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DEVELOPING A COMPREHENSIVE APPROACH TO TEACHING LAWYERING SKILLS

A Response to the MacCrate Report, Fifteen Years later

Scott E. Thompson[1]

I. INTRODUCTION

In 1992, the American Bar Association Section of Legal Education and Admissions to the Bar issued its *Report of the Task Force on Law School and the Profession: Narrowing the Gap* ("MacCrate Report").[2] While the report covered a number of significant topics, it is perhaps best known for the Statement of Skills and Values, which listed ten key skills necessary for any attorney to competently represent a client. The ten key skills listed in the report were:

Problem Solving	Legal Analysis	Legal Research
Factual Investigation	Communication	Client Counseling
Negotiation	Litigation and ADR	Practice Management
Professional Ethics		

The purpose of the MacCrate Report, as noted in its title, was to "Narrow the Gap" between the education offered at ABA approved law schools and the expectations of the bar.[3] The report itself suggests that the gap envisioned at the time the task force was formed did not exist, and that what was needed was "a more accurate vision of the relationship between legal education and the practicing bar."[4] However, the report still recognized that the criticisms leveled at the academy by the bar (and vice versa) "have a strong base in reality."[5] More than fifteen years after the MacCrate Report was published, reports, studies and practicing lawyers continue to challenge the legal academy to provide more instruction in skills and practical training, and

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[1] Director, Center for Lawyering Skills and Assistant Professor of Law, Liberty University School of Law.
[2] The Report is officially titled: "Legal Education and Professional Development – An Educational Continuum," reflecting the view of the task force that legal education begins before law school, reaches its peak during law school, and continues throughout a legal career.
[3] *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (MacCrate Report)*, 1992 ABA Sec. Legal Educ. and Admissions to the Bar 3.
[4] *Id.*
[5] *Id.* at 5.

spend less time focusing on esoteric issues and scholarly debates that have little relation to the real world of the practice of law.[6]

In 2004, Liberty University School of Law ("LUSOL") opened its doors with an entering class of sixty students. From its earliest planning days, during the drafting of its feasibility study, and from the moment its first curriculum was planned, LUSOL placed an emphasis on lawyering skills that is unique among American law schools.[7] The Lawyering Skills ("LS") program does not answer all of the criticisms leveled at the legal academy, but it does provide a comprehensive skills curriculum, comprised of a minimum of fourteen hours of skills training required of all students, that better prepares them for the practice of law than the traditional curriculum. The curriculum addresses each of the key skills identified in the MacCrate Report as being critical to the success of a competent lawyer.

In Section II, this article presents a brief sampling of the concerns of the bench and bar, both before and after the MacCrate Report. Section III explains in detail the skills curriculum used at LUSOL and shows how each of the key skills identified in the MacCrate Report is taught throughout the curriculum. Section IV comments on four significant challenges to a skills curriculum that were raised in the MacCrate Report and LUSOL's response to these challenges. Finally, Section V offers a brief conclusion.

II. CONCERNS FROM THE BENCH AND BAR

> As I went into practice, law school had me very well-schooled to do research with a large firm and had me moderately well-schooled to argue cases on appeal, but did not have me schooled at all to talk to clients, to answer questions, or even to know the questions to ask. How embarrassing it was when I first went down to the District Clerk's office to

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[6] Roy J. Stuckey, *Why Johnny Can't Practice Law – And What We Can Do About It: One Clinical Law Professor's View*, THE BAR EXAMINER, Vol. 72, No. 2, at 32; Adam Liptak, *When Rendering Decisions, Judges Are Finding Law Reviews Irrelevant*, N.Y. TIMES, MARCH 19, 2007, at A8.

[7] Feasibility Study for Liberty University School of Law at 23. While the skills emphasis has been embraced since the inception by the full faculty, special recognition must be given to Jeffrey C. Tuomala, Associate Dean for Academic Affairs, who initially outlined the length and breadth of the program.

> ask: "How do I do so-and-so?" and was told, "Well, you need to ask a lawyer about that!" . . . Law school, it seems to me, focuses largely on the hole and very little on the doughnut because no more than ten percent of law school is involved in counseling, in negotiation, in arbitration, and in the rest of the skills that we are talking about.[8]

Long before the MacCrate Report was ever published, those within the academy and the bar recognized the "gap" between what was being taught in law school and what was required to prepare students for the day-to-day practice of law. One author suggests that the debate over whether and how law schools should teach lawyering skills dates back to 1872.[9] In 1952, Arch Cantrall, a practitioner and member of the West Virginia Bar, published an article in the ABA Journal in which he wrote that "[s]ociety's contract with the law schools is to train lawyers, not to produce half-lawyers, taught some of the theories of the law but not how to put those theories into practice."[10] Cantrall proclaimed then, over a half-century ago, that "[w]ithin the present three-year limit the law schools can do a better job of teaching theory, and at the same time can teach at least the basic skills of practice."[11] In the late 1970s, the ABA formed a Task Force of Lawyer Competency.[12] In 1979, the Notre Dame Law School hosted a conference jointly sponsored by the school, the ABA, and the National Conference on Legal Education. The proceedings of that conference are contained in the book "Legal Education and Lawyer Competency: Curricula for Change." The opening paragraph of the book states that "American law schools still have not worked out their role in the education of lawyers."[13] The author asked: "Should university legal education remain essentially an 'academic' and therefore largely

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[8] James Brill, *Teaching and Testing Clinical Skills*, *in* LEGAL EDUCATION AND LAWYER COMPETENCY: CURRICULA FOR CHANGE 37, 38 (Fernand N. Dutile ed., 1981).
[9] Amy M. Colton, Note, Eyes to the Future, Yet Remembering the Past: Reconciling Tradition with the Future of Legal Education, 27 U. MICH. J.L. REFORM., 963, 976 n.65 (1994).
[10] Arch M. Cantrall, *Law Schools and the Layman: Is Legal Education Doing Its Job?*, 38 A.B.A.J. 907 (1952).
[11] *Id.*
[12] Shepherd Tate, Opening Remarks, *in* LEGAL EDUCATION AND LAWYER COMPETENCY: CURRICULA FOR CHANGE 9 (Fernand N. Dutile ed., 1981).
[13] Fernand Dutile, *Introduction:The Problem of Teaching Lawyer Competency*, *in* LEGAL EDUCATION AND LAWYER COMPETENCY: CURRICULA FOR CHANGE 1 (Fernand N. Dutile ed., 1981).

theoretical affair, or should its thrust be toward preparing the student for his day-to-day professional life?"[14]

These concerns were common throughout the conference. Roger Cramton, Dean of the Cornell Law School and Chairman of the Task Force, addressed the question directly and specifically when stating, "[t]here is also a need for more individualized instruction that builds student competence in skills of writing and oral expression, that puts students in professional roles of professional decision-making such as interviewing, counseling, negotiation, arbitration, and the like."[15] Reporting for the Task Force, Judge Alvin Rubin of the Fifth Circuit reported the recommendation of the Task Force that law schools "should provide all students the *opportunity* for instruction in other fundamental skills such as . . . oral communication, interviewing, counseling and negotiation, and litigative skills."[16]

Professor Dutile summarized the evolution of the study of law from the apprenticeship method to the law school method and noted that the case method of teaching law was "a happy medium between a narrative summary of a legal principle and 'living through' the entire case with the actual litigator."[17] Additionally, he succinctly summarized one of the primary reasons that most law students graduate without any real sense of how to practice law. "Since the orthodox law teacher, almost by definition, is not, for whatever reason, a practitioner in any real sense, he does not provide a practitioner role model for his students except perhaps by

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[14] *Id.*
[15] Roger Cramton, *The Need for Greater Emphasis on Skills Development*, *in* LEGAL EDUCATION AND LAWYER COMPETENCY: CURRICULA FOR CHANGE 13 (Fernand N. Dutile ed., 1981).
[16] Alvin Rubin, *The Need for Greater Emphasis on Skills Development*, *in* LEGAL EDUCATION AND LAWYER COMPETENCY: CURRICULA FOR CHANGE 20 (Fernand N. Dutile ed., 1981).
[17] Fernand Dutile, *Introduction:The Problem of Teaching Lawyer Competency*, *in* LEGAL EDUCATION AND LAWYER COMPETENCY: CURRICULA FOR CHANGE 2 (Fernand N. Dutile ed., 1981).

analogy."[18] His comments in many respects contain the same theme still being echoed today, nearly thirty years later.

> It is not surprising that the traditional law teacher has not been in the forefront of the fight for increased skills-training. Since his classroom work centers about the theoretical realm, and since traditional legal scholarship has been doctrinal, his view of legal education tends to ignore the "practical," the "nuts and bolts." He tends to dislike the idea of law as a craft.[19]

Ten years after the conference, the American Bar Association Council of the Section of Legal Education and Admissions to the Bar established its Task Force on Law Schools and the Profession.[20] The task force studied the issues for three years before releasing its report.[21] Included as part of the study were four public hearings on the issue of the preparation of lawyers to practice.[22] While the hearings reflected a diversity of thought, there was a general consensus that law schools should continue to teach the basics of legal research and reasoning while also teaching "better or more" practical skills such as negotiation; drafting documents and pleadings; developing a theory of a case; client counseling; time and case management; knowledge of court systems; and a host of other skills.[23] One theme that arose at each of the four hearings was the need for more opportunities for students to practice, observe and role play.[24] The report further noted that "a common recommendation was to provide progressive, integrated courses or programs which begin in the first year of law school and continue throughout graduation" and that schools should "tailor their curriculums, to prepare their students for their first law practice jobs." [25] The task force found that despite advances made by law schools in the area of skills

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[18] *Id.* at 3.
[19] *Id.* at 4.
[20] *MacCrate Report* at xi.
[21] *Id.*
[22] *Id.* at xii.
[23] *Id.* at 386-87.
[24] *Id.* at 387.
[25] *Id.*

training, the bar had taken little note of the changes.[26] Eleven years after the MacCrate report was published, one member of the task force noted that "many of [its] key recommendations [had] not yet been implemented."[27]

In 2004, NALP and the American Bar Foundation published "After the JD: First Results of a National Study of Legal Careers." The "After the JD" project is a study of the professional lives of more than 5,000 law school graduates during their first ten years after graduation. In its first report, the authors noted that survey respondents tended to agree with the proposition that "law school teaching is too theoretical and unconcerned with real-life practice."[28] Echoing the same sentiment, one law professor succinctly summarized the view of his students, a view likely held by many others, that "law teaching [is] emphatically not geared to the practice of law."[29] In a January 2007 Wall Street Journal article, Cameron Stracher, publisher of the New York Law School Law Review stated that "[w]hen they graduate, young lawyers rarely know how to interview clients, advocate for their positions, negotiate a settlement or perform any number of other tasks that lawyers do every day. In short, they are woefully unprepared to be lawyers."[30]

Most recently, in 2007, the Carnegie Foundation for the Advancement of Teaching published "*Educating Lawyers, Preparation for the Profession of Law*" as part of its Preparation for the Professions series, and the Clinical Legal Education Association published its "*Best Practices for Legal Education, A Vision and a Roadmap*."[31] Both documents acknowledge that since the MacCrate Report was published there has been some progress in skills training, but both remain

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[26] *Id.* at 6.
[27] Roy J .Stuckey, *Why Johnny Can't Practice Law – And What We Can Do About It: One Clinical Law Professor's View*, THE BAR EXAMINER, Vol. 72, No. 2, at 33.
[28] *After the JD: First Results of a National Study of Legal Careers*, Joint Publication of the NALP Foundation for Law Career Research and Education and the American Bar Foundation, 2004, at 79.
[29] Alan Watson, *Legal Education Reform,* 51 J. LEGAL EDUC. 91, 92 (2001).
[30] Cameron Stracher, *Meet the Clients*, WALL ST. J., January 26, 2007, at W11.
[31] William M. Sullivan et al., CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS, PREPARATION FOR THE PROFESSION OF LAW 88, 94 (2007); Roy J. Stuckey, CLINICAL LEGAL EDUCATION ASSOCIATION, BEST PRACTICES FOR LEGAL EDUCATION, A VISION AND A ROAD MAP, 3 (2007).

critical of the lack of progress in this area.[32] The Carnegie report succinctly summarized the problem in one parenthetical sentence. "In legal education …the primary emphasis on learning to think like a lawyer is so heavy that schoolwide concern for learning to perform like one is *not* the norm."[33] As the report noted, the bottom line question for lawyers is not "what they know, but what they can do."[34] The Carnegie report further details the "self-replicating circle" of hiring and promotion of law school faculty, especially at and from the most elite law schools that "pay scant attention to preparing their students for practice."[35]

The Clinical Legal Education Association (CLEA) further documented the failure of the academy to prepare students for the practice of law. In 2001, CLEA undertook a study to "develop a 'Statement of Best Practices for Legal Education.'"[36] The project "was motivated in large part by [CLEA's] concern about the potential harm to consumers of legal services when new lawyers are not adequately prepared for practice."[37] It is hardly surprising given the concerns raised that prompted the project that the Executive Summary concluded that "most law schools are not committed to preparing students for practice,"[38] and, consequently, '[m]ost law school graduates are not sufficiently competent to provide legal services to clients."[39] The report offered the following assessment of the job that law schools are doing in preparing students for the practice of law:

> It is likely that law schools are currently doing an adequate job of helping students develop some forms of law-related reading skills, legal analysis and reasoning skills, and legal writing and research skills, but they are giving much less attention to other important skills. Many students graduate without even an

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[32] *Id*.
[33] *Id.* at 22.
[34] *Id.* at 23.
[35] *Id*. at 90.
[36] Roy J. Stuckey, CLINICAL LEGAL EDUCATION ASSOCIATION, BEST PRACTICES FOR LEGAL EDUCATION, A VISION AND A ROAD MAP, viii (2007).
[37] *Id.* at 1.
[38] *Id.* at 7.
[39] *Id.* at 26.

> introduction to many of the basic skills of the legal profession, such as how to learn from experience, managing legal work, interviewing, counseling, negotiation and other forms of advocacy, and preparing pleadings and other legal documents.[40]

It was with these criticisms firmly in mind that LUSOL launched its Lawyering Skills program. Beginning with the first class, in August 2004, every LUSOL student has been required to complete a minimum of fourteen credit hours of required skills courses. While many other law schools offer classes similar to those at LUSOL, we are aware of no other law school that requires that each graduate have spent fifteen percent of his law school career in required skills courses.

III. Development of a Comprehensive Skills Curriculum

> 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, simulations courses develop proficiency in any professional skill to the level that a new lawyer needs. Some skill 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. [41]
>
> Unfortunately, most law schools do not yet provide an introduction to professional skills, much less opportunities to develop proficiency.[42]

From its inception, the education program at Liberty University School of Law ("LUSOL") has been practice oriented. The initial feasibility study laid the groundwork for the focus of the program.

> The educational program is also "practice oriented." As such it will provide extensive training in lawyering skills, beginning with the most basic skills in the student's first semester and progressively introducing additional skills in increasingly sophisticated and complex settings in each of the five remaining semesters. In addition to the 14 credit hours of required "Lawyering Skills" courses, the curriculum has several other skills courses in both the planning and litigation areas. The combination of the "mission-driven" and "practice oriented"

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[40] *Id.* at 79.
[41] *Id.* at 181.
[42] *Id.* at 183.

> education will make graduates of the program among the best trained for the practice of law in the nation.[43]

Sir Francis Bacon is attributed with the phrase: "Reading maketh a full man, conference a ready, and writing an exact man."[44] John Adams likewise identified four pillars of knowledge. "Let us dare to read, think, speak, and write."[45] The LUSOL skills program was developed on these foundational pillars. Each of the key skills identified in the MacCrate Report fit into one of these four categories: reading, thinking, speaking, or writing. The Lawyering Skills ("LS") program at LUSOL emphasizes the development of all four skills in every student. Moreover, the skills are taught in a progression that allows students to link the pieces together. Frequently, these skills are linked with the substantive law that students are learning at the same time. This coordinated approach to the curriculum addresses one of the fundamental concerns with the typical law school curriculum that has been raised frequently.[46]

A. The First Year Curriculum

1. Fall Semester

From the moment students enter LUSOL, they are exposed to skills assignments and training that are unusual, if not unique, among American law schools for their breadth of coverage. While the first semester skills course resembles the traditional Legal Research and Writing course taught at most schools, LUSOL adds to the basic course of legal writing and analysis by exposing students to their first real life lawyering simulation: the client interview. Students use the facts from the client interview to draft their Objective Memo, required in most first semester

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[43] Feasibility Study at 23.
[44] Sir Francis Bacon, *Essays of Francis Bacon or Counsels Civil and Moral, "Of Studies,"* at 14 (1597).
[45] J. Adams, *A Dissertation on the Canon and Feudal Law* (1765), reprinted IN 3 LIFE AND WORKS OF JOHN ADAMS 450-462 (C. Adams ed. 1851).
[46] *See* Roger Cramton, *The Need for Greater Emphasis on Skills Development*, *in* LEGAL EDUCATION AND LAWYER COMPETENCY: CURRICULA FOR CHANGE 12 (Fernand N. Dutile ed., 1981).

curricula, as well as the basis for a Memo to File and a Client Advisory letter. The first semester course is a two credit hour course that meets twice a week for one hour.

As part of the course planning, the skills faculty (consisting of the Director of the Center for Lawyering Skills and other full-time faculty members assigned to teach the first year course)[47] develop a fact pattern that will be the basis for nearly all of the research, writing, argument, and other skills that students will focus on during the first and second years. As part of the course instruction, the skills faculty covers essential client interviewing techniques.[48] In order to promote consistency across the sections, lectures regarding interviewing techniques are taught in a single large section. The Director recruits law school staff, faculty spouses, student spouses, and others to serve as "clients." The clients are then given a set of facts, usually a three or four page document that describes the events that led them to consult with the lawyer.[49] The students are told only the underlying cause of action, and must come prepared to ask questions to draw the facts out of the client. During the students' third week of class, they conduct a cold call client interview. The interviews are recorded using laptops and webcams and stored on a law school shared drive so that faculty can review and grade them and students can review them and evaluate their performances. Once they have completed the interview, each student then drafts a Memo to File recording the facts as communicated by the client.

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[47] For the Fall of 2008, LUSOL matriculated a 1L class of 108 students. This class size corresponds to projections made in the Feasibility Study that projected 85-100 first year students for the 2008-2009 school year. There were six faculty members teaching in the first year program during the fall semester 2008.

[48] The faculty has chosen Thomas Mauet's *Pretrial* as the textbook for the second year skills courses, but relies on Chapter 2 covering Informal Fact Investigation for the introduction to client interviews in the first year course.

[49] The most common problems encountered using volunteers are clients who won't volunteer any information that is not specifically requested, or clients who perform a complete data dump and tell the entire story within minutes of beginning the interview.

The faculty works from a standardized grading matrix to review the interviews and assign grades.[50] Grades are also assigned to the Memos to File. While it is impossible to provide absolute consistency in evaluating any skills assignment, a high degree of uniformity in grading across all sections is obtained by cross-checking average scores, high and low grades, and occasionally reviewing interviews that have been marked as either exceptionally good or exceptionally poor.

Once all Memos to File have been submitted, the students are given a standardized Memo to File that contains all of the facts that they should have received from their respective clients. The use of the standardized memo allows the "clients" some dramatic license during the course of the interview without fear that if they misspeak or forget some fact that they will be harming the student on all future assignments. The standardized memo then becomes the basis for future assignments, including the Objective Memo assignment that comprises the significant writing experience for the fall semester. Following completion of the Objective Memo, students also complete an Advisory Letter to the client based on the facts contained in the Memo to File and the research and analysis contained in the Objective Memo.

The first semester curriculum covers the key skills of factual investigation, problem solving, legal analysis, and client counseling. These skills are also covered in a manner that, in many respects, corresponds to the actual practice of law. For instance, a client consults a lawyer who must interview the client to determine the facts. The lawyer records those facts and proceeds to perform other legal and factual research. Using the research, the lawyer performs legal analysis of the claim, and ultimately counsels the client on possible courses of action. While those skills

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[50] The approach taken with our client interviews is similar to the approach of using standardized patients in medical schools and has been advocated for law school use. *See* Lawrence M. Grosberg, Medical Education Again provides a Model for Law Schools: The Standardized Patient Becomes the Standardized Client, 51 J. LEGAL EDUC.212-234 (June 2001).

can be taught in any classroom, the use of a common fact pattern allows each skill to build upon the previous one. The use of a "real client" turns abstract theory into real practice.

Additionally, the skills taught in the first semester skills course are integrated with two of the substantive law courses. The skills faculty consults with the Torts professors to ensure that the tort to be covered in the client interview will be discussed in class before the interview. The facts discovered during the interview and analyzed in the Objective Memo are also the facts used to support the drafting of a Complaint and Answer that is completed in the Civil Procedure classes.

2. Spring Semester

The spring semester also resembles the typical legal research and writing course, but also incorporates the teaching of skills not covered in most curricula. In addition to the transition from objective to persuasive writing and a heavy focus on research, LUSOL devotes nearly twenty percent of the class (8 of 42 class sessions) to contract drafting. The spring semester course is a three credit hour course taught three times per week for one hour.

The bulk of the spring semester course is the research and drafting of a Memorandum in Support of (or in Opposition to) a Motion for Summary Judgment. Students are provided with the Motion as well as an assortment of discovery documents and pleadings that form the case file. The facts are essentially the same as those provided during the fall although they are frequently modified to make them more appropriate for summary judgment and to simulate the change in facts that will come through discovery. The facts are also expanded to allow for research and writing on two distinct legal issues. While the Objective Memo in the fall is handled as a closed loop project requiring no outside research by the students, the Summary Judgment problem is an open research assignment. Students are randomly assigned to represent

either side in the case.[51] Following the completion of the drafting of the memorandum, students engage in oral arguments that take place as part of a mandatory 1L moot court tournament. For the first round of arguments, students are assigned to represent the same client they represented in drafting their brief, on one of the two issues that are typically argued. During the second required round, students argue the same issue for the other side ("off-brief"). During any elimination rounds that follow these two mandatory arguments, students may be assigned to argue any one of the four possible arguments (on-brief and on-topic, on-brief and off-topic, off-brief and on-topic, or off-brief and off-topic). This requires every student to have a complete understanding of both issues and be able to articulate the law for both clients on both issues. Oral arguments are taped and reviewed by faculty and graded. Each student is graded independently and grades are given without reference to judges' critiques, although the judges do give immediate critiques to the students.[52] Following completion of the oral argument tournament, as part of the skills course, students are informed that the Motion for Summary Judgment was denied and are instructed to write a settlement letter on behalf of the plaintiff.

The final segment of the first year skills course is contract drafting. For that exercise, students are given a fact pattern in the form of a client memo and instructed to draft a contract that represents the client's intent with respect to a specific purchase and sale of goods. This exercise is completed after significant consultation with the faculty teaching Contracts. The

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[51] Frequently those who have been most adamant that one side is clearly stronger than the other during the drafting of their Objective Memo will find themselves representing the opposite party during the Summary Judgment proceedings.

[52] While the 1L tournament is mandatory, all other moot court competitions are voluntary. However, the emphasis placed on oral argument throughout the LUSOL program has led to a high level of competence in competitive moot court programs and high praise from judges that have judged each of the LUSOL Moot Court tournaments. To date, our students have been judged by three Circuit Courts of Appeal judges (6th, 8th and 11th), five federal district judges, two state supreme court justices, five state appellate court judges, and nineteen different state trial court judges. In only three years of competitive moot court participation, LUSOL students have won seven different oralist awards, including three first place awards, and have advanced out of the preliminary rounds nine times, including two teams advancing to the regional finals in the ABA National Appellate Advocacy Competition.

Contracts faculty receives an exemplar of the finished product, the facts for the contract, and the grading matrix so that all of the terms implicated by the facts, including the array of anticipated boilerplate terms are covered in contracts before the drafting assignment is due.[53] This is the first segment of the LS curriculum that prepares students to use the law as a planning device.

The second semester course covers the key skills of factual investigation, problem solving, legal analysis, communication, client counseling, and legal research. These skills are covered in the context of representing two distinct clients through two unrelated legal problems. Moreover, while it is impossible to ever build a classroom curriculum that covers a single piece of litigation in the "normal" manner that it would be litigated, the first year curriculum mirrors the process in many respects. Building on the work done in the first semester, students turn from writing about the problem objectively and filing a Complaint, to drafting a persuasive memorandum that advocates a position for a client and arguing it before the court. Additionally, once the Motion for Summary Judgment is denied, students are returned to the real practice of law where they draft a settlement/demand letter seeking to advance the plaintiff's position based on the court's summary judgment ruling.

B. The Second Year Curriculum

1. Fall Semester

The third semester curriculum builds on the foundation laid in the first year.[54] While the skills become increasingly more complex, the students continue to track the same piece of litigation for certain elements of the course. Students are also exposed to other legal problems

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[53] For this skill to be completely integrated, the skills faculty would like to see this assignment become part of the Contracts course, with skills faculty available to assist in the grading if needed, but to date that has not occurred.

[54] Initially, the courses that are explained here as Lawyering Skills III and IV were reversed with discovery coming in the third semester and business planning coming in the fourth. Due to changes in the overall curriculum structure, the skills elements were reversed so that the skills continue to be taught in the same semester as the implicated substantive law.

that are addressed outside of the litigation context. The third semester course is a two credit hour course taught twice a week for one hour.

The third semester of the skills curriculum consists of a number of segments that are each taught as stand-alone subjects and include a heavy emphasis on using the law as a planning device. Specific assignments include negotiation; drafting, briefing and arguing a civil motion in *limine*; drafting a statute; and drafting an Operating Agreement and Articles of Organization for an LLC.

The course begins with a segment on statutory drafting. The LUSOL skills program endeavors to cover the use of law for dispute resolution as well as for planning purposes. While the balance still tips to the side of dispute resolution, the statutory drafting segment is the second of the planning elements of the curriculum. In addition to lectures on rules of drafting, students dissect poorly written statutes in class and ultimately must draft a statute for a new law, proposed by the professor, which is graded.[55]

Following completion of the statutory drafting segment, students are exposed to the key skill of negotiation. This segment includes both lecture and live negotiations pitting groups of two students against each other on behalf of "real clients." Each pair of students is given a set of facts that include those generally known as well as confidential facts known only to one side, and the parameters for an acceptable agreement set by the respective clients. The actual negotiation exercises begin with all students conducting a negotiation based on the same "case" and e-mailing their negotiated results to the professor. These results are then summarized and reported back to the class so that the students can compare the results that they obtained with the results that each of the other groups obtained. Students also discuss what worked and what did not

[55] In order to prevent students from simply drawing on available statutes, faculty have required students to draft such statutes as those that would ban or limit time travel, and would ban the use of cloaking devices.

work, and raise questions regarding negotiations based on actual practice. This first simulation is not graded but allows students to practice and receive feedback on their first attempt at negotiation. This simulation is followed by a graded simulation that is recorded for review by the faculty. While results are considered, greater weight is given to negotiation style, tactics, preparation and teamwork, provided that the results obtained are within the parameters set by the client.[56]

The third segment of the semester is the drafting and arguing of a civil motion in *limine*. Because the students have already drafted a significant memorandum in support of a Motion for Summary Judgment, time spent in lecture on the civil motion is limited. Rather, the focus is on the difference between drafting and arguing a dispositive motion, such as a motion for summary judgment, and a much more focused motion in *limine*. Depending on the case file being used, the motion may relate to the same case that students have been tracking since their first semester, or it may be a new and simplified set of facts used only for the motion in *limine*. Oral arguments of the civil motions are conducted in front a faculty member serving as the trial judge who provides immediate feedback on the argument. The written motion, the supporting brief, and the oral argument are graded exercises.

The final segment of the third semester course returns the students to the use of law as a planning device. In conjunction with material being covered in the Business Associations course, students are given detailed instruction in the planning and drafting of business documents. While courses such as Business Associations cover the theory of business entities,

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[56] The negotiations conducted during this phase of the course are identical to those used by schools that teach a full Negotiations course. The difference is in the number of negotiations that are conducted and the breadth of coverage. Although LUSOL does not offer a stand-alone Negotiations course, the negotiations component of LS III has provided a strong base for competitive negotiations teams. In its first year of negotiation competition, LUSOL won the 2007 Robert R. Merhige National Environmental Law Negotiation Competition. In 2007, LUSOL teams took third at the same tournament and took first and second at the ABA Regional Negotiation Competition, with both teams advancing to the national tournament and one of them being a national semi-finalist. In 2008, LUSOL teams took first and third at the ABA Regional with both teams advancing to the national finals.

few classes develop the understanding of how those entities are formed and appropriate client counseling that goes into decision making for such entities. In this segment, a business client meets with the class as a whole and explains an entity that he would like to form. Students are free to ask as many questions as they would like and the client answers them in accordance with how he would present them in a true business formation.[57] Lectures on the advantages and disadvantages of each business entity type and the decisions that business leaders and planners make are discussed through lecture, integrated with the Business Associations course, before the drafting process begins. Once students have the background material and factual material needed, they are instructed to draft the appropriate business documents. Students then draft an Operating Agreement and Articles of Organization for an LLC. Students may also be asked to draft a client letter explaining their decisions and explaining how their choices are reflected in the documents.

The third semester curriculum, then, covers the key skills of problem solving, factual investigation, negotiation, legal analysis, communication, litigation, legal research, and client counseling. In teaching the varied subjects in this semester, faculty members are selected based on their legal backgrounds. The class is taught in a single section with each segment taught by a professor with expertise in the skill set being taught. For the last two years, the negotiation section has been taught by a former Department of Justice attorney who regularly negotiated settlements of major litigation involving civil fraud. The civil motion has been taught by a former state government attorney with several years of courtroom experience. The business planning segment has been taught by individuals with extensive business planning background in

[57] Our client has typically been drawn from the Liberty University Business School who has many years of teaching experience as well as a business background. He meets with the course instructor in advance of the lecture to determine which issues to address and which ones to leave open for questioning. The first time this exercise was completed, the client was so convincing that students questioned whether they could be liable for the Unauthorized Practice of Law if they completed the work for him.

private practice. Each of the skills is covered in the context of representing a client and responding to real issues that the client brings to the table.

2. Spring Semester

The fourth semester is devoted almost entirely to discovery and reflects the amount of time and effort that a litigator spends in discovery in relation to the overall representation. In addition to the segment on civil discovery, students also draft a bench memo and argue a criminal motion to suppress. The fourth semester class is a two credit hour course taught twice a week for one hour.

Students are initially required to draft a complaint on a more complex set of facts than those used in the first year. While the first semester complaint drafted in Civil Procedure lays a good foundation, the cause of action and appropriate elements are limited in scope. In this exercise, the students must analyze facts, determine appropriate causes of action, and plead them according to the required elements. There are also several classes on litigation planning, legal investigation, case evaluation, scheduling, and initial disclosures. Students have the opportunity to immediately begin preparing a litigation chart that shows each cause of action, each required element, likely sources of proof, and likely discovery devices used to uncover that proof. The remainder of the semester is spent in the discovery mode. After students have turned in their Complaints, they are given a standardized Complaint from which to plan their discovery. Each of the major discovery devices is discussed and students draft a written set of discovery for each device. The course includes drafting of Interrogatories, Requests for Production of Documents, Requests for Admission, and Subpoena Duces Tecum. All discovery is based on a single case

that the student can become entirely familiar with and explore its many complexities.[58] In addition to coverage of these devices that all require corresponding written work products, students also cover Independent Medical Exams; electronic discovery and discovery in major litigation;[59] Motions to Compel; Protective Orders; Temporary Restraining Orders; and preliminary injunctions. These areas are covered in lecture and discussion format without any hands-on training exercise.[60]

The discovery segment concludes with depositions. In preparation for depositions, the skills faculty once again develops small fact patterns that relate to several witnesses or parties involved in the litigation. The case that has been used throughout the written discovery phase will also be used during the depositions. Each student is provided with two sets of confidential facts. One set is used when the student plays the role of the witness and one is used when the student is defending the witness during a deposition. Each student participates in a total of three depositions: taking, defending, and serving as a witness. No grade is given for the student as a witness, but grades are given for both taking and defending depositions.

The final segment covered during this semester is the drafting of a Bench Memorandum and argument of a Criminal Motion to Suppress. This is the only skill assignment that specifically addresses criminal law. While it is true that many lawyers never appear in criminal court, it is also the case that a large number of lawyers begin their careers either as assistant prosecutors or on court appointed defense lists. This assignment gives all students a very rudimentary

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[58] We have not always been able to maintain the same hypothetical for both years for some fact patterns that we have developed. Developing a single set of facts that lend themselves to Objective Memos and Summary Judgment for 1Ls, and written discovery for 2Ls (as well as Motions in Limine in the third semester) has proven problematic.

[59] My thanks to my former colleague Paul Creeden, an Associate in Hunton & Williams Litigation and Intellectual Property Practice in the Richmond, VA office, and expert in electronic discovery issues, who annually visits LUSOL to provide this increasingly important lecture.

[60] While we would like to have every student draft these very common discovery devices and motions, the course already requires an extensive amount of work, and any additional requirements would require more credit to be given and have a negative effect on the students' ability to complete the rest of their coursework.

understanding of the differences between the civil and criminal process. Students are given a hypothetical set of facts and must immediately perform research to determine the applicable law. Students draft a bench memo so that they are forced to analyze the law from both sides. Each student is then assigned to represent either the state or the defendant and to argue the motion to suppress. The criminal motion has been taught by a former federal prosecutor with more than thirty-five years of experience.

The fourth semester course covers the key skills of factual investigation, legal analysis, communication, legal research, and litigation. These skills are covered in the context of representing two clients through two distinct legal problems. Once the Complaint has been filed, students begin the process of discovery to build the proof that they will need in order to prepare the case for trial. Armed with a litigation planning chart,[61] responses to written discovery and deposition transcripts, students are now equipped to complete final preparations for trial, or pre-trial settlement. Additionally, throughout the semester many elements of practice management and professional ethics are discussed as they relate to specific issues.[62]

C. The Third Year Curriculum

1. The Fall Semester

The fall semester of the student's final year consists of a basic trial advocacy course. The course is a three credit hour course taught once a week for three hours.

The course is structured like many trial advocacy courses and is taught using the National Institute of Trial Advocacy model.[63] Throughout the course of the class, students receive

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[61] While the litigation chart assists the students in planning their discovery, it is also prepared as an independent graded assignment.

[62] During the discovery phase, students are given instruction in client file organization and management, time management, and cost management. Model Rules 1.6, 3.1, 3.2, and 3.4 are discussed in the context of making discovery responses.

[63] Our first Lawyering Skills V course was structured and taught by the late Jim Jeans, one of the founding members of NITA.

lectures on trial techniques and practice each of the major components of the trial. Each student performs voir dire, gives an opening statement, conducts direct examination (including laying a foundation and admitting evidence), conducts cross examination, makes objections, and delivers a closing argument. Each of these exercises is completed in-class with faculty oversight and feedback. Additionally, each student conducts a complete trial that requires all of these elements except voir dire. The key skills covered in this course include legal analysis, factual investigation, professional ethics, communication, and litigation.

2. The Spring Semester

The final skills requirement may be met by completing one of seven different courses that best fits the students' planned career path. Students may choose from Advanced Trial Advocacy, Appellate Advocacy, Business Planning, Estate Planning, Mediation, Real Estate Transactions and Development, or participation in the Constitutional Litigation Clinic. Each of these courses is taught as a practice oriented course and requires completion of assignments that pertain to actual client situations. Due to the flexibility in this final skills requirement, students may take this skills course at any time during the second or third year provided that other course prerequisites are met. Depending on which class is chosen, this course is worth either two or three credit hours.

a. Advanced Trial Advocacy

The Advanced Trial Advocacy course is as the name suggests. Since each student has already completed the basic trial advocacy course (Lawyering Skills V), the advanced course provides an opportunity for any student who desires to hone and polish his or her trial skills. In the basic course, students practice each of the components of the trial through classroom exercises, and each complete one trial. In the advanced course, all students complete two full

trials and, depending on the size of the class, may complete three. The key skills covered in this course include legal analysis, factual investigation, professional ethics, communication, and litigation. Advanced Trial Advocacy is a three credit hour course taught once a week for three hours.

b. Appellate Advocacy

The Appellate Advocacy course is also structured similarly to most other Appellate Advocacy courses. Students are given a complete case file, including lower court opinions and orders and must brief and argue the case on appeal. Whereas some Appellate Advocacy courses focus on students drafting portions of arguments for multiple different cases, the LUSOL course adopts a single case and utilizes it throughout the semester. Rather than have students analyze and argue a pre-trial motion based on earlier proceedings in the same case, as they do in earlier classes, for the appellate brief students go through the drafting process in phases with faculty members reviewing two complete drafts, each of which is followed by an individual conference. One class session of oral argument practice is also conducted before the brief is submitted. When completed, the brief is filed with "the Court" and served on opposing counsel, i.e., the student who will argue for the opposing party during oral arguments. During the oral argument, students argue before a three judge panel composed primarily of faculty and practicing appellate attorneys. The key skills covered in this course include legal analysis, legal research, communication, and litigation. The Appellate Advocacy course is a two credit hour course that meets once a week for two hours.

c. Business Planning

The Business Planning course is the first of three planning classes that satisfy the requirement for Lawyering Skills VI. The course is taught by an experienced business lawyer.

In addition to the practical nature of the assignments, the professor discusses such issues as how to build a business practice, the ethics of representing corporate entities, and the dynamics of interacting with a business (e.g., considering spouses when dealing with family partnerships). The class requires that all students complete three separate planning assignments and a final project. Each of the assignments requires progressively more complex planning and drafting. The first assignment requires that students select from a list compiled by the professor containing subjects of current interest to the business community. This past year topics included the 2008 Tax Stimulus package[64], the *Stoneridge*[65] opinion, and tax reform (flat tax and fair tax proposals). Students are told that they work for a firm that specializes in business clients and are instructed to prepare a "Client Newsletter" that discusses the implications of the topic for the firm's clients. The second assignment requires that students respond to a set of facts by preparing a business start-up plan that includes a discussion of the tax ramifications, securities issues, and similar matters. The complexity of the problem is such that students must consider multi-level entity planning to provide the best service for their clients. The third assignment requires that students complete eight documents related to a Regulation D Rule 506 securities offering. They must complete a risks assessment, investor questionnaire, purchaser representative questionnaire, and a letter explaining the package to the client. The facts that the students use in completing the analysis are based upon an actual case study that the class has discussed throughout the semester. Finally, each student must complete a final presentation. The presentation is given to a client, opposing counsel, or similar group, depending on the facts of the case. Students are required to address the business ramifications of every aspect of the

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[64] *See* Economic Stimulus Act of 2008, Pub. Law No. 110-185 (codified as amended at 26 U.S.C. §§ 1, 168, 179, 1400L, 1400N, 6211, 6213, and 6428, and 31 U.S.C. § 1324, and enacting provisions set out as notes under 26 U.S.C. §§ 168, 179, and 6428 (2008)).

[65] Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc., ___ U.S. ___, 128 S.Ct. 761 (2008).

plan that has been presented. Additionally, students not presenting play the role of the client or opposing counsel and must ask appropriate questions of the presenters. The key skills covered in the course are problem solving, factual investigation, professional ethics, legal analysis, communication, client counseling, and practice management. Business Planning is a three credit hour course that meets twice a week for ninety minutes.

d. Estate Planning

Estate Planning is also taught as an intensely practical course. Throughout the course of the class, students draft eight different documents, or sets of documents, that increase in complexity as the semester progresses. Students begin with estate planning for young adults and progress through wealthy young adults contemplating marriage, young married couples without children, young married couples with children, and married couples with children. The course also deals with gifts from grandparents, remarriage, and migratory married couples. The assignments include drafting from scratch, using existing forms and modifying them as necessary to accomplish the clients' goals, and drafting letters to clients explaining any proposed actions. The final project for the course requires that students represent a married small business owner and draft a will and associated documents taking into account business succession interests, state laws, and federal tax issues. The legal documents must also be accompanied by a client letter that explains all actions recommended to the client. The key skills covered in this course are problem solving, legal analysis, communication, and client counseling. Estate Planning is a three credit hour course that meets twice each week for ninety minutes.

e. Mediation

The Mediation course is the first full-course curriculum offering at LUSOL that addresses Alternative Dispute Resolution strategies. The course has been taught by an adjunct faculty

member who is a retired judge currently practicing as a certified mediator and arbitrator. The class is skills oriented. The judge has prepared several scripts that are used as the basis for conducting the mediations. During the course, there are four role play exercises, and each student serves as counsel to a party and as a mediator at least once. Additionally, those students not involved in the mediation presented on a given day sit through the exercises and offer a critique to those mediating. During the most recent semester, the class was invited to attend an actual mediation conducted by the judge. The judge also brought in several guest lecturers with mediation experience. The key skills covered in the course are alternative dispute resolution and communication. The Mediation course is a two credit hour course that meets once per week for two hours.

f. Real Estate Transactions and Development

Real Estate Transactions and Development is also an intensely practical skills course that puts students into the role of developing a commercial real estate deal. The professor who teaches the course comes from a practice background that includes more than twenty years as a licensed real estate broker, and real estate development practice with two of Florida's largest law firms. His practice background has enabled him to teach this course in a way that emphasizes the practical realities of real estate transactions.

The class is divided into "law firms" of four to five students each. At the initial class period, students are informed that they must find an actual real estate development project currently being completed in the area. Each law firm must choose a different development. Students then contact the developer of the project and meet with him, both individually and as a group, to gather as much information as possible about the project. Throughout the course, lectures are given that cover such topics as brokerage agreements, land contracts, surveys, environmental

regulations, commercial loans and financing, titles, and construction. The end product of the course is a ninety-minute group presentation that describes the chosen project. Additionally, students must complete a final exam. Final exams in the past have required students to evaluate a fifty page commercial lease and write a ten page letter to a client evaluating the lease; find errors in a survey; and review documents and draft a title insurance commitment letter. The Real Estate Transaction and Development course covers the key skills of problem solving, factual investigation, negotiation, communication, and client counseling. The course is a three credit hour course that meets twice a week for ninety minutes each.

g. Constitutional Litigation Clinic

The Constitutional Litigation Clinic works in conjunction with Liberty Counsel, a national constitutional law public interest law firm. Liberty Counsel litigates in the areas of religious freedom, family values, right to life, and the traditional family. All students enrolled in the Constitutional Litigation Clinic work with Liberty Counsel attorneys, under the direct supervision of a full-time faculty member who also serves as Special Counsel for Liberty Counsel, in on-going litigation matters. Students take part in weekly training sessions conducted by Liberty Counsel attorneys that cover issues unique to constitutional litigation. Additionally, students meet weekly with the clinic supervisor to provide and receive case updates. Students are given the opportunity to participate in Liberty Counsel attorney meetings and client conference calls where case strategies are discussed. Students draft Complaints, Affidavits, Motions, Briefs in Support of Motions for Preliminary Injunctions, and other legal memoranda. The key skills covered in this course include factual investigation, legal analysis, communication, litigation, legal research, practice management, and client counseling. Currently, the Constitutional Litigation Clinic is offered only during the summer. Once class

sizes have reached the goal of 150 students per class, the clinic will be offered during the fall and summer semesters. The clinic is a three credit hour course.

h. Professional Ethics

Professional Ethics are covered in many of the skills classes where a particular rule is implicated. Additionally, each student is required to take Professional Responsibility, which is not part of the LS program, in either his or her second or third year. The Professional Responsibility course is a two credit course. It is taught in the spring for one hour each, twice per week and also taught in the summer as a two-week intensive that meets five days per week for three hours each day.

i. Practice Management

Practice Management, the final key skill identified in the MacCrate Report, is also taught as a separate course: Law Office Management. Skills related to law office management are incorporated throughout skills classes as appropriate, but those planning to operate as solo practitioners or as part of small practices are encouraged to take the Law Office Management elective. The course is taught by an adjunct faculty member who began his own local firm.

Each spring, just before graduation, each student is provided with a Lawyering Skills Form Book. The book contains both hard copies and electronic copies of documents that students will likely reference during their early practice years. There is a copy of every type of document that the students drafted during their three years in the program, as well as other important documents that were not covered in class.[66]

No law school can ever fully prepare a student for the practice of law. However, LUSOL's heavy emphasis on skills training better prepares students for the practice of law than the typical

[66] The Table of Contents for the Lawyering Skills Form Book is attached as Appendix A.

curriculum. The curriculum developed at LUSOL fully embraces the law school's role in skills instruction outlined in the MacCrate Report.

> While even well-structured law school clinical programs would rarely be able to duplicate the pressures and intensity of a practice setting, law schools provide a unique opportunity for exposing students to the full range of these practice skills, an opportunity that might not be readily available in actual practice. Moreover, the organized instruction in these skills, in a simulated or live-client context in law schools, enables students to relate their later practice experience to concepts that they have learned in law school, just as students are able to place the substantive knowledge that they acquire after law school in the framework of the concepts they have learned in their substantive courses.[67]

Based on the feedback we have received from legal employers, both in the public and private sector, as well as those supervising externs, the connection of skills training with substantive law teaching has been well received by the practicing bench and bar. Offices that provide externship opportunities to our students have been overwhelmingly positive in their comments about our students' practical skills and abilities.[68]

IV. Overcoming Obstacles and Planning for the Future

> Still for a year it was splendid to have the time to think, which is supposed to go with academic life, and to dream about what could be done markedly to advance legal education in a school which had no vested interests, no faculty schisms or deadwood, no history, and no inertia.[69]

One of the questions asked during the hearings held by the MacCrate task force was: "What obstacles hinder a law school's ability to improve the preparation of its graduates for the practice of law?"[70] Included among the concerns mentioned were cost and high student-faculty ratios; lack of qualifications of faculty; resistance to change by faculty members; "unresolved issues

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[67] *MacCrate Report,* at 234-35.

[68] I have supervised the summer externship program during each of the last two summers and have personally spoken to each attorney supervising an LUSOL extern. Their response to the skill level of our students has been overwhelmingly positive.

[69] William H. Pedrick (Founding Dean of Arizona State University Law School), *The Non-Conventional Third year – including Counseling and Interviewing*, *in* LEGAL EDUCATION AND LAWYER COMPETENCY: CURRICULA FOR CHANGE 96 (Fernand N. Dutile ed., 1981).

[70] *MacCrate Report*, at 390.

about content, methodology, staffing, sequencing, coordination and progression"; and lack of room in the three year curriculum given other demands.[71] One speaker noted that "it would take a paradigm shift to accomplish meaningful reform … tinkering will [not] do enough."[72] Many of these challenges have been and continue to be confronted by LUSOL. Some have been overcome and some have not been noticed because of the emphasis on skills from the inception of the law school and the selection of faculty with a heavy practice background.

A. Cost, Staffing, High Student-Faculty Ratios

The most significant obstacle in implementing and maintaining a skills curriculum of this length and breadth is the commitment of faculty resources.[73] Skills classes generally require smaller sections so that students can receive individual attention, both on written assignments and on recorded simulations. During our first year, the first year legal writing course was taught in sections of thirty. That was quickly corrected and now all legal writing sections are taught in groups of approximately sixteen. The second year curriculum is more amenable to large group instruction and is currently taught in sections of approximately 30. However, with the extensive amount of written discovery drafted by each student, grading by one professor has been problematic and papers are frequently not returned to students in a timely manner. This is troublesome and has caused some student reaction because students often do not have the benefit of comments from one set of discovery before the next is due. Among all comments on student evaluations, failure to return graded papers in a timely fashion has been the predominant complaint with the LS IV course. Staffing, however, is of greatest concern in the third year when all students are required to take a trial advocacy course. During the Fall 2008 semester,

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[71] *Id.*
[72] *Id.*
[73] The CLEA report, however, comments that law schools that appear to be the most committed to preparing students for the practice of law have relatively modest budgets. *See* Stuckey, *supra*, at note 30, 4-5.

there was one faculty member teaching three three-hour sessions of LS V (trial advocacy). The sections were of twenty, eighteen, and eighteen students respectively. While these sections are larger than we would like (sixteen is optimal), classes of this size are manageable. However, when the current 1L class (108) becomes 3Ls, we will require six to eight sections of LS V. While this is an issue that we have been aware of since before the first class entered, it continues to cause those charged with administering the program some lack of sleep. It is our belief that every student will benefit from having a basic trial advocacy course. Whether that belief can withstand the pressure of larger class sizes can only be determined as the future unfolds.

One option that has been discussed by the faculty is to modify the skills program by creating two tracks: litigation and planning. Students would still be required to take the same number of hours of skills courses, but those who chose to pursue a business track would take certain courses and those pursuing litigation would take others. While this proposal would take pressure off some courses, it is not clear that it would address the overarching problem with staffing as the same number of students would still need to be taught in advanced skills courses that all require small sections.

An additional related issue is consistent use of the same faculty to teach skills courses. While there has been a core group of faculty teaching skills courses at LUSOL, because of the demands on a relatively small faculty, a number of different professors have been called upon to teach skills courses at different times. As different individuals have been used to teach the skills courses, especially the first year legal writing courses, it has been difficult to generate consistency in teaching, comfort level with the material, and consistency in grading. Those teaching the class for the fifth consecutive year are naturally more comfortable with the material

and have developed a grading standard that may be more difficult to adopt by the person teaching the course of the first time.

B. Qualifications of Faculty and Resistance to Change

LUSOL has not had any difficulty recruiting highly capable practitioners to teach in the skills program.[74] One reason is that the school has focused on skills since its inception. Additionally, attracting practitioners who want to teach has possibly been easier for a start-up school than for schools with long academic traditions. Whatever the reason, recruiting a highly qualified faculty with excellent practice credentials has not proven to be an insurmountable challenge.

Because we are a new law school, many of our faculty came to academia with extensive practice backgrounds. Counted among the faculty are the founder of one of the nation's premier public interest law firms who has argued cases before the United States Supreme Court and founded a successful law firm before turning to public interest law; a former federal prosecutor with more than thirty years of trial experience; a former civil litigator with the Department of Justice with more than fifteen years of experience litigating civil fraud cases; two retired state appellate court judges with a combined 35 years on the bench; a former president and managing partner of a law firm; and, other faculty members teaching skills courses with a combined 30 years of practice experience. Among the law firms represented by the LUSOL skills faculty are Sullivan & Cromwell; King & Spalding; Stoll Keenon Ogden; Akerman Senterfitt; Hunton & Williams; and Pennsylvania's Governor's Office of General Counsel.

Similarly, there has not been a great deal of resistance to change in developing the LS program. Because the skills emphasis was planned from the beginning, the school has not required a "paradigm shift" to implement it. There have certainly been ideas advocated by skills

[74] At present, all but one faculty member teaching in the skills area are tenure track faculty members with equal rank and status of those teaching substantive courses.

faculty that have not been well received by the faculty with prior teaching experience (e.g., moving the Contract drafting assignment out of LS II and into Contracts II). However, the overwhelming integration of skills training and substantive teaching has kept all faculty working closely together.

C. Content, Coordination, and Progression

The third significant obstacle to implementing a skills curriculum raised in the MacCrate Report related to issues of curriculum content and progression of courses. There are probably as many ways to design a skills curriculum as there are lawyers who could teach it. The LUSOL approach is to teach the key skills identified in the MacCrate report by putting students into the most common "lawyering" situations faced by new lawyers. Law schools have long proclaimed that if we teach law students how to think like lawyers, they can practice anything.[75] Similarly, the LS program proclaims that if we put students into enough practice settings, they will be able to take those skills and apply them in the myriad of similar settings that lawyers face every day. While students must learn to think analytically and critically, we believe that the best way for law students to apply those skills is to allow them to learn in a realistic continuum. Why should a law student make her first oral argument on an appellate case when she has no clue what it takes for the case to become an appellate case? Our skills program starts from the beginning with a client visiting a lawyer seeking advice. The lawyer performs research and drafts a memo. The memo becomes the basis for a client letter. A complaint is filed. These steps approximate what happens every day in the practice of law.

Students then draft a brief. They argue a pre-trial motion. The court rules. They draft a settlement or demand letter. Discovery is completed. Further pre-trial motions are argued. A

[75] *MacCrate Report, supra*, at note 3, 4.

trial is held. An appeal is briefed and argued. These steps in the process are all essentially followed by the course progression of the LS program.

However, litigation is not the only thing that young lawyers are assigned. The planning elements of the curriculum ensure that students understand and are competent in contract drafting, planning business entities, and drafting documents related to business formation. Other skills, such as negotiation, are included because they are necessary skills for all lawyers.

There are other challenges to putting together a skills curriculum that the students and other faculty members do not typically see: finding 100 clients for the 1L client interviews; coordinating judges for the two moot court tournaments held each year; planning and acquiring the technology needed to record interviews and other simulations for grading purposes. Perhaps the most challenging aspect of the job has been coordinating grades. The LUSOL faculty has adopted stringent grading guidelines. In order for the LS grades to fall within those guidelines, all professors must maintain relatively equivalent grades. With each professor grading six to eight substantive assignments during the course of the semester, keeping grades relatively close is challenging. Furthermore, accounting for differences between sections when one section gets an abundance of higher performers also presents challenges. However, none of these challenges has prevented us from maintaining this aggressive approach to skills. Different schools may take different approaches;[76] but, simply because one school coordinates their skills program one way and a different school plans it differently, there should not be an impediment to a comprehensive approach to skills training.

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[76] My thanks to Jim Moliterno, Director of the Legal Skills Program at William & Mary for discussing W & M's program with me. The W&M program puts students into law firms of sixteen students each for the first four semesters. During those four semesters the students are taught by a single faculty member (often an adjunct) and cover a broad range of skills. In addition to legal research and writing, students cover interviewing, counseling, negotiation, alternative dispute resolution, introduction to trial advocacy, and legal ethics. Because of the breadth of subject matter and the limited number of credit hours, many of these subjects are covered in survey fashion.

Progression of courses and key skills is an ongoing concern. During the 2008-2009 academic year, LUSOL reversed the second year skills classes. Most of what was taught in the Fall will now be taught in the Spring and vice versa. The progression of the skills taught is not affected and making the change allows for greater integration with other substantive law courses and keeps the skills concepts in sync with other curriculum changes.[77]

D. Room in the Curriculum

Planning a curriculum that has a significant skills component does not come without its costs. Of the ninety credit hours required for graduation at LUSOL, fourteen are earned in required skills courses (fifteen percent). Because of the skills concentration, students are limited in the number of substantive courses that they can take. LUSOL offers the full complement of required bar courses and students who might want to take more bar prep courses must prioritize and choose only those they value the most highly. If bar passage rates are an indication, the skills curriculum has not hindered the first two graduating classes from LUSOL from preparing for and passing the bar.[78]

One approach that is helpful in limiting unnecessary duplication of effort is integration of skills into the substantive curriculum. Initially, part of the integration occurred with substantive law professors teaching certain skills segments in the skills course (e.g., transactional professors taught parts of the contract drafting portion in the first two years of the program). However, what might be a significant hurdle at most schools has been relatively easily overcome here because most of the faculty are here in their first teaching assignments and all faculty accepted

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[77] Business Associations was taught in the spring and is now being taught in the fall. Consequently, the business drafting part of the second year skills curriculum is being moved to the fall so that the students continue to learn the skill at the same time they are learning the substantive law. Similarly, Evidence is taught in the spring and coincides with the Criminal Motion to Suppress portion of Lawyering Skills IV.

[78] The graduating classes of 2007 and 2008 have posted impressive bar pass results. For the two classes combined, 83 students have taken a total of 88 bar exams from 23 different states. 80 have passed the exam the first time it was taken, for an overall first time pass rate of 90.9 %. (This number may not match reported results as several students took one or more exam in a year other than the year they graduated).

the skills emphasis from the beginning. Therefore, Torts professors have structured their syllabi so that causes of action implicated by the client interviews are covered before the interviews take place. Additionally, Civil Procedure professors teach Complaint drafting as part of the Civil Procedure course. During the first two years of the program, Complaints and Answers were taught as part of the first year skills course. Because these components were reassigned to Civil Procedure, the skills professors were able to devote more classes to the basics of legal writing. Students nearly unanimously agree that learning the drafting of Complaints in Civil Procedure, at the same time they cover the rules related to Complaints, aids in understanding both. Students learn law best by linking it to practice.[79]

V. CONCLUSION

A complete skills curriculum that addresses all of the key skills identified in the MacCrate Report is possible. Most law schools offer classes that cover these skills. None (of which we are aware), except LUSOL, however, require training in all of the skills. The ten key skills identified in the MacCrate Report are the focal point of the Lawyering Skills program at LUSOL. Each skill is covered not only theoretically but in practice settings, multiple times during a student's six semesters of skills training. Following is a semester by semester break down showing which skills are covered during which semesters:

Problem Solving	(1,2,3,4,6)
Legal Analysis	(1,2,3,4,5,6)
Legal Research	(2,3,4,6)
Factual Investigation	(1,2,3,4,5,6)
Communication	(2,3,4,5,6)
Client Counseling	(1,2,3,6)
Negotiation	(3,6)
Litigation and ADR	(3,4,5,6)
Practice Management	(4,6)

[79] *See* William M. Sullivan et al., CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS, PREPARATION FOR THE PROFESSION OF LAW 88, 94 (2007); Roy J. Stuckey, CLINICAL LEGAL EDUCATION ASSOCIATION, BEST PRACTICES FOR LEGAL EDUCATION, A VISION AND A ROAD MAP, 35 (2007).

Professional Ethics (3, 4,5,6)

Developing a comprehensive required skills curriculum is challenging. Maintaining one is even more challenging. The bench, bar, and law students have been requesting one for years. Liberty University School of Law has shown that it can be done.