

# TEACHING FOUNDATIONAL CLINICAL LAWYERING SKILLS TO FIRST-YEAR STUDENTS

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## INTRODUCTION

In *Taking Lawyering Skills Seriously*, their contribution to the Clinical Law Review's 2003 symposium issue celebrating the twenty-fifth anniversary of Gary Bellow and Bea Moulton's *The Lawyering Process: Materials for Clinical Instruction in Advocacy*,<sup>1</sup> David Binder and Paul Bergman suggest a clinical program model that takes effective skills training seriously.<sup>2</sup> Binder and Bergman argue that the best way to transfer students' clinical experiences to the practice of law is through "skill-centered" clinical courses. That is, rather than molding classroom and live client work to the assortment of problems that arise out of a clinic's cases over the course of the school year, clinical programs might offer a menu of

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<sup>1</sup> David A. Binder & Paul Bergman, *Taking Lawyering Skills Seriously*, 10 Clin. L. Rev. 191 (2003).

<sup>2</sup> Much of the discussion among clinical law commentators concerns how, and where, to strike the balance between what have been identified as the two primary—and sometimes incompatible—goals of clinical legal education, namely effective skills training on the one hand and promoting social justice on the other. See e.g. Deborah L. Rhode, *Access to Justice* 193 (Oxford U. Press 2004) (challenging law schools to do better in persuading law students to make "access to justice a more central social priority"); Stephen Wizner, *Beyond Skills Training*, 7 Clin. L. Rev. 327, 328 (2001) (arguing that clinical legal education should be more focused on exposing students to an experience from which they may conclude "that they should become active participants in the struggle to extend the availability of legal services to the poor"); Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 Fordham L. Rev. 997, 1011 (2004) (adding to Rhode's challenge in arguing that "clinicians must strive to inculcate in their students an understanding and compassionate concern for the plight of people living in poverty, and a sense of professional responsibility for increasing their access to justice"); see also Binder & Bergman, *supra* n. 1 (citing William Pincus, *Educational Values in Clinical Experience for Law Students*, 2 CLEPR Newsltr. (Sept. 1969), for the identification of these two competing goals). Without minimizing that important problem, I leave that debate for others and, like Binder and Bergman, instead take it as a given that effective skills training is in fact a critical component of clinical legal education.

courses organized primarily around the *skills* we hope students will adopt and use in the practice of law.<sup>3</sup> The authors offer various approaches, adaptable across substantive areas, which such “skill-centered” clinical offerings can implement to teach students those skills that are not well-taught in practice.<sup>4</sup>

In the wake of the recent publication of Roy Stuckey’s *Best Practices For Legal Education* (the report arising out of the Clinical Legal Education Association’s five-year-long Best Practices Project)<sup>5</sup> and the Carnegie Foundation for the Advancement of Teaching’s contemporaneous report, *Educating Lawyers*,<sup>6</sup> there is a renewed emphasis on clinical skills that builds on the conversation started by Bellow and Moulton. My aim in this Article is to add to that conversation and build upon Binder and Bergman’s model by focusing on preliminary clinical instruction (what I will refer to as “foundational” instruction) law schools must offer to make upper-division clinical instruction more effective. Part One argues that for students to leave law school with a collection of transferable skills (that is, having a conceptual understanding of the principles underlying the various lawyering skills they are likely to make use of in practice and having processed that understanding through methods such as active learning, repeated opportunities to practice, and meaningful feedback)<sup>7</sup> students must obtain a foundation for these skills prior to entering upper-division clinical courses. That foundation should include an introduction to the following: fact-gathering, theory development and inferential reasoning, basic questioning techniques, obtaining chronologies, and T-funnel questioning. Each of the foregoing skills must otherwise be covered at the outset of both litigation- and transaction-oriented clinical offerings.

Part Two of this Article suggests that introduction to these foundational clinical lawyering skills probably should be integrated into the first-year curriculum. I say “probably” because that approach is not without substantial drawbacks. Part Two discusses some of the common problems associated with implement-

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<sup>3</sup> Binder & Bergman, *supra* n. 1, at 207.

<sup>4</sup> *Id.* at 212–218.

<sup>5</sup> Roy Stuckey et al., *Best Practices for Legal Education: A Vision and a Road Map* (Clinical Leg. Educ. Assn. 2007).

<sup>6</sup> William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass 2007) (summary available at [http://www.carnegiefoundation.org/files/elibrary/EducatingLawyers\\_summary.pdf](http://www.carnegiefoundation.org/files/elibrary/EducatingLawyers_summary.pdf)).

<sup>7</sup> *Id.* at 197–202; Binder & Bergman, *supra* n. 1.

ing this teaching of foundational clinical skills in the first year. For example, a typical refrain among law students is that their first-year legal research, writing, and skills courses divert them from what they perceive as their main goal—learning doctrine. First-year students also tend to believe that lawyering skills exercises impede their ability to prepare for stressful doctrinal exams. Thus, including skills training in addition to the traditional legal writing program is not likely to be popular with first-year law students. Moreover, students' ability to transfer what they learn in the classroom to other contexts best occurs when students have repeated opportunities to practice those skills over time and in different and increasingly more complex settings, and where they receive meaningful feedback on their performance (including self-evaluation). This means devoting substantial time and scarce resources to skills instruction, perhaps at the expense of writing instruction.

Part Three, then, offers possible approaches that provide students with context for skills-based instruction and make the clinical aspects of the first-year curriculum more meaningful; concurrently the suggested approaches stress ways to ensure that students learn skills transferable to practice without diluting instruction in legal writing and research. The Article concludes by arguing that implementing the model suggested here, or any other model designed to help law students gain sufficient exposure to those lawyering skills they are likely encounter in practice, must be a joint effort between the clinical and legal writing communities.

## I. THE REQUISITE FOUNDATIONAL SKILLS

The overwhelming majority of law students do not end up in a law practice that takes on the same types of public interest matters that the students worked on in their law school clinical or externship experiences. For the learning experience to be most effective, clinical skills—be they fact development, interviewing, counseling, trial advocacy, negotiation, deal-making, and the like—should be taught in a manner that ensures that the students will be able to transfer what they learned about performing that skill to the new contexts in which they find themselves post-

graduation.<sup>8</sup> As Binder and Bergman explain, transferable lawyering skills are best learned if the students have several, repeated opportunities to practice those skills over time,<sup>9</sup> receive meaningful feedback on their performance,<sup>10</sup> and evaluate their own performances.<sup>11</sup> Moreover, skills transfer is best achieved through

<sup>8</sup> Binder & Bergman, *supra* n. 1, at 198.

<sup>9</sup> *Id.* at 201; *see also* Stuckey et al., *supra* n. 5, at 166 (explaining that experiential learning pedagogies are “based in an understanding that students must perform complex skills in order to gain expertise”). In other words, a meaningful experience with any particular skill cannot be limited to reading a “how to” manual about that skill, watching videotaped examples or reading transcripts of that skill in practice, or watching other students perform. While each of the foregoing is not without value, the student is unlikely to gain any substantial development of the skill without repeated, active practice in either a real or simulated setting. *Id.* at 125 (“One cannot become skilled simply by reading about skills or watching others perform lawyering tasks. One must perform the skills repeatedly, preferably receiving expert feedback.”).

<sup>10</sup> *See id.* at 122 (“If [students’] performance is to improve, they need practice accompanied by informative feedback and reflection on their own performance.”). Instructor feedback is meaningful only if it is that—actual feedback—and given within the context of the pattern at issue. For example, assume a student is preparing a direct examination of a client for an unemployment insurance appeals hearing about the client’s alleged misconduct in his treatment of a customer. Assume the student’s direct examination includes the question “What happened next?” in the part of her direct immediately following the discussion of the interaction with the customer. It would not be particularly constructive for the instructor to simply strike out that question and replace it with “At any point after the customer left the store, did you talk to your manager about what happened? When? Tell me about that meeting.” Instead, if the goal is promoting long-term transfer of direct examination techniques, a class discussion of what might happen if the student were to ask such a question—the witness’s potential confusion, the ALJ interrupting the flow of the hearing because of her displeasure with such a vague and potentially broad question, etc.—followed by giving the student the opportunity to correct her own mistake may well permit for the concept to become encoded in the student’s memory about this particular questioning technique. Because of the realities of live-client litigation, going through that type of back-and-forth exercise is impracticable, and thus starting out with a simulation (or series of simulations) is more suitable if this type of constructive feedback is to be valued. Moreover, an actual experience of dealing with a confused witness or annoyed judge might have the type of impact on the student that is much more likely to stick with her. Of course that cannot be done at the expense of the client, but it *can* be done at the expense of a volunteer simulated client or judge.

<sup>11</sup> *See id.* (“[Students’] learning will be strengthened further if they develop a habit of ongoing self-assessment.”). I have found written self-critiques to be a terrific learning tool. In videotaped simulation exercises, I ask the students to break down their performances segment by segment (by referencing the videotape counter) according to whatever set of skills they practiced during the exercise. Students are encouraged to discuss both what went wrong and what went right, the latter of which ensures recognition of patterns they effectively have adopted. Perhaps because the typical student is very uncomfortable watching himself on videotape, I have found that most students are far, far more critical (and aware) of their performance when watching it on videotape and being forced to write about it as opposed to simply commenting on it after the exercise. Students also are more likely to accept “negative” feedback from the instructor as instructor and student watch the tape once again together after the student has written his self-critique rather than where such feedback is offered directly following the exercise. *See also* Steven Hartwell, *Six Easy Pieces: Teaching Experientially*, 41 San Diego L. Rev. 1011, 1017 n. 14 (2004) (suggesting that “[t]he act of writing—of turning perception into the written word—typically has a signifi-

practice in different and increasingly more complex settings, beginning with repetitive exposure in different contexts to any particular technique, followed by longer simulation exercises that may incorporate a handful of problems or a number of techniques, and eventually culminating in “full-blown” simulated or live-client experiences.<sup>12</sup>

With these principles in mind, many law schools offer skill-centered clinical courses that allocate different lawyering tasks to separate courses or offer live-client courses whose cases are likely to focus on a specific (and limited) set of skills or both.<sup>13</sup> Each course, then, more effectively results in transfer because it focuses classroom discussions and simulations on one or two lawyering skills and the most important techniques (or skills that are not well-taught in practice) underlying those skills.<sup>14</sup>

#### A. “Something’s Gotta Give”

Because this skill-specific approach relies upon repetition in shifting contexts, there simply is not the time over the course of a single semester (or much less a quarter) to cover all aspects of the particular skill(s) being taught in the course. Binder and Bergman suggest that “nuts and bolts” items that are easily learned in practice can be omitted.<sup>15</sup> For example, a course on deposition-taking

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cant and positive effect on learning”).

<sup>12</sup> Binder & Bergman, *supra* n. 1, at 197–202. Because most clinics’ live-client cases provide neither varying contexts nor the opportunity for performing increasingly more complex tasks, Binder and Bergman advocate the use of simulations (either instead of or in addition to the live-client work) as the “ideal vehicle for providing repeated opportunities for practice and feedback in a variety of factual settings that promotes conceptual understanding and thus transfer.” *Id.* at 202.

<sup>13</sup> *Id.* at 213–215. UCLA School of Law, for example, offers skill-specific clinical offerings such as Depositions and Discovery in Complex Litigation, Interviewing and Counseling, Trial Advocacy, Public Policy Advocacy, Negotiation Theory & Practice, Mediation, Appellate Advocacy, as well as transactional clinical offerings such as Renegotiating Basic Business Contracts, Venture Capital Formation and Financing, Public Offerings, and Environmental Aspects of Business Transactions. For a complete list of UCLA School of Law’s clinical offerings (both simulated and live-client), visit UCLA Law Clinical Program, *Clinical Courses*, <http://www.law.ucla.edu/home/index.asp?page=1733>.

<sup>14</sup> Binder & Bergman, *supra* n. 1, at 213–215; *see also* Stuckey et al., *supra* n. 5, at 133 (“Professional skills instruction in most United States law schools does not produce sufficiently proficient graduates. The fact of the matter is that very few, if any, simulation courses develop proficiency in any professional skill to the level that a new lawyer needs. Some skills instruction is better than none at all, but law students will not develop adequate entry level lawyering skills as long as professional skills instruction for most law students is relegated to one course in the second or third year of law school.”).

<sup>15</sup> Binder & Bergman, *supra* n. 1, at 205.

skills can ignore close coverage of areas such as preliminary admonitions and the closing “usual stipulations,” which even in the live-client context, can be read from a script or can be handled by the supervising instructor. Similarly, tasks like subpoenaing witnesses to appear at a trial or hearing, sending notices to consumers or employees that sometimes must accompany document demands, and other administrative tasks can be handled by a clinic paralegal.

But merely omitting “nuts and bolts” items is not enough. To have sufficient time to expose students to repetition in shifting contexts, clinical instructors also should be able to assume that students have knowledge of those baseline clinical techniques that form the foundation for clinical courses. It makes little sense to offer skill-specific courses but require individual clinical instructors to spend a substantial amount of their instruction time covering baseline foundational techniques, such as those described below, at the expense of sufficient repetition and context variety. For each clinical offering to move quickly into repetition of more complex techniques associated with the particular lawyering skill or skills on which the course focuses, it is imperative that students begin their clinical experience with the foundation for those skills already having been laid.

There are a variety of techniques that invariably apply to a whole host of lawyering skills. These include: (1) fact gathering, theory development, and inferential reasoning; (2) question formation; (3) eliciting chronologies; and (4) T-funnel questioning.

### ***1. Fact Gathering, Theory Development, and Inferential Reasoning***

There are few important skills that lawyers—particularly litigators—use that do not require understanding how to develop legal case theories and how to identify material facts that support those theories. Moreover, one of the most difficult skills for law students to master is articulating the inferences that tie facts to the contentions critical to a dispute and developing evidence that tends to strengthen (or rebut) those inferences. No client or witness interview, deposition, written discovery request, direct or cross examination, or mediation would be complete without asking questions designed to uncover or limit facts tending to prove a con-

attention critical to the dispute or tending to strengthen or to rebut desired intermediary inferences.<sup>16</sup>

Even in non-litigation settings, interviewing and counseling require at least some basic theory development of the potential dispute. When interviewing a walk-in client in an immigration clinic, for example, the lawyer must give some thought to what types of facts must be developed for the client to be able to obtain a Visa or asylum, and she also may want to ask questions designed to uncover facts that strengthen the inferences tying the client's story to the prerequisites for obtaining the Visa. Transaction-oriented skills are less likely to require factual development of legal theories, but proposed deals do require inquiry into potential terms, potential risks involved with the deal, and similar considerations; identifying those areas of inquiry resembles the theory development process.

Therefore, before students take clinical courses such as interviewing, depositions, discovery, trial advocacy, or mediation—and particularly live-client courses centered on any of these skills, the students should have a foundational understanding of how to develop case theories.

## 2. *Question Formation*

Learning how to ask well-crafted open-ended, closed, and leading questions is necessary across a spectrum of lawyering tasks, such as interviewing, mediating, taking a deposition, and conducting a direct examination or cross examination.<sup>17</sup> Without a foundational introduction to these techniques, clinical instructors would have to spend substantial instruction time teaching students these skills. For example, learning the client/witness/opponent's version of relevant events requires much more than an open-ended "tell me everything that happened" question; therefore students would benefit greatly from having a foundational understanding of how to formulate appropriate questioning topics and how to articulate those topics into effective open questions. Similarly, the line between "true" closed questions and those that are closed in form,

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<sup>16</sup> For a detailed discussion of developing theories and strengthening generalizations, see David A. Binder et al., *Lawyers as Counselors: A Client-Centered Approach* (2d ed., Thomson/West 2004).

<sup>17</sup> See Deborah Maranville, *Passion, Context, and Lawyering Skills: Choosing among Simulated and Real Clinical Experiences*, 7 *Clin. L. Rev.* 123, 129 (2000).

but leading in effect, can sometimes be unclear, and students should understand the ethical underpinnings of how they might impact the client/witness/opponent's answers based on the wording of the question.

### **3. *Eliciting Chronologies***

Like basic question formation, knowing how to obtain a cohesive chronology is important to many lawyering tasks. Obtaining a complete understanding of a client's story or a witness's version of events (whether sympathetic, neutral, or adverse) usually requires developing a timeline of relevant events. Similarly, most persuasive litigation stories have a narrative structure. In the transactional setting, effective client representation requires an understanding of the history leading up to a proposed deal, including an account of prior dealings between the parties and the course of discussions and negotiations prior to seeking legal advice. Likewise, spotting potential risks in a deal often necessitates a forward-looking inquiry into how the deal will play out over time.<sup>18</sup> It makes good sense, therefore, for students to enter their upper-division clinical curriculum with a foundational understanding of how to define a timeline, ask the initial question to get the witness to start the timeline, move the timeline along, and check for potential intervening gaps.

### **4. *T-Funnel Questioning***

It probably is not an overstatement to assert that no effective interview or deposition can take place without employing the T-funnel questioning pattern.<sup>19</sup> Not all information relevant to a problem or dispute fits a neat chronological inquiry. Furthermore, people often forget the chronological order of events, but still remember important details when probed through effective T-funnel

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<sup>18</sup> Binder et al., *supra* n. 16, at 229–232.

<sup>19</sup> Although most readers probably are familiar with what I refer to as “T-Funnel” questioning, I will briefly describe it here: A T-Funnel begins with a series of open-ended questions about a topic or event (e.g., “Tell me everything you know about X,” “What else do you know about X,” etc.) designed to uncover what the interviewee recalls about the subject without being suggestive. When the interviewee indicates that she can recall nothing else, the questioner moves on to closed questions, which are designed to stimulate recall of other potential matters regarding the topic or event in question. In theory, the combination of open and closed questions will allow the questioner to uncover all information that might be drawn from the interviewee's memory about the topic or event in question.

questioning. Most theory development questioning lends itself to the T-funnel pattern, since lawyers typically will seek to uncover more information than is likely to arise out of direct inquiry alone.<sup>20</sup> In the transactional setting, the T-funnel pattern typically can be used to inquire about a whole host of topics, such as the client's objectives, the terms of a proposed deal that the client has considered, a description of the client's (and the other party's) business, and a variety of transaction-specific topics.<sup>21</sup> Even within the timeline context, T-funnels often are useful to explore the details of events arising along the timeline and to search for potential gap-filling events.

Accordingly, all students should have a foundational understanding of how the T-funnel pattern works, how to identify appropriate closed questions at the "bottom" of the T-funnel, and how to recognize (and how to deal with) important information that is not relevant (or at least not directly related) to the T-funnel topic.

### *B. Using a Clinical Skills Foundation Course to Supplement Clinical Experiences*

As with any model, there are flaws in offering a menu of skill-centered clinical courses rather than traditional "case-centered" clinics. In the latter, students typically engage in and receive concurrent instruction in a wide range of lawyering tasks—including interviewing and counseling, negotiating with adversaries, motion practice, drafting pleadings and written discovery, researching factual and legal matters, developing case strategies, taking and defending depositions, and representing clients in court or administrative hearings—the students' tasks will vary with the needs of whatever cases are active in the clinic in any given semester.<sup>22</sup> While some argue—with good reason, as explained above<sup>23</sup>—that such a survey approach to clinical skills training, especially in the context of high-pressure and quick turn-around, live-client litigation, "is ill-suited to the successful transfer of lawyering skills,"<sup>24</sup> it

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<sup>20</sup> *Id.* at 167.

<sup>21</sup> *Id.* at 213–221, 227–229.

<sup>22</sup> See Binder & Bergman, *supra* n. 1, at 194–197 (describing a handful of such traditional law clinics).

<sup>23</sup> See *supra* nn. 8–14 and accompanying text.

<sup>24</sup> Binder & Bergman, *supra* n. 1, at 202. Binder and Bergman explain that traditional case-centered clinical programs devote inadequate time to too many skills and such an experience is unlikely to result in transfer. They further suggest that relying exclusively on

would be a stretch to suggest that students get no benefit at all from exposure to many of the lawyering tasks they likely will employ in practice.

In a clinical program that offers specialized skill-centered courses, on the other hand, a student who has the opportunity to take, for example, an Interviewing course, a Depositions course, and a Trial Advocacy course will be well-prepared for many of the clinical skills she is likely to use in a litigation practice. The reality, however, is that it is a very rare student who is fortunate enough to have such a complete clinical experience.<sup>25</sup> To begin with, taking so many clinical offerings can occur only by sacrificing at least some core Bar Exam courses, and anecdotal evidence (at least in my experience) suggests that the typical law student is hesitant to forego taking those core courses. More importantly, schools simply do not have the resources or the space to offer enough skill-centered clinical courses to satisfy student demand.<sup>26</sup>

As a result, it is difficult for law school clinical programs to succeed in effectively teaching those clinical lawyering skills that are not well taught in practice given that most students will be exposed only to a very small sampling of those skills. Of course, there is no easy answer to this dilemma. I suggest, however, that including a mandatory foundational clinical course in the curriculum can ease the transition from law school graduate to lawyer when a graduate is faced with a task he did not have the opportu-

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live-client experiences further inhibits transfer because, among other reasons, students are unlikely to confront an adequate range of typical problems associated with a particular task and will have limited opportunities to confront varying contexts, they cannot receive adequate and immediate feedback, and the time they spend on complex lawyering tasks often is short-changed by straightforward “nuts and bolts” tasks that cannot be avoided in real-life litigation. *Id.* at 202–205.

<sup>25</sup> At UCLA School of Law, for example, only one-fifth (62 of 303) of the 2005 graduating class took more than one clinical course, and only 10 of those students took as many as three clinical courses. More than one-third (118 of 303) never took a single clinical course.

<sup>26</sup> For example, UCLA School of Law offered during the 2004–2005 school year a total of 23 clinical courses (14 of which were live-client courses) with 306 available spots for an upper-division student body of 636 students. Accordingly, the average UCLA student is able to take just a single clinical offering over the course of his law school tenure, and more than half the student body (167 of the 303 students in the 2005 graduating class) never takes a live-client course. See also Gary S. Laser, *Educating for Professional Competence in the Twenty-First Century: Educational Reform at Chicago-Kent College of Law*, 68 Chi.-Kent L. Rev. 243, 277–278 (1992) (finding that “[m]ost law students take no more than one or two skills courses while in law school”); Lucia Ann Silecchia, *Legal Skills Training in the First Year of Law School: Research? Writing? Analysis? Or More?* 100 Dick. L. Rev. 245, 281 (1996) (“It is also undeniable that at many law schools students are given little opportunity to take skills courses beyond their first year.”).

nity to practice during his law school clinical experience.<sup>27</sup> If, for example, a law school graduate had taken only an Interviewing & Counseling course, he should be able to draw upon his foundational clinical skills in taking on new legal tasks such as preparing a discovery plan, propounding discovery, taking depositions, and representing clients in court.<sup>28</sup>

## II. PLACEMENT OF FOUNDATIONAL CLINICAL TEACHING IN THE CURRICULUM

I have argued in Part One that law schools should include in their curricula a course covering foundational clinical lawyering skills. The question then is, where does it make the most pedagogical sense to place this foundational clinical teaching? Part Two offers some suggested approaches and concludes that introduction to these foundational clinical lawyering skills probably should be made a part of the first-year curriculum.

### *A. Integrating Foundational Clinical Skills into First-Year Legal Writing and Research Curriculum*

The most logical place to include the foundational clinical teaching discussed in this Article is in the first-year legal analysis, research, and writing curriculum as part of an integrated “Lawyering Skills” course.<sup>29</sup> Much has been written in recent years arguing that the first year’s focus on doctrine may be too limiting and questioning continued exclusive reliance on the traditional Socratic method; commentators have advocated instead for alternative teaching, such as problem-centered learning and using simulations in the traditional classroom.<sup>30</sup> The Carnegie Foundation’s

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<sup>27</sup> See also Silecchia, *supra* n. 26, at 281 (“A course that introduces students to a range of skills has the distinct advantage of ensuring that students are at least familiar with the full range of skills that they may need upon graduation. While first year students will not have truly mastered any of these skills, this is the only way to ensure that all students will, at a minimum, have a basic familiarity with a broad range of skills.”).

<sup>28</sup> Moreover, those skills will have been further developed and reinforced in the Interviewing and Counseling course (or whichever other upper-division clinical offering he chose to take).

<sup>29</sup> I use “Lawyering Skills” to describe this course because that is the title used at UCLA School of Law. Other law schools that integrate foundational clinical skills with the first-year LRW course may use a different title such as “Lawyering” (NYU), “Legal Practice” (Michigan), and the like.

<sup>30</sup> See *e.g.* Stuckey et al., *supra* n. 5, at 97–104 (recommending that law schools

recent *Educating Lawyers* report, for example, suggests that a simulation-based “integrated” approach to doctrinal classes would allow students to connect the conclusions they draw in performing legal analysis with the “rich complexity of actual situations that involve full-dimensional people” and force them to consider the social consequences and ethical underpinnings of those conclusions.<sup>31</sup> Others explain that a problem-centered approach to doctrinal classes might lead to greater retention;<sup>32</sup> would introduce students to the notion that they must develop a theory of the case to advocate effectively;<sup>33</sup> and would help students “become aware of the complexity of and interplay among substantive, writing and ‘people’ skills in the practice of law.”<sup>34</sup> That debate is largely outside the scope of this Article, but it does suggest that an integrated Lawyering Skills course that includes coverage of foundational clinical skills may provide a good opportunity to fill some of the deficits in most first-year curricula.

One obvious drawback to the first-year integrated Lawyering Skills option is that there arguably is less time available to teach

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“broaden the range of lessons they teach, reducing doctrinal instruction that uses the Socratic dialogue and the case method; integrate the teaching of knowledge, skills and values, and not treat them as separate subjects addressed in separate courses; and give much greater attention to instruction in professionalism”); Michael P. Allen, *Making Legal Education Relevant to Our Students One Step at a Time: Using the Group Project to Teach Personal Jurisdiction in Civil Procedure*, 27 Hamline L. Rev. 133 (2004) (discussing the usefulness of group projects in light of the collaborative nature of good lawyering); Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek To Narrow*, 8 Clin. L. Rev. 109, 150 (2001) (suggesting that law schools should focus on adding simulations to the first year, either as freestanding courses or as integrated experiences into existing ones); Philip G. Schrag, *The Serpent Strikes: Simulation in a Large First-Year Course*, 39 J. Leg. Educ. 555, 555 nn. 1–5 (1989) (citing to published articles advocating the use of simulation to teach such traditional “lecture” courses as administrative law, contracts, constitutional law, bankruptcy, and civil procedure); Arturo López Torres, *MacCrate Goes to Law School: An Annotated Bibliography of Methods for Teaching Lawyering Skills in the Classroom*, 77 Neb. L. Rev. 132 (1998) (containing a bibliography of legal commentaries examining teaching lawyering skills in the context of the traditional doctrinal classroom).

<sup>31</sup> Summary: *Educating Lawyers: Preparing for the Professor of Law* 5–6, [http://www.carnegiefoundation.org/files/elibrary/EducatingLawyers\\_summary.pdf](http://www.carnegiefoundation.org/files/elibrary/EducatingLawyers_summary.pdf) (2007)

<sup>32</sup> Maranville, *supra* n. 17, at 136–137 (“In my view integrating clinical experiences into the curriculum, rather than rigidly separating doctrinal (as well as theoretical) courses from practical ones, can play a critical role in the effectiveness of legal education generally. In large part, this is true because of the nature of memory. Empirical research in other educational settings suggests that students who learn large quantities of information through lectures tend to forget most of it within a few months, but that learning done for the purpose of problem solving is retained more effectively.”).

<sup>33</sup> Robert G. Vaughn, *Use of Simulations in a First-Year Civil Procedure Class*, 45 J. Leg. Educ. 480, 480 (1995).

<sup>34</sup> Carol Chomsky & Maury Landsman, *Introducing Negotiation and Drafting into the Contracts Classroom*, 44 St. Louis U. L.J. 1545, 1546 (2000).

and practice writing and research skills. LRW faculty at law schools nationwide feel pressured to spend as much time as possible trying to teach legal writing skills.<sup>35</sup> So the question posed by many legal writing program directors is, “How can sufficient time be devoted to developing research and writing skills if the class time devoted to them must be ‘diluted’ with training in other skills?”<sup>36</sup> A simple response is to say that students invariably *will need* foundational clinical skills in order to practice law. LRW program directors would be well served, then, to “recognize and affirm the pedagogical value of teaching these additional [lawyering] skills.”<sup>37</sup>

Perhaps most importantly, demonstrating to first-year students from the outset the overlap and interdependence between legal writing and the clinical techniques described in this Article is critical to the effective teaching of lawyering skills.<sup>38</sup> While students no doubt know that whatever legal issue they are presented with in a LRW assignment reflects an underlying set of facts, their analysis of the interaction between facts and rules can only benefit from a broader understanding of the varying contexts in which

<sup>35</sup> A 1995 survey of law school legal research and writing programs found that 93 of the 111 program directors surveyed reported that if they could have additional class hours, they would spend that extra time on writing and research training. Silecchia, *supra* n. 26, at 262–263. Eighty-five of the 111 directors similarly identified the development of “competency in legal writing and analysis” as the single most important goal of their programs. *Id.* at 263. While the Legal Writing Institute’s annual surveys do not directly address this issue, the data from the most recent survey suggests that most LRW courses continue to focus on legal research and writing. See ALWD & Leg. Writing Inst., *2007 Survey Results*, 11–13 (2007) [hereinafter *2007 Survey Results*] (available at <http://www.lwionline.org/survey/surveyresults2007.pdf>) (reporting that only 24 of 181 programs surveyed include “other oral skill[s]” in their curricula and that only 7% of classroom time is spent on such “other” activities). Anecdotal evidence from my recent interviews of UCLA School of Law faculty who teach in the Lawyering Skills program supports the same conclusion. These faculty reported that they prefer to spend as much time as possible on teaching writing and written analysis and typically pare down the clinical skills portion of the curriculum because, the argument goes, those are skills students will have the opportunity to develop through upper-division clinical courses, whereas the first year is the only chance to develop much-needed writing skills.

<sup>36</sup> Silecchia, *supra* n. 26, at 266. For a good survey of the widespread belief that recent law school graduates have poor writing skills, see Susan Hanley Kosse & David T. ButleRitchie, *How Judges, Practitioners, and Legal Writing Teachers Assess the Writing Skills of New Law Graduates: A Comparative Study*, 53 J. Leg. Educ. 80, 86 (2003).

<sup>37</sup> Kenneth D. Chestek, *Reality Programming Meets LRW: The Moot Case Approach to Teaching in the First Year*, 38 Gonz. L. Rev. 57, 76 (2002).

<sup>38</sup> See Anthony G. Amsterdam et al., *Lawyering by the Book* 4–5 (N.Y. U. Lawyering Program 2006) (explaining that lawyers operate in the four dimensions of rule interpretation, fact investigation, desire, analysis and contextual dynamics, and management, and that the “dimensions of lawyering work never stand in isolation; they interact, and effective lawyering requires attention to these interactions”).

those facts are developed.<sup>39</sup> Integrating legal writing and clinical techniques would also demonstrate to students that identifying potential evidence and exploring that evidence can only be accomplished in the context of legal theories—potentially theories that students will have researched and analyzed in their research and writing assignments.<sup>40</sup> In other words, the research and writing instruction will benefit from the students' broader understanding of what it means to be a lawyer and represent a client.<sup>41</sup> As one commentator has noted, in an integrated Lawyering Skills course, "the research and writing process has much greater context because students see—in very practical terms—the ways in which research and writing are closely related to broader issues in the practice of law. When they are removed from their vacuum, the importance of research and writing becomes more apparent."<sup>42</sup> Without that context, students often are unmotivated to learn and become jaded by the learning process.<sup>43</sup>

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<sup>39</sup> *Id.* at 7–8 (explaining that "the facts we perceive, remember, express and comprehend are not mechanical representations of objective reality, but selective constructions that are profoundly influenced by the interactive contexts in which they are perceived and reported, and invariably skewed by our physical senses, memory, language, and identity").

<sup>40</sup> Chestek, *supra* n. 37, at 76 (further rationalizing that "[d]eciding what facts must be uncovered to support or defeat certain legal theories provides students a new and highly engaging way to practice the skill of legal analysis"); see also Stuckey et al., *supra* n. 5, at 16 ("Students who receive instruction that is contextualized by reference to problems or professional settings seem to believe that more is expected of them, and treat associated intellectual tasks with a greater seriousness of purpose and a higher level of engagement."); Silecchia, *supra* n. 26, at 267–268 (arguing that "retaining an in-depth focus on research and writing cannot come without answering [a] set of equally hard questions: Can research and writing be taught without a realistic context in which students can see how these skills are applied? . . . Are research and writing more likely to capture the sustained interest and attention of students if they are taught in conjunction with other skills that are more 'inherently interesting?").

<sup>41</sup> Broad introductory instruction that includes clinical lawyering skills also is consistent with the model first-year curriculum suggested by Stuckey. Stuckey et al., *supra* n. 5, at 206 ("The first year should provide the building blocks for the progressive acquisition of knowledge, skills, and values in the upper class curriculum and in law practice. . . . The goals of the first year should also include beginning the process of helping students develop their legal problem-solving expertise, self efficacy, and self-reflection and lifelong learning skills. . . . First year students should be given an overview of the program of instruction and how it is designed to prepare them for practice by progressively building their knowledge, skills, and values toward competence.").

<sup>42</sup> Silecchia, *supra* n. 26, at 280–281; see also Maranville, *supra* n. 17, at 128–129 ("Adult learning theory suggests that our students will learn best if they have a context for what they are learning. . . . Thus, attempting to interview a client about a personal injury claim will provide a specific form of context in learning torts.").

<sup>43</sup> See e.g. Engler, *supra* n. 30, at 156 (arguing that under the traditional model, "[b]y the time students gain exposure to more contextualized presentation of the law in trial practice, simulation, or clinical courses, they are in their second or third year and they have already adopted a hard-to-shake account of law and law practice"); Maranville, *supra* n. 17,

In addition to providing much needed context, integration of foundational clinical skills into the LRW curriculum is, I believe, *necessary* to teaching legal writing. Law student writing often suffers due to its failure to construct arguments in a logically reasoned manner—i.e., the ability to articulate the intermediate inferences (or minor premises) needed to reach the ultimate question(s) posed by the assignment, and the ability to recognize and articulate the inferences to be drawn from the facts, holdings, and policy rationales of the cases the student is analyzing. Rather than “diluting” instruction in writing skills, devoting LRW class time to teaching students about inferential reasoning in the context of developing potential evidence should actually serve to *improve* their aptitude in constructing well-developed written arguments.

Perhaps the biggest drawback to successful implementation of the integrated Lawyering Skills approach is that many first-year law students deem their LRW courses as “unworthy of the same level of attention as the other more ‘substantive’ courses.”<sup>44</sup> Anecdotal evidence<sup>45</sup> suggests that law school culture in the first year tends to convey the message—do well on your first-year doctrinal classes and everything else will fall into place.<sup>46</sup> Between the focus

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at 138 (arguing that the traditional model “fail[s] to motivate our students, to encourage their passion for the law”). In addition to motivating students through context, an argument could be made that clinical lawyering skills also are “intrinsically more interesting than basic research and writing—particularly from the point of view of the first year student.” Silecchia, *supra* n. 26, at 282.

<sup>44</sup> Chestek, *supra* n. 37, at 58; see also Kosse & ButleRitchie, *supra* n. 36, at 95 (lamenting the “second-class status” of LRW courses at many law schools). This mindset is likely exacerbated in non-graded, partially-graded, or otherwise “differently” graded LRW programs, which comprise 26 of the 181 respondents to the most recent survey conducted by the Association of Legal Writing Directors and Legal Writing Institute. *2007 Survey Results*, *supra* n. 35, at 8. Even among “major writing assignments,” fifty of the respondents reported that fewer than 75% of such assignments are graded. *Id.* at 14. I suspect that at any institution where not all major writing assignments are graded, it is even more likely that oral lawyering skills exercises are not graded. And even where LRW assignments and exercises are graded, many schools assign such a small number of credits to the LRW course that any assignment will have little impact on the students’ cumulative GPAs. See *id.* at 7 (reporting that the average respondent assigns a mere 2.25221 to 2.36 credits per semester during the first two semesters to its LRW course).

<sup>45</sup> Anecdotal evidence is based on my own observations as well as from my interviews of former students at UCLA School of Law.

<sup>46</sup> My own personal experience mirrors that perception. I still can recall attending my Contracts class on the day my first-year section’s first legal writing memorandum was due. The class started with the professor noting several absences and expressing outrage that students would think a legal writing assignment could possibly be worthy of missing class. His comment was something to the effect of, “Don’t you realize that a memo doesn’t matter a wit to employers compared to how you perform in your substantive classes?!?” While this professor’s perception likely overstates some employers’ mindset (many do pay attention to applicants’ LRW grades), it is probably true that the typical employer relies on students’

on grade point averages and the stress of preparing for doctrinal exams, the last thing a typical first-year student wonders is, “Am I learning practical skills that will help me be a better lawyer three, five, or ten years down the road?” Accordingly, a successful first-year Lawyering Skills curriculum that includes a clinical skills component must attempt to find ways to alleviate the concerns raised by this mindset. Part Three of this Article offers some possible approaches to making the clinical aspects of the first-year Lawyering Skills curriculum more meaningful, but absent a significant shift in the first year’s focus on doctrine suggested by the commentators cited above, some student resistance to an integrated Lawyering Skills class is likely to remain.

Another legitimate concern is that students may feel overwhelmed with the amount of work and information they need to absorb in an effective clinical skills component to a first-year Lawyering Skills class.<sup>47</sup> One commentator responds to this concern by noting that, on the contrary, “[s]ome students will appreciate the fact that the extra work is a necessary side-effect of this teaching method. They may view the work as similar to a ‘lab’ course they took in undergraduate school—the sort of course where you worked hard and learned a great deal, for a small number of credits.”<sup>48</sup> Whether or not that assertion proves to be empirically true,<sup>49</sup> we should be mindful of these concerns—especially in correlation with the baseline assumption that doctrinal classes “matter” more—in devising a first-year Lawyering Skills curriculum that includes a clinical skills component.

Finally, students who are not interested in pursuing a career in litigation may feel that too many of the foundational clinical lawyering skills covered are litigation-centric. However, not only can this criticism also be leveled at traditional research and writing assignments, which typically include law firm memoranda and

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cumulative first-year GPA (and corresponding class rank) as the benchmark for purported success, and as explained *supra* in n. 44, many LRW grades will have little, if any, impact on cumulative GPAs.

<sup>47</sup> For example, Kenneth Chestek recognizes the additional burdens his “moot case” approach imposes on students: “They will be meeting and interviewing clients and witnesses, taking depositions, and participating in document reviews and discovery. They will almost certainly have a much more substantial record to review and digest in order to write their final briefs than would students in a more traditional class.” Chestek, *supra* n. 37, at 78.

<sup>48</sup> *Id.* at 79.

<sup>49</sup> Chestek’s anecdotal evidence from his student evaluations suggests that his students indeed do enjoy the skills-inclusive format and recognize the benefits thereof despite a workload that may not be commensurate with the unit credits for the course. *Id.* at 68–70.

persuasive briefs based on a litigation model, but the best response is that the clinical skills described in Part One, such as fact-gathering, theory development and inferential reasoning, question formation, eliciting chronologies, and employing the T-funnel questioning pattern, are *not* litigation-specific. On the contrary, each of these skills could transfer to a variety of fields, including transactional practice or criminal law.<sup>50</sup> If that reality is communicated to the students, this integrated Lawyering Skills approach may actually lead to the opposite result: “A broader-based program offers a more realistic view, and makes those students not inclined to litigate more invested in the first-year program.”<sup>51</sup> Moreover, a broad-based first-year Lawyering Skills course that touches upon a variety of skills may make it easier for students to choose appropriate upper-division clinical electives.<sup>52</sup>

In sum, any law school that wants to design an effective first-year skills program must be mindful both of potential student resistance and of the pressures felt by many legal writing faculty to not “dilute” instruction in legal writing and research. Part Three of this Article will attempt to offer a model that takes these concerns into consideration.

### *B. Stand-Alone Foundational Course*

An alternative approach would be to leave clinical skills out of the first-year curriculum and instead offer a foundational “Clinical Lawyering Skills” course in the fall semester of the second year as a prerequisite to taking any upper-division clinical courses. This approach, which would be consistent with CLEA’s model best practices curriculum,<sup>53</sup> arguably might have some advantages over the

<sup>50</sup> *Id.* at 80.

<sup>51</sup> Silecchia, *supra* n. 26, at 281.

<sup>52</sup> *Id.* at 282 (“If the first year course touches briefly on skills such as negotiation, law practice management, or trial practice, interested students will be able to select upper level courses based on informed interest.”). My personal experience confirms Silecchia’s hypothesis: many of the former Trial Advocacy students I interviewed suggested that their exposure to trial practice in their first-year Lawyering Skills course was a driving force behind their desire to devote ten credits to the year-long, live-client Trial Advocacy course.

<sup>53</sup> Stuckey et al., *supra* n. 5, at 208 (“[T]he second [year] should focus on fact analysis. The school should continue providing instruction about core legal knowledge, including knowledge that is essential to all lawyers and foundational information that students will need to pursue specialized interests or tracks in the third year. . . . Emphasis in the second year should be placed on helping students develop their knowledge and understanding about professional skills and values, including sensitivity to client-centered practice. Basic introductory courses in professional skills, especially transactional and pretrial skills,

first-year Lawyering Skills approach. First, it would allow first-year students to focus exclusively on writing and research skills in the first year and not be overwhelmed with learning clinical skills (especially given that the importance of these skills may not be obvious to them so early in their legal education). Second, it would alleviate the time pressures faculty might feel in covering the entire curriculum of an integrated first-year Lawyering Skills model. Third, this approach might allow for separating out distinct foundational-skills courses—for instance, one as a prerequisite to litigation-oriented clinical offerings, and another for transactional courses. While it is true that the foundational clinical skills mentioned in this Article are useful for litigation as well as non-litigation skills, in-class exercises focusing on litigation- or transaction-centered tasks and simulation scenarios would give more relevant contexts to students' foundational learning and would better ensure high student interest and effort.

While I propose this potential alternative to respond to the concerns of those in the LRW community who might express some resistance to the integrated Lawyering Skills model, I do not believe that a stand-alone foundational clinical skills course is pedagogically the best approach. As explained in Part II(A) of this Article, I believe it is critical to the effective teaching of legal writing that students appreciate the interaction between written legal analysis and the clinical techniques described in this Article. Effective development of written legal analysis simply cannot take place independently from the facts underlying the legal issue in question, how those facts are perceived, how that perception is influenced by the contexts in which those facts arise, and what strategic choices those contexts might require the lawyer to make in constructing these written arguments.<sup>54</sup> Other drawbacks to the stand-alone approach are resources and inertia. Instead of tinkering with an already-existing first-year LRW program, such an approach would require taking resources away from that program and allocating limited resources (faculty and space) to second-year Clinical Lawyering Skills courses. I am realistic and cynical enough to realize that asking law schools to re-think their allocation of resources is a broader recommendation than I am willing to tackle with this Article.<sup>55</sup>

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should be offered to all students during both semesters.”).

<sup>54</sup> See *supra* nn. 30–43 and accompanying text.

<sup>55</sup> A stand-alone clinical skills foundational course as the final component of a three-

For these reasons, Part III of this Article will focus on possible approaches to devising an integrated first-year Lawyering Skills curriculum.

### III. INTEGRATING FOUNDATIONAL CLINICAL SKILLS INTO THE LRW CURRICULUM

A number of law schools already have attempted to integrate foundational clinical skills into the first-year legal research and writing curriculum.<sup>56</sup> However, the focus at most of these programs appears to remain on the traditional trio of legal writing, research, and analysis, with little (if any) introduction to clinical lawyering skills.<sup>57</sup> Section A, below, describes a representative handful of approaches that appear to invest substantial time to foundational clinical teaching, each of which might serve as a working model. Section B then attempts to offer some additional guidance for how to integrate foundational clinical skills into the first-year LRW curriculum in a manner that balances the goal of teaching transferable skills with the potential downsides of the integrated Lawyering Skills approach discussed, *supra*, in Part II(A).

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or four-semester LRW curriculum might be easier to sell at those law schools whose LRW programs already extend into the second year. According to the most recent data, approximately 25% of schools (46 of 177 respondents) have moved in that direction. *2007 Survey Results*, *supra* n. 35, at 7. These schools presumably already have made some judgments in favor of allocating limited resources to extended LRW instruction. Directors and faculty at those schools also likely would perceive the “time-crunch” issue described above (trying to squeeze in skills instruction into an already full writing instruction curriculum) as not insurmountable.

<sup>56</sup> The 1995 Silecchia survey found that 17 of the 111 respondents identified their programs as following the “lawyering skills” model. Silecchia, *supra* n. 26, at 253. While the annual surveys conducted by ALWD and the Legal Writing Institute do not directly address this issue, the data from the most recent survey is consistent with Silecchia’s findings. *2007 Survey Results*, *supra* n. 35, at 11–13 (reporting that 24 of 181 programs surveyed include “other oral skill[s]” in their curricula. Moreover, the developments over the last decade in thinking about the role of experiential learning in legal education, see e.g. Stuckey et al., *supra* n. 5; Sullivan et al., *supra* n. 6, and the concurrent re-tooling of LRW course at many law schools during that time, suggests that more law schools have adopted or are considering adopting an integrated “Lawyering Skills” approach.

<sup>57</sup> Data from the *2007 Survey Results* suggests that little class time is spent on introductory clinical skills instruction of the type described in this paper: The average program dedicates over 50% of classroom time to lecture, Q&A, or other discussion, less than 10% of classroom time is spent on individual exercises, and a mere 7% of classroom time is spent doing “other” activities (where clinical skills exercises likely would be reported). *2007 Survey Results*, *supra* n. 35, at 11–13; see also Silecchia, *supra* n. 26, at 257.

*A. Existing Models***1. UCLA School of Law Lawyering Skills Program<sup>58</sup>**

Billed as a “foundational clinical course,” UCLA School of Law’s year-long Lawyering Skills program attempts to introduce students to fact development, questioning techniques, interviewing, and client counseling, in addition to the traditional LRW menu.<sup>59</sup> These skills are introduced in the second semester in the context of preparing a client’s case (a breach of contract/age discrimination simulation). Students first are introduced to basic interviewing skills, such as developing chronological timelines. After several opportunities to practice these skills on each other, students prepare to interview a volunteer from UCLA’s Witness Program,<sup>60</sup> who plays the role of the client.<sup>61</sup> Typically, a handful of students lead the questioning and move the timeline along, but all students are afforded the opportunity to ask questions of the client.

Following this basic foundation for the interview process, the class moves on to more complex skills, such as obtaining details of topics or events through T-Funnel questioning, developing theories of the client’s case, and converting those theories into follow-up interview questioning. In-class exercises include brainstorming potential evidence relevant to the crucial issues in the case using such techniques as developing evidence that supports or contradicts generalizations about the critical facts to prove in the case,

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<sup>58</sup> For a brief description of UCLA School of Law’s Lawyering Skills Program, see <https://law.ucla.edu/home/index.asp?page=49>. Details included in this Article are based on my interviews with instructors in the program.

<sup>59</sup> *Id.* (stressing that “[t]hese skills are taught using the clinical method, with the client’s perspective firmly in mind and with the students learning by acting as lawyers”).

<sup>60</sup> UCLA’s Witness Program utilizes the services of approximately 200 community volunteers, many of whom are repeat players in the various simulation exercises used by the Lawyering Skills program. New simulations often are preceded by an introductory meeting with the various volunteers who will participate in the simulation, which helps assimilate the volunteers into the fact pattern and gives them some sense of the goals of the exercise. Using volunteer witnesses from outside the law school (many of whom are former or would-be actors who thoroughly enjoy getting into their roles) helps bring the simulations to life and tends to increase the likelihood that the students will be committed to the exercise.

<sup>61</sup> In order for students to process the learning experience—i.e., develop a foundation for the concept—Binder and Bergman advocate beginning with simple tasks before moving on to more complex ones. Binder & Bergman, *supra* n. 1, at 201. Thus, UCLA’s Lawyering Skills program starts with the non-threatening “interview your classmate” setting before moving on to interviewing the client.

brainstorming potential evidence using the historical reconstruction technique, and searching for evidence that might explain a particular theory. Once again, a volunteer from the Witness Program—either the same client, or a different volunteer playing the role of another witness in the case—is called upon to allow the students to practice these skills.

Finally, following in-class exercises designed to introduce students to appropriate questioning patterns on direct and cross examination and how to construct a closing argument, the students are given the opportunity to take this simulated case to trial. Students are divided into small teams and take responsibility for one specific component of the trial (for example, the direct examination of one witness). Working as a team, students begin by using the same brainstorming techniques discussed above to identify what evidence exists in the case file tending to prove the contentions at issue in the case. The student team then jointly drafts its portion of the trial proceeding, and a team representative participates in that component of the trial—with volunteers from the Witness Program again playing the roles of client and witnesses, and community volunteers sitting on the jury and deliberating at the conclusion of the trial.

While the UCLA School of Law Lawyering Skills model is fairly effective in teaching foundational clinical skills, it is not without its flaws. First, limited faculty resources invested in the program are such that much of the instruction must be done lecture-style, and as a result many students do not have enough opportunity to practice the skills. For example, while all students participate in the preparation for the various simulation exercises, only a handful of students have the opportunity to drive the questioning in the mock interviews and conduct the mock trial. As mentioned in Part One of this Article, knowledge retention and transfer are unlikely to occur without repeated active student participation in practicing the skills they have read about and discussed in class.<sup>62</sup>

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<sup>62</sup> See *supra* n. 9 and accompanying text; see also Binder & Bergman, *supra* n. 1, at 198–199 (explaining that clinical skills concepts are unlikely to become encoded in students' long-term memories if the students do not have the opportunity to practice the skills); Chestek, *supra* n. 37, at 61 (“Research suggests that active learning is almost always a more effective way to learn than passive learning.”); Hartwell, *supra* n. 11, at 1011 (quoting the Confucian maxim, “Tell me, and I will forget. Show me, and I may remember. Involve me, and I will understand.”).

Second, the skills exercises and mock trial are not graded. The results-oriented law school atmosphere discussed above<sup>63</sup> not only places the first-year student's focus on doctrinal classes, but, perhaps more significantly, on grades. The recent graduates I interviewed were unequivocal in their assertion that the vast majority of first-year students give short-shrift to the ungraded skills exercises and as a result get very little out of them. As one put it, "to value ungraded assignments on the basis that you will eventually have better skills as a lawyer, that it may help you better perform as an associate, or that you will be more likely to land an offer is simply countercultural."

Third, the skills-based instruction is not introduced until the second semester, wholly separate—i.e., out of context—from the legal research and legal writing assignments arising in the first semester. Students do present an oral argument of a motion in the second semester (for which they also wrote the persuasive brief) on behalf of their client, but without full integration of skills training from the beginning of their first year, they are unlikely to see much contextual connection between the facts cited in the motion and the fact development techniques they are later taught.

Finally, the culminating segment of the skills component (and the one to which the most resources are allocated) is the mock trial. While students do gain some benefit from exposure to trial advocacy, and they do benefit from an introduction to the basic questioning techniques employed in a trial setting,<sup>64</sup> students likely would be better served by ending with a more "foundational" exercise that is designed to pull together all the clinical skills described in Part One of this Article.

## 2. *The "Moot Case" Approach*<sup>65</sup>

Professor Kenneth Chestek's "moot case" approach ties most (if not all) of the assignments given in the first-year LRW course to a single, simulated case that the students work on for their entire first year as the lawyers for one or the other side of the case.<sup>66</sup>

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<sup>63</sup> See *supra* nn. 44–46 and accompanying text.

<sup>64</sup> See *supra* pt. I.

<sup>65</sup> For a thorough description of the "moot case" model, see Chestek, *supra* n. 37, at 64–68.

<sup>66</sup> *Id.* Professor Chestek employed this model in the Legal Practice course while at University of Michigan Law School from 2000–2003; he currently teaches Legal Analysis, Research and Communication at Indiana University School of Law/Indianapolis, where he

During the course, facts are revealed in stages, akin to what might happen in the development of a real case. Preliminary legal research and writing assignments include only enough facts to set up the legal issues.

Over the course of the year, students develop the factual record by interviewing the client, interviewing and deposing relevant witnesses, exchanging letters with opposing counsel (a student in another section), and reviewing documents ostensibly produced during the discovery phase of the case. Each student typically is assigned either to interview or to participate in the deposition of a single witness, after which students spend several class periods sharing what they learned. During this process, students might discover that some of the causes of action are not viable in light of the factual record, leading to class discussions of which legal issues should remain at the disposition stage of the case later in the year.

The factual record in turn becomes the basis for a persuasive brief the students are assigned to write. As part of that process, students have to sift through information that may be conflicting or irrelevant and make decisions about which facts to use in their briefs. The sides then exchange briefs and participate in an oral argument on the dispositive motion. Finally, the students are assigned to negotiate a settlement of the case.

This model appears to provide the context for the lawyering process that Part Two argues is necessary both to engage students and to give them a broader understanding of what it means to be a lawyer and represent a client. Chestek's student feedback suggests that students feel more invested in the problem through the moot case approach and they "therefore are able to write more passionately about it."<sup>67</sup> Students commented that they were able to identify with the client and "wanted to do a good job for the client because they had a sense of how important the case was to the client."<sup>68</sup> Because of the nature of the division of labor in developing the factual record, students learned to work collaboratively and cooperatively<sup>69</sup>—perhaps a pleasant respite from the competitive culture typically found in first-year classrooms.

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employs a scaled-back version of the "moot case" model.

<sup>67</sup> *Id.* at 71.

<sup>68</sup> *Id.* at 72.

<sup>69</sup> *Id.* at 72–73.

A potential downside to basing an entire course on a single case is that students do not get exposed to varying settings. And since each student participates only in a single interview or deposition, the model also might lack sufficient active and repetitive learning necessary to promote transfer. As discussed in Part One of this Article, students might be better served (and might get a more well-rounded introduction to clinical skills) by repeated opportunities to conduct small bits of the questioning patterns associated with the various questioning skills—*e.g.* an initial interview, a theory development interview, a deposition, a direct examination, and a cross examination. Finally, the sheer number of skills covered over the course of the year in Chestek's model—closed-universe memorandum, legal research memoranda, interviewing, depositions, document review, written communications with opposing counsel, persuasive writing, oral argument, and settlement negotiation—might cause concern that each of these skills is not covered with enough depth to foster retention, and that students might feel overwhelmed with all the work (though of course that depends on the number of credits assigned to this course).

### 3. *New York University School of Law Lawyering Program*<sup>70</sup>

Using several simulations of varying complexity, NYU School of Law's Lawyering Program attempts to expose students to counseling, fact investigation and research, negotiation, mediation, and preparation of witness testimony.<sup>71</sup> The program's goals appear to be quite consistent with providing the type of clinical skills foundation described throughout this Article.<sup>72</sup> Fact development, including an introduction to affidavit drafting and client interviewing, comes up fairly early in the syllabus, and the Lawyering Program's written materials repeatedly emphasize the interaction and interplay between rules, fact development, and contextual dynam-

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<sup>70</sup> A detailed description of New York University Law School's Lawyering Program is also described on its website. N.Y. U. Sch. L., *The Lawyering Program*, <http://www.law.nyu.edu/lawyeringprogram/> (accessed Sept. 25, 2007). The Lawyering Program's description is found in Amsterdam et al., *supra* n. 38.

<sup>71</sup> Chestek, *supra* n. 37, at 72–73.

<sup>72</sup> See N.Y. U. Sch. L., *supra* n. 70 (“NYU is . . . committed to giving sophisticated, in-depth attention, from the first year of legal study, to the interactive, fact-sensitive and interpretive work that is fundamental to excellence in practice. The Lawyering Program makes good on that commitment.”); Margaret Martin Barry et al., *Clinical Education for this Millennium: The Third Wave*, 7 Clin. L. Rev. 1, 42–43 (2000).

ics.<sup>73</sup> Students work collaboratively and regularly interact with faculty in planning, executing, and reflecting upon their work. Each of the simulation exercises begins with a research, discussion, and planning phase, followed by an implementation phase in which students carry out their plan by drafting legal documents, interviewing witnesses and clients, and engaging in negotiation and written and oral advocacy.<sup>74</sup>

A distinctive feature of NYU's Lawyering Program is that tenure-track faculty members are integrated into the program to supervise the videotaped simulation exercises that are done in small group conferences of two to five students.<sup>75</sup> Small group exercises include videotaped client interviews, counseling sessions, client interviews for purposes of a negotiation exercise, videotaped negotiation sessions, client interviews for purposes of a mediation exercise, mediation strategy sessions, mediation sessions with professional mediators, and oral arguments before federal and state judges.<sup>76</sup> Each simulation exercise concludes with a critiquing phase where, in small groups, students and their faculty supervisors analyze the choices they made in the earlier phases.<sup>77</sup> According to the Lawyering Program's Mission Statement, these critiquing exercises are designed for "developing professional habits such as discipline, confidence, and the ability to critically and objectively evaluate one's own work."<sup>78</sup>

The significant individualized instruction and repeated opportunities to conduct a variety of simulated lawyering exercises in

<sup>73</sup> See Amsterdam et al., *supra* n. 38.

<sup>74</sup> See *id.* at 15–16 (describing the Lawyering Exercises); see also N.Y. U. Sch. L., *Mission Statement*, <http://www.law.nyu.edu/lawyeringprogram/home/mission.htm> (accessed Fall 2005), which states,

In each of the Lawyering Program's exercises, students attempt to solve problems or answer questions, often by working in pairs or small groups. For each exercise, collaborative planning, execution, and reflection are as fundamental as the legal research and writing components. Educational studies have demonstrated that adults more effectively develop skills when they work together, which explains the "study group" phenomenon that many law students find so useful.

<sup>75</sup> Chestek, *supra* n. 37, at 72–73; N.Y. U. Sch. L., *The Lawyering Program: Curriculum*, <http://www.law.nyu.edu/lawyeringprogram/curriculum/curriculum.htm> (accessed Nov. 21, 2007) ("Each Exercise involves close interactions with faculty, either in role as supervising attorneys or out of role as conveners of more traditional classes.")

<sup>76</sup> See Amsterdam et al., *supra* n. 38, at 15–16 (describing the Lawyering Exercises).

<sup>77</sup> See Lawrence M. Grosberg, *Standardized Clients: A Possible Improvement for the Bar Exam*, 20 Ga. St. U. L. Rev. 841, 855 (2004); Philip N. Meyer, "Fingers Pointing at the Moon": *New Perspectives on Teaching Legal Writing and Analysis*, 25 Conn. L. Rev. 777, 793 (1993); N.Y. U. Sch. L., *supra* n. 75.

<sup>78</sup> See N.Y. U. Sch. L., *supra* n. 70.

differing contexts suggests that the NYU model implements many of the aspects of transfer and retention discussed in this Article.<sup>79</sup> Former NYU students have reported that they found the Lawyering Program approach to have been quite meaningful, in part because they were able to retain the principles of legal analysis as a result of contextualized training in a skills program.<sup>80</sup> Because of the emphasis placed on thorough critique of the simulation exercises, the legal analysis process is intertwined with self-reflection, thus providing the framework for learning from experience.<sup>81</sup>

On the other hand, there are obviously significant costs associated with NYU's model. Most law schools simply cannot afford—and likely do not have the space to support—a program that includes no less than seven faculty-supervised small group sessions and two individualized critiquing sessions.<sup>82</sup> In addition, some may be concerned that the Lawyering Program devotes insufficient time to teaching legal writing.<sup>83</sup>

#### 4. *New York Law School's "Standardized Client" Model*

New York Law School's Lawyering course is modeled after the NYU Lawyering Program but makes use of a "standardized client" as a less expensive alternative to the individualized instruction and feedback NYU students receive.<sup>84</sup> The course includes three videotaped "standardized client" exercises, each in different con-

<sup>79</sup> *Supra* nn. 8–14 and accompanying text.

<sup>80</sup> Meyer, *supra* n. 77, at 794–795.

<sup>81</sup> *Id.* According to the Lawyering Program's Mission Statement,

The Lawyering Program mission statement emphasizes critical thinking about lawyers' work by encouraging students to critique themselves and each other after each simulation. Small group critiques provide an optimal context for developing professional habits such as discipline, confidence, and the ability to critically and objectively evaluate one's own work. Moreover, carefully structured peer critiques enhance motivation, as students become responsible for providing constructive, thoughtful feedback to their colleagues. Students develop versatility by working with and learning from peers who have varied strengths, views, experiences and identities. The ideas and solutions that students bring to and take from the critique process are as important as the strategies they formulate and execute prior to and during each Lawyering exercise.

N.Y. U. Sch. L., *supra* n. 70.

<sup>82</sup> N.Y. U. Sch. L., *The Lawyering Program: Lawyering Calendar*, <http://www.law.nyu.edu/lawyeringprogram/home/lawyeringcalendar0708.htm> (accessed Nov. 21, 2007).

<sup>83</sup> See generally Amsterdam et al., *supra* n. 38; see also N.Y. U. Sch. L., *supra* n. 75 and individually linked web pages.

<sup>84</sup> For a detailed description of the "standardized client" model and New York Law School's Lawyering course, see Grosberg, *supra* n. 77, at 856–866.

texts. The purpose of the exercises is to introduce students to interviewing and counseling. In the first exercise, the students each conduct an initial interview of a client with a tort claim. The second exercise also consists of an interview, this time of a witness in a contract case. In the final exercise, students are to counsel a client in an adverse possession case.

Like NYU's Lawyering Program, NYLS's course relies on critique and feedback as the principal teaching tool other than the "doing" itself. The "standardized client"—an actor playing the role of client or witness—provides feedback to the student at the conclusion of the exercise through a detailed checklist prepared by the program's faculty. Instructors then compile those checklists and comment to the class on their observations of a limited number of videotaped exercises. They also provide some statistical findings on the exercise, from which instructors often are "able to show that the problems and challenges faced by the students were typically experienced by many others."<sup>85</sup>

While NYLS Professor Lawrence Grosberg finds the standardized client checklist feedback method to be "a fair, reliable, and much more cost efficient method of providing individual feedback" than NYU's program,<sup>86</sup> the risk is that students might not find a checklist form to be of much use, let alone one filled out by the witness rather than by a trained instructor. The NYLS model otherwise appears to do well in attempting to provide varying, relevant contexts and in limiting the range of foundational skills to be introduced so as to promote repetition and transfer. In light of the mere two units allocated to this course, however, it is unclear that much active learning occurs outside of the three simulation exercises.

##### **5. *William & Mary School of Law "Small Law Office" Model***

The William & Mary Legal Skills program employs a "small law office" model that incorporates facets of both the "moot case" and NYU models.<sup>87</sup> In this two-year course, students receive class-

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<sup>85</sup> *Id.* at 858–859.

<sup>86</sup> *Id.* at 858.

<sup>87</sup> For a detailed description of William & Mary School of Law's Legal Skills program, see William & Mary School of Law, *Legal Skills*, <http://www.wm.edu/law/academicprograms/legalskills/>.

room instruction in a variety of skills as well as legal ethics. They concurrently assume the roles of lawyers in the simulated client representation component of the course, each student becoming one of approximately sixteen “associates” in a simulated law office. Over the course of the two-year program, students take cases from inception through appeal, tackling clinical skills such as client intake, client counseling, negotiation, mediation, complaint drafting, written discovery drafting, oral advocacy, plea negotiation, trial planning, direct and cross examination, introducing evidence, opening and closing statements, and appellate oral advocacy along the way. Like the NYU model, this program uses a variety of complex simulations in different settings.

The law office model seems quite appealing in concept; by representing a client over time and taking cases all the way to trial and through the appeals process, students work with factual records they have developed themselves.<sup>88</sup> Also, like the “moot case” model, the law office model likely produces collaborative, cooperative, highly contextualized effort. However, taking cases from beginning to end might again require coverage of too many skills, even over a two-year period, for students to receive the appropriate amount of in-depth coverage and repetition necessary for retention and transfer. Coverage of so many skills can only be done at the expense of repetition or of adequate legal writing instruction (or both).<sup>89</sup> For those law schools that devote only a single year to their LRW programs, taking a case all the way from beginning to end—and stopping at every necessary turn along the way—appears to be a rather ambitious model to follow.

### *B. Additional Considerations in Creating an Integrated Lawyering Skills Model*

I have argued in this Article that transfer of lawyering skills best occurs when students have repeated opportunities to practice those skills over time and in different and increasingly more complex settings, and when they receive meaningful feedback on their performance (including self-evaluation). I have also argued that if

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<sup>88</sup> Maranville, *supra* n. 17, at 139.

<sup>89</sup> This is especially likely to be true at William & Mary in light of the fact that the Legal Skills program disposes of the school’s Legal Ethics requirement as well as its research, writing, and skills curriculum. Wm. & Mary Marshall-Wythe Sch. L., *Legal Skills*, <http://www.wm.edu/law/academicprograms/legalskills/overview3.shtml> (accessed Sept. 25, 2007).

we are to include a foundational skills component as a part of the first-year Lawyering Skills curriculum, we must be mindful of the potential drawbacks to that approach, including concerns about the possible dilution of instruction in legal writing and research, combating the first-year results-oriented mindset, and the possibility that students may feel overwhelmed by the skills-based instruction.

With these concerns in mind, I offer the following suggestions:

- Using two (perhaps three) simulations should be sufficient to provide a variety of settings. At least one of the simulations should involve something other than a typical civil litigation problem, such as a contract-drafting exercise. The simulations should be used side-by-side, so that the students have repeated opportunities to practice each of the skills in the varying contexts.
- The simulations should be introduced at the beginning of the year—not in the second semester, as some of the above-described models prefer—in order to give the students context for all of the skills covered, written or otherwise, from the outset. As in many “real” cases, the initial case assignment might come in the form of a brief memorandum from a senior lawyer in the students’ hypothetical firm, with just enough facts to describe the legal issue(s) the students will be asked to research and analyze. Knowing that the case’s factual record will be developed in later exercises (through a client interview, witness deposition, and the like) should lead to more engaged learning even during basic introductory research exercises. This model also lends itself to useful detours into topics that arise naturally from the context of the case simulations, such as “sneak-previews” into related skills and discussions of ethics and justice issues.
- In order to provide the best context and pique student interest, simulations should mirror issues the students are studying in their doctrinal classes. One intriguing possibility might be to coordinate with a professor in a doctrinal class and pick an important case the students will study in that class later in the semester, and simulate that specific case based on the factual record contained in the parties’ briefs (obviously, a case whose briefs are available on-line

would be best).<sup>90</sup> The timing could be organized so that the students read the actual case in their doctrinal class soon after the Lawyering Skills “work”—whether an objective memorandum analyzing a legal issue on which the client is counseled, or a persuasive brief/oral argument—has been done. Back in the Lawyering Skills classroom, the students might be assigned to read the brief submitted by the attorney for their “client,” and the class could explore whether other arguments could have been made in the case (or the arguments crafted differently) in light of the factual proposition/potential evidence/inference exercise they previously would have done in the case.

- Students need not work on all aspects of each simulation from beginning to end. So long as there is some correlation in the use of a simulation from one assignment to the next, the simulation should feel sufficiently “real” for the students to become invested without being overwhelmed with an overabundance of skills and tasks. For example, the initial simulation might consist of a corporate client seeking advice on the legality of a contemplated business decision and form the basis for the initial closed universe legal memorandum as well as an introduction to basic counseling techniques. That same client might then call to report a legal problem arising out of that business decision and give a very sketchy account of the facts over the phone. That phone call could lead into an introduction to fact gathering,

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<sup>90</sup> Lawrence Grosberg, whose New York Law School Lawyering course utilizes the “standardized client” model, has advocated for creating a standardized client counseling simulation based on this sort of doctrinal-skills collaboration. Grosberg, *supra* n. 77, at 863–865. Some law schools already are exploring the integration of LRW with doctrinal classes. At Pace Law School, a required first-year class is “Criminal Law Analysis and Writing,” which is described on the school’s website as:

An exploration of the substantive aspects of criminal law with a focus on the criminalization decision, goals of punishment, elements of criminal conduct and defenses to criminal charges. Also covers legal research and the legislative process and requires numerous writing exercises in criminal law, concluding with an appellate brief and an argument before a moot court.

Pace L. Sch., *Required and Elective Courses*, <http://appserv.pace.edu/emplibary/Required%20and%20Elective%20Courses.pdf> (accessed Sept. 25, 2007). At The University of Baltimore School of Law, designated first-year sections take an integrated “Introduction to Lawyering Skills/Torts” instead of separate Torts and LRW courses, which “[i]ntegrates rigorous instruction in legal analysis, research, and writing with the substantive law of torts to give beginning law students an opportunity to combine skills and doctrine the way lawyers must in the practice of law.” U. Baltimore Sch. L., *Introduction to Lawyering Skills/Torts*, <http://law.ubalt.edu/template.cfm?page=32> (accessed Sept. 25, 2007).

theory development, and inferential reasoning, followed by questioning skills exercises, and ultimately a legal research memorandum based on the facts that have been developed. Another simulation might not begin with a counseling problem, but rather might be an already active case that has been inherited from another lawyer and already has had significant factual development and soon will reach the dispositive pleading stage.

- All simulation exercises should be crafted with the foundational techniques described in Part One of this Article, and *only* that foundation, in mind. For example, students need not learn how to conduct a full-blown client interview—they can get the basic foundation for interviewing by learning how to develop a chronological timeline. Similarly, they can learn how to obtain details of topics or events through T-Funnel questioning and practice executing a variety of T-funnel topics, without needing to place them in the context of a full theory development interview or deposition. They can learn about and practice asking open, closed, and leading questions, without needing to conduct a complete direct or cross examination.
- Devoting significant resources to full-blown mock trials or negotiations makes little sense given that the goal is simply to lay a foundation for future skills development in upper-division clinical offerings or in practice. The majority of skills-instruction time should be devoted to learning about and practicing fact gathering, theory development, and inferential reasoning—the latter of which, as discussed above, also is integral to developing effective *writing* skills. Moreover, eliminating a full-blown mock trial or negotiation would have the added benefit of giving Layering Skills instructors additional time to concentrate on teaching writing skills.
- Clinical skills instruction should consist of limited, if any, lecture. Students should delve into each new skill with a small, simple simulation-based exercise, perhaps practiced in groups with other students, followed by class discussion. The instructor also can play the role of the witness during these preliminary exercises, with students taking turns asking a handful of questions. Coming up with potential evidence and theory development topics also should be done

first in small groups and then as a class, albeit in connection with a thorough class discussion specifically demonstrating the significant usefulness of that skill in undertaking a wide variety of skills.

- All students must have the opportunity to practice each skill. Once a skill has advanced to the point of an out-of-class simulation exercise (i.e. with a community volunteer or actor playing the role of the client or witness), students cannot simply observe others practicing the technique. Instead, students should be divided into small groups (of approximately five students), told to prepare together (including preparing any necessary potential evidence lists prior to identifying questioning topics), and then take turns questioning the witness (or counseling or whatever other skill is at issue), each for approximately ten minutes. This can most reasonably be achieved if, like at NYU, other clinical faculty are involved in supervising some of the simulation exercises.<sup>91</sup> Involving clinical (and other) faculty also would have the added benefit of giving legitimacy to the simulations, because they may then be regarded as bearing the imprimatur of faculty who teach clinical courses the first-year students likely look forward to, and makes it clearer that the first-year skills class is a critical component of the entire clinical curriculum.
- The importance of effective fact gathering might be demonstrated by instructing different witnesses to give slightly different information or to withhold certain information unless asked in a particular way or both. Following an out-of-class simulation exercise, each small group can be required to prepare, and then exchange with all other teams, a list of facts. A class discussion about what types of questions (e.g. what T-funnel topic, etc.) might have produced a desired fact could be fruitful. Similarly, forcing the students to use the factual record they actually developed (supple-

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<sup>91</sup> Many faculty members already volunteer for such activities as Moot Court, and in my experience, clinical faculty in particular tend to help other clinicians with simulation exercises in upper-division clinical offerings, so this could be achieved purely on a volunteer basis. Understanding that their participation in these first-year exercises will ultimately ease their own instruction in upper-division clinical offerings also should encourage clinical faculty to volunteer. In the alternative, giving participating faculty a mere one unit credit per year to supervise and give feedback on a handful of simulations should not put a significant strain on law school resources.

mented only if necessary) in preparing a written assignment such as a legal research memorandum or persuasive brief would highlight the importance of effective fact gathering, as will a discussion of how the results in a legal research memorandum or the arguments in a persuasive brief might change depending on the factual record.

- Meaningful feedback on simulation exercises should begin with student self-critiques in the manner described in Part I of this Article. Students should be encouraged to break down their performances both in terms of what went wrong and what went right, the latter of which ensures recognition of patterns they have adopted. Not only are these self-critiques valuable learning tools, but the instructor can comment on them in the same way as she comments on any other written work-product, thereby ensuring continued practice and feedback on student writing skills.
- All aspects of the Lawyering Skills class should be graded. Perhaps the best mechanism for grading skills-based exercises is the written self-critiques, in that they measure a student's ability to recognize what he did and why it worked or did not work, rather than measuring the student's actual performance during the exercise. An added benefit, once again, is that the student's writing performance can be taken into account in grading skills-based exercises.

## CONCLUSION

In order for a clinical program to effectively promote transfer of lawyering skills, preliminary student-wide clinical instruction probably should be made a part of the first-year curriculum. It should not be too difficult to convince clinicians that their students would be better prepared if they obtain a foundational understanding of important clinical skills before undertaking their upper-division clinical offerings, and thus my main critics, I suspect, will be legal writing program directors and instructors. Although many legal writing instructors may have legitimate concerns with the first-year "Lawyering Skills" approach, the model I have offered should help give context to skills-based instruction and make the clinical aspects of a first-year curriculum more meaningful, without overly diluting instruction in legal writing and research.

Ultimately, though, my model's success likely depends on the clinical faculty's willingness to bear part of the burden by volunteering to help supervise the simulation exercises that are so critical for promoting transfer. Accordingly, any push for modifying a law school's first-year legal writing curriculum in the manner I have suggested must begin with and have the backing of the school's clinical faculty. I hope that this Article will open and help focus the conversation between clinicians and legal writing professors, and that it reminds both groups that we all have the same interests in mind: ensuring that our law students gain sufficient exposure to those lawyering skills they are likely encounter (and that likely will not be well-taught) in practice.