated varied teaching methods. Key background information, such as structures of government and federalism, how an adversary system operates, and how to read statutes and cases, were provided through short lectures at appropriate times. Students worked in small groups to apply the concepts they were learning. In addition, students confronted several ethical concerns as the case progressed.

Students saw demonstrations of an abbreviated initial interview, a conference between a judge and her clerk -- performed by a sitting federal district court judge -- and an oral argument before the Washington Supreme Court. They performed a brief oral argument of a summary judgment motion. And they looked at documents including a complaint, answer, selected discovery requests, cross-motions for summary judgment and briefs.

The students took a brief online multiple-choice exam on structures of government and federalism.

C. Background: Bradley v. Asarco, 104 Wn.2d 677 (1985) & 635 F.Supp. 1154 (W.D.WA. 1986).

This is a local "common law" environmental damage case that arose from the operations of the American Smelting & Refining Company (ASARCO) smelter in Tacoma. The Bradleys were property owners on Vashon Island who sued ASARCO in state court alleging trespass and nuisance for depositing arsenic, cadmium and lead particulates emitted from ASARCO's smelter onto their land. They filed the case in state court; ASARCO had it removed to federal district court on diversity grounds; Judge Barbara Rothstein determined that it raised unresolved issues of state law about whether a claim for trespass would lie for depositing microscopic particulate matter (and, if so, whether actual damage was required), so she certified these questions to the state supreme court.

The Supreme Court answered the questions asked (quoting our own Professor Bill Rodgers at great length) and sent it back to federal court. In brief, the Supreme Court held that the element of "intent" was satisfied (relying on the Restatement concept of "objective" intent), that microscopic particles can constitute a trespass; but that unlike common law trespass, but more like nuisance, actual and substantial damage was required. On remand, Judge Rothstein threw the case out on summary judgment because the Bradleys had failed to come forward with evidence of substantial damage. (Had failed, that is, to present enough evidence at the summary judgment stage to avoid SJ.)

The Washington state Supreme Court decision in Bradley is in several of the leading tort casebooks (e.g. Prosser) and not infrequently is taught in first year torts when dealing with “environmental trespass” and/or the question of “intent.” It is also directly relevant to first year property, for the same reasons. It provides a useful primer on how the common law doctrine of trespass can be used to address environmental contamination. Collaterally, the fact that the case moved from state court to federal court to state court and then back to federal court can provide an excellent vehicle for illustrating the interplay between state law and state courts and federal courts (“our federalism”). Third, the case can easily be used to illustrate the anatomy of a lawsuit. We can use it to talk about lawyering from the beginning of a lawsuit through to its completion, including questions about fees and expenses. The fact that the case was ultimately decided on SJ can be used to convey some basic civil procedure lessons. The case did not involve a trial, but was not difficult to describe what a trial on damages would have looked like. Finally, the two opinions in Bradley are clear and relatively short and provide an ample basis to teach principles of case analysis.

There are collateral aspects to the Bradley litigation that bear mention.

(1) First, the case arose locally and many of the lawyers involved in the case are still around. Two of our faculty had experience related to the case. Professor Bill Rodgers was quoted extensively in the Supreme Court opinion. Professor Michael Robinson-Dorn was involved in a sequel case. Moreover, all the court files were ready to hand in the state and federal courts and so we were able to obtain the original documents that to put before the students.

(2) Second, Bradley was not the end of the ASARCO story. Following Bradley, a class action of property owners was brought and ultimately settled for \$67.5 million. So there was damage and there are interesting things that could be said about ADR in the sequel to Bradley. Another case brought on behalf of residents of Vashon and Maury Island was also brought and there is an unpublished opinion denying SJ in that case.

(3) Third, the case can provide a platform from which to raise legal ethics issues. On the one hand, one could discuss basis issues of competence in that the Bradley case was lost on summary judgment. On the other, one can raise issues of confidentiality. What did Asarco’s lawyers know and when did they know it, relating to the toxic particulate matter that ASARCO was discharging into the environment? We do not know whether there were ever any allegations that ASARCO or its lawyers were deliberately withholding information about the potential dangers of its emissions, but such allegations are implicit in the supreme court’s decision that ASARCO intended to trespass because it knew with substantial certainty that its emissions were settling on Vashon Island (and other areas in the sound). So it is not a stretch to use the case to raise questions about what a lawyer’s ethical duties are when he/she knows (from confidential information) that the client is engaged in an ongoing activity that threatens the health and property interests of others. Finally, in a later stage of the Asarco litigation, one of the lawyers who represented Asarco became a resident of Vashon and joined in the litigation against Asarco. There is an interesting conflict of interest. So there is a great deal that could be done with this topic from a legal ethics point of view.

(4) The case also ties in with the goal of illustrating the role of regulatory agencies and provides an opportunity for looking at some statutes or regulations and introducing students to the reading and interpreting of statutes because there were at least three background regulatory schemes at play in Bradley. As the court says:

The emissions from the Tacoma smelter are subject to regulation under the Federal Clean Air Act, the Washington Clean Air Act (RCW 70.94) and the Puget Sound Air Pollution Control Agency (PSAPCA). Currently, the Tacoma smelter meets the National Ambient

Air Quality Standards (NAAQS), both primary and secondary, for both sulfur dioxide and particulate matter. As a result of the variance granted by PSAPCA, the Tacoma smelter is also in compliance with PSAPCA Regulation I concerning particulate emissions.

(5) The case can obviously be used to raise larger issues about law and morality. What should the law's role be in dealing with environmental damage that historically has been "externalized" by companies? What role can and should the law play in addressing such issues.

In short, the Bradley case can be used to show incoming 1Ls that cases are about real people and that the appellate decisions that they mostly read in first year are only the tip of an iceberg. Certainly cases do not fall neatly into tight doctrinal boxes called torts or property or civil procedure. The lawyers involved have a large role to play in lawsuits, but ultimately it is not the most important role. And lawsuits may have reverberations that long outlast them.

Process: This reform was proposed along with several other changes to the first-year curriculum. Support came from several perspectives: faculty who hoped that substantive background information could be frontloaded, others who wanted to expose first our students to ethical issues, and still others who were concerned about providing students with context about what lawyers do. The Dean provided summer support money to the faculty member who did the bulk of the work on the orientation program by identifying the case, tracking down the documents, and interviewing the parties and the lawyers. The many faculty members who taught segments of the orientation program also received stipends.

Evaluation: Students provided daily feedback and brief final assessment through "clicker" questions during the orientation. Many sent follow-up comments by e-mail in the immediately following weeks and again at the end of winter quarter. Feedback was generally very enthusiastic, but there was some concern about the length and intensity of the program for students who needed to get settled in a new city.

Faculty response was also positive, but we did not do a formal survey. The Civil Procedure teachers, in particular, felt that the context provided by the orientation was extremely helpful.

We are offering the program again in 2008, beginning right after this conference, with a number of modifications based on student feedback, and feedback by several faculty who sat through the entire academic portion of the program. These include reducing the length of some of the lectures and incorporating more experiential exercises to be performed by the students. A critical challenge will be whether we can sustain the program over time. If, as we currently anticipate, we will need to use a new case after three or four years, a key question will be whether a faculty member will step forward to develop the materials.

Carnegie/Best Practices: Foundation for Legal Studies directly responds to Carnegie's plea for a more integrated curriculum. In addition, in designing the program, we used varied teaching methods, emphasizing active learning, thus drawing on the lessons of Best Practices.

1L “Capstone” Legal Research and Writing Options Focused on Real Legal Problems

Theodore A. Myhre, Lecturer, University of Washington School of Law

Presentation, Saturday, September 6, 2008

Theme 3: First Year Reforms Supplementing the Cognitive Apprenticeship.

Problem: The University of Washington School of Law requires a full year of legal analysis, writing, and research during the first year, as well as an analytic paper required during the second or third year. Two years ago, the decentralization of the legal writing program presented the option of restructuring the 1L curriculum to condense basic legal skills concerning research, analysis, common law interpretation, statutory interpretation, and basic legal conventions, style and use into two quarters. The third quarter could then be used for capstone courses for more advanced and focused studies. These advanced studies could then be used to bridge the gap between the first year and the upper level requirements in a more integrated manner.

Innovation: Capstone courses for legal writing programs create an opportunity for extensive alignment of many interests and agendas:

- (1) They allow the students to self-select a topic area of their choosing, rather than be forced into an unrelated area of law, thus allowing them to begin exploring a focus to their work and engage fully with the material.
- (2) The variety of possible capstone courses allows academic cross-fertilization by providing legal writing professors the academic freedom to explore pressing legal issues normally outside of the purview of traditional legal writing courses and to recruit doctrinal faculty to explore teaching a more skills-based course.
- (3) Capstone courses align the curricular agenda of the law school with the curricular agenda of the first year in a way that advances the interests of both in a more integrated manner.
- (4) Capstone courses align the work of the law school with the needs of the community, thus opening further avenues of communication and interaction.
- (5) Capstone courses produce consistently high evaluations by students because such courses satisfy many of the motivations and goals which brought the students to law school in the first place and allow them to practice the skills earlier acquired in law school in a mastery format.

Process: The process of forming capstone courses allows a general administrative title to contain a multiplicity of doctrinal or clinical topics, without the need to proceed through a curriculum committee. Essentially, participating faculty must select a legal issue that involves a pressing legal question of general concern, such as civil rights, asylum/immigration, public interest law, etc., or a task oriented process that requires professional mastery, such as judicial opinion writing/clerkships, pretrial motions practice, advanced research and rhetoric, etc.

The capstone courses are best viewed as a project that can be completed in a short period of time (6-10 weeks) that is taught by an “expert” in that area. These courses should be

taught by faculty or adjuncts from the doctrinal courses, as well as the skills-based courses in order to provide broader topical coverage. These course listings should be assembled to provide a menu from which the student may select their preference. Such self selection overcomes much of the learning-resistance often seen in students working on complex assignments for required courses because their engagement carries them deeper into the learning curve.

Each capstone course is generally smaller (12-36 students). Each course presents a description of the project and a clear articulation of how to advance student mastery of identifiable skills and professional work product. Some of the courses adopt student-centered learning approaches that facilitate the mastery of research, analysis, writing, and presentational skills. Others adopt a more topic-centered approach that enhances student knowledge for developing professional skills and work product in relation to the course topic.

Offering and staffing the capstone courses may be a challenge that requires participating faculty to recruit their colleagues to join the experiment. Other challenges include selecting an issue that can be tackled by the students and result in a tangible professional work product that can then be evaluated. Similarly, the work product itself may be individual or part of a group process, which engenders evaluation concerns for faculty. Often, faculty are allowed the opportunity to try out different teaching styles, such as facilitative, cooperative, mentoring, or authoritative in ways that other larger classes have not allowed previously.

The current solution to these challenges has been to allow each participating faculty to offer the course or courses that are meaningful to her or him, to develop a concise and manageable curriculum for the students, and to choose the teaching and evaluation style best suited to the demands of the project. The ultimate evaluation of student work product has been based on a mastery system, rather than a curve, because the subject matter and work product is so varied. Law school curricular goals, faculty freedom, and student engagement are the strongest factors in creating a successful capstone course. For example, if international law, civil rights, public interest law, business law or litigation are topics that a law school would like to integrate into the first year curriculum and that subsets of student have a particular interest in studying, then the capstone course offer a vehicle to deliver such doctrinal curriculum in a skills-based, best practices format.

Evaluation: The capstone courses are subject to course evaluations as are all other credited courses. Student evaluations are consistently high. They often evaluate the courses in the top one or two categories provided. Individual comments vary, but include statements such as, "This is the reason I came to law school" or "This course has done more to prepare me for my job this summer than any other course I have taken in law school." Feedback has been phenomenal and the capstone courses appear to be a substantial and effective addition to the first year curriculum.

Carnegie/Best Practices: The capstone courses are all about integrating information-based knowledge and skills-based knowledge into a unified whole. The most effective method of leaning is actually teaching one's peers. Legal communication requires students to educate or teach their peers what they have learned and, in the process, hones a professional skill set that provides the student with effective practices and experience with creating professional work product during the first year curriculum.

Additional resources: To be provided during the session. Also, feel free to contact me at tmyhre@u.washington.edu for materials and/or other resources.

Below please find a few sample capstone course descriptions for the Spring 2008 academic year.

Public Interest Law Practicum

Professor: Theo Myhre

Maximum Enrollment: 36 Students

Section E: Wednesday, 8:30-10:20

This Basic Legal Skills section will operate collectively as a public interest law project, in which students will develop legal research, analytic, and writing skills by proposing and assessing solutions to complex legal or policy problem. The project this year will be based on issues concerning lesbian, gay, bisexual, and transgendered ("LGBT") youth.

LGBT youth comprise a shockingly high percentage of the children within the juvenile justice system, the foster care system, and the homeless population. They also represent a vulnerable group within the educational system. Accordingly, we will pursue research and formulate recommendations for legal issues affecting LGBT youth within these four areas. We will attempt to work in dialogue with groups at both the local and national level to formulate the specific legal and policy issues. Students will then work with the professor to determine which specific questions they will research and answer.

This project will be largely student-driven; Professor Myhre will serve as a facilitator and advisor to student research teams. Students will begin by participating in brainstorming sessions and then will self-organize and decide which research avenues to pursue and how to pursue them. Students will work together in teams and communicate with other teams in writing about research progress and remaining hurdles. Each team will assemble a chapter in a comprehensive class-wide report addressing and assessing possible legal solutions to the problems. Students will likely participate in public panel discussions to present these materials to our community. This project would be a good choice for students who want to develop professional experience in public interest work, professional presentations, social justice issues, and who want to develop more advanced legal skills.

Asylum Law Practicum

Professor: Tom Cobb

Maximum Enrollment: 24 Students

Section C: Friday, 1:00-2:50

Students in this Basic Legal Skills section will work in groups to research case law and country conditions for several simulated asylum law cases and use that research to write model briefs. The scenarios we consider will embrace legal and factual issues that emerge from Microsoft's pro-bono immigration program. This program is part of Volunteer Advocates for Immigrant Justice (VAIJ), which is a joint Microsoft and American Bar Association initiative to provide pro bono legal services to indigent, undocumented immigrants facing removal from the United States. Attorneys in VIAJ have identified several legal issues in need of additional research and have asked us to work on those issues. At the conclusion of the class, students will submit their legal research and model briefs to these attorneys for use in real asylum cases. This class will take place in a workshop format. Professor Cobb will serve as a facilitator and advisor to student research and writing teams.

Human Rights Research Practicum

Professor: Mary Hotchkiss

Maximum enrollment: 24 students

Section F: Friday, 10:30-12:20

The increasing globalization of the practice of law calls for specialized legal research skills. This seminar will introduce students to the basics of international and foreign law research by focusing on the methods of human rights research. Sources for human rights law include treaty law, decisions from specialized courts, reports of States parties, commission reports, and ephemeral material from non-governmental organizations.

The seminar will begin with an introduction to the origins of modern international human rights law, examining the United Nations Charter and various components of key treaties: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

In the context of examining key human rights instruments, students will learn how to locate the text of treaties and agreements, obtain status and ratification information, and analyze treaty intent through background documents. Another aspect of human rights research is the documentation of human rights conditions in other countries. Students will learn how to locate this documentation and basic resources for foreign law research. Students will be evaluated on the basis of three finding assignments and one 6-8 page memorandum.

Judicial Clerkship Practicum

Professor: Sarah Kaltsounis

Maximum enrollment: 36 Students

Section J: Wednesday, 10:30-12:20

The first legal job for an increasing number of UW students is to work as a judicial clerk—an attorney who serves a one- or two-year term as an advisor for a state or federal judge. This workshop will help prepare students for a judicial clerkship after graduation or a judicial externship during law school. The workshop will begin with an introduction to judicial ethics and the inner workings of the state and federal court system. Students will then engage in the primary type of work performed by judicial clerks by completing one major writing assignment: evaluating a case record that includes the parties' briefs and supporting documents, then preparing a bench memorandum recommending how a judge should decide the case.

This workshop will focus on a real case that is currently pending at the U.S. Supreme Court and is set for oral argument on April 16, 2008. The case, *Kennedy v. Louisiana*, raises the issue of whether a state violates the Eighth Amendment when it imposes the death penalty on persons convicted of child rape. Students will be able to pick which justice they want to "work" for, evaluate the justices' questions and the parties' answers during oral argument, and then watch for the Court to issue its opinion(s). Students do not need to be particularly interested in the death penalty, criminal law, or even appellate advocacy to take this course; the skills learned will benefit students who are interested in a wide variety of practice areas or in obtaining any type of tribal, state, federal, trial-level, or appellate clerkship.

Pre-trial Motions Practice

Professor: Theo Myhre

Maximum enrollment: 24 Students

Section D: Friday, 8:30-10:20

This course will advance a student's legal research, writing, and oral presentation skills in an advocacy setting. The course will focus on legal advocacy through simulation of a pre-trial motions practice. The exact area of law at issue is to be announced, but it will most likely be in relation to a civil cause of action sounding in contract and tort law. Procedurally, the assignment will focus on making or responding to a motion for partial summary judgment.

The professor will assign students to represent either the plaintiff or the defendant. Students will research and write a brief in support of their client's position. Students will learn techniques for conducting effective oral arguments, and then, in a simulated session of the King County Superior Court, students will make an oral argument based on their briefs. Students will be encouraged to visit a local trial court to observe the motions calendar.

This project would be a good choice for students who are interested in exploring legal advocacy and pre-trial courtroom practice, which is the most frequent part of any career in litigation. Self-motivation is essential because in-class time will not be focused on conducting your independent research, but rather upon the rigorous analysis and persuasive arguments in an advocacy setting.

Northeastern's Legal Skills in Social Context (LSSC) Program
Professor Susan Maze-Rothstein,
Northeastern University School of Law

At Northeastern University School of Law our 1L signature course is Legal Skills in Social Context. The pedagogy is deeply experiential and team lawyering focused. We seek to teach law students what it means to use law as a tool for social change from the moment that they arrive in school. It involves the entire first year class of 200-plus students, 32 upper level students, 4 full time faculty, 16 advising attorneys (mostly faculty but some alumni practitioners as well) and our entire library staff. For the past decade, this layered supervision system has allowed us to do 16 social justice projects annually, which translates to approximately 20,000 hours of pro bono service per year through our 1L class.

Summary of LSSC Combined Goals

LSSC is a unified program that teaches four core skills necessary for effective lawyering in the 21st century:

1. Legal research
2. Legal writing
3. Client representation
4. Exploring law in its social context

LSSC provides students with the opportunity to develop fundamental research and writing skills. Practicing lawyers must know how to do legal research in order to advise their clients as to the clients' legal rights and duties. They must also know how to effectively communicate the results of their research to diverse audiences. The research and writing component of the LSSC program will teach students these basic legal skills. Students will prepare legal memoranda, briefs, and a client letter under the supervision of adjunct professors who are practicing attorneys in the Boston area.

The social justice component of the LSSC program also embraces the following unique aspects of the NUSL mission for which it has received national recognition:

- a. Applied research, writing, and sophisticated analysis for actual clients;
- b. Special emphasis and training on team problem solving and the development of complex work products;
- c. Heightening student awareness of the societal impact of law and the importance of working with differing points of view.

This component of LSSC instruction is delivered by a dynamic team of full-time faculty, advising attorneys, upper class student lawyering fellows and librarians. The synergy among these groups of participants creates a rich mix of skills and perspectives for beginning lawyers.

Summary of LSSC Social Justice Component Goals

In the social justice team lawyering component of LSSC students learn to relate to and represent clients, be they individuals or organizations, complicated by our societal diversity. To prepare students to work with real clients on projects that use law as a tool for social change, the entire first semester of study in this component of the course focuses on the following critical skills:

1. That legal doctrine is much more fluid and contingent(?) than it is settled and fixed;
2. That the fluid and contingent nature of law reflects both societal power relationships and a variety of cultural values and institutional forces that shape and are shaped by law;
3. As such, that there is a fundamental non-neutrality about law and its function within society seen most starkly where law touches those most marginalized in our society.

These three critical analytical principles are the sum and substance of the analytic study considered during the first semester studied through the fall text that includes a unit on lawyering, property and civil procedure. In the second semester social justice project work these same principles are used to advance a client organization's social justice agenda.

While the legal research and writing component of the program concentrates on the use of settled law to practice fundamental legal research and writing skills, the critical analytic study in the program explores how and why law is simultaneously settled and unsettled -- or arguably unsettled. Students who can grasp

these compatible, but seemingly polar aspects of the law, also learn that at different times lawyers are called on to use their analytic abilities differently. Together the sophistication of the LSSC skills course sets NUSL students apart from other student interns in their coop and job placement experiences.

In past years, the social justice projects have served human rights organizations, state youth courts and legal services providers. Each year, teams of first-year law students, closely supervised donate 1500+ hours of legal and policy research and analysis (per project, approximately 20,000 hours program wide) to non-profits. You will find information about the program, additional project descriptions from prior years and the on-line application form (also attached above in a PDF version) at this law school website link <http://www.slaw.neu.edu/course/lssc.html>.

Summary of LSSC Legal Research and Writing Component Goals

The research and writing classes will teach students how to do what practicing lawyers do every day: research the law and write about it. All students should master basic legal research and writing skills in their first year of law school so they can arrive at their first co-op confident in their ability to handle research and writing assignments.

The research portion of the class will introduce students to the many specialized legal resources they must use to determine the current state of the law in a particular subject area. These resources include secondary authorities such as legal encyclopedias and law reviews, and primary authorities such as case reporters, statutes, and administrative regulations. Because different employers will have access to different forms of legal materials, students will learn to use these resources both in print form in the library and in electronic form online. Since legal research can be both time-consuming and expensive, students will also learn how to create a research plan which is efficient and cost-effective.

Students will then be taught how to analyze the law they have found and apply it to the facts of their client's case. They will answer questions such as: What is the applicable rule of law in the client's situation? Is the rule of law clearly stated in a statute or a prior case or must it be synthesized from a number of different cases? Is the client's factual situation the same or different from prior cases? What are the necessary legal elements a plaintiff must prove to win his or her case? What defenses does the defendant have?

Once the law and the client's factual situation have been thoroughly researched and analyzed, students will learn to communicate their findings to others. The writing portion of the class will teach students the art of legal writing. Legal writing differs dramatically from most undergraduate writing. Students in college are frequently rewarded for the length and complexity of their papers, for numerous quotations demonstrating the depth of their research, and for original ideas. Lawyers, however, must learn to write simply and concisely, with few quotations, and must clearly demonstrate to the reader how their conclusions are drawn logically from established legal principles. Throughout the year, students will practice their legal writing skills. They will learn how to communicate with diverse audiences by organizing and writing legal memoranda for use by other lawyers, briefs to be filed with the court, and a letter explaining the law to a client.

Students will apply the research and writing skills learned in the first semester to preparation of their Social Justice Projects in the second semester, where the full array of skills learned in the program are brought to bear.

NUSL is proud of LSSC, its signature program that readies students for the challenges of law practice in the 21st century.

LSSC SOCIAL JUSTICE PROJECT SUMMARIES 2008-2009

1. **ACLU Technology and Liberty Program** (Washington DC) - This project will address erosion of U.S. Constitution Fourth Amendment privacy provisions in the face of evolving technologies, and the potential role of stronger state constitutional privacy guarantees as an alternative source of protections. U.S. Supreme Court cases like *U.S. v. Miller* and *Smith v. Maryland* have narrowed the scope of "reasonable expectations of privacy" and by creating the "third party doctrine." The deliverable will be a strategy memo comparing the best states to pursue suits that will advance the goal of data protection and individual privacy.
2. **Boston Area Colleges Election Improvement Project**-This project will examine the legal and practical aspects of how states have sought to regulate Election Day exit polling and how courts have treated

attempts to inhibit the process, particularly in light of First Amendment protections. Exit polling is increasingly important in redistricting disputes, and in assessing voting barriers facing various marginalized communities. From these findings, the project will develop guidance concerning best practices for the regulation of exit polling and concerning constitutional challenges to overly restrictive regulations.

3. **Committee for Public Counsel Services -- Mental Health Litigation Unit** -The goal of this project is to eventually establish through legislation or case law, a right to counsel in all guardianship proceedings in Massachusetts. It will explore how and whether to bring a class action on behalf of indigent unrepresented wards in guardianship proceedings (adults with mental illness, adults with mental retardation, the elderly, etc.), asserting that the imposition of guardianship without the benefit of counsel constitutes a substantial due process deprivation of liberty.

4. **Drug Policy Alliance** -This project aims to explore Veterans' access to mental healthcare/substance abuse treatment programs, and to propose legislative and policy changes that will increase their access to such services. The project begins with a factual investigation into the scope and possible causes of the problem veterans now experience in accessing mental health and substance abuse treatment programs. The project will then examine the various laws at both the federal and Mass. state level that either mandate or impede veterans' access to these vital treatment programs. The end product will propose how the laws should be changed, and will be presented at a conference sponsored by the Drug Policy Alliance.

5. **Justice Resource Institute/JRI Health Law**-This project will focus on developing a city-wide system for the provision of HIV/AIDS legal services. The ultimate goal is to create a seamless system of legal services by building upon the current system as well as seeking new and innovative ways to address the breadth and depth of legal issues that people living with HIV/AIDS face. The project will examine the current state of legal support for persons with AIDS/HIV in these particular areas and will diverse funding sources to create a city-wide system for HIV/AIDS legal services.

6. **LAMBDA Legal** - This two pronged project will develop an educational campaign and supporting materials to help non-transgender people (including gay and lesbian people) understand that all human beings have a gender identity and expression and that every gender non-conforming person is vulnerable to discrimination on that basis, and thus should have recourse to legal protections. It will also, develop a model federal court brief that explores perceived sexual orientation discrimination claims, the viability of Title VII sex stereotyping claims and Constitutional claims that gender/expression based unequal treatment should receive heightened scrutiny.

7. **Legal Assistance Corp. of Central Massachusetts** -This project looks to expand opportunities for minority-owned businesses, and in particular immigrant-owned businesses. It will examine whether the City of Worcester and other local governments can create legal incentives, programs or preferences for such businesses. This will entail research on the legal issues presented by municipal preferences for minority-owned businesses that will withstand legal challenges.

8. **Legal Momentum** -This project will prepare a study of local ordinances that require affirmative action in government-funded contracting with a particular focus on Worcester, Boston and New Haven ordinances, and also the federal law governing these ordinances. A primary focus for the client organization is measures that enhance opportunities for women in the skilled construction trades. The project will include an analysis of the legal issues such ordinances raise, will discuss legal challenges to such measures, and will assess their political and enforcement aspects.

9. **Mass Black Legislative Caucus**-This project will explore prisoners' rights to mental health services under Massachusetts and federal law (and particularly the Americans with Disabilities Act) and the extent to which current Massachusetts legislative proposals further the goal of securing mental health services for prisoners. The project will also investigate the best legislative or administrative models from other states that enhance, if not guarantee, the provision of community-standard mental health services to incarcerated individuals. Finally, the project will examine any documented gaps between the provision of mental health services to people of color verses Caucasian prisoners, and research the legal implications of such gaps including potential civil rights violations. The project's goal is a set of recommendations that will address any disparities in the provision of mental health care 1) between individuals in the community and those who are incarcerated (with an eye to successful reintegration of prisoners with mental health issues upon release) and 2) among distinct groups of incarcerated individuals, including people of color and Caucasians.

10. **Medial Legal Partnership for Children** -The primary goal of this project will be to explore legal solutions to the problem of lack of mental health services in Massachusetts public schools. The project will research established federal and state laws to determine what services are now mandated and will also explore how new legal and legislative reforms, including the "Rosie D" decision and the recent expansion of the Massachusetts Children Psychiatric Access Project (MCPAP) may increase the availability of services to certain child populations. [The MCPAP was recently funded by the Massachusetts legislature to provide free mental health screenings in the school settings]. The project will identify gaps in services and recommend promising legislation and/or policy reforms to address these gaps. As a final product, students will prepare a set of practical guidelines to assist parents of children with mental health problems in accessing needed mental health services.

11. **National Center for Law and Economic Justice** -This project focuses on communication access for people with disabilities in dealing with state and local agencies that provide government benefits. It will identify best practices for benefits agencies in serving clients with disabilities who make contact by telephone, email, or other alternatives; develop a manual for legal services and other advocates on policies and practices to advocate for in their states and localities; analyze applicable disability rights and benefits law; and develop litigation strategies.

12. **Office of Senator Spilka** -Law office will need to develop a model for a free-standing youth court based on restorative justice principles to assist youth who are in need of Children in Need of Services (CHINS) law options. Building on the work the work of several prior LSSC student law offices, the final product will be legislative recommendations to create a system of restorative justice based youth courts statewide (Massachusetts) as a diversionary program for the Juvenile Court System.

13. **Seattle Community Law Center**-This project seeks a training manual on Social Security Disability/SSI overpayments, Due Process and accurate decision-making by district offices for claim representatives of the Social Security Administration. The manual will detail how to correctly process and evaluate requests for reconsideration and waiver of alleged overpayments in Social Security Insurance Disability Insurance or SSI.

14. **Shelter Legal Services** -This project addresses the problem of individuals who are at risk of losing their housing, or who are unable to secure housing, because they are required to register as sex offenders under the increasingly restrictive laws and/or regulations of the Massachusetts Sex Offender Registry Board (SORB). The project will research the Massachusetts statute creating the SORB, including its legislative history, the development of internal SORB regulations, and the expansion (or restriction) of SORB's powers through state and federal case law. Research will also include how an offender can terminate the registration requirement and what arguments can be used on appeal to support such a termination. Students will be encouraged to research similar registration and classification systems in other states, as well as secondary legal and other sources, to develop arguments against SORB's increasing power to restrict the housing choices of offenders.

15. **Victim Rights Law Center** -This project examines the problem that campus disciplinary proceedings in several Boston area colleges rarely—if ever—result in sanctions against an alleged perpetrator of sexual assault. The project has two components. First, it will investigate and compare disciplinary proceedings (and their results) in selected Boston area colleges to those disciplinary proceedings at colleges where sanctions are far more frequently imposed, in an effort to identify factors that may explain why so few disciplinary proceedings in the Boston area colleges result in sanctions. Second, the project will perform research to answer a very specific legal inquiry posed by the client VRLC, namely: "Can a class action lawsuit under Title IX be used to address the inadequacy of campus disciplinary proceedings against alleged perpetrators of sexual assault?, And, if so, what are the prerequisites for filing such a lawsuit?"

16. **WAGE, Inc.** - In a mobilization lawyering ongoing project to end the gap in women's wages, this project will continue our state statutory analysis on gender discrimination laws (equal pay statutes, equal rights amendments, human rights statutes and human rights commission regulations, sexual harassment statutes, comparable worth statutes, civil rights statutes and civil rights commission regulations and statutes and regulations for commissions against discrimination) in select states. It will also examine Alternative Dispute Resolution options and means of educating women about how to understand the legal parameters of negotiating pay at the point of hiring.

Legal Skills Program at William & Mary, a Pre-MacCrate Innovation
Jim Moliterno, Tazewell Taylor Professor of Law and Co-Director Legal Skills
Program, College of William & Mary
[Showcase Presentation]

Problem: The Program was meant to respond to dissatisfaction with legal education's treatment of lawyer skills and lawyer ethics teaching and the lack of connection between the two.

Innovation: We combined the teaching of lawyer skills and lawyer ethics. By teaching how lawyers do their work at the same time as we teach the ethical and legal norms that guide that work, we enhanced the teaching of both. This innovation was about connections, but not connections with the first year curriculum. Instead, we sought to capitalize on the connections between lawyer skills and lawyer ethics teaching, in an experiential education model.

Learning professional norms and ethics is better done in role. That simple truth is the fundamental premise of the Legal Skills Program at the William & Mary Law School. All other corollary principles that have guided the design, implementation, and modification of the program over its 20 years of operation spring from this fundamental premise.

Since 1988, each student at the William & Mary Law School has taken the Legal Skills Program, a four semester course of comprehensive skills and ethics development. In the Program, students are members of one of twelve small (approximately 16 person) law offices that are led by a Senior Partner (full-time or adjunct faculty member) and a Junior Partner (a competitively selected, paid third year student).

They learn through readings and classroom sessions the material that would be covered in the professional responsibility course and a range of professional skills courses, including the research and writing course, an interviewing course, a negotiation course, a document drafting course, and a basic pre-trial and trial practice course. Combining the instruction in what lawyers do with the instruction in the ethical and legal principles that limit and guide what lawyers may and should do allows for a deeper, more meaningful learning of all of the material involved, especially the material relating to the ethical norms of the profession.

While engaged in their classroom learning, the students are cast in the role of lawyer in a series of sophisticated simulations. Each student represents people playing the roles of his or her clients from a beginning of the lawyer-client relationship to some logical conclusion of it. In some instances, that conclusion is a negotiated settlement of a dispute or a negotiated transaction; in others the conclusion is the end of the litigation process. Through their representation of four clients, students face conflicts of interest, confidentiality, and duty to court issues, among others, all in the role of lawyer. In every instance, the representation allows the student to have managed a lawyer-client relationship from beginning to end, to

manage relationships with supervising lawyers, opposing parties=s lawyers, team-member lawyers, and in appropriate instances, court personnel.

Through these simulations, the students become practiced at the activities of lawyering, but more importantly become acclimated to the professional relationships within which they will soon live their working lives.

There simply is no better way to learn admirable ways of behaving than to engage in those ways with thoughtful mentors and teachers as guides. This was the best aspect of the apprentice system, which is happily gone because of its many other fundamental shortcomings. Nonetheless, to capture this role-based introduction to the profession and place it within our academic institutions enhances the professional values of those entering the profession.

Process: Our program was born of failure. In the mid-80's, we had a failing legal research and writing course. It could not have succeeded with the miniscule resources that were being allocated to it.

When my faculty colleagues set out to solve the problem of its failing legal research and writing course, they did not merely decide to place more resources in the current program. That would have been a sensible solution given the paltry staffing situation in the failing program. Instead, however, the faculty looked for more creative opportunities to make something good from the bad situation. It looked broadly to include consideration of other skills courses and the professional responsibility course.

Some political choices were made in the design of the program to make it more likely to be adopted. The first-year curriculum has a deeply entrenched constituency supporting the status quo. It has been said correctly that changing the law school curriculum, especially the first-year curriculum, is like trying to move a graveyard. We decided to leave the first-year curriculum alone except for the addition of our new course operating in place of the abandoned legal research and writing course. No credit hours were taken from any existing first-year course. There was no synergy sought between the subject matter of any first-year course and our new program. Although there is attraction in combining a skills course with a substantive law topic, the complications of doing so with an ever-changing ever-realigning first year faculty were thought simply too daunting a task to undertake and sustain. Notice I said "sustain." From the first, we decided that we wanted to create a program that could last. Leaving the first-year curriculum alone was a key to accomplishing that goal. Except for noticing an improvement in their students thinking skills early in the first semester, no first year faculty member was affected by the adoption of this program.

Rather than seek partnership with any substantive first-year course, we partnered with the also poorly-staffed professional responsibility course. We thought then, and we think now that there is great advantage to combining the teaching of lawyer skills courses, that is, how lawyers do their work, with the lawyer ethics course, that is, how the law regulates the way in which lawyers do their work. We undertook to

be not only a comprehensive lawyer skills course covering the ordinary range of lawyer skills subjects, but also the required professional responsibility course for our law school. That was a frightening undertaking and a weighty decision. To me, that one decision more than any other has distinguished what we have done from other similar efforts at other schools.

Our solution was accomplished with the resources that were currently allocated to the replaced courses and those that would be allocated to a mid-cost legal research and writing program.

Our process began with an existing failure, proceeded to creative problem-solving, and succeeded because of a combination of this open-mindedness and good luck.

Evaluation: The Program has been exceedingly well-received and its success documented. Favorable references to the Program have been made in numerous publications including periodicals such as *The ABA Journal*, *The Professional Lawyer*, *The Wall Street Journal*, and *U.S. News and World Report*. Book and law journal authors have singled out the Program for praise.

The Program was the inaugural first place recipient of the ABA E. Smythe Gambrell Professionalism Award in 1991.

Extensive student evaluations are conducted at the end of each semester and are carefully studied. Our evaluation documents go well beyond the usual course law school course evaluation documents.

More importantly, perhaps, empirical data generated supports the proposition that the Program better prepares law graduates for their professional lives, and in particular to identify and resolve ethics issues that they face in their practices. Some of the data gathered is described in Professional Preparedness: A Comparative Study of Law Graduates' Perceived Readiness for Professional Ethics Issues, 58 *Law & Contemporary Problems* 259 (1995). Among other things, the survey evaluated the views of law school graduates, 2-5 years out of school, regarding their law school preparation for numerous lawyering tasks. Four schools=s graduates participated in the survey, William & Mary and three other similarly ranked, similarly sized schools. The William & Mary graduates, who had been through our Program, rated their preparation significantly higher than the graduates of the other three schools, who had experienced the traditional professional responsibility course and a traditional array of mostly elective skills courses beyond their research and writing course. Much more is said about these results in the article.

Graduates of the Legal Skills Program also gave significantly higher ratings for their preparation for ethics issues than had students who had participated in live client clinics at their schools. Even if similar results might be achieved in live client clinics, training in the Legal Skills Program is provided to all the students in a law school, rather than the relatively modest number of students served by live client clinics.

As well, graduates of the Skills Program reported lower levels of stress in their practice than the other survey respondents. The experience of practice in the long-term simulation context seems likely to allow students to develop a familiarity with practice demands that allows a more comfortable transition into practice. Lower stress levels in turn, seem likely to result in more productive professional relationships.

The Program=s reach has extended beyond our school and students. The Program has been on the agenda at several conferences beginning in 1990. Many law schools have requested and received materials from our Program; several have sent faculty to visit us; several have adopted programs that include features of ours. We have been visited by delegations of legal academics from law schools in Great Britain, Canada, Australia, Armenia, Japan, Czech Republic, China, and Russia. I am in communication with many of these legal academics as they advise their own institutions regarding courses of professional skills and ethics development. Courses modeled on ours are in the curriculum at law schools in Japan, Australia, and Czech Republic, and our staff has been active in assisting law schools in Armenia, Georgia, Serbia, Thailand and Spain in more modest courses in lawyer ethics or legal skills.

Carnegie/Best Practices: The Carnegie Report encourages law schools to expand focus beyond teaching legal analysis skills and to create opportunities for students to be apprentice lawyers. Doing so requires opportunities for students to connect problem-solving skills, legal analysis skills, technical lawyering skills and ethical sensitivities. These connections can best be experiences in role.

We undertook to be not only a comprehensive lawyer skills course covering the ordinary range of lawyer skills subjects, but also the required professional responsibility course for our law school. That one decision more than any other made our course a richer, more meaningful, more significant, Carnegie-like innovation, in place continuously at our school since before MacCrate.

Additional resources: The Program=s teaching methods, goals and objectives have been described in published materials, most prominently and fully in Experiential Education, Legal Education and Professional Responsibility, 38 William & Mary Law Review 71 (1996), Professional Preparedness: A Comparative Study of Law Graduates' Perceived Readiness for Professional Ethics Issues, 58 Law & Contemporary Problems 259 (1995), and Teaching Legal Ethics in a Program of Comprehensive Skills Development, 15 Journal of the Legal Profession 145 (1991); and The Legal Skills Program at the College of William and Mary: An Early Report, 40 J. of Legal Educ. 535 (1990).

A course description and numerous course documents are available at www.wm.edu/law/academicprograms/legalskills

Using Teaching Rounds to Educate Teachers to Educate Lawyers

Jane Aiken, Professor of Law, Georgetown University Law Center
Robert Dinerstein, Professor of Law, American University, Washington
College of Law

Elliott S. Milstein, Professor of Law, American University, Washington
College of Law

[Working Discussion Group]

Problem: No attempt to reform the curriculum to achieve the goals set out in the Carnegie Report can be achieved unless there is a large-scale effort to attract, train and sustain faculty members to engage in the project of making curriculum reform a reality in the daily practices of teaching throughout the curriculum.

Innovation: We propose to contribute to the project of building a cadre of law professors committed to reimagining and reshaping their own teaching in order to make the three apprenticeships identified by Carnegie integral and integrated parts of legal education by bringing a model of professional development that we are using with clinical teachers -- Rounds About Teaching -- to the classroom faculty. Rounds about Teaching is a training model that builds a community of teachers who participate in regular facilitated peer conversations built upon the experience of teaching. In rounds conversations teachers can tell stories about events in their classrooms, get ideas about what and how to teach, reflect with supportive colleagues about the relationship between what they have done and their teaching goals and plan for the future with the benefit of the insights of others. We have found that building a community of teachers around the project of teaching makes each of us more self-conscious and deliberate in the connecting the decisions we make in all phases of our teaching to both our own pedagogical goals and the larger set of curricular goals animating reform efforts.

Process: This workshop will engage participants in an experience of "Faculty Rounds" and through that experience explore how such a practice could be instituted at your law school. The Carnegie Report notes that law teachers rarely discuss their teaching. Nevertheless, when such discussions do occur, they are usually quite rich and stimulating. Faculty rounds are similar to medical rounds: a group of peers who join together and discuss challenges and strategies that confront them. In our case, it is about teaching issues.

The purpose of rounds is to provide us with an opportunity to reflect on our practice. In the workshop, we will have the chance to talk about teaching with colleagues, to examine together the real and complex circumstances of

our work, and to listen to other voices of experience. By meeting together in this way we can come to a deeper understanding of the art and craft of teaching. It is also fun.

Below are possible discussion topics to give you an idea of the possibilities. They are certainly not exhaustive. Like medical rounds, this will be a place where the discussion can be stimulated by opportunities and challenges that are of immediate interest to participants.

Possible Discussion Topics

Dealing with difficult student situations such as lack of preparation, giving a clearly wrong answer to a question, etc.

Meeting the needs of struggling students while establishing a high level of rigor

Dealing with the student who dominates the class discussion

Tips for stimulating discussion in seminars and other classes

Motivating students/ inspiring students

Increasing active learning/ incorporating some of the Carnegie suggestions

General teaching tips and good ideas

Dealing with controversy or provocative issues in the classroom

Creating an open classroom where students feel comfortable to question and explore issues

Strategies for intercultural communication

Adapting to differing learning styles/disabilities

Inspiring critical & creative thinking skills

Grading (both formative and summative)

Personal boundary setting in the classroom and during office hours

Evaluation: We evaluate rounds about teaching through de-briefing of the participants, at the end of each session and at the end of the semester.

Participants bring their own perspectives to this de-briefing but we would expect them to address the following questions at the end of a particular session:

- If you presented a teaching problem to the group, did you receive helpful feedback? If so, what feedback was especially useful and why? If not, are there particular aspects of the rounds discussion, or particular interventions, that could have been improved so that the session would have been more helpful to you?
- If you were a participant in the session, did you find the presentation of the problem(s) effective in providing sufficient context and information for you to be helpful? Was the nature of the presenting

problem(s) clear? Did you think other participants were helpful in assisting the presenter(s) with identifying available choices for resolving the problem(s)? Did you think your own interventions were helpful (and were perceived to be so)? Why or why not?

- For both participants and presenters, did you believe the efforts by the facilitator(s) were effective in facilitating conversations among group participants? What actions were especially helpful? Were there any instances in which facilitators might have intervened (or declined to intervene) more effectively?

Carnegie/Best Practices: We believe that Rounds About Teaching for classroom teachers can help teachers get ideas about and develop skills to teach the Carnegie apprenticeships. Teachers emerge from most rounds discussions with concrete ideas about how to approach some upcoming teaching event or ways to evaluate a teaching event that didn't seem "to work. Rounds helps to build a community among law professors around the project of teaching, turning an isolated activity into a collective project.

Rounds About Teaching can help teachers develop a self-consciousness about questions of professional identity. Law professors often have an identity as scholars and teachers and sometimes as public advocates for issues they know and care about. Less often do they have an identity around being a lawyer or practicing law. The identity of the law teacher is in tension with most of the identity questions facing the students. Even at the most elite institutions, law professors are teaching most of their students to be lawyers. And the students are at various stages of the process of moving from the identity of student to the identity of lawyer. Developing ways to bridge the gaps between teacher and student identities can be an important aspect of rounds discussion.

Rounds About Teaching can help participants see and build connections among discrete teaching experiences – Rounds groups can be configured as homogenous or heterogeneous groupings and around different axes. Whatever the grouping, participants will bring a diversity of teaching experiences. When a rounds group includes teachers in different subject areas, at different points in the three year arc of legal education, or from different teaching sites (e.g. large class, seminar, simulation-based skills courses, etc.), participants will see begin to see connections among their efforts to implement the lessons of the Carnegie report. These connections are critical because one of the overarching messages of the report is the need for legal education to build connections among the different apprenticeships so that the students experience them, by the end of law school, as an

integrated whole. Rounds is a way to see discrete experiences of teachers as connected to the overall project.

Rounds conversations can also be utilized to develop an awareness of how assessment relates to ongoing teaching and to develop and use new assessment techniques. As people become more intentional in what they teach and have ongoing conversations about their efforts and struggles, they often find themselves framing issues about their ability to achieve their teaching goals and the capacities of the students to learn what they are teaching in terms of assessment. Thus, rounds provides a site for teachers both to assess themselves and to generate better instruments for assessing students, in both formative and summative ways. Rounds can become the vehicle for faculty to work together to improve methods of assessment of students that will have greater validity than those currently commonly used in most law schools.

Additional resources: See Bryant and Milstein, ROUNDS: A “SIGNATURE PEDAGOGY” FOR CLINICAL EDUCATION? 14 Clinical Law Rev. 195 (2007).

**Training Law Teachers to Teach the Apprenticeship of Professional Identity
and Purpose within Individual Courses in the Formal Curriculum:
A Simulation-Based Training Module**

University of Washington School of Law
Legal Education at the Crossroads: Ideas to Implementation
Workshop
Friday, September 5, 2008

Susan Bryant, Professor of Law, City University of New York Law School
Ann Shalleck, Professor of Law & Carrington Shields Scholar, American
University, Washington College of Law

Problem:

Within legal education, the apprenticeship of professional identity and purpose is not taught intentionally within the formal law school curriculum, and the informal messages conveyed by law schools, while operating powerfully, remain largely unexamined and unchallenged as an educational matter. Law teachers often do not know how to teach about professional identity and purpose, in particular, how to integrate issues of identity and purpose into their teaching of courses throughout the formal curriculum.

- The primary educational setting within which professional identity and purpose receive explicit attention is in legal ethics/legal profession courses. These are generally isolated from the rest of the curriculum and, with few credits, tend to focus on limited aspects of the apprenticeship.
- Law teachers have little experience, few materials, and no training in how to integrate issues of professional identity and purpose into other courses that they teach in the formal curriculum. Curriculum reform, however well-conceived, well-structured, well-supported and deeply rooted in consensus will falter if those involved in teaching the reconstituted curriculum do not have the vision, the skills and the confidence to realize its purposes in daily classroom work.
- Messages/lessons about professional identity and purpose are often transmitted implicitly and indirectly through the structure and processes of the formal curriculum, as well as through the teaching of individual courses (for example, competition, neutrality, expertise, authority and distinctions between process and substance).

- Messages/lessons about professional identity and purpose are relegated to the informal curriculum (eg. the placement office, student organizations) where information and values are conveyed both intentionally and unintentionally.

We will address two aspects of this set of problems:

- We seek to clarify the meaning(s) of the multiple aspects of professional identity and purpose that should be part of the formal curriculum, including identifying recurring issues that can be integrated into teaching in courses throughout the curriculum. We hope to get teachers thinking not just about the interesting and contested issues that these aspects of being a lawyer evoke, but also the role of legal educators in conveying how these questions are embedded in legal analysis and legal practice.
- We will present and discuss a simulation-based training module to help teachers integrate the teaching of issues of professional identity and purpose intentionally into their teaching of standard courses within the formal curriculum.

Innovation:

As one component of teacher training, we propose a training module based on use of simulation to get teachers thinking about and trying out different ways to make the teaching of professional identity and purpose part of their teaching of the standard material of a course.

We plan to engage teachers in exploring a series of questions:

- What do we mean by identity and purpose?
- How do questions of identity and purpose overlap with, but remain distinct from, issues of doctrinal understanding, analytic facility, skillful implementation of lawyering activities and practical judgment?
- What are we currently teaching our students both implicitly and explicitly about the identity and purpose of being a lawyer?
- What would we like to communicate intentionally about professional values and personal commitments as professionals?
- How can we teach about identity and purpose in first year offerings, non-practice based classes, and practice-based courses?
- How can we ensure that intentional teaching about identity and purpose is integrated with the teaching of the other apprenticeships?
- How should teaching issues of professional identity and purpose change through the trajectory of legal education?

We also want to address the needs of an audience of law teachers of various experience levels, with a variety of practice and teaching experiences:

- How do assumptions about law teaching affect the integration of these issues?
- How comfortable are law teachers with issues related to the identity of being a lawyer?
- What are their implicit and explicit goals for their students' professional lives?
- Have they experimented with different pedagogies?

We will use a series of exercises involving role-play, reflection, and discussion as part of developing models of effective teacher training of the apprenticeship of identity and purpose. The role-play will put teachers in role as students in teaching around identity and purpose issues. While this type of role-play does not get to the enactment of actual teaching practices by the teachers themselves, it enables them to experience how issues of identity and purpose “feel” to students and to think about how issues of professional role and responsibility matter in teaching. We hope that this understanding provides a useful starting point for other parts of teacher training that focus more on creating teachers' capacity in the use of different pedagogical methods.

Process:

Developing simulation-based training about the integration of professional identity and purpose into teaching throughout the curriculum involves several steps:

- Developing materials for the training – 1) explanations of the meaning of professional identity and purpose; 2) simulations that create real-world scenarios in which issues of professional identity and purpose readily appear and can, without a great stretch, be combined with the teaching of substantive material; and 3) teaching plans for the modules.
- Identifying sites for trying out the modules – eg. individual schools, conferences on legal education reform, professional development programs.
 - o Identifying and planning for level and nature of resistance at different sites.
 - o Identifying and preparing supports within the audience.
- Redoing training modules based on experiences.
- Creating and coordinating with others who create training modules focused on developing capacity in the use of pedagogical methods that integrate the teaching of professional identity and purpose with the other apprenticeships.

- Distributing teacher training materials to others who wish to use them.
- Collecting materials that teachers develop for their actual classes to integrate the teaching of professional identity and purpose with the other apprenticeships.
- Coordinating simulation-based training with other types of teacher training regarding issues of professional identity and purpose.
- Writing about the project – both descriptively and analytically.

Evaluation:

1. Feedback from those trained using simulation-based modules –In debriefing of the role play, we will discuss the value of role-play as a professional development tool and a source of learning. We will see if teachers’ reflections about being students learning about identity and purpose contribute to thinking about ways to teach that apprenticeship. We will also explore how reflection on teaching helps faculty develop concrete ideas about how to improve their capacity to integrate identity and purpose.
2. Self-evaluation from those collaborating on the development of the simulation-based training module.
3. Coordination of simulation-based training with other kinds of training regarding the teaching of professional identity and purpose.
4. Tracking the relationship of curricular reform to the training of teachers to carry out curricular reform in their classrooms.
5. Brining together those who have tried the integration of professional identity and purpose in different settings to compare experiences and learn from each other.

Carnegie/Best Practices:

Two major messages of the *Carnegie Report* are that 1) the teaching of professional identity and purpose is grossly inadequate and 2) when don, it remains isolated from the teaching of the other apprenticeships.

Additional Resources:

Materials from the session will be posted on the conference website after the conference.

Integrating Civil Procedure, Torts and Legal Writing
in the Context of a Real-World Problem

Dean Robert Ward, Professor Justine Dunlap,
Associate Dean Michael Hillinger
Southern New England Law School

Problem: Law School is taught in discrete doctrinal courses, but legal problems occur in a messier, inter-doctrinal fashion. Also, legal writing and research is taught in a completely separate course, often by separate faculty. The skills taught in this court are foundational but often students give them less attention than they deserve.

Innovation: This workshop will focus on Southern New England's new effort to coordinate three first year classes: Torts, Civil Procedure and Legal Skills. A practice problem will be distributed in the Civil Procedure and Torts classes. The problem will involve a basic automobile accident/tort claim, with two defendants. The classes will be divided into multiple sets of three law firms, representing the plaintiff and each of the two defendants. The essential charge of the problem is to file and serve a complaint, and to file defensive motions and responsive pleadings. The exercise will go through the pleadings phase of a lawsuit, complete with motions hearings. It may be possible, in some cases, to proceed into the preliminary phase of discovery. The professors serve as the clerk and judge.

Working through this problem will help students with mastery of civil procedure, a course difficult to learn in the abstract. Further, it helps students "get" that a counterclaim and/or a cross-claim, *e.g.*, do not simply involve abstract Civil Procedure Rules, but rather require identifying and applying substantive (in this instance, Tort) law. Simply and perhaps tritely put, the exercise marries procedure and doctrine.

The second component, new this year, involves coordinating the exercise with the first-year Legal Skills class. Students will use the same set of facts in their Legal Skills class, but will work with them in different ways. For instance, they will use these facts to develop client letters and memoranda of law in the initial part of the course. Coordinating the memo writing with the practice problem will give context to all three courses and help break down the artificial divide that inevitably occurs when law is taught as discrete courses.

Students will be encouraged to make connections between Legal Skills, Civil Procedure and Torts. Further, connecting Legal Skills to doctrinal courses may spur students to give it the full attention it deserves. The Legal Skills course already culminates in the drafting of a summary judgment motion. Using the same practice problem for the summary judgment will reinforce the context and complement the pleadings exercise already completed.

Process: This past year, the Civil Procedure professor (Dunlap) distributed this exercise in both her day and evening divisions. In the day division, it was in conjunction with the Torts professor (Cleary), who had developed the problem several years earlier. At the conclusion of the semester it was clear that the effectiveness of the problem was enhanced by its use across two courses. The two professors decided to do the exercise again next year. They approached the Director of Legal Skills (Hillinger) about expanding the exercise into the Legal Skills program; he enthusiastically agreed.

Obstacles: We have identified several challenges for which we seek input. First is the challenge of how to grade the project. Grading group effort always seems more complicated and, often, students raise concerns of unfairness. This is now further complicated by a group effort across courses and with different faculty.

Second, adding the Legal Skills portion into the project will increase its difficulty. The Legal Skills faculty are adjuncts and have had a fair degree of autonomy in material development. This project will require major curricular changes in that program. It will be a challenge to be sure that all Legal Skills faculty on board and to coordinate the project adequately. This past year, only Professors Dunlap and Cleary needed to coordinate and they did so informally as they saw each other during the week. As is perhaps typical, Legal Skills faculty come and goes, often without much interaction with non-Legal Skills faculty. Hence coordination will not occur casually, but will take concerted and consistent effort. On the positive side, in several meetings with the Director of Legal Skills (Hillinger), the Legal Skills faculty expressed their enthusiasm with the aims of the project and their willingness to cooperate in implementing it.

Third, there is the challenge of coordinating all three classes and assignments in a way that works for the students. They must be given the necessary doctrinal and Legal Skills instruction in a way that jibes with what they are being asked to do in the project. This will require all of the involved faculty to be sensitive to the flow of the problem and what the students need to know in order to complete the assignments.

Finally, we have discussed, albeit very tentatively, the possibility of giving examinations that ask student to address issues across the doctrinal divide. This, too, raises challenges such as who grades the examinations and how the grades are recorded.

We look forward to feedback and criticism on these issues as well as others that we have not yet identified.

Evaluation: Student feedback and faculty assessment will both be used to evaluate the innovation. We will also assess student written products and examinations. We welcome suggestions for other evaluative measures.

Carnegie/Best Practices: This process emphasizes legal problems in context and requires students to actually perform legal tasks. Students will collaborate with others and begin to develop the qualities of judgment and time management that they will need as lawyers. Students will face ethical issues and learn to identify their own lawyering tendencies as they draft and serve pleadings and motions and interact with opposing counsel.



ELON UNIVERSITY
SCHOOL OF LAW

**Curricular Innovation at Elon University School of Law -
Integrating Theory and Practice with a Purpose**

Professor Howard E. Katz, Elon University School of Law
Professor Steve Friedland, Elon University School of Law

Working Discussion Group

Problems addressed:

The training of future lawyers is less effective than it could be because:

1. Students are not exposed to the lawyering perspective early in their law school careers. They are introduced to appellate case analysis and theoretical analysis as the norm. Other aspects – experiential learning, professionalism, skills training, and transactional considerations - are viewed by students as deviations from the norm. This limits their perspective and may make students more hesitant about or resistant to these other aspects as they progresses thru the curriculum.
2. Students do not see how lawyers act and are not called upon to act like lawyers. Unlike medical students, who are treated as doctors early in their schooling, law students operate, for the most part, in a separate school-oriented student environment until they actually get their first legal job.
3. First year courses are substantive-oriented, with no integration of approaches other than cognitive.
4. There is a lack of engaged learning in the first year. First year courses, and most of the traditional law school curriculum, are insular in the sense that most or all of the teaching and learning occurs in the law school building itself (figuratively speaking, of course students also work “at home”). Students are not actively engaged in the legal community or the community at large. Also, they are not engaged in the sense that they do not have opportunities for experiential learning, application of knowledge, and making connections between what they are learning in law school and the practice of law. This failure to engage students can impede the learning process itself, and represents a lost opportunity to model future professional behavior.

Innovation proposed:

In both fall and spring semester of the first year, students would experience a week-long practicum program somewhere between the half-way and three-quarters point of the semester. The program would send students to private law offices, public law agencies and in-house corporate legal departments to observe and experience lawyering skills and values. In preparation for the practicum, and to foster transparency of purpose, students would be informed about lawyering competencies and the particular competencies the program is designed to introduce and develop.

In addition to the observational aspect of the practicum, all students would also engage in a writing exercise related to one or more of their courses. The course to be linked to the practicum would be determined by the faculty and would likely rotate from year to year. It is anticipated that a faculty committee would be appointed to supervise and direct the educational aspect of the practicum, with an administrative member of the law school coordinating the logistical aspects. During the time of the practicum, regular classes would not meet.

An alternative method (not actually proposed by the subcommittee) that would serve some of the same purposes would be to offer a mini-course on Negotiation, with a strong simulation component.

Either the Practicum proposal or the Negotiation mini-course helps put other models of learning on a more equal footing with the traditional cognitive, analytical approach common in the first year, and integrates other approaches into the first-year curriculum.

Obviously simulation cannot replicate a real-world experience. It cannot directly show students how lawyers act, but it can instruct on how to act like lawyers. While the Negotiation mini-course proposal does not get students “out of the building” and into the community, it does present “skills” training and non-cognitive learning as valid purposes of the first year and of law school in general. It would introduce a fundamental skill set that can be built upon (presenting one's position, understanding another's position, deciding whether to use an adversarial or cooperative style to reach objectives, etc.). This is a skill set that is relevant to both litigation and transactional attorneys. Having students learn Negotiation early in the course of study also allows for an introduction to, and a modeling of, professionalism.

Process:

The Practicum has been proposed by a faculty subcommittee on engaged learning, whose members include a former Chief Justice of the North Carolina Supreme Court and the Director of the University's Center for the advancement of Teaching and learning. A faculty-wide discussion at the law school has occurred. As the faculty continues to define the university's commitment to engaged learning in the context of the law school, it is anticipated that the faculty will again consider ways to integrate theory and practice with a purpose, including the Practicum. Implementation will require the approval of the full faculty.

The anticipated objections –
takes time away from “regular” classes (thereby reducing “coverage”);
makes competing demands on students;
introduces these other perspective too early in the process;
competes with midterm exams given by some professors;
requires administrative coordination.

It should be noted that Elon has strong relationships with local attorneys, and a well-developed program whereby many attorneys are regularly in the building as preceptors to every first year student. There is also a one-credit course in Law, Lawyering and Leadership offered in a January mini-term. These existing programs – with their attendant infrastructure - make the implementation of the Practicum Week easier than it otherwise might be.

A Negotiation mini-course might appear more administratively “simple” to a faculty that wishes to address the problems mentioned above. Apart from the fact that it sacrifices the real-world experiential component, the Negotiation mini-course also probably requires more staffing, in terms of full-time or adjunct faculty to teach the small sections that would be required.

Evaluation:

Assessment will occur both during the Practicum week and at the end of the semester. During the Practicum, students will be asked to provide feedback as to what they are learning and how they are learning it, and will be given feedback (both individually and in groups) as to how to improve the learning process for the remainder of the practicum. At the end of the semester students will be asked what they learned and how did they learn it, and will be given feedback as to their engagement in the process and their ability to learn from it. This feedback process will facilitate both self-reflection and improvement of the learning process by the student, and refinement and improvement of the program itself.

How the proposal relates to the Carnegie Report and Best Practices in Legal Education:

Addresses the objection that cognitive learning is the sole focus in most first-year curriculums.

Addresses the failure to integrate professionalism into the first year.

Addresses the failure to integrate skills training into the first year, and/or provides a template for integration of skills training in the upper-level courses.

Enhances learning of the core analytical skill being taught in the first year, by allowing students to see the connection of theory and practice, which can result in better motivation and improved processing of the “traditional” material being presented in class.

**Lawyering in the Community:
Experiential Learning in the First Year as a Gateway to Pro Bono**
Professor Anne Goldstein, New York Law School
Workshop Discussion Session 1: Theme 3: Group 3

Problem: The required first year Lawyering Process course at the University of Connecticut School of Law focuses on research and writing in the fall and uses simulations to introduce the skills of interviewing, counseling and negotiation in the spring. After teaching the course for many years, I had come to believe that something crucial was absent from the spring semester. The course, whose goal was in part to simulate reality, seemed divorced from reality. I wanted to address this problem by creating a link to the practice of law in a real-world setting that would reinvigorate the class and give greater urgency and direction to the learning process both for myself and my students. I hoped that creating this link would prompt some of the students to think about what they were doing in law school and would bring home both the need and the opportunity for pro bono service in the profession.

Innovation: In collaboration with Bonnie Roswig, an experienced legal services attorney and pro bono coordinator, I developed a program called Lawyering in the Community (“LINC”), which integrates a ‘real life’ legal experience into the curriculum of a first year legal skills course.

The LINC concept is premised on two central ideas:

1. that exposure to the real world of lawyering is an essential but often missing part of first year legal skills training; and
2. that education about both the need and the opportunity for pro bono service can be effectively tied into a first year legal skills course.

I have experimented with several models of LINC. The first model involves class participation in a single pro bono project. I used this model in the spring of 2006 to involve my entire class in an existing pro bono project created by Attorney Roswig. The project, called “Utility Day” is a half-day walk in clinic that provides finite ‘pro se’ legal assistance to very low income clients who are facing the possible shut-off of their heat and utilities following the end of a statutorily mandated moratorium.

Over three Saturdays in April, in three different cities in the state, the students, along with volunteer attorneys and paralegals, assisted over 200 clients. Students interviewed and counseled clients and in some cases negotiated with the utility company representatives who were present at the event. They helped the clients avoid utility termination, come to an agreement on an affordable monthly utility payment, and gain a better understanding about budgeting within a limited fixed income.

I wanted LINC to be an integral part of the course, not simply a stand-alone experience. To that end, Attorney Roswig and I developed three LINC classes and several writing assignments. The first class, held early in the semester, was a pro bono orientation, which included guest speakers and an introduction to some of the dynamics of interviewing very low-income clients. One goal of this class was for students to gain an appropriate level of understanding that might facilitate their willingness to do pro bono work in the future and help dispel some of the fears and myths about working with low income clients in the legal system. The second class, held as close to Utility Day as possible, was a training that provided an overview of utility and consumer law in Connecticut as well as the practical details necessary for the students to effectively participate in Utility Day. Prior to that class, the students researched and wrote a short memo involving the state statute governing issues of utility termination. After participating in Utility Day, the students wrote narratives describing and reflecting upon their experiences. The third and final class was a ‘debriefing,’ which provided further opportunity for reflection and discussion.

An alternative model of LINC, which we developed in the second year, involves offering multiple outside projects from which students can chose, some of which provide an opportunity for active participation by the students and some of which are purely observational. A third model, which we used in the third year of LINC, involves a combination of the first two—students doing a variety of different projects as well as participating in a single class project. Like the first model, these models integrate classroom time and writing assignments related to the ‘real world’ LINC experience.

Process: I anticipated that it would be difficult to find a project equally suited to both my goals for the course and the course’s inherent constraints. There were 50 first year students in my section. Individualized faculty supervision was not an option. I wanted a ‘legal project,’ rather than a community service project but the project could not be a clinical experience involving actual legal representation. The course was graded and I had to ensure that all students would have similar opportunities at about the same time. The entire experience, including training and debriefing had to fit within a time frame of approximately four weeks and involve an area of substantive law that the students could master relatively quickly. Finally, I wanted a project that met an unmet legal need and that offered students an opportunity for client interviewing and counseling with tangible results but no ongoing client responsibility.

To find a project, I reached out to clinicians and legal services providers. I was quickly referred to Attorney Roswig, who almost immediately proposed Utility Day. Utility Day was the perfect fit because it followed the model of ‘unbundled legal services,’ allowing volunteers to offer finite ‘pro se’ legal assistance to a large number of clients in a half day clinic to address a narrow civil legal problem. In the

past, Attorney Roswig had used paralegal volunteers as well as lawyers to staff Utility Day; law students were a logical next step.

Once Attorney Roswig and I had thoroughly discussed the idea, I sought and received approval from the law school's administration to move forward. We then spent a year planning how to integrate of Utility Day into the curriculum before implementing LINC for the first time in the spring of 2006.

Developing the alternative model of LINC in the second year presented its own challenges. It was a time intensive effort that involved outreach to many individuals at a variety of organizations, including legal services providers and groups focused on public interest law, to find and set up educationally valuable participatory and observational opportunities for all the students in the section. This model also required follow up with each individual student throughout the semester.

Perhaps the most significant challenge of using multiple projects was trying to maintain a sense of class unity around LINC while students were pursuing so many different options. In the third year of the program, I tried to address this challenge by combing the two models and once again scheduling a class event. I chose Citizenship Day, which is a one day pro bono event sponsored by the American Immigration Lawyers Association, where volunteers interview and guide clients interested in applying for citizenship. I was able to work with the attorneys who were organizing "Citizenship Day" in the state to train the students as well as to arrange for the whole class to volunteer at the event.

Evaluation: We did not engage in a formal evaluation process of LINC but we did solicit feedback from the students. Reaction to the Utility Day project was overwhelmingly positive. In fact, students subsequently held this project up as an example of the kinds of efforts that can make a difference in improving the climate in law school by breaking through stereotypes and connecting students to the needs of the community. Typically, students also commented that it was an energizing and educational experience to go beyond the use of simulations in learning the skills of interviewing and counseling. What was striking about student reaction to the alternative models of LINC was the extent to which even experiences that were purely observational had an impact on students. The experience prompted many of them to think about the needs of very low income clients, how the poor interact with the legal system, how the legal system 'really works,' and how strong and visible is the need for more pro bono legal assistance.

Carnegie/Best Practices: As flagged by Robert McCrate in his Forward to CLEA's Best Practice's Report:

The central message in both *Best Practices* and in the contemporaneous Carnegie report is that law schools should:

- broaden the range of lessons they teach, reducing doctrinal instruction that uses the Socratic dialogue and the case method;
- *integrate the teaching of knowledge, skills and values, and not treat them as separate subjects addressed in separate courses;* and
- give much greater attention to instruction in professionalism.

(emphasis added)

LINC offers one response to this message. It is a program that provides some of the benefits of clinical legal education in a setting that is neither a traditional clinic nor an externship, that provides the potential for large numbers of first year law students to get started on the road to pro bono service and that offers a way to reinvigorate the essential legal skills curriculum.

1L 4-Credit Legal Professions Course
Indiana University School of Law–Bloomington

Memorandum prepared for

The Legal Education at the Crossroads Conference
University of Washington School of Law
September 5-7, 2008

In April 2007, the faculty of the Indiana University School of Law–Bloomington voted to amend its core curriculum by revising and expanding the traditional Legal Professions course and moving it into the first year. On one level, the change was fairly modest. Legal Professions B614 was a long-time law school offering that satisfied the ABA legal ethics and professional responsibility requirement.¹ Our faculty simply agreed to revise an existing course, move it into the 1L year, and expand it from three to four credit hours. The most “radical” aspect of the course was its collateral effects—the trimming of other 1L courses from five to four credit hours. Yet, this change was necessary to signal to incoming students that Legal Professions was a foundational law school course on par with Torts, Contracts, Property, Civil Procedure, and Criminal Law.² Despite the loss of credit hours by virtually all 1L professors, the curricular change was approved by a near unanimous vote.

The high degree of faculty consensus was based on course objectives that went beyond traditional legal ethics. As stated in the course syllabus, the purpose of the revised course is “to provide our first-year students with a solid foundation for building a successful and satisfying professional career.” To achieve this goal, we recast the structure of the traditional legal ethics course. Specifically, the course is organized around practice settings (large firm, small firm, in-house, prosecutors, judges, mediators, etc) rather than ethics and professional responsibility topics (competence, confidentiality, conflicts, attorney-client privilege). The course draws upon carefully edited ethnographies, memoirs, case studies, and other socio-legal research to build a factually rich context; in turn, ethical dilemmas and the application of the Model Rules become more concrete. In addition, four credit hours enable us to cover the law of lawyering and the economics and structure of the legal profession. Students thus have the time and information to intelligently reflect upon their future careers.

This remainder of this memo covers three topics: (1) background on the development of the course; (2) discussion of practice setting themes; (3) how we assessment professionalism.

1. Background

In the fall of 2006, Dean Lauren Robel formed the Ad Hoc Committee on Professionalism to examine several perceived shortcomings in our curriculum and make appropriate recommendations. The formation of the Committee was spurred by several factors, including the observation of several prominent alumni that Indiana students often performed as well as their Ivy-League counterparts but too often lacked confidence or organizational savvy.³ The

¹ The ABA Accreditation Standards requires law schools to provide “substantial instruction in: ... (5) the history, goals, structure, values, rules and responsibilities of the legal profession” ABA Accreditation Standard 302(a)(5); *see also* Interpretation 302-9 (requiring “instruction in matters such as the law of lawyering and the Model Rules of Professional Conduct of the American Bar Association”).

² Cf. Stephen McG. Bundy, *Ethics Education in the First Year: An Experiment*, 58 LAW & CONTEMP. PROBS. 19 (1995) (discussing failure of 1L Legal Professions course at UC Berkeley because 2 credit hours engendered student skepticism).

³ The After the JD study and our own internal polling suggest that our graduates are more likely—compared to their elite law school counterparts—to be first-generation lawyers or professionals. *See generally* Ronit Dinovitzer & Bryant G. Garth, *Lawyer Satisfaction in the Process of Structuring Legal Careers*, 41 L. & SOC’Y REV. 1 (2006).

Committee's work also coincided with the publication of *Educating Lawyers* (2007) [i.e., the Carnegie Report]. The authors of this important study observed that the heavy emphasis on "thinking like a lawyer" during the 1L year, in combination with the effect of 1L grades on students' employment prospects, had the unintended effect of signaling the marginal importance of professional values and ethics to a lawyer's long-term professional success. Moreover, careful inspect of our data from the Law School Survey of Student Engagement (LSSSE) suggested that our upper level courses—similar to our peer schools—are actually *less likely* to include substantive discussions of professional ethics and values than our 1L courses.

Drawing upon these trends and information from other sources, the Ad Hoc Committee produced a detailed course proposal for a new 4 credit Legal Professions course for the first year. The proposed course had two key components: (a) providing students with an accurate, systematic, and factually rich introduction to the history, economics, and structure of the legal profession; and (b) with this context in place, using course material to explore the interaction between practice setting and professional values and ethics, including coverage of traditional professional responsibility and legal ethics doctrine.

The objective of the course, however, was not merely didactic. We also wanted to provide our students with an opportunity to identify their own personal values and to reflect upon the tradeoffs that every young lawyer eventually has to confront. In turn, we concluded that this experience would enable students to make better decisions during the remainder of their law school careers, including a more conscious cultivation and safeguarding of their professional identities. After a series of meetings to discuss the scope of the required 1L changes, the Indiana Law faculty approved the Committee's proposal. That document is available online at http://www.law.indiana.edu/people/henderson/share/LegProf09/Course_materials/Pro.pdf.

2. Focus on Practice Settings

The goal of this course is to help students develop a "successful and satisfying professional career." Yet, success is a personal concept that necessarily entails value judgments. In particular, differing values and interests are going to lead people into differing career paths. The course prompts students to ask, "What is the best fit for me?" This inquiry presupposes that students have engaged in an honest appraisal of their own values. We facilitate this process by providing our students with information and time to reflect. The information comes from three sources: (1) extensive self-assessment exercises during the first semester (discussed below); (2) carefully edited ethnographies, memoirs, and case studies that capture the benefits, burdens, and recurring ethical conundrums of specific practice settings; and (3) six "Practice Setting Forums," which feature alumni and other distinguished lawyers from specific practice settings.

In many respects, the third category (Practice Setting Forums) demonstrate the powerful institutional synergies of the new course. The Forums are organized around two practitioners who share their careers stories with 1L students during a live 90-minute class. Prior to the event, students are assigned readings that provide relevant background. Participants are carefully chosen to reflect diverse or divergent viewpoints (e.g., male and female, white and minority, older and younger, plaintiff/prosecutor and defense orientation, public and private sector). We tested this concept during the 2007-08 academic year. Despite some initial skepticism (the Forums were mandatory for 1Ls), the student reactions were overwhelmingly positive. Moreover, the participating lawyers loved the experience because it gave them the opportunity to contextualize their own personal and professional experiences. Some of the themes explored in the readings and Practice Setting Forums include:

- *Solo and Small Firm Lawyers.* What are the benefits and burdens of solo or small firm practice? Does it depend upon practice area? What business skills are involved? Is it a

myth that these lawyers enjoy a better work-life balance? Why are a disproportionate number of ethics complaints directed at small firm lawyers?

- *Large Firm (Corporate) Lawyers.* The associates work long hours, but does it get any better if when you get promoted to partner? What does it take to become partner? Does it vary by city, type of firm, or practice area? Do compensation systems affect or influence ethical behavior within large firms?
- *Judges, Prosecutors, Public Defenders, and Criminal Defense Lawyers.* Is there any tension between career advancement and the ethical use of “prosecutorial discretion”? For public defenders, what is the difference between a “competent” versus an excellent criminal defense? What are the long term options for lawyers working in the criminal justice system? Does it vary by state versus federal systems?
- *Plaintiffs’ Side Trial Lawyers.* These lawyers get the large judgments that grab headlines; they are also the targets of “tort reform” legislation. What are the history, structure, and economics of this industry? How common are frivolous lawsuits?
- *Public Interest Lawyers.* What is the purpose of public interest lawyering—to provide relief to indigent clients or to engage in cause lawyering (i.e., to use litigation and legislation to change underlying social conditions)? How do public interest lawyer resolve conflicts between the needs of clients and the cause?
- *Corporate General Counsel.* Over the last 30 years, the job of in-house corporate lawyer has grown in influence and prestige. What is driving this trend? Does having a single “client” compromise a lawyer’s independence and professional judgment?

3. Assessment and Grades

The final grade for Legal Professions is based on a 100 point scale:

<u>Component</u>	<u>Weight</u>
Group Exercise (organized by Practice Group):	15 points
Class and Group Participation (quality and quantity):	15 points
Paper Assignment (2000 words)	20 points
Final Exam	50 points

The course covers two interrelated topics: (1) traditional legal doctrine on professional responsibility, legal ethics, and the law of lawyering; and (2) extensive readings, problems, and class exercises that are designed to familiarize students with a wide range of practice settings and enhance their professional development and judgment. The first topic obviously can be tested using a traditional law school exam (50%); yet, the second topic raises much more difficult assessment issues that most Legal Professions instructors tend to avoid. During a recent meeting organized by the Carnegie Center for the Advancement of teaching, this pattern of avoidance was directly addressed by Dr. Mack Lipkin, a leading innovator in the clinical training of doctors: “What we assess signals to students what we value. If we want doctors who can communicate with patients and render effective diagnosis and treatment, we have to assess those skills. The record is clear; students develop strong competencies in the areas we chose to test.”

Drawing upon Lipkin’s observations, the instructors at Indiana concluded that we needed a fair and effective way to based at least 50 percent of the students’ grades on professionalism and other non-doctrinal competencies. Building upon a non-academic program that had been in place in Indiana since the late 1980s, we assigned incoming 1L students to “Practice Groups” of seven to eight students. The fall semester includes a mandatory program of self-assessment exercises, which are done in the context of the Practice Groups and facilitated by carefully

selected 2L and 3L students employed by the law school (Practice Group Advisors). Several exercises focus on emotional intelligence, interpersonal skills, and team building. During the second semester, each Practice Groups is enrolled in one of four sections of Legal Professions (~50 students per class); the Practice Groups, in turn, become the unit for a series of ungraded and graded group assignments. The following is an example of a possible group exercise.

The state of Midland is considering passage of tort reform legislation modeled on the Texas statutes. Students are staffers on a legislative subcommittee who are asked to evaluate the proposed legislation in light of empirical evidence on the Texas law. Some of the relevant materials include case studies by socio-legal researchers, which document how valid personal injury claims (e.g., clear negligence that causes permanent disfigurement) can no longer be cost-effectively litigated for some group of plaintiffs (e.g., older victims, middle-aged housewives). The assignment raises sophisticated issues of public choice and assess to justice. In addition, students will have to grapple with their own negative stereotypes of plaintiffs' lawyers.

These Practice Group exercises are then subjected to three levels of peer-review: (1) at the Practice Group level, by class members outside their Group; (2) at the individual level, by members of their own Practice Group; and (3) by the instructor. Feedback of Practice Group presentations and other work product is solicited via electronic surveys. Likewise, the Group will evaluate its own Members at several points throughout the semester. Although feedback to fellow students is given anonymously, the instructor can access the identity of each respondent (to deter potential bad faith evaluations). An edited peer evaluation is then provided to each Practice Group and each student. Drawing upon all the available evidence, the instructor will assign the final grade for group projects (15%) and class/group participation points (15%). Although student-peer feedback is advisory in nature (the instructor assigns the actual grade), students are told to operate on the assumption that feedback from classmates will be highly influential. The best marks will go to students who are strong contributors to strong Practice Group projects and provide valuable, constructive feedback to peers.

To elicit maximum student buy-in, the year-long role of the Practice Group is explicitly disclosed to students during 1L orientation. The remaining 20 percent of the class grade is based on a 2,000 word reflective essay. The essay uses an interview with a practicing lawyer to explore various facets of the course materials. To receive maximum credit, the narrative must touch on at least one ethical dimension (broadly defined) of the lawyer's job or practice setting. For copies of the course syllabus and related materials (including sample student essays, which are inspiring), please contact Bill Henderson at wihender@indiana.edu.

**LEGAL ETHICS AND PROFESSIONAL DEVELOPMENT
VANDERBILT LAW SCHOOL PROPOSAL (a course in 3 segments)**

Presentation by Professor Ed Rubin, Vanderbilt Law School

Proposal Submitted by Josh Perry, Assistant Professor, Center for Biomedical Ethics and Society

This working draft represents a *first step* towards exploring a revision of the legal ethics and professional responsibility curriculum. It is a work in progress that has been discussed and developed by a number of faculty members, and for which specific comments and general reactions are requested.

Rationale

Professional development and legal ethics should be an intentional and vibrant process that is taken seriously in a structured environment in each of a student's three years at Vanderbilt Law School.

What are we doing currently?

Currently, standardized instruction in professionalism and legal ethics occurs in the required 3-credit Professional Responsibility (PR) course taken by 2Ls and 3Ls. Additional, although limited, instruction in the ethics rules and opportunities for discussion of professionalism issues may occur in other offerings as well, including skills courses, clinics, and seminars.

What works and what doesn't work about the current configuration?

The current model is efficient, but it often fails to have much of an impact in shaping students' values, habits of mind, perceptions, judgments, and interpretations of the legal world – as well as their understanding of their roles and responsibilities as lawyers and the criteria by which they will define and evaluate their professional success. Many students erroneously expect the course to consist primarily of preparation for the MPRE. Other students, having already taken and passed the MPRE, resent having to take a required course that is often largely devoted to content they think they have already mastered. Furthermore, those students taking the current PR course in their second year often do not know what area of law they will be specializing in or in what type of environment they will be working. Thus, to the extent current PR instructors attempt to create simulations, many 2Ls remain relatively detached from the material because it lacks a sense of practical urgency or relevance. Finally, 3Ls taking the PR course often find the discussion of professional development – to the extent this material gets covered at all – to be a late-in-the-game, add-on of marginal value to their education and development.

How can we do ethics education and professional development better?

The idea is that the 3-hour mandated Professional Responsibility course taught to 2Ls and 3Ls be restructured to redistribute the currently allocated 3 credit hours of instruction across three years, in three separate segments – each of which is designed to connect with students in a way that will fully resonate with where they find themselves along their three-year course of study. The course would be broken down as follows:

- Segment 1: First semester (1L) – *Foundations of Legal Ethics and Professionalism* (1 credit)
- Segment 2: Third or Fourth semester (2L) – *The Law of Lawyering* (1 credit)
- Segment 3: Sixth semester (3L) – *Professionalism and Ethical Lawyering in Context* (1 credit)

General Objectives

The four points that follow illustrate opportunities for what could be accomplished with the PR requirement if the proposed 3-Segment model were adopted:

- Engage the moral imagination of students (beginning during the earliest stages of professional development) as they move toward professional practice through the use of 1) a mix of theoretical and practical ethics literature, 2) well-elaborated case studies and 3) exposure to varied forms of legal practice;
- Create sustained opportunities for students to learn about, reflect on, and practice the responsibilities and role identities of legal professionals;
- Create opportunities for students to develop moral judgment, explore their values, and form their professional identity in concert with their burgeoning legal capabilities and consonant with their personal priorities and the fundamental purposes of the legal profession; and,
- Provide an opportunity for students to wrestle with issues of professionalism and work with peers, practitioners, and faculty in serious, comprehensive reflection on their educational experience and strategies for their career and professional growth.

As described in more detail below, the 3-Segment course – *Legal Ethics and Professional Development* – not only covers these broad elements constitutive of learning to “think like a professional,” but also the ABA Model Rules of Professional Conduct and Code of Judicial Conduct that students encounter on the Multi-state Professional Responsibility Exam (MPRE). The course is designed to comply fully with ABA accreditation curriculum standards, including required “substantial instruction” in “other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and the history, goals, structure, values, rules, and responsibilities of the legal profession and its members,” as well as “substantial opportunities” for “small group work through seminars, directed research, small classes, or collaborative work.”

Attached to this document are three Appendices:

Appendix A provides preliminary thoughts on the first segment *Foundations* course. As described, parts of this model are already being tested, but neither content nor design has been finalized.

Appendix B provides a brief sketch of the most straight-forward segment of the course designed to teach the disciplinary code and the law governing lawyers that is covered by the MPRE. This material is obviously related, but significantly different than the legal ethics and professionalism curriculum that will be explored during the 1L *Foundations* and 3L *Lawyering in Context* segments.

Appendix C concludes with preliminary thoughts about design and hallmarks that might be features of the third segment that is intended to synthesize and ground the material encountered in Segments 1 and 2.

APPENDIX A

First semester 1L – Foundations of Legal Ethics and Professionalism (Segment 1)

Background

During the Fall Semester 2006 and Fall Semester 2007, Julie Sandine and I taught an informal series of sessions designed to introduce 1Ls to themes in legal ethics and professionalism and create a supportive environment in which to process their immersion into “the legal vision of the world.” Elizabeth Mertz, *The Language of Law School 4* (2007) The sessions met 1 hour a week for the first 10 weeks of the semester. Neither credit nor grades were awarded. Enrollment, capped at 25, was voluntary and conducted by lottery due to overwhelming numbers of interested students who signed-up during Orientation after hearing a description of the offering. Attendance records were kept, and approximately 18-20 students attended all 10 sessions.

Student reactions to the course ranged from positive to extremely enthusiastic. Julie and I found that first year students respond well to the small class size, interactive discussion format, and the use of real life simulations or hypothetical examples. We have also seen success using creativity exercises, outside speakers, and video clips. Due to the voluntary nature of our sessions the last two years, we did not regularly assign outside readings. This marks a significant difference from the proposed *Foundations* course, where weekly reading would be assigned and a series of written exercises would be required.

Structure

A faculty-level Course Director will be retained to coordinate all aspects of the three year course. The first year class will be randomly divided into 8 to 10 small sections. Practitioners, typically from the Nashville community, would serve as group facilitators for each section. This model draws from a similar course in the medical school. As envisioned for use in the law school, each week the practitioner-facilitators would meet with the Course Director to review and discuss that week’s content and compare notes on best pedagogical practices for engaging the students in that week’s material. A discussion guide for each session will be provided. These guides would include prompts, questions, relevant case studies, and hypotheticals that would serve to standardize the quality and experience across the groups.

Selection and training of the practitioner-facilitators is a critical component to the overall success of Segment 1. During a series of one-on-one interviews conducted over the last six months as part of an unrelated research project, several potential candidates have already been preliminarily identified. This experience strongly suggests that the requisite number of qualified practitioner-facilitators could be readily found among the local bar (and probably from among VULS alumni). The ideal practitioner-facilitator would be:

- someone who is enthusiastic and positive about his or her practice;
- someone who has enough experience to ground the discussions in real-life scenarios, but who can still relate to ethical and professional challenges faced by young associates; and,
- someone who understands and embraces the objectives of this first foundational Segment.

After being selected, the practitioner-facilitators would attend a summer training seminar designed, organized and taught through the Cal Turner Center, an interdisciplinary ethics program at Vanderbilt, and by the Medical Center, which already runs a program of this sort for first year medical students. In the seminar, the practitioner-facilitators would be exposed to the literature relevant for broad consideration of ethical issues confronted by law students and to the effective techniques for small group facilitation involving discussion of controversial and/or difficult issues.

Specific Objectives for the Foundations Segment

Similar to the voluntary class that Julie and I have already offered, the proposed *Foundations* first semester, first year course would have the following primary objectives:

- Introduce students to the centrality of moral judgment and importance of professional formation both as a student and beyond;
- Increase awareness of concrete ethical issues and moral tensions that exist throughout all areas of the law and in all legal practice environments – with a particular emphasis on those issues and tensions students will encounter during their first 5 years of practice;
- Expose students to empirical data linking professionalism and personal satisfaction;
- Empower students to seek purpose and fulfillment as they weigh career opportunities; and, provide students with a small, supportive and safe environment to address moral distress and to explore common concerns with 1L colleagues and access the guidance of an experienced community practitioner with a real-life practice perspective.
- Sensitize students, on a preliminary basis, to the basic rules of professional responsibility that they may need in their legal employment during the summer after their first year

Evaluation

Students would be assigned several brief writing assignments that would be reviewed by the practitioner-facilitator and returned to the student with comments and a grade. At the end of the first semester segment of the course, but before the exam period, students would receive an overall grade for this segment. This grade would not appear on the student's transcript, but would be one component of the final course grade that would appear on the student's transcript at the end of the third year segment. Thus, the grades and comments on the papers, and the grade for the segment, would be designed to meet the educational purposes and student request for intermediate, or formative feedback. Despite the absence of a recorded grade, any student who did not attend the classes or complete the assignments would receive a failing grade (in the instructor's discretion) and would be required to repeat the Segment.

APPENDIX B

Offered both Third and Fourth Semesters (2L) – The Law of Lawyering (Segment 2)

Structure

In their second year, all students would take Segment 2, the one-credit, one-hour per week course, designed, in large part, to familiarize students with the material covered by the MPRE. While this segment would *not* be an MPRE-prep course, it would focus on the technical, rule-based law governing lawyers, including:

- the disciplinary rules of professional conduct currently articulated in the American Bar Association (ABA) Model Rules of Professional Conduct;
- the ABA Model Code of Judicial Conduct;
- relevant portions of the Restatement of the Law (3rd) Governing Lawyers;
- relevant portions of the Sarbanes Oxley Rules;
- controlling constitutional decisions bearing on issues of professional responsibility; and,
- generally accepted principles established in leading federal and state cases, and in relevant procedural and evidentiary rules.

Thus, most of the course material would be immediately relevant to students preparing to take the MPRE in either the Spring of their 2L year or the Fall of their 3L year.

It is proposed that this Segment be taught in large, lecture-hall sections, using adjuncts from the community as is the current practice. Despite the large class format and the reduced number of hours from the traditional professional responsibility course, this segment would not be a simple recitation of the rules but a critical examination of their content, coherence and effect, using the same large-group teaching techniques (e.g., the Socratic Method) currently used in the traditional course.

Evaluation

At the end of the course (either on the last session or during exam period) students would take a relatively short essay type or multiple choice exam, similar to the kind of exam given in the traditional course. They would receive their grade for this exam, but like the grade for the first year segment, it would be a component of the final grade, and would not appear on their transcript until the end of Segment 3.

APPENDIX C

Sixth Semester (3L) –Professionalism and Ethical Lawyering in Context (Segment 3)

Structure

The final 1-hour credit will be earned during a required course to be offered during the second semester of the third year. At this stage in their professional formation, students should have some notion of the type of law they will be practicing and the environment in which they will be practicing, and many will know the exact position that they will be entering later on that year. Accordingly, this third Segment of the course would offer at least 3 different sub-segments with - to the extent possible - concentrated material of particular relevance to students on the verge of beginning their law practice.

Using a mix of detailed hypothetical scenarios building upon the preceding five semesters of legal education and reviewing/synthesizing the material from the first year *Foundations* course and the second year *Lawyering* course, these 3L segments would be offered in at least the following areas:

- Sub-segment 1: Civil practice encompassing both litigation and transactional dilemmas (approx. 3 sections);
- Sub-segment 2: Criminal practice encompassing both defense and prosecution dilemmas (approx. 1 section); and,
- Sub-segment 3: Regulatory practice encompassing the unique dynamics encountered by lawyers who engage legislatures, courts, and agencies (approx. 1 section).

Further specification may be possible, and will be considered. Suggested class size for each of these sub-segments would be approximately 40.

One potential approach would be to break-down the class into teams of 3-4 students who would be responsible for presenting one week's worth of material and using creative, interactive presentation methods. This format encourages team-based learning and collaboration – skills that are increasingly important in many legal and business environments. The class would also be taught by practitioner-facilitators who would be trained by the Cal Turner Center. These practitioners could be the same ones involved in the 1L *Foundations* course, since the two courses would be meeting in different semesters. They could also be adjuncts teaching the 2L *Law of Lawyering* course, or practitioners retained only for the third year segment.

Distinctive features of this 3rd year course would include:

- (1) team-based presentation of each week's material using a creative format;
- (2) a writing assignment including reflection on the student's "professional mission statement;"
- (3) exposure to and exploration of a significant number of real-world, fact-based hypothetical scenarios designed to simulate the type of practice-specific ethical issues and moral dilemmas students can anticipate following graduation.

Evaluation

The practitioner facilitator would assess the students on the basis of their presentations and any written assignments, and would assign a final grade based on these assessments plus the student's grades in the previous two segments. This grade would appear on the student's transcript.

Integrating Upper-Level Legal Methods Courses Offering Skill-Based Menu Options into the Law School Curriculum.

Anna P. Hemingway, Interim Director of the Legal Methods Program,
Director of Academic Support, Legal Methods Professor,
Widener University School of Law-Harrisburg, PA.
Showcase Presentation

Problem: One of the main purposes of every law school in the United States is to prepare its students to practice law.¹ Yet many, if not most, law students face a “steep learning curve”² after graduation. Part of that curve often involves learning how to effectively write legal documents and conduct legal research for a specific practice area of law. For example, the practice of criminal law involves writing sentencing memoranda and omnibus pretrial motions, while a personal injury lawyer may focus more on writing litigation plans and settlement evaluation letters. Legal Methods programs often cannot adequately address all of these different forms of legal writing. Rather, the programs concentrate on the basics: objective writing of a closed memorandum and an open memorandum, followed by the persuasive writing of a motion memorandum and an appellate brief. While these fundamental writing and research skills need to be at the core of legal education, they are simply not enough to thoroughly prepare a student to practice law, especially when the courses are offered only in the first year of law study.

In 2006, the Widener Legal Methods program went from being a required five credit, two semester course covering the basics, to a seven credit, three semester course covering the basics. We slowed everything down, so that the students could have an opportunity to more fully develop the basic skills needed to succeed as a lawyer. After offering this program for a year, it became evident that many of the students believed they were missing out on an opportunity to develop additional, “different” legal research and writing skills. Some students complained that they did not have any inclination to practice appellate advocacy and resented the program requirement that they focus on persuasive writing for two semesters. A program structured in this nature is certainly a viable alternative at many schools, and given the chance, may indeed have been successful at Widener. The Legal Methods professors at Widener, however, decided to respond to the students’ criticisms by trying something new: offering a menu option for the third semester of Legal Methods.

¹ Don Welch, “What’s Going On?” in *the Law School Curriculum*, 41 Hous. L. Rev. 1607 (2005). This article discusses the importance of developing professional judgment in law school.

² Jason M. Dolin, *Opportunity Lost: How Law School Disappoints Law Students, the Public, and the Legal Profession*, 44 Cal. W. L. Rev. 219 (2007). This article addresses how law schools can better prepare students for law practice and explores why schools do not already do this.

Innovation: In 2007, Widener began offering students different menu options that would fulfill their Legal Methods III requirement. Instead of just offering Legal Methods III, a course focusing on Appellate Advocacy, Widener menu options also included Advanced Legal Skills, Contract Drafting, a Legal Methods III course specializing in Domestic Violence, Legislative Drafting, and a Personal Injury specialization. This year, we are also offering a Legal Methods III section specializing in writing for the attorney practicing criminal law, and a section for the attorney writing in general practice. The program is hoping to add a course focusing on judicial opinion writing next year.

While striving to develop students' abilities to effectively resolve legal problems in a contextual basis, each course focuses on writing assignments unique to that area of the law. For example, the Domestic Violence specialization provided "practical skills necessary to provide competent and ethical legal representation to victims of domestic violence."³ The assignments included conducting a mock client interview and a mock settlement negotiation, drafting a petition for protection from abuse and custody complaint, an opinion letter, and a memorandum involving a custody issue.⁴ In contrast, Legislative Drafting provided students not only with the theoretical understanding of constitutional and political constraints on legislative drafting, but also with practical drafting experience.⁵ The assignments included drafting problems involving criminal statutes, funding statutes and tax statutes, along with editorial work on poorly written statutes.⁶

These courses are available for students to take after their first year of study is complete. This timing is a very important aspect of the program. By providing instruction on legal research and writing beyond the first year, these skills are further integrated into the students' overall education. The courses strive to utilize learning techniques that help students further develop their lawyering skills before graduation.

Process: To implement this program, the Legal Methods Department wrote a proposal to Widener's Curriculum Committee detailing the different sections we wanted to offer. The proposal specifically explained the goals of each course. We did not encounter any obstacles: the Curriculum Committee unanimously approved the proposal.

Once the proposal was approved, the Legal Methods Director worked on finding ways to effectively administrate the program. Initial concerns were the scheduling and staffing of the classes. In order to effectively offer all of these small Legal Methods III sections, the course offerings need to be

³ Randi Teplitz, *Legal Methods III Synopsis*, (November 2007).

⁴ *Id.*

⁵ Vincent DeLiberato, *Legislative Drafting Syllabus*, (2008).

⁶ *Id.*

carefully coordinated with the Registrar's Office. Additionally, Legal Methods III relies on the use of several adjuncts having expertise in their area of specialization.

Evaluation: The program is being evaluated at several levels: (1) the program director is responsible for monitoring the administration of the courses; (2) the Legal Methods professors (both full-time and adjuncts) monitor the content of the courses and student performance; and (3) the students provide evaluations of each course. Generally, the feedback has been very positive. The faculty enjoys the opportunity to further develop their own areas of specialization and students are happy to have so many practical, skill-based options to choose from in fulfilling their graduation requirements. The students also have multiple opportunities for feedback and assessment in each course. A key administrative concern continues to be the scheduling of the different sections. Since it is not possible or desirable for the school to offer each section each semester, students need to carefully plan their scheduling of courses to assure they get a seat in the section they prefer.

Carnegie/Best Practices: *Best Practices* calls on law schools "to make a commitment to improve the preparation of their students for practice, clarify and expand their educational objectives, improve and diversify methods for delivering instruction, and give more attention to evaluating the success of their program of instruction."⁷ In order to accomplish these objectives, *Best Practices* suggests that law schools "shift from content-focused programs of instruction to outcomes-focused programs of instruction that are concerned with what students will be able to do and how they will do it."⁸ The Legal Methods III courses that are now offered are all focused on what the students will be able to do for their clients upon graduation. Not only do the Legal Methods courses develop the "fundamental competencies common to most practice areas,"⁹ they also attempt to address what *Best Practices* describes as the "legal market's demand for lawyers with very specific and extremely diverse types of competencies."¹⁰

For example, the Legal Methods III-Writing for General Practice syllabus bullets for the students the goals of the writing component and the research component of the course. It explains that the students will "draft a variety of documents"¹¹ and "learn new research and advocacy skills that you will utilize in your everyday practice of law."¹² In so doing, the course exemplifies the *Best Practices* principle that courses should articulate specific

⁷ Ron Stuckey, et al, *Best Practices for Legal Education*, 7 (2007).

⁸ *Id.* at 8.

⁹ *Id.* at 41.

¹⁰ *Id.*

¹¹ Alex Makosky, Writing for General Practice syllabus (2008).

¹² *Id.*

educational goals.¹³ The course syllabus specifically lays out what the students should be able to accomplish and how their success will be measured. Through the use of context-based education, all of the Legal Methods III courses strive to teach analytical skills and the production of law-related documents: two skills which are invaluable to a new practitioner, regardless of their area of specialization.

Additional Resources: Please see footnotes throughout.

¹³ Best Practices, *supra* note 7 at 55.

Building Toward Practice— William Mitchell's Pathways to the Profession and Keystone Course Programs

Denise Roy, Curriculum Committee Chair, William Mitchell College of Law
Showcase Presentation

Problem:

The **Pathways** and **Keystone Programs** aim to help students sustain intensity and enthusiasm beyond the first year of law school, to begin to develop a sense of professional identity, and to build systematically toward practice and a lifetime of self-directed learning as legal professionals.

The **Pathways Program** began as a planning tool to help students choose courses after the first year of required courses. Our work was prompted by students' difficulty sorting through, prioritizing and sequencing the large number of elective courses available to them after the first year, which often manifested in complaints about course scheduling and registration. As the project developed, we discovered its rich potential to help students both integrate academic studies with other learning activities, such as clerkships, competitions and public service, and connect to the wider legal profession. The Pathways Program has also proved very useful to faculty and administrators as a tool for assessing curriculum, advising students, and communicating about programs. The process of creating and improving Pathways has sparked exciting collaboration among various departments of the law school, including academic support, admissions, alumni relations, career development, faculty, information technology, library, marketing, multicultural affairs, and student services.

The **Keystone Program** grew from a desire to be as intentional about designing the last year of law school as we had been about the first—making the last stage of law school something more than just a continuation of the second year and providing a more effective transition to practice. We believed that capstone courses could promote learning by generating excitement and challenging students to act as creative, responsible professionals. We wanted to encourage students to see their middle year(s) as building toward a more integrated, intensive kind of learning, and, beyond that, to provide the kind of reflective learning experience increasingly rare in the early years of practice.

Innovation:

Pathways to the Profession of Law is an interactive website comprised of a series of Pathways through William Mitchell's post-first-year curriculum. A number of the Pathways are subject-area focused, such as Business Law, Criminal Law, Intellectual Property Law and Tax Law. Others are for students who do not have a particular doctrinal focus or who want to place their specialized studies in the context of a well-rounded overview of law. These include the Bar Preparation Pathway, the Public Interest Pathway and the Civil Litigation Pathway. We have also begun to develop Pathways aimed at a particular type of practice, such as the Government Practice Pathway.

The highlight of each Pathway is an interactive Pathway Guide helping students select courses as they move through a Pathway by identifying core and recommended courses, as well as other courses to consider, and providing links to course descriptions along with other information about how the courses fit in the curriculum. Links to Sample Schedules for part-time and fulltime students show how Pathway courses can be fit into a student's schedule among required courses and non-Pathway electives. Each Pathway also has: (1) an opening page with information about the Pathway and how it relates to the practice of law, information about related on-campus events and programs, and a list Pathway faculty with links to their bios; and (2) a Resource Page providing links to Pathway-related student organizations, competitions, professional organizations, blogs and web sites and displaying RSS feeds displaying current news stories related to the Pathway. Soon we will provide information

about public service opportunities related to the Pathway and a means of connecting with a Pathway Mentor.

The **Keystone Program** encompasses a growing and evolving set of capstone-like courses to be taken in the last (3rd or 4th) year of law school. A keystone sits at the top of an arch and holds all the other stones in place. Unlike the more familiar “capstone course”—which takes its name from the stone at the top of a wall—a Keystone Course represents both a pinnacle and a passage. A Keystone Course is a transformational learning experience representing both the culmination of law school learning and a transition to law practice and a lifetime of self-directed learning.

A key innovation here lies in the criteria we have developed (set out below), which ensure that each class will meet core pedagogical goals while affording faculty flexibility to design courses appropriate to their goals and interests and yielding a rich array of courses to meet the needs of a diverse student body. As a result, several very different models have grown from a single set of criteria, including simulation courses, courses that combine a field placement with a seminar, and courses that combine multiple clinics with a Keystone seminar connecting clinic practice with theoretical study. We have created a simulated corporate buy-sell transaction course, courses that simulate small firm practice in both the civil litigation and small business settings, a course on elder justice and policy in which students work on policy initiatives for senior advocacy organizations and come together in a seminar setting to use technology as a senior advocacy tool, and a seminar on the role of lawyers in democracy that challenges students studying theoretical connections between justice and democracy to work with lawyers on democratization projects. Under development are courses focusing on complex tort litigation, employment law representation, family law collaboration in a multi-disciplinary setting and a practice theory course available to all clinic students.

A Keystone Course:

1. builds on previous law school learning;
2. requires that students take active responsibility as professionals educated in law;
3. requires that students consider questions relating to legal ethics or professionalism;
4. reflects real-world framing in subject matter, organization, content and methods;
5. integrates multiple facets of law-related doctrine, skills or theory;
6. requires that students work on developing one or more skills at an advanced level;
7. requires that students produce substantial, concrete manifestations of their learning;
8. provides repeated cycles of reinforcement and evaluation, including student self-evaluation; and
9. is offered for sufficient credits to accomplish these requirements.

These courses improve on traditional doctrinal courses by requiring students to take active responsibility as professionals addressing real-world challenges in an integrated way and to produce substantial, concrete manifestations of their learning. They improve on training in early years of practice by ensuring students’ work is subjected to cycles of reinforcement and evaluation, including self-evaluation.

The Curriculum Committee and faculty refer to these criteria in approving new courses as Keystone Courses or designating existing courses as Keystone Courses. Students successfully completing Keystone Courses receive a designation, with explanation, on their transcripts. Until we have a critical mass of such courses, they will be optional and not required for students.

Process:

Both projects can be traced to William Mitchell’s strong connections to the practicing bar and long history of innovative teaching. A 2005 strategic planning process yielded commitment to the goal of

sustaining students' intensity and enthusiasm beyond the first year by designing and implementing an education that propels students to achieve at a high level throughout their careers. Specific means identified for accomplishing this goal included capstone courses, improved sequencing through the intermediate curriculum, strengthened links between the educational program and students' professional development and improved assessment tools allowing diverse students to achieve and demonstrate successful learning.

Mitchell's Curriculum Committee, which had been active in the 2005 strategic planning process, took on the charge of implementing this goal. The committee began with the capstone sub-goal. After some study of other capstone programs (which turn out mostly to be externships) and a great deal of discussion about how to provide a more intentional, effective transition to practice, we developed the above capstone (now Keystone) course criteria and a process for developing and approving **Keystone Courses**, all of which was approved by the faculty as a whole. We then began the process of recruiting faculty to develop new Keystone courses, lobbying for administrative support for development and teaching of Keystone Courses (including staff support, stipends, release time and teaching load adjustments), and identifying existing courses that could be designated as Keystone courses. We piloted our first courses this past spring (2008) and will continue adding Keystone Courses over the next several years. The biggest challenges to implementation are the resources required to make this kind of small-enrollment, time-intensive education available to a large number of students. The administration has been very supportive of the effort, and faculty has been very enthusiastic about creating Keystone Courses.

The **Pathways Program** concept was originally conceived and roughed out by the Curriculum Committee beginning in April 2006. The committee as a whole brainstormed about approaches and then individual committee members (including faculty members, administrators and students) drafted sample Pathway Guides. Through this process, consensus was reached about critical content and layout. Ideas for other Pathway features developed in the course of work on the Guides. Implementation required the support of the administration and faculty, especially as significant IT and Marketing resources were required to turn the concept into working web pages. However, the project did not require formal faculty approval. Once we decided to pilot the project, individual faculty members in each of the pilot Pathway areas drafted guides, sample schedules, opening page text and faculty lists. Library staff developed resource page content with input from faculty. We piloted seven Pathways in Spring 2007 and added a number of Pathways in each of Fall 2007 and Spring 2008. We currently have seventeen Pathways and are continuing to build on the program.

Evaluation:

Feedback on the **Pathways Program** has been uniformly enthusiastic. The striking absence of any negative feedback lead us to abandon the idea of using formal surveys to evaluate the program. We do have a number of less systematic means of evaluating the program. Most importantly, we have included an e-mail link on every Pathway web page inviting students to provide feedback. (This link also provides a quick and easy means of getting questions answered, which has not turned out to be needed.) We have also gathered feedback through student members of the Curriculum Committee, the Student Bar Association and reports on student reactions expressed to staff and faculty. Students find the Pathways very useful and user-friendly. Informal reports from faculty and staff are also uniformly positive. Faculty find that the Pathways reduce time devoted to advising students about course selection and also provide a means to showcase our program in a given area to alumni, employers, faculty candidates and others. The Pathways have proved a popular and effective tool for staff working in career development, admissions and alumni relations, in particular.

We have just completed our first semester of **Keystone Courses**. Student feedback gathered through course evaluations and informal reports has been very positive. The courses filled quickly and all had wait lists. Students who took the courses reported positively on their learning experiences.

Faculty teaching Keystone courses are excited about offering their courses on a regular basis and other faculty members have been encouraged to create new Keystone Courses and seek Keystone designation for existing courses. These courses have proved a particularly wonderful vehicle for collaboration between fulltime faculty and practicing lawyers and judges, who have played roles varying from full partners in developing courses to experts called in to teach a particular aspect of a simulation to field placement supervisors.

Carnegie/Best Practices:

Both the **Pathways Program** and the **Keystone Program** promote the integration of the cognitive/theoretical, practical and professional/ethical apprenticeships as urged by the Carnegie Report. They also reflect and further “an institutional commitment to do the best [we] can to prepare [our] students for practice,” a key value underlying all the Best Practices recommendations and particularly reflected in Key Recommendation 1. They grew from the kind of intentional, mission-driven, outcomes-focused process that the Best Practices report considers critical to effective implementation of best practices in legal education (see Best Practices pp. 7-8).

More specifically, the **Pathways Program** encourages and helps students to plan for and integrate the three kinds of learning emphasized by Carnegie across the curriculum as a whole. Work on the Pathways Programs provides a lens through which the faculty can assess the curriculum as a whole, including the question of whether students have adequate opportunities for all three kinds of learning and for integration of the three kinds of learning. The Pathway Guides make it obvious when curricular elements are missing from a particular Pathway. The other Pathway pages link students’ academic work to practice and to a variety of extracurricular settings in which the three apprenticeships may be pursued.

The criteria for **Keystone Courses** require integration of the three Carnegie apprenticeships and specifically implement a number of Best Practices recommendations. In a Keystone course, students must take active responsibility as professionals and grapple with ethics and professionalism issues (professional/ethical apprenticeship; Best Practices Key Recommendations 5 and 6); they must work on advanced lawyering skills (practical apprenticeship; Best Practices Key Recommendation 3-6); and they must both build upon previous learning and integrate various aspects of doctrine and skills (cognitive apprenticeship, Best Practices Key Recommendation 6). The requirement of “real-world framing” requires that Keystone Courses employ “context-based instruction” (Best Practices Key Recommendation 7). The courses provide a vehicle for collaboration with practicing lawyers and judges (Best Practices Key Recommendation 1).

Additional resources:

Pathways site: www.wmitchell.edu/pathways

Keystone site: <http://www.wmitchell.edu/curriculum/curriculum/keystone-program.asp>

California Western School of Law

STEPPS: Skills Training for Ethical and Preventive Practice and career Satisfaction

The STEPPS program is designed to teach professional responsibility, ethics, and lawyering skills in an engaging context that emphasizes prevention and problem solving. Students receive 3 credits per trimester for the combination of their classroom work and active participation on simulated cases.

In each of the two trimesters, students will attend a weekly large group class and a 16 person Law Office small group session. Each Law Office is directed by a faculty member (“senior partner”) and a teaching assistant (“junior partner”). The large class uses a combination of lecture, discussion, problems, and in class exercises. In law office meetings students learn and practice lawyering skills by using simulated cases and role-play exercises.

The caseload for each law office will include a variety of areas of law that are civil, criminal, transactional, and litigation. Often working in teams, each student will work on three cases during the Fall trimester and one case of greater complexity that will be handled from start to finish in the Spring.

Students will have opportunities to learn and practice the fundamental lawyering skills of interviewing, counseling, case planning, negotiation, mediation, problem solving, and prevention analysis. Students will receive feedback and evaluation on each skill. Advanced research and writing assignments will include drafting of a variety of types of legal documents.

Preventive practice is one of the unique points of emphasis for the program. Students will examine the special skills necessary to address prospective potential problems and counsel clients about them. While such skills are crucial for transactional work, they are also relevant in the litigation context, and will be embedded in most cases that students handle in the program.

Exposure to a variety of areas of law and diverse lawyering skills will help students begin to evaluate the options available for legal work in their future. Work environment is a key factor in determining what kind of job will provide satisfaction, and the STEPPS law office will offer opportunities to explore questions related to career settings. In addition, the offices will examine the challenges of balancing personal and professional goals. The STEPPS program will be an ideal opportunity to begin to identify and address the career satisfaction concerns that present life long and evolving challenges

STEPPS PROGRAM



Skills
Training for
Ethical and
Preventive
Practice and career
Satisfaction



Go to www.cwsl.edu/stepps

CALIFORNIA WESTERN SCHOOL OF LAW

STEPPS: Skills Training for Ethical and Preventive Practice and career Satisfaction

The STEPPS Program is a sequence of two 3-credit courses. The phase in of the program in 2008-2009 will involve 6 small (16 students) office sections and will be on a voluntary basis. Students will attend a one hour large class and a two hour law office section meeting each week. The following year, 2009-2010, the program will be required for all 2L students.

Five Main Program Goals:

- Professional Responsibility
- Prevention & Problem Solving
- Legal Research & Writing
- Other Lawyering Skills (i.e. interviewing, counseling, case planning, negotiation, ADR techniques)
- Enhancement of Career Satisfaction

Primary Pedagogies for each of the Program Goals:

1. Professional Responsibility:

A. Lectures—a more traditional component of the program will cover the rules and their interpretations;

B. Readings—a required text for the program will be Legal Ethics in the Practice of Law, co-authored by Prof. Nina Tarr, who will be teaching in the program. The text relies heavily on the problem method and will be supplemented by court decisions and ethics opinions;

C. Case handling and office meetings—students will work on simulated cases that contain realistic ethical issues which they will have to discuss and resolve.

2. Prevention and Problem Solving:

A. Readings—new materials have been assembled especially for the program by Prof. Tom Barton;

B. Case handling—each student will represent a variety of clients in diverse matters that will present legal problems to be solved in context;

C. Office meetings—like a law firm, each office will have “case rounds” meetings at which solutions to cases handled by the firm will be discussed so that students are introduced to solutions to problems beyond those in their own cases.

3. Legal Research & Writing:

A. Research and Memoranda--Students will perform research and memo writing on issues related to their cases;

B. Legal Drafting--Documents will be drafted as appropriate for the type of problem;

C. Case Management--Correspondence and file memos will be maintained as they would in a law office;

D. Feedback--Firm partner/teachers will provide detailed and specific feedback on all writing.

4. Lawyering Skills (Interviewing, Counseling, Case Planning, Negotiation, Mediation, ADR):

A. Lectures—some of the basic information about the theory and practice of each skill will be covered in course lectures;

B. Readings—a required text for the course will be Essential Lawyering Skills, one of the leading texts in the field;

C. Skills practice—students will have opportunities to practice the various skills in connection with work on cases and in classroom exercises;

D. Client representation—work on behalf the simulation clients will require certain capstone lawyering performances in each skill area;

E. Feedback—capstone performances on cases will be video recorded and reviewed by the Firm partner/teachers.

5. Career Satisfaction:

A. Portfolio—through case handling and course work, each student will develop a portfolio of demonstrated accomplishments;

B. Law Office meetings—career satisfaction issues will be discussed at firm meetings in the context of the actual case work and client demands of the simulations.

For more information please go to our website: www.cwsl.edu/stepps

Or read the recent article in The Complete Lawyer at:

<http://www.thecompletelawyer.com/volume4/issue4/article.php?ppaid=9475>

**The New Third Year at Washington and Lee School
Washington and Lee School of Law Third Year Reform
Rodney A. Smolla, Dean and Professor of Law
Washington and Lee University School of Law
Showcase Presentation**

We are at a turning point in the history of the legal profession and the history of legal education. As the Carnegie Foundation's influential 2007 report, *Educating Lawyers: Preparation for the Profession of Law*, forcefully explained, while the Langdell model works extremely well in the first year to teach students the essential building blocks of legal theory, reasoning, and doctrine, it is an incomplete vision of what it should mean to prepare a lawyer for the profession.

Driving Forces

For many, many decades practicing lawyers and judges have said that law schools need to do more to help students make the transition from the theoretical and academic study of law to the actual practice of law, to the serving of clients, to the solving of people's problems, to the exercise of judgment, to understanding the traditions of the profession and the ideals of professionalism.

This, combined with recent publications and debate focused on best practices and legal education reform, drove the faculty at Washington and Lee to think not just about what it means intellectually to become a lawyer, but what it means professionally to become a lawyer. We felt we could be more ambitious and more rigorous in our efforts to help novice lawyers enter the profession with a complete sense of how to engage in the actual craft of lawyering.

Ambitions of the Third Year

Our purpose is to transform law school into a three-year progression from the purely academic study of law to the development of the lawyer's professional role as counselor and advocate in the highest ethical traditions of the profession.

Through a blend of, simulated and actual practice experiences and instruction in professionalism, we will help our students learn the craft of law by actually doing it.

- The overarching goal of the third-year program is to distinguish the learning process in the final year of law school from that in the first and second years, with a view toward deliberately preparing students for the transition to a professional practice.
- A third-year student is expected to more systematically exercise and express professional judgment in a variety of contexts. In short, third-year students will, with guidance and supervision, engage in the craft of lawyering.
- A third-year law student is expected to reflect more systematically on what it means to live one's life in the law. Students will consider and receive guidance on the admirable qualities, dispositions, attitudes, concerns, and habits of good lawyers.

- Lawyers increasingly require conversance with international, foreign, and extraterritorial law in all aspects of their legal work. Students have opportunities in the third year to pursue advanced applications of transnational legal education through practicum courses that are internationally focused and involve travel and legal practice experience in other nations.
- By tradition, law school has been heavily weighted in favor of litigation experiences. Even in subject-matter areas that are in actual practice overwhelmingly transactional, law school courses often present the subject matter through the prism of litigation, using cases (in which by definition the transaction has in some sense failed) as the medium of study. The new third year will counter this historic bias, and offer a substantial mix of transactional experiences, including simulated, real-practice, and CLE experiences that are transactional in nature.

The Third Year At a Glance

- The third-year program is entirely experiential, comprised of law practice simulations, real-client experiences, and the development of professional and practice skills.
- Each semester includes a two-week immersion course in practice skills; one focusing on office skills and transactional practice and the other on litigation and conflict resolution.
- All students participate in a year-long professionalism program that will involve practicing lawyers and judges and will promote the development of professionalism in all aspects, including legal ethics, client management and the economics of law practice.
- The rigorous third year, presented entirely through a mix of legal clinics and experiential courses, builds upon the lessons and law of the first- and second-year curriculum and serves as a true capstone of the three-year legal education.
- The third-year courses are taught by members of the permanent law faculty, adjunct faculty, and visiting “professors of practice” drawn from the bench and bar.
- Washington and Lee has invited a distinguished group of external advisors to assist in the planning of this new curriculum. These advisors come from the highest levels of the judiciary, practicing bar, business world, journalism, and the academy.

Structural Elements of the Third Year

- ***Practicum Courses.*** The largest single component of the third year experience consists of practicum courses, primarily simulated practice experiences that will span the array of traditional legal subject matter.

Example: Business Planning Practicum Professor Lyman Johnson

This course is aimed at students who expect to be legal advisors to business leaders. The principles of law learned in the corporate, tax, and other commercial courses are drawn together as students perform lawyer-like work on common, but complex and intellectually-demanding, business transactions. All work is closely supervised and carefully evaluated.

Students, for example, advise two entrepreneurs as to the best organizational form for a start-up biotech venture, writing a six-page analytical memo detailing and supporting their views. They then prepare an actual operating agreement for an L.L.C. for the proposed deal. They do this work, however, only after engaging in an in-depth analysis of state statutory provisions and federal income tax rules governing unincorporated business entities. They also confront intellectual property topics, professional responsibility concerns, and a host of other business and finance issues as they design the optimal business arrangement for the venture.

Students next confront a challenging financing issue. Drawing on their understanding of securities regulation—covering both public offerings and private capital formation—they analyze and express views on the choice between conducting an IPO or entering a corporate joint venture to finance a growing business. They then negotiate and prepare a detailed letter of intent, addressing all pertinent issues, for a proposed Delaware corporate joint venture between the L.L.C. they earlier formed and an unrelated public corporation.

Finally, students handle selected issues associated with the purchase and sale of a business. They work with an Asset Purchase Agreement and ancillary documents and see how a broad range of legal subjects must be thoroughly understood and addressed in order to handle a complex sale and purchase transaction.

- ***Practice Intensive.*** Two-week, intensive courses at the beginning of each semester covering transactional and dispute resolution practice emphasizing litigation, mediation, arbitration, drafting and negotiation skills.
- ***Clinic and Externships.*** Students will participate in one of the many existing or developing clinics or externship programs so that each will graduate with a real law practice experience.
- ***Law Related Service Program.*** All students will participate in extra-curricular law-related service, including external community service activities or internal programs such as law reviews, moot court competitions or student organizations.

- **Professionalism Program.** Running throughout the year, this program engages students in the study of the legal profession as a profession structured by unique principles, institutions and challenges.

The Study of the Profession as a Profession

Many intense challenges face the legal profession, including the intense pressures created by the modern competitive legal business environment, the stresses of trans-jurisdictional practice, the pressures of globalization, the struggle to provide legal services to the indigent, the challenges domestically and internationally to the rule of law, the challenges of addressing issues of racial, ethnic, and religious diversity, the role of lawyers in civil engagement and leadership, stresses on leading a good and decent and healthy life, balancing family or health or spiritual needs with the pressures of fast-paced practice, the breakneck pace of technological innovation, the perceived decline of civility, mentoring, and ethical sensitivity within some elements of the profession, the high debt load of graduating law students, the poor salary structures for judges, government lawyers, and public interest lawyers, and the perceived assault on the independence of courts.

These issues are often studied by law students in the context of substantive course offerings. In the Washington and Lee third-year program, they will also be studied in a disciplined manner as part of a coherent exploration of the legal profession itself.

The Development of Ethical Judgment in Context and in Action

Law Students will have already taken a course in Professional Responsibility during their second year of law school. The Professionalism Program will build on that course by presenting students with simulated practice conundrums in which ethical judgment must be exercised.

The Development of Professional Identity beyond Mere Adherence to Disciplinary Ethics Rules

Professionalism means a great deal more than minimal adherence to the legal profession's disciplinary rules. Lawyers are members of a self-governing profession, and their actions and demeanor reflect on the profession. Integrity; the avoidance of bigotry, discrimination, and prejudice; the treatment of others with respect, civility, and courtesy; the mentoring of less experienced lawyers; engagement in civil society; and community service are among the hallmarks of such professionalism.

Managing One's Life as a Lawyer

The professionalism program will include exploration of the challenges that arise in managing of one's life as a lawyer, including everything from time management to lifestyle balance issues to mental and physical health.

The CaseArc Integrated Lawyering Skills Program

Presenter: Kenneth R. Margolis, Professor of Law and Director,
Case Western Reserve University School of Law
Showcase Presentation

Problem: Like many law schools, our legal writing and skills courses tended to be a group of somewhat disconnected individual offerings which had no overarching goal aimed at addressing the needs of all students to be taught a broad range of fundamental lawyering skills. Except for the standard 1st year legal writing course, these courses were elective, so many students had very little training before graduation in important lawyering skills or exploration of professional role.

Innovation: In Fall, 2003 the law school redesigned its legal analysis, research and writing and lawyering skills programs to develop a fully integrated and sequenced curriculum, which extends over all 3 years of law school. The CaseArc Program consists of an extensive Introduction/Orientation program, four required courses and a Capstone program. Team teaching integrates legal theory and doctrine, lawyering skills and professional role. Doctrinal subjects are linked with legal analysis, research, writing and problem solving. Simulations are used to teach fundamental skills including interviewing, counseling, negotiation, and oral presentation. See Appendix for a more detailed description of the program.

Process: The process leading to the adoption and implementation of the CaseArc program involved a year-long study by a special faculty Task Force on Lawyering Skills and Professionalism. The Task Force's findings and recommendations were shared with the full faculty on at least 2 occasions and the ultimate design of the program received unanimous faculty support. Obstacles at the adoption phase included debates and faculty decisions about the proper balance of skills training and doctrinal training (the appropriate "skills vs. substance" balance in the curriculum), the reallocation of resources from existing courses to the new courses, and staffing of the new program. Obstacles at the implementation phase included a wide variety of logistical issues such as training of adjunct faculty, room scheduling, timing of simulations with doctrinal classes, resource issues, hiring new faculty, detailed design of new courses, finding appropriate materials for the new courses, grading methodologies to provide formative and summative feedback and other issues. These issues were overcome by constant interaction and communication between the Task Force members, students, the administration and the new and existing faculty who would be involved in teaching the courses.

Evaluation: To date, empirical evaluation has rested primarily on student evaluations. But we have also engaged in a variety of less formal anecdotal evaluations such as the use of a Student Advisory Group, interviews with random students, meetings between faculty members and adjuncts regarding what experiences they are having and what works and what doesn't work, regular meetings between faculty teaching the same course, and some post graduate contact with students who have gone through the program. We are considering other types of evaluation such as interviews with employers of our students, broad based questionnaires or surveys of our graduates who have now gone through the program, a more formal outside advisory group consisting of practitioners and alumni, and the like.

It appears that the student evaluations of the program are steadily improving. We appear to be successful in achieving the basic goal of training all of our students in what we have defined as the fundamental lawyering skills.

Carnegie/Best Practices: We believe the CaseArc program follows many of the key recommendations of the Carnegie Report/Best Practices in Legal Education reports in that: 1) it integrates the teaching of legal doctrine and analysis, lawyering skills and professional role; 2) the training begins

on the first day of law school and continues throughout all three years providing sequenced training in fundamental lawyering skills; 3) it provides opportunities for faculty to work across the curriculum by utilizing professionals with different strengths and focuses in their teaching – combining members of the legal academy and the practicing bar in team teaching, large class, small class, and individual training using lecture, discussion, peer review and experiential learning techniques; 4) it implements the common purpose of training all of our students in the fundamental skills necessary for successful law practice.

Additional resources:

CaseArc website: <http://law.case.edu/curriculum/content.asp?id=398> (and associated links); Turning Law Students Into Lawyers (article on the program in the online journal The Complete Lawyer): <http://www.thecompletelawyer.com/volume3/issue5/article.php?ppaid=4436>

APPENDIX: Summary of the CaseArc Integrated Lawyering Skills Program

Summary of Underlying Principles

1. **Exposure of All Students to Fundamental Skills.** All are exposed to the fundamental lawyering skills in the first and second years. These skills consist of:
 - a) Fact investigation including document review
 - b) Client interviewing
 - c) Client counseling
 - d) Legal research tools and methods
 - e) Legal analysis
 - f) Legal problem solving and strategic thinking
 - g) Legal writing in litigation and non-litigation contexts
 - h) Oral presentation in different contexts - objective, persuasive, formal, informal
 - i) Negotiation and other ADR techniques
 - j) The transactional/planning process
 - k) Recognizing and resolving ethical dilemmas
2. **Integration of Skills and Substance.** Legal writing problems and other skills exercises are linked to the substantive areas of law that students are studying at the time. This helps them learn the substance and give the skill relevance to the rest of their studies. It also permits skills training to complement doctrinal/theory training, rather than be a distraction from it.
3. **Graduated Complexity.** First exposures to all skills (including legal writing and analysis) are simple. Later experiences are increasingly complex. Some skills are taught more than once due to their importance – e.g. client relations skills, legal analysis and legal writing
4. **Repetition.** Skills are best learned by repeated practice. Students get practice throughout law school in the fundamental skills of lawyering in increasingly complex situations.
5. **Collaboration and Coordination.** For the integrated teaching of fundamental skills, a team approach is used for the first four semesters. There are several teams operating during each semester. A team consists of a research, analysis and writing professor, one or more doctrinal professors, assistance from a librarian, and several adjuncts.

Summary of Courses

First-Year Required Courses:

Introduction to Lawyering. This is the Introduction Week and Orientation to the law school and the CaseArc program. Entering first year students attend a full week of activities and classes immediately preceding the beginning of classes in the fall semester. Topics covered in class sessions include the professional obligations and values of the legal profession; client interviewing; an introduction to legal analysis and writing; the law school classroom; and comparative legal systems. Activities include interviewing a client, watching a trial, deliberating as a jury, and observing an appellate argument.

Core Lawyering Skills - Part 1 (CORE 1). This is the first of the required sequence of courses in which students are introduced to the fundamental skills of practicing law. Students receive an orientation to the American legal system and begin the study of the methods and formats of objective written legal analysis and manual and computerized legal research. Students begin to develop the basic skills of interviewing, fact gathering and client counseling. The course is taught by a combination of classroom instruction, small group discussions and through performance and critique of simulation exercises. The goal is to integrate the learning and application of legal theory, doctrine and practice in an authentic manner. Students are assigned to an instructional team consisting of a doctrinal instructor, a research, analysis and writing instructor, a skills instructor and are assisted by a librarian. The team coordinates the assignments and exercises so that students are provided a learning experience which combines lecture, discussion and hands-on experience.

Students must take this course in the fall semester of their first year.

Core Lawyering Skills - Part 2 (CORE 2). This is the second of the required sequence of courses in which students are introduced to the fundamental skills of practicing law. Students build on their learning in CORE 1 by confronting more complex and challenging problems. The format of the course and teaching methods are similar to CORE 1, but students learn more complex fact gathering and document analysis, counseling, legal research, analysis and writing in the persuasive mode. Students are introduced to negotiation theory and technique and to the principles of effective oral presentation in formal and informal settings.

Students must take this course in the spring semester of their first year. Prerequisite: Core Lawyering Skills - Part 1 (CORE 1)

Second-Year Required Courses:

Core Lawyering Skills - Part 3 (CORE 3). This is the third of the required sequence of courses in which students are introduced to the fundamental skills of practicing law. Students build on their learning in CORE 1 and CORE 2 by applying the principles of legal analysis, writing, interviewing, counseling and negotiation in the transactional setting. Students also learn about the challenges of applying these lawyering skills in the representation of groups and entities. The format of the course and teaching methods are similar to CORE 1 and CORE 2.

Students must take this course and Focused Problem Solving in their second year. They choose one in the fall and the other in the spring. Prerequisites: Core Lawyering Skills - Parts 1 and 2 (CORE 1 and 2).

Focused Problem Solving. This is the fourth of the required sequence of courses in which students are introduced to the fundamental skills of practicing law. Students apply and expand the skills learned in CORE 1, 2 and 3 in the context of a specific area of law and a concrete case problem. The overarching emphasis of the course is legal problem solving, strategy formation and implementation. Students are assigned to represent a client in a simulated case. They identify and evaluate options to solve specific legal problems, engage in fact gathering, develop strategies for accomplishing goals, interview and counsel clients, evaluate ends/means considerations, engage in negotiation or mediation, and depending on the type of problem, function in the litigation and/or transactional contexts.

Students must take this course and CORE 3 in their second year. They choose one in the fall and the other in the spring. Prerequisites: Core Lawyering Skills - Parts 1 and 2 (CORE 1 and 2).

Capstone Opportunities (real client clinics, externships and labs):

The training in the first two years of the *CaseArc* program is designed to culminate in students participating in the Capstone Experiences. Students must complete an "advanced legal analysis" experience including research and writing in a focused substantive area which satisfies the law school's upper level writing requirement. Students also may complete a "reality based" practice experience which meets certain criteria (these are still elective courses.) For the experiential capstone, interested students select an experience from a menu of available options. The experiential capstone arises out of a real legal problem or situation, and originates from an outside constituency. Examples of the experiential capstone are real client representation (e.g. in-house real client clinics), a recurring legal issue as presented by an outside attorney (e.g. Death Penalty Lab), a set of problems presented by a tribunal (e.g. War Crimes Tribunal), or a decision making problem presented to a judge (e.g. Federal Judicial Externship). These experiences involve interaction between the student and the outside players.

Real Client Clinics, Externships and Labs (2007-2008)

Clinics:

Criminal Justice Clinic
Community Development Clinic
Civil Litigation and Mediation Clinic
Health Law Clinic

Externships:

Access to Justice
City Law Department – Summer
City Law Department – Academic Year
Federal Public Defender
Federal Judicial
Federal Trade Commission
Immigration Law Practicum
Internal Revenue Service
International Tribunal
U.S. Attorney – Civil
U.S. Attorney – Criminal

Labs:

Coast Guard Defense
Death Penalty – I and II
Financial Integrity in Emerging Markets
Global Corporate Governance
International War Crimes Research
Terrorism Prosecution – I and II
Urban Development

Lessons from the Front Lines of Experiential Education

Susan Brooks, Associate Dean for Experiential Learning and Associate Professor of Law
Kevin Oates, Associate Professor of Law
Emily Zimmerman, Associate Professor of Law
Drexel University – Earle Mack School of Law

Showcase Presentation

I. Problem/Challenge

Starting new law school that integrates all aspects of professional training (doctrinal knowledge, skills, professionalism) from day one

In August 2006, Drexel University's law school admitted its first class of students. From its inception, the law school's mission has been to provide its students with a program of legal education that integrates all aspects of professional training. This mission informed the school's planning and continues to inform the school's curriculum and pedagogy.

II. Innovation

A. ***Intentional, ground-up planning of a law school that integrates all aspects of professional training***

B. ***Sequential experiential curriculum***

The curriculum has been designed to provide students with professional training that supports students' development and gives students opportunities to handle increasingly complex work with increasing levels of responsibility "in role" as they progress through law school.

i. **Introduction to professional training in first year**

a. **Introduction to Law and Legal Methods**

All first-year students take a 2-credit Introduction to Law course during Orientation and then take 6 credits of Legal Methods. In these courses, students learn research, analysis, advocacy, and legal writing; students learn about professionalism; and students develop their skills through a series of writing assignments (including memos and briefs).

b. **Interviewing, Counseling, and Negotiation**

All first-year students take Interviewing, Counseling, and Negotiation. This course also continues the students' introduction to professionalism. Students not only read and discuss theory and planning of these lawyer-client and lawyer-lawyer interactions, but also develop their skills through a series of simulation exercises in which students role play as both lawyers and clients.

c. **Other first-year courses**

Students receive integrated training in other first-year courses. For example, in Constitutional Law, students

present oral arguments and judge other students' arguments.

ii. Continuing professional training after the first year

a. **Co-op program**

Students receive academic credit for spending 20-25 hours per week at a field placement in one of a variety of settings -- including law firms, judicial chambers, and public service organizations -- for roughly 6 months and participating in an accompanying **Lawyering Practice Seminar** in small sections (15-20 students); field placement supervisors are trained by law school faculty. In the first year, well over two-thirds of eligible students participated.

b. **Pro bono requirement**

Students are required to perform 50 hours of pro bono service while in law school.

c. **Field clinics**

Small groups of students are specially licensed, and spend 16-20 hours per week supervised by adjunct faculty/staff attorneys at prominent local government and public interest organizations for an entire academic year. Field clinic students also participate in the **Justice Lawyering Seminar**, in which they research and write a publishable paper inspired by their field experiences.

d. **In-house clinics**

Tenured and tenure-track faculty teach and supervise small groups of students "in-house." The structure of these clinics is similar to the field clinics, in terms of the length and time expectations, as well as the accompanying seminar. The in-house approach allows for greater control in case selection and in student supervision, and allows students to participate in an aspirational model of practice.

- C. ***Concentrations***
Students may elect, but are not required, to pursue a concentration in Health, Intellectual Property, or Business and Entrepreneurship. A faculty member directs each concentration. Concentrations have specific requirements for students to fulfill. For example, the Business and Entrepreneurship concentration requires that students complete particular courses as well as a Practicum in Entrepreneurial Business Lawyering or relevant Co-op.

- D. ***Interface with the Philadelphia legal community***
All law students are members of the Philadelphia Bar Association. Students participate in events with and are mentored by members of the bar. Judges participate as co-op partners, adjunct faculty, and employers of our students. The law school actively engages the community -- both public and private -- through the Career and Professional Development Office, the Co-op and Pro Bono programs, and the concentrations.

III. Process

- A. ***Hiring***
The law school has hired faculty who are committed to the mission of providing students with integrated professional training.

- B. ***Resources***
The law school has committed resources to integrated professional training. For example, the law school has an Associate Dean for Experiential Learning; a Director of the Co-op Program; Co-op professors; an Associate Director for Public Interest Programs; directors of concentrations; tenured and tenure-track legal methods faculty; tenured and tenure-track clinical faculty; and a Career Advisor in Government and Public Interest Law.

- C. ***Communication***
The law school faculty and administration communicate and collaborate regularly, both formally and informally.

- D. ***Autonomy***
The law school entrusts specific faculty members with particular responsibilities and gives them autonomy to do their work.

IV. Evaluation

On-going process – both formal and informal

The law school prepared a self-study in connection with its provisional accreditation, which required a process of reflection and evaluation. In addition, reflection and evaluation are on-going. Reflection and evaluation occur in the form of student evaluations and feedback (for example, student representatives attend faculty meetings), and conversations among faculty, administration, and students.

V. Carnegie/Best Practices

The law school is designing a program of professional training that reflects the type of legal education that the Carnegie Report and Best Practices envision: a deliberate, thoughtful program of legal education that integrates knowledge, skills, and professionalism and appreciates its role in training “future legal professionals.” Carnegie Report, page 12.

Through its program of integrated legal education, the law school has tried to address each of Carnegie’s “six tasks” involved in “prepar[ing] professionals”:

1. Developing in students the fundamental knowledge and skills, especially an academic knowledge base and research
2. Providing students with the capacity to engage in complex practice
3. Enabling students to learn to make judgments under conditions of uncertainty
4. Teaching students how to learn from experience
5. Introducing students to the disciplines of creating and participating in a responsible and effective professional community
6. Forming students able and willing to join an enterprise of public service

Carnegie Report, page 22.

VI. Additional Resources

- A. *Drexel University Earle Mack School of Law website*
<http://www.drexel.edu/law/>
- B. *Dean Roger Dennis’s article in The Complete Lawyer*
<http://www.thecompletelawyer.com/volume4/issue3/article.php?ppaid=8146>

Gonzaga's Skills and Professionalism Curriculum

Gerry Hess, Professor, Gonzaga University School of Law
Showcase Presentation

Problem

Educating Lawyers and *Best Practices* provide comprehensive assessments of legal education. They detail strengths and weaknesses of legal education and make recommendations for significant reform. Both books adopt the premise that effective education of lawyers should address three areas: knowledge, skills, and professionalism. The books conclude that most law schools excel in teaching legal doctrine and analysis, but do not devote enough attention to skills (litigation, negotiation, mediation, problem solving, research, counseling, oral and written communication, etc.) and professionalism (integrity, diligence, reliability, judgment, creativity, morality, responsibility, etc.)

In the 2007-2008 academic year, Gonzaga reviewed its required curriculum in light of the challenges presented by *Educating Lawyers* and *Best Practices*. Gonzaga decided that its required curriculum should aim to achieve the following:

- Further Gonzaga's mission
- Prepare graduates to enter the profession as competent lawyers, with the requisite basic knowledge, skills, and professionalism
- Prepare graduates to pass the bar exam
- Be grounded in sound education theory and practices
- Be informed by data about current law practice
- Build on Gonzaga's existing strengths
- Inspire, energize, and challenge students.

Innovation

Gonzaga's revised curriculum includes required skills and professionalism courses in all three years of law school.

Gonzaga's Revised First Year Curriculum			
Fall		Spring	
Civil Procedure	4	Contracts	4
Torts	4	Property	4
Perspectives on the Law	3	Criminal Law	3
Legal Research & Writing I	2	Legal Research & Writing II	2
Litigation Skills & Professionalism Lab	2	Transactional Skills & Professionalism Lab	2

Gonzaga's revised required curriculum made five significant changes in the first year program:

- Addition of a 2-credit Litigation Skills & Professionalism Lab

- Addition of a 2-credit Transactional Skills & Professionalism Lab
- Reduction of 5-credit doctrinal classes (Civil Procedure, Contracts, Property, torts) to 4 credits
- 4-credit doctrinal courses offered in a single semester, rather than two semesters
- Addition of 3-credit Perspectives on the Law course (Constitutional Law moved to second year to accommodate this course).

Course descriptions for the new first year courses.

Litigation Skills & Professionalism Lab:

This course involves a case study approach to the development of litigation skills and professionalism values. The case study will follow the life of a tort case, taking students through a series of skills exercises and professionalism problems. The course will acquaint students with litigation skills in such areas as pre-filing case investigation, client and witness interviews, pleading, discovery planning and execution, pretrial motions, and settlement negotiations through the use of role-playing, simulation and case assignments. In the process, the students will learn the elements of the applicable torts and consider how to prove or disprove those elements. The pedagogy is also designed to confront students with issues of ethics and professional responsibility that may arise over the course of litigation representations.

Transactional Skills and Professionalism Lab:

This course focuses on the skills needed by lawyers involved in transactional practice. Those skills include ascertaining the parties' true desires through interviews and negotiation, creatively structuring deals and drafting terms to achieve those desires, and imagining all the events that might later interfere with the transaction or the parties' relationship, and determining which ones to provide for in the transaction documents. The course will take students through the early development of a commercial transaction, negotiating its terms and structure, and ultimately the drafting of the transaction documents. In that process, students will be confronted with issues of ethics and professional responsibility. They will also learn the distinctions between representations, warranties, covenants, conditions, and the other types of contract terms and practice how to spot and avoid ambiguity.

Perspectives on the Law

This course will examine the meaning of law from various perspectives. It will expose students to many of the prevailing theories of jurisprudence that both inform the law and can be used to evaluate legal rules and their impact on social justice. Such theories would include some or all of the following: natural law, positivism, law and economics, critical race theory, feminist legal theory, and critical legal studies, and game theory.

Gonzaga's Revised Second Year Required Courses	
Constitutional Law (Governmental Structure)	3
Constitutional Law (Civil Liberties)	3
Legal Research and Writing III (Litigation)	2
Legal Research and Writing (IV) (Transactional)	2
Professional Responsibility	3
Evidence	3

Gonzaga's revised required curriculum made three significant changes:

- LR&W III increased from 1 to 2 credits; focus on litigation practice
- LR&W IV increased from 1 to 2 credits; focus on transactional practice
- Criminal Procedure was removed from the required curriculum

Course descriptions for the revised LR&W III and IV courses:

LRW III. In the fall semester, students draft motions and memoranda in support of pre-trial motions (discovery and summary judgment or dismissal) as well as an appellate brief. The course focuses on increased skills in organizing a written document with a major emphasis on persuasive organization and the use of persuasive rhetoric in support of a hypothetical client's position

LRW IV. In the spring semester, students work on a series of assignments that require the production of a variety of transactional documents (letters of intent, contracts, wills or trusts, etc.). The course focuses on understanding a client's position regarding a transaction, the desired or negotiated outcome that is sought, and the use of precise language within a document to achieve the proper outcome.

Gonzaga's New Third Year Required Course	
Clinic or Externship	3

Gonzaga's revised required curriculum added an experiential requirement in the third year. The skills and professionalism portion of the first and second year curriculum focus on simulation-based courses. In their third year, students will take the important step of applying in real life the knowledge, skills, and professionalism they have learned in their first two years of law school. Further, students should learn additional critical knowledge, skills, and professionalism as they work on problems involving real people. Gonzaga views this requirement as both a capstone to students' law school education and as a bridge to practice.

Process

Gonzaga's faculty placed a high priority on curriculum review in its strategic planning process in 2006 and 2007. Gonzaga accomplished its required curriculum revision in one year. In June of 2007, the dean formed the Curriculum Review

Committee and in May of 2008, the faculty voted overwhelmingly in favor of nearly all aspects of the Curriculum Review Committee's proposed revised curriculum. Three aspects of Gonzaga's process lead to that result: (1) Curriculum Review Committee, (2) background research, and (3) full faculty involvement throughout.

Curriculum Review Committee. The Committee membership broadly represented Gonzaga's faculty and administration. Members included a clinical teacher, a LR&W teacher, two senior doctrinal teachers, two junior doctrinal teachers, a librarian, and the dean. The Committee chair was a senior doctrinal teacher with a history of working effectively with Gonzaga's faculty and administration. The Committee met bi-weekly from late August, 2007 to May, 2008. The Committee members worked collaboratively, with all Committee members sharing the workload.

Background research. The Committee began its work by discussing three books: *Survey of Law School Curricula* (ABA, 2003), *Educating Lawyers* (Carnegie Foundation for the Advancement of Teaching, 2007), and *Best Practices for Legal Education* (Clinical Legal Education Association, 2007). The Committee gathered input from Gonzaga's Board of Advisors, a group of prominent Gonzaga alumni, to get their thoughts on the types of knowledge, skill, and professionalism that contribute to success as a lawyer. Committee members interviewed faculty members regarding their views on the knowledge, skill, and professionalism critical to the success of Gonzaga students. The Committee also administered a survey to all current Gonzaga students to solicit their views about the current and future curriculum. The Committee considered other resources to gather additional information concerning the critical components of effective legal education, including *Outcomes Assessment for Law Schools* (Institute for Law School Teaching, 2000), *Legal Education and Professional Development* (MacCrate Report, 1992), Gonzaga's results in the 2006 and 2007 Law School Survey of Student Engagement, and reports from Career Services on employment for Gonzaga grads over the past five years. The Committee reviewed journal articles dealing with bar pass issues and considered data concerning bar pass experience of Gonzaga students. Finally, the Committee reviewed recent curriculum revisions at other law schools.

Full faculty involvement. The Committee maintained ongoing communication with the full faculty throughout the year.

- Aug.-Nov. 2007 – Committee updates on its progress at faculty meetings.
- Dec. 2007 – Committee memo to faculty regarding curriculum revision goals, process, and broad outlines of proposal for revised curriculum
- Jan. 2007 – Committee members interviewed each faculty member to solicit views on curriculum goals, process, and December proposal
- Mar. 2007 – Committee memo to faculty with detailed curriculum revision proposal
- Mar. – Apr. 2007 – Committee interview each faculty member to solicit views on March proposal
- Apr., 2007 – Faculty meeting to discuss March proposal
- May, 2007 – Faculty meeting to discuss and vote on revised proposal.

**From Foundations Through Capstones:
The University of Minnesota's Integrative Curriculum on
Identity, Role and Professionalism in the Practice of Law**

Nancy Cook, Clinical Professor of Law, Director of Lawyering Program
University of Minnesota

Brett McDonell, Professor of Law, Associate Dean for Academic Affairs
University of Minnesota

Showcase Presentation

Problem:

The law school has not sought to solve a particular problem so much as it has looked for ways to meet long-term goals. Our program is being developed to address these challenges:

1. make legal education relevant in a global, multidisciplinary, technological world;
2. develop a curriculum not only rich in doctrinal theory but meticulous in imparting the skills and problem solving methods needed to put theory and policy into practice;
3. create an environment that allows students to be conscious of professional and social values, reflective about lawyering role options, and deliberate about personal vocational choices;
4. establish an ordered, continuous pedagogical arc for students from initial immersion in legal analysis and mastery of basic lawyering skills and concepts, through intensely supervised experiential learning and contextualized, in-depth critical analysis of law and policy, to participation in complex, collaborative problem solving and demonstrable excellence in written and oral lawyering skills.

Innovations:

The curricular innovations related to the lawyering program include the following:

1. *Work of the Lawyer Course*. This is mandatory, one-semester course that introduces first-year students to basic lawyering skills and issues of identity, role, and professional responsibility. Students meet once a week in sections of up to 50 students. Theoretical foundations for practice are developed in these classes; students then meet weekly in small sections of ten students to

engage in exercises and discussion. The larger sections are taught by full-time faculty and the smaller sections by adjuncts. In the small sections, students act in role in a semester-long simulation involving a transactional legal problem.

2. *Legal Writing.* A mandatory one-credit course on statutory interpretation has been added to the second semester of the first-year curriculum in conjunction with the legal methods program.

3. *First-year Electives.* Students in the first year are being given the opportunity to enroll in one elective course. Of particular relevance to the lawyering program is a Perspectives course, which introduces students to a variety of critical approaches to the law, such as critical race theory, law and economics, and legal history.

4. *Professional Responsibility.* Although the design of the professional responsibility curriculum is still in early developmental stages, it is undergoing some immediate modifications. Beginning in the fall of their first year, students will be exposed to current issues in professional responsibility through a series of lectures and workshops. Issues of professional responsibility are being explicitly incorporated into the Work of the Lawyer simulation and classroom instruction. In addition, in their second or third year, students will be required to take a one-credit, rules-based course on ethics. (This course may be developed as an on-line course.)

5. *Capstone Courses.* In development for the 2010-2011 academic year are third-year Capstone courses. The Capstones are being designed to provide students with intensive immersion in a particular doctrinal area through collaborative or multidisciplinary work on a complex problem. Many of the Capstones will grow out of existing issues that are being addressed through public policy initiatives, impact litigation, legislative proposals, law reform efforts, or community development projects. The classroom component of each Capstone will be taught by a permanent faculty member; an experiential component will engage students in planning, strategizing, and executing agendas with practicing lawyers, professionals from other disciplines, community activists and others.

5. *Other Courses.* The innovations described have an impact on much of the law school curriculum. The first year has had to be reconfigured to make space for the innovations, resulting in decreased credit for some traditional first-year courses and turning other such classes into upper level or optional offerings. The introduction of traditionally clinical methodologies and substantive focus to the first year is likely to produce shifts and refinements in the clinical curriculum.

Process:

The curricular innovations are the result of a lengthy evolutionary process. Many of the basic themes surfaced at a faculty retreat several years ago. The administration followed up with extensive discussions in small and large groups over a two year period. As consensus started to build and a vision began to emerge, a committee was formed to give structure and content to the lawyering program in general and the Work of the Lawyer course in particular.

Evaluation:

The Work of the Lawyer course is being offered for the first time as an elective in the spring 2009 semester. At this point no assessment tools are in place. Given the scope of the changes, one of the current challenges facing the faculty is articulating what, specifically, needs to be assessed.

Sources of Inspiration:

It would be difficult to point to any particular triggering sources for these innovations. While certainly consistent with many of the objectives and values expressed in the Carnegie Report, the Minnesota project actually predates the Carnegie Report. The faculty retreat gave voice to a number of the underlying aspirations, but the ideas have been percolating for decades.

Towards a More Dynamic, Integrated Curriculum: Clinics, Externships, Intersessions, Mini-Terms, and Capstone Courses

Austen Parrish
Vice Dean for Academic Affairs and Professor of Law
Southwestern Law School

Showcase Presentation, Session II, Whole Curricular Reforms

Problem:

No problem with legal education directly prompted the revisioning of our curriculum. Instead, our innovations were spurred by the appointment of a new Dean (Bryant Garth), and a desire to draw on the school's historic strengths and its reputation in Los Angeles for producing graduates who "hit the ground running." Understanding why our curricular reforms fit well with our school, in part requires understanding a little of the school's history.

Established in 1911, Southwestern was founded on a mission to provide access to legal education for those who would otherwise be excluded: Southwestern's first graduate was a woman, and its student body included a significant immigrant population. Strong academic and scholarly ambitions also accompanied the founding – Southwestern was the first law school in Southern California to use the Harvard case method of instruction, and it established a law review at a time when most schools emphasized only entering the profession, not scholarship.

Southwestern has also long been at the forefront of curricular innovation. Southwestern was the first American Bar Association-approved law school to offer four programs of study leading to a J.D. degree that differ in scheduling and instructional approach. In addition to traditional full-time day and part-time evening programs, Southwestern developed two innovative options: PLEAS, one of the only part-time day programs in the country designed to meet the needs of students with child care responsibilities; and SCALE, a unique two-year accelerated J.D. program. Notably, Southwestern began offering its two-year accelerated program in 1974, over thirty-years before Southwestern's vision was followed by schools like Northwestern and the Univ. of Dayton. In addition, Southwestern has been at the cutting-edge of providing practical training, with one of the most extensive Externship programs in the country.

Innovations:

Beginning in 1994, the school spent over a decade dramatically transforming its campus with the acquisition and renovation of the historic Bullocks-Wilshire building, and creating state-of-the-art facilities. Once the renovations neared completion, the school turned its attention to Southwestern's academic program and policies.

Over the last four years, the school has spent significant time reevaluating its curriculum. Although Southwestern always provided students with a rigorous academic program, the school recognized that its curriculum was very traditional and in need of updating. The school sought to achieve three goals: to infuse the curriculum with professional skills and professionalism concepts; to provide more choice to students earlier in their academic careers; and to expand the school's already strong academic support program. The 2005 ABA Section on Legal Education's Survey of Law School Curricula 1992-2002, the Carnegie Foundation Report, the Best Practices in Legal Education Report, and results from the Law School Survey of Student Engagement (LSSSE) influenced the school's reforms.

As a result, in the last few years, the school:

- Instituted a new first-year curriculum, in which students take four doctrinal courses in their first semester rather than five, allowing for an intensified two-semester, integrated lawyering course plus an elective course in their second semester.
- Greatly expanded the first year legal research and writing course to incorporate more skills and professionalism instruction, and increased the number of units earned from three to six.
- Created two live-client clinics – the Children's Rights Clinic, and the Immigration law Clinic – as well as a Street Law Clinical Program.
- Established a second LL.M. Program and added programs to the Entertainment Law and Media Institute to enhance our LL.M. in Entertainment Law, including establishing a new peer law journal in Entertainment Law.
- Created a unique three-unit academic support course for first-year students, dramatically expanded the amount of upper-division counseling and advising provided to students, and created a Student Resource and Writing Center.
- Added a number of intensive workshops, an upper-division elective course, and other programs for third-year students to help prepare them for the bar examination.

Following on the momentum and success of these initiatives, Southwestern also adopted several new curricular innovations for the upper division. The innovations include a Capstone Course, a January Intersession, and a Floating Mini-Term. The programs are designed to encourage student engagement during the second, third, and (where applicable) fourth years of study. More detail about each innovation is provided below:

a. January Intersession

The January Intersession consists of a one-week term held before the regular Spring Semester begins. The Intersession will feature a menu of about a dozen new and innovative courses that are more suited to short-term, intensive treatment than to a

traditional semester. Students have the opportunity to enroll in one or two-unit courses focusing on a discrete topic with a skills or practice focus. The classes meet about three to four hours a day for the five days and most are graded on the performance of skills or something other than a final exam. Invitations to teach these special short courses are being directed to potential visitors, adjuncts, interested full-time faculty, and other experts in the field who otherwise might not be available for a full semester.

Among the January Intersession courses approved by the faculty are: The Art of Persuasion; Business Concepts for Liberal Arts Majors; Criminal Law in Action; Selected Problems in Evidence (Evidence Lab); Fashion Law; Legal Spanish for International Practice; Media Litigation; Prosecution and Defense of Domestic Violence Cases; Reproductive Technologies and the Law; and a VITA Income Tax Course

b. Capstone Courses

Capstone Courses provide the opportunity for advanced study, with special emphasis on teaching the Carnegie Foundation Report principles of theory to practice and professionalism. A given Capstone can be interdisciplinary, cover multiple subjects, and be team-taught. Students may opt to enroll in a Capstone during their final semester or year of study, after having completed the applicable prerequisites. Enrollment is limited to ensure individual attention, as well as sufficient time and resources for simulations - including but not limited to advocacy, alternative dispute resolution, and transactional skills. Evaluation is based on skills versus an exam. These courses are taught primarily by full-time faculty, in some cases team-teaching with practitioners serving in the capacity of adjunct or visiting professors, or perhaps as guest speakers.

c. Floating Mini-Term

The Floating Mini-Term concept is somewhere in between the January Intersession and Capstone Courses. A course offered on a Floating Mini-Term basis will treat a traditional subject, but during a period of three to seven weeks, rather than a traditional 14- or 15-week semester. The precise length will vary, depending on curricular interest, the availability of the anticipated professor, and the nature of the subject. It is anticipated that the Mini-Term program will enable Southwestern to enlist distinguished guest faculty from around the country or even internationally to teach specialized courses. Initial Mini-Term offerings approved thus far for Spring 2009 include an 8-week course on Islamic Law, and a 4-week course on European Union: Regulatory Law.

Process:

In 2004, the faculty embarked on a comprehensive reexamination of the academic program through a series of intensive committee and full faculty meetings. Much of the reforms were also the product of our formal self-study. In August 2006, the dean appointed a committee of faculty and senior staff who met at a retreat designed to discuss curricular reforms. At that retreat, the group identified and discussed the strengths and weaknesses of Southwestern, and the challenges and opportunities the law school would face over the next five to seven years. The ideas generated were informally capsulated in a SWOT analysis (Strengths, Weaknesses, Opportunities and Threats). That analysis provided the

genesis for our strategic plan and self-study process. The self-study then further formalized our goals and curricular changes.

Widespread agreement existed among the faculty as to the kinds of reforms the school wanted to make. The biggest obstacles were finding the time and resources to implement the numerous reforms.

Evaluation:

We are using every available methodology to track our success, including data collection of all kinds, responses from internal and externally created surveys, and anecdotal information gathered from interviews with students, alumni and members of the legal community. Southwestern is one of the major users of the Law School Survey of Student Engagement (LSSSE) data, for example, and tracking student responses to the national survey has already led to significant and measurable improvements. Data collection on our applicants, matriculants, and graduates is central to our understanding of how our educational programs prepare students for successful professional careers. We are also using surveys and personal interviews to increase our understanding of how students approach the bar exam. And data on lawyer careers – and on Southwestern careers in particular – allow us to see what remains to be done and to measure changes that are taking place. We have also tasked several faculty committees that are periodically reviewing the impact of our reforms, and providing periodic written reports to the Dean (and the Board of Trustees). So far, we have had a tremendous positive response from our students and alumni.

Carnegie/Best Practices:

The reforms are directly tied to the Carnegie Report's goals of integrating theory and practice. As a result of the innovations and curricular changes, Southwestern was discussed in the Carnegie Report. Southwestern has also been chosen as one of ten law schools by the Carnegie Foundation to participate in a consortium on the future of legal education. As a member of this group, Southwestern is one of two California schools, along with Stanford, to be included in the project that will develop recommendations on law school curricula and skills training over the next few years.

Additional Resources:

A tremendous amount of material describing the innovations are available on Southwestern's website: www.swlaw.edu.

A Second Year Integrated Curriculum

Dean Ellen Y. Suni, University of Missouri-Kansas City (UMKC) School of Law
Theme 6 – Working Discussion Group 1

Problem: When I first interviewed for a law teaching job almost thirty years ago, I talked about the need for better integration of doctrine and skills. At that time, I was viewed by many as a radical. Today, with the publication of the Carnegie Report and CLEA Best Practices, as well as other reports published along the way, there is a greater recognition of the need to better integrate doctrine, theory, skills and professionalism in the education of new lawyers in order to allow them to develop the problem-solving skills and judgment that are essential to good lawyering.

While many schools, including my own, have seen development of many excellent individual efforts to integrate skills and professionalism within particular courses, and while clinics provide that opportunity to a limited number of students, there is a need for greater integration throughout the curriculum. Many of our students are “turned off” by what appears to be the lack of relevance of their learning to real lawyering. Many find the second year boring, since it just looks like more of the same. The second year of law school needs to be rethought in order to better meet the needs of students, the profession and the public.

Innovation: The proposal I am submitting is for restructuring the second year to be primarily comprised of integrated modules that include sequenced teaching of doctrine in predetermined “clusters,” introduction to relevant “facets of practice,” and a “capstone” simulation experience that is seamlessly linked to what preceded it, allowing each facet to contribute to the strength of the others and “cross[] boundaries to infuse each other.” *Educating Lawyers at 191*. More specifically, the proposal calls for the third and fourth (and possibly fifth) semesters of law school to be taught in modules that break the semester into three parts. Rather than offering courses for 13 weeks followed by evaluation, the model calls for doctrinal courses to be offered in 7-8 week blocks. Students would enroll for three courses in this model, and the courses would be related around a central theme. Following conclusion of the three courses, including evaluation, students would enroll in two “mini-courses” offered over the course of two weeks that are primarily skills based, and would then conclude with a supervised simulation exercise related to the learning that has occurred during the

semester. The simulation exercise would provide for practice in legal skills, including strategy development and reflection, as well as exposure to the essentials of professionalism.

An example should help to clarify how this would work. A student might enroll in the family module. That student would enroll in doctrinal courses in Family Law, Estates and Trusts and Debtor Creditor (or courses with similar names and content). These courses would likely be taught using a combination of methods including case analysis and problem-solving, and the courses would include students in the family module as well as students taking one or more of these same courses as part of other modules (for example, an elder law module or a business reorganization module).

At the conclusion of the eight weeks, and after evaluation in the doctrinal courses, the students in the family module would take two courses during the ensuing two weeks. One course would be "Counseling Clients in Crisis." This course would be co-taught by law faculty, lawyers and faculty and/or practitioners in the field of psychology. In addition, the students in this module would take a "crash" course in "Drafting Family Law Documents," where they would become familiar with the type of documents used in family practice and with basic skills for drafting those documents. (Hopefully they would have received some exposure to this in the doctrinal course itself.) Since the students are taking only these two one credit courses within the two week period, the courses can be structured to meet in appropriate time blocks, to require significant work to develop the necessary skills, and to utilize lawyers and other professionals because of the limited and flexible commitments required of them.

After the conclusion of the mini-courses, the students will participate in a complex simulation that involves a client who is seeking a divorce, and who, as a result of the divorce, needs to redo documents such as wills and trusts and has to deal with concerns regarding whether there will be sufficient funds available to support the family post-divorce. The simulation requires the student to use the information learned in the doctrinal courses, to integrate that information with the skills learned in the mini-courses, and to put it all together in assisting the client. The student learns problem-solving and lawyering skills in context, begins to develop practical wisdom and professional values, and is required, as part of the assessment of performance, to engage in reflection on the relationship between these aspects of practice and how the student interacts in role. See CLEA Best Practices at 150-151.

Students would participate twice or three times (depending on the rest of the curriculum structure) in different modules and would thus have the opportunity to get additional practice, experience the transference of skills and knowledge and see the progression and development of skills and judgment. I believe this model would be very effective in engaging students and helping them understand the relationship between theory and practice. By providing context-based instruction, it would help build competence and show how the combination of knowledge and skills, when combined and used effectively, can lead to effective problem-solving and the development of practical wisdom and judgment. See *id.* at 149.

Process: I first proposed this model as part of a complete curriculum reform proposal sixteen years ago. Not surprisingly, my faculty colleagues were not ready to seriously address such a radical curriculum reform. As I have begun to mention it again recently, the receptivity has changed. While not yet ready to embrace it, colleagues are willing to talk about it.

This proposal would have to be adopted as part of a comprehensive curriculum revision. Since it breaks out of the normal “boxes” related to semester length and course structure, it would take significant work to determine how best to integrate the revised second year into the three year curriculum without impairing other aspects of the curriculum or program that are deemed important.

In considering the proposal, the faculty will need to consider a variety of benefits and obstacles. First, it requires a major reshuffling of the academic semester and a compression of traditional courses. While there may be resistance to this, given that many schools offer traditional courses in shortened summer semesters, this should not be insurmountable. An additional issue is how faculty participation in the various aspects of the program “counts” toward a full teaching load. Depending on the school and its culture, this may be a significant issue. Additionally, there is the question of whether competent teachers can be retained to teach the mini-courses and to help oversee the simulations. Would “regular” faculty be competent and willing to be part of these courses (I think they would at my school, but this is a real issue). If not, are there resources to retain such faculty, and how do ABA faculty counting rules impact on a school’s willingness to invest resources in this way? Who would do the significant work of recruiting the faculty, developing the simulations, retaining the “actors” (who, at a university, could be acting students who are paid or who participate in a course themselves), providing the feedback, etc. How are students graded or

assessed for their efforts? And how do we insure that every student participant gets good experiences through this program? These are not insignificant concerns.

On the other hand, there can be significant benefits. Not only is the quality of student interest and investment likely to increase and student dissatisfaction with the second year likely to decrease, but the change in the format of the semester is likely to create some free time for faculty not participating in the mini-courses or simulations in a given semester to use for scholarship.

Another concern is how this second year program interfaces with the rest of the curriculum. What kind of capstone experience should follow this? What impact will these second year simulations have on clinics that provide live client opportunities in the third year? How do we fit in competition teams, journals and other important enrichment opportunities for students around this modular approach?

These are the issues and concerns I would like to address. Initially, is the basic model sound? Are there other impediments and benefits? And can the issues raised be resolved so as to provide both students and faculty with meaningful educational experiences that truly integrate theory with practical skills.

Evaluation: As with any new program, evaluation will be important. One aspect of the evaluation can assess student and faculty satisfaction, including degree of interest and the extent to which students believe their lawyering skills have been developed and enhanced. Objective determination of the extent to which the program succeeds in increasing problem-solving skills and judgment will be more difficult, and I am also seeking assistance in determining how best to approach this.

Carnegie/Best Practices: This proposal meets the Best Practices for Organizing the Program of Instruction by achieving congruence in its program of instruction; progressively developing knowledge, skills and values; and integrating the teaching of theory, doctrine and practice. (Chapter 3 A, B and C, pp. 93-100). The Carnegie Report, too, encourages such integration. It suggests that “a truly integrative approach” is required “in order to provide students with broad-based yet coherent beginning for their legal careers.” *Educating Lawyers* at 59. As the Report indicates, “The pedagogical cycle is not completed unless these segregated domains are reconnected.” *Id.* at 124 I believe the proposed program reconnects those domains in the second year, building on the (first year) and preparing students for further integrative and culminating experiences in the third year.

Transforming Compensated Law Student Clerking Into a Reflective and Positive Learning Experience

Ken Gould, University of Arkansas at Little Rock William H. Bowen School of Law
Theme 6 – Working Discussion Group 1

Problem: At most American law schools today a significant percentage of upper level students are employed for compensation in part-time or summer clerking positions for private law firms or for governmental or non-profit agencies. Students generally value clerking as a source of income during law school, an opportunity to gain an advantage in obtaining employment after graduation, and a positive experience in practice skills education. Faculty often view the student clerking experience as depriving students of time for class preparation, distracting student focus from studies, and often providing a negative educational experience.

In nearly all clerking environments students are engaged in learning activities that complement the more formal program of legal education occurring within the confines of the law school curriculum. However, the educational value of the clerkship learning experience varies widely both in terms of the quality of supervision under which students work and the substantive knowledge, skills, and ethical and professional standards the students develop while clerking.

Law school faculty and administration generally fail to recognize that the clerkship experience constitutes an unofficial but very real facet of their students' educational program, an aspect of the students' legal education that is usually beyond the school's authority to control or even monitor. As a practical matter, the compensated clerkship experience constitutes an informal, unregulated, unsupervised, and unmonitored externship program (under ABA Standard 305, "Study Outside the Classroom, *Interpretation 305-3*" – no credit is allowed for participation in compensated placement programs).

Many students lack a base of experience or a developed or intuitive sense of discernment that allows them to critically assess the quality of the practice environment in which they are placed by their clerkship experience. Many are also not self-motivated to undertake such an assessment on their own. Within the compensated clerkship environment, very few students are provided a structured opportunity to analyze and reflect upon the quality of the practice experience they observe and in which they engage.

What little research data exists regarding the educational quality of student compensated clerking as a learning experience is at best mixed. However, the data clearly shows that in their clerking experiences

students are gaining knowledge of substantive and procedural legal principles, developing lawyering skills, and adopting ethical and other professional standards of practice, all topics of learning also covered by the law school curriculum. However, the law school is simply not in a position to gauge whether the quality of education students receive in that unofficial externship program clerking experience is good, bad, or of some other quality.

Two significant problems flow from this analysis: (1) Students are involved in a significant aspect of their legal education without a structure for analyzing and reflecting upon the quality of their practice experience with the result that they are often unable to evaluate the nature and quality of their learning experience; and (2) The law schools abdicate any responsibility for attending to an important part of their students' legal education. Although the American Bar Associations Standards for Law Schools don't expressly address responsibility for students' legal education outside the school's formal program, standard 303, governing "Academic Standards and Achievements" does require that a school "shall have and adhere to sound academic standards" In any event, at a minimum the law schools should be concerned about coordinating the formal and informal programs of legal education in which their students engage, at least by providing a structure for students to assess the nature and quality of their education received in the clerking experience.

Innovative: The law student compensated clerking experience could be transformed into an educational benefit through a structure provided by the law school that would enhance the prospects for students analyzing and reflecting upon the quality and nature of their clerking experience. Students who clerk for compensation would be required or encouraged (if the course were elective) to enroll in a complementary law school course that would provide a format under the direction of law school faculty for analyzing, reflecting, and reporting upon the clerking experience. In a classroom component of the course, students would share and compare their clerking experiences with other students. Faculty would lecture and provide reading materials related to standards and quality of practice, lead collaborative discussions among the students, and assign and review papers through which students would analyze and reflect on their experiences. On occasion, qualified lawyers at the law firms and agencies employing the students would also participate in the classroom educational experience by speaking about practice and ethical issues and through involvement

in the collaborative discussions. Students would also maintain journals reflecting the quality and nature of the supervision received, the work assignments given, and the ethical and professionalism issues that arise. The journals would be reviewed by course faculty with a view toward possible one on one dialogue with the students in regard to selected issues or possible use of journal materials in collaborative discussions with the other students in the class (of course, care would have to be taken to preserve client confidentiality).

To receive credit for participation for the course contemplated by this proposal, a student would have to clerk for a firm or agency that participated in a pre-semester training program that would focus on law school expectations for the quality and nature of the supervision received, the work assignments given, and the ethical and professional environment of the student clerking experience. Through the approach outlined in this proposal, what is by some measures for many students a neutral or negative educational experience could be transformed into a positive opportunity for growth and development as a lawyer.

Process: The underlying idea for “Transforming Law Student Clerking into a Reflective and Positive Learning Experience” was first broached to my faculty at a school of law workshop/retreat held in the spring of 2008, in part, to consider implementation of the Carnegie Report. The idea received a favorable reception at the retreat/workshop and gave me sufficient encouragement to pursue that matter further. In connection with my preparation for the Crossroads Conference, I solicited reactions to and evaluations of the proposal from my faculty colleagues. All who responded viewed the proposal favorably and a number offered positive and critical suggestions.

I now plan to present the proposal in a fleshed out form to the school’s curriculum committee with a view toward adoption by the law school faculty. Assuming faculty adoption of the proposed course, an obvious possible short-term barrier to implementation could be lack of personnel to staff the course. That problem may be at least partially addressed by experimental and limited initial implementation of the course, offering the course as an elective to a limited number of students. That approach would carry the additional salutary advantage of allowing for time and experience to refine the course, if indeed the experiment proves worthwhile.

Evaluation: In part, evaluation of the course would be through faculty review of student journals and of written assignments designed to stimulate student analysis and reflection upon the quality of the practice

experience they observe and in which they engage. Survey instruments designed to assess the educational quality of the student clerking experience and would be distributed to both students and participating employers.

Carnegie/Best Practices: There are numerous links between the “Transforming Law Student Clerking into a Reflective and Positive Learning Experience” proposal and comments, observations, and recommendation of the Carnegie Foundation “Educating Lawyers” and the “Best Practices for Legal Education” reports. Those links are summarized in the opening sentence of the “Overview of Legal Education” section of the Carnegie Report Summary which speaks of the value of professional education depending “in large part upon how well the several aspects of profession training are understood and woven into a whole.” For many law students, a significant part of that professional training involves the compensated clerking experience. Adoption of this proposal could assist students in understanding and weaving their total professional training experiences into a whole.

Additional Resources: Research and data on student compensated law related work is sparse. The American Bar Association does not collect data in regard to student law-related employment as part of its law school accreditation process. The 2008 report of the Association of American Law Schools and The Carnegie Foundation for the Advancement of Teaching, *Law School Survey of Student Engagement (LSSSE)* reports data for law students “[w]orking for pay in a law-related job” for nearly 27,000 students from 85 law schools responding to the web-based survey. Two significant studies on the impact of student law related employment are: Daniel J. Givelber, Brook K. Baker, John McDevitt and Roby Miliano, *Learning Through Work: An Empirical Study of Legal Internship*, 45 J. Legal Educ.1 (1995); and Lawrence K. Hellman, *The Effects of Law Office Work on the Formation of Law Students’ Professional Values: Observation, Explanation, Optimization*, Geo. J. Legal Ethics 37 (1990-1991). An extensive but selected bibliography of books and articles relating to the design, critique, and pedagogy of legal externship programs may be found at J.P. Ogilvy, *GUIDELINES WITH COMMENTARY FOR THE EVALUATION OF LEGAL EXTERNSHIP PROGRAMS*, 38 Gonz. L. Rev. 155, 182-85 (2002-2003).

The Clinical Year
Stephen Ellmann, Associate Dean for Faculty Development
and Collaborative Learning, New York Law School
Second- and Third-Year Projects Workshop – Group 3

Problem: Two endemic problems of legal education intersect for the students at many schools. One is that law school so often does not attempt to prepare students to practice law. The other is that the profession is bifurcating, with lavish salaries for the privileged minority of each year's new graduates and the prospect of much more modest salaries, and much more difficult job searches, for most of the rest. At New York Law School we're working on a set of programs meant to respond to this compound problem.

Innovation: The principal topic of this presentation is one of these programs, the "clinical year." But this program is only one of several courses we have in mind, and the courses are only part of our overall effort to help our students prepare to make their way in the world. Our Associate Dean for Professional Development leads a range of efforts, outside the for-credit curriculum, to encourage students to commit to professional values and to learn professional self-presentation, beginning with the first days of law school. These efforts, we hope, will mesh closely with the curricular innovations we have in mind. These are targeted especially to our "middle-60" students – the students who don't qualify for our Harlan Fellows honors program (the students who have the best shot at finding the job of their choice after graduation), and who also aren't required to enter our Comprehensive Curriculum Program designed for students at risk of failing the bar. The remaining students, our middle 60 percent, need programs (in-class and out-of-class) that will help them to develop marketable credentials attesting to their readiness for the world of practice. The new curricular programs we're considering – which will build on the live-client, externship and simulation skills courses we already offer – include:

(1) a certificate in dispute resolution skills, to be earned in a variety of skills courses but with a particular focus on students' participation in moot competitions (in appellate advocacy, trial advocacy, negotiation and client counseling) and on courses in which students learn these skills, not just in the somewhat artificial modes practiced in competitions but with a focus on the elements of these skills as actually employed in practice;

(2) project-based learning: students' work on projects from public policy studies to draft legislation to community legal education to cases, typically in teams under the supervision of full-time or adjunct faculty members; in a sense, these will all be quasi-clinics (though most probably won't be built around particular cases), calling on students to take responsibility for meaningful work and introducing them to a wide range of practice settings and issues;

(3) certificates in particular subject-matter areas: our Harlan program has been built around Centers, currently seven in number, and several of these Centers are now offering or developing programs for middle-60 students, often involving "projects" of the sort mentioned in the previous paragraph; and

(4) a "clinical year": a clinical rotation, making up the great majority of a student's third year, and modeled on medical school clinical rotation. This program is the focus of this workshop, and so I will describe its mechanics in some detail before discussing its underlying rationales.

This program, which I hope to initiate on a pilot basis either in the 2009-10 or 2010-11 school year, aims to immerse students in practice for an entire academic year. While the program's details are all still under consideration, the basic outline of the pilot version would likely be on these lines: A small group of students (perhaps 8 in all) would do three clinical rotations in the course of their third year. Each rotation would last approximately 8 weeks, and count for 4 credits, and would be preceded by a 2-credit, 1-week intensive skills and substantive law preparation course. Thus the full program would last 27 weeks, or almost exactly 2 semesters, and students would earn 24 credits in it. The sites would be chosen so as to give students an exposure to a representative range of practice settings, and active involvement in a range of practice tasks, with a particular view to areas in which NYLS students might later make their careers (and especially areas in which NYLS has developed relationships that might help students to get future employment). These might include real estate (a transactional field); immigration (judicial/administrative work); and a litigation field such as juvenile law.

While on their placement, students would be supervised by an attorney working at the placement site who would become a member of NYLS' adjunct faculty. These adjunct supervisors would both supervise the students, as they would any other junior members of their staff, and be responsible for holding weekly individual and/or "seminar" meetings with the rotation students to explicitly discuss the experiences the students are having. The 2-credit intensive preparation weeks preceding each placement would be taught by NYLS full-time faculty, joined as appropriate by adjuncts, including the adjunct faculty who will be the students' placement supervisors. Grading would be done by the placement supervisors and the intensive week faculty.

24 credits is certainly light for the amount of work students should be doing in their rotations, but that number would leave room for students to take two other courses with particular value for bar passage in the evenings during their rotation year. (Taking these courses would undoubtedly add to the students' overall workload – but would not be any more burdensome than taking the same courses is for regular evening students, who typically have full-time day jobs just as the clinical year students in effect would.) Students would also be required to meet all normal requirements for graduation (and therefore would have to take all upper-level required courses during their second year), and would be encouraged to take as many fundamental, bar-related courses as possible during their second year as well.

What this program would offer, if it works as we hope, is a deeper immersion in some aspects of the world of practice than most in-house law school clinics can provide, as well as an approach to that world that is in some important ways more academic than the experiences most externships are structured to offer. (This is not

an argument that the clinical year will be “better” than clinics or externships; rather, this new program will have distinctive virtues that make it another valuable element for law school curricula.) The depth of the immersion comes partly from the sheer extent of the work – a full school year – and from the variety of settings in which each student will be placed. At the same time, this immersion is in the “real world” of practice, rather than in the special environment of an in-house clinic. In-house clinics rarely, if ever, can replicate the full range of practice demands, notably because clinics frequently have limited caseloads and normally do not face “billable-hour” pressures.

Perhaps the central problem with pure law office apprenticeship, at least as it has been perceived from the law schools, is that it may not be reflective enough. Even though lawyers in the United States currently must be learning most of what they know about how to practice from their experiences “on the job” – since law schools offer only limited practice instruction, and also since the lawyer’s life on the job will be approximately 10 times as long as his or her time in law school – it is possible that the on-the-job teachers – that is, supervisors and colleagues – do not teach well, or do not teach the right lessons.

There’s reason to question how far this skepticism should be taken, but the clinical year doesn’t embrace “on-the-job” learning without more. Nor, of course, do the many externship courses, at NYLS and around the country, that aim to foster students’ reflection on the practice settings in which they work. The clinical year, however, will in important ways be a distinctly “academic” immersion in practice. Full-time faculty at the law school will likely be closely involved in teaching the intensive pre-placement preparation weeks, and the result should be that they also work with the placement supervisors to frame the most useful curricula for these weeks. Meanwhile, the placement supervisors – who will not simply be attorneys adding supervision to their duties but rather will become members of the school’s adjunct faculty, with distinct teaching responsibilities in the program – would work with the school’s faculty, particularly the clinical faculty, to structure their roles to be as pedagogically effective as possible.

It may well be, however, that clinical year placements will put less emphasis than many clinics do on the students’ duty to figure out the tasks of representation for themselves. There is value to requiring students to find the answers for themselves, and to make the judgment calls for themselves, all with the careful guidance and feedback of a supervisor – but most practicing lawyers, even in their capacity as adjunct faculty, may be somewhat more directive than this. The Carnegie Report makes clear, however, that many different mechanisms go into students’ learning. There is much to be learned from work-under-direction – indeed, it appears that the rotations of third-year medical students are distinctly “under direction” as well – and so this difference does not seem troubling.

In a broad sense, this program aims to bridge the gap between practice and academia by moving students out into practice – and by moving the academy into practice with them. The (almost) all-encompassing character of the program is integral to it – we seek to engage students in a learning process as demanding and

gripping as medical school rotations can be. We hope that experience of this sort will provide students with a uniquely comprehensive introduction to the world of practice, and a wide introductory experience in the skills necessary for working in that world. We also hope it will provide students with a credential – a year of training on-the-job – with unmistakable value in the hiring market (in addition to many networking opportunities in the course of the year).

Process: A great deal must be done to make the course a reality. A number of faculty members are thinking about “middle-60” curricular reform, but the full faculty will need the opportunity to consider the clinical year and other particular proposals, and faculty approval of the course itself and perhaps of related changes in some curricular rules will be a necessary prerequisite to the course going forward. (We do not anticipate problems with compliance with ABA or NY Court of Appeals rules, but this also must be assured.) Placements must be found that provide the mix of legal settings and skill development opportunities we need. Supervisors must be found in those placements who are prepared to make a substantial commitment to pedagogy as part of their daily practice. Faculty must be recruited to teach the intensive pre-placement weeks. A system of monitoring and problem-solving must be put in place to deal with the many challenges to be expected in the actual operation of the program. Students, of course, must have the chance to learn about the program and to decide to join it. Needless to say, funding is also necessary, though the costs for an initial pilot are not immense; we anticipate looking for grant support to bring the program online. Finally, we must work on ways to integrate this program (and other curricular innovations we have in mind) with our concurrent “professional development” education for students on how to develop and present a portfolio of their accomplishments to potential employers.

Evaluation: Selecting and implementing effective evaluation tools will clearly be very important. Among the possibilities are the following: (1) job measures: do students from the program have more success than others in getting jobs they want (to the extent this can be measured), and do employers tell the students and the school that participation in this program is a valuable credential; (2) faculty evaluations: do students master the material taught in the intensive preparation weeks (perhaps measured by exams or simulation exercises), and do they progress and perform well in the practice settings (as assessed by their supervisors); (3) student assessments, and graduates’ appraisals, of what they have learned and of whether the program has helped them to start on their careers.

Carnegie/Best Practices: Both the Carnegie Report and *Best Practices* emphasize the need for law schools to become more truly schools for lawyers, schools focused on imparting to students the intellectual and practical skills they need and the engagement with professional values that can make their employment of those skills meaningful. The clinical year speaks to all elements of the legal education apprenticeship, but does so in a way that may seem surprisingly obvious – namely, by making the third year something quite close to explicit apprenticeship.

Weaving Professionalism, Ethics, and Skills Throughout a Law Student's Career

D. Benjamin Beard, Professor of Law, Chair of Curriculum Committee
Maureen Laflin, Professor of Law and Director of Clinical Programs
University of Idaho College of Law

Working Discussion Group

BACKGROUND: The University of Idaho College of Law has approximately 300 students and 20 full-time faculty. The College, located 300 miles north of the state capital, Boise, and 300 miles east of Seattle, is among the most remote law schools in the country. With a population base of perhaps 100,000 within a fifty mile radius, the College has a limited number of local practitioners to augment its professionalism, skills and clinical programs and offerings. It has therefore had to be creative in tapping into outside resources. The College recruits adjuncts and visitors from throughout the region.

With a standard first year curriculum heavily weighted toward common law case analysis, and a limited number of faculty to cover the full curriculum, the Faculty seeks ways to build upon its strong foundation in ethics, professionalism and skills training, to create a more integrated program, and to reform/revamp its curriculum to better prepare our students for the practice of law.

In recognition of the need for curricular reform to update our offerings, and particularly in light of the Carnegie Report and the CLEA Best Practices Report, the Faculty initiated conversations in the past year to consider teaching and learning styles, ways in which the curriculum could be reformed, and how to balance bar passage concerns with the preparation of students for the practice of law. The Faculty articulated several goals to be achieved by reform that include:

- a. reducing coverage in first year courses to gain faculty resources to cover additional upper division offerings;
- b. providing more "skills" training in the first year;
- c. reducing the coverage in first year courses to add coverage of more "public law" such as Constitutional Law; and
- d. exposing students to the breadth of law beyond common law case analysis by incorporating more statutory and administrative law.

In addition to the above goals, some members of the Faculty are interested in exploring a more "integrated" program of skills training across the three year curriculum. Breaking from the existing course-by-course approach to skills training, the goal would be to develop a skills training model that:

- a. develops explicitly stated learning goals and objectives for each of the three years of law school which would be applied in assessing new and existing courses – clinical and non-clinical;

- b. is more fully integrated into and becomes a part of the doctrinal course work of the students;
- c. is designed for the express purpose of engaging students more fully in their own education; and
- d. perhaps most importantly, has a natural and logical progression over the course of the three years, and leads to a fully trained and competent graduate, prepared to enter the practice of law.

This sort of a model potentially conflicts with the Faculty's felt need that students be better trained in the Core Skills of critical analysis, writing, and case reading by the end of the first year. However, it serves as a realistic goal if there is a long-term commitment to effectuating the kind of curricular change urged by *Carnegie* and *CLEA*.

The Problem: The Problem to be addressed by the College of Law relates to the way in which the College, with limited faculty personnel, can incorporate greater skills, ethics, and professionalism throughout the law school curriculum to better engage our students in their education and prepare them for the practice of law.

Innovation: The Innovation being proposed is to incorporate professionalism, ethics and legal skills throughout the three year law school experience in a progressive program that will engage our students over their entire law school career, and better prepare them for practice upon graduation. In part, this innovation may be accomplished by reducing the number of credits currently assigned to the standard first year courses in order to free up time for broader doctrinal coverage, and additional skills training. Another possibility would be to not section each first year course and instead ensure that each 1L experiences at least one small seminar class.

The College currently has a broad offering of ethics, professionalism and skills experiences for a school of its size. Orientation throws new students directly into the apprenticeship of law. On the first day of orientation, attorneys and judges from throughout the state guide students in groups of 6-8 through real-world ethical and professionalism problems.¹ Third year students participating in our week-long Trial Advocacy course introduce the first year students to our skills program during orientation. Orientation week concludes with first year students serving as witnesses and jurors for the 3Ls' mock trials. Thus before school even begins, 1Ls have received a significant introduction to ethics, professionalism and skills.

Students continue to grapple with ethics, professionalism, and skills throughout their three years in a variety of different settings – in the standard PR course; in one of our 6 in-house clinics or 3 externship offerings; through their participation in the mandatory 40 hour pro bono program; or through involvement in student organizations such as the Alternative Spring Break Project or the Public

¹ The State Bar's Ethics and Professionalism Section helps fund the cost of bringing the facilitators to Moscow from around the state.

Interest Law Group. These experiences could be augmented through a more structured use of our various visitors -- the Idaho Appellate Courts regularly sit at the law school, the State Bar Commissioners as well as numerous judges and practitioners who visit Moscow each year.

Professionalism and skills instruction consists of several skills courses (Lawyering Process (Pre-trial skills), Trial Skills, Trial Advocacy, Negotiation and ADR, etc) and individual faculty efforts in particular doctrinal courses. While individual efforts are encouraged and valuable, they are sporadic and not yet part of a comprehensive integrated skills program.

In legal research and writing, students are trained in both expository and persuasive writing. **One innovation** being considered involves greater collaboration between first year doctrinal teachers and the legal research and writing instructors. This collaboration ideally would result in increased coverage, and greater integration, of the skills of research, writing, critical reading, and analysis with the doctrinal classes in the first year.

The second year is a real challenge. We struggle with the desire to provide our students with some level of mastery of core skills and the need to ensure a solid bar passage rate. Some faculty and advisors encourage students to take mainly bar related doctrinal courses in their second year. These courses are taught primarily, though not exclusively, in a traditional large classroom setting. Several courses have mini-lab options (Bankruptcy, Lawyering Process, Domestic Violence, Children and the Law) associated with them. The main question for the second year is how to engage our students and ensure a good bar passage rate.

The third year provides broader opportunities for student training in professionalism, ethics and skills through 6 live client clinical offerings (Appellate, General Practice and Domestic Violence, Immigration, Small Business, Tax, and Victims Rights), several externships opportunities including our Semester in Practice Course², and simulation courses such as Lawyering Process, Trial Advocacy, Negotiation and ADR, Trial Skills, etc.

The College's Northwest Institute for Dispute Resolution is a self-supporting program which features nationally recognized faculty. The Institute offers 3-4 dispute resolution courses each May for students and members of the practicing bar, the bench and the community. Our students learn alongside the practicing bar and the bench. Idaho also has several interdisciplinary efforts -- Waters of the West, environmental science and law, accountancy and law, MBA and law with other colleges at the University of Idaho, with Boise State University and with Washington State University.

The challenge is to take these efforts to the next level -- to integrate these programs and efforts into a more comprehensive, and integrated program. The goal of reform is to find a way to create a progressive professionalism, skills and ethics program throughout the three year career of each law student. Viewing existing

² Students may spend their sixth semester in Boise in our 12 credit externship program.

models suggests several ways to create such a three year program - from required courses focusing on specific skills and ethics issues through a more integrative approach that builds professionalism and skills training into doctrinal courses. The innovation being proposed is to determine how best to accomplish this goal given the limited faculty and financial resources, and student time, available at a small state law school.

The Process: At Idaho the process for implementing a broader skills program will be faculty development and adoption of such a program. In the coming year Faculty discussions of curricular reform, including an expansion of professionalism, ethics and skills training throughout the curriculum will continue. Development and adoption of curricular reform would occur in the Spring or Fall of 2009. The College is currently seeking approval to initiate a second J.D. degree program in the state capital, Boise, in Fall 2010. It is anticipated that the initial revised curriculum would be adopted and in place for the class entering in both Moscow and Boise in 2010. The principal hurdle to development, adoption and implementation of such a plan will be Faculty buy-in to the reform.

Evaluation: Evaluation of the outcomes attained following adoption of the reforms contemplated would be through surveys such as the Law School Survey of Student Engagement, exit interviews and focus groups of graduates, alumni and graduate surveys, and bar passage rates.

Carnegie/Best Practices: It is the purpose of these innovations and curricular reforms to address the three competencies identified in the Carnegie Report. By reforming the curriculum to include greater skills and professionalism components, students will be more engaged in their legal education, and will receive better and more thorough training in those competencies necessary for entry into the legal profession.

Additional Resources:

For further information please see related materials that can be accessed through the main College of Law website at the University of Idaho College of Law website <http://www.law.uidaho.edu/default.aspx?pid=108534> . The site is password protected - the password is LegalEdXRoads.

*Implementing CARNEGIE and BEST PRACTICES at a Smaller School:
Preliminary Ideas for Integrated Learning Opportunities
and Extended Lessons in Professionalism*

Professor Patti Alleva
Professor Margaret Moore Jackson
UNIVERSITY OF NORTH DAKOTA SCHOOL OF LAW

Crossroads Conference Working Discussion Group
September 6, 2008/4-5:30 p.m.

PROBLEM: As CARNEGIE¹ and BEST PRACTICES² reaffirm, there is a fundamental misalignment between what we teach and what students need to learn as they enter the legal profession. This misalignment derives in primary part from (1) the lack of conscious curriculum design and intentional teaching and learning across the three years of law school, (2) the traditional second-classing of practical lawyering skills, emotive/relational insights, and issues relating to professional identity and values, (3) the dearth of structured learning opportunities based on realistic scenarios that consciously integrate the cognitive, practical, and behavioral dimensions of lawyering and facilitate synergistic insights about legal problem-solving anchored in the profession's values and purposes, (4) curricular emphases and teaching methods that send unfortunate, but unintended or tacit, messages about lawyering, and (5) the lack of formative assessment to facilitate deep learning. These problems also help to explain why so many second and third year students are disengaged, unprepared, and unmindful of public service and justice imperatives.³

INNOVATION: We offer three nascent curriculum reform ideas to help address these problems. We see them as "first phase" small-scale models for, or precursors to, more comprehensive change in core courses and institutional culture. They also seem feasible within the limited-resource environment of a small public law school.

(1) **The Integrated Problem-Based Learning Requirement.** What if faculty members crafted a series of scenarios (or a single evolving scenario) intentionally designed to explore and enforce the three CARNEGIE apprenticeships⁴ in the context of selected substantive and procedural principles? Each scenario in the series (or each phase

¹ William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, & Lee S. Shulman, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

² Roy Stuckey and Others, *BEST PRACTICES FOR LEGAL EDUCATION* (2007).

³ See, e.g., CARNEGIE at 89, 115-16, 140, 175, 179-80, 194 and BEST PRACTICES at 3, 24, 40-41, 95 (lack of conscious curriculum design and intentional teaching and learning); CARNEGIE at 87-89, 91, 132-33, 145, 163, 188 and BEST PRACTICES at 16-24 (second-classing); CARNEGIE at 12-13, 88, 187-88, 194-95 and BEST PRACTICES at 97 (dearth of integrated learning opportunities); CARNEGIE at 31-32, 53, 57-58, 60, 77-78, 84, 139-42, 149-51, 183-84, 187-88 and BEST PRACTICES at 22, 90-91, 103-04, 139-40 (unfortunate unintentional or tacit messages); and CARNEGIE at 164-67, 188-89 and BEST PRACTICES at 236-39 (lack of formative assessment).

⁴ CARNEGIE at 28 (delineating the cognitive, practical, and identity/purpose apprenticeships).

of the evolving scenario) would embody, for progressive excavation by teacher and student, a blend of doctrines, skills, and values so that the sum total of learning across the scenario(s) was a composite of basic educational experiences designed to produce a well-rounded legal professional beginning his or her career. In short, this problem-based (or as CARNEGIE calls it, “enriched case”⁵) learning approach would make it possible for students to think, work, and ethically engage as legal problem-solvers within the crucible of the concrete situations provided.

Depending upon the learning goals to be achieved, this self-contained multi-problem sequence (or multi-faceted problem) could be taught (a) as a required first-year mini-course (perhaps in three to five days between the first and second semesters), (b) as a required second-year mini-course (perhaps between the third and fourth semesters or immediately before or after the second year), and/or (c) as a required third-year capstone experience (perhaps in a concentrated two-week segment during the semester). Several faculty members could share responsibility for creating and teaching the problem(s) depending on the doctrines, skills, and values to be imparted, experienced, or simulated. At least a portion of the problem-solving exercises could be explored by students in small groups, facilitating opportunities to build collaborative skills and to engage in peer assessment.

This experience could be “an intentional complement[] to doctrinal instruction”⁶ and (a) provide at least one significant integrative learning opportunity for each student to “work in role” and to perform simulated “legal tasks in context”⁷ with formative feedback to encourage self-conscious learning, (b) model, intensely and intentionally, the notion that lawyering is often a “messy” multi-faceted undertaking with legal, practical, ethical, social, and relational dimensions and consequences, (c) reinforce, build upon, and contextualize learning from more discrete courses, (d) provide a tripartite frame of reference based on the three apprenticeships through which students could view the entire law school experience (thus working to minimize any additive aspect of this requirement), and (e) help to set the stage for more pervasive curricular reform.⁸

(2) **The Bookends Assessment Scenario.** What if in the first year we asked students to analyze in writing and, in some respect, to act out before a videocamera a realistic hypothetical involving client representation which they would revisit in their third year? Each student’s first-year performances would be archived until his or her third year, when a new written analysis and video would be made involving the same problem. The scenario at the heart of this exercise could relate to the integrated learning experience described above in §(1), and could be used for both formative and summative assessments. Small groups might provide the best setting for securing the benefits of this comparative experience. For example, in the third year, each student would be required to compare and

⁵ *Id.* at 199.

⁶ *Id.* at 195.

⁷ *Id.* at 179.

⁸ *See, e.g.,* CARNEGIE at 12, 28, 34-44, 58-59, 82, 124-25, 145-47, 182-83, 191-200 and BEST PRACTICES at 97-100, 143-48 (regarding integration and problem-based learning). *See generally* Barbara J. Duch, Susan E. Groh, & Deborah E. Allen, eds., *THE POWER OF PROBLEM-BASED LEARNING* (2001); *see also id.* at 6-7 (describing problem based-learning and its use of small student learning teams working to secure, communicate, integrate, and apply information to solve complex real-world problems).

critique, within the group, his or her first- and third-year performances, with other students offering supplemental commentary. Each student might then be responsible for writing a short essay, for the professor's review, containing that self-critique, which could focus on the lessons learned over the years from cognitive, skills, and values perspectives.⁹

(3) **Professionalism-Across-the-Curriculum.** What if we developed a required sequence of courses or mini-courses, perhaps one in each year, devoted to professionalism issues and coordinated in various respects with other courses? This might (a) help to emphasize the importance of this multi-faceted subject, (b) afford professors an outlet for exploring more deeply those professionalism lessons they might otherwise ignore or race through due to time and coverage constraints, and (c) offer contextual (rather than isolated lecture) opportunities for judges and practitioners to share their expertise. Perhaps at least one professionalism course in the sequence could incorporate an integrated learning experience. Lawyers and judges might act as consultants during the pre-class problem-creation stage and/or commentators during the in-class problem-unfolding stage.¹⁰

PROCESS: We have already begun implementation by hosting faculty seminars on CARNEGIE and BEST PRACTICES.¹¹ With these sessions, we hoped (a) to familiarize the faculty with current curriculum reform efforts, (b) to help develop collective "buy-in" for change, (c) to make preliminary progress towards that change through informal and tentative consensus about problems and solutions, and (d) to start exploring the challenges of implementing CARNEGIE and BEST PRACTICES consistent with our educational mission. We plan to hold a third faculty session in Fall 2008, after the Crossroads Conference and after the visit of Judith Welch Wegner to our law school as Distinguished-Scholar-in-Residence. Professor Wegner's visit immediately follows the Conference and will provide an unparalleled opportunity for the faculty to discuss reform in concrete ways.

During these sessions, we also began candid discussion about the obstacles inherent in our status as a small public law school (the only one in the state) with limited faculty and financial resources. Our small faculty (with sizable teaching and service loads) is also very junior. We have a notable number of untenured professors who face promotion and tenure demands and who may not (understandably) be as amenable to the time-consuming and risky nature of curriculum reform as those with more security and experience. This spotlights the importance of appropriate faculty incentives and rewards. Ultimately, any curricular plan would have to be approved by the faculty as a whole after considering input from relevant constituencies (such as students, staff, bench, and bar).

⁹ See, e.g., CARNEGIE at 162-84 and BEST PRACTICES at 239-63 (regarding assessment).

¹⁰ See, e.g., CARNEGIE at 126-61 and BEST PRACTICES at 149-57 (regarding professional values and identity). *Professional Visions: Law, Literature, and the Role of Lawyers in the Social Order*, currently an elective taught by Professor Alleva, uses readings, realistic scenarios, and role plays based on literary characters to bring to life the identity/purpose/values/ethical-social judgment aspects of the third apprenticeship and the relational skills of the second. This course, along with Professor Jackson's clinic courses, could be among a list of capstone offerings in the professionalism sequence.

¹¹ For session I, we assigned pages 21-33 and 185-202 of CARNEGIE, pages 11-37 of BEST PRACTICES, and Bill Henderson, *Why I Worry About the Carnegie Report (2007): Four Data Points*, Empirical Legal Studies Blog, Dec. 7, 2007, at http://www.elsblog.org/the_empirical_legal_studi/2007/12/why-i-worry-abo.html.

EVALUATION: Key to evaluating any of these curricular innovations is identifying, as a faculty, the learning outcomes we seek to achieve with each (consistent with broader institutional and curricular goals) so that we know which particular doctrines, skills, and values we should teach to and then assess (*i.e.*, seek to have students document or demonstrate). We have yet to reexamine these goals and outcomes in our current faculty configuration.

Examples of specific skills or outcomes that we might assess (formatively and summatively) through these situation-based exercises include competence in (1) researching, explaining, and applying pertinent legal doctrines in an uncertain and dynamic situation (via traditional essay exam and/or drafting a client letter, legal memorandum, transactional document, and/or pleading), (2) navigating an ethical or moral dilemma (via traditional essay exam and/or reflective essay), (3) handling interpersonal conflicts, communication challenges, or other relational/emotional issues (via role play and videotaped critique), (4) collaborating and learning to listen deeply in solving the problems presented (via student peer critique), (5) developing the habits of professional self-reflection, other-awareness, open-mindedness, metacognition, and life-long, self-directed learning (via reflective essay or journal), (6) evaluating the potential consequences for the community (however defined) and the justice system (via small group discussion and collective essay or newspaper editorial or via simulated informational meeting with a client, law firm colleague, or journalist), and (7) exploring intrapersonal conflicts, satisfactions, or other identity issues (via pair-and-share discussion and individual essays, written or oral).¹²

CARNEGIE/BEST PRACTICES: Footnotes at the end of the Problem, Innovation, and Evaluation sections link to CARNEGIE and BEST PRACTICES.

ADDITIONAL RESOURCES: Other helpful resources are cited in footnotes 8, 11, and 12. Also, please check the Conference website for other materials that we will use to facilitate discussion of our curricular innovations at our Workshop on Saturday, September 6, 2008 at 4 p.m.

¹² *See, e.g.*, BEST PRACTICES at 39-91 (setting institutional learning goals). *See also id.* at 179-88 (describing simulation-based courses); Gerald F. Hess & Steven Friedland, TECHNIQUES FOR TEACHING LAW 261-83, 285-324, 193-222, 131-48 (1999) (discussing classroom assessment, evaluating students, simulations and role-plays, and collaborative learning, respectively); *see generally* Gregory S. Munro, OUTCOMES ASSESSMENT FOR LAW SCHOOLS (2000) (urging adoption of comprehensive assessment programs in law schools to improve student learning and institutional effectiveness); Thomas A. Angelo & K. Patricia Cross, CLASSROOM ASSESSMENT TECHNIQUES: A HANDBOOK FOR COLLEGE TEACHERS (2d ed. 1993) (providing a practical guide for classroom assessment).

Revised Program Title and Description
Whole Curriculum Projects Group 1
Legal Education at the Crossroads: Ideas to Implementation
Saturday, September 6, 2008
4:00 p.m. – 5:30 p.m.

A Consultation: Best Practices Meets Reality

This session will focus on challenges to curricular innovation at the William S. Boyd School of Law at the University of Nevada Las Vegas. Faculty from the school will describe some of the curricular innovations they have implemented and others they would like to implement, then explain some of the issues that are affecting their efforts. Some of the issues include faculty and financial resources, faculty preferences, working students, pressures from the Bar, and national ranking implications.

Members of CLEA's Best Practices Implementation Committee will discuss with the UNLV faculty the extent to which their innovations are consistent with the principles of best practices set forth in Best Practices for Legal Education and exchange ideas for overcoming impediments. Full audience participation will be encouraged.

Participating in the consultation will be UNLV faculty members Dean John White, Terrill Pollman, and David Thronson and the following members of CLEA's Best Practices Implementation Committee: Lisa Bliss (Georgia State), Carolyn Grose (William Mitchell), Carrie Kaas (Quinnipiac), Karen Lash (EJW) and Vanessa Merton (Pace).

“Across the Great Skills/Theory Divide: Finding New Rhetorical Ground for Curricular Change”

Ann Juergens, Co-Director of Clinics, William Mitchell College of Law
Denise Roy, Curriculum Committee Chair, William Mitchell College of Law
Working Discussion Group

→ Problem:

Integration is a hard working, well meaning word. The subtitle of this conference—Sharing New Ideas for an Integrated Curriculum—uses the term “integrated” and assumes, correctly, that those interested in this meeting would understand what that connotes. “Integration” has become shorthand for inclusion of doctrine and skills, practice and theory, ethics and professionalism, throughout the law school curriculum. “Integration” is a word that draws a contrast with the more usual practice of maintaining segregated silos for each of these subjects and methods of study, with the most capacious and respected silo filled with “legal analysis” and “theory.” We warmly welcome the recommendations in the Carnegie and Best Practices reports for more “integration.”

Yet calls for integration may assume and solidify segregation just as the old words for describing our teaching are losing their meaning. Over the last few years at William Mitchell when we try to gather the “skills” teachers or “clinic” teachers together, what used to be a clear group now has a larger and more ambiguous membership. The teachers who use simulation or externship placements or who represent clients in a clinic are as likely to include doctrine and theory in their classrooms as are the subject matter specialists. Practical components and/or real world framing are often intertwined with theoretical and analytic instruction: doctrinal courses have added “skills boosters;” policy seminars have optional field placements; clinic courses study theory; first year contracts students negotiate and draft clauses. The doctrinal/practical, theory/skills, substantive/clinical course and faculty categories no longer hold.

Law teachers continue to use these categories in the absence of better rhetoric. Recent nationally heralded innovations in law school curricula use terms that reinforce the old theory/practice dichotomy and its hierarchy. This usage continues the divide and nurtures misconceptions of what we are doing with our teaching. The word “skills” has some history of meaning practice competencies devoid of cognition and intellectual challenge. That “theory” and “analysis” often were considered higher order functions than “skills” or “practical applications” is revealed in the traditionally higher status reserved for professors who write and teach about the former.

Because language creates meaning and is in constant flux, we need to find new words as the meanings of words in common usage change. We need words that do more than describe the salting of the main stream of the curriculum with varying doses of “skills” or “theory” or “professionalism.” What words shall we use to describe our hopes for our curriculum? How might that language guide us in curricular change? Is it possible to move beyond polarized and, in our experience, polarizing language? We seek words that announce the creation of a new whole or wholes out of the elements of theory, skills, and professional identity.

For our purposes at Mitchell, and at other schools at a similar stage of pedagogical development, we wish for words and phrases that unify rather than divide. New choices of language have the potential to unify the many faculty members who cross the boundaries of the old categories. Each of them is an important part of the project. A more accurate and unifying rhetoric is needed to signify what our students and leaders may expect from us in our teaching. New language can gently encourage new faculty members to teach in ways that do not emulate the segregated, i.e., the

separate and unequal, approach to theory and practice that many of them learned in their own legal educations.

A revised language also may help to undo the messages to students that may be conveyed by the rhetorical divide between theory and practice courses. If the courses where they learn to practice competently are “skills” courses and “clinics,” it is likely at many schools that those courses are not part of the core curriculum, or are taught by teachers who are not fully enfranchised members of the faculty. They may be the primary place where the issues of poor people are addressed in the law school. Students may infer that theoretical analysis and higher level thinking are what they need for their “real” classes and future cases, and “skills” are what they will use to practice in pro bono or low paid settings. In sum, the real intellectual work of law school is too often seen as taking place in the analytic realm, divorced from the true challenges and mental heft needed to put that analysis to work responsibly for human beings and their enterprises.

→Innovation:

The innovation will be to construct a new rhetorical framework for discussing our curriculum—one that refrains from using the terms “skills” and “doctrine” as much as possible—as a push toward shifting the paradigm for legal education.

For example, shall we rename all of our courses to include the competencies students will learn, as well as or instead of naming the area of legal doctrine about which students will learn to think? So “Contracts” might become “Analysis, Negotiation and Counseling: Contract Law.” This idea substitutes the (less felicitous) word “competency” for “skill.”

Shall each class be termed “basic” or “applied?” This is still a dichotomy but the meanings of the words are not as loaded with misconceptions (yet).

→Process/Background:

William Mitchell has examined its course of study frequently. Most recently our deans charged a small group to convene a process to take our well-developed “skills” curriculum to the next level of effectiveness. A day-long workshop with Judith Welch Wegner in September, 2007 assisted the Mitchell faculty’s reflection on what aspects of an integrated legal education were already in place and what more were needed. We hoped to harness the momentum spurred by her visit and by the Carnegie and Best Practices reports to better our teaching and curriculum design. This process renewed our thinking about the history of our curriculum, the language it has used, and the paradigm that embodies.

Mitchell’s stake in integration of theory and skills and in interrogating the dominant paradigm of legal education is woven of threads stretching back over a century. William Mitchell College of Law is an 108 year old independent law school in St. Paul, Minnesota. It was begun to provide access to the profession and to the legislatures, courts, and administrative bodies for those who could not afford to go to law school unless they were working full time. Its teachers came from the ranks of active lawyers, and its mission was to prepare men and women for the practice of law. “The Lawyers’ Law School” was the moniker of its oldest predecessor school. Its faculty seem to have always understood that it should teach students to act competently and responsibly as lawyers alongside the more traditional (since Langdell) lessons of teaching students to *think* like lawyers. It is no coincidence that more of Minnesota’s judges are alumni/ae of our school than of any other law school, or that the person who commissioned the MacCrate Report—Minnesota Supreme Court Justice Rosalie Wahl—was a graduate of Mitchell and worked as a clinical teacher here.

It was in 1902 that Mitchell's predecessor school began to require an upper-level practice simulation course—Moot Court, with both trial and appellate exercises. In 1911, the school began a Legal Aid Clinic for students, in partnership with the St. Paul Legal Aid Society, both for practice and for service opportunities for students. Clinics for credit were first offered in 1973. Faculty pioneered the use of videotaped feedback on student skills performances in 1972 in a Debtor Counseling Seminar. In 1977, a full-time tenure track person was hired to co-teach with the judge who for many years had taught the course then called Trial Advocacy. A few years later, several more full-time tenure-track faculty members were hired to teach and further develop “skills” courses, including the legal writing program. Those tenure-track faculty came from the ranks of respected law firm, government, and legal aid lawyers. Full-time faculty taught the principles of trial advocacy and legal writing in weekly large section classes and worked closely with practitioners who taught and critiqued small groups. A mix of full-time faculty and practitioners taught a varied set of clinical courses too.

As practice and research on adult education evolved, so did Mitchell's required “skills” curriculum. Beginning in 1989, after adding two full-time tenure track professors whose expertise and interest were in “clinical” teaching, faculty teaching in the “skills” programs asked the deans to allow them to add client-related exercises to the advocacy course. After a year or two of work, the two-credit Trial Advocacy course was transitioned to a three-credit course named Lawyering. Lawyering added interviewing, counseling, negotiation, mediation and deposition exercises to the trial skills already taught in the required upper level course.

About five years later, in the mid-'90s, a larger group of faculty again looked at whether our teaching was accomplishing what the practice of law required of our graduates. Learning theory told us that adult students learn more effectively in context, so we decided to integrate our research and writing instruction with the other skills our students would need to perform well as lawyers. A working group of faculty and administrators spent a year taking apart our first year legal research and writing course and our second year Lawyering course. Then we knit them back together with some additional elements to enhance the whole. Phased in over two years, the new nine credit course sequence was named Writing and Representation: Advice and Persuasion [WRAP] (6 credits, 1st year) and Writing and Representation: Advocacy (3 credits, 2nd year). Students followed the WRAP and Advocacy sequence by choosing at least one more two-credit “skills” course from a diverse menu of options that included clinics, externships, an intensive simulation practicum, and other mixed method simulation courses. In addition to the minimum 11 credits of required “skills” work, students had to complete an advanced writing requirement.

Not surprisingly, Mitchell's clinics, externships and public service opportunities grew too. More and more of our “doctrinal” faculty began to include some “practical skills” in their classrooms. Every one of the faculty who teach in clinics or the simulation skills courses or in legal writing also teach doctrinal classes.

More recently, several years of work led to the addition of the Pathways interactive web guide to our curriculum and to Keystone Course programs, which work to achieve integration of knowledge, practice and professionalism after the first year of law school. (See Denise Roy's Showcase Presentation on that subject.)

Mitchell's tenure track is fully “integrated,” i.e., there are not different types of tenure for different methods of teaching. The unified status of “doctrinal” and “clinical” and “skills” and “legal writing” teachers seems to be one of the key causes—or is it an effect?—of a curriculum that offers a lot of on-going experimentation and collaboration across teaching methods.

The task now before Mitchell is to develop its curriculum into the 21st century. We have brought skills exercises and practice orientation into our classrooms for more than a century. That

seems to have happened organically and somewhat spontaneously with the support of the leadership. The next step is to engage even more of the faculty in the integration process and to articulate principles for curriculum design for the next few decades. The challenges of those tasks are self evident: we have a range of levels of faculty engagement and it is daunting to imagine curricular principles that can last more than a handful of years.

→Carnegie/Best Practices:

The Carnegie Report engages this problem by emphasizing integration. Still, as mentioned above, even as it urges integration, it reinforces the idea of a theory and practice, doctrinal and skills split. The Carnegie Report seems to link “theory,” “knowledge,” and “doctrine” and set those apart from “practical skills.”

Isn't learning to “think like a lawyer” fundamentally a skill? The authors distinguish formal knowledge from practical skills and seem to use “knowledge” and “theory” interchangeably in referring to the 1st apprenticeship and in talking about the case-dialogue pedagogy. That fails to acknowledge the significant sense in which case-dialogue is a skills pedagogy and not just a means of transmitting information (knowledge) about doctrine. Contrast the bar prep course pedagogy; that's a pedagogy for transmitting knowledge about doctrine with little to no attention to skill (other than memorization).

If case-dialogue is primarily a kind of skills pedagogy, then the problem in legal education is really the extreme value on coverage, the paucity of context, the inattention to other skills, and the valuing of knowledge over professional identity development more than the absence of skills teaching in case-dialogue courses. In fact, the case-dialogue method in pure form seems to do a good job of addressing all three apprenticeships, though with a particular focus on a narrow part of the full range of lawyering skills (that assumes that learning to think like a lawyer is an important part of professional identity development). What we are doing over the law school course of study is deciding which skills to emphasize in what order and how to build toward inclusion of the full range of skills. Along the way we also are working to build knowledge and professional identity (though with too much attention to the former and too little to the latter).

Missing in legal education then, are:

- (1) adequate attention to context (one of the main points of Best Practices);
- (2) adequate attention to the full range of skills, in large part due to the reification of the legal analysis skill; and
- (3) adequate attention to professional identity development beyond learning to think like a lawyer.

The key difference between this approach and Carnegie's lies in the challenge to the strength and nature of the distinction between the 1st and 2nd apprenticeships. While importantly bringing needed emphasis to skills and ethics education, Carnegie continues to reify and distort and overemphasize doctrinal teaching by linking it, alone, with “theory” and “cognition.”

→Additional Resources:

- “Assessing William Mitchell's Program in Light of the Carnegie Report,” from Sept. 2007: <http://www.wmitchell.edu/academics/faculty/documents/CarnegieReport--MitchellAssessmentfinal.pdf>
 - “Mitchell Faculty Publications Related to Teaching, a representative bibliography:” <http://www.wmitchell.edu/academics/faculty/documents/MitchellFacultyPublicationsRelatedtoTeaching.pdf>
 - Mitchell's Pathways to the Profession website: www.wmitchell.edu/pathways
 - Mitchell's Keystone Course program: <http://www.wmitchell.edu/curriculum/curriculum/keystone-program.asp>
-

The following is an outline containing excerpts from the article:

VIRTUAL REALITY TESTING: THE USE OF VIDEO FOR EVALUATION IN LEGAL EDUCATION

Kimberlee K. Kovach

46 J. Legal Ed. 233 (1996)

The law students are ready to take their Evidence exam. The proctor lowers the lights. The video screen immediately displays a courtroom where the lawyers are arguing about admissibility of evidence.

The students, who are instructed to assume the role of judge, listen intently as the lawyers articulate the basis of their objections and responses. After ten minutes, the screen fades. The students have three minutes to make rulings and discuss, in writing, their justifications.

I. Introduction and Overview of the need to connect learning and evaluation

This article explores the use of video for testing. My thesis is that as our teaching emphasizes performance, so should our examination and evaluation procedures. In other words, the final exam must be as realistic as possible: I call it virtual reality. I describe two specific ways to use video: first, to develop a more reflective practitioner through self-observation; and, second, to provide a more realistic final exam problem. Although thus far the video exam has been (to my knowledge) confined to skills-based courses, [FN21] it could be used more widely.

The following section describes how I use video for student assessment in two distinct ways. First, a video of the student's own performance provides the student with direct feedback and an opportunity for discovery, growth, and improvement. This use emphasizes self-evaluation and reflection, complemented by the instructor's assessment. Second, on the premise that testing should simulate as real a situation as possible, I use video to test all students at the end of the semester, using a traditional framework [FN22] but presenting, on videotape, a more realistic problem.

II. Why use Video (now dvds)

Video has a number of advantages over written material for both teaching and testing. Video allows students to see things they would otherwise be unable to see, conveying realistic situations with accuracy and immediacy. On a videotape students can observe behavior, such as nonverbal communication, that cannot be conveyed by the written word. The realistic presentation of video is excellent preparation for law practice. And law students should be acquainted with video because it is widely used in both depositions and trials. [FN23]

With the flexibility of video, the instructor can focus on a specific portion of a demonstration. [FN24] Video can add to variety in teaching, resulting in increased *236 interest, attention, and learning. [FN25] A primary benefit of audiovisual media is the dramatic increase in retention of material when it is seen, not just heard. [FN26] Video also assists the learning process by providing diagnostic and remedial tools; [FN27] it allows the student to watch his own performance and determine his own strengths and weaknesses.

Just as video can be used in various ways in the instructional phases of education, video may be utilized differently in the evaluative components. Since my Mediation and Interviewing & Counseling courses are blends of theory, knowledge, and skill development, my thought was that the test, or evaluation, should

reflect that mixture. My using video in the teaching process made its use for evaluative purposes seem natural. Accordingly, I divide the assessment into components reflective of the course design and content. The student's final grade is segmented, with at least one-third resulting from the practical application of the material, or skills development.

A. Video for Self-Reflection and Evaluation

1. Goals and Objectives

In videotaping a student's performance I have three goals: to provide the student an opportunity for self-evaluation; to give myself a means of assessing the student; and to provide a basis for constructive one-on-one feedback.

Traditional classes often provide negative feedback to the student, with fear the primary motivator. [FN28] But positive reinforcement is more effective than negative criticism, and more likely to improve performance. [FN29] If students anticipate criticism, their ability to hear comments may be limited, particularly if the teacher has not been trained in the best methods of providing feedback. And students may resist a supervisor's feedback because they want to be treated as adult learners responsible for their own education. [FN30] But students are willing to listen if they see an opportunity to improve, and if improvement brings positive reinforcement. [FN31] The assessment process can be beneficial to self-development rather than detrimental. [FN32]

2. Methodology

During the semester, each student has two opportunities to be videotaped. The first is a practice video, which the student is to use for self-critique and improvement before filming the final video. [FN41] The practice tape is primarily for the student's benefit. A best-case scenario for optimal development of skills would provide instructor feedback at this point but, regrettably, I have not had time for that. I do randomly review a few of the practice videos to determine the level of understanding and skill development of the class as a whole. If there is sufficient time, and if a student volunteers to be critiqued in front of the entire class, I may use a practice (near the end of the semester, the final taping is completed.)

3. Grading

When I am considering the video and the self-critique, my primary goal is to determine the student's ability to extract knowledge and understanding from the course and apply it to her own performance. The video also provides a method of evaluating acquired skills, although I give less weight to performance. I emphasize the student's ability to be self-reflective and to recognize areas of achievement along with those for improvement. The paper demonstrates the depth of knowledge and understanding of the course material, not only from a theoretical perspective, but also from a practical standpoint. Specifically, the student should be able to identify those skills which derive from theory and then determine which she demonstrated effectively, which she did not, and why. [FN49] Consistent with understanding and self-evaluation, the written analysis is much more important in the grading than the actual performance. [FN50]

In some later courses, I have also added a peer written critique component.

B. The Video Problem for the Final Examination

1. Goals and Objectives

Whether a lawyer is in an interview, hearing, mediation, or trial, his reaction must usually be immediate. And the information that he reacts to is seldom in written paragraphs: it is presented through an interpersonal interaction.

To predict the student's spontaneous reaction in a real situation, a test problem must be as real as possible. The student should view the interview rather than read a transcript. Although it is possible to use a real-life situation in a clinical setting, it is nearly impossible to be consistent and reliable; [FN54] students are assigned different cases with different clients. And even in simulation clinics, where the instructor uses

the same fact pattern or problem, different persons playing the role of client create different situations. Video solves those problems: it presents the same realistic situation to all students and ensures consistent, objective evaluation. A bluebook exam based on a video is an efficient means of testing many students at once, using the same problem and the same criteria. [FN55]

Like any other exam, a video exam should be constructed with a view to validity, reliability, and fairness. [FN56]

The video exam problem should replicate, as accurately as possible, situations a lawyer is likely to encounter in practice. Such an exam can demonstrate whether the student has fully integrated the knowledge and skills learned during the semester so that she is able to recognize a problem instantly and respond appropriately. The videotape provides a realistic example of what the student will confront in practice, and the exam answer predicts how the student will perform.

2. Creating the Problem

One method of creating a video problem is to take existing videotapes of trials or interviews and design questions about the content. For some subjects, such as trial advocacy, evidence, and even professional responsibility, sufficient videos are available. [FN65] For other subjects, you may have to create a tape.

Once the tape is made, I examine the raw footage and, with assistance from our audiovisual department, produce an edited version: this involves some cutting, and the insertion of some questions. Each unedited film provides a myriad of problems about which specific questions can be asked. I review the raw footage a few times before designing the questions. If I need to focus on a specific, isolated problem, I edit the tape accordingly.

As the tape is played, the video stops at certain points and a question appears on the monitor, asking about something the students have just seen. The tape then allots two to three minutes (depending on the difficulty of the question) for the students to answer. [FN66] The question remains on the monitor while the students write their answers in their bluebooks. This is the only time the students have to answer that question; the video, like life, is not replayed. The video then picks up again, the interview or mediation continues, and we move along to the next issue. A twenty-minute tape generally has three or four short-answer questions. I use the video segment as the first part of the examination, [FN67] and it counts for only a portion of the entire grade.

3. Grading Considerations

I grade the answers to the videotape examination problem as I would grade other essay or short-answer questions.

III. Applications of Video for Evaluation

A. Clinical and Skills-Based Courses

Most clinical courses do not rely on traditional testing for evaluation but rather use close supervision of the student by professors or supervising attorneys, with feedback [FN71] and self-evaluation. [FN72] Often students are evaluated on a pass/fail basis, although specific grades are becoming more common. [FN73] But many skills-based courses, though theoretically within the clinical domain, [FN74] are offered as part of the traditional curriculum, along with the traditional final exam or paper. Those methods of evaluation are adequate for measuring whether the students have a clear understanding of principles or underlying theory, but neither can accurately measure a student's competence in performing the skills essential to (for example) negotiation and mediation, particularly the interpersonal skills. Skills-based courses, with the focus on performance, require a different means of testing. [FN75]

Both clinical and skills-based courses, with their emphasis on the demonstration of lawyering competencies, are prime candidates for the increased use of video in testing as well as teaching. (For one Subjects that might lend themselves to video evaluation include negotiation, alternative dispute resolution, pretrial and trial advocacy, appellate advocacy, and office practice. In pretrial and trial advocacy courses, for example, situations such as client and witness interviews, trial preparation conferences, motion and deposition practice, jury selection, and pretrial conferences *244 with the court could be demonstrated by video, followed by a number of questions. While instructors in these subjects may have used video for teaching or even evaluating performance, they have rarely employed it as part of an examination process. They should consider its potential.

B. Application to Traditional Courses

The video problem can be particularly useful for measuring the student's expertise in areas where a lawyer must make immediate decisions. Such courses as Evidence, Civil Procedure, Contracts, Criminal Law, and Criminal Procedure could make good use of video in testing. Just as clinical teaching methodology has been adapted to the traditional classroom, [FN78] the evaluation methods of clinical and skills-based courses, including video, can be effectively adapted to most subjects.

In an Evidence class, for example, a problem might require the student to object to an offer of evidence, draft a response to an objection, or perhaps make a ruling. Students of Civil Procedure could watch a motion argument or a trial and draft the points for appeal or, alternatively, the court's decision. In a Contracts class, the video could present a client interview from which the students must gather the facts and draft a contract, or advise the client about causes of action. For a Torts class, an accident could be staged and video-taped. [FN79] For Trusts & Estates, Teresa Stanton Collett has used a video exam problem showing a probate conflict.

With the integration of clinical, practical teaching into the general law school curriculum, [FN80] we no longer see "skills" and "substance" as entirely separate entities. Any course can benefit from the use of realistic, practical problems for both teaching and examination. The realism of videos is particularly effective in giving students a better understanding of the practical components of practice. The more realistic the presentation, the greater the opportunity for learning. [FN81]

IV. Impediments to Innovation and Some Suggestions

A. Inertia

B. Time Concerns

C. Complexity of Administration

D. Potential Bias and Subjectivity

E. Cost

F. Student Reaction

V. Conclusion: Evaluating the Lawyer of the Future

The incongruity between the standard bluebook examination and the practice of law makes it difficult to predict a law student's ability to practice law. [FN112] The standard exam measures only a small portion of the knowledge and skills on which a lawyer relies; [FN113] it does not provide an overall, realistic view of the student. Yet law school exams are used to establishamination is an inaccurate, inadequate measure. Other methods of evaluation, more relevant to actual law practice, should supplement, if not replace, the standard exam.*251 To some extent the skills essential to law practice have changed over time, and will continue to change. Yet the most important part of lawyering remains interpersonal interaction. Many of the MacCrate Report's enumerated skills have interpersonal components. [FN117] Communication is key to the practice of law..... While much communication is written, more is seen, heard, and spoken. In order to adequately predict practice abilities, we need to test these skills.

The next best thing to reality is virtual reality. With improved technology, problems will be presented in an interactive video format. Eventually the entire examination may consist of taking students to the courtroom, conference room, or other site, and into the virtual reality of law practice for the twenty-first century.

As the student enters the examination room, she is given a headset. With the press of a button, she is transported to a large conference room in which the decision-makers of five international corporations are discussing a contract dispute. The student, representing X Corp, must assist Mr. Segen in negotiating a resolution of the dispute.

After a cursory greeting, her client privately whispers, "They are negotiating in bad faith--what do we do now?" The student's verbal and nonverbal responses are electronically transmitted to the client. Depending upon the lawyer's response, the client continues with additional questions throughout the hourlong negotiation. The student's responses along with the ultimate outcome of X Corp's contract are evaluated and graded as part of the Ethics in Negotiation and Settlement examination.

Legal Education at the Crossroads — Ideas to Accomplishments: Sharing New Ideas for an Integrated Curriculum,
 University of Washington

Plenary: Assessment September 7, 2008

1	School	Charlotte School of Law	Franklin Pierce Law Center	Hamline University School of Law	South Texas College of Law	University of Missouri Kansas City
2	Context for Assessment	New Law School, Mapping curriculum – and learning outcomes	Alternative bar licensing/experiential training pilot (<i>currently</i> honors program)	University-wide learning outcomes assessment goals and project.	Connecting learning and assessment; designing mechanisms which not only track the knowledge and skills learned, but actually provide additional opportunities for learning.	Mapping curriculum for emphasis program
3	Students to be Assessed	All students	Participating 2Ls and 3Ls (Daniel Webster Scholars)	All students	Primarily skills and clinical courses	Family Law Emphasis Students

<p>School</p>	<p>Charlotte School of Law</p>	<p>Franklin Pierce Law Center</p>	<p>Hamline University School of Law</p>	<p>South Texas College of Law</p>	<p>University of Missouri Kansas City</p>	
<p>4</p>	<p>Identifying student learning outcomes – process to date</p>	<p>Experiential Learning Director directs process: Faculty draft outcomes at retreat 8/07; finalizes at workshop and follow-up emails. Faculty identifies curriculum components & do preliminary mapping of outcomes SP 08. Director drafts Curriculum Alignment Matrix; Faculty committee identifies activities necessary for outcomes; activities are organized and grouped into categories. Faculty refine matrix & approve policy statement re: outcomes at 8/08 retreat.</p>	<p>Committee initiates led by NH Supreme Court justice '02; initial vision outlined with emphasis on MacCrate '02-'04; Director selected to develop and implement '05; Director develops curriculum and designs courses with outcomes goal of making law students <i>client-ready</i> '05 – present; desired outcomes specifically identified and methodologies developed '06 - present</p>	<p>Step 1 (2007-2008): identify and articulate desired learning outcomes and map them to the University's learning outcomes; familiarize faculty with learning outcomes theory and practice. <u>Step 2 (2008-2009): map the identified learning outcomes to existing curriculum; identify gaps in curriculum; suggest changes to curriculum as needed to fill gaps; inventory existing assessment methods; develop assessment plan; continue to educate faculty.</u></p>	<p>Implementation of innovative evaluation/grading in the skills and clinical arenas; additionally some feedback to faculty by the OAR (Office of Assessment and Research) which is currently working on developing additional assessment tools</p>	<p>1. Law School learning outcomes process 2. Faculty identify learning outcomes for all emphasis courses; 3. Survey of bench and bar regarding outcomes for emphasis students</p>

School	Charlotte School of Law	Franklin Pierce Law Center	Hamline University School of Law	South Texas College of Law	University of Missouri Kansas City
<p>5 Basis for assessment criteria</p>	<p><i>Carnegie Best Practices Australian mapping models</i></p>	<p><i>Carnegie Best Practices MacCrate Law School Admissions Council (Shultz and Zedeck) GGSL SIMLE (Maharg and Barton) GGSL Standardized Clients (Maharg, Barton and Cunningham)</i></p>	<p><i>Law School Specific Resources (partial):</i></p> <ul style="list-style-type: none"> • <i>Carnegie Best Practices</i> • <i>MacCrate</i> <p><i>Input of faculty, staff (particularly from career services and library) and practitioners</i></p> <ul style="list-style-type: none"> • <i>Munro</i> • <i>Boalt Hall (Beyond the LSAT project)</i> <p><i>General Assessment Resources (partial):</i></p> <ul style="list-style-type: none"> • <i>US Depl. of Ed (Spellings Report)</i> • <i>Dr. Susan Hatfield, Winona State University</i> • <i>Assessing for Learning (Maki)</i> 	<p><i>Carnegie MacCrate; General research on uses of assessment in Higher Ed.</i></p>	<p><i>Carnegie Best Practices AFCC Family Law Education Reform Project (FLER) Survey of constituents</i></p>

School	Charlotte School of Law	Franklin Pierce Law Center	Hamline University School of Law	South Texas College of Law	University of Missouri Kansas City
6 Next steps	Convert activities to benchmarks; identify assessment tools; map learning & assessment opportunities across curriculum	Continue training and implementation of standardized clients/witnesses; apply SIMPLE (simulated professional learning environment) software; continually refine outcomes matrix for program and each DWS course	Step Three (2009-2010): implement revised curriculum; improve and expand assessment methods; begin concerted effort to collect assessment data; continue to educate the faculty Step Four (2010+): evaluation of assessment data; continued refinement and improvement of curriculum and assessment methods; continue to educate the faculty.	Integration of methods within other courses; Implement additional methods such as video streaming and email follow up and feedback	Map outcomes to courses & learning opportunities Identify overlap and gaps; Sequence courses; Developing new learning opportunities; Develop pre-testing/goal setting processes; Match assessments to outcomes; Improve portfolio assessment;

School	Charlotte School of Law	Franklin Pierce Law Center	Hamline University School of Law	South Texas College of Law	University of Missouri Kansas City
7 Assessment methods – measuring student learning	Probable: <ul style="list-style-type: none"> •Capstone experiences •Exams •Portfolios •Essays & Term Papers •Videotaped Presentations • Evaluation of Simulations • Peer Reviews •Evaluation of Internships/ Externships/ Clinic • Performance on bar exam 	Portfolios including: <input type="checkbox"/> Papers, including drafts with teacher comments <input type="checkbox"/> Legal documents <input type="checkbox"/> Exams <input type="checkbox"/> Self-reflective evals <input type="checkbox"/> Peer evals <input type="checkbox"/> Teacher evals <input type="checkbox"/> Standardized client evals <input type="checkbox"/> Videos of simulated depositions w/real stenographers: oral arguments before real judges, trials, witness interviews, negotiations, standardized client interviews <input type="checkbox"/> Standardized client interview evals from client Oral exams Multiple simulations Clinical work Externships Capstone	Existing (partial): <ul style="list-style-type: none"> • Bar Exam statistics • MPRE statistics • Final exams (essays, papers and multiple-choice questions) • Mid-term exams (with and without detailed feedback) • Self-assessment and peer review tools (principally in clinical and practical courses) • Seminar/writing requirement with detailed feedback on draft papers • Oral advocacy exercise as part of legal writing • Instantaneous feedback with “clicker technology” • Legal drafting exercises as part of legal writing and some doctrinal courses Possible additions or requirements: <ul style="list-style-type: none"> • Coordinate assessment methods across the curriculum • Require a statement of learning outcomes for all courses • Standardize rubrics for the principal forms of grading, particularly essay exams • Require mid-terms with detailed feedback in select courses • Extra-curricular training and assessment, principally in the area of professionalism • Portfolio requirement 	Journals, Self Reflection, Use of Video - Virtual Reality Testing; Student Peer Assessment on papers and on videos of negotiation, mediation; practitioner feedback (Arbitration moots);	Existing: Course assessment methods (final examinations; simulation exercises; reflection papers; research papers; observation of practice; self-assessments; assessments by bench & bar; post-graduation reflection/practice

School	Charlotte School of Law	Franklin Pierce Law Center	Hamline University School of Law	South Texas College of Law	University of Missouri Kansas City
<p>8 Student learning outcomes - content</p>	<ol style="list-style-type: none"> 1. Intellectual and Analytical Reasoning 2. Problem Solving and Solution Design 3. Written and Oral Communication 4. Information and Communication Technology 5. Negotiation 6. Practice Management 7. Professional Relations 8. Professional Ethics 9. Leadership in Social Responsibility 10. Self-Reflection and Lifelong Learning 	<p>All MacCrate Skills and Values, further refined with language from Law School Admissions Council Project by Shultz and Zedeck (LSAP)</p>	<p>The general goals of HUSL's "Learning Outcomes for Lawyer Achievement (LOLA)" are as follows (see separate document for a list of the specific learning outcomes under each goal): GOAL #1 (KNOWLEDGE): Acquire the conceptual frameworks and substantive knowledge needed for competent professional service as a new attorney and as a basis for lifelong learning. GOAL #2 (SKILLS): Learn, practice, and apply the skills and methods that are essential for effective lawyering. GOAL #3 (PROFESSIONALISM): Develop the personal attributes, attitudes, and practices befitting an honorable and respected profession.</p>	<p>All aspects of communication; recognition of the types, techniques and approaches in mediation and negotiation; awareness of ethical issues; reflective practitioner; collaboration; impacts of culture (defined at the broadest level) on all aspects of law practice; methods of information processing; creative problem solving;</p>	<p>In addition to general student learning outcomes for entire law school (see http://www.umkc.edu/UMKC/catalog-grad/html/law/0640.html) special emphasis will be given to the following outcomes: Students will be able to:</p> <ol style="list-style-type: none"> 1. Identify and apply fundamental doctrinal content to fact situations commonly encountered in a basic family law practice in order to generate solutions and predict outcomes 2. Students will be able to identify the impact of extra-legal influences on evolving areas of family law 3. Students will be able to identify basic psychological and sociological understandings essential to working with families and children (e.g., family systems; divorce process; child development; cultural competency; etc) and will appreciate and be able to work cooperatively with mental health experts 4. Students will be able to communicate with confidence, empathy, and appropriate boundaries with clients under stress or with impairment 5. Students will be able to take a basic family law case from client interview, through fact investigation to final judgment 6. Students will be able to identify ethical (regulatory) issues in practice and will have a basis for deciding matters within their ethical discretion 7. Students will be able to generate multiple avenues of problem solving and dispute resolution for typical family law issues, recognizing especially the limits of law in this field;

*Making Law Students Client-Ready:
A New Approach to Legal Education*

DANIEL WEBSTER SCHOLAR
HONORS PROGRAM
"Making Law Students Client-Ready"

John Burwell Garvey
Professor of Law and Director
Daniel Webster Scholar Honors Program
Franklin Pierce Law Center
Concord, New Hampshire 03301

Plenary Session: Assessment
September 7, 2008

Problem: The *MacCrate Report*, published in 1992, identified a serious gap between standard law school training and the training needed to properly prepare for and thrive in the legal profession. As an accredited academic institution responsible for the education and development of law students, we recognized our obligation as the fiduciaries of these *future* fiduciaries.

Innovation: The Daniel Webster Scholar Honors Program was designed to make students client-ready. The program is a collaborative effort of the New Hampshire Supreme Court, the New Hampshire Board of Bar Examiners, the New Hampshire Bar Association, and Franklin Pierce Law Center. During the three-year pilot phase, which is in its final year, the program is limited to fifteen students per class. These students are selected from the applicants who apply in March of their 1-L year. Selection is based upon overall ability to succeed in the program, including academic, professional and interpersonal strengths. Selected students undergo an intensive two-year program.

Although they continue to matriculate with their class and must meet all of the law school graduation requirements, Webster Scholars have many additional requirements. During each semester, in addition to electives, they take various specifically designed Daniel Webster Scholar ("DWS") simulation courses, including: Pretrial Advocacy; Trial Advocacy; Negotiations; a Miniseries involving Family Law, Law Office Management, Commercial Paper and Conflicts of Law; Business Transactions, and; a Capstone course integrating and building upon the skills they have learned during the DWS program. They are also required to have at least 6 credit hours of clinical and/or externship experience, and are required to take four additional courses which would otherwise be electives: Business Associations; Evidence; Wills, Trusts & Estates, and; Personal Taxation. After being trained in Family Law in the spring 2-L semester, they each provide at least 12 hours of supervised pro bono telephonic advice to real clients at the Legal Advice and Referral Center. All Scholars work closely with the director. In addition to participating as a teacher in numerous courses, the director serves as a mentor, counselor, and advisor; with 30 years of private practice experience, he provides guidance and outside resources on real world professionalism issues such as ethics in the context of real cases, behavior, dress, punctuality, job searches, practice management, substance abuse, and life balance management.

During the entire DWS experience, each Scholar is reviewed and evaluated in many different ways. There is extensive formative assessment, which leads to summative assessment. All Webster Scholars are required to read the *MacCrate Report* at the beginning of the program.

For each DWS course, they keep a journal and reflect upon their own experiences in the course and identify their strengths and weaknesses, relating to and identifying the *MacCrate* skills and values in their work. This includes their reflections based upon watching their own video taped performances in oral argument, client interviewing, deposition taking, negotiating, etc. They each write a reflective paper on each course, again using *MacCrate*. Also, during DWS courses, Webster Scholars provide peer review. Teachers, visiting lawyers, judges, stenographers and lay people participating in simulations provide feedback. Each Scholar has a portfolio which is compiled on an ongoing basis, and includes: papers, including drafts with teacher comments; legal documents drafted by Scholar; exams; self-reflective *MacCrate* analysis; peer evaluations; teacher evaluations; standardized client evaluations; videos and transcripts of simulated depositions with real stenographers, oral arguments before real judges, trials, standardized client interviews and negotiations and; standardized client interview evaluations from client. Each semester, each portfolio is evaluated by a bar examiner, who also meets with and questions the students once a year.

Students must obtain at least a B- in all DWS courses, and at least a 3.0 cumulative law school average on a 4.0 scale. Those Scholars who successfully complete this two year process and who pass the Multi-State Professional Responsibility Exam and the character and fitness review are certified as having passed the New Hampshire bar exam, and are admitted to the New Hampshire Bar upon graduation. The first graduating class was 2008.

Process: Because our program involves an alternative bar licensing exam, we needed to satisfy multiple constituencies. Therefore, we worked with the Supreme Court, the New Hampshire Bar (which is a unified bar), and the Board of Bar Examiners. In developing our curriculum, we carefully examined the 10 skills and 4 values identified in *MacCrate*, and looked to see where, if at all, those skills and values were developed in our current curriculum. Through this process, we developed a series of topics which we thought should be covered as part of a client-ready, two-year training and bar exam, and then circulated the results to the various stakeholders. We worked to obtain buy-in from the various groups, and then created a plan for implementation.

At least at the present time, many law schools will not be able to run the program as an alternative bar program, because it will take time for licensing bodies to adapt to this alternative method of bar examination. This does not undermine the value of the program, since more than half of our Webster Scholars plan to practice outside of New Hampshire, and all Webster Scholars have said they would take the program with or without the bar passage component.

To those schools interested in replication, in addition to contacting us in the early stages, **we recommend the following basic steps.** While this is only intended to serve as an overview, it does demonstrate that the program can be easily replicated on a little budget and a lot of energy:

1. **Consider your mission statement.** Identify the goals you have for your students before they graduate. (Consider using the *MacCrate* Skills (10) and Values (4) as a guide.)

2. **After identifying your student goals, consider your school's current curriculum and ask to what extent those goals are being addressed in the current curriculum.** Again, use *MacCrate* as a guide. If possible, survey the faculty and ask professors to identify their courses and the skills and values addressed in each course. (We prepared such a survey – a modified *MacCrate* analysis - which faculty members could access on their computer.) In addition to

getting important information for the new program, a survey will help to make all faculty members more mindful of what they are teaching and why.

3. Once you have identified what is already being taught, consider what you would like to teach in the new program, and how you would like to integrate it into the overall curriculum. Since the program attempts to integrate the educational experience in increasingly complex layers, it is important to know the educational sequencing. For example, the Webster Scholars are required to take Business Associations and Personal Tax in their 2-L year, because they need the information in order to take full advantage of the learning opportunities in the DWS Business Transactions course in the 3-L year.

4. After you have identified what you want to teach in the program, identify all available resources in your law school, legal community, and community at large. For example:

- a. Identify professors with substantial practice experience who are willing to participate, and catalogue the experience available.
- b. Identify programs in the school which already exist, e.g., clinics, externship programs, moot courts, etc., which can be integrated into an overall program.
- c. Announce the program in your alumni magazine and on the web, and seek alumni volunteers.
- d. Announce the program in the state and local bar publications, and seek volunteers.
- e. Use personal contacts to personally request volunteers. This includes judges, lawyers, stenographers, lay people (who can be trained to be standardized clients, witnesses and jurors), and paralegals. You are only limited by your imagination, and many people enjoy participating as volunteers in the law school setting.

5. Design your courses. Intentionally weave them together so that they create a seamless fabric. Carry simulations forward from one course to the next, so that you build in additional complexity. This allows the students to build upon their skills as they go from exposure, to competency to mastery. For example, we carry an FMLA fact pattern forward from Pretrial Advocacy to Trial Advocacy, and revisit it in the Capstone, so students see how the pieces fit together, and their skills and insights improve in the process through repetition and repeated exposure. As just one lesson, they find out in Trial Advocacy how difficult it is to control a witness with vague questions and answers from a deposition they took in Pretrial Advocacy! When designing your courses, take advantage of resources which are already available. Visit our program. We have already created simulations, as have others. Some texts now offer electronic files with case documents.

6. When you have determined what you want to teach, how you want to teach it, and have designed the courses, you need to select your faculty. This is a critical job, as not everyone has the energy, teaching skill and patience to run simulations. Experienced adjuncts can be very useful, but adjuncts without experience need substantial preparation and training. If possible, have a new adjunct co-teach the first time with an experienced teacher.

7. Communicate clearly and constantly with the faculty as you develop the program. Change can be threatening. Seek input, and show skeptics that the program is value added. If they are not familiar with *MacCrate*, *Carnegie*, and *Best Practices*, educate them. You need faculty buy-in for the program to flourish.

8. Communicate with the students. Explain the program on the web, in person, and in writing. Have meetings where you offer pizza! Get them excited.

9. Create an application. Make it straightforward. If you obtain writing samples from Legal Skills, references from 1-L professors, access to student school files and conduct personal interviews, you can do a good job of evaluating the applicants.

10. Have a selection committee – not just an individual. We use the director and 1-L professors who have observed the students in the learning environment.

11. At least in the early stages, limit enrollment. We have found that 15 per class is manageable. When we have finished the initial modeling, we will expand. We hope to make at least major portions of the program available to all students.

12. As for the bar licensing part of this program, the school will need to approach the licensing entity in its state, to see whether there is any interest. We are happy to offer case specific suggestions and guidance.

Evaluation: We graduated our first Webster Scholars in May of 2008. Therefore, feedback on whether the program is meeting its goals is not yet extensive. However, our early experiences are very positive. Every student who graduated from the program said that they had experiences in externships, clinics and summer clerkships where they felt they were ahead of their peers. The market seemed to agree, as every Webster Scholar was employed in a good legal position by graduation. We have received consistent feedback from judges, lawyers, stenographers and lay people who notice that Webster Scholars seem seasoned and professional. In addition, the director is a member of the Carnegie Initiative, and serves on the assessment sub-committee. He presented details of the program to the sub-committee in June of 2008, as part of an evaluative process, and the program was very favorably received.

During the summer of 2008, the program trained 8 standardized clients, who will provide an assessment as part of the Capstone Course. The New Hampshire Supreme Court has agreed to allow us to use the standardized clients to test cohorts of newly admitted non-DWS lawyers, in order to compare their performance to the DWS performances. Going forward, we will be interviewing practicing Webster Scholars, employers, peers and judges to determine whether Webster Scholars are meeting our goal of being client-ready.

Carnegie/Best Practices: Since we launched our program in 2005 and *The Carnegie Report* and *Best Practices* were not published until 2007, we did not have the benefit of their expertise when the program was designed. However, we relied heavily on *MacCrate*, and were delighted to see that our program also incorporates most of the *Carnegie* and *Best Practices* recommendations. We have tried to design a program to bridge the gap between academia and practice, which emphasizes professionalism at all stages, and which will make our students client-ready. With those goals, our curriculum was designed intentionally, and provides for extensive formative and summative assessment from multiple sources.

Additional Resources: The *Carnegie Report* and *Best Practices* have reinvigorated the discussion of legal education, and there are now many resources available. One good site is the AALS curricular reform site managed by Dean Ed Rubin of Vanderbilt: http://www.aals.org/services_curriculum_committee.php. For basic *MacCrate* materials: <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html>. Standardized clients: <http://law.gsu.edu/ccunningham/PDF/ValuingWhatClientsThink.pdf>. Daniel Webster Scholar Honors Program: <http://www.fplc.edu/websterscholar/>.

Professionalism In and Out of the Classroom

Timothy Floyd

Professor of Law and Director, Law & Public Service Program
Mercer University Walter F. George School of Law

Patrick Longan

W.A. Bootle Chair in Ethics and Professionalism
Mercer University Walter F. George School of Law

Showcase Presentation

Problem:

The problem with legal education that prompted Mercer University's Walter F. George School of Law to initiate the innovations described below was a perception that law schools gave too little emphasis, if any, on helping students form and explore their professional identities in law school. Law students do not generally receive explicit instruction on what professionalism means or how the practice of law can affect who they become. Students also do not receive sufficient opportunity to practice the principles of professionalism in a work environment that is supplemented and supported by classroom discussions that permit ongoing reflection about professionalism and professional identity. The innovations we have implemented are intended to address these perceived deficiencies.

Innovations:

We have implemented two innovations in our curriculum. The first is a first-year class on professionalism. This three-credit, graded course covers what professionalism means, why it matters whether lawyers are professional, what impediments to professional behavior exist in current practice, and how professionalism is enforced and encouraged. The course also explores the connection between professionalism and fulfillment in the practice of law. Students leave this course with a vocabulary and a structure for talking and thinking about problems of professionalism in the law.

The second component is our Law & Public Service Program, a comprehensive program that cultivates and supports an ethic of public service in our students. The heart of the program is learning through experience and service in clinical courses and in the public interest practicum (our externship program). In addition to the curricular offerings, the program encourages and coordinates volunteer community service and pro bono legal work by students. The Program is designed to be

interdisciplinary, offering opportunities for cooperation between law students and students in other schools and colleges of the University.

The classroom component of the practicum and the clinics, including the readings and discussions, focuses on issues of professionalism and developing professional identity. As students reflect on their real world experiences and observations, we urge them to use the lessons they learned in the first year course to reflect on the professionalism of the lawyers they encounter and to develop their own professional identities.

Process:

The first-year course on professionalism evolved from a long term planning process in the late 1990's. A major theme of the plan adopted by the Mercer faculty at that time was professionalism. A key ambition in keeping with that theme was the development of a first year course devoted to developing the students' professional identities. When the law school received funding for a new endowed chair in ethics and professionalism, the holder of the chair was given the responsibility to develop and teach the course.

In the spring of 2003, the faculty approved the insertion in the first-year curriculum of the professionalism course, effective with the spring semester of 2004. Although usually changes to the first year curriculum are difficult to implement, this change was not, because of the long-term, preexisting commitment of the Mercer faculty to teaching professionalism. Professor Longan, who teaches the course, developed the course over the next nine months. The course has been taught every spring since 2004.

The long term planning process referred to above also included an emphasis on creating a public interest program at the law school. The Law & Public Service Program was created by a vote of the faculty during the 2005-06 academic year. Two newly created faculty positions, filled in the summer of 2006, have been dedicated to the program. Professor Floyd serves as Director of the program.

In developing the clinics and externships that are the heart of the program, the faculty decided that professionalism and professional identity would be the central themes. As in all clinical courses and externships, students learn valuable lawyering skills, but we made the choice to emphasize professionalism as the primary educational goal. Accordingly, we have constructed the readings and topics around those issues. Additionally, reflection is a crucial aspect of these courses; students submit regular reflective journals in which they are urged to reflect on their own emerging professional identities.

There have been no obstacles within the faculty to the direction we have taken with the Law and Public Service Program. In addition, students have been quite open to the focus on professionalism, thanks largely to their experience in the first year course.

Evaluation:

The primary means of evaluating the first year course has been a reflective paper written by the students at the end of the course. At the beginning of the semester, the students write a paper about their ambitions as lawyers and as people. The last assignment before the exam is to write the same paper but to comment on how, if at all, those ambitions have changed as a result of the professionalism course. Excerpts from those papers will be available at the conference.

In the Law and Public Service Program, we evaluate how well students are learning professionalism primarily through their reflective journals and the classroom discussions. We tell our students at the outset of the semester that the central question they should ask themselves throughout the course is "Can I be the person I truly am and also be a good lawyer?" The first part of the question requires deep reflection on personal identity, and the second part requires them to reflect on how a lawyer practices with "professionalism." Both parts of the question help them to develop their own professional identity.

Carnegie/Best Practices:

Educating Lawyers identifies three "apprenticeships" for legal education: the intellectual or cognitive apprenticeship, the practical apprenticeship, and the normative apprenticeship, that is, the development of professional identity and purpose. This third apprenticeship, the formation of ethical and committed professionals, includes the task of inculcating the values and ideals of the profession. Carnegie contends that while law schools do an excellent job on the cognitive apprenticeship and recently have improved markedly in the skills apprenticeship, law schools should do more to develop and integrate the normative apprenticeship. We believe the focus on the apprenticeship of professional identity is perhaps the most innovative and promising aspect of the Carnegie study. Likewise, *Best Practices* strongly emphasizes the need to better educate students regarding professionalism.

Educating Lawyers also emphasizes the power of the signature pedagogy of legal education, especially in the first year, in the formation of law students'

identities. By placing our course on professionalism and professional identity in the first year, we believe we stand a better opportunity to positively impact their professional identities.

In addition, learning professionalism in context, as we do in the Law and Public Service Program, is based upon *Best Practices'* insistent theme of "context-based education."

Additional resources:

For more information on the first year course on professionalism, see the following web sites:

<http://www.law.mercer.edu/academics/centers/mclep/legalprofession.cfm>

<http://law.gsu.edu/ccunningham/Professionalism/Award05/Apps/Longan.htm>

An article describing the course in depth will be published in spring 2009 in Volume 60 of the Mercer Law Review. A pre-publication draft of that article will be available at the conference, along with the most recent syllabus and related materials.

For more information on the Law & Public Service Program, see the following web site:

<http://www.law.mercer.edu/academics/service/>