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# Method Lawyering: Immersion Teaching Illustrated

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# METHOD LAWYERING[1]
## IMMERSION TEACHING ILLUSTRATED

*Kris Franklin*[*]

> ***Scenario****: Frankie and Saanvi are a lesbian couple who have been together for almost two decades. They met in college and are now in their mid-thirties. They had never really thought about getting married, but in the wake of legal and political changes in the U.S., as well as changes in their employment and financial status, changing community mores around legalized same sex marriage, and discussions of the possibility of having and legally protecting children, they are beginning to explore the option. Both partners work in creative fields. In recent years Saanvi's work has been especially well-received. Much to both partners' surprise, Saanvi has been generating substantial income over the last few years and has become unexpectedly wealthy.*
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> *Through the vantage point of a lesbian couple ambivalent about the institution of marriage, this scenario traces most of the central legal questions surrounding marriage and divorce, conceiving and raising children, owning property within married relationships, and preparing for and resolving dissolution of a marital union.*

### INTRODUCTION

#### *Teaching Law by Immersion*

Informed by the adage "show, don't tell," this Article seeks to provide an immersive introduction to immersive teaching and learning in law school.

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[1] "Method Lawyering" is both a reversal of the Lawyering Method elements used as a framing device throughout this work, and an allusion to method actors' efforts to immerse themselves in the totality of their characters to gain a deeper understanding of their circumstances. Method actors believe that there is no other way to gain such a rich sense of their characters' contexts then to understand and identify with their lives to the greatest extent achievable. The immersion teaching discussed here similarly seeks expanded comprehension through experience.

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Professor Peggy Cooper Davis,[2] together with her collaborator Danielle Davenport,[3] initially wrote the above-sketched scenario as a portion of the *Family Practice*[4] course they taught together at NYU School of Law (now with Brence Pernell[5]). The scenarios were subsequently adapted for a 2018 Harvard Law School seminar *Professional Responsibility in Family Practice* taught by Professor Davis,[6] and then again reshaped for use in a simulation-based family law survey entitled *Family Law in Practice* that I teach at New York Law School.[7] These various courses differ significantly in purpose and pitch, though all are centered on student-lawyers working through the same principal narratives.[8] In addition to sharing the central stories and characters, this array of quite disparate courses uses a common instructional model that we[9] call the Immersion Method.[10]

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[3] Actor, playwright, and Teaching Fellow, NYU School of Law Experiential Learning Lab.

[4] *See* https://www.law.nyu.edu/node/29420.

[5] Assistant General Counsel, MRDC and Adjunct Professor, NYU School of Law.

[6] *See* https://www.law.nyu.edu/node/29421.

[7] *See* https://www.nyls.edu/academics/j_d_course_of_study/curriculum/course-detail/?course=4935.

[8] The Frankie/Saanvi scenario makes up the bulk of the courses discussed here, but all also include a second scenario that introduces the child protection system and explores both parental/familial autonomy and the oversight of the state. That scenario deepens students understanding of tensions pertaining to liberty and order in the family law context, and raises important considerations of race, class and education in family courts.

[9] Pronoun references in this work are a little complicated. I owe a great debt to Davis and Davenport as the primary creators of the characters these courses are centered around, and to Davis as the originator of the instructional design all these courses utilize. I contributed to the revision work that Davis and Davenport undertook to emphasize professional responsibility issues for the Harvard version, and have intermittently continued to consult in the ongoing partnership between Davis and Pernell. Simultaneously, with permission I adapted the narratives to fit the needs and design of my own class. Thus, much of the work and conversation around these courses has felt intensely collaborative. I therefore use "we" in this article to refer to the fruitful intersections of this alliance. I use "I" when referring solely to my own particular class.

[10] As designated by Prof. Davis in a separate collaboration that included Davis, Susan L. Brooks (Drexel University Thomas R. Kline School of Law), Susan S. Kuo (South Carolina School of Law) and me.

We want to be careful not to suggest, however, that we believe this kind of law teaching is unprecedented. Others before us have built courses with educational goals growing out of simulated client work. In fact Susan B. Apel, has already successfully done so in the same field of family law. *See* Susan B. Apel, *No More Casebooks: Using Simulation-Based Learning to Educate Future Family Law Practitioners*, 49 FAM. CT. REV. 700 (2011) (hearinafter *No More Casebooks*). Relatedly, see Andrew Schepard & Herbie DiFonzo, *Hofstra's Family Law With Skills Course: Implementing FLER (The Family Law Education Reform Project)*, 49 FAM. CT. REV. 685 (2011). Regrettably, we were not aware of these

The immersion method integrates doctrinal, practical and values training in legal education by drawing freely from the most sophisticated techniques of case method, simulation, and clinical teaching. Though some class meetings look and feel like traditional case-driven law classes, the instruction and learning in immersion courses—particularly of foundational legal doctrine—is driven entirely by the simulated client work.[11]

Frequently in our immersion classes students are given some background cases and statutes to start from. They are also sometimes given more directed questions to consider while other students are working on different issues. From these beginning points the student-lawyers must then formulate their own research inquiries, acquaint themselves with the law in question, and prepare to engage in the next lawyering task required by the case.[12] Instructors devote considerable time in class meetings to helping students unpack client narratives, identify legal issues, and plan their research and client work. But in the immersion classroom there is often a collaborative feel of the professor guiding what is ultimately a student-led discussion rather than simply assigning work or interrogating students' comprehension.

The lawyering tasks the students undertake in the course include preparing case memos, briefing supervising attorneys, interviewing experts, counseling clients, preparing documents for the client, and advocating or negotiating on the client's behalf. With faculty guidance and expert supervision, students teach themselves the basics of family law doctrine[13]

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prior works when we constructed our own family law immersion courses. It would have undoubtedly enriched our work had we been. Yet there remains some benefit to having arrived independently at similar objectives, and our goals are perhaps more global and less directly preparatory for practice than theirs.

[11] This coverage of legal rules in direct response to the requirements of well-chosen simulations is what distinguishes immersive learning from the exercises many colleagues add to their doctrinal instruction in casebook courses. Such simulations are frequently wonderful opportunities for students to apply legal rules and consolidate their mastery of key concepts, and I use these kinds of projects in many of my own courses. Yet I distinguish them from fully immersive learning if they are designed to reinforce or supplement what is conceived of as the core learning in a course.

[12] This Article's goal is to give readers some of the feel of what these classes do. A very different type of writing would be required to detail all of the logistics of the course. It therefore skims over important considerations such when we use actors in role as clients (some, but deliberately as infrequently as possible to make the course economically feasible and reproducible), how the course is scheduled (for mine, just like any other doctrinal class that meets twice a week in an ordinary classroom), how we conduct in-role work in class with a manageable number of students rather than the whole class, or how as faculty we move back and forth between more professorial roles to acting in more supervisory capacities to guide/coach students through the simulations. Any of us who teach these classes would be happy to provide syllabi, materials, or consultation to other faculty who would be interested in exploring this kind of teaching for their own courses.

[13] We do ensure students learn the basic rules of family law they will need for practice

while simultaneously practicing and critically examining lawyering interactions, and honing their research, writing and legal drafting skills. In my particular course roughly half of the class sessions are conducted entirely in-role working on parts of the simulation. The remaining class sessions are conducted as out-of-role workshops where the students and I work together to ensure that they understand the law and the facts, have located the primary sources they need, and that they understand them and are using them effectively.[14]

As faculty, then, we get to lead the same kinds of careful examinations of rules of law that more traditional Socratic classrooms generate, just done through the lens of a specific client's problems. Meanwhile our students learn legal doctrine in ways that are likely to foster retention;[15] reinforce basic law school skills of case reading, statutory analysis, and application of rules to facts, all while developing additional skills they will need in the profession.[16] Immersion teaching helps fulfill the ABA mandate that law graduates complete at least six credits of experiential coursework.[17]

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and the bar exam. In my class this is tested by a take-home examination in which students are expected to apply the rules they have learned to new facts which differ substantially from those raised in the course simulations. This shows students (and my administration!) that even in this new format they have covered what they would be expected to learn in a more traditional family law course.

[14] Others have pointed out that some of what this article describes and proposes may be less of a radical (read: easier) shift for me than for some legal educators. I have perhaps an unusually intersectional law teaching background. I began my career as a practitioner handling individual cases, and I have substantial experience teaching a variety of traditional doctrinal courses, along with simulation-based lawyering skills courses, legal writing and research, all overlaid with a background in learning theory and academic enhancement. All of these are at least somewhat relevant to undertaking the kind of immersion teaching this article describes. But while that degree of variety in teaching assignments may not be common, law professors bringing a diverse array of personal and professional expertise to their classes is hardly unusual. I firmly believe that skilled law faculty who wanted to undertake this kind of teaching could so do well no matter what their previous professional path.

[15] Nellie Munin & Yael Efron, *Role-Playing Brings Theory to Life in a Multicultural Learning Environment*, 66 J. LEGAL EDUC. 309, 313 (2017); *see also* Nadja Alexander & Michelle LeBaron, *Death of the Role-Play*, 31 HAMLINE J. PUB. L. & POL'Y 459, 466 (2010) (in-role work "is said to yield deeper and broader learning"). Empirical support for the common assertion that experiential learning promotes retention has been especially well documented in medical training. See for example Rahul R. Bogam, *Effect of Simulation Based Education on Knowledge of Medical Students in Context of Community Medicine*, 3 INT'L J. MED. RES. & HEALTH SCI., 651 (2014).

[16] That this is true both for family law specialist skills (*i.e.* drafting prenuptial agreements), and for more general practice readiness (*i.e.* writing client advice letters or negotiation).

[17] ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS STANDARDS 301(b), 302 (Am. Bar Ass'n 2014-15).

We love teaching immersion classes. They provide some of the structure of traditional law teaching while pushing the boundaries of learning from work that feels real and has a practical and personal dimension. There is simply something different, deeper, and more magically enriched about learning that arises from invested personal experience.

*An Article Modeling Immersion Methodology*

Rather than arguing It is framed in vignettes that illustrate parts of a specific client problem, then move out toward thinking through (some of)[18] what would be needed to address that problem, and then proceed more abstractly toward using that experience to examine (some of)[19] the processes both student-lawyers and faculty-supervisors have engaged in.[20]

Each of the first four sections of this Article shows a portion of what students *do* in the corresponding segment of the course. These sections then come from a different angle to surface some of the considerations that went into *building* and *teaching* that segment. I hope this structure provides an intriguing dialogue between the student-lawyers' processes and the faculty processes that went into engineering those student experiences. The Article then wraps up in Part V with a consideration of ways the immersion method merges clinical methodology the essentially doctrinal/Langdellian purpose of most law school lecture courses.

With such ambitiously layered objectives it may be helpful to have some sort of grounding armature to structure this examination/modeling of the immersion family law course. Many related-but-differing descriptions of the components of experiential learning exist, and in this Article I am choosing (not entirely arbitrarily) to rely on one version that shares a common DNA with the genesis of this family law course: the Elements of the Lawyering Method as developed and refined by the NYU Lawyering Program.[21] The

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[18] All legal work is incredibly multi-faceted, and the dynamics of interpersonal interaction and intrapersonal awareness add additional layers to lawyers' professional work. Thus the topics in any one of the snippets included here could easily fill volumes. I am critical of the limitations of my own judgments about what to draw attention to, but then this Article is intended to be illustrative rather than all-inclusive.

[19] *Id.*

[20] As, inevitably, do all client/problem-based teaching methodologies. *See* Wyatt G. Sassman, *Cases as Fictions: Clinical Methods in Teaching and Scholarship*, 4 SAVANNAH L. REV. 95, 107 (2017) (describing clinical methods for teaching legal doctrine as "analysis [that] starts with the client's goals and moves outward to what legal tools are available in the doctrine. The availability of a specific legal tool is dependent on the presence of both the fictional client's need and the necessary contextual facts.")

[21] *Available at* https://www.law.nyu.edu/node/29418 [hereinafter Experiential Learning Lab]. The Lawyering Method builds on the multiple intelligence work of researchers such as Howard Gardner. It presupposes that excellence in law practice requires a range of

Article is structured with the four Lawyering Method elements as a sort of exoskeleton: Setting Goals; Interpreting Facts; Interpreting Rules; and Managing Interactions.[22]

Thus each of the first four sections of the Article begins by envisioning a slice of what students are working on for the client problem. For each Lawyering Element the piece then moves in two parts:

1. First, I use the Lawyering Element comparatively literally. That is, to consider what this particular class segment requires the student-lawyers to do, and through that work, what students learn about that element. For each illustrative vignette, this section seeks to elucidate and deconstruct what the students are doing/learning through their work.

2. Next, in light of each vignette, I use the Lawyering Element more conceptually (and to be honest, far more loosely) as a vantage point for small portions of faculty reflection about the student learning experience.

   To summarize, I ask in turn: What are **Goals** for this class, and also overall goals for educating lawyers? What do the **Facts** tell us about what we believe developing lawyers must learn, the current realities of legal pedagogy, and the limitations of time and built-in incentives in law teaching? What are the core **Rules** of family law, and of the social/cultural constructions of family that students encountering the subject must come away comprehending? Also, what are the internal and external rules that govern current legal pedagogy, what policies and assumptions underlie them, and ideally how should they affect our pedagogy going forward? And finally, what are the nuts and bolts of how we **Manage Interactions** among clients, colleagues, and students, for courses like these? What are the logistics of who does what in the course? And in a world of limited resources and debates

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intellectual, interpersonal and emotional skills. Refinements in defining the Lawyering Method were developed as a collective effort combining the thinking leading scholars across an array of disciplines including Anthony G. Amsterdam (law), Jerome Bruner (psychology), and Carol Gilligan (psychology), as well as dozens of thoughtful participants in the NYU Lawyering Theory Colloquium and the NYU Lawyering Program Workways pedagogy working group.

[22] I adopt this particular framework because it is uncomplicated, well-considered, and comparatively indisputable. But its ease can also be misleading: many of these elements bleed into one another far more than this list implies. That can be seen throughout this Article, where part of what I consider as "facts" might also be examined through the lens of "goals," and so forth. But however imperfect or loosely-metaphorical a structure it provides, having some form of external organization principle is far more useful than having none.

about directions for legal education more generally, what are the ramifications for more widespread use of immersive methodologies?

## I. SETTING GOALS

*Student A: So, here's one issue we all seem to be agreed upon: we're going to recommend that we represent only Frankie, not Frankie and Saanvi together. Even if it's technically ethical, it seems like there's too much potential for conflict of interest, especially with what we know about their different finances.*

*Student B: That makes sense.*

*Student C: Yeah, I agree.*

*Student A: So if that's the case, we still need to clarify what we know and maybe do research to find out more about what we want to advise Frankie to do in terms of her relationship with Saanvi.*

*Student B: But how much research do we really want to bill Frankie for if it's simplest and safest for them just to get married? My bet is that that's what they'll end up doing anyway.*

*Student C: Fair enough, but we know that Frankie is still pretty ambivalent about getting married. Shouldn't we at least find out more about the kinds of documents they'd need to get close to the protections they would have from marriage? At the same time, we also know that it's more expensive and time-consuming and might not provide the same protections in the long run…*

*Student A (interrupting): Does anyone know what those documents are or how close they get you? I know I don't, and we are going to have to spend some time looking into it.*

*Student B: My sense is that that's Frankie's decision, not ours. Let's present her with the various options and see which one she goes for.*

*Student A: And there's the added complication if they do end up having children, which she has mentioned to us more than once. We have to present Frankie with two scenarios here. One with kids and the other without.*

> *Student C: So really one decision leads to the next decision leads to the next. We are going to have to help walk her through all of them, kind of like a flow chart.*
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> *Student A: That makes sense. So let's make a list of all the research we need to do and start to divide up the tasks.*

### *A. Students/Lawyers: Understanding their Roles and Goals*

So far, so good. Our student-lawyers seem to understand that they cannot begin their work without a plan, and they seem roughly to have formulated one. They have actually accomplished quite a complicated array of lawyering tasks pretty efficiently, so it will be helpful to unpack them.[23]

The student-lawyers' first objective was to determine whom to represent. This predicate question raises immediate issues of professional ethics, values and interests.[24] To reach the conclusion they do, the students must have read Rule 1.7 on conflicts of interest[25] and they should have considered commentary from family law practitioners about collective vs. individual representation.[26] They had to weigh the possibility of diverging interests between their proposed clients Frankie and Saanvi against the added inconvenience and expense for the couple of having each party represented separately.

The students' choice to represent only Frankie is probably a wise one, and will merit further exploration in class. Both partners may have complementary goals for the moment, but there is no guarantee that that will always remain true: families are complicated, and on any number of issues what's good for one partner may not remain equally advantageous for the other. It is not uncommon, though, for couples in the giddy throes of romance to have a difficult time envisioning a future that includes familial conflict, which is precisely why it is part of the family lawyer's job to introduce the

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[23] Though the examination that follows just scratches the surface.

[24] Thus also immediately intertwining the ethical and professional exploration with doctrinal learning.

[25] AMERICAN BAR ASSOCIATION, MODEL RULES OF PROFESSIONAL CONFLICT, Rule 1.7: Conflict of Interest: Current Clients, *available at* https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_7_conflict_of_interest_current_clients/.

[26] *See* Nancy R. Schembri, *Prenuptial Agreements and the Significance of Independent Counsel*, 17 J. CIV. RTS. & ECON. DEV. 313 (2003). *See also*, Steven H. Hobbs, *Family Matters: Non-Waivable Conflicts of Interest in Family Law*, 22 SEATTLE U. L. REV. 57 (1998) (considering matters in which representation cannot or should not be joint); *but cf.*, Elizabeth Carter, *Rethinking Premarital Agreements: A Collaborative Approac*h, 46 N. MEX. L. REV. 354 (2016) (arguing forcefully in favor of collaborative premarital contracts in which intended spouses retain shared counsel).

possibility.[27] Already, our student-lawyers are confronting the extent to which sensitive and very emotional factors intersect with doctrinal ones in family law—perhaps not entirely distinctly from the way similar questions arise in other areas of law, but unusually pervasively and prominently in family representation.[28]

With the matter of who they will represent resolved, our student-lawyers move onto their client's primary presenting question: what are the legal consequences if she weds her partner, and what legal protections could her family avail itself of if they choose not to marry? To consider the dimensions of this question the student-lawyers will have to work on "goal setting" both with respect to clarifying the client's objectives and to their own work plans. Let's briefly consider each in turn.

From the short dialogue excerpted in our vignette it is not immediately apparent exactly what the client's goals are. We know she is undecided about getting married (do we really know why? does she?).[29] Is she seeking legal information to guide her in making what is ultimately an intensely personal decision? Is one of the partners more inclined toward marriage than the other and hoping that legal counsel will be persuasive in a given direction? Or is this perhaps instead a purely pragmatic inquiry for Frankie, to figure out from a legal perspective exactly what benefits, privileges, and obligations marriage transmits so she can make a more informed decision?[30] How does the possibility of introducing a child into the family factor in? To put a finer point on it, is the client's goal purely gathering information from her lawyers, or does she want guidance and possibly additional legal work in order to secure the maximum possible legal protection for herself and her family?

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[27] *See* Christine Fletcher, *10 Things You Need to Know About Prenups*, FORBES (Sep. 18, 2018) *available at* https://www.forbes.com/sites/christinefletcher/2018/09/18/10-things-you-need-to-know-about-prenups/#2118bc9662ba (urging readers to "hope for the best, but plan for the worst").

[28] A point frequently made in casebook-driven family law courses as well. *See, e.g.*, DOUGLAS E. ABRAMS, NAOMI R. CAHN, CATHERINE J. ROSS, DAVID D. MAYER & LINDA C. MCCLAIN, CONTEMPORARY FAMILY LAW 3 (4th ed. 2015) (pointing out to family law students that the subject is "rich in human challenges and emotions"). But perhaps not quite so viscerally encountered by its students?

[29] This is one of the places where Davis and Davenport's insightful decision to set the simulation in the context especially pays off. In theory any couple could be asking such questions about whether they would or should get married. Yet it makes far more sense for a lesbian couple living in a time when same-sex marriage has only recently become universally available in the U.S. to be unusually thoughtful about marriage's ramifications.

[30] Analyzing the impact of the Defense of Marriage Act prohibiting federal recognition of same-sex marriages, the Governmental Accountability Office (GAO) identified 1138 statutory provisions in the United States Code that accorded rights and privileges on the basis of marital status. *Defense of Marriage Act: Update to the 1997 Report – 2004*, *available at* https://www.gao.gov/new.items/d04353r.pdf.

At this point the student-lawyers do not necessarily know the answers to those questions,[31] but already they know enough to begin to think about them. It is suggestive that Frankie is asking these questions of an attorney in the first place. After all, how frequent is it that a key stop for long-term committed partners deciding whether to marry involves extended consultation with *lawyers*? The students may conclude that this decision by the client is a simulation artificiality introduced to provide an opportunity for them to explore the question: why legal marriage? I would nevertheless invite them to respond realistically to everything in their simulation,[32] and to try to use the oddness of the circumstances to complicate or sharpen their understanding of their client's goals. Here that query could lead the students to be somewhat skeptical of their client's actual desire for marriage. It could also lead to an examination of the client's specific social context. Her lawyers know that she has come of age in a world where legal marriage was not an available option for her relationship.[33] They might be prompted to want to learn more about Frankie's hesitancy, and whether the recent(ish) legalization of same-sex marriage has some personal, familial, or cultural implications for Frankie that they are not fully aware of.[34] That inquiry in turn might be helpful in aiding Frankie to further clarify and then meet her goals in consulting her attorneys.

Notice, then, that on the client's behalf our student-lawyers' careful attention to her goals neatly epitomizes the description of the goal-setting element as elucidated in the Lawyering Method, which affirms that lawyers "must hear or propose explicit goals, identify implicit goals, and balance both

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[31] It may be that Frankie is not fully certain herself.

[32] My practice in simulation teaching is never to change what "clients" (often outside volunteers or paid actors) say or do, but instead to try to find a way to understand their conduct as part of their characters. Students sometimes comment on the effectiveness of those "playing" their clients, which usually prompts me to look slightly puzzled and profess not to be acquainted with the word "actor." But even this fairly rigid approach to realism still leaves room for faculty intervention when needed. We can always use in-role devices like faculty-drafted emails from clients, etc. to add or correct facts that are crucial to the students' progress in the case.

[33] A history which led to a great deal of confusion about the legal status of pre-*Obergefell* same-sex relationships. *See* Michael J. Higdon, *While They Waited: Pre-Obergefell Lives and the Law of Nonmarriage*, 128 YALE L. J. FORUM, 1 (2019).

[34] As the students will learn, Frankie is in fact experiencing a good deal of resistance to the "institutionalizing" of her relationship. Some of it stems from feminist critique of marriage itself, and some from an unwillingness to grant what has traditionally been a hostile state the power to define the private relationship she cherishes. For background underlying such considerations see Paula Ettelbrick, *Since When is Marriage a Path to Liberation?*, 6 OUT/LOOK 14, (1989); Katherine Franke, *Same-Sex Marriage is a Mixed Blessing*, NY TIMES, June 23, 2011, *available at* https://www.nytimes.com/2011/06/24/opinion/24franke.html?mtrref=www.google.com&gwh=0B7DB08E40BF752B6DCF9FA9D119DC7F&gwt.

against judgments about the [client's] interests…."[35]

Notice, too, that the vignette leaves off at exactly the point where the student-lawyers begin to establish goals for their own work on this portion of the case. Presumably in the next segment of their conversation the student-lawyers will distill what they need to find out, and then they will begin their research. The effectiveness of that research can be evaluated in the next section of the course when the students will meet with Frankie to review her options. And both the efficacy and efficiency of the research goals and paths will be subject to critical examination, consistent with immersion methodology.[36]

Having identified several possible client objectives and determined that they will treat them essentially as options along a decision tree that they will present when they next meet with their client, our student-lawyers begin to enumerate their research tasks. The student-lawyers' "flowchart" idea is a rather astute plan. It shows a genuinely sophisticated understanding of the counseling work they are preparing for, in that they seem to grasp the contingent nature of client decision-making.[37] The students also seem intuitively to discern that they can best help their client make a decision about marriage—her stated primary goal—by outlining both best- and worst-case protections for the client's family in marital and non-marital scenarios.[38] That perception in turn branches into their plans for further investigation of the kinds of private documents attorneys can provide to their clients to afford at least some of the protections automatically conferred by marriage.[39]

Family law practitioners and professors would further be pleased to see that these students immediately comprehend how much the marriage/not

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[35] Experiential Learning Lab *supra* note ___.

[36] One of the benefits of an experiential immersion course is that researchers can pretty easily identify the successes and breakdowns in their research goals when they turn to use what they have found. In addition to evaluating their efficacy in setting their research goals I further ask students to look critically at their own efficiency in finding the information they sought. Repeating those two lines of critique—completeness and time investment—for all research work in the course helps delineate for students what the broad goals of research should always be. It also helps them teach themselves to refine their research paths within family law-specific material.

[37] *See* Alexander Scherr, *Lawyers and Decisions: A Model of Practical Judgment*, 47 VILL. L. REV. 161, 265-69 (2002) (considering the professional anxiety lawyers may experience from the limitations of their advisory roles, and "not having the final say in legal decisions" that they must in the end leave up to their clients).

[38] Meaning that they will have to look closely at questions of who can marry whom and by what means, as well as what marriage permits and what it requires. This should lead them next to study such issues as financial support obligations within marriage, property ownership status, healthcare access and determination, legal expectations (or not) of fidelity,

[39] Meaning that they will have to learn something about common estate-planning instruments such as powers of attorney, health proxies, and designations of conservatorship.

decision changes with the possibility of children. This is true both because the issues become more complicated[40] and the stakes may become so much higher.[41] Most practitioners would probably also be delighted to have their junior lawyers be at least passingly aware of billing matters and proportionality in regard to legal work.

So our vignette suggests that the students have a lot on their plates even in this beginning stage of the simulation. But so far they do seem eager and equipped to handle it.

### *B. Professors/Case Supervisors: Establishing Achievable Goals for Integrated Learning*

What are the educational goals of this introductory segment of the immersion family law course?

Well first, to learn some family law.[42]

In all of our immersive family law courses this means developing a core understanding of the rules of law pertaining to the clients' problems. Since my course is intended as an introduction to family equivalent to a more traditionally-taught casebook courses it additionally means that the legal principles studied should be consistent with those usually learned in any standard family law class. In an immersion class, though, we do mean "learn law" far more multi-dimensionally than may be true in traditional casebook courses. Yet we firmly believe that students also leave the class with at least as solid an understanding of the legal principles they have studied as they would have gained in a casebook-driven class.

For this proposition we can turn to the reflections on experiential learning that abound in the legal pedagogy literature.[43] To support the notion that learning by doing helps students master fundamental concepts we can turn to

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[40] Particularly given the biological reality that in the lesbian client's scenario no child will be the direct biological descendant of both parents, which inevitably raises a host of legal issues pertaining either to assisted reproduction or to adoption. *See* Elizabeth A. Harris, *Same-Sex Parents Still Face Legal Complications*, N.Y. TIMES, June 20, 2017, *available at* https://www.nytimes.com/2017/06/20/us/gay-pride-lgbtq-same-sex-parents.html.

[41] Kris Franklin, *"A Family Like Any Other Family:" Alternative Methods of Defining Family in Law*, 18 REV. L. & SOC. CHANGE 1027, 1073-76 (1990-91) (considering nontraditional means of providing legal recognition for familial ties, and concluding that workable schemes were far more straightforward to construct for relations among adults than between adults and their children).

[42] Because at least my own version of *Family Law in Practice* is intended to be a reasonably comprehensive survey of common family law doctrine, I will have to ensure that students encounter in broad strokes most of the topics generally introduced in a basic family law course. Discussed further *infra* at ___.

[43] *See* Jennifer E. Spreng, *Spirals and Schemas: How Integrated Courses in Law School Create Higher-Order Thinkers and Problem Solvers*, 37 U. LAVERNE L. REV. 37, 43-50 (2015).

other scholars' examinations of the embedded learning in other disciplines: Bob Moses's concretized teaching of positive and negative numbers by riding public transit, for example,[44] or Aaron Pallas's introduction to statistics methodology through group exploration of what it truly means for a number to be in the "middle" of a data set.[45]

This kind of learning embodies what educational theorist Eleanor Duckworth deems "critical exploration."[46] Duckworth's own research is centered in primary education, and she grounds her theories in the earlier thinking of Jean Piaget and Bärbel Inhelder.[47] Through examples of puzzles and projects that enable children to explore science, mathematics, spelling, and other basic educational topics, though, her work is universalized beyond child development. Moreover it neatly anticipates the kinds of learning that adult law students do in immersion courses. As Duckworth relates, she is "convinced that people must construct their own knowledge and must assimilate new experiences in ways that make sense to them…. [M]ore often than not, simply telling students what we want them to know leaves them cold."[48] Duckworth's observation helps make it clear exactly why immersion—designed learning by doing—permits "learning law" much more meaningfully than casebook courses typically foster. The student-lawyers' empathy for their clients, and simultaneous interest in their own experience working on the problems the clients present, give abstract operation of legal rules real context in precisely the way that Socratic hypotheticals aim for[49] but too rarely achieve.[50]

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[44] Detailed at length in ROBERT P. MOSES & CHARLES E. COBB, JR., CIVIL RIGHTS FROM MISSISSIPPI TO THE ALGEBRA PROJECT (2002).

[45] PALLAS, AARON M., & ANNA NEUMANN, CONVERGENT TEACHING: TOOLS TO SPARK DEEPER LEARNING IN COLLEGE 69-77 (2019) [hereinafter CONVERGENT TEACHING]. For further examples see Mary Kay Delany's introduction to epistemology in high school social studies through examination of policies and perceptions of President Ronald Reagan. *Understanding the Presidency*, *in* "TELL ME MORE": LISTENING TO LEARNERS EXPLAIN, 125 (Eleanor Duckworth, ed. 1987).

[46] ELEANOR DUCKWORTH, "THE HAVING OF WONDERFUL IDEAS" AND OTHER ESSAYS ON TEACHING AND LEARNING, 140 (2006).

[47] *Id*. at 1-5, 15-16, 38-40.

[48] *Id*. at 173.

[49] For a thoughtful endorsement of the continuing value of well-considered Socratic case dialogue see Michal T. Gibson, *A Critique of Best Practices in Legal Education: Five Things All Law Professors Should Know*, 42 U. BALT. L. REV. 1, 30-61 (2012).

[50] Especially for all students equally. The nature of Socratic dialogue as it usually functions in the casebook law classroom tends to involve a solitary interlocutor conversing with one or only a very few students at a time. In theory all other students/observers are thoroughly engaged in critically considering both sides of this discourse, but it seems doubtful that those who are not part of the exchange remain attentively and fully engrossed at every moment. Jeremiah A. Ho, *Function, Form, and Strawberries: Subverting Langdell*, 64 J. LEGAL EDUC. 656, 658-70 (2015).

Current learning theory may provide additional explanation for the unique value of immersive learning: it is frankly more complicated and more challenging. Scholars can debate the merits of complexity at various points in educational curricula (they have!),[51] but there is little doubt that if we want to teach complicated things (we do!)[52] at some point or other we will need to teach things in a way that is… complicated. With respect to retention of material learned[53] psychologists even have a name for the effect of what they call "desirable difficulty."[54] We know that the harder human brains work to retrieve information the more strongly it is stored, and the more effortlessly it is retrieved later on.[55] It accordingly makes sense that so-called "effortful" learning has been found to be less superficial and more long-lasting.[56] So if learning of legal doctrine takes place in an immersive setting, and the immersion experience is more demanding, the body of current learning science should suggest at the very least that mastery of the rules should be more complete and more long-lasting.

Some may wonder whether learning legal rules by immersion actually *is* harder than learning them in casebook courses.[57] When it comes to the kind of curated experiences fictionalized in simulations, writers have suggested

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[51] *See* COMPLEXITY IN EDUCATION: FROM HORROR TO PASSION (Cok Bakker & Nicolina Montesano Montessori, eds. 2016).

[52] All law teachers must impart deep knowledge of intricate legal rules and exceptions, all while we are concurrently and *always* aiming to further refine the ineffable complexities of "thinking like a lawyer."

[53] Which differs from initial mastery of concepts and skills, but is of course closely adjacent.

[54] Robert A. Bjork & Elizabeth Ligon Bjork, *A New Theory of Disuse and an Old Theory of Stimulus Fluctuation*, in 2 FROM LEARNING PROCESSES TO COGNITIVE PROCESSES 35 (Alice F. Healy et al., eds., 1992).

[55] *See generally*, PETER C. BROWN, HENRY L. ROEDIGER III & MARK A. MCDANIEL, MAKE IT STICK: THE SCIENCE OF SUCCESSFUL LEARNING 67-101 (2014) (urging that for greater learning we should "embrace difficulties" and that "easier isn't better").

[56] Elizabeth Ligon Bjork & Robert A. Bjork, *Making Things Hard on Yourself, But in a Good Way: Creating Desirable Difficulties to Enhance Learning*, in PSYCHOLOGY AND THE REAL WORLD: ESSAYS ILLUSTRATING FUNDAMENTAL CONTRIBUTIONS TO SOCIETY 56 (Morton Ann Gernsbacher et al., eds., 2009)

[57] And I suppose some might suggest that the stress of traditional cold-calling in many casebook-driven law classes is itself *difficult*. I'm quite sure it is, but I doubt that is precisely the kind of difficulty that the researchers had in mind for enhancing comprehension and recall.

that they tend to be "simpler"[58] or at least insufficiently "messy."[59] I do not agree that simulations by their very nature must be comparatively uncomplicated.[60] Quite the contrary, in fact, in the sense that they bring together so many dimensions of what we mean by "law." And when considering only the narrow category of learning established black letter rules, it is hard to see how there can be substantial variation in difficulty whether those rules are learned in practical context rather compared to a more traditional case reading.

But even though learning legal doctrine is absolutely central to the overarching goal to "learn some family law," what we mean by that is also more ambitious than just mastery of statutes, cases, or concepts. Legal doctrine does not exist for its own sake—it is developed in the context of real human problems. Understanding how the law operates for the people who encounter it is part of truly comprehending what it is, and why it is that way. That's how law students and lawyers move from "knowing" the law (being able to recap legal principles) to thoroughly *knowing* it (having thought deeply enough about legal principles to exercise good judgment about when they apply and predict how they might shift in new circumstances).

Moreover, immersion teachers and our students include within the "learning law" umbrella a family-law-specific examination of client interviewing, counseling, research, advocacy, ethical questions and values inquiries, along with the rest of the extended list of the professional undertakings of lawyers. In so doing, we also take on the many goals of experiential education enumerated by Deborah Maranville and her colleagues: understanding unequal social structures, advancing social justice, developing lawyering skills, cultivating professional identity, fostering professional ethics, providing culturally competent client representation to a diverse array of clients, developing sound judgment and problem-solving

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[58] *See, e.g.*, Jay M. Feinman, *Simulations: An Introduction*, 45 J. LEGAL EDUC. 469 470 (1995) (characterizing simulations as "more complex than doctrinal hypos, but lacking the intense reality of a live-client experience"), or *Myths and Misconceptions*, *supra* note ___ at 32 (contending that simulations "necessarily simplify the factual and interpersonal complexity of actual lawyering). *See also* Margaret Moore Jackson, *From Seminar to Simulation: Wading Out to the Third Wave*, 19 J. GENDER RACE & JUST. 127, 138-39 (2016) (describing "what simulation teaching may do less well").

[59] Comments attributed to Dean Erwin Chermerinsky of U.C. Irvine, quoted in *No More Casebooks*, *supra* note ___ at 706.

[60] It certainly helps in creating rich and deeply realistically complex characters and situations to have the unique contributions of a talented playwright like Danielle Davenport. Legal educators could probably gain a lot from more widespread cross-pollination with creative disciplines. Yet as enormously valuable as Davenport's collaboration was for our particular immersion courses, I do not think finding non-legal contributors is a sine qua non, and the absence of such a collaborator should not be a barrier to immersion for law professors working on their own.

abilities, gaining insight into law and the legal system, promoting lifelong learning, and learning to work collaboratively.[61] In short, our goal of learning law is as expansive as the meaning of the word itself.

One immediate example is the student-lawyers' insight into the "flowchart nature" of their impending client counseling session that I have already praised. An overarching goal of legal education is helping law students understand and develop skills for their role in helping clients solve problems.[62] The progressive nature of the various decisions their client will have to make and the information she needs to make her choices almost force the student-lawyers to become more thoughtful about the interrelationship between legal information and client decision-making. One goal down, and certainly plenty of other examples can be found.

Once we have established "learning some family law" in an intricate and multi-faceted way as our encompassing teaching objective, it may be helpful to consider some of the logistical details involved in trying to meet those objectives.

We find that many of our approaches are consistent with those outlined by other law teachers reflecting on their simulation-based coursework, so there is no need to rehash what has been amply communicated by so many colleagues. Instead then, I outline here several of the operational decisions that seem not to have been adopted by others, or are at least not fleshed out in other published works.

The first is the strategic use of structured team-based research assignments. In my course students organize themselves into teams of three or at most four student-lawyers, and once the teams are formed they are chunked into groupings designated A, B and C.[63] It is not unusual in experiential law classes to have students work in teams (often dubbed "law

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[61] Deborah Maranville, Mary A. Lynch, Susan L. Kay, Phyllis Goldfarb & Russell Engler, *Re-Vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*, 56 N.Y. L. SCH. L. REV. 517, 527 (2011/2012).

[62] A prodigious volume of writing directed at law students, and about the profession generally, focuses on the modern attorney's primary responsibility to serve as a "problem solver" for clients. For just one prominent example, see Carrie Menkel-Meadow, *When Winning Isn't Everything, the Lawyer as Problem Solver*, 28 HOFSTRA L. REV. 905 (2000). Perhaps this also explains the common law school graduation gift of a mug emblazoned with *Lawyer: Because Badass Problem Solver is not an Official Job Title*.

[63] The idea of dividing teams into groupings and assigning differing preparations emphases was originated by Peggy Cooper Davis in her version of the course. My specific research assignments and focuses diverge from hers due to the differing nature of our courses, but I was happy to adopt her effective and efficient approach.

firms"[64]). And there are tremendous advantages to learning in teams,[65] not the least of which is that knowing how to work collaboratively has frequently been identified as a crucial skill within the legal profession and beyond.[66]

An innovation in our particular immersion classes is to use the differing letter designations to manage workload and to more comprehensively exemplify the kinds of inquiries expected of attorneys by frequently posing differing—albeit occasionally overlapping—research preparation assignments to differently-lettered teams. For example, after meeting the client and planning their work as shown in our vignette, my own students would begin with some background reading that the partner in their firm would provide (e.g., *Obergefell v. Hodges*[67]) and would then consider a more focused question depending on their team's designation, such as:

A. Who is eligible to be married in our state, and what procedures does the jurisdiction require?

B. Does our state recognize domestic partnerships, and if so how are they similar to or dissimilar from legal marriage?

C. What is common law marriage, does our state recognize it, and is there any possibility our client already has one?

In class meetings, student teams can report on their own research, ensure that their findings and analysis were consistent with other teams sharing their letter designation, and ask questions of groups that focused in other areas. Divvying up the questions this way serves one faculty goal of ensuring that all of these topics are considered, and another faculty goal of exposing all students to many topics without ending up spending too much time on any

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[64] *E.g. No More Casebooks*, *supra* note ___ at 702. Forming student working groups called law firms is a pretty widespread practice in many classrooms. *See*, *e.g.*, Robert G. Vaugh, *Use of Simulations in a First-year Civil Procedure Class*, 45 J. LEGAL EDUC. 480, 481 91995); Lloyd B. Snyder, *Teaching Students How to Practice Law: A Simulation Course in Pretrial Practice*, 45 J. LEGAL EDUC. 513, 515 (1995).

[65] In fact, there are well-developed theories of best practices for team-based learning that have been employed in other disciplines for decades, and used effective in law classrooms for some time. *See* Sophie M. Sparrow & Margaret Sova McCabe, *Team-Based learning in Law*, 18 J. LEGAL WRITING INST. 153 (2012). Since it has a different structure and design I cannot claim that my course fully follows all of the systems identified as components for effective "team-based learning." Perhaps, then, that designation does not fully fit the pedagogy of my class. Nonetheless our objectives and procedures are similar (and I hope complementary) so whether or not *Family Law in Practice* is considered a "team-based learning course," it is certain that there is significant learning both within and about functioning professional teams.

[66] *See* BEST PRACTICES, *supra* note ___ at 77; Sophie M. Sparrow, *Can They Work Well on a Team?*, 38 WM. MITCHELL L. REV. 1162, 1162-64 (2012) (considering the strong desire in the legal profession for law graduates who are well-prepared to function as effective team members).

[67] 135 S. Ct. 2584 (2015).

one of them.[68] Since several teams share the same letter designation and therefore the same assignments they can compare their work with others, so that collectively the class has achieved some specialization, coverage, and contrast for self-critique, all without unhelpful duplication of student effort.

Yet another difference from most casebook courses (and many clinical ones) is my insistence that students reflect explicitly and critically on their research paths.[69] Self-reflection is quite naturally a key component of any immersive learning. It may be the singular hallmark of what law professors consider "clinical method."[70] It is therefore frequent in clinical education that students are asked to be thoughtfully reflective about their lawyering interactions such as meetings with clients or witnesses, their appearances in court or at hearings, and so on. But there are fewer opportunities in law school for budding lawyers to turn their attention directly to surveying and improving their own research work and learning processes. That's a shame. An entire body of literature on the value of metacognition suggests that the more students are conscious of how they are learning, the more effective learners they will become.[71]

## II. INTERPRETING FACTS

> *Student B: That was a* really *productive meeting with Frankie!*
>
> *Student C: Yeah, I feel like we have a much clearer direction to go in now.*
>
> *Student A (jumping in): Sure, we have a better sense of what our tasks are and what she is saying she would want. I mean, obviously we're going to need to know a lot more about property ownership, mortgages, taxes, and so on. But did anyone else feel like Frankie wasn't being super-realistic about the financial considerations in their relationship? It seemed to me Frankie had a hard time*

[68] Even though this particular example does not show it, it is common for one of the pre-assigned questions to be about lawyering process, such as "How should an excellent attorney conduct this initial client meeting?" That meets the dual goals of creating an opportunity to be explicit in learning/reviewing key lawyering skills, and of making that project seem equal in significance to learning about the legal rules governing the problem. It is my habit to rotate letter assignments so that the more process-oriented questions move around to differently-designated teams.

[69] Discussed *supra*, note ___ and accompanying text.

[70] CLINICAL PEDAGOGY, *supra* note ___ at 23-24.

[71] *See, generally*, HOW PEOPLE LEARN, *supra* note ____ at 47-48; MICHAEL HUNTER SCHWARTZ & PAULA J. MANNING, EXPERT LEARNING FOR LAW STUDENTS (3d ed. 2018) (applying metacognitive techniques to law student learning).

*acknowledging quite how dependent their lives are on Saanvi's income and assets, which are so much greater than hers.*

*Student C: That's true. I think she doesn't think about—or doesn't want to think about—how much their comparative finances have changed. She was fine sharing expenses early in their relationship when she had more money but neither of them had very much, but now that Saanvi has a* lot *of money it seems like she is more reluctant to consider everything they have as joint.*

*Student B: I actually really admire Frankie for wanting to feel like Saanvi's financial equal, but it's scaring me in terms of writing a prenup.*

*Student A: Yes. I am certainly glad we're the ones writing the first draft, not Saanvi's lawyers! But I feel pretty torn here between our obligations to look out for Frankie's best interests, and on the other hand to draft this document the way she has suggested she wants.*

*Student C: I know! Frankie's not necessarily looking out for her own best interests.*

*Student A: Do you think she was thinking aloud, or that she definitely meant what she said about all of the stuff that's in Saanvi's name staying that way? My sense is that without a premarital agreement, if they were to get divorced somewhere down the line Frankie would be entitled to a lot more. I don't think she has really thought through what it would be like if they ever broke up.*

*Student C: We'd have to know a lot more about what a divorce would look like in our state without a prenup, and how stuff would get divided, before we can think through the options and terms we should present to Frankie.*

*Student B: By the way, have either of you drafted a prenup before? I know I haven't, and I don't really know where to start.*

### *A. Students/Lawyers: Defining Facts Needed to Complete a Task*

From this new vignette it is apparent that our student-lawyers are now presented with a clearly defined lawyering task. We learn that they are preparing to draft a prenuptial agreement, which suggests that the client has

decided to legally marry.[72] The vignette also establishes that the partners, probably acting wisely upon advice of counsel, plan to consider ways to address some significant differences in their assets and income before they wed.

The next steps for the student-lawyers would seem to be:

1. Finding out as much as possible about both Frankie's and Saanvi's current earnings and property;
2. Learning more about both partners' careers, investments and family backgrounds, so that to the extent possible their individual and joint assets can be projected to the future;
3. Gathering information about wealth- and estate- planning, including how federal and state taxation would treat the family currently and whether there are more advantageous ways for them to structure their money;
4. Familiarizing themselves with the marital property dissolution scheme in their state to contrast it with whatever premarital agreement(s) might be on the table;
5. Drafting a prenuptial contract that would protect Frankie's economic interests in the case of a divorce; and finally,
6. Presenting that draft agreement (or perhaps several alternative approaches to a possible agreement) to Frankie in a meeting in which the attorneys explain their concerns about her financial security and then seek to implement her decisions.

Steps 3 and 4 fall squarely within the category of understanding and using legal rules, step 6 pretty clearly involves a great deal of "managing interactions," and step 5 probably combines the two. This segment of the Article concerns itself primarily with the fact-gathering required to begin the work at hand.

So exactly what facts do the student-lawyers need to perform their work, and how will they get them? Legal work is always intensely fact-bound, but in what ways—and where those facts come from—can differ enormously.[73] Advocacy settings, for example, pose the unique complexity of necessitating both the most objective read available and the ultimate need for creative structuring of the most favorable slant possible in the circumstances.[74] For

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[72] Lawyers for Frankie should at least consider the outside possibility that both the client and her partner could be using the term "pre-nuptial" colloquially, and that they are seeking a relationship contract but have no immediate plans to legally wed. But that seems unlikely, and it is probably safe to assume that Frankie and Saanvi want to get married.

[73] *See* W. Bradley Wendel, *Whose Truth? Objective and Subjective Perspectives on Truthfulness in Advocacy*, 28 YALE J. LAW & HUM. 105 (2016).

[74] As the Lawyering Elements explain, interpreting facts is rarely a simple matter, "for facts are rarely certain and always subject to varying interpretations." Experiential Learning

less-contested legal work[75] like the planning documents sought here the assembling of facts may be more linear, but it is never effortless. Because the matters we handle are *always* personally consequential, lawyers must work tirelessly to collect as much information about their clients' circumstances as they can.[76]

For crafting a prenuptial contract, the facts our family lawyers need to work with will almost all be based within their client's financial realities.[77] Personal issues are hard. And money questions are especially personal, therefore especially hard to talk about. We learn in the vignette that the student-lawyers have discovered there is a considerable disparity between their clients' fortune and her partner's. As well as, apparently, some touchiness around her feelings of dependency. This could make the fact gathering required in this situation unusually thorny. The student-lawyers will have to be thoughtful about what information they need and where they will get it, as well as being careful about how they deliver their inquiries.

Their first steps should be to go beyond the descriptive information available from conversations with their client and to seek to review as much documentary evidence as they can reasonably[78] obtain. That can provide more concrete and indisputable information than would be obtained orally, while simultaneously helping to circumvent the awkwardness of asking some questions in person. They may want to ask for bank statements, copies of W-2s or tax returns, mortgage papers, and so on.

What's particularly complicated is that it would be very helpful to see such materials for both Frankie *and* Saanvi. Yet not only is Saanvi not their client, she is represented by separate counsel. The student-lawyers now have both a client to gather information from[79] and someone who is essentially a

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Lab, *supra* note ___. *See also* § 13.4 *Developing a Unifying Theme* in STEFAN H. KRIEGER & RICHARD K. NEUMANN, JR., ESSENTIAL LAWYERING SKILLS 174-83 (4th ed. 2011 but probably not the most recent).

[75] One important distinction between legal counsel and advice from other kinds of professionals is that lawyers are trained always to operate within the shadow of potential litigation. Even in purely transactional work, lawyers are often taught to anticipate and mitigate risk in the eventuality of partnerships not working out. *See* STEPHEN L. SEPINUCK & JOHN FRANCIS HILSON, TRANSACTIONAL SKILLS: HOW TO STRUCTURE AND DOCUMENT A DEAL 6-11 (2015).

[76] As Mary Pat Treuthart exemplifies, teachers of family law courses routinely emphasize "the importance of listening, really listening, to what the client is saying, and not saying." *A Perspective on Teaching and Learning Family Law*, 75 UMKC L. REV. 1047, 1051 (2007).

[77] GARY N. SKOLOFF, RICHARD H. SINGER, JR. & RONALD L. BROWN, DRAFTING PRENUPTIAL AGREEMENTS, (2019 supp.).

[78] "Reasonable" meaning without being too intrusive, and without incurring unwarranted attorneys' fees in the process.

[79] Susan L. Turley contends that lawyers should always see interviewing clients (and

third-party (at least to *their* representation)[80] that they need to consult with. All while respecting that in seeking the information they need, they are wading into private matters between life partners. The attorneys will have to be savvy about assessing their priorities, and then they'll need to decide from whom and how they should ask for those materials.[81]

Now, assume for the moment that our student-lawyers were wildly successful in that project and somehow magically obtained every single piece of paper that they could possibly wish to get their hands on, and that they meticulously pored through them. Would they then have all the facts they needed? Hardly. At best this would only provide a slice of the present facts. Even those may be unclear or subject to interpretation.[82] Drafting planning documents like prenuptial agreements entails understanding the facts when the contract becomes operative—*i.e.*, at some undetermined possible point in the future. Future "facts" are not actually facts, they are speculation of possible scenarios that may unfold. But they are also the contingencies upon which the legal analysis to be done now (legal reasoning being at base the application of rules to facts), hinges. Or to put it differently, the efficacy of our lawyers' current drafting project depends on what the facts *will* become. Those can be anticipated but cannot yet be actually known.

For our student-lawyers, planning in this way will help solidify their grasp of the imaginative process that is so often a part of legal work with facts. Sometimes that imagination leads to creative avenues of investigation.[83] Sometimes it involves envisioning what is not currently established but might be true and then asking questions or collecting evidence to find out whether it actually is. Other times, as here, it involves wading into the vast chasm of uncertainty that lawyers' greatest challenge is to manage.[84] In many practice

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others) as a key tool of research for lawyers. I completely agree. *"To See Between": Interviewing as Legal Research Tool*, 7 J. ASS'N LEGAL WRITING DIRECTORS 283 (2010).

[80] Experts in interviewing emphasize the importance of "parallel universe" thinking when seeking to elicit information through conversation. *See* CLINICAL PEDAGOGY, *supra* note ___ at 258-59.

[81] Raising interesting complexities in managing interactions, and thus exposing how interconnected and overlapping the various Lawyering Elements actually are. *Supra* note ____.

[82] ANTHONY G. AMSTERDAM & JEROME BRUNER, MINDING THE LAW, 7 (2000).

[83] *See* Carrie Menkel-Meadow, *Aha? Is Creativity Possible in Problem Solving and Teachable in Legal Education?*, 6 HARV. NEGOT. L. REV. (2001). This is also undoubtedly why a law school text devoted to interviewing and counseling skills so heavily stresses maintaining an open perspective when working with clients. STEPHEN ELLMANN, et al. LAWYERS AND CLIENTS: CRITICAL ISSUES IN INTERVIEWING AND COUNSELING 16-17 (2009).

[84] CLINICAL PEDAGOGY, *supra* note ___, at 19-21, positions "improving capacities to manage uncertainty" as a central component of the third goal of all legal clinical education. *See also* ELIZABETH MERTZ, THE LANGUAGE OF LAW SCHOOL: LEARNING TO THINK LIKE A LAWYER, 66-67 (2007) (observing the "epistemological uncertainty" in which law students

circumstances, treating things that are not actually factual as contingent but potential "facts" is a necessary component of lawyers' thinking. Within a cautious profession predicated on trying to be correct, handling uncertainly is probably one of the hardest things new lawyers need to learn.[85] Nevertheless, our role as *counselors*-at-law frequently obliges us to give the best advice we can even about uncertain prospects. In short, to help clients manage a never-entirely-knowable present and a changeable future.

Turning back to the reality that they will probably never have every single piece of evidence they could ever hope to obtain,[86] the next key question for our student-lawyers will be: how will they know when they have done enough gathering and interpreting the facts in their case? Professors teaching students to conduct legal research frequently stress the need to find some ending point.[87] The difficulty of deciding that enough is enough extends equally to factual research. Lawyers need to become comfortable with probably overshooting their research targets to the point of repetition or diminishing returns just to ensure relative completeness, while also aiming to do so with as much economy of time as possible. That requires training and experience, which our student-lawyers are happily beginning to accrue.

### *B. Professors/Case Supervisors: Considering the Factual Context for Developing and Teaching an Immersive Course*

What are the "facts" of a sound legal education? That is to say, given an expectation of lifelong learning and refining expertise, what is it that we in the profession believe law graduates and new lawyers must have learned?

Clearly there is no single definitively-accepted answer to that question, hence the endless debates within the academy about curriculum, skills and values training, or subject matter knowledge—as well as the ongoing calls for transformational change that the Carnegie Report[88] and so many law

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begin to understand what attorneys mean by "facts.").

[85] See, for example, the extended dialogue intended to illustrate for law students the challenge and importance of operating in a "world full of wicked 'whiches'" in RICHARD MICHAEL FISCHL & JEREMEY PAUL, GETTING TO MAYBE: HOW TO EXCEL ON LAW SCHOOL EXAMS, 109-16 (1999).

[86] Really, how would they ever be able to know that for sure even if they did?

[87] Major legal research texts uniformly include advice on when to keep going and at what point to stop. *See*, *e.g.*, AMY E. SLOAN, BASIC LEGAL RESEARCH: TOOLS AND STRATEGIES, ___ (7th ed. 2018) (on "deciding when to stop"); CHRISTINA L. KUNZ, et al., THE PROCESS OF LEGAL RESEARCH, 10 (8th ed. 2012) (on "stopping").

[88] Published as WILLIAM M. SULLIVAN, ANN COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter, CARNEGIE REPORT]. Prior to that, related propositions about the need for at least som reform in legal education methods was put for the in the MacCrate Report. REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING

school critics recommend. As has already been noted, though, we do all seem to reconcile into a general concurrence that practice-ready law graduates must have a complementary balance of a basic knowledge of legal rules, sharp analytical skills, and meaningful introduction to many and varied tasks of the profession like reading, researching, writing, advocating, speaking persuasively, and working effectively both with other professionals and with clients.

Our vignette helps illustrate that immersive learning of legal doctrine embedded in context readily combines all of those components of preparing for a legal career.[89] Our student-lawyers have not yet studied the rules that govern the financial decisions their client must make, but they themselves recognize that they must learn about "property ownership, mortgages, taxes, and so on," as well as finding out about the marital property division rules operating in their state. Moreover, they seem to treat that legal knowledge in precisely the way law professors would want them to: as required baseline information which must then be applied to a specific factual context (that is, Frankie's).

It is not inconsequential, though, that these students have essentially *assigned themselves* the project of mastering this sometimes-dense material. A significant body of research shows that feelings of personal agency and autonomy can enhance learning.[90] Further work suggests the most common learning modes in traditional law school classes may interfere with student autonomy and self-efficacy,[91] while enhanced autonomy positively impacts both law student happiness and learning itself.[92]

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THE GAP (1992), *available at* https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report).authcheckdam.pdf.

[89] It even introduces the kinds of transactional planning work that some critics suggest is often underemphasized current legal education. For a summary of commentary on the need for more teaching of transactional skills in law schools, see Carol Goforth, *Transactional Skills Training Across the Curriculum*, 66 J. LEGAL EDUC. 904 (2017).

[90] Allison D. Martin & Kevin L. Rand, *The Future's So Bright I Gotta Wear Shades: Law School through the Lens of Hope*, 48 DUQ. L. REV. 203, 214-217 (2010); Carol L. Wallinger, *Autonomy Support 101: How Using Proven Autonomy Support Techniques Can Increase Law Student Autonomy, Engender Hope, and Improve Outcomes*, 48 DUQ. L. REV. 385, 396-98 (2010)

[91] *See* Larry Krieger & Kennon Sheldon, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCH. LAW 261, 262-67 (2004); *see also* Corie Rosen, *Creating the Optimistic Classroom: What Law Schools Can Learn from Attribution Style Effects*, 42 MCGEORGE L. REV. 319, 324 (2011) (locating destabilizing effects of legal education across types of courses and law schools).

[92] *See* Louis N. Schultz & A. Adam Ding, *Alternative Justifications for Academic Support III: An Empirical Analysis of the Impact of Academic Support and Humanizing Law School*, 38 OHIO N.U. L. REV. 999, 1002-11 (2012) (reviewing literature supporting the

Impressively, our student-lawyers easily blend their doctrinal questions with their intrapersonal ones: they know both that they must learn more about the areas of law they plan to research and that having that information will not alone be sufficient to resolve the client's current insistence on entirely separating her wealth from her betrothed's. These students' contextual legal work not only helps erase the doctrine/skills divide,[93] it may also enhance the transfer of learning from one setting to another.

Educational theorists use the term "transfer" to describe learning that takes place in one context being used in another.[94] Anyone who has ever taught, well… *anything*, probably recognizes the exceeding difficulty of helping learners transfer prior knowledge[95] to new settings, and of getting them to deploy it effectively. It could be argued that learning which is not transferred is not actually learned at all—otherwise, it would have been available for use in new circumstances. Researchers who study learning have found that a good way to increase transfer is to provide multiple opportunities for learners to practice applying what they are learning,[96] ideally in circumstances that will help them see the underlying functions of the matter (its "deep structure"[97]) rather than becoming fixated on surface-level commonalities or distinctions.[98] Immersion work automatically and of

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positive impact of greater student autonomy in law schools); Paula J. Manning, *Understanding the Impact of Inadequate Feedback: A Means to Reduce Law Student Psychological Distress, Increase Motivation, and Improve Learning Outcomes*, 43 CUMB. L. REV. 225, 229-33 (2013) (summarizing proven effects of self-determination and autonomy support on achievement).

[93] As Kristen Holmquist observes: "the result of drawing artificial boundaries between the cognitive and the practical is to limit what it means to think like a lawyer…" *Challenging Carnegie*, 61 J. LEGAL EDUC. 353, 365 (2012).

[94] HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL, 51 (John D. Bransford, Ann L. Brown, and Rodney R. Cocking, eds. 2000).

[95] The term "prior knowledge" has a specific and important meaning in educational theory. Students connect what they learn to things they already know, and research suggests that can often be a helpful scaffold to learning, but also sometimes a hindrance if the activated prior knowledge is insufficient or inappropriate. For a useful overview of research on prior knowledge in learning theory see SUSAN A. AMBROSE et al., HOW LEARNING WORKS: 7 RESEARCH-BASED PRINCIPLES FOR SMART TEACHING, 10-39 (2010).

[96] ROBERT E. HASKELL, TRANSFER OF LEARNING: COGNITION, INSTRUCTION AND REASONING 45-47 (2001).

[97] DANIEL T. WILLINGHAM, WHY DON'T STUDENTS LIKE SCHOOL?: A COGNITIVE SCIENTIST ANSWERS QUESTIONS ABOUT HOW THE MIND WORKS AND WHAT IT MEANS FOR THE CLASSROOM, 133-37 (2009) (observing that experts are able to transfer knowledge and think more abstractly than novices because they organize well-understood material much more conceptually).

[98] *See generally*, Mary Nicol Bowman & Lisa Brodoff, *Cracking Student Silos: Linking Legal Writing and Clinical Learning Through Transference*, 25 CLINICAL L. REV. 269, 280-81 (2019) (considering ways to facilitate transfer of skills between first-year legal writing classes and upper-level clinical courses).

necessity requires that kind of practice. It also pushes students toward higher-order thinking about the law at issue,[99] which likely generates the sort of deeper comprehension that is indispensable for transfer.

Meanwhile, in addition to considering the "facts" of what we want students to learn in law school, legal educators must also be cognizant of our own factual contexts. If many disparate scholars have suggested reforming legal education, and a wide variety of thinkers are already invested in integrative learning in law schools, what realities on the ground are preventing it from becoming more pervasive?

One certainly is the always-present limitation of time. No one ever has enough of it, and law professors are hardly immune from time constraints. There are few readily-available products that can immersively structure an entire semester-long or year-long inquiry into a subject in the way that more traditional casebooks do. So creating an immersion course currently requires a sizeable investment of time that creating a casebook-driven course may not.[100] Furthermore, the differential time investment may not end after a one-time investment in course design. Instead, immersive classes require ongoing supervision of student work, including review of students' planning, research, performance with clients and supervisors, and of course comments on their writing.

But there are ways to control at least some of the faculty workload in these courses. Having students work in teams, for example, fractionalizes the number of individual papers to be reviewed. Assigning students to reflect on some of their work processes, performances, and products—in addition to being a key practice for self-regulated learning—has the benefit of giving the faculty member a concrete summary and a sense of the students' own understanding of their work to concentrate their responses upon. Guidelines or rubrics can also be introduced to help faculty members streamline their feedback and maximize the information conveyed while reducing the time invested.[101] Moreover, as more and more law schools are encouraging or even requiring formative assessments that add to faculty workloads,[102] the

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[99] That is to say, toward the highest levels in Bloom's Taxonomy of *Evaluating*, or even *Creating*. This compares favorably to casebook learning of legal doctrine, which aims primarily at achieving the intermediate levels of *Applying* legal rules and *Analyzing* them in factual context, and despite the best intentions of its users may at times only accomplish the introductory cognition levels of *Remembering* or *Understanding* the rules introduced. BENJAMIN BLOOM, et al., TAXONOMY OF EDUCATIONAL OBJECTIVES: HANDBOOK 1, THE COGNITIVE DOMAIN (1956).

[100] Perhaps over time the legal academy or some external commercial enterprise may address that imbalance?

[101] *See, e.g.*, Sophie Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics – Explicit Grading Criteria*, 2004 MICH. ST. L. REV. 1.

[102] Olympia Duhart, *The 'F' Word: the Top Five Complaints (and Solutions) About*

distinction between the time commitments involved in immersive teaching and more traditional casebook teaching may be growing less distinct. Despite all of the many strategies that can make this kind of teaching manageable, though, there is no denying that it can be a lot of work. And there remains the unequivocal factual reality that for sheer logistical reasons, immersive class size must usually be smaller than it is in casebook lecture courses.[103] This is hopefully offset by the educational value for students and the unalloyed enjoyment it can offer faculty.

Another concern for many law faculty members is expertise. Or more accurately, a comfort with their own expertise (or their ability to develop it) with respect to the material of a subject they might teach, but discomfort with the limitless array of mastery that immersion learning entails. It's reasonable to recognize that few of us feel equally capable of teaching legal doctrine, reviewing legal writing, supervising students' interactions with clients and experts, commenting on their research strategies, and so on. And probably for good reason. There are decades of accreted wisdom to assimilate in every one of these fields. Yet law professors routinely take on the teaching of new subjects despite our not-yet-fully-developed proficiency in teaching them. We hope and expect that we will do reasonably well to begin with, and will get better over time. Too, are not most law professors already specialists in legal research, legal analysis and legal writing? Many have also practiced law in the areas in which they teach, but for those who have not there is perhaps the option of co-teaching an immersive course with another law professor or an adjunct faculty practitioner who possesses the requisite experience.

We expect law students and beginning lawyers to develop a divergent collection of professional competencies.[104] We tell students no one expects them to be perfect in all arenas at once, and that the vulnerability they feel in learning to do something they have not done before is not a weakness—it is a vital precursor to growth. Can we really expect any less of ourselves?

## III. INTERPRETING RULES

*Student C: I think it's great that Frankie and Saanvi*

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*Formative Assessment*, 67 J. LEGAL EDUC. 531, 536-38 (2018).

[103] For example my *Family Law in Practice* course currently caps at twenty-eight registrants. That's considerably fewer than a more traditional family law survey course may enroll, but it is still a reasonably economical way to deliver a high-quality educational experience to plenty of law students.

[104] For one example of the myriad skills needed for law practice, see the twenty-six Shultz-Zedeck Lawyering Effectiveness Factors identified in the research undertaken on behalf of the Law School Admissions Council. Quoted in Marjorie M. Schultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law school Admissions Decisions*, 36 LAW & SOC. INQUIRY, 620 (2011).

*want to have kids. It seems like they'll be excellent parents.*

*Student B: I agree, but I feel thrown by the whole donor idea.*

*Student A: In what way?*

*Student B: Well, maybe I'm being too rigid here, but the idea of a kid having up to four parents is kind of freaking me out. Two moms* and *two dads? And don't get me started on how this could work legally. It could be a total mess!*

*Student A: I don't really feel that way, to be honest. But on the other hand, I also don't know how we could set up legally-binding agreements among all four of them. We know Frankie and Saanvi's situation, but what do we really know about Victor and Anthony? Can they both be legal parents of this still-hypothetical child? Are they even legally married, and would that matter with respect to parentage? Can there possibly be any precedent for this anywhere?*

*Student B: Exactly!*

*Student A: And what if Frankie and Saanvi decide this is all too complicated for them. Could it be possible for Anthony or Victor to be a known donor yet* not *be a legal father?*

*Student C: But don't forget they've said they weren't necessarily set on the "they are all parents" arrangement. It's just one possibility.*

*Student B: In terms of legal parenting protection, this is whole thing is scaring me. I can't imagine we can tell them anything with any kind of certainty, no matter how we feel about it personally.*

*Student C: Look, somebody always had to take a risk on the outcome for every big change that has ever happened in the law. Isn't it actually our client's job to decide how much risk she can accept?*

*Student A: Ok, but do Frankie and Saanvi even know what the risks are? Do we?*

*Student C: Folks, we're getting way ahead of ourselves by worrying primarily about the most unusual scenario. The women don't even know for certain that that's what*

> *they want. Our main concern here is with Frankie and Saanvi and their legal relationship with this child. If they have a child with a donor, is it legally equally both of theirs? Do we have to do some work to make even that happen, no matter whether there are dads we need to worry about or not?*
>
> *Student B: That's helpful. I guess we'd better start looking at the legal ramifications of one, two, three, or four parents, since we're going to have to talk Frankie through all of them. So where do we start?*

### *A. Students/Lawyers: Understanding Boundaries and Possibilities in the Interpretation of Legal Rules*

This vignette puts our student-lawyers in the position of having to clarify the current legal rules pertaining to the parentage of a child born in a same-sex marriage, in which it is not biologically possible for one child to be the genetic offspring of both spouses. Since most traditional parentage law arose in the context of opposite-sex spouses conceiving children or adopting them together, this will require some interpretive extrapolation of that body of law to extend to the client's potential circumstances. Reams of meditative commentary have been written about the kinds of reasoning that legal interpretation consists of[105] and it is not the project of this Article to review all of them or to add substantially to that body of thought. Instead it may be valuable to look more narrowly at what our particular student-lawyers will have to do with rules of law for the work they now find themselves engaged in.

Of course the process of "interpreting rules" usually originates first in fully comprehending the present legal regime through the process of finding/knowing, stating accurately, and meticulously applying the laws that currently exist to determine whether they irrefutably cover the facts at hand. If they do, the lawyers can probably proceed straightforwardly with their work by using those resolutions.[106] The interpretive work (and for lawyers,

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[105] For one brief summary in a clinical context, see Robert D. Dinerstein & Elliot S. Milstein, *The Indeterminacy of Law* in CLINICAL PEDAGOGY, *supra* note___; *see also* Anya Bernstein, *Democratizing Interpretation*, 60 WM & MARY L. REV., 435 (2018) (arguing that judges must embrace their opportunities and obligations to interpret through discretionary sources).

[106] Although if that outcome turns out to disadvantage their clients the next step may be to see if they can find a way to interpret the law differently. If so, then this becomes the place for capable advocacy. If not, then it is what it is. As the Lawyering Method observes, in finding and interpreting rules "there is an obligation both to be responsibly truthful and the serve clients faithfully… [which] requires negotiating tensions between the quest for a proper

the fun?) comes in when there are no clear answer to the client's problem in the existing body of legal rules because the law is in flux, the facts are novel, or as we possibly have here, both.

To answer their client's immediate questions about parental rights if she and Saanvi were to add children to their family, our student-lawyers might therefore begin by thinking through the legal situation for similarly situated different-sex couples. They could then generate some sort of recent timeline understanding of how those rules of law have and sometimes have not been applied to same-sex couples. That is because family law has for generations been finding ways to protect the parenting rights of married opposite-sex couples using assisted reproductive technologies.[107] Either due to courts' pure lack of imagination about the possible multiplicity of family forms,[108] differences in legalization of the marital status of the adults,[109] or outright bias,[110] families with parents of the same gender have not always automatically been afforded the same recognition of their status.

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or just result and the quest to prevail." Experiential Learning Lab *supra* note ___.

[107] *See, e.g., In re Adoption of Anonymous*, 345 N.Y.S.2d 430 (Sur. Ct. 1973) (recognizing the husband of a woman artificially inseminated with a donor's sperm as the lawful father of the child). Also see both the original and currently-revised versions of the Uniform Parentage Act (UPA) and the Uniform Status of Assisted Conception Act (USCACA) proffered by the National Conference of Commissioners of Uniform State Laws, which include stratagems to ensure that both members of an infertile heterosexual couple will be seen as co-equal parents of a child they conceive through assisted reproduction.

[108] Particularly the until-recently-ubiquitous presumption that a child could have at most one parent of each gender at the same time. *See, e.g., N.A.H. and A.H. v. S.L.S.*, 9 P.3d 354, 357 (Sup. Ct. Colo. 2000) ("[b]ecause a can have only one legal father…"). *Cf.* Nancy D. Polikoff, *This Child Does Have Two Mothers: Redefining Parenthood to Meet the Needs of Children in Lesbian-Mother and Other Nontraditional Families*, 78 GEO. L.J. 459 (1990) (early advocacy for legal recognition of more than one parent of the same gender).

[109] Prior to *Obergefell v. Hodges*, or to individual state determinations to solemnize same-sex marriage or provide comity to same-sex marriages from other jurisdictions. Same sex marriages still have an extraordinarily short history in the U.S., beginning slowly after first being recognized in Massachusetts in 2004. *Goodridge v. Dep't of Pub. Health*, 789 N.E.2d 941 (Mass. 2004).

[110] There were, of course, longstanding presumptions that gay men and lesbian were perforce unfit parents. For but one example see the saga of Sharon Bottoms, whose own mother successfully sued to remove her child from her care after Bottoms began a relationship with a women. *Bottoms v. Bottoms*, 457 S.E.2d 102 (Va. 1995). It is occasionally hard to read some court decisions about legal parentage as grounded in anything but prejudice. *See, e.g., In re Marriage of Simmons*, 825 N.E.2d 303 (Ill. App. Ct. 2005) (denying legal parenthood to a now-divorced transgender husband of an inseminated wife, despite the state having listed him as the father on the child's birth certificate, despite uncontested statutory authority conferring parenthood on the male spouse of a woman using donor insemination to conceive, and despite a "savings clause" in the state parentage act intended to provide for legal fatherhood even in the event the marriage conferring that status was subsequently deemed invalid, as this one had been.)

Once they begin their research our student-lawyers will find they have to sort through some earlier cases in their states recognizing (or not) *de facto* parents,[111] cases granting (or not) "second parent" adoptions[112] to previously-nonlegal same-sex parents, and will have to discover whether post-*Obergefell*, their state now permits married partners of the same gender to be listed together parents on a child's birth certificate from the time of delivery[113] without the requirement of an adoption or any further judicial action. That is a dizzying set of evolutions in the law to get to the present rules, and understanding the history of these changes may be crucial for anyone who seeks to give advice about how the law would treat parentage for a family like Frankie's and Saanvi's.

All this just to understand the law governing the most straightforward possibility the vignette suggests Frankie and Saanvi might consider: having a child who is the biological progeny of one of the women in the partnership, gestated by her with the intention of producing issue of the marriage, with no plan for legal involvement by the sperm donor.

Then the student-lawyers will have to consider ramifications of associated alternatives their client might select, including: What if the couple decides to expand their family by adoption rather than pregnancy? What if doctors implant the fertilized egg of one woman into the womb of another? What if the couple decides to use a known sperm donor rather than an anonymous one? What if he is the biological relative of the non-inseminated partner and therefore the non-inseminating mother has some genetic link to the child? What if the couple wants the donor to have an ongoing relationship with the child; does he then have to be a recognized parent? What if they would like him to be a legal father? And finally, what if, as seems to be making Student B so very apprehensive, they really do plan to have two legal fathers and two legal mothers for their not-yet-conceived child?

Many of these questions have pretty definitive answers, though ones that

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[111] The American Law Institute recognizes parentage by estoppel or in effect ALI PRINCIPLES § 203(1)(c); *see more generally*, Lea Moalemi, *Blood Will Not Justify My Relation: Same-Sex Couples and their Battle for Standing as De Facto Parents*, 56 FAM. CT. REV. 490 (2018); Susan E. Oram, *De Facto Parental Rights: A View from the Trenches*, 23 ME. B.J. 150 (2008).

[112] *See, e.g.*, *Adoption of Tammy*, 619 N.E.2d 315 (Mass. 1993); *see generally*, Jane S. Schacter, *Constructing Families in a Democracy: Courts, Legislatures and Second-Parent Adoption*, 75 CHI.-KENT L. REV. 933 (2000).

[113] A minority but growing number of states now routinely list married same-sex partners as parents on the birth certificate of a child born to the marriage, thus obviating the need for a second-parent adoption (although even in those states non-biological parents are sometimes advised to nonetheless complete an adoption as additional protection against any dispute). Douglas NeJaime, *Marriage Equality and the New Parenthood*, 129 HARV. L. REV. 1185, 1240-49 (2016).

may vary significantly from state to state.[114] Our student-lawyers must research to find out what those answers are. In doing so they will teach themselves quite a significant body of family law. And since there might always be the possibility the family could relocate, they should have at least a rough notion of how those responses might be different in other states. In other words, they have to fully learn the existing legal rules.

With respect to the final question, though, which our vignette indicates is not just a moot hypothetical but instead a real possibility their client is raising, the students-lawyers are probably going to find that the question is a new one and the law at present provides no conclusive precedent.[115] The best they can hope to do is to interpret—to imaginatively yet critically *extend*—the existing rules of law in an effort to try to predict how it might be applied to the alluded four-parent scenario.

Interpretative work in law often starts from analogical thinking.[116] If two circumstances are similar, then the same rule of law ought to govern both.[117] This, though, begs the question what makes different situations sufficiently "similar."

Our student-lawyers might start by asking whether there are any cases already recognizing more than two legal parents. If they tried that avenue they would probably soon discover that advocacy on behalf of stepparents has resulted in a number of cases of their being granted status *in loco parentis*[118] even without termination of the parenting rights and obligations of one of the original legally-sanctioned parents.[119] These cases somewhat acknowledge the possibility of a family having three adults functioning as parents due to the exigencies of remarriage. Student-lawyers might also encounter opinions permitting a reduction from two-parent families to one where warranted by the facts, despite statutes designed to perpetuate continuation of at least two

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[114] *See id*. at 1140-65.

[115] At the time of this writing they are going to find just a very few cases, none of which establish unequivocal precedent. Probably the most closely-related circumstances arise in a New York case determining that a third parent had standing to seek custody and visitation of the child he had been raising with his husband (the child's biological and legal father) and their friend 9the child's biological and legal mother). *Raymond T. v. Samantha G*., 74 N.Y.S.3d 730 (Fam. Ct. 2018). But their research should also show that so far that case remains an outlier, and has not persuaded other jurisdictions.

[116] Schott Brewer, *Exemplary Reasoning: Semantics, Pragmatics, and the Rational Force of Legal Argument by Analogy*, 109 HARV. L. REV. 923 (1996).

[117] Id. at 931-34.

[118] Margaret M. Mahoney, *Stepparents as Third Parties in Relation to their Step*children, 40 FAM. L.Q. 81, 100-102 (2006).

[119] A termination of the parenting rights of an original parent is ordinarily required for a stepparent adoption, usually upon consent of the terminating parent, but occasionally over his or her objection (*e.g*., *In the matter of* J.J.J., 718 P.2d 948 (Alaska 1986)).

legal parents.[120] Or they'll locate other decisions restricting the expansion of parenting rights in new family formations to ones that can be seen as "the functional equivalent of the traditional husband-wife relationship."[121] Are these circumstances "similar" to Frankie's and Saanvi's potential four-parent family? Unclear, but it does highlight why in the vignette our student-lawyers are rightly interested in finding out whether the proposed dads are married. The stepparent rules may end up being analogized in some argument favoring legal status for all four parents.

Using what they learn about the history of recognizing parentage in assisted reproductive technology cases, or for stepparents, the team of student-lawyers might try to interpret those rules by reasoning deductively[122] (working from the general to the particular) or inductively[123] (working from the particular to the general). In addition, Frankie's attorneys might also want to consider the policy basis for the rules in interpreting whether existing law might somehow reach to cover a family with two mothers and two fathers.[124] An understanding of the reasons for what the law currently *is* helps predict what it might *become* under the new circumstances.

Our student-lawyers absolutely must engage in this interpretation of legal rules in order to answer their client's question. Yet even they already understand that in such novel circumstances it is extraordinarily unlikely they will ever produce an unambiguous answer. It is almost undoubtedly true that no amount of reading, research or thoughtful interpretation of the law will

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[120] *See, e.g., In re: Z.E.*, 21019 WL 3779711 (Pa. Super Ct. 2019) (not reported) (against strict interpretation of adoption statute, the court permitted termination of a biological father's paternity absent the usually-required averment of intended adoption by new father, due to the horrific circumstances of the children having been conceived as the product of decades-long rape of the mother and a possible ongoing threat of abuse to the children even with the incarceration of the biological father).

[121] *Adoption of Garrett*, 841 N.Y.S.2d 731, 732 (Sur. Ct. 2007) (denying paternal adoption of a child by the brother of the biological/legal mother).

[122] The beginning point in articulating the process of deduction is often attributed to Aristotle (with perhaps an updated nod to Sherlock Holmes), and is taught in nearly all philosophy courses specializing in logic. *See also* JOHN DEWEY, HOW WE THINK, 79-90 (1991). Introductory legal writing/legal analysis textbooks commonly explain processes of deductive reasoning in some detail in order to show beginning law students how they will be expected to reason. For just one such sample, see BRETT A. BROSSEIT, ELIZABETH M. MORTENSON & SARAH D. MURPHY, APPLIED CRITICAL THINKING & LEGAL ANALYSIS: PERFORMANCE OPTIMIZATION FOR LAW STUDENTS AND PROFESSIONALS, 139-41 (2017).

[123] Again, frequently attributed to Aristotle. For an in-depth examination of basic principles of induction see IRVING M. COPI, CARL COHEN & VICTOR RODYCH, INTRODUCTION TO LOGIC, 495-599 (15th ed., 2019); *see also* APPLIED CRITICAL THINKING, *id*. at 133-35 (summarizing induction for a law student audience).

[124] Policy arguments are grounded in normative claims about what is a public good. *See* MICHAEL EVAN GOLD, A PRIMER ON LEGAL REASONING, 122-37 (2018); WILSON HUHN, THE FIVE TYPES OF LEGAL ARGUMENT, 51-53 (2002).

fully conclude the investigation. In the absence of square precedent from within their exact jurisdiction which specifically recognizes a four-parent family comprised of two same-sex couples with two members who are the biological progenitors of the child, our student-lawyers will probably not be able to provide a conclusive answer to their client about the legal status of such a family. That precedent certainly does not exist at the moment.

Even suppose it did. Depending on the client's determination and the advocate's creativity, it is still precisely in the nature of lawyers to look for ways to compare or distinguish such precedent to argue that it should or should not determine Frankie and Saanvi's case. The only thing that could unquestionably settle the law for Frankie and Saanvi would be a final statement of the law in their specific case by a judge deciding it. That in turn would prompt subsequent refinement of the rules when some relatedly- but differently- constituted families argue that the (hypothetical future) Frankie/Saanvi case did or did not apply to them. Thus illustrating the almost-endless cycle of interpreting rules of law. Also exemplifying why the processes of interpreting law and fact are inextricably interwoven.

But our student-lawyers must assist their client *now*. They have to help decide in the absence of well-settled precedent whether they want to take the legal risks associated with building a four-parent family. Facts and rules may be ever-entangled in law, but as is so commonly true, here the rules will affect the facts we have to work with because they may end up determining how our client sets about trying to bring a child into her family in the first place. The lawyers' interpretation of the rules will influence Frankie's understanding of how much legal risk would be involved in a currently-untested family formation, which in turn could have a direct consequences on how Frankie ultimately constructs her family.

### *B. Professors/Case Supervisors: Using Well-Chosen Factual Settings to Stimulate Interpretation of Legal Rules*

Given the enterprise of this Article, this section could proceed in several directions. We might ask: how do we navigate and interpret the rules *of* legal education? Or alternatively: what is the role of interpreting rules *in* legal education?

The enquiries do not truly diverge, however. It could be fairly said that virtually all aims of legal education and its pedagogy are concerned with imparting both the substance of a common body of legal rules and the ability to use them professionally. Most of the unresolved disputes in law teaching stem from differing emphases on those proficiencies or on differing ideas about how to impart them, not from disagreement that both matter. So this project takes as given that institutions of legal education care about students learning bodies of substantive law and skills in interpreting and using it.

Assuming that's true, the "rules"[125] structuring law school courses tend to require classes to straddle some middle ground between introducing the specific common law principles and statutes that govern the topic we teach, and probing more deeply into the meaning of the discipline or of the workings of law itself. No one law school course can ever teach all of the rules of law there are to know on a particular legal topic. Even if it could the law would keep changing and evolving; its practitioners must be adept at interpreting the extant rules and applying them to new situations. Thus the common law professors' debate about topical "coverage" in their courses[126] misses the point. A pretty indisputable rule about law classes, then, is that we cannot ever possibly cover everything.[127]

One thing every course can reasonably aim to do, though, is to ensure students are given the opportunity to deeply encounter the core concepts of its subject. Educational theorists Aaron Pallas and Anna Neumann define *core concepts* as those "basic building blocks" that depict "a field's unique substantive concerns and distinctive knowledge structures and dynamics."[128] In other words, they form a base from which further meaningful inquiry into the subject could, and would have to, spring. Think "supply and demand" in economics, for example.[129] Understanding that notion—really understanding it—is foundational to learning pretty much anything else in the field.

It is important to distinguish "core concepts" from the "topics" typically covered in a particular subject. First of all, there are probably fewer of them. Maybe at most three or four. Maybe only one. The core concepts will be those ideas or processes which by their very nature provide a gateway to learning all of the topics that the subject matter can muster. For lawyers, the core

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[125] Here, "norms" might be a more accurate descriptor, if we see that designation as encompassing both behaviors that are required and those that are only customary and expected. Both norms and rules can function similarly to control conduct, though of course the consequences for violating them might be very different. Indeed, some earlier versions of the Lawyer Method Elements did reference "norms" as a category and include legal rules as a subset within that umbrella. (Unpublished manuscripts on file with the author). But the familiarity and clarity of referencing "rules" has its appeal as well—even if at times those "rules" are more metaphorical than mandatory.

[126] For a few examples of legal educators' skepticism regarding concerns about coverage justifying resistance to new teaching methodologies, see Steven I. Friedland, *Trumpeting Change: Replacing Tradition with Engaged Legal Education*, 3 Elon L. REV. 93, 125-26 (2011); Robert F. Blomquist, *Some Thoughts on Law School Curriculum Reform: Scaling the Mountainside*, 29 VAL. U. L. REV. 641, 656-57 (1995).

[127] Another corresponding rule is that we are probably never really finished teaching anything. It is unrealistic to assume that one class or one year is enough time to fully master the intricate nuances of lawyers' thinking, for example, so teachers of upper-level law classes are probably remiss if they do not include teaching legal analysis as one objective of their course.

[128] CONVERGENT TEACHING, *supra* note ___ at 67.

[129] *Id*. at 68.

concepts of our subject matter almost always boil down to the law's ways of addressing weighty social matters like "punishment" in criminal law, or perhaps "responsibility" in torts. If our students struggle to understand that this is what the body of law they are learning is *about*, they may study an array of legal rules but will be ill-equipped to truly and deeply know those rules, or to actually use them. Law teachers would be well advised to think clearly about what core concepts they want to get across in their subjects, and to concentrate on and return to those core concepts until their students move toward mastery. Then we must enable students to bring those concepts to the many topics the subjects typically include.

So what are the core concepts in family law?

Like almost anything in law, that could probably be debated endlessly. But I believe it would not be too controversial to suggest that one core concept is what makes someone the parent of a child with all of the ensuing legal privileges and responsibilities that status grants. Many potentially-conflicting factors might dispose of that question: genetics,[130] intention,[131] or perhaps habit, or function.[132] These factors may historically have been hard to disaggregate, because they usually converge when a fertile heterosexual couple conceives by ordinary means. But parentage gets more complicated and more interesting, when those factors are not in exact alignment. Thus the bulk of parentage law in most family law courses arises in contexts where the factors conflict, forcing courts or legislators to establish hierarchies among the considerations. Decisions about which factors matter most may change

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[130] It is sometimes important legally to distinguish genetics from biology, because they may not always correspond. In cases of gestational surrogacy the woman who biologically gives birth to a child may not have any genetic connection to the infant, and may not be the child's legal parent. *See* Mark Strasser, *The Updating of Baby M: A Confused Jurisprudence Becomes More Confusing*, 78 U. PITT. L. REV. 181,183, 194-201 (2016). Conversely, in donor egg insemination, a woman who gives birth to a child may have no genetic relationship yet be both the intended and legal parent of a child she gave birth to. *See* NATIONAL CONFERENCE ON COMMISSIONERS OF UNIFORM STATE LAWS, UNIFORM PARENTAGE ACT §§ 802-804, 809, 815 (2017) [hereinafter UPA].

[131] UPA, *id*. §703 (relying on "intent to be a parent" for legal parentage in assisted reproduction cases). The state of California even provides statutory forms giving lawful effect to stated intentions of parenting in assisted reproduction cases. CAL. FAM. CODE § 7613.5. The student-lawyers should also note, though, that the UPA remains model legislation that has not been widely adopted, and that California law is considered to be a leader in the area of intentional parenting, and even that state does not permit intention to supersede genetics in all instances. *See Jason P. v. Danielle S*., 171 Cal. Rptr. 3d 789 (Cal. Ct. App. 2014) (holding that a sperm donor was not precluded from asserting presumed biological parentage).

[132] That is, by acting as a *de facto parent. See* UPA § 609, *id*. For a mapping of de facto parentage laws in different U.S. jurisdictions see https://www.lgbtmap.org/img/maps/citations-parents-de-facto.pdf.

over time, and they can be diametrically opposite in different jurisdictions.[133] Learning this teaches burgeoning family lawyers that all of the considerations matter to some extent, and there is no easy consensus about how to resolve difficult questions about such a profoundly important question as "Who is a parent?"

Does it go without saying that our vignette shows the student-lawyers preparing to grapple with precisely that question? And that they seem already to have a sense of the immense importance of the answer for their client and her potential future child?

In a similar vein, the earlier vignette in Part I included student-lawyers contending with what most family law scholars would identify as another core concept in the subject matter: what is the legal, cultural and personal significance of marriage? Here is where the framing of the facts and characters as written by Davis and Davenport shows a particular genius. By presenting student-lawyers with a client who is trying to decide whether to get married at all, the students have to consider carefully the distinction between personal relationship decisions and the benefits and obligations conferred by the state within the legal institution of marriage. They have to ask themselves why marriage is a function of government at all, rather than purely a private commitment. Perhaps they will begin to interrogate the line demarking personal autonomous choice in family formation and what is, or should be, part of the public purview.[134]

This is a significant departure from the approach Susan Apel took in her visionary family law simulation course. There, an already-married client's presenting issue was a divorce.[135] By tracing the typical stages of the divorce, Apel's students move through the topics commonly taught in family law casebook classes: rules governing child support, division of marital property, spousal support obligations, and so forth.[136] Apel beautifully demonstrates that with thoughtful manipulation of character and fact, doctrinal "coverage" is just as easy (or difficult) to achieve in an immersion course as it is in a more traditional one.[137] In fact, I did just that for my own immersion course.

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[133] *E.g.*, with respect to functional parenting laws, compare *Chatterjee v. King*, 280 P. 3d 283 (N.M. 2012) with *McGuffin v. Overton*, 542 N.W.2d 288 (Mich. Ct. App. 1995), *app. den.*, 546 N.W.2d 256 (Mich. 1996).

[134] Which might further spur the more philosophically-minded among them to wonder whether that question more fundamentally lies under virtually all of the great unresolvable questions in law.

[135] *No More Casebooks*, *supra* note ___ at 701.

[136] *Id*. at 703.

[137] Though not without allowing for some convenient artificialities. For example in my *Family Law and Practice* class students draft a prenuptial contract which sadly never gets signed, so that when Frankie and Saanvi later get divorced my students will have to employ state regulations to resolve how their property will be divided.

As I was creating my version I scanned the contents of just about all of the family law casebooks on the market, selected the topics that seemed common among them and also struck me as particularly important, and then modified Davis and Davenport's narratives so the progress of the clients' cases would naturally raise each one. It wasn't especially hard to do.

But the innovation that Davis and Davenport's scenario brings is a more critical and fundamental investigation into the legal institution of marriage. To answer some of Frankie's questions in the first vignette, the student-lawyers had to think deeply about the very meaning of marriage in law and society. This consequently allows the class to bring in some of the larger constitutional questions about family autonomy and the role of the state. [138] Addressing these core questions experientially, with the explicit goal of helping their own client think them through, enriches the students' understanding of marriage itself. That should in turn strengthen their mastery and retention of the many legal rules pertaining to marriage law that they will learn along the way.

Likewise, by asking themselves whether existing parenting laws can be interpreted to permit a two-mother-two-father family, our student lawyers will simultaneously develop a deeper understanding of what the law does currently establish.[139]

I would posit that the Davis/Davenport scenario is simply one excellent example of the kind of fictional universe that by its very design requires deep engagement with core concepts in its subject matter. Further, that scenarios engaging identified core concepts could be created for virtually any subject in law. And finally, that having that engagement be an essential outgrowth of their client work enables students to survey the legal rules of the subject while at the same time reinforcing their learning about lawyers' interpretive processes, which can always be further developed.

## IV. MANAGING INTERACTIONS

*Student A: Gosh, it's so sad to work on a divorce. I suppose I am not the only one relieved when it seems, like it does for Saanvi,[140] the couple hopes to treat each other*

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[138] For example in addition to the obviously directly-relevant *Obergefell* decision, students read and consider *Loving v. Virginia*, 388 U.S. 1 (1967).

[139] With a concomitant investigation of the big-picture constitutional background in cases like *Meyer v. Nebraska*, 262 U.S. 390 (1923) and *Michael H. v. Gerald D*. 504 U.S. 905 (1988).

[140] In defiance of professional responsibility rules (and basic ethics) students who have thus far represented Frankie now switch to working with Saanvi in the marital dissolution section of the course. This serves the purpose of introducing a different client's perspective without having to take time for the class to learn a new family's facts. Though we generally

*respectfully. Those angry scorched-earth breakups are terrible for the couple and I imagine they take a lot out of the attorneys, too.*

*Student B: I guess so. But my impression is some lawyers like that. Maybe even encourage it.*

*Student C: Well we're certainly not going to do that. Yet I don't think that's a guarantee that everything this divorce is, and will, remain amicable. I mean…*

*Student B: [interrupting]… That's right. No matter how pragmatically people want to approach it, breakups involve hurt feelings and can turn messier than anyone ever expected.*

*Student A: Plus when there are kids involved, like Saanvi's daughter here, the two can have a lot more conflict than they would if they were just dividing up property.*

*Student C: Yeah, and the stakes for trying to behave cooperatively are even higher. Zelda is still a toddler, which means Saanvi will be actively co-parenting with her ex for at least another decade and a half. Probably more.*

*Student A: So do you think Saanvi's hope for primary custody is realistic? It seems like Frankie has actually spent more time with Zelda so far, and I'm guessing Frankie's lawyers will fight that. I'm worried, too, that us pushing for that will make it harder to get a favorable economic settlement for our client. There are only so many things at issue to negotiate.*

*Student B: Hold on a minute! I know you probably didn't mean to suggest it, but to me there's something super-uncomfortable about the idea that we might trade time with the kid for money in a divorce.*

*Student A: Of course that's not what I meant! Although… [spoken more tentatively] um, isn't that sort of what sometimes happens in a divorce settlement? We have to do a good job representing Saanvi's interests in every area we negotiate. And sometimes matters in a negotiation end up connected.*

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strive where possible for verisimilitude, there are certainly times when we use the advantages of artificiality to facilitate immersion learning.

*Student C: Ok. We have got our work cut out for us prepping for our settlement conference with Frankie's lawyers.*

### *A. Students/Lawyers: Treating Interactive Work as a Challenging and Vital Part of their Profession*

This vignette leaps ahead in time. Frankie and Saanvi have legally wed (alas without ever having signed a prenuptial agreement even though my students drafted one!) and have been raising their[141] child together. Our student-lawyers now represent Saanvi, and the couple is currently contemplating divorce. Our student-lawyers are doing well to carefully contrast what their client has thus far presented with what can typically happen in the difficult circumstances of dissolving a long-term relationship, especially one where child custody may be contested.

They know what she asked them to do—behave reasonably and fairly toward Frankie while settling the asset division and seeking exclusive or primary custody of Zelda—and they suspect she may be unrealistic in failing to realize those objectives may conflict. The lawyers appear appropriately concerned, and they are committed to exploring the tensions these interests may pose.

As her advocates, they probably should be.

Divorce cases are some of the most emotionally-laden and important settings most family lawyers work in.[142] The complexity of the work in my class is amplified by the fact that the divorce takes place in New York. The state retains fault-based causes of action in divorce proceedings, and was the last in the US to freely sanction divorces without allegation of wrongdoing.[143] If the divorce were litigated, allegations and proof of fault by one party could potentially affect not just the grounds for terminating the legal marriage[144]

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[141] The child is legally theirs alone. In the facts the student-lawyers are given, one member of the male couple who considered parenthood with our protagonists did end up donating sperm, but neither he nor his partner considers himself the child's father. While the men spend some time with Zelda, neither has ended up having a genuine parenting role in her life.

[142] Examining the body of family law more generally, but providing a perfect encapsulation of the stereotyped divorce action, Clare Huntington observes that "in its dispute-resolution mode, law intervenes in a heavy-handed and adversarial fashion, often exacerbating family conflicts by pitting one family member against another in a zero-sum, win-lose battle." CLARE HUNTINGTON, FAILURE TO FLOURISH: HOW LAW UNDERMINES FAMILY RELATIONSHIPS, at xii (2014).

[143] NY Dom. Rel. L. § 170.7, permitting divorce on the grounds that a marriage has broken down irretrievably for a period of at least six months, was adopted in 2010.

[144] In New York these consist of abandonment, cruel and inhuman treatment, extended imprisonment, adultery, or judgment following a legally ordered or privately agreed-upon separation. See NY Dom. Rel. L. §§ 170.1-170.6.

but the terms of post-nuptial economic arrangements.[145] Perhaps it could even impact custody or visitation.[146]

To be effective advocates for Saanvi our student-lawyers are going to have to ask some very sensitive questions. They will naturally have to probe into some personal areas of her relationship that Saanvi may—but far more likely may not—feel comfortable talking about.[147] They may have to help her sort through which feelings are important but not necessarily legally significant ("I just can't believe she said that to me!") and which might be material to her case. Meanwhile, anyone facing the prospect of divorce is likely to be distressed, anxious about the future, and perhaps defensive and eager to protect the memory of positive parts of the relationship, or conversely, to reject the possibility of anything positive about the past or the future.

While preparing for what will ideally be a settlement in their case, the student-lawyers will constantly have to manage their interpersonal communications with Saanvi. [148] They will have to establish her overall objectives, help her sort her priorities, and counsel her to compare those desires against what would be realistically achievable in litigation. Next they will have to get ready to advocate for her with opposing counsel, and eventually in court if the parties are unable agree on a private dissolution. In other words, every phase of their work will require effective interpersonal interactions, rather with their client, another advocate, or possibly eventually a judge hearing the case.

Clinical professors in law have probably always paid attention to the interpersonal dimensions of lawyering.[149] A wider range of legal scholars began to catch up to the importance of the human aspects of law with the

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[145] For one court's extended and thoughtful examination of ways marital fault may relate to post-nuptial property allocation and spousal support, see *Mani v. Mani*, 183 N.J. 70 (2005).

[146] Courts do strive to treat interpersonal difficulties between spouses as quite distinct from the parties' roles as parents. But it is also easy to see how facts establishing at least some legal grounds for divorce (for example cruelty or abandonment) could also bleed into the court's assessment of a child's best interests.

[147] For example, does anyone feel truly at ease when asking adult in a professional context for details about her sexual compatibility with her partner? Lawyers can (must?) learn techniques for asking uncomfortable questions of their clients. But that probably does not make it easy even for highly-experience practitioners, let alone the budding attorneys who are actually managing Saanvi's case.

[148] *See* Mary Pat Treuthart, *A Perspective on Teaching and Learning Family Law*, 75 UMKC L. REV. 1047, 1048-49 (2007) (describing her own work as a family law practitioner and observing that "even when the legal aspects were… routine" her interactions with clients made it invigorating).

[149] Brook K. Baker, *Learning to Fish, Fishing to Learn: Guided Participation in the Interpersonal Ecology of Practice*, 6 CLINICAL L. REV. 1, 9-10 (1999).

emergence in the 1990s of a field explicitly studying law and emotion.[150] But this is not to suggest that managing interpersonal interactions is limited to handling people's feelings. Instead it goes to the core of what it means to represent clients.[151] The Lawyering Method explains that as a central component of their work, attorneys "communicate with clients, counterparties, witnesses, and various kinds of decisionmakers."[152] This inevitably requires "managing each interaction strategically to further institutional or client goals without being wrongfully deceptive or inappropriately manipulative."[153]

Because our student-lawyers will ultimately need to advocate on their client's behalf, they know that had better take care to listen to her carefully now. They stand in between their client and the person who will decide something incredibly important in her life, so their job is not just to understand and care about her goal of getting her son home, but to anticipate how they can put her in the most favorable position with the deciding body. Thus the attorneys must find ways now to counsel their client (which often takes the form of questioning their client or even disagreeing with her[154]) all while earning and retaining her trust. And they must do so while keeping in mind what they believe will eventually be the most effective way of persuasively interacting with agency officials or a judge.

Notice how inextricably the interpersonal is entwined with the facts and the law.[155] The student-lawyers in our vignette understand that what they

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[150] *See* THE PASSIONS OF LAW (Susan A. Bandes ed., 1999). For additional current resources on law and emotion see Robin West, *Law's Emotions*, 19 RICH. J.L. & PUB. INT. 339 (2016); Carleton J. Patrick, *A New Synthesis for Law and Emotions: Insights from the Behavioral Sciences*, 47 ARIZ. ST. L.J. 1239 (2105).

[151] Grant H. Morris believes that confronting the emotional issues lawyers deal with in the practice of law is "an essential part of practical skills and professional identity development" for law students. *Teaching with Emotion: Enriching the Educational Experience of First-Year Law*, 47 SAN DIEGO L. REV. 465474 (2010).

[152] *Available at* https://www.law.nyu.edu/node/29418.

[153] *Id*.

[154] "I believe lawyers should give advice, sometimes forcefully…" Abbe Smith, *"I Ain't Takin' No Plea": The Challenges in Counseling Young People Facing Serious Time*, 60 RUTGERS L. REV. 11, 16 (2007). Some scholars might find that directedness antithetical to the "client-centered" lawyering introduced in 1977 by David Binder & Susan Price in their influential text *Legal Interviewing and Counseling: A Client-Centered Approach*. But so long as clients remain the determiners of their own circumstances, at least some commentators suggest that dialogue between lawyers and clients, even if challenging, is not inconsistent with client-centeredness or with good lawyering practice. *See* Robert Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501, 581-93 (1990).

[155] Some would argue that the interpersonal is uniquely important in family law. For an example of the contention that factual and personal context are particularly heavily implicated in family law, see Eli Wald, *The Contextual Problem of Law Schools*, 32 NOTRE

learn about the facts of Saanvi's case will determine what they can interpret and argue to be her legal rights. Which will correspondingly affect what they advise her to agree to and to challenge. Which then establishes how she authorizes her attorneys to advocate on her behalf. Which sets the parameters for their arguments and negotiation in her case. And all of this must take into account the lens through which a judge or other authority may perceive her case. *All of it* depends meaningfully on interactive dynamics.

Managing interactions is sophisticated and challenging work. Our law student-lawyers are only beginning to be introduced to it,[156] and they will probably have to devote many years of their careers to developing real interactive expertise. But immersion learning immediately and automatically places these crucial professional skills on the table. It shows beginners who spend so much of their time in law school absorbing rules and reasoning that legal doctrine will become only one component of what Eli Wald and Russell Pearce accurately describe as the immensely *relational* work of representing clients.[157]

### *B. Professors/Case Supervisors: Managing Faculty Interactions to Foster Integrated Teaching and Learning*

From the professors' perspective, managing interactions in an immersion class is one of the true delights of teaching it. It is also one of the most complex and demanding requirements of this kind of pedagogy.[158]

Of course, professors interact with students in every class and on every day. We generally believe it is up to us to guide that discourse successfully

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DAME J.L. ETHICS & PUB. POL'Y 28, 316-17 (2018); but see also Kathryn Abrams, *Barriers and Boundaries: Exploring Emotion in the Law of the Family*, 16 *Va. J. Soc. Pol'y & Law* 301, 307 (2008) (asserting that at least at the time of writing the law and emotions scholarship focused on the family was underdeveloped).

[156] Though it may well be true that law schools ought to pay far greater attention to teaching this, and much earlier on. Joshua D. Rosenberg, *Teaching Empathy in Law School*, 36 U. SAN. FRAN. L. REV. 621, 631 (2002).

[157] Eli Wald & Russell G. Pearce, *Being Good Lawyers: A Relational Approach to Law Practice*, 29 GEO. J. LEGAL ETHICS 601 (2016). The phrase "relational lawyering" was perhaps introduced in the early 1990s or before (see Serena Steir, *Reframing Legal Skills: Relational Lawyering*, 42 J. LEGAL. EDUC. 303, 303 (1992) (introducing the concept in a review of two recently-published works on client counseling). It has gained significant traction and is now in fairly common use. *See, e.g.*, Susan L. Brooks, *Mindful Engagement and Relational Lawyering*, 48 SW L. REV. 267 (2019)/

[158] Clinical law professors have developed almost a science of supervision to guide their practices when overseeing student lawyering work. *See* CLINICAL PEDAGOGY, *supra* note ___ at 169-252. All law teachers who expect to simulate law practice experiences can learn a tremendous amount from this scholarship. But because we deal with matters which, in the end, do not really resolve events in actual peoples' lives, immersion teachers may also be able to get away with being slightly less ambitiously deliberate in their supervisory rules. That may be a fair tradeoff for such a multi-dimensional teaching and learning modality.

in our own classrooms,[159] so we may already treat the "managing" part of the interaction as a component of our teaching. Yet that work is geometrically more complicated when students are immersed in real-feeling client representation.

It may be useful to disaggregate "managing" from "interactions." First let's observe just how many distinct interactions there are. Our vignette suggests the student-lawyers have already met with their new client, so that's one. They will probably end up negotiating with opposing counsel or perhaps mediating a settlement. That's at least another, maybe more. They may end up arguing their client's case in front of a judge. If so, given the facts as we know them, we can expect they will need to prepare their client for the proceeding. Plus the student-lawyers are managing their own collaboration. In all our vignettes they seem to be doing a pretty good job of advantageously using their different reactions to the clients, rather than allowing variances to hamper their teamwork.[160] Are we up to five or six interactions just for this one snippet of one case in the course? There's plenty to keep adding: throughout a semester in my *Family Law in Practice* class students will interact with a taxation consultant, an expert on child protective proceedings, multiple supervisors, at least three different clients, a child welfare worker, a mediator, and one another as opposing counsel.[161]

In short, the work in the immersion course requires a rather a lot of interacting. Far more than takes place in a typical casebook-driven course. This then begs the question: is it the immersion instructor's job to *manage* all of these relations?

Depends on what we mean by "manage." It is revealing that the Mirriam-Webster definition for the verb indicates that it can be used either transitively or intransitively.[162] The intransitive version of "to manage" means "to direct or carry on business."[163] Intransitive verbs do not allow for direct objects, so

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[159] *See generally* MICHAEL HUNTER SCHWARTZ, GERALD F. HESS & SOPHIE M. SCHWARTZ, WHAT THE BEST LAW TEACHERS DO, 177-85; 241-58 (2013) (detailing the control yet flexibility with which master law teachers expect to run their classrooms).

[160] Let's be honest about the fact that productive cooperation will probably not always happen, in which case addressing any tensions within teams is yet another set of interactions the students, the professor, or both, will have to manage.

[161] For my own classes I find it enjoyable to play any of these roles myself, but I usually don't have to. Colleagues from both within my institution and outside of it have been eager to volunteer to come to class and play one of these roles. The variety of differing styles in interaction is immensely valuable to my students, and having guests play the roles affords me the opportunity to act as an intermediary, or sort of MC for some of my own classes. [The very fact that so many busy professionals are keen to play these roles may also say something about a hunger for new forms of teaching in the legal academy.]

[162] MERRIAM-WEBSTER'S DICTIONARY (online ed.), *available at* https://www.merriam-webster.com/dictionary/manage.

[163] *Id*.

in this meaning of the word the action itself is all. The person managing is the person doing. But the dictionary lists the transitive form of the verb first: "to handle or direct with a degree of skills."[164] Thus in this more primary sense of the term, the person managing is the person facilitating, coordinating, or maybe overseeing the processes others are involved in. The definitional distinction here provides a neat metaphor for the kinds of "managing interactions" that the best immersion teachers probably do. We create opportunities for student-lawyers to learn in role.

It is precisely that learning in role which so gloriously interleaves interactive, analytical and problem-solving skills for law students and novice practitioners. The interpersonal dimension cannot be devalued when it is an indispensable part of doing the work at hand.[165] Substantial research supports a conclusion that working in role enhances student learning and retention.[166] So the very process of managing the myriad interactions our student-lawyers have to participate in and anticipate can help them master the material they are learning. At the same time it necessarily improves their experience and proficiency at interviewing and counseling their client, or persuading someone on her behalf.

On the faculty side, meanwhile, we probably have a meta- set of interactions we will need to attend to. How do professors committed to immersive teaching interact with those in the academy who may not value it?[167] Or with law school administrators who may have concerns about resource allocation, particularly at the outset in the development phase of a new model of instruction?

To the first point, it is probably true that very few colleagues will directly confront an eager immersion instructor to dispute the value of such a course.

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[164] *Id*.

[165] Joshua D. Rosenberg, *Interpersonal Dynamics: Helping Lawyers Learn the Skills, and the Importance, of Human Relationships in the Practice of Law*, 58 U. MIAMI L. REV. 1225 (2004).

[166] *See* Danial Druckman & Noam Ebner, *Onstage or Behind the Scenes? Relative Learning Benefits of Simulation Role-Play and Design*, 39 SIMULATION & GAMING 465 (2008) (summarizing the literature showing benefits of role-based learning); *see also* Nellie Munin & Yael Efron, *Role-Playing Brings Theory to Life in a Multicultural Learning Environment*, 66 J. LEGAL EDUC. 309 (2017); Nadja Alexander & Michelle LeBaron, DEATH OF ROLE-PLAY, 31 HAMLINE J. PUB. L. & POL'Y 459 (2010) (which despite its title looks favorably upon in-role learning). For background thinking about the place of drama and in-role work in learning see AUGUSTO BOAL, GAMES FOR ACTORS AND NON-ACTORS (2d ed. 2002).

[167] To the extent that, at least in the 1990s, Leonard D. Pertnoy felt the need to remind the legal academy that it was actually fine to teach legal skills to law students. *Skills is Not a Dirty Word*, 59 MO. L. REV. 169 (1994); *cf.* Jonathan K. Van Patten, *Skills for Law Students*, 61 S.D. L. REV. 165, 195-200 (2016) (concluding that legal education does provide skills valuable in the practice of law).

Quite the opposite; many law professors purport to favor such a turn toward more integrated learning in law schools. Yet—we do not ever seem to really change to get there.[168]

Managing our professional interactions to generate enthusiasm for meaningful (but manageable) reform is an important part of moving broadly toward a more contextualized and immersive pedagogy.[169] Those who want to see such changes have to make difficult choices about whether we want to just do it ourselves in our own classes, or whether we seek more ambitiously to bring others along with us. In the case of the former, we need only to find ways to steer through an institutional curriculum approval process. For the latter, though, we need broad coalition-building and probably a willingness to collaborate and compromise.

We need to think about who is most willing and able to change their model of law teaching: Younger faculty who may have less investment in traditional modes of instruction (or in the lecture notes they may have honed over the course of a career), but who may also be focused on tenure or more generally on garnering recognition within their fields? Mid-career or more senior faculty members who are ready for something new, but whose time can be limited by the fact that they often bear the bulk of faculty governance and institutional service in addition to being more sought-after for their scholarly expertise? Should it be clinical faculty members, doctrinal teachers, or professors of legal research and writing? Immersive teaching interrelates aspects of all of these fields, and can thus be done by any. But there are likely to be relational implications depending upon who leads the charge.[170]

Prospective immersion teachers will also have to be strategic in managing their interactions with the people who hold the purse strings. Immersion

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[168] *See* Brent E. Newton, *Preaching What They Don't Practice: Why Law Faculties' Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy*, 62 S.C. L. REV. 105 (2010). I do not actually agree with the author's conclusions that law faculty are obsessed with scholarship, or that scholarship is necessarily in contention with practical education. But I entirely endorse the notion that the legal academy tends to talk about changes in the ways we educate lawyers far more than we actually change.

[169] As an instructive example, Prof. Newton's thoughtful critique offers insights that legal education reformers might find genuinely valuable, but… I am hard-pressed to believe most law professors would embrace being guided by a work that refers to their scholarly endeavors as providing "little if any social utility" and represent "a colossal amount of wasted resources." *Id*. at 114.

[170] One could argue that at least some programs traditionally thought to fall within the LRW rubric but in fact emphasizing a far broader range of lawyering skills and competencies, are already paving the way. Yet even law schools that enthusiastically incorporate this immersive professional practice teaching in their curriculum have mostly limited the methodology to the programs themselves, rather than seeing them as a model for more widespread curricular innovation.

courses do require resources which casebook courses simply do not routinely need. But one thing we lawyers know is that managing interactions persuasively often means aligning the relief sought with the interests of those with the power to decide in our favor. Perhaps it can be helpful, then, to remind deans and faculty who are on the fence about committing time and money to immersion projects about all those judges, alumni, and other critics of legal education who keep saying that law schools can, indeed *must*, do a much better job of preparing our students of the future to become lawyers.[171]

## V. IMMERSION METHODOLOGY AND LEGAL ED REFORM

*Teaching by Experiential Immersion Draws Significantly from the Work of Clinical Legal Education.*

Is teaching by immersion simply another way of talking about clinical teaching? Because it can be adopted with a primary purpose of teaching legal doctrine, I don't think so. But because it is driven by a client-based problem-solving approach, and so deeply enmeshes learning rules and skills in a relational setting, it certainly shares a great deals with clinical methodology.

Legal scholars can and have quibbled about how exactly to describe clinical methods.[172] Yet I do not think it is much of a leap to suggest that decades of work exploring clinical methods[173] and simulation in law teaching have arrived at some basic agreements about what they consists of. I concur with Carolyn Grose's sense that there exists at least a "loose consensus" regarding what constitutes clinical/experiential pedagogy.[174] And although clinical methodology may not be fully congruent with immersion teaching, it is entirely consistent with it.[175]

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[171] Eli Wald, *The Contextual Problem of Law Schools*, 32 NOTRE DAME J.L. ETHICS & PUB. POL'Y 281 (2018) (considering the problem of teaching law "universally," and arguing for a wholesale commitment to context in the law school curriculum). It may be encouraging that Sheldon Krantz and Michael Millemann found examples of some law schools moving in that direction. *Legal Education in Transition: Trends and Their Implications*, 94 NEB. L. REV. 1 (2015).

[172] Discussing the elements of the "clinical method," Frank S. Bloch noted as long ago as 1982 that "no single model… was universally accepted." *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321, 326 (1982).

[173] Perhaps beginning with Gary Bellow, *On Teaching and Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, CLINICAL EDUCATION FOR THE LAW STUDENT 374 (1973). For a contemporary summary of clinical theory and methodology se the premier anthology in the field, SUSAN BRYANT, ELLIOT S. MILSTEIN AND ANN C. SHALLECK, TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY (2014) [hereinafter, CLINICAL PEDAGOGY].

[174] Carolyn Grose, *Beyond Skills Training, Revisited: The Clinical Education Spira*l, 19 CLINICAL L. REV. 489, 497 (2019).

[175] Maybe the only real departure from clinical instruction in our vision of immersion is

Katherine Kruse's characterization of the consensus themes in clinical teaching are consistent with teaching by immersion:

1. Grounding learning in student-lawyers' work on client problems
2. Teaching lawyering work as a process
3. Providing (insisting on?) multiple opportunities to learn from critical reflection on their experiences.[176]

Perhaps an even more apt description is based on Jeff Giddings's doctoral research into clinical legal education programs, which defines the fundamentals of experiential learning method as:

> an intensive small group or solo learning experience in which each student takes responsibility for legal and related work for the client…in collaboration with a supervisor. Structures enable each student to receive feedback on their contributions and to take the opportunity to learn from their experiences through reflecting on matters including their interactions with the client, their colleagues, and their supervisor, as well as the ethical dimensions of the issues raised and the impact of the law and legal process.[177]

Both these accounts nicely encapsulate the approaches deployed in all of the different versions of immersion courses using the scenarios in this Article. Each posits that we begin from actual experience working with a specific problem, then thoughtfully go about working on the problem, and that we learn from careful examination of that work.

Yet our purposes are from those in most clinical courses. For my immersion class, and to a significant degree for all of the different courses that have so far been based on the Davis/Davenport narratives, a central objective is to teach the core legal doctrine covered in the common casebook course. In short, then, we draw from clinical methodology to create a richer

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an effort to emphasize and explicitly reinforce doctrinal learning as a key objective of the enterprise along with more traditional clinical goals of imparting practical skills and professional values. "Emphasis" is used here quite intentionally, because I do not actually view this as differing from what traditional clinical teaching actually *does*; merely from what it tends most often to be *seen as* doing. I firmly believe clinical learning has always incorporated and reinforced legal doctrine, Carnegie authors' divisions notwithstanding. But though clinical teachers likely agree—*see*, *e.g.*, *id*. at 501-503—most discussions of clinical pedagogy nonetheless accept the legal academy's framing of doctrinal learning as primarily occurring in casebook-based course work.

[176] Paraphrased from *id*. at 498.

[177] Jeff Giddings, *Why No Clinic is an Island: The Merits and Challenges of Integrating Clinical Insights Across the Law Curriculum*, 34 WASH. U. J. L & POL'Y 261, 265 (2010). Both this portrayal and Kruse's share a common process of planning for/doing/critically reflecting upon the work that real lawyers would undertake in a given scenario, which seems to get to the heart of the processes of clinical instruction. *See Myths and Misconceptions*, *supra* note ___, at 24.

version of the more traditional law school classroom.

*Teaching Legal Doctrine by Experiential Immersion is an Extension of Much Current and Prior Thinking about Legal Education*

Immersive law teaching is in many ways consonant with the proposals for reforming legal education that were put forth by the influential Carnegie Report in 2007.[178] It is, though, probably more ambitiously radical.

The Carnegie approach classified coursework grounded in Langdellian case dialogue as uniquely effective in inculcating one of the "three apprenticeships" the Report identified as central to the making of new lawyers.[179] But the Report was more ambivalent about law schools' effectiveness in professional or ethical training,[180] and consequently called on legal educators to incorporate additional training in practically-oriented coursework to appropriately balance what it deemed the cognitive, ethical and practical apprenticeships necessary to developing well-prepared attorneys. [181] The Carnegie Report did call for an "integrative" approach to the incorporation of the analytical, ethical and practical dimensions of legal work rather than an "additive" one, but it did so only briefly.[182] And the Report's immense appreciation for the "signature pedagogy" of Socratic case dialogue[183] used almost exclusively throughout the first year of legal education—and frequently thereafter[184]—may have led readers to mistakenly

[178] CARNEGIE REPORT, *supra* note ____. Though we many have moved past that era, there was a significant period in which virtually all discussion of legal education referenced the Carnegie Report, usually in the context of Roy Stuckey's near-simultaneously-released BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP (2007) [just as a prior cohort of reformers nearly universally referenced the equally visionary yet not ultimately transformative task force report lead by Robert MacCrate in 1992, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT]. Both the *Carnegie Report* and *Best Practices* had complementary, though not identical, notions of legal knowledge, skills and values, as well as a similar desire to craft models of a more comprehensive legal education which paced greater emphasis on experiential professional instructions. Not coincidentally, both of them relied heavily on reflections from Peggy Cooper Davis. CARNEGIE REPORT at 39-40, 42, 57, 200-201; BEST PRACTICES at 99, 147, 207-209, 216-218.

[179] CARNEGIE REPORT, *id*. at 47-74. *See also* William M. Sullivan, *After Ten Years: The Carnegie Report and Contemporary Legal Education*, 14 U. ST. THOMAS L.J. 331 335 (2018) (summarizing the report as having found that pervasive case-dialogue teaching in law schools failed to provide "training in the full range of capacities needed for legal practice," and neglected the development of "ethical and contextual dispositions essential to professional identity").

[180] *Id*. at 30-32, 89-91; 127-28

[181] *Id*. at 194-97.

[182] *Id*. at 191-92.

[183] *Id*. at 23-34.

[184] Criticized by Carnegie authors as potentially redundant and producing diminishing

conclude that the drafters supported the introduction of more "integrated"[185] coursework primarily in skills classes that would be coequal but adjacent to more traditional casebook courses.

Notwithstanding the Carnegie authors' possible intentions, a recent study of the reach of post-Carnegie curricular innovation in law schools concluded that where changes did occur they were most likely to involve lawyering skills classes and/or clinical courses offered as electives in the second and third years.[186] Significantly, most current law professors—and law students—would probably agree with Katherine R. Kruse's assertion that the legal academy still actively and passively dichotomizes legal theory from legal practice.[187] Kruse makes clear that this split is both conceptually untrue (she calls it mythical[188]) and educationally unwise, and she argues that a well-balanced law curriculum should consist of a progressive sequencing of instruction that fully integrates doctrinal and professional skills learning.[189] Kruse is hardly a lone voice articulating this claim; her critique of legal education's cramped cabining of legal doctrine and professional skills is widely shared, though perhaps varyingly framed by different critics.[190]

In fact, in theorizing about ways to improve learning in 21st century law schools, *a lot* of scholars have suggested teaching in ways that embed legal doctrine within practical experiences.[191] Using slightly different descriptive

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returns. *Id*. at 75-78.

[185] Professor Davis shares some of the Carnegie Report authors' appreciation for the educational value of Socratic dialogue, but advocates repositioning the goal as "desegregating" analytical, ethical and practical teaching rather than "integrating" it. *See* Peggy Cooper Davis, *Desegregating Legal Education*, 26 GA. ST. U. L. REV. 1271, 1291 (2010). *See also* Peggy Cooper Davis & Elizabeth Ehrenfest Steinglass, *A Dialogue About Socratic Teaching*, 23 N.Y.U. REV. L. & SOC. CHANGE 249 (1998) (analyzing and illustrating intensive Socratic inquiry in the law classroom).

[186] Stephen Daniels, Martin Katz & William Sullivan, *Analyzing Carnegie's Reach: The Contingent Nature of Innovation*, 63 J. LEGAL EDUC. 585, 609 (2014).

[187] Katherine R. Kruse, *Legal Education and Professional Skills: Myths and Misconceptions about Theory and Practice*, 45 MCGEORGE L. REV. 7 (2013) (hereinafter *Myths and Misconceptions*).

[188] *Id*. at 9.

[189] This echoes Anthony G. Amsterdam's groundbreaking conception of staged legal education as beginning from basic doctrinal and reasoning skills introduction, then applied in finely-crafted simulation courses curated to refine practical skills and reinforce conceptual learning, and concluding with closely-supervised apprenticeship experiences in the form of live-client clinical work. Anthony G. Amsterdam, *Clinical Legal Education-A 21st Century Perspective*, 34 J. LEGAL EDUC. 612, 616 (1984).

[190] Indeed, Gerald P. López contends that the vision embodied in clinical programs should "define the fundamental orientation, design and staffing of every law school across the country" *Transform – Don't Just Tinker With – Legal Education (Part II)*, 24 CLINICAL L. REV. 247, 250 (2018).

[191] For an early and especially influential example, see Carrie Menkel-Meadow, *The Legacy of Clinical Education: Theories about Lawyering*, 29 CLEV. ST. L. REV. 555 (1980).

language or frameworks than ours, numerous law professors began creating such courses more than a generation ago.[192]

And yet…. Such courses are hardly ordinary. To the contrary, they still generally remain unusual enough to warrant their own descriptive law review articles.[193] [If you are currently connected to a law school, ask yourself: is there more than one such course offered? Is there even one at all?] Despite persistent calls for substantial change, immersion-style instruction remains reserved for specialized courses and usually ones in the upper-level curriculum which are chiefly focused on strengthening professional skills. It is not seen as a primary means of both teaching legal doctrine and integrating (or to use Davis' formulation, desegregating) ethical and professional learning with mastery of legal rules and reasoning.

So why is it that immersive teaching is not a commonplace—even on its way to becoming a signature—legal pedagogy?

Perhaps this is a byproduct of our unfortunate habit in the legal academy of imagining the teaching of legal doctrine as distinct from practical training.[194] Or our hierarchies and differential categorization of the law

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For more current examples see Jennifer E. Spreng, *Suppose the Class Began the Day the Case Walked in the Door: Accepting Standard 314's Invitation to Imagine a More Powerful, Professionally Authentic First-year Learning Experience*, 95 U. DET. MERCY L. REV. 421 (2018); Sheldon Krantz, *Legal Education in Transition: Trends and Their Implications*, 94 NEB. L. REV. 1, 18-29 (2015); R. Michael Cassidy, *Reforming the Law School Curriculum from the Top Down*, 64 J. LEGAL EDUC. 428, 432-37 (2015).

Immersive teaching was also envisioned as central to student learning in the hypothetical idealized learning-centered law school of the future as envisioned by Rebecca Flanagan in *Better by Design: Implementing Meaningful Change for the Next Generation of Lawyers*, 71 ME. L. REV. 103, 106 (2018).

[192] Paul Barron, *Can Anything Be Done to Make the Upper-Level Law School Courses More Interesting?* 70 TUL. L. REV. 1881 (1996) (spoiler alert: yes) (describing an immersive upper-level course in in bankruptcy law and advocating for more widespread adoption of the methodology across a variety of substantive areas of *law); Phyllis G. Coleman & Robert M. Jarvis, Using Skills Training to Teach First-Year Contracts*, 44 DRAKE L. REV. 725 (1996); Roberto L. Corrada, *Development, A Simulation of Union Organizing in a Labor Law Class*, 46 J. LEGAL EDUC. 445 (1996); Robert G. Vaughn, *Use of Simulations in a First-year Civil Procedure Class*, 45 L. LEGAL EDUC. 480 (1995); Stacy Caplow, *Autopsy of a Murder: Using Simulation to Teach First Year Criminal Law*, 19 N. MEX. L. REV. 138 (1989).

[193] *See, e.g.*, Karl S. Coplan, *Teaching Substantive Environmental Law and Practice Skills Through Interest Group Role-Playing*, 18 VT. J. ENVTL. L. 194 (2016); David B. Oppenheimer, *Using a Simulated Case File to Teach Civil Procedure: the Ninety-Percent Solution*, 65 J. LEGAL EDUC. 817 (2016).

[194] The Analyzing Carnegie's Reach study found far more movement toward individually-initiated curricular innovation than it did meaningful alteration of faculty development or in the traditional faculty incentive structures. *Carnegie's Reach*, *supra* note ____ at 609-611. The survey's authors found glimmers of hope for movement toward a more coordinated model of lawyer preparation in the future, but concluded that for the most part, integrated curricular innovation often continued to be isolated or "piecemeal" *See id*. at 609.

teachers who do primarily Socratic case-method teaching[195] from those whose teaching emphasizes practical skills and professional ethics.[196] Maybe it is due to fear or overwork. Concerns about expertise (and lack of).[197] The linear ease and ready availability of a course design driven by the process of casebook selection.[198] Concerns about topical coverage and/or substantive depth.[199] Perhaps despite the many calls for legal education reform and the clear desire of the bar,[200] there is not yet a firm consensus that learning in law school *ought* to be more integrated.

But I simply do not believe that last conjecture is true. Though I am quite certain there are some holdouts, and of course there must be those who have legitimate methodological questions to raise, a familiarity with the legal ed literature over recent decades suggests that time for debate about integrated learning in law school may have passed.[201] I therefore presume that there already exists a relatively widespread consensus in support of innovative immersive experiential learning in law schools,[202] and that nonetheless we

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[195] Although apart from history and habit there is no reason why attention to these other aspects of lawyers' training cannot have an important place in the doctrinal classroom. *See* Paula Schaefer, *A Primer on Professionalism for Doctrinal Professors*, 81 TENN. L. REV. 277 (2014) (calling on all teachers of legal doctrine to explicitly integrate 'attorney professionalism" into their course objectives and outlining means of doing so).

[196] For but one recent reference to the negative effects of stratification within law teaching, see Lawprofblog, *Legal Writing Professors: A Story of A Hierarchy Within a Hierarchy*, ABOVE THE LAW, (Sept. 4, 2018, 404 PM), https://abovethelaw.com/2018/09/legal-writing-professors-a-story-of-a-hierarchy-within-a-hierarchy/.

[197] *See* Martin J. Katz, *Facilitating Better Law Teaching—Now*, 62 EMORY L.J. 823, 833 (2013) (raising a concern that "not every professor has the type of training that prepares them to do good simulations") (hereinafter *Facilitating Better Law Teaching*).

[198] *See* MICHAEL HUNTER SCHWARTZ, SOPHIE SPARROW & GERALD HESS, TEACHING LAW BY DESIGN, 37-54 (esp. 45-47) (2009) (urging law faculty to design courses intentionally and with an emphasis on learning goals, and only secondarily selecting casebooks to complement those objectives).

[199] Coverage of topical material is a perennial—though perhaps overstated—concern in most doctrinally-focused law classes. *Id*. at 48. Depth of exploration of central legal questions also matters tremendously. We believe immersion teaching can actually emphasize either or both. Simulation design can be modified to give broad exposure to myriad topics in immersion classes, to stimulate intense inquiry into principal themes, or to balance both.

[200] *See* Mark A. Cohen, *Law Schools Must Restructure. It Won't Be Easy*, FORBES, MAY 15, 2017, *available at* https://www.forbes.com/sites/markcohen1/2017/05/15/law-schools-must-restructure-it-wont-be-easy/#2f86efc03d3f; Bruce Antkowiak, Op-Ed, *Law Schools Must Reform*, PITTSBURGH POST-GAZETTE, Jan. 4, 2011, *available at* https://www.post-gazette.com/opinion/Op-Ed/2011/01/04/Law-schools-must-reform/stories/201101040170.

[201] *How Experiential Learning in Law Schools Became Widely Accepted*, LEGAL REBELS PODCAST (Aug. 14, 2019) (interview with law school dean Rodney Smolla, who declares "now experiential learning is pretty much accepted by everybody").

[202] Grounded, as SpearIt and Stephanie Smith Ledesma observe, in a richly-developed literature that recognizes the influence of such educational theorists as John Dewey and Paolo

are not yet providing as much of it as we *do* actually agree we should. This is likely due to structural inducements,[203] some combination of the factors listed in the preceding paragraph, and inertia. And in an absence of multiple immersive experiential models from most of our own legal educations, it undoubtedly also stems from just not knowing where to start or what the courses would and should look like.

I hope this Article provides at least one sample to begin the exciting work of imagining this more integrated way to teach and learn law.

## CONCLUSION

The narratives and commentaries included here are not intended to be exhaustive. There is certainly more that can be said on most (probably all) topics touched on. This piece is meant, though, to showcase some of the kinds of thinking that law students do in immersion classes, and the kinds of thinking that goes into implementing them. It is meant to show how much is accomplished all at once in such learning: consolidation of doctrine, analytical skills and tuning innumerable professional skills.

And to encourage more people to do it.

And to show that it is fun.

And possible.

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Friere. *Experiential Education as Critical Pedagogy: Enhancing the Law school Experience*, 38 NOVA L. REV. 249, 253-54 (2014).

[203] Which many scholars have written about and which probably pose a significant barrier. I certainly do not want to downplay the institutional incentives that so often leave curricular innovation to the individual enterprise of the unusually energetic, rather than to the legal academic establishment. But I likewise do not want to be limited by those realities. There is much momentum toward change in legal education and it is helpful, perhaps but not necessarily unrealistically, to assume that there will be more. Reflecting on faculty buy-in for curricular reform emphasizing simulations and other experiential learning opportunities at Denver Law School, Martin J. Katz concluded generating broad faculty support, even despite some concerns and objections, was attainable through a shared planning process. *Facilitating Better Law Teaching*, *supra* note ___, at 842-43.