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MacCrate Goes to Law School: An Annotated Bibliography of Methods for Teaching Lawyering Skills in the Classroom

Arturo López Torres
Texas Tech University School of Law, a.torres@ttu.edu

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MacCrate Goes to Law School: An Annotated Bibliography of Methods for Teaching Lawyering Skills in the Classroom

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I. INTRODUCTION

The question of whether law schools should teach lawyering or practical skills is longstanding and steeped in debate. Although the debate continues today, most, if not all, law schools have incorporated skills training into their curriculum by offering a variety of clinical or practicum courses that contain lawyering skill components. While doing an excellent job of teaching practical skills, clinical programs are able to teach only a few students at a time and require a significant dedication of ongoing financial resources. Moreover, much of the federal funding to support clinical programs has dwindled in recent years. Other modes of skills training are needed to supplement clinical instruction. One proposed and feasible solution is for law professors to integrate more practical skills training into traditional law school courses. This bibliography compiles those law review articles that explore the teaching of lawyering skills in the traditional, non-skills oriented law courses.

Although opinions may differ about what constitutes lawyering skills, these differences are usually a matter of semantics. Typically, the literature enumerates the same basic set of lawyering skills regardless of the source. For example, one author may use "problem solving" to identify a skill, while another might use "problem formulation." Rather than spending time debating terminology, this bibliography adopts the ten fundamental lawyering skills outlined in the

2. In essence, the debate pits the academy against the bar—theory versus practice—thus creating a chasm between law schools and the practicing bar. The former declares that their primary function is to teach students to think like lawyers, while the latter claims that the law schools' mission is to train students to practice law. See Rodney J. Uphoff, et. al., Preparing the New Law Graduate to Practice Law: A View from the Trenches, 65 U. Cin. L. Rev. 381 n.3; see also, e.g., Carrie Menkel-Meadow, Narrowing the Gap by Narrowing the Field: What's Missing from the MacCrate Report—Of Skills, Legal Science, and Being a Human Being, 69 Wash. L. Rev. 593 n.2 (1994)(citing several versions of the debate).
4. See id. at 285 n.36.
5. See id. at 276, 280 (asserting that the integration of practical skills into the traditional law school curriculum is already taking place); see also Sandra Hansberger, The Road to Tomorrow, 57 Ore. St. Bar J. 9, 12 (1997).
6. Most of the law review articles that address practical lawyering methodologies have appeared within the last 25 years, and the bulk of these have been published in the last few years. This growing body of literature has now produced a symposium issue. See Symposium, Teaching Lawyering Skills, 75 Neb. L. Rev. 643 (1996).
MacCrate Report\textsuperscript{8} to organize the bibliographic entries. The reasons for this are threefold. First, in drafting the MacCrate Report, the committee conducted a comprehensive review of the literature on the subject, and one may readily assume that the committee developed the ten fundamental lawyering skills based on this review. Second, the MacCrate Report goes to great lengths to define and articulate each skill. Moreover, commentaries providing further information and background on a particular skill follow each interpretation. Finally, the American Bar Association issued the MacCrate Report in 1992, and this recent publication date reflects contemporary terminology. Most legal professionals are familiar with the report and its language.

There were no studies found which attempt to collect articles from the existing body of legal literature on lawyering skill methodologies in the classroom or like setting. It is logical to conclude that little, if any, research has been conducted to examine or classify skills-based articles that focus on skills development in the traditional law school courses. Moreover, with an increased emphasis on skills training in recent years, it is reasonable to direct attention to the legal literature to determine to what degree, if any, this relatively nascent emphasis has been pedagogically recognized or developed.

This bibliography contributes to the literature by distinguishing and examining articles that purport to incorporate lawyering skills training in traditional law school courses. It pinpoints needs or deficiencies in the legal literature. Consequently, it identifies potential lawyering skills that are ripe for discussion or in need of development for particular subjects within the law school curriculum.

This bibliography provides law professors information on how to incorporate skills training into substantive and other nontraditional, skills-related courses. The annotations also serve as a vehicle for the exchange of teaching ideas and techniques among legal educators which, in turn, may enhance the effectiveness of classroom teachers.\textsuperscript{9} With better teaching, everyone wins—the profession, teachers, and most of all, students.

\textsuperscript{8} See Section of Legal Educ. & Admissions to the Bar, Am. Bar Ass'n, Statement of Fundamental Lawyering Skills and Professional Values, (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, 1992)\textsuperscript{[hereinafter, MacCrate Report]. The ten fundamental lawyering skills are: problem solving (Skill §1), legal analysis and reasoning (Skill §2), legal research (Skill §3), factual investigation (Skill §4), communication (Skill §5), counseling (Skill §6), negotiation (Skill §7), litigation and alternative dispute resolution (Skill §8), organization and management of legal work (Skill §9), and recognizing and resolving ethical dilemmas (Skill §10) See id. at 7.

\textsuperscript{9} Moliterno and Lederer contend that skills training “can enrich traditional academic study, [e.g., theory], as skills teaching places those subjects in context, enriching the academic study inherent in them.” James E. Moliterno and Frederic I. Lederer, An Introduction to Law, Law Study, and the Lawyer’s Role 40 (1991).
A. Organization and Classification

The MacCrate Report's ten "Fundamental Lawyering Skills" provide a ready-made organizational scheme with which to arrange the selected articles. This bibliography does not classify the entries beyond the ten skills, although the MacCrate Report breaks down each skill into various elements. Entries are classified according to skills explicitly or implicitly considered in the article. The entries are arranged alphabetically within each category by author.

Many articles address two or more of the ten MacCrate Report skills. When this occurs, the citation is cross-referenced in each category it addresses. However, the annotation appears under the predominant skill discussed. If the piece contains four or more skills, it is placed in the final category—Integration of Skills—immediately following the ten lawyering skills. The annotations note any unique features conveyed by the article, such as teaching techniques or methodologies, course descriptions, course materials, and class assignments and exercises.

B. Methodology

Sources consulted for this bibliography are sources traditional to most United States law school libraries. For example, these sources include: INDEX TO LEGAL PERIODICALS, Legal Resource Index (electronic companion to CURRENT LAW INDEX), JLR (Journal and Law Review) database in WESTLAW, and the ALLREV (Combined Law Review File) library in LEXIS. Understandably, the JOURNAL OF LEGAL EDUCATION was a fertile source for items pertinent to this bibliography and, consequently, each volume of this publication was reviewed for relevant articles. The initial bibliographic search turned up several hundred items. Each was reviewed to make sure it contained the necessary criteria for selection. Additionally, articles cited or discussed in these pieces were checked for possible inclusion.

This bibliography is current as of August 1997. A Uniform System of Citation (15th ed. 1991) was modified to include the author's full name, unabbreviated periodical title, and page length of the article. An alphabetical list of authors and a subject index follow this bibliography.

C. Selection and Exclusion

Articles selected for this bibliography must meet two principal criteria. First, the entry must, in some way, consider lawyering skills. Articles about pedagogical generalities or non-skills related teaching

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11. See id. at 7-11.
techniques were excluded. Second, the skills must be discussed within a pedagogical context. For inclusion, therefore, an article must contain two elements: (1) a discussion of at least one of the ten MacCrate lawyering skills, and (2) a description of how the professor teaches or instills the skills in the classroom.

Selection is limited to periodical sources readily available in the United States and Canada. This has no reflection on the quality or relevance of materials published outside the United States and Canada or the non-legal literature. Additionally, book chapters and treatises are not included. Although conference, workshop, and meeting materials may be relevant, these types of materials are excluded due to their ephemeral nature.

Since law professors are the targeted audience, it does not include sources outside the law literature or items written by non-law professors. Also omitted are items discussing general educational objectives, curricular reform, or extracurricular teaching (e.g., moot court competitions), and items that do not describe specific classroom examples or experiences.

Although I have aimed for comprehensiveness, it is possible that I have inadvertently overlooked some excellent pieces and, for that, I apologize in advance. Readers are invited to call any relevant work to my attention for possible inclusion in a future update. Readers should also treat this bibliography as a starting point and are invited to read the text of any items of interest for themselves.

II. DISCUSSION

The main purpose of this bibliography was to review the existing body of legal literature and glean law review articles that examine the teaching of lawyering skills in the context of the traditional law school courses. Relevant articles were grouped according to the MacCrate Report's ten fundamental lawyering skills.

This bibliography identified 204 articles which met the selection criteria. Of these, 22 articles effectively combined four or more skills into one course, highly integrating them so that they may not be easily classified into individual skills. The remaining 182 articles were distinctly classified into one of the ten MacCrate lawyering skills.

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12. This was the subject of a previous bibliography. See Arturo L. Torres and Karen E. Harwood, Moving Beyond Langdell: An Annotated Bibliography of Current Methods For Law Teaching, 1994 Gonz. L. Rev. 1 (1994). I would like to thank Karen E. Harwood for allowing me to use relevant entries from this bibliography.

13. Often these articles end up being narratives by professors describing their course. How a specific course is taught may offer insight to those contemplating teaching a similar course or may provide methods useful in developing courses other than the one being described.

The results indicate that 76% of the articles in this bibliography were classified into five lawyering skills: Communication, Problem Solving, Litigation and Alternative Dispute Resolution Procedures, Legal Analysis and Reasoning, and Legal Research. Clearly, articles about communication skills far outdistance any other skill found in the literature, so much so that 25% of the articles deal with some aspect of communication. The remaining top five lawyering skills (Problem Solving, Litigation and Alternative Dispute Resolution, Legal Analysis and Reasoning, and Legal Research) collectively comprise 51% of the articles. Individually, none of these skills consist of more than 14% of the total.

This survey reflects a significant drop between the top five lawyering skills and the remaining skills, which comprise a total of 24% of the citations identified. Negotiation, with 10% of the articles, is the most cited of the lower five skills. Surprisingly, very few articles were identified that considered skills such as Counseling, Factual Investigation, Recognizing and Resolving Ethical Dilemmas, and Organization and Management of Legal Work. These four skills combined constitute only 14% of the articles cited in this bibliography.

The bibliographic data allows for a couple of general observations. About one-quarter of all the articles in this bibliography addressed some form of communication skills. It appears that communication is considered a fundamental lawyering skill by the legal literature. Second, a drastic need exists to develop and incorporate skills-based pedagogy and techniques in skills such as Counseling, Factual Investigation, Recognizing and Resolving Ethical Dilemmas, and

15. The low rating of Organization and Management of Legal Work is validated by the American Bar Association, Commission on Advertising's report concluding that only 5.7% of the 142 responding schools offer law practice management as both a primary and secondary subject. See AMERICAN BAR ASSN', COMMISSION ON ADVERTISING, LAW PRACTICE MANAGEMENT AND LEGAL SERVICES MARKETING IN THE LAW SCHOOL CURRICULUM 6 (1996).
Organization and Management of Legal Work. These skill areas are ripe for developing skill-based classroom methodologies and reporting them in the legal literature.

III. LAWYERING SKILLS

1. Problem Solving

Defined: Incorporates skills and concepts involved in problem solving and understanding the client’s situation and objectives. Skills include: identifying and diagnosing the problem; generating alternative solutions and strategies; developing a plan of action; implementing the plan; and keeping the planning process open to new information and ideas.¹⁶

🔍 Trial Advocacy


The authors contend that their upper division, one-semester Lawyering Process and Criminal Trial Advocacy courses are designed to develop problem solving and decisionmaking skills in the performance of lawyering tasks. They seek to move beyond theory and note that “[i]t is equally hard to support an assumption that the dynamics of problem solving and decisionmaking can be adequately taught without ever asking the student to engage in the process himself.”¹⁷ Their approach addresses all the skills defined within problem solving and clearly incorporates what problem solving seeks to advance—the skills of a person who is “willing to engage in independent thinking to determine what approach is best suited to a particular situation.”¹⁸ The authors also describe course requirements, supervision, costs, and program commitment.


The authors attempt to derive a teaching methodology of problem solving from the perspective of an experienced trial advocate. They center their year-long course on a single, complex ongoing fact pattern concentrating on the sophisticated nuances of a problem, instead of imposing an environment which requires continual familiarization with new scenarios. Students are directed “from an initial client in-

¹⁶. See MacCrate Report, supra note 8, at 15-21.
¹⁷. Bellow at 690.
¹⁸. MacCrate Report, supra note 8 at 24.
terview through trial,”¹⁹ a process which mirrors many of the skills defined in problem solving.

➤➤ Simulation


Simulation and game play are easily adaptable to the teaching of problem-solving skills. Brown advocates the “gaming” approach as one in which students are able to comprehend problems in proper context. Simulations, including one developed and described by Brown, walk a student through several problem-solving skills. For the novice professor who is contemplating simulation use in class, Brown offers some basic techniques gleaned from his ten years of teaching Land Development Law. The appendix contains illustrative interactions involving several gaming roles.

➤➤ Administrative Law


Burg professes that “[t]heoretical material placed in a real-life context becomes clearer and more understandable”²⁰ to students. In his Administrative Law course, he utilizes role play techniques and case study to incorporate client counseling skills, factual and legal investigative skills, and understanding of administrative hearings. Former clinic clients and their actual social security cases are used in the role play and case study. The case study, presented in four class sessions, includes client interviews, case preparation, administrative hearing, and judicial review. Role playing and problem solving help students familiarize themselves with the clients' situation and objectives.

➤➤ Contracts/Civil Rights


An argument is made for the use of the problem method to augment the case method. Calleros explains how he does this in his first-year Contracts and elective Civil Rights Legislation courses. The appendices contain actual problems used in the courses.

Criminal Law


Caplow describes how simulation exercises and role play are used in a large Criminal Law course. These methods allow students to experience what it means to “plan, deliberate, analyze and make choices.”21 The course is a prime model of one that utilizes all problem-solving skills. Caplow details sample problems and exercises which may be adapted to other courses.

Simulation


Cicero approaches his class as a “shop floor,” to allow the students to experience some of the issues and values that underlie the doctrine of labor law and confront workers. Cicero uses “a process of interactive teaching through simulations, problems and discussion” to draw upon some of the natural parallels that exist between worker and employer and student and school.22 He describes the pedagogical tools he uses to teach a Labor Law course.

Problem Solving


The authors suggest that legal problem solving is a skill that can be taught and learned and describe their method for accomplishing this. They train and teach students through the use of a flowcharting model. This model may also serve as a blueprint for other courses.


Corporations/Securities Regulations


Dallas presents the objectives and mechanics of several simulations used in her Corporations and Securities Regulations courses. Simulations used in the Corporations course are divided into publicly

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21. Caplow at 137.
22. Cicero at 121
held corporations and closely held corporations. A complex and demanding simulation is a two-hour shareholders’ and directors’ meeting of a publicly held corporation. The simulations require students to interview clients and make distinctions among the various forms of business associations. Dallas also designs drafting and consultation simulations to help students understand the materials assigned on the management and control of closely held corporations. Finally, one of the simulations for the Securities Regulations course revolves around students’ investigation of the due diligence obligations of persons liable under Section 11 of the Securities Act of 1933. A negotiation simulation allows students the opportunity to explore the obligations of different persons who can be held liable under Section 11 of the Act. All simulation materials are available from the author.

Constitutional Law


Davidow characterizes some basic teaching techniques, rationale, and the applicability of learning theory to problem solving and role playing. He shares his experiences in using role playing techniques, in the form of clinical vignettes, in Constitutional Law courses to augment the traditional case method.

Commercial Law


Finding the proper balance between comity and sovereignty is the underlying debate in any Conflict of Laws course. To dramatically make this point, Larson begins her Conflict of Laws class with a two-day discussion of the Dred Scott case. She briefly outlines the reading assignments and details the facts surrounding the Dred Scott decision.

Teaching Methods


This article is based on King’s experiences using simulated game playing to teach Commercial Law. Game playing is an excellent example of how to incorporate problem solving into a course. The game, materials, preparations, and evaluation are briefly described. The appendix contains some of the simulations used.
Clinical Education


McDougall provides an overview of a Clinical Program in Law and Public Policy which is designed to teach students how to plan, reflect, and practice law from a public policy perspective. The program integrates classroom work, seminars, tutorials, and field externships. McDougall also describes several learning methodologies used in the program.

Criminal Procedure


Moskovitz makes a strong and lengthy argument for the problem method's superiority over the traditional case method. To illustrate this belief, he compares how a typical casebook assignment would be taught under either method. Moskovitz notes that "[p]roblem-solving is the single intellectual skill on which all law practice is based." He provides examples of writing problems, ideas on how to convert from case to problem method, and recommendations on books which use the problem method. The examples and book recommendations, while related to Criminal Procedure, may be applied to any course.

Problem Solving


In asserting for the integration of problem-solving techniques and strategies in the classroom, Nathanson identifies essential features and proposes a theory of legal problem solving. His extensive discussion about this theory encompasses problem and identification, fact investigation, legal issue identification and assessment, advice and decisionmaking, and planning and implementation. Although specific classroom exercises or assignments are not offered, Nathanson's problem-solving theory may serve as a foundation for others in designing instruction for legal problem solving.

Commercial Law


Nathanson suggests that problem-solving skills may be effectively developed through course and curriculum design. Moreover, he out-

23. Moskovitz at 245.
lines and describes six supporting principles for teaching legal problem-solving skills. Nathanson then uses the principles to draft sample exercises for his Commercial Law course.

★★ Problem Method


Ogden discusses the problem method and encourages greater use of problems by law professors. He breaks down the problem method into three segments: assign problems to students prior to class; students research problems; students discuss solutions in class. The problem method is applied to form sets of objectives that are specific to legal education, substantive law, judgment and analysis, lawyering skills, and professional responsibility. The appendix lists problem method materials that were available to law teachers in the early 1980s.

★★ Corporations


Okamoto contends that teaching practical skills is as important as teaching theory and is best accomplished through simulations. This thesis is tested in his Advanced Corporate Practice seminar which contains a series of simulated lawyering tasks focusing on a hypothetical, leveraged buy-out transaction. These simulated tasks integrate many skills, such as drafting, negotiation, client counseling, and problem solving. Okamoto provides a course description, discussion of objectives, syllabus, and scheduling.

★★ Civil Procedure


Estate Planning


Simulations of estate planning practices, by probing real-life situations and problems, are presented to students. Thus, "[t]he student simulates practice by learning the subject area to solve the problem presented."24 Students prepare their own problems and critique each others’ work. A course handout is available from Robinson.

Property/Simulation


This essay discusses the use of a role-playing exercise in a large (70-100 students), first-year Property II course. The course focuses on land use, with a Board of Adjustment hypothetical that uses students to role play lawyers, clients, and Board of Adjustment members. Tomain describes the exercise and offers his reflections.

Problem Method


The problem method was used to teach all second- and third-year law courses at the Notre Dame Law School during the mid to late 1950s. Two types of problems, class and research problems, are described. Class problems initiate class discussions wherein legal rules are discussed in light of problems presented. Research problems are assigned to train students in the use of legal research techniques and tools. During the second year of law school, each student is assigned one research problem in each of their courses. The article may be generally useful in developing problem exercises.

Property


Weaver expounds a definitive six-step method of teaching the Rule Against Perpetuities, derived from his fifteen-year experience in teaching Property. He asserts that the most effective method to teach the Rule is through a six-step process which he thoroughly describes.

Criminal Law


Zarr describes his attempt to teach Criminal Law by using a “complete record” of a murder case. He asserts that, “exposure to a whole case can also help give a student perspective on a number of institutional roles and relationships.”25 A complete record also allows students to become familiar with the sequence of steps involved in using problem-solving skills. The materials include trial record, briefs on appeal, appellate decisions, habeas corpus proceedings, and opinion. Zarr describes how these materials were used in a series of class assignments.

2. Legal Analysis and Reasoning

Defined: Involves effectively analyzing the application of legal rules and principles specific to a client’s problems. Skills include: identifying and formulating legal issues and distinguishing all relevant facts; formulating relevant legal theories and synthesizing pertinent legal rules; elaborating legal theory and identifying arguments from different perspectives; evaluating legal theory for applications and implications; and criticizing and synthesizing legal argumentation to objectively evaluate theories and arguments.26

Constitutional Law


Baker offers practical, “how to” tips on how to effectively integrate the use of television programming into a Constitutional Law course. His rationale for using contemporary video clips is that “constitutional issues are shaped and decided in the real world . . . I want [my students] to learn how to connect the ideas and legal theories with life . . . .”27 By viewing and discussing C-SPAN programming, students may elevate their understanding of critical aspects of the ways in which legal analysis is conducted in actual practice. This concept correlates to the legal analysis skill which addresses how decisionmakers derive decisions, as well as the considerations and predispositions that are likely to bear on responses to legal theory.


25. Zarr at 701.
27. Baker at 297.
This is an expanded and revised version of the authors' previous article, *A Course on the Constitution*, 40 Journal of Legal Education 530-532 (1990). The authors contend that the case method of teaching constitutional law provides students with a skewed perspective of the subject. They propose a course which would fully expose students to the intellectual foundations of the Constitution by examining the thoughts and opinions of the framers. Lesson plans designed to achieve this goal are included.

**Evidence**


Blaustone attempts to demystify the legal reasoning process by using storytelling to analyze and relate relevant facts to a legal rule. The complete text of four review narratives based on the life of John Henry Wigmore is presented. These short stories are used to review the underlying rationale, prevailing interpretations, and development of the Federal Rules of Evidence. The class procedures, mechanics, and sequence are described.

**Criminal Law**


The use of role playing can be an effective technique in teaching a Rape Law course. Bloch outlines her instructional approach, while demonstrating the complexities and hazards of statutory construction. She requires students to draft a model rape statute.

**Law and Economics**


Law and Economics, as a legal analysis mode, can develop students' skills in elaboration (identifying arguments in different dimensions that support or oppose legal theories) and evaluation (considering concepts that bear on decisionmakers' reactions or predispositions to legal theories). Crespi divides his one-semester, three-credit, elective Law and Economics course into three parts. The first part includes basic microeconomic concepts and narrative critiques. The second part involves applying microeconomic principles toward analyzing selected legal cases drawn from basic common law doctrines of property, contract, tort, and criminal law. The course concludes by returning to a more theoretical level to discuss, among other principles, cost-benefit analysis. Throughout the article, Crespi notes the various books and articles used in the course.
Constitutional Law


Day describes his Constitutional Law course wherein students role play as Justices of the United States Supreme Court. Through role playing, students are afforded the opportunity to elaborate legal theory and identify legal arguments from the decisionmaker’s perspective. In using the role playing approach, Day has three goals: develop an understanding of recurring constitutional themes, policies, and arguments; emphasize the role of facts in constitutional adjudication; and expose students to cooperative activities.

Simulation


APEX28 is an urban simulation game. The authors describe what students can learn by using APEX. They also evaluate the urban gaming simulation in terms of its uses and advantages for urban legal studies. The authors conclude that the use of APEX (or any other gaming simulation) furnishes a method of relating specific legal questions to the entire urban planning process while engaging players in the decisionmaking process.

Teaching Methods


Performance-centered teaching is defined as a collaborative learning experience that stresses short, written analysis rather than traditional, oral exchange about appellate cases between teacher and student. Delaney utilizes problem solving and written exercises to enhance analytical skills. He presents a 14-point, teacher-prepared, model analysis that students may use to compare their own written

28. As of August 1997 a description of APEX may be found on the World Wide Web (http://eric.dof.hmc.edu/mellon/sharp.html). That site states:

METRO-APEX: A Simulation-Game Augmented by Internet Resources

METRO-APEX is a simulation-game in which students are assigned a role of a principal decisionmaker in an urban community: politician, planner, factory manager, real estate developer, environmental quality manager, journalist, or interest group director. The power of METRO-APEX lies in its ability to demonstrate how decisions affect individuals and groups in a community, and how these decisions impact metropolitan growth and life over a period of years. Internet tools and resources assist [players] with their decisionmaking.
analyses against. Delaney further employs role playing as an avenue of analysis, to actively apply legal doctrine. The article includes sections, “How to Teach” and “What to Teach,” which reflect the performance-centered perspective. The former details Delaney’s four-step process, while the latter emphasizes integrated, overlapping subject matter over single subject matter classes.

Legal Analysis


Section II of this article focuses on instruction in basic analytical strategies by discussing the function of case briefs in student analyses of appellate opinions. While the article does not outline a specific classroom course, the strategies may be generally applied toward improving students' analytical skills.

Jurisprudence


Huff, a Professor of Philosophy, looks at “dogmas which entangle legal education” and advocates the inclusion of jurisprudential issues in first-year law courses. Allowing students to explore their personal beliefs, along with jurisprudential issues, from the beginning of their legal training will diminish a tendency towards being indifferent to values. The article describes ways to incorporate jurisprudence into first-year courses.

Legal Analysis


Ingram’s Case Analysis course is designed to teach students to carefully analyze and dissect a case. A step-by-step approach, with use of actual opinions, is outlined. Ingram develops and presents a matrix to teach case briefing. The MacCrate skills of legal analysis, including identifying and formulating legal issues and theory, are incorporated by Ingram.


"Frame-shifting" is a method of teaching legal reasoning wherein students expand their frames of reference and thereby understand how the same facts can yield different outcomes. Jaff describes this process and explains how it empowers students.


The inductive method requires students to research and write holdings based on facts of an actual case. This is done in a vacuum, without prior knowledge of the actual court holding and unassisted by controlling precedents. Each student drafts an opinion developing the reasoning for his or her conclusion. Students' holdings are then read and discussed in class. Finally, students may read the actual opinions to compare their holdings and reasoning with those of the actual case. A brief discussion of materials used is included.

Jurisprudence


Section III contains suggestions on how jurisprudential principles can be incorporated into a law school's curriculum. According to McQuade, jurisprudence allows students to formulate, elaborate, and evaluate legal theory. He also offers brief descriptions of how introductory and advanced jurisprudence classes may be taught.

Legal Analysis/Legal Research and Writing


This article proposes a model, upper-division, remedial seminar in legal analysis and writing for students who have experienced difficulty with legal analysis and exam-taking. The seminar helps develop legal analysis building blocks by having students complete a series of short, highly-structured exercises. The course uses three educational learning theories and develops corollary skills through its interactive nature. The classes involve weekly writing assignments, extensive written critique, individual conferences, and rewriting and recritiquing of assignments.

Tax Law

Passive and active teaching methodologies are discussed and contrasted. The latter approach is favored because it requires students' direct involvement with tax codes and regulations. Oberst describes some of his teaching methods and techniques, such as class preparation, textbooks, classroom analysis, and exams. He believes tax teachers are duty bound to develop students' skills in interpreting statutes and regulations, just as practicing tax attorneys must constantly analyze primary tax materials.


➤➤ **Teaching Methods**


Paul uses a “bedtime story” to expose his first-year, Property students to the concept of “thinking like a lawyer.” The bedtime story centers around a young teenager's attempts to stay up well past his bedtime on a week night. Using a heavy dose of legal reasoning and analysis, the roles and arguments of the teenager and his babysitter are examined from different perspectives. This concept can be adapted for any substantive class.

➤➤ **Conflict of Laws**


Perdue uses materials on Indian tribes in her Conflicts of Law course to examine interrelations and recognition of judgments. Students find the Indian materials “an interesting context in which to review and reexamine the basic elements of the course.”

➤➤ **Civil Procedure**


Gaming techniques in the classroom can effectively enhance the case method. Rosato substantiates this in the context of describing the gaming techniques used in her Civil Procedure course. For example, she describes the mechanics and procedures used in her Buffalo

30. Perdue at 678.
Creek Family Feud game. She designed the game to test the students' knowledge of discovery rules, including depositions, interrogatories, and requests for production of documents. To a lesser degree, she also briefly describes her Class Action Jeopardy game.

Legislation


Simulations may be used to teach substantive and procedural courses. Schrag describes the use, purpose, structure, and methods of simulations in a large Legislative Process class. The course encourages policy analysis as students assume roles of legislators. Students gain understanding of how to evaluate legal theory and are exposed to considerations which decisionmakers typically bear. A comprehensive instructor's manual and simulation materials are included.

Statutory Analysis


Knowing how to read and analyze statutory materials are essential lawyering skills. Stark develops and proposes a syllabus for teaching statutory law. He discusses the rationale for the various components and some of the ways in which these may be taught.

Legal Analysis


After articulating the critical importance of legal reasoning, Suber presents two interesting exercises designed to stimulate its development. The exercises are adapted from an article by Douglas R. Hofstadter, *Metamagical Themes*, SCIENTIFIC AMERICAN 18-30 (Sept. 1981), and are devoid of legal-content facts. Suber expressly hopes that by focusing on the form of reasoning by analogy, students will gain valuable insight on legal reasoning. The exercises may be used in any course to teach legal reasoning.

Lawyering Skills


Wangerin describes a systematic approach to teaching legal analysis in a substantive course so that students begin to develop the skills needed to “think like lawyers.” He divides the legal analysis process into six skills, described in detail, and offers examples of specific class-
room exercises based upon E. Farnsworth and W. Young, Cases and Materials on Contracts (3d ed. 1980).


3. Legal Research

Defined: To effectively conduct legal research, a working knowledge of the nature of legal rules and institutions including case law, statutes, administrative decisions, rules of the court, restatements, and legal remedies are necessary skills. In addition, knowledge of and an ability to use the most fundamental tools of legal research—both primary, secondary, and alternative sources—are required. Furthermore, conducting legal research requires an understanding of the process of devising and implementing a coherent and effective research design.31

Legal Research and Writing


Alexander describes how to teach a large, first-year Legal Methods course with one professor. The class is divided into five small groups, and the large classroom setting is retained for lecture purposes. The lecture sessions are scheduled once a week and are conducted with the traditional case method. The small-group sessions are staggered by one week so that the writing assignments, linked to the small-class sessions, are always in five different stages. By this process, the instructor and library resources are able to handle and manage the demands and requirements of a large number of students. Alexander briefly explains the program's goals: familiarization and utilization of research tools, legal research literacy, drafting, and legal analysis.


A commentary by librarians on how to develop legal research skills in beginning and advanced stages. The article places emphasis on locating and using legal research materials.

31. See MacCrate Report, supra note 8, at 31-36.

Braveman describes an attempt to refine a first-year Research and Writing class. The revised course, "The Firm," adds, among other elements, basic lawyering skills, interdisciplinary materials, and professional responsibility to its research and writing components. Braveman describes course contents, exercises used, and class administration.


This editorial piece offers brief, but helpful, recommendations on selecting good Legal Research course books for first-year students. Items to consider include illustrations, block-letter approach, flexibility, and reference features.


A brief discussion on approaches to teaching legal research and writing along with a list of recommended texts.


After pointing out that all segments of the legal community are concerned about the poor quality of legal research, Dunn argues that legal writing programs and Computer-Assisted Legal Research (CALR) are major factors. He suggests that legal research is more than a course and is instead a concept that can be better comprehended by tightly integrating legal research with other law school courses. Dunn's proposal includes in-depth library tours, conducted by librarians, and research and writing assignments. The assignments are used to teach students an understanding of various research sources and how to distinguish the value of each source relative to the specific project. Assignments build incrementally to utilize the various research sources.


Learning legal research is made fun through use of the authors' board game which is played in the law library. The game simulates a summer associate program and requires students to research litiga-
tion from start to finish. The objective is to secure an offer of permanent employment by obtaining a high research score.

▶▶ Lawyering Skills


This year-long, first-year course in writing, research, appellate advocacy, and law study, is taught primarily by second- and third-year students. The program model is fairly typical in that legal research and writing are emphasized in the first semester and beginning of the second semester. This is followed by a focus on appellate advocacy during the mid-to-latter part of the second semester. Grading, use of student instructors, and course text are discussed.

▶▶ Legal Research and Writing


Horowitz suggests that broadening research and writing through three years of law school permits the development of projects of increasing complexity and diversification. Brief descriptions of assignments—from legal bibliography to a publishable student note or comment—are provided.


After tracing the history of legal research instruction, the authors propose a model program for the teaching of legal research by librarians. The model incorporates basic research skills, including an understanding of the process of devising and implementing a coherent and effective research design. The model proposes that computer-assisted research occur in the classroom.

▶▶ Teaching Methods


Legal Method, a four-hour credit course, attempts to address perceived first-year, legal research deficiencies. The course is comprised of four parts: legal research, brief introduction into origins of common law, constitutional law cases, and a series of research problems, several of which are presented.
MacCrate Goes to Law School

Legal Research and Writing


Of special interest in this article is the section on class structure which describes reading and writing assignments and instruction method. Skills taught include the coordination of research tools in relation to writing assignments. Livingston also provides a course evaluation.

Legal Research and Writing/Clinical Education


The Basic Legal Techniques course combines an introduction to law materials with traditional legal research and writing methodology. Marple fully describes a clinical unit on practical skills which utilizes a simulated consumer law case.

Teaching Methods


McDonnell describes his experiences in teaching manual legal research using the collaborative learning method. McDonnell divides the fifty-minute class period into two parts. The first part involves a class lecture. In the second part, groups of three students are each assigned a unique research problem which entails hands-on experience in the library under the instructor's or teaching assistant's supervision.

Legal Research and Writing


One of the first Legal Research and Writing courses to be offered as part of the regular curriculum is described. The article details three major components of the class: research techniques, writing, and evaluation.


Silecchia addresses practical considerations in establishing an advanced Legal Research and Writing course. The discussion includes setting course goals in creating a class that supports and builds upon first-year writing courses. The model course emphasizes the big picture and incorporates a research design to create a final written project.


Silecchia suggests that first-year Legal Writing courses, while focusing on research and writing skills, can also be geared toward introducing a wider range of skills and abilities. She suggests three methods for accomplishing these goals and provides sample assignments and topics.


The use of computer technology by legal writing students is pervasive, and Silecchia outlines the dangers and advantages of this development. She describes the approaches she implemented to ensure that students use technology in a constructive manner so as to improve their writing and professional skills.


In this short article, Thurman describes elements of a research and writing program. The course, typical by current trends, requires completion of a major memorandum, appellate brief, and oral argument. A full-time instructor conducts the course with the help of upper-class student assistants.

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**Feminist Legal Theory**


With the aid of two student co-authors, the principal author recounts in detail her Feminist Jurisprudence seminar. The course format, typical of a research and writing seminar, included six weeks of class, four weeks of research, and four weeks of oral presentations. The seminar was designed to develop independent research skills, critical thinking, and effective communication. The article fully de-
scribes the seminar's approach, teaching methodology, grading, and goals. Student observations, reactions, and comments by the student co-authors are interwoven throughout the article.

Legal Research and Writing


As with any skill, students can learn legal research and legal writing with practice, and Gilmer presents a program which incorporates this premise. His approach is traditional, developing research and writing skills through a research memorandum and utilizing small and large group presentations and discussions. Special emphasis is given to the Uniform System of Citation.


The authors present a broad critique of what they term to be the bibliographic method of legal research instruction. Using several examples, they propose a process-oriented framework and its ground rules. The framework emphasizes legal system orientation, assessing research problems, and the library phase of legal research. According to the authors, the framework allows a direct view of legal research as a step-by-step process.

4. Factual Investigation

Defined: There is little doubt that most practitioners consider the skill of factual investigation a key element of the lawyering process. The central components of effective factual investigation entails knowing when and in what context factual investigation is needed, planning the investigation process, implementing a plan, organizing the information in an accessible form, knowing when to stop, and evaluating the information gathered.32

Lawyering Skills


32. See id. at 38-45.
Brown summarizes his three courses which focus on preventive law. The Planning by Lawyers and Jurisprudence of the Lawyering Process are elective courses taught to law students. The Preventive Law Seminar is a postgraduate law course offered to practicing attorneys. Brown observes that most students are generally inclined to question the law and less inclined to question the facts. Consequently, much of his teaching approach and emphasis concern facts.

➤➤ Teaching Methods


During first-year orientation, Calhoun attempts to develop the ability to read critically by immersing students with an exercise using the General Custer controversy. He presents extensive historical data to serve as the raw material for the designed exercise. Calhoun describes how, through the exercise, he directs student discussion in analyzing Custer's orders. Calhoun concludes that this experience forces students to grapple over facts and invokes spirited discussion.


➤➤ Evidence


Acknowledging that fact-finding is an important component of law practice, the UCLA Law School established a three-semester hour, summer session course, Methods of Proof. The course covers 17 different subjects, varying from confessions to blood chemistry, under two major topics: testimony of eyewitnesses and other methods of proof. Gathering and interpreting facts and evidence are at the core of the course, and time allotments for each subject are given. A typical final examination question is provided.

➤➤ Trial Advocacy

Kenety describes some of the “more creative approaches” used in his trial practice course in which he incorporates skills of factual investigation: planning the investigation, implementing the investigative strategy, and evaluating the information gathered. First-year students role play parts in trial practice assignments.

Teaching Methods


This article introduces six problem-based learning techniques, ranging from methods requiring the instructor to supply facts and organization, to those where students gather, organize, and decide how to use facts. The authors focus primarily on the latter methods involving student-centered, problem-based learning and explain how these approaches may be used.

Trial Advocacy


After outlining the need for hands-on training, Marx describes the establishment of a first-year, required course on facts. The primary goal of the course is to develop the ability to analyze facts from a client-oriented, counseling perspective. The course deals with getting the facts, putting the facts in evidentiary form, and presenting the facts in the courtroom. This brief essay provides, among other elements, discussion related to course specifics, background materials, mechanics, and grading.


5. Communication

Defined: Communication skills are essential. Lawyers communicate in a wide range of contexts: written briefs or oral arguments to advocate or persuade; opinion letters or counseling to advise or inform; interviews or discovery letters to elicit information; and drafting contracts, wills, trusts, statutes, or administrative regulations to establish legal obligations or effectuate legal transactions. Types of communication may differ, but there are skills fundamental in effective communi-
cation: assessing the perspective of the recipient of the communication with the knowledge of one's own perceptions; using effective methods of communication by presenting ideas logically and appropriately; attending to detail; effectively using factual material; and tailoring the nature, form, or content whether it be drafting or listening receptively.  

Legal Research and Writing


Achtenberg discusses several legal writing models used at various programs. These models include directorship, faculty, graduate assistant, and student teaching assistant. The appendix contains a simple memorandum problem that can be used to teach legal writing.


The authors discuss the use of computer software programs (which they were developing at the time) as effective tools toward enhancing understanding of the logical structure of legal writing. The design and sequence of these software programs are included. Many of the concepts may be used to teach legal writing more effectively.

Teaching Method / Simulation


Lecture-in-Disguise is a team-teaching technique which uses a simulation to present the class material and promote active listening skills. Barkai has used the technique while teaching evidence, criminal procedure, and legal writing. Barkai suggests how the technique may be used in a lawyering skills course. The appendix contains an example of a "Lecture-in-Disguise" used on the first day of a clinical course.

33. See id. at 47-50.

The use of writing assignments, within the context of a Domestic Relations course, teaches students how to think like lawyers, develops skills on how to approach legal problems, teaches the importance of detail and precision, and provides practical experience. Insights into typical writing assignments used, grading, and objectives are provided. Bean’s techniques may be incorporated into any course.


The use of non-legal, simulation exercises designed for clinicians is explained. The authors present a series of eight, well-constructed exercises from their Trial Practice course which may be adapted for other courses. The simulations permit students to understand the extent to which their daily social behavior constitutes professional behavior, particularly when speaking to clients.


This upper-level seminar delves into a first-year curriculum’s “canonical presentation of a sequence of courses and the formalist core-and-penumbra structure of doctrine within these courses.”* See* Readings for the seminar are divided into two parts: Part One addresses doctrinal topics regarding women’s issues that may fall within first-year courses, and Part Two incorporates the “different voice” thesis that emphasizes care, connectedness, and individual rights. Description of how some of the materials are used are interwoven throughout the article. Bernstein also briefly describes the two writing requirements, research and reaction (one-page assessment of the readings for each class) papers.

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34. Bernstein at 218.
Legal Analysis/Torts


Each student in Bernstein’s Torts class anonymously chooses one of five legal perspectives: economics, corrective justice, feminism, libertarianism, or “practicality.” Students are required to read mainly law review articles on torts which illustrate the five perspectives. As the course progresses, Bernstein depicts each perspective with examples from case readings. On the final exam, one question is devoted to these perspectives. Methodology and course grading are discussed, and a partial reading list is supplied.

Lawyering Skills


Bowyer asserts that valuing the client’s perspective (political, emotional, and cultural values and attitudes) empowers the client which, in turn, works toward humanizing the legal practice. In this vein, Bowyer’s Politics of Law Practice course, while incorporating problem-solving methods, is designed to sensitize students to their clients’ needs and achieve communication. The course has four components: classroom sessions, internships in law practices, individual student sessions with the instructor, and written reflection and analysis. Bowyer offers several examples of student case studies from the course.


Brest presents a brief description of a first-semester Lawyering Process course, taught through six, simulated clinical exercises, small groups, and classroom instruction. The four goals of the course include introduction to interpersonal skills, examination of professionalism, instruction on basic legal research and writing, and promotion of independent learning.
Teaching Methods


In a two-semester, unscientific experiment with a first-year Torts class and a second-year Professional Responsibility course, Burman reports that out-of-class assignments were beneficial to both him and the students. The article briefly describes the assignments' logistics and results.

Feminist Legal Theory


Cain discusses experiences gained from teaching a Feminist Legal Theory Seminar. The article includes assignments, techniques, and student journal excerpts.

Teaching Methods


Campbell provides a review and synthesis of the literature related to teaching legal writing and teaching in clinics. From these two bodies of literature and her own teaching experience, Campbell suggests approaches to teaching legal writing in a clinical setting.

Legal Research and Writing


This article outlines why writing is an important component of the law school curriculum. Cook briefly discusses objectives, contents, exercises, and other classroom aids for his Writing III course.


The authors describe the three-credit hour course, Advanced Legal Writing, and discuss the progression of assignments. The assignments apply writing techniques, ranging from drafting contracts to collection letters.

The Current Tax Problems seminar is designed to give students an opportunity to develop proficiency in handling tax problems common to the general practice setting. The seminar is divided into five components: estate planning, real estate sales, partnership or corporation, divorce and separation agreements, and sale of corporate business. Cunningham provides week-by-week descriptions of problems assigned.


Dickerson explains how teaching legal drafting to a large class (165 students) can be easily done using his six-phase approach which he briefly describes. A professional draftsperson and three teaching associates (recent graduates) administer the class. Although a university lease agreement is used to describe the process, the methodology may be adapted as an exercise for other legal instruments. Appendices contain a policy statement and excerpts from Phases One (student instruction) and Two (drafting questions).


A very succinct description of how one professor incorporated legal writing techniques into his Legal Drafting course.


Using practitioners as instructors, this course considers the basic forms of business organizations: sole proprietorship, limited liability company, and corporation. The second part of the clinic involves fi-
nancing the buyer’s enterprise. Problems require students to re-
search, draft, and negotiate various documents.


>>> Criminal Law


This piece reviews the use of small discussion groups in large, first-year Criminal Law and Procedure classes. These discussion groups provide more personal interaction and relatively unstructured discussion. The article furnishes selective issues and topics which were discussed in the small groups.

>>> Legal Research and Writing


This short piece describes a one-credit, tutorial-style course taught in the second semester of the first year. The course is administered by 11-12 professors, each assisted by two third-year, moot court advisors. The problems, drawn from substantive courses, involve two major projects—a memorandum of law and a moot court case.


>>> Teaching Methods


The authors describe and discuss the use of narrative to encourage students in their Race and the Law seminar to confront the Rodney King controversy and its evidence of deeply embedded prejudice in the legal system and society.

Constitutional Law


Although some problem solving and analysis techniques are used, Hardy primarily addresses a drafting exercise which utilizes constitutional theory. Students were required to write a constitution for a fictitious, eastern European nation. The exercise was not done in class but strictly completed through electronic mail.

Contracts/Simulation


The principal objectives of using simulated exercises in a first-year Contracts course are to teach doctrine, encourage self-reflection, and inspire student cooperation. The role playing exercises, briefly discussed, are also used to promote communication.

Legislation


The critical elements of the model course in Legislative Drafting are described as exposure to the principles of legislative drafting, utilization of a problem approach, substantial student writing, and continual, individualized feedback. The goals, materials, and phases of the course are outlined. Appendices provide course assignments and suggested problems.


Contracts/Simulation


Teaching lawyering skills in the first year of law school is not only appropriate but essential. Thus, Hyman presents and describes seven simulation exercises used in a first-year Contracts course that attempt to incorporate skills training from the very beginning of law school. The design of three of the major exercises focus on measuring contract damages, negotiating a restrictive covenant and liquidated damages, and drafting a client advice letter. The other four shorter exercises are also described. Hyman concludes that there is insufficient time to
do both types of teaching—skills and case method—in the standard time allowed for most courses. Moreover, he notes, that "[t]he [skills] exercises still rub roughly against the casebook."35

Legal Research and Writing


This note describes in detail what a typical first-year Legal Research and Writing course should include. Accordingly, the note is intended to be a working guide for those involved in instituting a Legal Research and Writing course.

Legal Ethics


Johns shows how legal ethics, professional responsibility, and professionalism can be incorporated into a first-year Legal Writing course. Ideas for actual assignments are included.

Legal Research and Writing


Kalven provides a brief description of the objectives and writing assignments for the first-year Research and Exposition course. Assignments include a precise, precedent analysis, case problem, topic problem, and a book review.

Kearney, Mary Kate and Mary Beth Beazley, Teaching Students How to "Think Like Lawyers": Integrating Socratic Method With the Writing Process, 64 Temple Law Review 885-908 (1991).

This piece describes how the Socratic method and the writing process have traditionally been used and how this tradition can be integrated into a Legal Writing course. The authors describe the use of a five-step approach to achieve this integration.


35. Hyman at 779.

Third-year law students and one faculty member teach the Legal Writing course. The authors relate the program's assignments, problems, forms, instruction techniques, and administration. The appendix contains a sample critique of a student's memorandum on one of the research problems.


This article was written at a time when Legal Writing courses were still considered experimental. The progression of the course is briefly described along with class assignments.

**Teaching Methods**


Markman isolates three areas where journalism pedagogy might improve legal writing instruction—process, product, and audience—and illustrates how journalism educators address these concerns. She maintains that legal writing educators could build upon journalism educators' efforts to move from a product to a process-oriented method of teaching writing. Legal writing teachers could adopt journalists' strong sense of audience and use this concept to make students better communicators.


**Legal Research and Writing**


An experimental, two-hour, first-year course which combines legal writing and legal methods is described. Contents (e.g., use of legal materials, legal problem solving, and legal communication and writing) and evaluation of the course are recounted.

Storytelling


Storytelling can hone oral communication skills in students and promote their ability to present ideas logically and appropriately. This essay explores the role of lawyers as storytellers. Part One examines the uses of storytelling by lawyers, and Part Two surveys the current state of legal education and its failure to recognize the lawyer's role as storyteller. Finally, Part Three offers a model of the legal storyteller that may be used in the classroom.


Meyer describes his experimental course, Law and Popular Storytelling. His goal is to give students a chance to respond to narratives in their own voices. The course requirements, assigned readings, and films used are briefly described.


Teaching Methods


Small group learning may promote the skills of listening receptively and using effective methods of communication for resolving conflict. Reed advances the use of small groups in a criminal law, clinical setting and documents why small group learning is advantageous in certain areas of the law school curriculum.

Legal Research and Writing


This short essay describes one drafting assignment in a Code Pleadings course. The exercise is designed to take each student from beginning to completion of the pleading process while minimizing instructor supervision.

A revised definition of legal writing is used to suggest specific techniques for teaching legal writing, designing legal writing programs, and ensuring that these techniques can be carried over into law practice.


Robinson reports on experiences in teaching and the mechanics of his drafting course. Appendices contain sample drafting excerpts and assignments.


**Criminal Law**


This short piece describes a program which integrates criminal law, legislative process, and legal analysis and writing into a first-year course, Criminal Law/Legal Writing and Research/Legislative Process. According to Simon, this model merges these courses to create a course that teaches the substance of criminal law and legislation through the writing process.

**Legal Research and Writing**


Sossin briefly questions the usefulness of typical legal research and writing assignments. He proposes designing these assignments with a pedagogy of legal research and writing perspective. The appendix contains three problems used in Sossin’s Legal Research and Writing class.

**Legislation/Simulation**

The use of simulations in the Legislative Drafting course, which is structured around a Massachusetts criminal code revision, is described. Stern is quick to point out that the simulation may be adapted to other topics. The course attempts to duplicate the statutory drafting process by requiring each student to research, draft, present, and revise statutes as if employed as an attorney in a drafting agency or as a legislative aide.

Contracts


The purpose of the seminar is to bridge the classroom to the “real world” by simulating contract drafting activities of a law office. Students complete prescribed problems, compare their work with that of class peers, and have their work evaluated by practicing lawyers. The use of visiting attorneys and other organizational aspects of the course are discussed. The appendix is laden with drafting exercises used in class.


Trial Advocacy


Tuerkheimer describes his Trial Advocacy class in which a court reporter is present to record a mock trial. The trial transcript promotes realism and subsequently serves as a rich source for class discussion and review.


In the context of responding to Judge Edwards' article36, Woodhouse briefly describes her Child, Parent, and State course. She relies on "experimental" techniques, such as simulations, and consciously tries to balance theory, doctrine, and practice in the classroom. This collaborative learning process is Woodhouse's preferred method of teaching.

6. Counseling

Defined: Counseling clients about decisions they must make or courses of action they are considering may take form in a litigation context, for example, counseling a client about a settlement offer in a civil case or plea in a criminal case. Counseling may also take place from a non-litigation context, for example, estate planning or filing a bankruptcy petition. Skills and concepts include: understanding the proper nature and bounds of the lawyer's role in a counseling relationship, taking into account ethical rules and safeguarding the client's best interests while maintaining legal information and client's perspective; analyzing the decision to be made, including addressing alternative options; presenting all options in a comprehensible fashion to the client; and ascertaining and implementing the client's decisions, identifying changes and circumstances, and maintaining constant communication.37

Lawyering Skills


This short piece contains four hypotheticals, in the form of exam questions, accompanied by Brown's discussion of possible approaches. The hypotheticals were derived from a two-credit, one-semester, nonlitigating Client Counseling course. Each hypothetical requires students to identify alternative options, make rapid judgments, properly

37. See MacCrate Report, supra note 8, at 51-58.
grasp opportunities offered in a counseling conference, and, decide how best to serve the client as a lawyer.

Simulation


This article describes a course developed to teach interviewing, negotiation, and counseling skills. The three-hour course includes a two-hour class meeting per week. During one night a month, students participate in simulated interviewing, counseling, or negotiation experiences, observed and critiqued by the entire class. Each student participates in a minimum of two simulations. Galinson supplies the synopsis and goals for each class meeting.

Lawyering Skills


Goodpaster maintains that human interaction, specifically interviewing and counseling skills, is pedagogically the most important and difficult of the lawyering skills to teach. He first explores the general nature of lawyering skills, focusing on the theoretical elements of training design. Next, he demonstrates the theoretical analysis of lawyer's interaction with others. Finally, he analyzes lawyering skills involved in interviewing and counseling and outlines a skills-training program. Goodpaster's interviewing and counseling skills course contains three elements: awareness and skills training phase; substantive training in interaction and problem psychology; and a performance and evaluation phase. Sample exercises used in class are provided.


Lawyering Skills


Herwitz describes a business law skills course, The Business Lawyer: Representing Modest Business Enterprises, which uses role play and simulation to teach counseling concepts. Herwitz provides a scenario which features two clients who are advised throughout the life cycle of their small business. He also provides brief narratives of each class meeting.
Teaching Methods


Skills are increasingly being included in law school courses, and evaluation methods need to consider this trend. While video has traditionally been used in the classroom for teaching purposes, its use for evaluative purposes and final examinations is unique. Kovach describes how she uses video in forming the basis of student self-evaluation, assessment, and one-on-one feedback throughout the progression of her Mediation and Interviewing & Counseling courses. Kovach describes production procedures, considerations, and grading. She briefly addresses the use of video in both skills and non-skills courses. Kovach also outlines some of the problems inherent in the use of video, such as time, resources, complexity of administration, and cost.

Lawyering Skills


This article provides an overview of an interdisciplinary approach toward client services. The approach, which addresses psychological as well as legal issues, concurrently utilizes both law and counseling students in the interviewing and counseling process. The article discusses how both students and clients benefit from this collaborative approach. The program's setting, issues, and evaluation are described.


Tax Law/Legal Analysis


The objectives of this Income Tax seminar include exposure to income tax problems, planning considerations, and ethical questions presented by corporate formulations, reorganizations, dispositions, distributions, and the like. The seminar contains three distinct parts: (1) classroom discussion of assigned areas of study, (2) preparation and presentation of a written plan and supporting memorandum for client action, and (3) critique of the plan and memorandum. Class-
room objectives, mechanics, and grading are discussed. Wolfman also provides an appendix containing sample problems.

7. Negotiation

Defined: Negotiation skills encompass these elements: preparing for a negotiation effectively and evaluating strategies, alternatives, and the "settling point"; analyzing objectives from a competitive or cooperative perspective; and planning for all realistic contingencies. Conducting a negotiation session effectively involves communication, analyzing relevant information, and modifying strategies based on the other side's negotiation behavior. Lastly, competency in negotiation requires counseling the client about terms obtained from the other party and implementing the client's acceptance or rejection decision.38

Alternative Dispute Resolution/Simulation


Effective communication is the key to productive negotiation and mediation. Barkai extensively explains three simulations he uses to instill effective communication skills in students. First, he reproduces the "Ugli Orange" negotiation simulation in Appendix A. A description of the related video and transcript is developed and presented, covering salient points used for class discussion. The second, "Negotiating with a Duck," is meant to convey the importance of listening in communications. Finally, "the Savvy Samurai" illustrates the importance of conflict resolution. Barkai also describes other teaching techniques, such as using optical illusions, cartoons, and read-a-long communication exercises.


Simulation


In Part One of this article, Coleman reviews the bargaining and negotiation literature. A brief analysis of a simulation concerning an automobile bodily injury claim comprises the second section. The third and fourth sections describe the background and material for a

38. See id. at 60-64.
Finally, in Part Five, Coleman presents a simulation exercise which resembles a labor negotiation.

Contracts


Students often complete a Contracts course without ever negotiating, drafting, or even seeing a contract. The authors address this deficiency by constructing a simulation (comprising 50 percent of the student’s final grade) which requires the students to negotiate and draft a contract, client letter, and client bill. The authors reproduce the simulation in the appendix and describe its goals, mechanics, and results.


Lawyering Skills


Galanter’s Negotiations course is described from the perspective that negotiation is the essence of legal practice. The course is organized around particular types of disputes (e.g., personal injury, criminal, family) and understanding the differences each kind presents.


Torts

Little integrates negotiation and advocacy simulations into his Torts I course and supports the introduction of skills which are removed from substantive law. The appendices contain a rich and extensive array of exercises and problems used.

Lawyering Skills


Long before the MacCrate Report, Mathews argued for inclusion of negotiation as an integral part of the law school curriculum. He describes organization, procedures, problems, assignments, and grading for a Negotiations class. Mathews outlines skills involved in five problems dealing with tort, settlement (automobile accident), collective bargaining, separation agreement, building lease, and grievance settlement.

Teaching Methods


Instructors can teach negotiation with systematic faculty observation and critique. The article is a full explanation of how Moberly divides the class into groups and pits these groups against each other in negotiation exercises, time allotments, space requirements, and grading procedures. Videotaping the negotiations proved helpful, especially for instructor feedback.


Negotiation/Alternative Dispute Resolution


Ortwein recounts his six-year experience teaching a Negotiations for Lawyers course which emphasized an awareness and understanding of the negotiation process. He presents suggestions for course content and describes materials used and problems employed.
Teaching Methods


The authors outline their approach to a team-taught Negotiations seminar. They use a combination of case histories of negotiation settlements, a psychiatrist to enhance understanding of interpersonal dynamics of negotiating and counseling, and simulated problems.

Simulation/Lawyering Skills


To increase the relevancy of his third-year course, Acquisitions and Mergers, Rabinovitz incorporates simulated lawyering skills components. Students negotiate and draft a basic acquisition contract, related employment and escrow agreements, and other primary documents. Students also prepare a comprehensive closing agenda which lists all documents to be exchanged and each step to be taken at closing. Rabinovitz' personal observations and reservations about the course are included. The sections on instruction and grading may be helpful to those teaching or contemplating a similar course.

Lawyering Skills


This article provides a good, basic review of the literature on legal negotiation training and mediation and conflict resolution training materials. According to Rominger, a negotiation component for a Business Law class can be developed from these sources.


Using a Negotiations course as the basis for discussion, tips regarding professor selection, student evaluations, and other teaching components are reviewed.

Simulation


The Terry White Educational Simulation involves a debt collection lawsuit that requires students to interact frequently with simu-

39. Terry White is a successor to two other negotiation exercises. See The Bins Mini-Simulation Assignment, reprinted in Michael Meltsner and Philip G. Schrag, Re-
lated clients. The article may be used as an instructor's manual. Schrag includes exercise materials which may be reproduced for student distribution without further permission.

➤➤ Labor Law


The prime objectives of Sherman's Collective Bargaining course are to familiarize students with problems involved in the negotiation of a collective agreement and with problems arising under a consummated labor relations agreement. The class is divided into small, three- to four-person law firms. One firm represents the management of a small steel company, and the other represents an independent union seeking to organize the employees of the company. The instructor, with occasional help from other faculty members, assumes the client role. Without formal class hours and materials, the course progresses through five stages: (1) organization of the employees, (2) recognition of the union, (3) preparation for bargaining, (4) negotiation of a collective agreement, and (5) administration of the agreement. Sherman conducts a critique at the end of each stage.

➤➤ Lawyering Skills


The Lawyer as a Negotiator class was taught with the assistance of a psychologist who analyzed student negotiation simulations. White describes the course and advocates its curricular value. Each student participated in four negotiation simulations, completed reading assignments, and wrote a term paper. The simulations involved a labor-management contract, commercial landlord-tenant dispute, divorce settlement, and personal injury claim. The reading assignments focused on lawyer negotiations and psychology of negotiations. White offers selective course problems, materials, and grading system used. One of the interesting elements of this course is that students negotiated their grades with one another.

➤➤ Contracts


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Port of a CLEPR Colony, 76 Colum. L. Rev. 581, 678 (1976); Michael Metsner & Philip G. Schrag, Toward Simulation in Legal Education 533-80 (2d ed. 1979).
In an attempt to bridge the gap between common law research study and statutory analysis, Whitman presents some contract negotiation exercises through hypothetical client letters. Whitman discusses benefits of these exercises which include promoting the development of communication and evaluation strategy skills.

Alternative Dispute Resolution


Williams presents eight suggestions on content, design, and sequence of simulated problems. Examples are drawn from negotiations but may be easily adapted to mediation and arbitration. Williams espouses coordinating simulation exercises with class readings and discussion, while making facts and rules as complete and unambiguous as possible. He begins with relatively simple exercises and modest objectives, using any variations in settlement ranges to full advantage. Simplified game formats are used to teach particular dynamics, and role assignments demonstrate the effects of attitudes and motives in oneself and others.

Lawyering Skills


Practical skill exercises for drafting, negotiating, and oral advocacy are developed and presented in a Franchising Law course. Wright creates a hypothetical ice cream shop and uses practical skill exercises to initiate and operate the franchise.

Administrative Law/Simulation


As part of a Tax Policy seminar, Yin assigns students roles as finance committee members, administration representatives, or lobbyists. The purpose of the simulation is to reach a revenue goal established by the professor. Students must negotiate their interests and attempt to influence the committee. This simulation shows the necessity of cooperative negotiating when attempting to reach a specific outcome.
8. Litigation and Alternative Dispute Resolution Procedures

Defined: In order to develop an appropriate course of action and safeguard the client's best interest, attorneys must have fundamental understanding of the litigation, appellate, administrative, and alternative dispute resolution procedures. Specifically, lawyers should have an understanding of: (1) all steps of the litigation process, including pre-trial, trial and post-trial techniques; (2) appellate procedures, such as oral argument, procedural rules, and brief writing; (3) functions and structures of administrative law and procedures; and (4) alternative forms of dispute resolution and when to pursue options such as arbitration, mediation, and conciliation.40

Public Interest


Blaustone details several teaching methods, including simulation, used to teach mediation in his Lawyering and the Public Interest course. A hypothetical case, mediated by students, is defined. Appendix A contains role instructions for the hypothetical, and Appendix B consists of samples of assigned questions.

Administrative Law/Simulation


Dissatisfied with conventional teaching methods in an Administrative Law course, Botein creates a mock agency, simulating the administrative law process, which involves negotiation and prehearing conference, an evidentiary hearing, administrative review, judicial review, and rule-making proceedings. The simulation exercise invokes skills of understanding the fundamentals, functions, and structure of the Federal Communication Commission (FCC), along with its governing procedural rules and principles. Specifically, the simulation revolves around the FCC's procedure for passing on citizen group petitions to deny radio and television station license renewals. The thirty-five student class was divided into five groups: the public interest challengers, the FCC's Broadcast Bureau, the defending station's counsel, the seven-person FCC, and the District of Columbia Circuit.

40. See MacCrate Report, supra note 8, at 67-74.
Alternative Dispute Resolution


Bush sends his students to observe and analyze a real-life, Alternative Dispute Resolution session. He advances the pedagogical value of this method, briefly explains mechanics of the class, and reports on the results of the methodology.


Simulation


Cicero goes beyond the Socratic method by combining simulated and fieldwork experiences in a seminar setting. Students are assigned to three-person “law firms” who, under supervision by faculty and tutors, handle a variety of simulated cases, problems, and clients during the semester. The simulations require each law firm to work through the skills of taking part in a court trial, an administrative hearing, a contract arbitration, motion hearings, legislative conferences, depositions, and a Supreme Court appeal.

Bankruptcy Law


The use of role playing in a course focusing on bankruptcy reorganization is explained. Students are furnished with client files in a simulated Chapter 11 reorganization case and are instructed to represent their respective clients throughout the proceedings.


Trial Advocacy

Teaching a large (e.g., 120 students) Trial Advocacy class using only two instructors is the focus of this piece. The two-semester course provides students with various opportunities to teach themselves. This self-teaching method consists of constant repetition of three basic elements—doing, observing, and studying. Students perform a series of courtroom exercises against one another and under instructor supervision. Students are also provided numerous opportunities to observe live demonstrations and videos depicting selected aspects of trials. Ultimately, students are required to conduct a full-scale trial by applying theory and techniques which they have been exposed to during the course.

**Alternative Dispute Resolution**


To accommodate conceptual and practical approaches, Green describes goals, methodology, structure, reading materials, classwork exercises, and research component of his advanced seminar on Alternative Dispute Resolution. The emphasis of this course is to provide the opportunity for students to explore characteristics and dynamics of a full range of dispute resolution processes. These include the “primary” dispute resolution processes (e.g., adjudication, arbitration, mediation, negotiation, and fact finding) and a variety of “hybrid” processes (e.g., private judging, neutral expert fact finding, mini-trial, and settlement conference). Green briefly describes the simulations used.

**Evidence/Simulation**


Gross uses simulations that are based on students’ personal experiences as a means to teach direct examination and cross-examination techniques in his Evidence Workshop course. The course consists of three main components. First, each of the ten courtroom vignettes involves testimony of a single witness on direct and cross-examination based on some actual experience of the person in the witness role. Second, students in the course play all roles including courtroom officers. Finally, the entire class reviews and critiques each simulation.

**Simulation/Criminal Law**

Herman recounts his staged altercation between two students fighting over a casebook in his first-year Criminal Law course. This conflict served as the source of witnesses, parties, and events which simulated real-life consequences in Herman's Trial Practice course. The verbatim script is set out in a footnote, thereby permitting others to use the same case.

**Trial Advocacy**


Kelly describes his two-hour Trial Practice course wherein students experience all stages of a lawsuit. This exposure provides students with the opportunity to utilize their understanding of litigation fundamentals and practical skills of client conferences, case investigation, pleadings and motion practice, discovery procedures, pre-trial conference, jury selection and instruction, opening statement, witness examination, and closing argument and post-verdict motions. By obtaining special permission from the Missouri Supreme Court, third-year law students prepare and try actual cases with authentic clients and witnesses. With prior agreements of insurance companies, their respective insureds, and the independent witnesses, pending property damage claims are submitted for preparation and jury trial by student counselors. Course descriptions, scope of student counselor's role, and acquisition of subject trial cases, among other topics, are presented.


To increase student understanding of the process by which case law grows, Kessler coordinates and supervises extracurricular court visits to the United States Court of Appeals for the Second Circuit. Organizational details are included for those who might be interested in replicating the plan.


**Trial Advocacy/Teaching Methods**


Through a functional analysis of trial advocacy, McElhaney outlines specific areas that ought to be taught and suggests how a Trial Advocacy course should be organized and made part of the law school
curriculum. He espouses the combined incorporation of advocacy skills with the concrete skills of drafting.

➤➤ Lawyering Skills

Mueller, Addison and James Fleming, Jr., Case Presentation, 1 Journal of Legal Education 129-135 (1948).

This brief essay describes an early attempt to incorporate clinical legal skills (e.g., interviewing, fact finding, negotiation, and arbitration) into a seminar setting. The course sequencing is briefly but thoroughly described. Utilizing actual case files, the authors guide students through the skills of client interviews, settlement conferences, and procedural steps necessary to bring the cases to arbitration hearings, to court, and then through trial. As the authors note, this may be the students’ only opportunity to view a legal problem from its beginning to resolution.

➤➤ Alternative Dispute Resolution


The authors set forth their Mediation and Law class goals and other related items, such as methodology, discussions, simulations, video-taping and critique, films, skill-building exercises, and pedagogical challenges. The authors integrate theory and practice with substantive law and give students practical skills of interviewing, counseling, and active listening which model interactive dynamics of the mediation process.

➤➤ Simulation


Ordover describes several simulation problems based on complex substantive and procedural areas involving forms of injunction or accelerated relief.

➤➤ Trial Advocacy

Sandler, Paul Mark, Teaching Appellate Practice, 6 Trial Diplomacy Journal, Summer 1983, at 29-32.

Sandler’s Appellate Practice course entails more than brief writing and oral advocacy in that it also focuses on a broad range of materials related to effective client representation on appeal. The course is divided into seven segments: (1) Introduction to Appellate Practice, (2) Trial Overview, (3) Preserving, Perfecting, and Protecting the Ap-
peal, (4) Brief Writing, (5) Oral Argument, (6) Clinical Experience, and (7) Final Review. Sandler also provides a list of course materials used.

**Lawyering Skills**


The Lawyer’s Role course is designed to give students an insight into the non-litigational aspects of law practice through role playing assignments that teach many of the MacCrate skills. Schultz offers an interesting analysis of empirical research on the expectations of new lawyers and the hiring partners and how these expectations relate to the MacCrate skills.

**Legal Analysis**


Shreve attempts to incorporate skills components in two courses, Litigation Workshop and Conflicts of Laws, traditionally taught by case method. Litigation Workshop is offered to first-year students and develops legal analysis skills, introduces students to the adjudicative process, and serves as a supplemental laboratory for Civil Procedure. The workshop uses simulated exercises, such as filing a federal lawsuit, conducting discovery, and briefing and arguing several pretrial motions. In Conflicts of Law, students are introduced, through cases and text, to a series of methodologies which purport to direct and explain the choice of law process.

**Lawyering Skills**


After twenty years of teaching clinical education, Stark develops a mediation clinic from the ground up. However, the article’s purpose is not about how to design a mediation clinic but rather to provide a context which others in the field may use to come to their own conclusions. Part II of the article examines and describes a variety of skills training and student supervision issues that arise in a mediation setting and includes Stark’s experiences. The clinic is designed to teach

41. *See Sandler at 30.*
"generic listening, questioning, persuasion and problem-solving skills that are fundamental to the practice of law."\textsuperscript{42}

\textbf{Trial Advocacy}


The Trial Law and Procedure course, focusing on the substantive law of trial practice, goes beyond the traditional "skills and tactics" Trial Advocacy course offered at most law schools. It provides students with an opportunity to make trial decisions and think critically about fundamental aspects of the trial system. The course covers five aspects of trials: historical context and development, contemporary theoretical debates about what trials should be, conflicting jurisprudential principles that shape trials, relevant Supreme Court opinions, and the complex body of doctrine that purports to regulate trials.

\textbf{Civil Procedure/Simulation}


To aid frustrated, first-year students in their struggle with the "big picture" in civil procedure, Ticcioni designs and uses a civil litigation exercise. The exercise involves a litigation simulation which is conducted for approximately six weeks during the second semester of a six-hour, two-semester, first-year Civil Procedure course. The class is divided into five- to seven-member, plaintiff and defendant "firms", with one member designated as lead counsel of each firm. The plaintiff firms are given a memorandum which sketches a grievance roughly resembling that which prompted the Ralph Nader airline bumping litigation (\textit{see} Nader v. Allegheny Airlines Inc., 512 F.2d 527 (D.C. Cir. 1975)). Two motion sessions per week are scheduled with the instructor acting as the motion judge. The exercise is fully set forth in the appendices.

\textbf{Trial Advocacy}


The traditional Appellate Advocacy course taught in most law schools does not reflect the reality of appellate practice. These courses often use "canned" material which fails to establish a realistic appeal record and set of facts. Tuerkheimer attempts to overcome this shortfall by offering a two-semester course which requires students to

\textsuperscript{42} Stark at 459.
complete both semesters to receive credit. During the first semester, students conduct a "full-scale", simulated trial which is transcribed. The full set of trial transcripts and facts are used in the second semester's Appellate Advocacy course as the record for appeal. The article briefly describes class mechanics and methods used in both semesters. Tuerkheimer provides a sample trial responsibilities matrix which may be useful to others teaching a similar class.


This article reviews the two predominant models for teaching trial advocacy skill—the semester approach and the intensive approach. Each method is critiqued and compared, including expense, skill, and evaluation procedures. Tuoni also provides brief recommendations on how to improve both approaches.

Lawyering Skills


The skill of understanding the litigation process is brought to life through presentations made by practicing attorneys who explain the procedures and techniques for many of the cases, from probating estates to administrative hearings, that the general practitioner handles. This summer school course is designed to incorporate lawyering skills from the practitioner's point of view.


9. Organization and Management of Legal Work

Defined: To effectively organize and manage legal work. Skills and concepts include: formulating goals and principles for effective practice management; developing systems and procedures to ensure that time, effort, and resources are allocated efficiently; developing systems and procedures to ensure that work is performed and completed at the appropriate time; developing systems and procedures for effectively working with people; and effectively administering a law office, from handling cases to attending to the financial aspects.43

43. See MacCrate Report, supra note 8 at 76-78.
Lawyering Skills


Law schools may teach students how to “think like lawyers”, but few teach students to “think like managers.” It is becoming increasingly difficult for law firms to train new lawyers in practice management and the lawyering process. Baker describes and advocates a Law Practice Management course which gives students some awareness of practice management issues and allows them an opportunity to assess their interests and skills.

10. Recognizing and Resolving Ethical Dilemmas

Defined: Involves familiarity with the nature and sources of ethical standards, including primary sources of ethical rules and the duties owed to a client. In addition, familiarity with the means by which ethical standards are enforced and the ability to guard against unethical conduct. Furthermore, familiarity with the processes for recognizing and resolving ethical dilemmas includes identifying warning signs, solutions, and appropriate responses.44

Feminist Legal Theory/Health Law


In the course of reviewing feminist literature on health care ethics, Bender briefly discusses related textbooks and provides specific examples of teaching tools and techniques in that field.

Contracts


Burnham offers numerous examples of how ethical issues can be incorporated into a Contracts course. Some techniques may be transferable to courses other than Contracts.

Ethics/Simulation


Burns integrates a Professional Responsibility course with Trial Advocacy and Evidence courses. Fourteen simulations to foster inte-

44. See id. at 80-83.

To teach an Ethics course, Burns develops and describes simulations used to enhance the "moral vision into the kinds of concrete situations in which ethical issues actually arise." The class is team-taught by practicing attorneys with actors or drama students playing witness and client roles. Students may play these non-lawyer roles as well. The course materials can be integrated with Evidence and Trial Advocacy, as happens here, or with any other law school course. Burns describes various exercises and program materials.

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**Ethics**


This article contains reflections, observations, and suggestions from an experienced teacher of Professional Responsibility. Esau suggests how a course on Professional Responsibility may be taught and offers materials, teaching methodologies, and his grading method.


The premise that lawyers each have a professional responsibility to provide legal services to impoverished people is a cornerstone of the legal profession. Glennon puts this premise to the test by substituting the professional responsibility component in her Civil Procedure course with one that includes an "ethic of care" element. This element promotes the belief that students' professional lives are connected to the lives of those who live in poverty and that, by working with people living in poverty, students gain the ability to create rewarding and sustaining relationships with clients and colleagues. Glennon de-
scribes how she integrated her teaching of the required, first-year Civil Procedure with students' legal work in education law, primarily in areas of special education and school discipline.


➤➤ Teaching Methods


The use of video-taped recordings of a simulated law office transaction between an attorney and clients, as part of a Professional Responsibility course final examination, is discussed. Johnson describes class objectives, student reactions, advantages, limitations, and applicability of this alternative testing format to courses other than Professional Responsibility.

➤➤ Ethics


LaRue uses John Dean's book, *John W. Dean, Blind Ambition: The Whitehouse Years* (1976), to teach Legal Ethics. He provides lengthy examples from the book and discusses how the excerpts are incorporated into his class lectures.


Can the legal profession's "crisis of professionalism" be cured through good moral judgment? The authors conclude that judgment can be cultivated through an immersion in practice, combined with critical reflection on practical experiences. This theory is illustrated by describing and analyzing the authors' own hybrid clinic that combines classroom with clinical instruction.

➤➤ Civil Procedure

Matasar suggests that Civil Procedure is an ideal vehicle for connecting ethics with doctrine since procedural rules "strain constantly to balance competing interests."\textsuperscript{46} The article includes specific examples of ethical issues which Matasar has used in class, such as commencement of lawsuits and personal jurisdiction.

\section*{Ethics}


After discussing the evolution of legal education, Moliterno proposes an intensive, four-semester, simulation-based, ethics program focusing on the development of legal skills. The "Program" would incorporate four semesters of legal skills and ethics, an externship, and simulation exercises in substantive elective courses.

\section*{Ethics/Clinical Education}


An Appellate Litigation clinic is an opportune method of integrating theory and practice. Ronner discusses the goals of the clinic and the specific skills gained by focusing on these goals. Also included is a summary of two actual events in which students of the clinic were taught important lessons in professional responsibility.

\section*{An Integration of the MacCrate Skills}

Defined: The MacCrate Report acknowledges that individual skills cannot be neatly compartmentalized and that some skills require the application of another. Some educators have effectively combined and highly integrated four or more skills into one course, so that the skills may not be easily and singularly classified. For the readers' convenience, I have identified those articles which integrate four or more of the MacCrate skills into this section and, after each entry, it is noted which of the ten fundamental lawyering skills the article addresses.\textsuperscript{47}

\section*{Civil Procedure/Teaching Methods}


\textsuperscript{46} Matasar at 588.

\textsuperscript{47} See MacCrate Report, \textit{supra} note 8 at 4.
In the second semester of a two-semester, six-credit, first-year Civil Procedures course, the authors incorporate three tort cases, which, they believe, offer special insight into civil procedure and the legal system. Students are required to draft complaints, responses, and motions (e.g., consisting of hearings, discovery, and pre-trial conferences). A paid, third-year student spends about 160 hours during the semester handling program tasks. (1, 4, 5, 8)

>> Bankruptcy Law / Simulation


Barron addresses simulated "real life" problems in the context of his advanced Bankruptcy Law course. The course is co-taught with an experienced bankruptcy practitioner. The focus of the course is a mythical company that will ultimately need to file Chapter 11 bankruptcy. Students take roles as "associates" in a debtor firm and as attorneys for a secured lender or unsecured creditor committee. The instructors, in the roles of senior partners, pose issues each week. The associates must research those issues, draft a memorandum, and make an oral presentation on their conclusion and strategies for resolving the client's problem. Barron's approach and techniques may be used in traditional, substantive courses, including larger, more basic courses. Many of the MacCrate fundamental lawyering skills are addressed. (1, 3, 5, 7, 9, 10)

>> Clinical Education / Externship

Caplow, Stacy, From Courtroom to Classroom: Creating an Academic Component to Enhance the Skills and Values Learned in a Student Judicial Clerkship Clinic, 75 Nebraska Law Review 872-915 (1996).

Caplow first identifies the MacCrate skills (e.g., legal research, communication, legal analysis and reasoning, and organization and management of legal work) students gain through a Judicial Clinic course. These skills are ingrained through an academic component in the course that requires students to analyze their experiences as a judicial clerk. By using journal entries, simulations, and other in-

48. The parenthetical series of numbers appearing at the end of subsequent annotations are intended to assist the reader by identifying the pertinent fundamental lawyering skills outlined in the MacCrate Report that are referenced by the author. For example, this article integrates four of the skills: skill #1, problem solving; skill #4, factual investigation; skill #5, communication; and skill #8, litigation and alternative dispute resolution.

49. See MacCrate Report, supra note 8.
class exercises, students relate their experiences to the skills needed for successful practice of law. (2, 3, 5, 9)

Discovery


Cavanagh offers several pedagogical techniques which can be used to develop discovery skills by using the problem method, simulation, computer-assisted instruction, and audio-visual materials. (1, 2, 5, 7)

Labor Law/Simulation


Trying to contextualize cases and inculcate an appreciation for labor law, Corrada uses a semester-long simulation to teach his Labor Law course. Students form a union and bargain with the professor regarding the terms and conditions of the course, all in the context of teaching the intricacies of the National Labor Relations Act. Students conduct a union-organizing campaign, negotiate their position with their employer (professor), and have the option to threaten a strike if the employer fails to meet their demands. Corrada gives insight on how the students successfully incorporated the assigned reading with their roles as union members. (1, 2, 5, 7)

Clinical Education


To maximize the student’s exposure to and development of practical lawyering skills, Fell blends the advantages of an externship with the comprehensive, academic oversight of a classroom. His Criminal Defense Clinical Externship program is designed to build upon basic skills’ simulation courses (e.g., in the classroom) with a live-client experience. He has the students participate in a variety of skill exercises, such as interviewing, case planning and investigation, legal research and writing, drafting, and negotiation. (3, 5, 6, 7, 8)

Civil Procedure

The pedagogical objective is to expose "students to lawyering skills not generally encountered in the first year."\(^{50}\) Grosberg attempts to instill in students that "lawyer" embodies critical components beyond the ability to analyze appellate decisions and doctrine. By using the *Buffalo Creek*\(^{51}\) litigation, Grosberg presents the student with an opportunity to evaluate, or at least consider, different styles and modes of lawyering. (1, 4, 5, 8)

**Simulation**


The simulated law firm concept provides practical experience for associates to handle simulated cases from the initial interview with the client, through hearing before a judge, and on to the closing of the file. Hollander describes her program, as well as various modes of simulations, including computer-aided teaching programs currently used in law schools. She also reviews the literature on the use of simulation as a teaching aide. Appendix B describes a typical classroom simulation involving role play in a management-labor employment contract negotiation. (1, 6, 7, 8)

**Contracts/Simulation**


Hyman sets forth and explains advantages of seven lawyering simulation exercises to teach first-year Contracts. Four of the exercises are relatively brief, requiring little preparation time, while the remaining three are more substantial. The exercises span three major substantive themes in contract law: damages, consent, and negotiations. (1, 5, 7, 10)

**Clinical Education**


Knight explores the value of the criminal prosecution clinic as a relatively unexplored option to teach basic lawyering skills to students. She highlights an extensive list of practical skills that may be instilled in a student through the clinic. A section of this article offers

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50. Grosberg at 380.
practical tips and suggestions for starting a similar program in the curriculum. (1-10)

➤➤ Teaching Methods


The authors detail four teaching models employed in the teaching of their clinical course: “major case” model, mini-simulation (the appendix contains a complete copy of one of the mini-simulations used), maxi-simulation, and actual field work. Numerous examples of topics and problems used are provided. (4, 5, 7, 8)

➤➤ Lawyering Skills/Simulation


This nine-credit Legal Skills Program spans the first two years of law school and includes these topics: history and structure of the legal profession and professional ethics; legal research and writing (including drafting); interviewing and counseling, negotiating, and other alternative dispute resolution methods; and pretrial practice and introduction to trial and appellate practice. The Program is organized around simulated student law offices and progresses on two concurrent tracks—simulated client representation and classroom instruction. The students, or “Associates”, represent clients from the initial interview stage to a logical ending point. The simulation attempts to integrate fact investigation with legal research. Most of the classroom instruction is done in small groups. The program is limited to the traditional law firm model. (3, 5, 6, 7, 8, 10)

➤➤ Lawyering Skills


Motley describes a law school program which attempts to train students in lawyering skills, give students insight into the workings of the legal system, promote a sense of professional responsibility, and develop students’ abilities to learn from experience. Motley discusses the program’s underlying theory and identifies problems encountered with the program. The appendices contain several forms used in the program. (1, 5, 8, 10)
Teaching Methods


Rosato sets forth how to go about creating and designing games or simulations for classroom use. Her suggestions may be used in any class for the development of lawyering skills. (1, 2, 4, 5, 6, 7, 10)

Lawyering Skills


Practical skills are assimilated through an Applied Skills Program comprised of three courses: Appellant Advocacy, Facts (e.g., litigation), and Legal Drafting. Rutter provides examples of how each course's objectives are executed to incorporate professional techniques for training in the underlying skills. The appendices contain extensive samples of course materials, such as problems, outlines, and exams. (1, 4, 5, 8)

Torts


The first part of a Products Liability course is taught using traditional methods (e.g., theme of liability, causation, defenses, design defect, and failure to warn). The second part of the semester elevates to practice-oriented aspects, such as damages, discovery, settlement, and mass tort case management. Schotland briefly describes how she presents and tries to instill an understanding of these four elements in students. (1, 2, 5, 7, 8)

Simulation/Civil Procedures


Schrag discusses the development and implementation of a year-long simulation that can be used in class with any number of first-year Civil Procedure students (e.g., 125-140 students). He provides an overview of the case and briefly discusses each of the 12 simulation exercises. Conducting all 12 classroom exercises uses about twenty percent of the class time in a five-credit course. The exercises deal with the same fact patterns and include these elements: counseling, interviewing, strategic planning, complaint drafting, class-action cer-
tification, interrogatories, depositions, jury selection, and negotiations. (1, 2, 4, 7)

★★ Teaching Methods


The Legal Methods course is intended to complement the Socratic method through the use of simulation and role playing techniques for skills training. The course is built upon a teaching case which requires students to adopt various litigation roles. The case entails about twenty hours of classroom instruction and spans across several weeks. It is characterized by prolonged and progressive case development and involves interviewing, counseling, negotiation, and oral argument. (1, 4, 5, 8)

★★ Simulation


The Pretrial Practice course takes students through the process of preparing two cases for trial, beginning with initial client interview and culminating, in one case, with a settlement negotiation, and, in the other case, with a final pretrial conference with a local judge. The course uses first-year students as clients and witnesses. A full course description is provided, and a syllabus is available from Snyder. (2, 6, 7, 8)

★★ Lawyering Skills


The Legal Practicum course is designed to simulate many activities of a small general law practice and revolves around a set of exercises which enable the student to “learn by doing.” The exercises incorporate commercial law, civil procedure, criminal law and procedure, professional responsibility, torts, family law, and employment law. The authors maintain that the Practicum covers most of the MacCrate skills, such as problem solving, legal analysis and reasoning, communication, negotiation, litigation, and alternative dispute resolution procedures. The extensive appendices include exercises for conflict management, mediation/arbitration dealing with UCC, assessment forms, time sheets, course calendar, and budget. (1, 2, 5, 7, 8)
Business Law


The basic elements of a Business Lawyering course and how it incorporates doctrine, skills training, and business theory are explained. Vaaler discusses the major techniques, themes, and issues of the course. The appendix provides course format, assignments, and negotiation exercises. (1, 2, 4, 9)

Problem Solving


This two-and-one-half page essay summarily describes Legal Problem I (drafting skills), Legal Problems II (advocacy and courtroom procedures), and Legal Problems III (counseling and office procedures). All three courses are electives and restricted to seniors. (5, 6, 8, 9)

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