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John B. Mitchell

B. Hollingsworth

P. Clark

R. Lidman

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AND THEN SUDDENLY SEATTLE UNIVERSITY WAS ON ITS WAY TO A PARALLEL, INTEGRATIVE CURRICULUM

JOHN B. MITCHELL, BETSY R. HOLLINGSWORTH,
PATRICIA HALL CLARK, AND RAVEN LIDMAN*

I. INTRODUCTION

This is a story of change so sudden that it surprised even those who most fervently sought it. For nearly a decade, Seattle University School of Law¹ has offered an extensive typical skills curriculum. All students are involved in an intensive two year writing program.² The simulated Comprehensive Pretrial and Trial Advocacy Program trains over 150 students a year,³ while in the Law Practice Clinic, 60 students a year represent domestic and criminal clients. Course offerings such as ADR, Negotiations, and Appellate Advocacy, along with judicial and public service externships and an array of student competitions, fill out the lawyering skills offerings. All was well done, well con-

* The authors are Clinical Professors at Seattle University Law School.

¹ The law school changed its affiliation from University of Puget Sound to Seattle University in August, 1994.

² In 1981, our faculty approved expanding the Legal Writing Program into what has subsequently become a national model for legal writing programs. Students take six credits of legal writing: a three-credit course in the first year in objective and advisory writing and a three-credit course in the second year in persuasive writing and oral advocacy. Both courses use pedagogical approaches derived from current research in rhetoric and writing instruction, and both are taught by full-time faculty formally trained to teach legal writing. The primary textbook for both courses is *The Legal Writing Handbook*, written by Laurel Oates, Anne Enquist, and Kelly Kunsch, all of Seattle University Law School. The *Handbook* integrates research, analysis, and writing, using the comprehensive approach for which the Legal Writing Program is known. Upper-division advanced legal writing seminars are also available as electives. Seattle University Law School hosted the first national conference for legal writing faculty in 1984. At that conference, the Legal Writing Institute was founded as a professional association of legal writing faculty. Since 1984, the Institute, which is located at Seattle University Law School, has grown to over 1400 members from over 100 law schools, and it has held six national conferences, three of which were hosted at Seattle University Law School. The Legal Writing Institute also publishes a newsletter and journal.

³ The Comprehensive Trial Advocacy program was developed using a methodology and a set of materials guided by current learning theory and expert-novice schema theory. See Marilyn J. Berger & John B. Mitchell, *Rethinking Advocacy Training*, 16 AM. J. TRIAL ADVOC. 821 (1993). The students study from a text by Professors Mitchell and Berger, and Ronald Clark, a Senior Prosecuting Attorney with the King County Prosecutor. See MARILYN J. BERGER, JOHN B. MITCHELL & RONALD CLARK, *PRETRIAL ADVOCACY: PLANNING, ANALYSIS AND STRATEGY* (1988); MARILYN J. BERGER, JOHN B. MITCHELL & RONALD CLARK, *TRIAL ADVOCACY: PLANNING, ANALYSIS AND STRATEGY* (1989).

ceived, staple clinical fare. Then something happened. These programs remain, but woven throughout the course offerings is what we call a Parallel, Integrative Curriculum: One-credit live-client and simulated course components running parallel to related upper-level substantive courses.⁴ This article is about that curriculum and, as importantly, how it came into being.

A. A Brief Description of the Current Status of the Parallel, Integrative Curriculum

Currently, live-client components are offered in conjunction with regular courses taught by regular faculty. Students registered for these regular courses are lotteried into a one-credit mini-clinic to handle real cases in the areas of: Health Law (appeals of Medicaid service denials for indigent clients); Immigration Law (representation of clients in deportation hearings); Law & Psychiatry (representation of patients at mental commitment hearings); Professional Responsibility (investigation of and recommendations on bar complaints); and Trusts & Estates (drafting of wills and powers of attorney for elderly and AIDs clients). A sixth such component, to be offered in conjunction with the Housing Law course, is being developed under a grant from the Department of Education.⁵ Clinic students working in teams of two, get initial intensive training on the specific relevant law and procedure, and on-going supervision, from a clinical faculty member.

On the simulated side, Drafting Lab is offered to students in a

⁴ Other teachers and institutions have used a structure where students in a substantive course are simultaneously offered a clinical experience. Some have used field placements. See, e.g., Paul Bergman, *The Consumer Protection Clinical Course at UCLA School of Law*, 29 J. LEGAL EDUC. 352 (1978) (students in seminar simultaneously do clinical work in which case supervision is provided by agency personnel); Howard R. Sacks, *Student Fieldwork as a Technique in Educating Law Students in Professional Responsibility*, 20 J. LEGAL EDUC. 291, 295 (1968) (students in professional responsibility seminar do fieldwork research). In others, regular faculty supervise the clinical component. See, e.g., Barbara Bezdeck, *Legal Theory and Practice at the Maryland School of Law*, 93 AALS SECTION ON CLINICAL EDUCATION NEWSLETTER, at 13 (Dec. 1993) (LTP curriculum, which ties classwork and actual client representation experience, covering most first-year and a number of upper-level courses); Sanford J. Fox & Edleff H. Schwabb, *Comments on a Bail Project Seminar*, 19 J. LEGAL EDUC. 102 (1966) (students in seminar on bail simultaneously do some intake and observation in bail process). Interestingly, as early as 1953, some were suggesting a "practice laboratory" where students could put the knowledge they gained from a course into effect. See Charles W. Joiner, *Teaching Civil Procedure: The Michigan Plan*, 5 J. LEGAL EDUC. 459, 469 (1953).

⁵ In 1993, the law school was awarded a grant by the Department of Education (D.O.E.) to refine the then-existing Law & Psychiatry and Immigration Law component clinics, and to create two additional live-client component clinics. The Housing Law Clinic, in which the students will deal with landlord tenant issues, will be the last clinic developed under this grant. The Trusts & Estates Clinic was begun with a start-up grant from the Estate Planning Council of Seattle.

range of doctrinal courses, tying each student's drafting experience to the subject matter of the particular course in which he or she is enrolled.⁶ Additionally, simulated one-credit "lab" courses are offered in conjunction with Criminal Procedure and Evidence. These lab courses are one-credit parallel simulations in which students work through a case file. They perform lawyering exercises (interviewing, case theory analysis, oral argument, counseling, etc.). They develop an understanding of particular doctrinal issues but do so in a context similar to that of a practicing lawyer. Presently, eight members of the faculty are working on books designed for use as either texts for the separate one-credit lab courses, or as material which will allow traditional professors to integrate a series of realistic lawyering problems into their substantive classrooms.⁷ These texts are designed to accompany courses in Administrative Law; Agency, Partnership, and Limited Liability Organizations; Antitrust; Business Planning; Corporations; Environmental Law (NEPA); Family Law; Pensions, Compensation and Benefits; Real Estate; Secured Transactions; and Securities.

| STRUCTURE OF LAWYERING SKILLS CURRICULUM | | | | |
|--|---|---------------------------------|-----------------------------|--|
| Legal Writing Program | Simulation Program | | Live Client Program | |
| | <u>Integrated</u> | <u>Freestanding</u> | <u>Integrated</u> | <u>Freestanding</u> |
| Legal Writing I | Crim. Pro. Lab | Comprehensive Pretrial Advocacy | Immigration Law | Law Practice Clinic (Civil and Criminal) |
| Legal Writing II | Evidence Lab | Comprehensive Trial Advocacy | Law & Psychiatry | Judicial Externships |
| Advanced Legal Writing | Drafting Lab | ADR | Professional Responsibility | Non-Judicial Externships |
| | Business Planning Skills Development Series | Negotiations | Trusts and Estates | |
| | | Appellate Advocacy | Health Law | |
| | | Student Competitions | Housing Law | |

Even those on the faculty who are not directly involved in the projects accept this evolution, many enthusiastically.⁸ Faculty teach-

⁶ The lab courses are taught by a variety of people: the regular classroom teacher, another regular faculty member, or adjuncts.

⁷ These texts will comprise the Seattle University Skills Development Series, to be published by The Michie Company.

⁸ Cooperation and coordination between clinical and traditional faculty, aside from

ing Evidence and Criminal Procedure recommend the corresponding labs to their students. Others whose classes have been conjoined with live-client components have allocated class time to discussions of non-confidential aspects of the cases in the related clinic, have attended hearings, and even have changed portions of their syllabi. Several other faculty members have asked that we develop components for their class. Student response has similarly been enthusiastic. All clinical offerings have been over-subscribed.⁹ Even the regular, free-standing clinic had the longest waiting list in its fifteen-year existence.

Three years ago, none of this parallel, integrative curriculum existed. What then happened?

B. An Unlikely Locale for Widespread Curricular Change

Reader expectations at this point are likely to be something like the following story. A new, visionary leader emerges, exhorting her colleagues to move into action in response to the MacCrate Report.¹⁰

improving the overall quality of all participants' workplace experience, enrich both individual and institutional pedagogy. This notion was poignantly expressed in Margaret M. Russell, *Beginner's Resolve: An Essay on Collaboration, Clinical Innovation, and the First-Year Core Curriculum*, 1 CLIN. L. REV. 135 (1994):

Without such bridges—between clinicians and non-clinicians, theorists and practitioners, doctrinalists and anti-foundationalists—law teachers rapidly become pigeonholed “specialists” of the worst kind. Their “specialization” relies not on the intellectual strength and promise of what they *do* know, but rather on their inability or unwillingness to connect that expertise to substantive areas and methodologies with which they are unfamiliar. The ultimate losers in such a scenario are, of course, our students, who are left to piece together an already fragmented and imperfect course of study with the disconsolate thought that, in the end, their teachers neither grasp nor even particularly care about attempting to make the fragments approach a coherent, complementary whole.

In this essay, I urge my fellow law teachers, especially other non-clinicians, to resist the seductive elitism of such self-segregation and to consider ways in which our classroom teaching might derive enormous benefit from cross fertilization with theories and methodologies from across the various “Divides” of our legal educational landscapes.

Id. at 138.

⁹ This experience is consistent with the findings of *The Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 529 (1992) that offering more than two live-client clinics increases the student demand for a clinical experience. In this regard, choice of clinical subject matter does seem to make a difference to our students in that students are not just interested in a clinical experience, but in having that experience in a particular doctrinal and/or practice area.

¹⁰ AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT — AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereafter cited as “MacCrate Report” for the Task Force chair, Robert MacCrate]. The fault lines in legal education that are currently being shaken by the MacCrate Report were clearly envisioned in 1953:

My next prophecy is that legal education will continue to struggle with the problem of practical education, and will almost surely not solve it to the satisfaction of

Endless faculty meetings, curriculum committees, subcommittee studies, difficult “struggles” over institutional direction and values, faculty retreats, white papers, and meetings with students follow, leading to eventual consensus, a school fight song, and the parallel, integrative curriculum.

In fact, none of this happened.

In assessing what did happen, it is crucial to understand that the emergence of the integrative curriculum and its aftermath was no more likely to take place at Seattle University than at many of the law schools in the country.

Like so many other law schools, Seattle University has a relatively large student body (850–900) and is for all practical purposes totally tuition funded. Thus, though the number of faculty are adequate, most resources are needed to cover the core curriculum of traditional substantive subjects. In sum, any significant curricular programs one tries to make available to any significant portion of the student body will tend to stretch the budget, simply because there are so many students and the school has little money to spare.

Further, the school is a little over twenty years old, with many of the founders and those from the early years still teaching on the faculty. These faculty, and even the majority of younger faculty whom they hired, form a core of fairly traditional Socratic teachers.¹¹ They are as a group excellent, but again basically traditional. The Socratic modality is, in fact, the institutional norm for the substantive curriculum, a norm enforced through promotion and tenure decisions.

Historically, the faculty has hardly been wildly supportive of clinical education, particularly the live-client clinic. In past years, this clinic was perceived as an appendage to the budget, and a very expensive appendage at that. Many saw the clinic as lacking intellectual rigor, smacking of the notion of a trade school, and serving as a refuge for the less academically capable who took the clinic in an effort to avoid the “difficult” courses.

everyone. Some practicing lawyers will continue to be disturbed that the young graduate does not know how to make out a replevin bond the day he leaves the law school. Others will be less concerned, but will still feel that the neophyte in practice is left a rather innocent article after his law school experience.

Erwin N. Griswold, *The Future of Legal Education*, 5 J. LEGAL EDUC. 438, 443 (1953). See also Arch M. Cantrall, *Practice Skills Can and Must be Taught in Law School*, 5 J. LEGAL EDUC. 311 (1953).

¹¹ On the other hand, virtually all faculty at Seattle University use some lawyering simulations in their courses, though this might be a single drafting exercise. Some of the faculty, particularly the younger faculty, have incorporated extensive simulations into their substantive courses by using ongoing case files, in some instances with a single case file providing the narrative for two separate substantive courses (e.g., torts or contracts and civil procedure).

Those charged with administering the lawyering curriculum have little formal political power in the institution. None of the current live-client clinicians have ever been on a tenure track. Currently three of us are on long-term contracts, a fourth on a D.O.E. grant. We are liked by the rest of the faculty, but we have no particular power within the formal processes of the institution (other than one clinician, one vote, excluding tenure matters). The simulated program, while administered by a tenured faculty member, carries even less formal clout since the freestanding Comprehensive Pretrial and Trial Advocacy Programs are generally taught by adjuncts.

Finally, while the faculty all get along and are generally very nice people (considering that they are law professors), there exists no clear consensus on an institutional vision, let alone on the role of clinical education. In short, there was no great likelihood of widespread curricular reform in the direction of the MacCrate Report at Seattle University, and, in fact, no one was even calling for it.¹² So again, what happened?

In Part II, we present our theory for why the parallel, integrative curriculum initially spread and is now accepted at the law school. In Part III, we discuss why this curriculum is pedagogically sound. Finally, in Part IV, we describe the philosophy, methodology, and logistics of the live-client and simulated parallel, integrative components.

II. WHY THE CURRICULUM HAS BEEN ACCEPTED

Without two preconditions, none of what happened would have been possible. First, we had a forward-looking, supportive Dean. At our school the Dean has the power to approve any course on an experimental, one-time basis without referral to the faculty. Under this authority, the Dean approved the first two live-client components (Law & Psychiatry and Immigration Law) and the first two simulated components (Evidence and Criminal Procedure Lab). Only after the courses had actually been taught and proved successful were they then subject to formal faculty vote for adoption into the regular curriculum.

¹² It has always been recognized that changing a curriculum is no easy matter. According to Woodrow Wilson when a university president, "Changing a curriculum is like trying to move a graveyard." Frank I. Michelman, *The Parts and the Whole: Non-Euclidean Curricular Geometry*, 32 J. LEGAL EDUC. 352, 352 (1982). Thus, one author characterizes his vision of wholesale curricular change as "unrealistic." See Robert S. Redmount, *The Transactional Emphasis in Legal Education*, 26 J. LEGAL EDUC. 253, 275 (1974). For a well thought out list of reasons why "significant curricular reform" is so difficult, see Lewis D. Solomon, *Perspectives on Curriculum Reform in Law Schools: A Critical Assessment*, 24 TOLEDO L. REV. 1, 35-38 (1992). Yet, in spite of this, there have been schools that have restructured their entire curriculum to reflect the skills and values perceived to have been needed by practicing attorneys. See *id.* at 27-35 (describing Mercer and Montana programs).

Under these circumstances, this review turned out to be non-controversial. Second, we got along with the traditional faculty, and though, again, many were skeptical about the cost and methodology of clinical education, none was overtly hostile (*i.e.*, we had no active enemies).

While these preconditions were necessary to avoid certain failure, they did not move us very far towards likely success. That success was a result of organizational dynamics and program design. It is to these two concepts that our discussion now turns.

A. *Informal Paths, Momentum, and an Organization within an Organization*

1. *Informal paths.* What in retrospect was the beginning of the parallel, integrative curriculum began informally on a colleague-to-colleague basis.¹³ First, a clinical professor obtained the Dean's permission to teach the simulated Evidence and Criminal Procedure Lab. Next, the first live-client component was created when several clinicians presented the concept to a senior professor in the regular faculty, who taught Law & Psychiatry. Ironically, that professor was among a group that historically had been skeptical of the live-client clinic. He was, however, interested in bringing high quality lawyering into the local mental commitment process, and saw the component clinic as a means to that end. He was also open-minded. The success of the pilot live-client Law & Psychiatry component clinic earned his enthusiasm for the endeavor.

For the most part, the rest of the curriculum has similarly developed without formal committees, studies, or faculty meetings.¹⁴ All

¹³ The notion that the best way to bring change in the law school curriculum is through informal collaboration between groups and individuals working along the periphery has been articulated by a number of others:

I agree with Paul Brest that we had better rely on individual or group initiative, not faculty mobilization, for those concrete innovations in educational practice that may or may not show the way to actual improvement. To be quite honest about it, I do not want to be mobilized any more than I suppose many of the rest of you want to be mobilized. I also, however, do not want to be atomized.

Michelman, *supra* note 12, at 356. See also Paul Brest, *A First-Year Course in the "Lawyer Process,"* 32 J. LEGAL EDUC. 344, 351 (1982) (in the process of discussing "Curriculum B", a major renovation of the first-year curriculum, the author describes a Welfare and Housing Law seminar that was the product of such one-on-one faculty cooperation); Redmount, *supra* note 12, at 280-81 ("The basic structure and substance of legal education may not change much, and its tendency is to gradually assimilate new ideas rather than develop a different character. There is, however, noticeable change in peripheral training possibilities.").

¹⁴ Again, the only formal faculty involvement consisted of approving (unanimously) the permanent inclusion of the Evidence and Criminal Procedure Labs, and the Law & Psychiatry and Immigration component clinics in the curriculum. Of course, over time, issues will arise requiring faculty input, guidance and decision, such as budgetary requests for expansion of the program with a permanent new hire, or standards for evaluation.

was done informally, working directly with individuals, or with groups as in the case of the Skills Development series project. This we believe is an important perspective for those who would seek curricular innovation, at least in most current law schools.

Faculty members, when at formal meetings, are not necessarily the same people they are in one-to-one encounters, or at least they do not project the same aspect of their persona. In formal meetings, faculty carry personas that must be preserved, and long histories that must be perpetuated. Their actions have symbolic significance, tying them to various wings and groupings of the faculty and placing them on certain sides of ongoing institutional debates. Formal meetings also carry the possibility of formal institutional precedents, a possibility coloring each position taken.¹⁵ Thus, at the prototypical faculty meeting, the institutional consequence of even the smallest action is subjected to minute and endless analysis by a faculty trained and practiced in just such sport. Finally, the lines of hierarchical status, which are impliedly but constantly reinforced in formal settings in an institution like ours (*e.g.*, clinicians are on contract and are limited in the subjects on which they may vote at meetings), alter the peer relationships between regular and clinical faculty which otherwise exist outside the meetings.

All of this leads to the same conclusion. Work one to one. There will be someone in the traditional faculty who will be willing to work on such a project, and likely far more than one. With respect to more ambitious visions, we have developed the theorem of Forty-Sixty: With the cooperation of forty percent you can offer many students an exposure to a different educational experience than they would otherwise have received, provided none of the other sixty percent affirmatively try to *block* the efforts. The best way, in turn, to insure that none of this sixty percent will do so is to leave them alone, and ask nothing of them as individuals or in a formal setting. From our experience, so long as the project has plausible academic merit, most faculty couldn't care less about what is done so long as they do not feel that it

¹⁵ This disparity between the nature of formal personas at law school meetings, and the informal ones encountered in the hallways, is hardly a phenomenon unique to law school faculties. Over 100 years ago, one of the central creators of the conceptual foundations of social psychology and role theory, William James, wrote:

Properly speaking, a man has as many social selves as there are individuals who recognize him and carry an image of him in their minds. . . . But as the individuals who carry the images fall naturally into classes, we may practically say that he has as many different social selves as there are distinct groups of persons about whose opinion he cares. He generally shows a different side of himself to each of these different groups.

William James, "*The Consciousness of Self*", 1 PRINCIPLES OF PSYCHOLOGY, Chapter x, 281-82 (1981 ed.).

is being done behind their backs, they are not asked to do any more work or alter their classes, and you are not trying to obtain any significant moneys from the budget.

2. *Momentum.* We tend to think of the law school in terms of its factions (e.g., clinical or traditional) or groupings of individuals. Yet at heart it is an organization, albeit a loose association of independent contractors or a partnership of would-be latter day monks. And organizations are alive, not static. They breathe and that breath vibrates along the threads connecting its complex network of relationships and ever competing and evolving sets of norms and conventions.¹⁶ Thus, once the Law & Psychiatry clinical component pilot project was a success, subtle supportive movement from ordinarily skeptical cells of the organization began, and a slow momentum started to shift the orientation of the organization.

3. *An organization within the organization.* This subtle momentum was fragile, and the larger organism was prone to return to its previous norm, unless some force was applied to assure that the momentum would continue in its current direction. As one of the only coherent organizations that exist within the law school, the clinical faculty were in a position to first maintain and then accelerate this

¹⁶ Organizations are increasingly being viewed as something other than a machine operating in a sphere unconnected to the human reality of those who work within it. Gilsinan and Valentine attribute this "organization as machine" metaphor to the functionalist paradigm that "has generated most management and organizational theory." James F. Gilsinan & James R. Valentine, *Bending Granite: Attempts to Change the Management Perspectives of American Criminologists and Police Reformers*, 15 J. POL. SCI. & ADMIN. 196, 200 (1987). Noting that this functionalist approach has been "rapidly losing ground" in organizational theory, the authors embrace the interpretive approach. *Id.* This "perspective views organizations as systems of meaning. People actively structure their organizational reality. Thus organizations act primarily as interpretive lenses through which people assign meaning both to their own activity and to the activity of others." *Id.*

Organizations are complex playing fields where organizational structure and organizational values interact, with competing and emerging values vying for dominance. WILLIAM GORE, *ADMINISTRATIVE DECISION-MAKING: A HEURISTIC MODEL* 119 (1964).

Perhaps this function of structure can be characterized as one of rationalizing individual belief and maintaining faith in the efficiency and worth of the organization. The result of continuous changes in structure is a continuing reinterpretation of the organization and its environment and hence recurrent reinforcement of individual commitments to the numerous symbols of organization. Major changes in structure seem to come about when a sudden buildup of anxiety manifests itself in a hurricane of feeling which topples an organization over its threshold of change into a precipitate act. Change may also come about through a more casual continuing process of adjustment, with several issues in revision at any given time, each being shepherded along at a rate consistent with tolerably comfortable levels of anxiety.

Id. at 122. A similar view is expressed in Gilsinan & Valentine regarding the "interpretive perspective" of organizational theory. Gilsinan & Valentine, *supra* at 200-01.

momentum.¹⁷ Many clinicians have bemoaned the isolation of the clinic from the traditional law school with its separate space, separate staff, and separate faculty.¹⁸ But take a look at this from another perspective — that of power, not its lack.

Faculty committees and their membership come and go, and meet infrequently. The faculty as a committee of the whole ceases to exist the moment the meeting is adjourned. But the clinic is literally an ongoing organization, particularly if it contains more than one clinician. We have our own space, our own support staff, and our own computers, fax machines, photocopiers and other resources. We work together as a team, are already set up to efficiently produce large quantities of work, and can generally meet whenever we wish. We are therefore capable of developing action plans and strategies, bringing concerted focus to a goal, and conducting appropriate follow-up.¹⁹ In short, the clinic is a logical locus for initiating the momentum for curricular change. In saying this, it is important to understand that we are not talking about some cabal secretly manipulating matters behind the backs of the traditional faculty. Quite the contrary. All of our efforts have been out in the open and have required both the cooperation and the trust of the regular faculty with whom we work. It is rather that as an entity we can generate quality work products quickly.

Our clinic took the lead in developing the parallel, integrative curriculum. We initially selected appropriate areas and then contacted faculty. We next created and supervised the pilot projects, and finally we obtained a D.O.E. grant to expand the program. Similarly, a clinician wrote the initial Evidence and Criminal Procedure Lab texts,²⁰ made contacts with a publisher, organized the meetings of

¹⁷ The legal writing program is also a separately managed, well-structured organization. Since it relies on instructors who remain for at most three years, however, it does not maintain the organizational continuity of the clinic.

¹⁸ Historically, the clinic has operated peripheral to and as an "add-on" to the traditional curriculum. See, e.g., Geoffrey C. Hazard, Jr., *Curricular Structure and Faculty Structure*, 35 J. LEGAL EDUC. 326, 331-32 (1985) (clinics peripheral to the law school); Steven H. Leleiko, *Clinical Education, Empirical Study, and Legal Scholarship*, 30 J. LEGAL EDUC. 149, 150 (1979); Myron Moskovitz, *Beyond the Case Method: It's Time to Teach With Problems*, 42 J. LEGAL EDUC. 241, 246-47 (1992) ("Law school clinics can give students this training, but clinics are at the fringe of legal education, usually reserved for a small number of third year students."); But see Stephen F. Befort, *Musings on a Clinical Report: A Selective Agenda for Clinical Legal Education in the 1990's*, 75 MINN. L. REV. 619, 632-33 (1991) (integration is happening or has occurred at many school but progress is uneven).

¹⁹ In fact, in many respects the live-client clinic has the properties of an organized interest group, with all of its capacities. Cf. James D. Gwartney & Richard E. Wagner, *Public Choice and the Conduct of Representative Government*, in PUBLIC CHOICE AND CONSTITUTIONAL ECONOMY 3 (James D. Gwartney & Richard E. Wagner eds., 1988). The organizational structure of a particular simulated or field placement clinical program will determine whether it possesses these same attributes and capacities.

²⁰ Professor Mitchell co-authored the texts with Rick T. Barron, Senior Trial Deputy in

teachers of substantive courses who would write texts in the Seattle University Skills Development Series, and currently serves as editor for the series.

The organizational focus by the clinic, though necessary, was not alone sufficient to maintain growth of the curriculum. Rather, the design of the curriculum was essential to its continued momentum and lack of opposition.

B. Design

1. *The three elements of the design.* The design of the parallel, integrative curriculum is founded on three elements:

- The courses all begin as one credit.²¹
- The component is offered parallel to the substantive course, with contemporaneous enrollment in the substantive course being the only prerequisite for the clinical component. Conceptually, we visualize the concept as two boxes, a large one to be filled with the material of the substantive course and a small one hovering above to be filled with the substance of the clinical components.
- The components are offered in conjunction with upper-level courses.

2. *A closer look at the elements.*

a. One-credit courses. Many consequences flow from the courses being limited to one credit. First, faculty do not seem to get troubled by their creation. Psychologically, one credit seems of little consequence in the curriculum. Practically, these courses do not eat up much of the 90 credits students must take for graduation. As such, the curriculum existing prior to the creation of these component clinics remains intact, contributing to a paradox: In some sense, the whole curriculum is changing, yet in an equal sense, nothing has really changed.

Second, from a student perspective, students who would not be willing to commit 4-6 credits to a clinical experience are willing to do so for one credit. This is particularly so when the subject area is one that interests the student. Put another way, the one-credit components allow students to delve into live and simulated clinical experiences and still have plenty of credits left over to take traditional bar

the Santa Barbara, California, Public Defender office.

²¹ In the past year, two professors who teach the related course have inquired whether students should get two credits for the live-client components. While this would alter the initial design, such change is consistent with the broader conception of flexibility and curricular evolution. *See infra* Conclusion.

courses, upper level seminars, and the like.²²

Third, the one-credit format allows us to provide clinical experiences to a far greater number of students than would otherwise be possible with existing resources. The simulated components can accommodate 24-50 students while still being pedagogically effective. Each live-client component takes 12 students, working in teams of two. For one credit, each team does one case. That makes six cases per live-client component clinic which must be supervised. A full-time clinician can readily supervise two such clinics a semester (6 cases each, 12 total), as does one professor in our clinic.²³ Thus, a single clinical faculty member can provide a meaningful and intense, live-client clinical experience to 48 students a year.²⁴

b. Parallel to underlying substantive course. Central to the widespread acceptance of the clinical components is that they are constructed to be parallel to, and not literally integrated into,²⁵ the underlying course.²⁶ Whatever one's ideal of the "integration" of lawyering into the traditional curriculum, there are two reasons that we believe make the parallelism aspect of the design essential.

First, one must keep in mind *who* traditional teachers tend to be, particularly the more senior tenured faculty, who collectively wield considerable power over the direction of the institution. While a substantial percentage of our faculty has practiced law, and many are

²² At Seattle University, students also find that the availability of some one-credit courses is useful to them when planning their schedules.

²³ Almost immediately, some parlayed their view of the economic implications of the MacCrate Report, *supra* note 10, to declare the MacCrate Report enterprise wholly unfeasible, and thus stillborn before it could begin. See John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of Legal Education*, 43 J. LEGAL EDUC. 157 (1993). By creating one-credit courses, and pairing students in "teams" in the live-client components, we have substantially diluted the pessimistic vision of economic impact portrayed by Costonis. For an excellent discussion of placing students in teams, see David F. Chavkin, *Matchmaker, Matchmaker: Student Collaboration in Clinical Programs*, 1 CLIN. L. REV. 199 (1994).

²⁴ Most of these one-credit live-client and simulated components are taught by full-time clinical faculty, with the exception of the component on professional responsibility, which is taught by Professor Strait of the traditional faculty. The simulated components, however, could readily be taught by practitioners who serve as adjuncts. The number of student teams that can be supervised in a live-client component, on the other hand, may be limited by student practice rules which apply in almost all trial court settings, but in few administrative areas. Also, since real clients are involved in the latter, standards of professional responsibility demand more intensive supervision than in simulated programs.

²⁵ For discussions of "integrative" curricula, see, e.g., Joseph P. Tomain & Michael E. Solimine, *Skills Skepticism in the Postclinic World*, 40 J. LEGAL EDUC. 307, 308 (1990); Nancy L. Schultz, *How Do Lawyers Really Think?*, 42 J. LEGAL EDUC. 57 (1992).

²⁶ Some field placements also fulfill aspects of this parallel function. While the primary supervisors in such externship clinics will be practitioners, the clinician can mediate between traditional teacher and practitioner, thereby attempting to bring all three together.

even currently involved in practice, we believe that what follows is a fair description of the career landscape of the traditional faculty at most schools. For many, their experience with practice is limited to a few years researching in a large law firm that followed a few years researching for some appellate or supreme court.²⁷ They thus have limited knowledge or understanding of practice, let alone the day to day workings and conventions of particular local systems.²⁸ Their reaction to being asked to speak about real practice tends to be discomfort. To be asked to actually participate in it evokes an emotional spectrum ranging from disinterest to fear. Though the former reaction may be some psychological mechanism to ward off the latter, the point is that many law professors have little interest in practice.²⁹ Their conception of themselves is as "theoretician."³⁰ Many even look

²⁷ An interesting study of the practice backgrounds of law professors was published in Note, *Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors*, 25 U. MICH. J.L. REF. 191 (1991). According to the study, clerkships were not only common (30% of professors had clerked), the prevalence of this experience actually increased in the 1980's. *Id.* at 208. As to actual practice, of those entering practice in the 1980s, 80% overall had some practice experience, with the numbers dropping to 63% at the so-called elite schools. *Id.* at 217, 219. This is an overall increase from 67.2% in the 1970s. *Id.* at 218. The average years of experience are 5.4 years, with only one-quarter having more than 5 years experience. *Id.* at 217, 219. The study did not, however, distinguish between clinical and non-clinical faculty. As to the more senior faculty, prior to 1960, 38.2% had some private practice experience represented by a mean of 1.2 years on their first job. *Id.* at 221. Those professors currently in their thirties and forties who have worked in private practice average 2 years experience.

²⁸ Understanding local conventions, the unwritten rules and procedures, is obviously important to effective practice. Thus, in a study of bankruptcy attorneys and the bases for their choices whether to counsel Chapter 7 or Chapter 13, Professor Braucher found that "[t]he study suggests that local administrative practices and legal culture have more effect on choices in consumer bankruptcy than do features of the law conventionally thought to be important to chapter choice. Bankruptcy law is put into effect through a system of local administration that produces great variations, both formal and informal, from place to place. Each city has its own culture, to which lawyers react differently: some assimilate and others resist it." Jean Braucher, *Lawyers and Consumer Bankruptcy: One Code, Many Cultures*, 67 AM. BANKR. L.J. 501, 503, 522, 580 (1993). See also Bergman, *supra* note 4, at 361-62 ("... it has become apparent that an agency-based clinical program can be an excellent base from which to examine aspects of agency process otherwise largely ignored in law school. Those aspects are all the informal considerations which play such a large role in agency life.") (footnote omitted).

²⁹ Traditional professors generally have become true academics, uninterested in practice. Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231, 1236 (1991). The apparent lack of interest of many traditional law professors in areas of inquiry touching upon actual practice and adjudication has been the subject of stinging commentary by Judge Harry Edwards. See Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1993); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession: A Postscript*, 91 MICH. L. REV. 2191 (1993).

³⁰ The proposition advanced in this study is that this division [among factions, wings, and so-called movements within the faculty] does not arise from differences of opin-

down on, or out and out dislike, practice and its practitioners.³¹ In this regard, one of the authors vividly remembers his first day as a visiting professor in the faculty lounge of a so-called “top ten” law school. The Dean introduced him, noting that he was “interested in teaching how practicing lawyers think about and use doctrine in their area.” There was a pause, and then a professor (who was later to become Dean) slowly replied, “Oh, I wasn’t aware that practitioners thought.” End of conversation.

Moreover, even professors—who, like most of the non-clinical faculty at Seattle University, are not hostile or indifferent to practice—might nevertheless find the thought of participating in actual practice or supervision unnerving. This is hardly surprising or unwarranted. They’re right. It *is* frightening. And, when we really think about the client responsibility and anticipated ego blows, it is un-

ion or attitudes among law professors. Were that true, movement should be discernable. Rather, the differences arise from the very manner in which law professors perceive themselves and their profession. Each law professor has a distinct self-image, or self-persona.

Douglas D. McFarland, *Self Images of Law Professors: Rethinking the Schism in Legal Education*, 35 J. LEGAL EDUC. 232, 233 (1985) (footnote omitted). The traditional classroom teacher’s persona is that of theoretician or “traditional legal scholar”:

In response to arguments by practicing lawyers and judges that students are not being prepared in skills necessary for the practice of law, the traditional legal scholar might recite the example of the most effective swimming coach of all who paid little attention to strokes and kicks but spent all training time in body building and physical training. Or the traditional legal scholar might reply with a derisive snort, “Then our law schools would become trade schools, and we shouldn’t kid ourselves about it.” Perhaps in a slightly better mood he might argue that a law school cannot teach tricks of the trade because teachers are not actively engaged in the trade to keep up with the latest tricks, or that these how-to-do-it things can be better taught in practice by those who spend full time on them. The answer lies at the heart of the vision of the traditional legal scholar. The law school exists to teach students how to think like lawyers. The law school does not exist to teach students to be lawyers.

Id. at 239 (footnote omitted). As Owen Fiss put it, “Law Professors are not paid to train lawyers, but to study the law and teach their students what they happen to discover.” Letter from Owen M. Fiss to Paul D. Carrington, in correspondence collected in Peter W. Martin, “*Of Law and the River*,” and *of Nihilism and Academic Freedom*, 35 J. LEGAL EDUC. 1, 26 (1985).

³¹ According to Judge Edwards, too many academicians still disdain practice. See Harry T. Edwards, *The Role of Legal Education in Shaping the Profession*, 38 J. LEGAL EDUC. 285, 293 (1988). See also Edwards, *supra* note 29. In this same vein, one commentator noted when discussing interviews of potential faculty candidates that, “In fact, practitioners may be held in disdain. The quality sought is experience in learning law rather than practicing law.” McFarland, *supra* note 30, at 233, 240.

An analogous remark was made when discussing legal scholarship:

First, scholarship about skills is perceived as “nuts and bolts” and merely descriptive, with little intellectual content. Worse, it is tainted with the aura of the practice of law, a topic *disdained by many law school professors*.

Peter Toll Hoffman, *Clinical Scholarship and Skills Training*, 1 CLIN. L. REV. 93, 108 (1994)(emphasis added).

nering for even those of us who know (or at least think we know) what we're doing. Adding into the mix that these professors know that they don't know what they're doing makes their reaction eminently reasonable. Further, even if they do know something from a few years of practice, it will not be enough given the nature of law professors. Law professors do not want to do anything where they don't think they know what they're talking about.³² They read five law review articles to give them background for a single point in class. They're only comfortable in making a point if they can answer follow-up questions three levels deep. Don't ask them to teach lawyering, let alone supervise a real case. They simply will not believe that they are qualified to do so, and they may well be right. Of course, there will be exceptions among senior faculty and increasingly among newer faculty, but generally the above will hold true.

Second, one must look at *practicalities*. Even if the professor admires practitioners, feels that teaching good practice is the goal of the law school, supports clinics, and is even a bit fascinated by practice, the professor is unlikely to alter his or her course to significantly integrate even simulated lawyering skills. Professors have their courses put together.³³ They've refined them for years. They have their notes and hypotheticals. They know how to teach the classes and feel they teach them well. They feel that there is barely time to cover what is

³² One example of this general unwillingness to enter areas in which professors lack the confidence that they can perform well is the so-called "pervasive approach" to teaching professional responsibility. Repeatedly, we have read cogent arguments and seemingly successful experiments with respect to this approach. See, e.g., Norman Redlich, *Law Schools as Institutional Teachers of Professional Responsibility*, 34 J. LEGAL EDUC. 215 (1984); David T. Link, *The Pervasive Method of Teaching Ethics*, 39 J. LEGAL EDUC. 485 (1989); Deborah L. Rhode, *Ethics by the Pervasive Method*, 42 J. LEGAL EDUC. 31 (1992). Why then hasn't this eminently sensible and proper position truly caught on? Most likely because all too many professors feel no confidence in the area and may not in fact be competent to teach these subjects. See James E. Starrs, *Crossing a Pedagogical Hellespont via the Pervasive System*, 17 J. LEGAL EDUC. 365, 381-82 (1965); Rhode, *supra* at 52. On the other hand, with Professor Rhode's new ethics text containing problem sections tied to individual doctrinal courses (and teaching notes to match), the pervasive method may begin to flourish. See DEBORAH L. RHODE, *PROFESSIONAL RESPONSIBILITY: ETHICS BY THE PERVASIVE METHOD* (1994).

³³ An analogous idea was expressed by Professor Peter Gross:

The principal obstacle, from which I think most others flow, is the fundamental polarity between the individual teacher, on the one hand, and the collegium on the other.

Each teacher designs and teaches his or her own courses, with minimum influence thereon by the collegium. The individual teacher's participation in the collegium—through contributing and voting at faculty meetings, and engaging in committee work—is generally quite peripheral to his or her professional life.

Peter W. Gross, *On Rescuing the Three Year Generalist Program*, 28 J. LEGAL EDUC. 249, 267-68 (1977). Cf. Hazard, *supra* note 18, at 326 (curriculum doesn't change because basic structure of the faculty doesn't change).

needed and, in fact, wish that the curriculum committee would recommend that another credit be added to their course.³⁴ Again, they are not about to change their course.

The concept of parallelism in the component design answers all the above concerns: No real additional work for the non-clinical teacher is required, while at the same time an unthreatening view of the process is offered where the professor can come only as close to real practice as s/he wishes. Thus, a typical initial conversation with a professor about creating a live-client component will generally go as follows:

- CLINICIAN: We were thinking about offering a clinical component for 12 people in your class. What do you think?
- PROFESSOR: I'm sorry, I just don't have time to do a lot of extra work. I'm on the dean search committee . . .
- CLINICIAN: It won't be any extra work.
- PROFESSOR: Right!
- CLINICIAN: No, really. All we need from you is to let us come in the first class for 10 minutes to explain the clinical component and answer questions. From time to time we may ask you to pass out some information or make an announcement, but that's it.
- PROFESSOR: That's it?
- CLINICIAN: Yeah. We have a weekend training workshop and we'd love to get your ideas, but only if you have time. We'll put together the workshop and conduct it.
- PROFESSOR: What about supervision? I wouldn't feel comfortable. . .
- CLINICIAN: We supervise. We'll send you summaries of the cases which might form the basis of hypotheticals or class discussion. We will also tell you when there are hearings if you want to attend.
- PROFESSOR: Am I expected to go to these hearings?
- CLINICIAN: Absolutely not.
- PROFESSOR: Now I don't get to the subject matter of the clinic until two-thirds through the course. Do I have to change my syllabus?
- CLINICIAN: Only if you want to. It's your class.
- PROFESSOR: And that's it?
- CLINICIAN: Oh, one more thing.
- PROFESSOR: Ah, hah!

³⁴ Cf. Solomon, *supra* note 12, at 37 ("faculty members face competing demands for time [and] . . . [t]he faculty may be concerned that developing innovative approaches to teaching will result in lost time for scholarship").

- CLINICIAN: No. No big deal. At the end of the semester, have lunch with me and the clinic students where we'll discuss their experiences. Then, after the students leave, we'll talk for a few minutes about how this all went, consider what we might add or change, and such.
- PROFESSOR: That's it?
- CLINICIAN: That's it.

c. *In conjunction with upper level courses.* These types of simulated and live-client components could obviously be added to first-year subjects. We have chosen not to do so in our design for a number of reasons. Tinkering with the upper-level curriculum is far less controversial than altering the first year,³⁵ particularly since there is some informal consensus in the national profession that the second and, particularly, the third year are the weakest part of the traditional curricular design.³⁶ Most importantly, the first year at Seattle University

³⁵ From the perspective of curricular design, the first year of law school generally is viewed as the most successful of the three law school years. See, e.g., *Curriculum Report Prepared by the School of Law of the University of South Carolina*, 23 J. LEGAL EDUC. 528, 530 (1971). In fact, historically one did not touch the first year, except perhaps to remedy omissions by adding courses. See Donald Kepner, *The Rutgers Legal Method Program*, 5 J. LEGAL EDUC. 99, 99 (1953). Nonetheless, curricular innovations in the first year date back over forty years, see David F. Cavers, *The First Year Group Work Program at Harvard*, 3 J. LEGAL EDUC. 39 (1950); Donald B. King, *Legal Aid Combined With Legal Writing for First Years*, 11 J. LEGAL EDUC. 111 (1958), and have more recently sprung up throughout the country. See Solomon, *supra* note 12, at 5-13, 19-27 (cataloguing experiments with content and scope of the first-year curriculum).

³⁶ The upper-level curriculum has been subject to repeated criticism. See, e.g., Walter Gellhorn, *The Second and Third Years of Law Study*, 17 J. LEGAL EDUC. 1, 5 (1964) (case method is boring and inadequate when repeated over and over again); Harrop Freeman, *Legal Education: Some Farther-out Proposals*, 17 J. LEGAL EDUC. 272, 273 (1965) (third year useless, boring); Kenneth Culp Davis, *The Text-Problem Form of the Case Method as a Means of Mind Training for Advanced Law Students*, 12 J. LEGAL EDUC. 543, 546 (1960) (upper-class boring, time would be better spent on "what lawyer should do"). Cf. Harry G. Henn & Robert C. Platt, *Computer-assisted Law Instruction: Clinical Education's Bionic Sibling*, 28 J. LEGAL EDUC. 423, 423 (1977) (computers can help alleviate the boredom in the upper level). All of the above is well summarized by Professor Gross, *supra* note 33, at 266:

The first criticism, then, and a point which has been sounded with vehemence for over three decades, is that the upper curriculum is excessively information-oriented; that it imparts details of no apparent relevance to an overall process of student development; and that at the same time it fails to impart a set of skills significantly broader than those "case analysis" skills purportedly taught in the first year.

A second, related, problem with the upper curriculum is that it lacks coherence.

The student is confronted with an array of individual courses which defy the constructing of a coherent sequential program of skills and knowledge development.

A study done of entering students at the University of New Mexico Law School in 1967 revealed that "[g]enerally, the students are optimistic, even idealistic, about their future profession and its role in society. Furthermore, most of the students seem to have brought with them basic attitudes of honesty and respect for the law." Cleopatra Campbell, *The*

is a fixed curriculum with no electives. Any alterations would therefore involve formal curricular change and reform. In other words, committees, faculty meetings and other such events that run directly contrary to our commitment to organizational change through *informal paths*.

III. WHAT ARE OUR PEDAGOGICAL GOALS?

A. Who Are Our Graduates and What Do They Need?

The key insights of the MacCrate Report for us were not only the list of skills known as the Statement of Skills and Values (SSV), but also the realization that different law schools turn out students for different types of practice.³⁷ The traditional curriculum is underlain by

Attitudes of First Year Law Students at the University of New Mexico, 20 J. LEGAL EDUC. 71, 81 (1967). These days, however, are not the early '60s. The job market is tight and student debt is high. Watergate is part of the culture and lawyer jokes are as close as the nearest party. Nevertheless, our first year students seem little different than these. By the time they leave, however, much of the optimism, idealism, and respect is dissipated. Something isn't right.

³⁷ Because the profession is diverse, a law degree is frequently depicted as providing its holders with a high degree of professional mobility and flexibility. Yet, over the years, placement statistics from any given law school disclose that the percentages of their graduates who enter specific professional niches are fairly predictable. Graduates of "national" law schools tend to enter practice with large firms; graduates of many state and region-oriented schools are apt to enter practice in small or medium size firms, or even in solo practice. The choice of law school attended correlates strongly with the range of professional career options exercised by students at graduation and may circumscribe or expand the variety of career options available. MacCrate Report, *supra* note 10, at 226 (footnotes omitted). At Seattle University, 44.8% go into private practice. Of these, 14.8% are in solo practice, while 19.4% are in firms of 2-10. Only 4% go to firms over 50. See Report to Board of Visitors (Nov. 12, 1993) (on file with authors). Accordingly, although big firms train their new associates, see Johnson, *supra* note 29, at 1245-46, only 1 out of 25 Seattle University graduates will be given this type of opportunity for post-graduation training in their field.

The continued growth in the number of lawyers in solo and small-firm practice is an indication of continued vitality in this segment of the profession in its latest roles. The absence of an established structure is both the attraction and the drawback of such practice. The ABA Task Force on Solo and Small Firm Practitioners adopted the statement of its witnesses: "The biggest problem that solos and smalls have is isolation." Graduates entering such practice seldom have an experienced attorney to whom they may go for advice, nor do they have access to training programs in which to learn on the job. Without mentor, collegial support or on-the-job training, the lawyer needs to reach out for assistance while attempting to establish a professional network on whom to call.

It is not surprising that successive assessments of the profession have found that the smaller the setting in which beginning lawyers practice, the more they rely on their legal education for learning practice competencies. However, one frequently heard plaint is that law schools in preparing students for practice give greater attention to the needs of those lawyers entering practices in which they will serve the business community than to the needs of those entering practices in which they will provide legal services to individual clients. The transition from law school into indi-

the tacit assumption that graduates will go into large firms, but in fact most graduates go into small firm or solo practice, and these latter groups of graduates need to acquire some sense of how to practice upon graduation, but generally lack any meaningful opportunity to do so.³⁸ Like a large percentage of law schools in the country, most of Seattle University's graduates will go into small firm or solo practice. Thus, we cannot rely on some firm to train them and slowly acclimate them to client representation. They must hit the ground running, and our curriculum must give them a fighting chance.³⁹ For reasons articulated below, we believe the parallel curriculum also will be beneficial to those anticipating a big firm or public service career as well.

B. *The Conceptual Foundations of the Component Clinic Pedagogy*⁴⁰

Four concepts underlie the curriculum:

vidual practice or relatively unsupervised positions in small offices, both public and private, presents special problems which the law schools and the organized bar must address.

MacCrate Report, *supra* note 10, at 46–47 (footnotes omitted).

³⁸ In some fundamental sense, the very issuance of the MacCrate Report by a less than radical committee, representing the ABA and AALS, is a statement of what every practitioner knows: Marginal representation is the norm, incompetence is prevalent, and it cannot continue to be ignored. See also Johnson, *supra* note 29, at 1232–33 (commercial practice has changed, is different than students expect, and students are completely unprepared for it); Edwards, *supra* note 29.

³⁹ Even with the best law school preparation, we firmly believe that graduates who enter solo practice must maintain constant access to attorney expertise and/or mentoring.

⁴⁰ Initially, one may criticize this curriculum as having no clear structured sequence, and that in many respects it appears random. We understand and do not object to these reactions. It is our position that neither the lack of sequencing nor apparent randomness in any way devalues the pedagogical effectiveness of the parallel, integrative curriculum. While in some sense this curriculum could be characterized as sequenced, with the first year primarily focused on analysis and doctrine and the second and third on understanding lawyering in context, we acknowledge that it is not sequenced in the way that term is normally used, such as, William & Mary's "CSD" model, see James E. Moliterno, *An Analysis of Ethics Teaching in Law Schools: Replacing the Lost Benefits of the Apprenticeship System in the Academic Atmosphere*, 60 U. CINN. L. REV. 83, 122 (1991), and that discussed by Johnson, *supra* note 29. The curriculum does not, for example, move the students from simulated lawyering in their first year to in-house live-client clinical instruction and externships in their second and third years. It does not build on tasks, carefully sequencing instruction to add complexity. See REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS 15 (1979)(Cramton Report) ("The curriculum should be coherent, presenting students with problems of progressively greater scope and challenge which allow them to utilize skills and knowledge previously acquired."). See also Solomon, *supra* note 12, at 17. There is no structural ascension toward specialization with cornerstone and capstone courses. See Kristine Strachan, *Curricular Reform in the Second and Third Years: Structure, Progression, and Integration*, 39 J. LEGAL EDUC. 523 (1989) (detailing a plan for specialization tracks, including "cornerstone" and "capstone" courses). In fact, the parallel, integrative curriculum does not even assure that every student will be exposed to every MacCrate Report Skill and

- Lawyering in context;
- Plateauing;
- Clear, limited objectives;
- Classroom and curricular “pop.”

1. *Lawyering in context.* By this concept, we mean that students begin to appreciate the roles and dimensions involved in lawyering by experiencing what lawyers do in a variety of contexts, each circumscribed by both an area of substantive doctrine and the perspectives of the particular practice area.

In many ways, each component clinic is a lawyering *microcosm*.⁴¹ While each component covers different doctrine and often different practice skills, each contains many of the same fundamental perspectives on lawyering—client-centered representation and client voice, the centrality of ethical conduct, adversarial and strategic thinking, the essential functions of planning and preparation, development of options, fall-backs, and back-ups, and so forth. Thus, whichever component the student takes, he or she will learn basic, core lessons.

Value. Rather, the curriculum generally offers the opportunity for a wide range of choices, experiences, and exposures. This in turn leads to the claim of randomness.

Now such randomness is not in itself necessarily a bad thing. With a sufficient number of such experiences the student will assimilate a substantial repertoire of lawyering skills and knowledge base. After all, a student's education is defined by the *total* educational experience upon graduation. Also, there is simply no way we could expose the students to “everything” about lawyering, whatever that would mean. Moreover, even if through prudent use of a magic wand we could provide such exposure, that would not mean that the students could actually function as competent attorneys when doing this “everything.” Nonetheless, one could fairly question whether this lack of sequencing and seeming randomness is no more than the mirror image of the lack of sequencing and random experiences of the traditional law school curriculum. Put another way, by literally tying our clinical components to the existing traditional curriculum, haven't we merely added some clinical spice to an inherently flawed pedagogical construction? Fair question, and an important one. We believe, however, that the four concepts underlying the curriculum answer such pedagogical doubts.

⁴¹ In his presentation on “Addressing Skills and Values Issues in Lawyer-Client Relationships: Skills Training, Variations in Practice Settings and in Characteristics of People,” given at the 1995 AALS annual meeting in New Orleans, Professor Frenkel emphasized the importance of exposing students to a wide range of practice contexts. *See also* Workshop materials, at 17 (on file with authors). In sharp contrast to this model, the dominant law school context is that of the professional academician; in effect, students are being trained to be law professors. Johnson, *supra* note 29, at 1259. That is problematic in light of Richard Abel's observation that “the little we know about what lawyers do suggests that they make scant use of their formal legal education.” RICHARD L. ABEL, *AMERICAN LAWYERS* 22 (1989). For example, in litigation-oriented components, students are repeatedly exposed to strategic planning in an adversary context. *See* Berger & Mitchell, *supra* note 3, at 834. Whatever the doctrinal area, every component clinic will carry this same, fundamental lesson: “Students will be more successful not because they can speak well or argue more persuasively, but rather because they can structure facts and law into a compelling and theoretically sound case.” Steven Lubet, *Advocacy Education: The Case for Structural Knowledge*, 66 *NOTRE DAME L. REV.* 721, 734 (1991) (footnote omitted).

Further, under our model, the context for study of doctrine moves from the world of expert law teachers to that of expert law doers. This is significant. Perhaps one of the most serious failings in contemporary legal education is that all too many students graduate with a vast doctrinal base of knowledge sealed within a context that is not translatable to practice. You will meet them on the streets a few years out of law school and they will exclaim that (other than the clinic, if they took it) law school was a make-believe world that had nothing to do with practice. All they've learned, they've learned since graduation. They are dead wrong, of course! Without all those large Socratic classes, they would hardly be functioning as the professionals they are. The problem again is that they did not understand the place of doctrine and doctrinal analysis in resolving a particular issue or accomplishing a certain task as the setting was moved from classroom to office. Like a small child who does not recognize her teacher when she sees him in the mall, the neophyte does not recognize what they know when it appears in a different context.

Law, however, is always there, always defining the context, yet fluidly appearing and disappearing like the Cheshire cat. That is what students must comprehend. To say that "this is not really a legal problem; these neighbors just need to talk" is to simultaneously postulate a course for the dispute other than the formal process. It is to envision the costs and consequences of taking that alternative course, the constant specter of the formal process which threatens to translate private relationships into formal rights and duties should the neighbors fail to work this one out at someone's kitchen table. Similarly, at a deposition, case theories circumscribed by doctrinal elements will initially guide the questioning. Then interpersonal and communicative skills take the front and law seems to disappear. Suddenly, "Object. Attorney-client privilege. I instruct the witness not to answer." Law reappears. Then a response: "Maybe there's another way I can get at what I need. Let me ask your client this . . ." Negotiations of a sort take the fore, with law disappearing again. But law is always there, appearing, disappearing, reappearing. Experiencing the actual use of doctrine in a variety of practice settings teaches this most fundamental lesson.⁴²

There is much to support the parallel, integrative curriculum in current learning theory. We all actively participate in creating mean-

⁴² Ironically, the clinical components enhance the students' perception of the relevance of the underlying doctrinal course by placing it in a practice context where students can appreciate its significance. By making themselves participants in a joint endeavor with the clinicians, moreover, the traditional faculty member is far less likely to be perceived by her students as unconnected to the reality of practice.

ing from what we experience by placing this experience into conceptual constructs, commonly known as schema or schemata.⁴³ Experts, such as experienced practicing attorneys, store large quantities of information in expert schemata. These schemata not only facilitate storage and retrieval of large chunks of information, they organize the information in a way that is meaningfully connected to the types of tasks and operations that must be carried out.⁴⁴ This allows the expert to create sophisticated problem representations from data by calling upon appropriate (or analogous) schemata, and then drawing upon the stored knowledge base within the schemata to formulate a solution. In doing this, the expert will apply "pattern recognition" for simpler problems,⁴⁵ quickly sifting the relevant from irrelevant. For more

⁴³ For an extraordinarily rich and deeply researched discussion of how experts use cognitive models/structures in developing problem representations and solutions, see Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory* (unpublished manuscript, 1995) (on file with authors). See also Berger & Mitchell, *supra* note 3; James F. Voss, Terry R. Greene, Timothy A. Post, & Barbara C. Penner, *Problem-solving Skill in the Social Sciences*, 17 *PSYCHOL. LEARNING & MOTIVATION* 165, 191-212 (1983). Further elaboration of the basic cognitive processes of making meaning through interpretive frameworks, generally referred to as "schema theory," can be found in Richard C. Anderson, *The Notion of Schemata and the Educational Enterprise: General Discussion of the Conference*, in *SCHOOLING AND THE ACQUISITION OF KNOWLEDGE* 415, 419 (Richard C. Anderson, Rand J. Spiro & William E. Montague eds., 1977); Robert Glaser, *Education and Thinking: The Role of Knowledge*, 39 *AM. PSYCHOL.* 93 (1984); John B. Mitchell, *Current Theories on Expert and Novice Thinking: A Full Faculty Consider the Implications for Legal Education*, 39 *J. LEGAL EDUC.* 275, 277-83 (1989); David E. Rumelhart, *Schemata: The Building Blocks of Cognition*, in *THEORETICAL ISSUES IN READING COMPREHENSION* 33 (Rand J. Spiro, Bertram C. Bruce & William F. Brewer eds., 1980); see also JEAN PIAGET, *THE LANGUAGE AND THOUGHT OF THE CHILD* (1932) (presenting cognitive, as opposed to behavioral, theory regarding child development).

The concept of schema theory has begun to appear in the legal literature in discussions ranging from juror decision-making processes to the role of metaphor in legal reasoning. See Albert J. Moore, *Trial by Schema: Cognitive Filters in the Courtroom*, 37 *UCLA L. REV.* 273 (1989); Richard Sherwin, *Lawyering Theory: An Overview, What We Talk About When We Talk Law*, 37 *N.Y. L. SCH. L. REV.* 9, 38 (1992); Richard Sherwin, *Preface to Lawyering Theory: Thinking Through the Legal Culture*, 37 *N.Y. L. SCH. L. REV.* 1, 1 (1992); Steven L. Winter, *Transcendental Nonsense, Metaphoric Reasoning, and the Cognitive Stakes for Law*, 137 *U. PA. L. REV.* 1105 (1989); Steven L. Winter, *The Cognitive Dimension of the Agon Between Legal Power and Narrative Meaning*, 87 *MICH. L. REV.* 2225, 2234 (1989).

⁴⁴ "[T]here is strong evidence that what makes an expert is not the quantity of his or her detailed knowledge, but the quality of its organization. The knowledge of experts is organized in ways that permit an expert to recognize in complex situations patterns that are entirely invisible to novices." Blasi, *supra* note 43, at 5. Accord Glaser, *supra* note 43; Anderson, *supra* note 43.

⁴⁵ Expert "pattern recognition" is exemplified by studies of chess masters. See, e.g., A. DEGROOT, *THOUGHT AND CHOICE IN CHESS* (1965). Expert trial advocates also apply this mode of conceptual construction. See, e.g., John B. Mitchell, *Redefining the Sixth Amendment*, 67 *S. CAL. L. REV.* 1215, 1293-1301 (1994) (describing how public defenders use "patterns" in representation).

complex problems, the expert will create "mental models"⁴⁶ out of existing schemata that can be *run* like computer models to test variables and consequences.⁴⁷ In contrast, the novice (law student or beginning attorney) will react principally to the surface elements⁴⁸ of the problem, constructing a superficial problem representation, then indiscriminately drawing upon an undifferentiated mix of relevant and irrelevant information.⁴⁹

Offering students a variety of live-client and simulated practice contexts in which to deal with a range of lawyering problems is a reasonable methodology for instilling expertise. From the various experiences, students begin to develop a range of lawyering schemata and begin to appreciate the great number of dimensions to real world problems.⁵⁰ In the simulation components, the students are repeatedly asked to enter the thought processes of the expert's world; in the live-client components, they are asked to fully participate in that world. Again and again they spiral and cycle back through situations demanding expertise.⁵¹ Always, there is context, and in imparting ex-

⁴⁶ Plainly, however, some problems are too complex to yield a solution by the processes of problem recognition and solution retrieval. The problem situation may contain many different subproblems, thus evoking many different schemas. Very likely a particular problem will not fit precisely with any of them. The problem situation may change over time, both as the result of actions taken by the problem-solver and as the result of changes invoked by other actors or the environment. One set of theories that help explain how people handle the resulting information processing load assumes the existence and use in problem-solving of "situation models" or "mental models." The relation between the concepts of schema and mental model is less than precise. Although the structure and form of a mental model can be derived from schemas, mental models are different from schemas in that they represent objects and processes that are specific and unique, as opposed to those that are categorical, prototypical, or metonymic. In this sense, mental models are comprised of schemas with the variables filled in, that can then be "run" in simulation according to expectations supplied by a script. Thus we may have a schema for restaurants in general, but an image or mental model of eating lunch with Lucie at a corner table in the Thai restaurant on 3rd Street.

Blasi, *supra* note 43, at 36 (footnotes omitted). See also P.N. JOHNSON-LAIRD, *MENTAL MODELS* (1993); William F. Brewer, *Schemas Versus Mental Models in Human Memory*, in *MODELING COGNITION* 187-98 (Peter Morris ed., 1987).

⁴⁷ See JOHNSON-LAIRD, *supra* note 46, at 15.

⁴⁸ See Voss et al., *supra* note 43, at 191-212.

⁴⁹ See Blasi, *supra* note 43, at 21.

⁵⁰ Blasi, *supra* note 43, at 98. For a concrete example of this proposition, see Braucher, *supra* note 28, at 556:

Lawyers for consumer debtors are not driven purely by financial factors such as maximizing income and minimizing credit risk from nonpayment of fees. Other concerns that influence them are the local legal culture, their status aspirations, and their views of their appropriate professional and social role, including their perspectives on the causes and functions of consumer bankruptcy and on what is meaningful about their work.

⁵¹ Through cycle and spiral, experience begets theory, which affects interpretation, which begins the cycle again. See Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of*

pertise, "there is no substitute for context."⁵²

2. *Plateauing*. In teaching lawyering skills, we have noticed that students often experience a quick initial jump in understanding, followed by slower periods of incremental refinement, then followed by another jump and so forth. We call this "plateauing," and it is hardly unique to legal education. Think about learning to play some sport, let's say tennis. To start, you couldn't hit the ball over the net. Then, there was suddenly a moment when you "got it," got the feel, the sense, and you could hit the ball over the net into the other court. You made a huge jump, probably relatively quickly, and found yourself on a plateau looking down on where you'd just been. But then it may take months of playing and practice to become significantly better. It is slow, sporadic and incremental. Two steps forward, one back. Then one day, you're at a totally different level. You not only can consistently hit the ball over the net, you are playing the game.

This notion of plateauing is particularly important in the one-credit simulation components. One hour the students may counsel a client, and the next conduct a negotiation, an interview, or a cross-examination. One may well ask how students can get any value out of these exercises without extensive readings and careful training. After all, many schools have full semester courses in interviewing and counseling alone. As will be explored in Section IV, teaching these lawyering skills as such is not the primary purpose of the component. Rather, the primary objective is to contextualize the underlying substantive doctrinal course by exposing students to how practicing lawyers in the field think about the doctrine in the context of, *e.g.*, interviewing and negotiations. Nevertheless, because of "plateauing," the students also learn quite a bit about the skill that is worthwhile for its own sake.

For example, consider interviewing and counseling. One of the central criticisms of practitioners that has led to the emergence of the philosophy of client-centered lawyering in legal education⁵³ was the

Feminism and Clinical Education, 75 MINN. L. REV. 1599 (1991). In this regard, the models of cognitive science give scientific foundation to the intuitively insightful notion of the "reflective practitioner" espoused in DONALD A. SCHÖN, *EDUCATING THE REFLECTIVE PRACTITIONER: TOWARD A NEW DESIGN OF TEACHING AND LEARNING IN THE PROFESSIONS* 13 (1987).

⁵² Blasi, *supra* note 43, at 97; *see also id.* at 143 n.270:

There is a growing body of evidence that all learning is highly situated and context dependent. JEAN LAVE & ETIENNE WENGER, *SITUATED LEARNING* (1991); D.N. PERKINS & G. SALOMON, *Are Cognitive Skills Context-Bound*, 18 EDUC. RESEARCHER 16 (1989).

⁵³ For an articulation of the "client-centered" approach, *see, e.g.*, DAVID A. BINDER & SUSAN C. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* (1977), and a later edition of the book, DAVID A. BINDER, SUSAN C. PRICE &

simple perception that all too often practicing lawyers do not listen to their client's wants, needs, and voice,⁵⁴ instead constraining the client's world into the lawyer's legal categories. Merely to understand and assimilate this concept puts the student on a different plateau, for the problem that has led to the focus on client-centered representation is, in significant part, one of role conception. In the past, students left law school with a role conception that they were expected to know it all and take charge. If instead you tell them that, while they must know a great deal and take much responsibility, ultimately it is the client's case and that they must, therefore, work with the client to determine and carry out the client's wishes, most students will attempt to conform their conduct to this norm. "Oh, so that's what you want me to do—Sure, I can do that; I just didn't understand before that that's what's expected." Significantly, this type of plateau-raising lesson can be transmitted in an exercise or two, particularly if repeated in other components and classes in the curriculum. Of course, there are levels upon levels of interpersonal skills, theories, techniques, and ethical quandaries in interviewing and counseling that are understood by the good practitioner, but getting students to this initial plateau is a significant and meaningful jump.

3. *Clear, limited objectives.* As the previous section indicates, we do not try to do everything. To attempt too much in a one-credit class leads to superficial treatment and winds up accomplishing nothing. With one credit, you have to focus. This principle guides the construction of both the live-client and simulated components. The live-client components are intended to provide students with a window into the world they are studying,⁵⁵ thus really being clinics for the class-

PAUL BERGMAN, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (1991). For commentary on this approach, see, e.g., Serena Stier, *Reforming Legal Skills: Relational Lawyering*, 42 J. LEGAL EDUC. 303 (1992).

⁵⁴ For discussions of the concept of client "voice," see Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1, 21–32, 45–52 (1990); Clark Cunningham, *A Tale of Two Clients: Thinking About Law as Language*, 87 MICH. L. REV. 2459, 2465–69 (1989). For another view of the role of the client in case theory, see Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485 (1994).

⁵⁵ Much of what comprises "law" fails to surface in the traditional doctrinal course. Little, if anything, is seen at the trial court, let alone law office, level. See Louis M. Brown, *Teaching the Low Visible Decision Processes of the Lawyer*, 25 J. LEGAL EDUC. 386, 386 (1974). Unwritten rules, conventions, informal processes and the like are rarely acknowledged, see Bergman, *supra* note 4, at 361–62, in spite of their importance in the actual operation of law. See, e.g., Braucher, *supra* note 28; Kenneth Culp Davis, *Behavioral Science and Administrative Law*, 17 J. LEGAL EDUC. 137, 145 (1964) ("Decisions that governmental administrators make are not limited to the merits; they also involve pressures, timing, methods, personalities, resources, relationships, and politics. Only a tiny minority of decisions come up in orderly fashion as do decisions in adjudications.").

room.⁵⁶ The simulated components are meant to provide a *link* between the substantive course and practice by teaching how lawyers actually “think about” the doctrine in the particular practice area.⁵⁷

a. *Live-client component clinics.* In a live-client component clinic, students only have one client and all students have cases with similar contours. With that in mind the particular lawyering skills to be emphasized can be narrowed. Thinking in context as an expert or, as we more often say, “thinking like a lawyer” will be enhanced. Moreover, the interplay of the clinic and the class should foster the objectives discussed below.

(1) *Framework.* As we all know, clinics have often grown spiritually and even physically apart from the regular curriculum. This tendency towards isolation is, however, misguided. Theory informs practice, and theory is informed by practice.⁵⁸ In the integrated curriculum, each component clinic implicitly carries this important message in a powerful way. After all, an entire area of substantive study (the traditional course) is simultaneously being perceived by the

Students with a commercial bent are given no sense whatever of the commercial law firm as a business enterprise. See Johnson, *supra* note 29, at 1232-33, 1238-39. The concrete significance of exposing students to the “real world” was well expressed by Bergman, *supra* note 4, at 359:

But the fieldwork experience allows students to learn agency procedures not only theoretically, but also realistically. The importance of this cannot be overstressed. After all, statutes and court decisions notwithstanding, consumer law for the vast bulk of the American public is what the public agencies are able to enforce. For example, students learn that the Attorney General’s Office has the power to require advertisers to submit substantiation for their ads. But in what situations is this power exercised? Do the agency attorneys possess sufficient expertise to ascertain whether data supports a certain claim? Does the agency have a policy to police ads in certain types of businesses, or are decisions made on an ad hoc basis? [footnote omitted]

⁵⁶ While 89% of live-client clinics have some classroom component, *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 529 (1992), there is only a scattering throughout the literature of the notion we are espousing in our live-client components, *i.e.*, clinics to support the doctrinal classroom. See, *e.g.*, Fox & Schwabb, *supra* note 4 (students in bail seminar bring experiences from field back into class); Thomas J. Andrews, *The North Carolina Sentencing Seminar: An Experiment in Controlled Clinical Legal Education*, 28 J. LEGAL EDUC. 317, 317 (1977). Cf. Gross, *supra* note 33, at 272 (noting that clinic is most valuable when “exploited” for benefit of total law school program). After all, clinical cases offer live-client “texts” which may be studied along with conventional texts. See David R. Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67, 67 (1979).

⁵⁷ For a full discussion of the logistics and methodology for the live-client and simulated components, see Part IV *infra*.

⁵⁸ See, *e.g.*, Michelman, *supra* note 12, at 352 (law school teaches too much doctrine, not enough theory and practice). Cf. Tomain & Solimine, *supra* note 25, at 316-17 (bemoaning the fact that skills are not tied to a broader, political perspective).

students and the faculty through the lens of practice in that area (the component clinic). Thus armed with a perspective and a framework that they likely never have had before, students approach traditional law school fare with a different level of excitement, and the usual lament of law school malaise in the upper level curriculum is dramatically lessened.

(2) *Respect for the client.* Because students are simultaneously reading cases and practicing in the world about which they are reading, they will not regard the cases as espousing merely abstract legal principles. For example, in the Law & Psychiatry Clinic, the students have a real client whose voice and story must be understood and translated with respect for the client, yet within the constraints of the law and procedures of the forum. One simply cannot predictably control, guide or manipulate those whose mental processes are other than those to which we are accustomed. *In re Smith* now has a client-centered meaning because students “know” Jennifer Smith.

Similarly, in the Immigration Clinic, students face clients from very different cultures, with different languages, who have undergone experiences that are likely unimaginable to most of us living in the United States. The client is the only one who can really tell the story. The client has the only “voice” that can convey authentic experience. Again, the students’ role cannot be to impose their voice on the client. Rather, it must be to translate the client’s voice to the court.

(3) *Cross-fertilization.* There are many clinics around the country with classroom components, some of which focus exclusively on skills and others of which combine skills instruction with coverage of the underlying substantive area. Generally these classes are taught by clinicians. These are classes for the clinic; they support the students’ efforts in their clinical representation. Although the traditional classroom instruction students receive in our integrated clinics no doubt helps them in performing in the clinical component, our model of the clinic-classroom relationship is primarily designed to achieve the goal of enhancing the students’ perspectives on the legal doctrines they study and apply. By experiencing the doctrine in practice, students gain insights that they bring back to the classroom and that enlighten discussions by providing illustrations, points of departure, hypotheticals, and a window into the world.⁵⁹

⁵⁹ One does not need to extol the possibility of scholarship evolving from the clinical experience, Leleiko, *supra* note 18, since the very existence of this journal is solid evidence of that reality. Rather, for the traditional legal scholar, the existence of a clinical component to their course offers an *opportunity*. In traditional law review articles, appellate courts are the only world in which law is done. Yet most law happens in worlds generally

b. Simulation components. Some of the concerns underlying the design of the simulation components mirror those already discussed in conjunction with the live-client ones. The simulation components tend to diffuse the so-called dichotomy between theory and practice, expose students to a wide range of practice contexts, and broaden the skills base (*i.e.*, adding skills such as judgment, imagination, and personal communication to cognitive skills). Other concerns, however, though no doubt touched upon to an extent in any component clinic, regardless of whether live or simulated, were more consciously at the philosophical center of the creation of the simulation components and texts.

(1) *Looking at cases from the beginning "up".* Exclusive use of the traditional case method as an approach to substantive areas engages students in a process which begins at the *end* of the appellate level and looks "down." This one perspective can be extremely misleading. Most law is practiced at the point prior to trial (or non-litigation activity), looking "up." In this upward-looking perspective, appellate cases are often viewed not so much as sources of authority to resolve disputes, but guides for future activity (*e.g.*, What must I plead? How should I present my witness at this motion in order to come within the *Miranda* principle? What must my declaration state in order to get a court-appointed expert?, and so forth). Further, when looking from the trial level "up," issues are not solely confined to the analysis of the four corners of an appellate opinion. Issues are often "created," "evolved," and/or "framed." *The facts* are not a static concept when viewed from the trial level "up."⁶⁰ They are sought,

invisible to legal scholars, *i.e.*, lower courts and administrative agencies and law offices. See Mitchell, *supra* note 45, at 1216 (most citizens' experiences with the formal criminal law will be in the lower courts); Brown, *supra* note 55, at 386. By monitoring the cases student handle in the live-client clinical component, professors of the substantive courses can use this window into the real world to glimpse cutting-edge issues and perspectives that they can address in scholarship. After all, lawyers in the trial courts were arguing about the substance of *Miranda* for decades before it reached the Supreme Court.

⁶⁰ As Professor Louis Brown explained in describing a set of experimental law school courses,

Because a significant aspect of the work of the planning lawyer is the planning of facts, much of the approach concerns fact. The choices which a client must exercise are often (always?) choices of fact. By way of comparison with traditional case materials (appellate decisions where the facts come to the appellate court—and to the student), these teaching materials present facts in a state of flux.

Louis M. Brown, *Experimental Preventive Law Courses*, 18 J. LEGAL EDUC. 212, 213 (1965).

Taking this notion that facts are unstable or in flux from Professor Brown's transactional world to that of litigation, it can be said that,

[e]xperienced [trial] lawyers tend not to think in terms of "facts." Rather, lawyers think about facts as information that supports, harms, or is neutral to their case.

developed, characterized, and made part of a record. The labs provide this dynamic, upward-looking perspective.

(2) *Ends-means thinking*. Substantive law classes wrestle with “What ‘does’ this case mean?” Practicing attorneys, viewing cases from an adversary, ends-means perspective, wrestle with “Knowing my client’s objectives, what could I ‘plausibly’ argue this case means?” The labs develop adversarial,⁶¹ ends-means thinking in analysis.

(3) *Teaching recurring “patterns”*. Traditional law classes provide recurrent “patterns” of case analysis (e.g., What did the case hold? Why? Was the court’s reasoning correct? Is that result consistent with previous cases?). Practicing attorneys likewise have recurrent “patterns” (e.g., What is my theory of the case? How does this case or fact affect my theory? What will I argue? What will my opponent respond? How will I counter? What other information do I need? Why?). The sequenced questions in the labs provide “patterns” applicable to both the specific substantive area and to practice in general.

4. *Classroom and curricular “pop”*. How much can students learn in one credit? You’d be surprised. They get a great deal from that single credit. As we say, one credit carries a lot of “pop.” There are a number of reasons for this.

Immersion into the outside world exposes students to forces that

Thus, facts represent supportive information, or a lack of information, or create inferences. Using a combination of substantive evidence and rhetoric, experienced lawyers try to keep out information harmful to their case, gain admission of that which is helpful, draw and actively place a favorable gloss on the resulting inferences, and wrap it up in a narrative that convinces the judge or jury of their position. Thus, to trial lawyers, there is no such thing as the “fact” of an eyewitness identification. Instead, they see a set of information: A particular person (a witness), with particular perceptual abilities and biases, who can put forth particular words from the witness stand, about a particular event he or she claims to have perceived, under particular circumstances.

In approaching this witness, opposing expert lawyers will attempt to add, subtract, recombine, and recharacterize this information to support the story they want the judge or jury to accept. For example, the prosecution might attempt to create the tale of a vigilant citizen who would never accuse an innocent man of a crime. The defense, on the other hand, might tell of a well-meaning citizen who was so frightened by the event that his senses temporarily failed him. By seeing the world as one in which information, lack of information, and inferences compose the universe, the advocate is constantly watching what others would call “reality” dissolve. The advocate then recreates that reality within his own rhetorical framework.

Mitchell & Berger, *supra* note 3, at 831-32 (footnotes omitted).

⁶¹ Interestingly, 35 years ago, Professor Howard L. Oleck recommended teaching traditional substantive law through having students adopt adversary positions. Apparently, he had used this model for the previous thirty years. See Howard L. Oleck, *Thirty Years of the Adversary Method*, 13 J. LEGAL EDUC. 83 (1960).

demand learning, regardless of any demands from the law school. This is true for the live-client components. Even though the objectives of these clinics is not only to develop lawyering skills but to provide students with a “window” into the practice/institutional world they are studying in class, students who are going to conduct a hearing or negotiation, necessarily have to prepare for that hearing or negotiation. Under such “realities,” and with the guidance of the clinic faculty, they wind up developing advocacy skills within the framework of the lawyering task(s) they must carry out for their client. That’s pop, especially since students generally do far more than one credit’s worth of work in the live-client components. They do not complain (very much), and almost never at the end of the course, because they appreciate the opportunity.

In the simulated components, the students often get a stronger grip on the material in the underlying doctrinal course than those enrolled solely in the substantive course, both because the material is placed in a meaningful context and, frankly, because they have added an hour a week to their study of the subject. Additionally, in this one credit, they simultaneously obtain a pretty good sense of how practicing lawyers “think about” doctrine in the area, learn the types of tasks and problems lawyers in that area face and the mental approaches to these tasks and problems, and in the process accumulate some of the expert knowledge-base upon which lawyers in the area draw (*e.g.*, practical considerations in representing the lead tenant in a shopping mall; what questions to ask when preparing a witness who will testify about “chain of custody,” etc.).

To gain another perspective on this concept of pop, approach it from a course selection perspective. Student #1 takes a regular three-credit upper division course, a well-taught, thought-provoking course. Student #2 uses her three credits differently. She takes a one-credit simulated Corporations component and two one-credit live-client components, say the Immigration and Health Law clinics. We are only talking about three credits, three out of ninety credits needed for graduation, 3.3% of the students’ total academic law school experience. Yet the difference in how they used this 3.3% may profoundly affect these two students’ overall law school education. From our experience, Student #2 will, all else being equal, understand far more about lawyering and be better prepared to enter practice than Student #1.

The concept of pop can also be viewed from a full curricular perspective. Curricular “pop” is another way to articulate the paradox of “change and no change” we’ve already mentioned. The traditional faculty changes nothing. They teach the same course and teach it in

the same way if they wish. Students still have plenty of credits available to take bar courses and advanced seminars. All tinkering is around the periphery. But, as we've just seen, this tinkering changes the breadth and relevance of the student's education. It also joins traditional faculty to the worlds of lawyering (and clinicians) through the traditional faculty member's acceptance of the parallel, integrative curriculum, whether that acceptance is tacit, overt, or active. In short, the school simply ceases to be the same school. All is changed, but almost nothing has *been* changed. *That* is curricular pop.

IV. METHODOLOGY, AND LOGISTICS OF THE LIVE AND SIMULATED PARALLEL, INTEGRATIVE COMPONENTS

A. *One-credit Live-client Components*

1. *The organizational model, or how to build your very own live-client clinical component.*

These component clinics are constructed along a seven-point organizational model:

a. *Focus on a narrow lawyering task.* The clinics cover a narrowly delineated, discrete part of the subject area. For example, the Immigration Clinic covers only deportation hearings and the Law & Psychiatry Clinic handles only 180-day re-commitment hearings. This allows students to gain a relatively quick grasp of the issues and procedures, and the supervisor likewise to gain a relatively quick grasp of each subject. (In fact, few of the existing clinical faculty had previous experience in either the immigration or mental health areas.) In addition, the lawyering task can be timed to go from a rational entry point to conclusion within a semester.

b. *Access to expert consultants.* An attorney practicing in the area acts as an expert liaison. In this role, the practitioner consults with the supervisor on the cases, often helps plan and participate in training, and may be available to counsel students.⁶²

c. *Simultaneous enrollment in substantive course and component clinic.* Students may not enroll in the integrative clinic unless they are enrolled in the related substantive course. Clinic participants receive one academic credit in addition to the credit granted for completion of

⁶² Our policy is to provide a stipend to such expert consultants. We limit their involvement and ask that students approach them only through us. This ensures the consultant is not swamped by student calls, not required to be up to speed on *our* cases, and that students have prepared by discussing the issue between the partners and with faculty before the expert is contacted.

the substantive course.

d. Low case load, underrepresented clients. Each team of two students represents a single client in a single case. Each clinic can accommodate up to six clients per term per class and, therefore, up to twelve students per class. All clients are indigent.

e. Faculty cooperation and interaction. The clinical supervisor is always available to meet regularly with the substantive course faculty member to discuss such matters as the progress of cases, non-confidential information that may be used for class discussion, possible changes in the class syllabus to enhance the clinic if the faculty member so desires, and so forth.

f. Training. Student participants begin with an intensive, front-loaded training schedule, generally including a weekend workshop using simulation to prepare the student for the specific tasks they will perform.⁶³ Depending on the particular course, this workshop may be preceded by one or more pre-workshop sessions covering anything from an outline of the substantive contours of the area to insight into the institutional players the students will encounter. Comprehensive training and resource manuals are also made available to component clinic students.

g. Case conferences with supervisors. Student teams maintain regular office hours, during which they meet with a supervisor from the full-time clinical faculty for a one-hour case conference, twice per week.

B. Simulated Clinical Components (the So-called Labs)

1. The organizational model, or how to build your own simulated component.

a. Classroom organization. The classes are organized and taught as follows:

(1) To enroll in the component, a student must be currently enrolled in the underlying substantive course (though occasionally we have allowed students who have already taken the course to enroll).

(2) The class time is divided into two components: 1) class dis-

⁶³ Preparation for the particular clinical task through an intensive workshop is a methodology also employed by the District of Columbia School of Law. See Gay Gellhorn, *Report on a Pilot Clinical Project in Employment Discrimination: Harmonizing Pedagogy and Client Service Goals*, 92 AALS SEC. ON CLIN. EDUC. NEWSLETTER, at 19 (Sept. 1992).

cussion focusing on particular assignments, where doctrine is analyzed in the context of strategic, adversary planning; 2) a performance exercise where students who have been organized into "firms" role-play one of the performance problems, which is then critiqued and discussed.

(3) The class is conducted in two-hour blocks, meeting once a week for seven weeks, beginning in the fifth week of class (to allow the students to "get up to speed" before the lab starts). However, the materials are organized so that the course could begin the first week and run one hour a week for fourteen weeks. In the Criminal Procedure component, for example, 24-30 students are organized into six "firms"; thus, each firm will participate in two performance problems during the course. The class could be offered to 50 students, however, with twelve firms each doing one problem. This would not necessarily be bad. One can learn a great deal watching others and one can conduct a reasonable class discussion with 50 students.

*b. Organization of the texts.*⁶⁴ The texts are at the core of our series of simulated component courses. The texts are intended to further our objective of providing students with a link between traditional substantive courses and the world of lawyering by focusing on how practicing attorneys think about and use the particular substantive doctrine. The texts are constructed in the following manner:

(1) The chapters of the books reflect the topical subdivisions of typical substantive course texts in the area. Within each subdivision, the assignments raise a variety of substantive issues in the context of strategic decision-making and performance.

(2) The centerpiece of the books is the case file or transactional history.⁶⁵ The ongoing "story-line/narrative" is contained in a set of realistic documents in the case file and is presented in introductions to each assignment which place the students in the context of an active

⁶⁴ The existing simulated component course offerings will be greatly expanded as the texts in the Seattle University Skills Development Series (Michie Co.) are completed. See *supra* Section I-A.

⁶⁵ Rich case files are obviously at the core of a quality simulation component. We have generally chosen a single, ongoing narrative rather than a series of unconnected, shorter fact patterns. The idea is that students will spend the course in the ongoing representation of a client. See also Steven Lubet, *Advocacy Education: The Case for Structural Knowledge*, 66 NOTRE DAME L. REV. 721, 733-34 (1991) (recommending an ongoing simulation, in which students "work with the same case files for weeks, if not months, in succession [r]ather than rely upon short, unitary problems," so that "case files are nuanced, complex, and detailed," and the facts of the cases are "subject to continual reevaluation"); Mitchell & Berger, *supra* note 3, at 833 (discussing the "single fact pattern approach").

lawyering role. These files and histories are made up of an extensive collection of realistic documents which contain the facts the students will use to guide their representation. Here the facts of the case are not prepackaged. Rather, like practicing attorneys, the students must recognize, extract, and characterize information relevant for their representation as they sift through the documents.

(3) Assignments, correlated to specific substantive issues raised in the traditional texts, place students in a wide range of settings and lawyering tasks. Each demands that the students act as problem-solvers. All require meshing an appreciation of the particular substantive law with a variety of lawyering skills. Unlike the so-called problem method, these assignments go far beyond challenging students' recognition of doctrine.⁶⁶ They place the students in the role of an attorney who is actually engaged in representation of a client — a role in which tactics, judgment, and ethics are always at play.⁶⁷ Each assignment concludes with an exercise in which the students perform some lawyering tasks (*e.g.*, drafting, arguing, interviewing, conducting examinations, counseling, negotiating, and such). The principal point of these exercises is not to teach the particular skill as one would in an advocacy course but, again, to provide a lawyering context for what is being learned in the substantive course.⁶⁸

(4) Each assignment contains a series of sequenced Planning Questions. These questions are of two types. Many reflect "recurrent patterns" that experienced attorneys in the area employ intuitively. Others are specific to the issues raised in the particular assignment,

⁶⁶ In 1958, Bernard J. Ward wrote about the virtues of the problem method. See Bernard J. Ward, *The Problem Method at Notre Dame*, 11 J. LEGAL EDUC. 100 (1958). Shortly thereafter Kenneth Culp Davis recommended its use in upper-level courses. Davis, *supra* note 36, at 546. Now, there are a number of problem texts. See Gregory L. Ogden, *The Problem Method in Legal Education*, 34 J. LEGAL EDUC. 654 (1984) (author presents bibliography of problem texts). In fact, one commentator writes that the problem method is the only economically feasible one to institute the goals of the MacCrate Report. See John S. Elson, *The Regulation of Legal Education: The Potential for Implementing the MacCrate Report's Recommendations for Curricular Reform*, 1 CLIN. L. REV. 363, 386 (1994).

⁶⁷ We do not mean that the problem method cannot be used to approach tactics and strategy. Of course it can. See Ogden, *supra* note 66, at 659. It just rarely is. If, then, one is more comfortable characterizing our texts and methodologies as variants on the problem method, we will not object. We recognize that this places us in good company. See *supra* note 66.

⁶⁸ As the purpose of the simulation components is to introduce students to how practitioners "think about" the underlying doctrinal area, the course is in some ways like a modern language course where students learn to speak about subjects as would practicing attorneys. See James Boyd White, *Doctrine in a Vacuum: Reflections on What A Law School Ought (and Ought Not) to Be*, 36 J. LEGAL EDUC. 155, 163-64 (1986) (doctrine can be given context by having students use it as a language).

including ethical issues. Spaces are provided for students to record their answers. All of this is intended to take the students through the mental process of an experienced advocate and, in the process, reinforce the heavy emphasis that the books place on planning and preparation in the context of strategic theory.⁶⁹

CONCLUSION

What has been presented in this article is a mixture of institutional politics and pedagogy. As the song goes, you can't have one without the other. The parallel, integrative curriculum offers a relatively safe mechanism for ongoing pedagogical experimentation and evaluation. It maximizes flexibility and the possibility of cross-fertilization and innovation by allowing a medium for a realistic working relationship between the clinical and traditional faculty. In doing so, it maximizes the institutional capacity for wise curricular evolution in a number of respects. As the profession changes and the conception of professional training evolves along with it, the curriculum is easily adjusted by gradually altering the content of the integrative components. In fact, once the curriculum is in place, it might even be possible to gradually move towards actual integration, or to create a curriculum geared towards specialization by "clustering" the components with some as capstones or other such innovations.

For the significant number of law schools in the country which are in similar circumstances to Seattle University, the methodology and philosophy guiding the creation and growth of the parallel, integrative curriculum offers a powerful model. Taken in whole, or only borrowing little pieces, this model offers both a politically and economically realistic methodology to expand students' opportunities for meaningful clinical learning in their legal education. The model meets the fundamental concern underlying the MacCrate Report that students leave law school with some sense of what they are doing and, in the process, provides a structure for coordinating and combining the talents of clinicians and traditional substantive faculty. It is not *the* answer, but it is *one* answer, and a good one at that.

⁶⁹ The MacCrate Report's recognition of the importance of strategic problem-solving, MacCrate, *supra* note 10, at 142-51, echoes the same perception by many others. See, e.g., Anthony G. Amsterdam, *Clinical Legal Education — A 21st Century Perspective*, 34 J. LEGAL EDUC. 612, 614 (1984); Robin Yeaman, *Creativity and Legal Education*, 23 J. LEGAL EDUC. 381, 381 (1971) (creativity in approaching the solving of lawyering problems "distinguishes the competent tradesman from the great lawyer"); Davis, *supra* note 36, at 546 (upper-level courses should train students using "what lawyer should do" problems).

