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A Synergistic Pedagogical Approach to First-Year Teaching

Jamie Abrams

jamieabrams@wcl.american.edu

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A Synergistic Pedagogical Approach to First-Year Teaching

Jamie R. Abrams*

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I. INTRODUCTION

The legal profession is changing dramatically as employers and educators face new sustainability challenges.¹ Law school applicants, students, and graduates indeed sense the changing legal market poignantly. Law school application rates are on the rise making admissions standards more competitive.² Current students are applying for fewer jobs under tighter hiring constraints,³

* Jamie R. Abrams teaches at the American University Washington College of Law. The author thanks Duquesne University School of Law for hosting "The First 'Colonial Frontier' Legal Writing Conference" on December 5, 2009, and for providing a forum to discuss "*Engendering Hope in the Legal Writing Classroom: Pedagogy, Curriculum, and Attitude*." The author is also deeply appreciative of the American University Washington College of Law's deep and ongoing support of curricular innovations through its Integrated Curriculum Program led by Dean Claudio Grossman, Dean Christine Farley, Integrated Curriculum Director Andrew Popper, and implemented by a dynamic and inspiring first-year faculty, including Nancy Polikoff, Tony Varona, and David Hunter. Thanks also to Teresa Phelps and Nancy Polikoff for feedback on earlier drafts and to Erica McKnight, Lisa Coleman, and Maggie Donahue for their excellent research and editing assistance.

1. See, e.g., Kristin Choo, *Pro Bono: Pay Cut for Public Service*, A.B.A. J., June 2009, at 27, 27-28 (2009) ("[S]ome firms enduring declining billable hours are using public interest placements to defer incoming associates or to provide transitional placements for laid-off lawyers . . ."); Nate Raymond, *Deferred Associates "Hit the Ground Running" at Non-Profits, DA's Offices*, N.Y. L. J., Oct. 27, 2009, <http://www.nylj.com/nylawyer/probono/news/09/102709a.html> (describing the emerging trend of deferred law firm associates receiving stipends to work at non-profit organizations or government agencies before beginning at private firms); E. Kenneth Wright, Jr., *Help Is On the Way*, CHI. BAR ASS'N REC., Feb.-Mar. 2009, at 12, 12 (2009) ("[M]any of our leading law firms are restructuring and/or eliminating lawyers and staff to remain profitable and to stay afloat."); Thomas E. Wright, *Telling Noah About the Flood*, J. KAN. B. ASS'N, May 2009, at 6, 6 (2009) ("From Jan. 1, 2008 to March 31, 2009, there have been 9,946 people laid off by major law firms."); Carol J. Williams, *Law Firms Give Associates a Chance to Build Skills While Doing Good*, L.A. TIMES, Apr. 6, 2009, <http://articles.latimes.com/2009/apr/06/local/me-loaner-lawyers6> ("Rather than lay off junior lawyers, some firms are lending them to public interest practices where they can handle weightier issues and gain courtroom experience. . . . Across the country, the junior end of the law firm hierarchy has been taking the brunt of layoffs, pay freezes and furloughs . . .").

2. See, e.g., Debra Cassens Weiss, *Number of Students Applying to Law School Jumps 3.8 Percent*, A.B.A. J., Apr. 2009, http://www.abajournal.com/news/article/number_of_students_applying_to_law_school_jump_s_3.8_percent/ ("The number of students applying to law schools is up 3.8 percent for fall 2009, and the number of applications filed by those individuals is up 6 percent.").

3. See, e.g., Robert W. Denney, *Trends Report: Selections from the Legal Market Basket*, LAW PRAC., Sept. 2008, at 8, 8 (describing the increasing number of law firms that are cancelling their summer associate programs); Carolyn B. Lamm, *Leadership When It's Needed Most: ABA Programs and Initiatives Help Lawyers Help Themselves and Others*, A.B.A. J., Nov. 2009, at 9, 9 ("Due to shrinking law firm summer programs and increased competition for public interest positions and clerkships, law students and young lawyers face great uncertainty.").

and facing great insecurity over employment prospects,⁴ job stability,⁵ and financial security.⁶ Practitioners are likewise facing wide scale layoffs,⁷ reduced compensation,⁸ and greater career uncertainty.⁹ The changing legal market has positioned practitioners to explore non-traditional careers,¹⁰ to enter new fields,¹¹ and to work in more temporary roles.¹²

These market and professional realities overlay in important ways with the existing and ongoing dialogue on legal education reform.¹³ These existing critiques and calls for reform have his-

4. See, e.g., Lamm, *supra* note 3, at 9 ("Many graduates have had job offers deferred until the economy gets back on track.").

5. See, e.g., Debra Cassens Weiss, *2009's Toll: More Than 10,000 Law Firm Layoffs and Lower Pay Trend*, A.B.A. J., May 28, 2009, http://www.abajournal.com/news/article/2009s_toll_more_than_10000_law_firm_layoffs/ (noting that law firms laid off over 10,000 employees between January 2008 and May 2009); Nathan Koppel, *Recession Batters Law Firms, Triggering Layoffs, Closings*, WALL ST. J., Jan. 26, 2009, at A1 ("[P]ay cuts and layoffs have become commonplace; profits, on average were down 8% to 12% across the industry last year after 15 years of consistent profit growth . . .").

6. See, e.g., G.M. Filisko, *Associates: How Low Will Pay Go?*, A.B.A. J., June 2009, at 32, 32 (explaining that law firms throughout the country have decreased salaries for associates); Weiss, *supra* note 5, ("Lower pay for lawyers could be a lasting effect of the recession . . ."); Wright, *supra* note 1, at 6 (predicting that salaries for attorneys will decrease in cities throughout the country).

7. See, e.g., Rachel J. Littman, *Finding the Silver Lining: The Recession and the Legal Employment Market*, N.Y. ST. B.J., Sept. 2009, at 16, 17-18 (noting the effects of the economic recession on the legal market extends not only to BigLaw, but also the public interest sector).

8. See, e.g., James D. Cotterman, *Compensation Challenges: Trends in Paying Partners and Associates in Trying Times*, A.B.A. L. PRAC., July 2009, at 47 (addressing the economic pressures placed on law firms to lay off personnel, drastically reduce hours, and employ wage reductions or freezes in order to maintain equilibrium); Alana Roberts, *More Lawyers Needed in Public Sector: Law Firms Say Days of High Pay, Automatic Increases Are Over*, MIAMI DAILY BUS. REV., July 17, 2009, 2009 WLNR 22491532.

9. See Littman, *supra* note 7, at 20. Littman forecasts that the structure of lawyering will transform: "Contract attorneys, eDiscovery specialists, of counsel and lawyers in other 'nontraditional' legal roles, which have until now been relatively underutilized and kept on the fringe of law firm practice, may find more opportunities." *Id.*

10. See Nicole Black, *Commentary: Rethinking What It Means to be a Lawyer*, DAILY REC. (March 16, 2009), 2009 WLNR 7827994 (illustrating the ways in which attorneys may forge new career paths).

11. See Littman, *supra* note 7.

12. See Aviva Cuyler & Nicole Black, *Virtual Law Practice: A Passing Trend or the Wave of the Future?*, GPSOLO, June 2009, at 48 (describing the increase in virtual and contract law practice as an alternative to the traditional law office); Littman, *supra* note 7, at 19-20.

13. See, e.g., Ronald Chester & Scott E. Alumbaugh, *Functionalizing First-Year Legal Education: Toward a New Pedagogical Jurisprudence*, 25 U.C. DAVIS L. REV. 21, 24 (1991) ("[T]he most salient defect of the current structure of legal education is that it does not adequately prepare the student to practice law.").

torically come from legal employers,¹⁴ bar leadership, other institutional sources,¹⁵ and legal educators,¹⁶ including specialized critiques from the Legal Research and Writing (LRW) community and clinical faculty.¹⁷ The proposed solutions vary dramatically, including calls for more coordinated teaching,¹⁸ expanded clinical offerings,¹⁹ more skills-based teaching,²⁰ and the eradication of first-year course boundaries.²¹

14. See, e.g., WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

15. See, e.g., Karen Sloan, *Reality's Knocking: The Ivory Tower Gives Way to the Real World's Demands*, NAT'L L.J., Sept. 7, 2009, at 1, 15 (reporting that some law schools have modified their curricula to focus on skills desired by employers in response to the economic downturn); Wright, *supra* note 1, at 6 (predicting that law schools will likely change their program offerings to respond to students' changing needs in a difficult job market).

16. See, e.g., Chester & Alumbaugh, *supra* note 13, at 23 (noting the diverse and widespread critiques of legal education by practitioners, faculty, and students).

17. See, e.g., Susan P. Liemer & Jan M. Levine, *Legal Research and Writing: What Schools Are Doing and Who Is Doing the Teaching (Three Years Later)*, 9 SCRIBES J. OF LEGAL WRITING 113, 131 (2003-04) (presenting the results of a national survey on the staffing of legal writing programs at U.S. law schools and arguing for revisions to relevant ABA standards); Andrea McArdle, *Writing Across the Curriculum: Professional Communication and the Writing That Supports It*, 15 J. LEGAL WRITING INST. 248, 251 (2009) (explaining the value of "reflective, narrative, and other imaginative writing" to law students as they develop their legal writing skills); Abigail Salisbury, *Skills Without Stigma: Using the JURIST Method to Teach Legal Research and Writing*, 59 J. LEGAL EDUC. 173, 174-75 (2009) ("[S]ome new tactic must be employed to arm students with the ability to research and write effectively so that upon graduation, they are prepared to develop arguments and support them to advocate for their positions."); Susan E. Thrower, *Teaching Legal Writing Through Subject-Matter Specialties: A Reconciliation of Writing Across the Curriculum*, 13 J. LEGAL WRITING INST. 3, 5 (2007) (describing the rationale and methodologies used in teaching legal writing in "specialized sections" as one means of implementing writing across the curriculum).

18. See, e.g., Mary Beth Beazley, *Better Writing, Better Thinking: Using Legal Writing Pedagogy in the "Casebook" Classroom (without Grading Papers)*, 10 J. LEGAL WRITING INST. 23, 27 (2004) ("Because writing and thinking are so intertwined, using the Legal Writing pedagogy in the casebook classroom can advance the goal of teaching students 'how to think like lawyers.'"); Lisa Eichhorn, *The Role of Legal Writing Faculty in an Integrated Curriculum*, 1 J. ASS'N OF LEGAL WRITING DIRECTORS 85, 87 (2002) ("By expanding their teaching areas, LRW faculty may also be able to overcome the 'us versus them' mentality that has often characterized their real and perceived relationships to colleagues who teach primarily doctrine and theory."); Pamela Lysaght & Christina D. Lockwood, *Writing-Across-the-Law-School Curriculum: Theoretical Justifications, Curricular Implications*, 2 J. ASS'N. LEGAL WRITING DIRECTORS 73, 100 (2004) (advocating for a law school curriculum that "would increase writing in doctrinal courses" and detailing the three primary features of such a curriculum); Margaret M. Russell, *Beginner's Resolve: An Essay on Collaboration, Clinical Innovation, and the First-Year Core Curriculum*, 1 CLINICAL L. REV. 135, 148 (1994-1995) (concluding that the coordinated curriculum "offers myriad possibilities for innovation in and improvement on the traditional first-year model, while avoiding some of the pitfalls inherent in a complete reconstruction").

19. See, e.g., Darby Dickerson, *Building Bridges: A Call for Greater Collaboration Between Legal Writing and Clinical Professors*, 4 J. ASS'N OF LEGAL WRITING DIRECTORS 45, 45 (2007) (contending that the goals, teaching methodologies, and skills gained in legal writing courses and clinical work have many overlaps that, if capitalized on, can have positive outcomes for law students); Michael A. Millemann, *Using Actual Legal Work to Teach*

The First “Colonial Frontier” Legal Writing Conference, held at Duquesne University School of Law, focused on *Engendering Hope in the Legal Writing Classroom: Pedagogy, Curriculum, and Attitude*. This conference built on the foundational work of Allison Martin and Kevin Rand, in which these scholars call for educators to engender hope in law students to prepare them for practice.²² Martin and Rand conclude that hope is a predictor of students’ academic performance and psychological health during the first semester of law school and recommend that law professors “main-
tain[] and creat[e] hope in law students” by embracing five core principles.²³ Martin and Rand’s core principles recommend that law faculty “(A) help law students formulate appropriate goals, (B) increase law students’ autonomy, (C) model the learning process, (D) help law students understand grading as feedback rather than as pure evaluation, and (E) model and encourage agentic thinking.”²⁴ Martin and Rand provide concrete recommendations on how to “engender hope” in the legal writing classroom.²⁵

Martin and Rand’s frame for approaching legal education is both timely and responsive, considering the rapidly evolving legal market and the ongoing calls for legal education reform. As the

Legal Research and Writing, 4 J. ASS’N OF LEGAL WRITING DIRECTORS 9 (2008) (describing the benefits to students of collaboration between LRW professors and clinical professors); Stefano Moscato, *Teaching Foundational Clinical Lawyering Skills to First-Year Students*, 13 J. LEGAL WRITING INST. 207 (2007) (advocating for collaboration between clinical and legal writing professors to establish foundational clinical skills during the first-year of law school and to cultivate transferable skills); Sarah O’Rourke Schrup, *The Clinical Divide: Overcoming Barriers to Collaboration Between Clinics and Legal Writing Programs*, 14 CLINICAL L. REV. 301, 305 (2007) (“When clinicians and LRW faculty members share their methodologies and adopt in part each other’s approaches, they provide context, continuity, and reinforcement of the principles taught in each course.”).

20. Alice M. Noble-Allgire, *Desegregating the Law School Curriculum: How to Integrate More of the Skills and Values Identified by the MacCrate Report into a Doctrinal Course*, 3 NEV. L.J. 32, 33 (2002) (detailing methods for including skill-building in doctrinal classes without sacrificing coverage of course content).

21. See, e.g., Chester & Alumbaugh, *supra* note 13, at 25 (“[B]y focusing on arcane distinctions and the memorization of formal rules, the student has no chance to develop a perspective on any given problem, let alone to discern any overall coherence in the legal system.”); Millemann, *supra* note 19, at 9 (“Legal research and writing (LRW) teachers should use actual legal work to teach their courses, including (indeed, especially) first-year courses.”); Jill Schachner Chanen, *Re-engineering the J.D.: Schools Across the Country Are Teaching Less About the Law and More About Lawyering*, A.B.A. J., July 2007, at 42, 44 (describing overhauls of traditional first-year curricula at Harvard, Vanderbilt, and Detroit Mercy).

22. Allison D. Martin & Kevin L. Rand, *The Future’s So Bright, I Gotta Wear Shades: Law School Through the Lens of Hope*, 48 DUQ. L. REV. 203 (2010).

23. *Id.* at 218.

24. *Id.*

25. *Id.*

Carnegie Report highlighted: "Critics of the legal profession, both from within and without, have pointed to a great profession suffering from varying degrees of confusion and demoralization. A re-awakening of professional élan must include, in an important way, revitalizing legal preparation."²⁶ Martin and Rand's work and the Colonial Frontier conference responsively and proactively bring together educators to consider pedagogical approaches centered on engendering hope in our students to prepare them for successful and satisfying legal careers. "Engendering hope" as a pedagogical frame for curricular innovation offers a holistic and success-oriented approach that is a workable and adaptable starting point for strengthening the legal education model.

This article uses Martin and Rand's core principles as a lens to examine a synergistic integrated pedagogical approach adopted at the American University Washington College of Law (WCL). In this pedagogical approach, a section of first-year WCL faculty (including writing faculty, doctrinal faculty, adjunct faculty, tenured faculty, and contract faculty) coordinated to lead students through a client simulation woven through all first-year courses in the first semester. We built a fact-pattern around a home construction accident. The accident triggered primary causes of action in both tort and contract against the home developer and in tort against a manufacturer of an allegedly faulty product. It also triggered secondary causes of action against other contractors and parties. The first-year faculty involved in this simulation set out to weave this fact pattern through the first-year fall curriculum and to develop sustainable teaching materials to that end.²⁷ We sought to build on the existing strengths of integrated teaching and develop an approach and a set of materials that could be replicated and adapted by other faculty compositions and interests. We incorporated skills components ranging from complaint drafting to case management to negotiation.

This article examines how this simulation engendered hope in law students, using Martin and Rand's five principles as a rubric for initial assessment. This article reveals the methodology for this curricular innovation, the desired objectives, and our initial

26. SULLIVAN ET AL., *supra* note 14, at 19.

27. The first-year faculty involved in this endeavor included Teresa Godwin Phelps (directing the Legal Rhetoric Program), Nancy Polikoff (civil procedure), Tony Varona (contracts), David Hunter (torts), Jamie Abrams (legal rhetoric), Molly McBurney (legal rhetoric), Elizabeth Besce (legal rhetoric), and Jonathan Lawlor (legal rhetoric). These faculty members worked under the leadership of the Integrated Curriculum Director, Andrew Popper, Dean Claudio Grossman, and Dean Christine Farley.

assessments. WCL's approach reveals how synergistic pedagogy can engender hope in today's law students without unduly straining existing models, resources, or personnel. This approach suggests a proactive, not reactive, pedagogical technique capable of replication in institutions of varying curricular specialization, size, composition, and resources. This approach in its early assessment seems to energize hope in students and faculty alike, an outcome that is itself a catalyst to change.

II. THE EVOLVING LEGAL LANDSCAPE

Reforming legal education is a symbiotic and multi-faceted conversation. Institutional reform initiatives should necessarily begin by positioning the proposed innovation squarely in the ongoing dialogue regarding the status and direction of legal education and the legal profession. This section highlights a sampling of threads of existing critiques and commentaries to contextualize WCL's integrated simulation, including the keystone *MacCrate Report* and *Carnegie Report*, the LRW community's perspective, and the importance of assessment in legal education. This section concludes that longstanding critiques of the existing legal education model, paired with the changing legal market, reignite and expedite the need for workable and timely solutions.

A. Legal Education

Critiques of legal education pedagogy are certainly not new. Reform proposals and critiques have emerged historically from practitioners,²⁸ scholars,²⁹ institutions,³⁰ and governing bodies.³¹ Some critiques focus on the educational model expansively and others on discreet curricular components (such as research and writing).³²

28. See, e.g., John O. Sonsteng et. al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 332 (2007) (noting arguments critiquing legal education for the lack of practical employment skills that law students have); Kelly S. Terry, *Externships: A Signature Pedagogy for the Apprenticeship of Professional Identity and Purpose*, 59 J. LEGAL EDUC. 240, 241-43 (2009) (explaining how the "signature pedagogy" of law school creates deficiencies in new lawyers' ability to practice law).

29. See Chester & Alumbaugh, *supra* note 13.

30. *Id.*

31. See AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992), available at <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html> [herein after MACCRATE REPORT]; see also SULLIVAN ET AL., *supra* note 14.

32. See *infra* notes 46-47.

Law schools have responded largely ad hoc to these critiques with a range of curricular reforms and methodologies.³³ This section briefly highlights relevant existing scholarship to reveal generally the breadth and depth of the existing literature and to position the LRW community writing within the broader critique of legal education.

Two widely recognized and strongly heeded calls for legal education reform came from the *MacCrate Report*³⁴ and the *Carnegie Report*.³⁵ These reports were substantial catalysts for dialogue, reforms, and innovation in legal education. *Legal Education and Professional Development—An Educational Continuum* (popularly known as the *MacCrate Report*), published in 1992, challenged the delineation between legal practitioners and law schools and urged stakeholders in the legal community to recognize that “[b]oth communities are part of one profession [that is] engaged in a common enterprise—the education and professional development of the members of a great profession.”³⁶ The report also challenged legal educators and practitioners to make substantive changes to the legal education model by emphasizing practical experience and clinical education.³⁷ To address the reported “lack of competence among graduating lawyers,”³⁸ the *MacCrate Report* issued a “Statement of Fundamental Lawyering Skills and Values,” which identified certain skills and values essential to effective lawyering.³⁹ These enumerated values included competent representation, promoting justice, ensuring the accessibility of legal services, engaging in activities to enhance the profession, and seeking out skills development opportunities.⁴⁰ The fundamental lawyering skills identified in the report include problem identification and diagnosis, planning, legal theory development,

33. See, e.g., Ronald Chester, *Reshaping First-Year Legal Doctrine: The Experience in the Law Schools*, 20 FLA. ST. U. L. REV. 599, 611-29 (1993) (chronicling attempts to restructure the first-year education at Harvard, CUNY-Queens, and Georgetown).

34. See generally MACCRATE REPORT, *supra* note 30; see also Russell Engler, *The MacCrate Report Turns 10: Assessing its Impact and Identifying Gaps we Should Seek to Narrow*, 8 CLINICAL L. REV. 109, 157 (2001) (“The Report’s overall purpose is to help narrow the gap and to urge law schools as part of an educational continuum to improve their teaching of fundamental lawyering skills and values to help prepare law graduates for practice.”).

35. SULLIVAN ET AL., *supra* note 14.

36. Jessica Dopierala, *Bridging the Gap Between Theory and Practice: Why Are Students Falling Off the Bridge and What are Law Schools Doing to Catch Them?*, 85 U. DET. MERCY L. REV. 429, 436 (2008) (quoting MACCRATE REPORT, *supra* note 30, at 5).

37. *Id.* at 437.

38. Engler, *supra* note 34, at 115.

39. MACCRATE REPORT, *supra* note 30, at 132-221.

40. *Id.* at 140-41.

legal research, factual investigation, effective communication, client counseling, negotiation, courtroom advocacy, practice and case management, and ethics.⁴¹ The *MacCrate Report* revealed broad support for reforming educational models around a “unifying theme,” as Alice Thomas explained: “Calls for a revolution are occurring across all levels of teaching, not just law school teaching. The core concern at the heart of this revolution is a very simple one—that numerous learning theories, strategies and methods mire current teaching, and lack a unifying theme.”⁴²

The influential *Carnegie Report* was published in 2007 and is titled *Educating Lawyers: Preparation for the Profession of Law*.⁴³ The *Carnegie Report* analyzed the popular “case method” of teaching and suggested that law schools should develop more integrated curricula that combine “theoretical and practical legal knowledge and professional identity.”⁴⁴ The *Carnegie Report* emphasized that the focus “is on fostering in the legal academy more focused attention to the actual and potential effects of the law school experience on the formation of future legal professionals.”⁴⁵ Responses to these keystone reports revealed the need to think holistically about education.⁴⁶

The LRW community has been one active and mobilized stakeholder in the dialogue about curricular reforms. It has been a notable voice agitating for change within the legal education system. Many calls for reform have focused specifically on the first-year curriculum,⁴⁷ an area of teaching that has proven uniquely chal-

41. *Id.* at 138-40.

42. Alice M. Thomas, *Laying the Foundation for Better Student Learning in the Twenty-First Century: Incorporating an Integrated Theory of Legal Education into Doctrinal Pedagogy*, 6 WIDENER L. SYMP. J. 49, 56 (2000).

43. SULLIVAN ET AL., *supra* note 14.

44. *Id.* at 13.

45. *Id.* at 12.

46. See, e.g., Engler, *supra* note 34, at 158 (“At a minimum, we should understand the relative trade-offs between simulation courses, curricular and extracurricular programs and first-year or upper-level programs, as we try to identify the wisest way to strengthen a given law school’s overall instruction in skills and values.”).

47. See, e.g., Dopierala, *supra* note 36; Gary A. Munneke, *Legal Skills for A Transforming Profession*, 22 PACE L. REV. 105 (2001); Nienke Grossman, *A Problematic First Year at Harvard Law School: Problem-Based Learning’s Role in Meaningful Curricular Reform* (May 20, 2004) (unpublished manuscript, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1330553); Miriam E. Felsenburg & Laura P. Graham, *Beginning Legal Writers in Their Own Words: Why the First Weeks of Legal Writing Are So Tough and What We Can Do About It* (Wake Forest Univ. Legal Studies Paper No. 1460738, 2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1460738.

lenging to reform because of its traditional pedagogy.⁴⁸ Indeed, the pedagogy of legal writing instruction itself was a notable curricular reform historically.⁴⁹ LRW programs today are typically a hallmark component of the first-year curriculum,⁵⁰ and thus a driving consideration in envisioning first-year curricular reforms. Most schools require LRW in the first year and teach both objective and persuasive writing.⁵¹ LRW is generally a graded course with extensive feedback built into the syllabus.⁵² LRW instructors vary widely in their institutional status. A handful of schools position LRW faculty at parity in hierarchy and salary, while more commonly LRW faculty are in contract positions with lesser status and pay than doctrinal faculty.⁵³

Recent focus on curricular reform has also focused on the need to generate stronger assessment models. The *Carnegie Report* notably identified that current assessment models are inadequate to generate the skills and values that lawyers need to succeed in practice.⁵⁴ Critical perspectives have argued, for example, that the current model disproportionately affects certain students' job opportunities after graduation and negatively impacts students' mental health without sufficient proof that the current models are

48. See, e.g., Engler, *supra* note 34, at 157 ("Of all the hallowed traditions within legal education, the first-year, core curriculum seems the hardest to reform. Before we attempt to construct an optimal first-year program for a given context, we should separate the standards of learning theory and political or fiscal reality.").

49. See generally Teresa Godwin Phelps, *The New Legal Rhetoric*, 40 SW. L.J. 1089 (1986) (tracing the evolution of legal writing instruction from a period of no legal writing training, to the "current-traditional paradigm" in which legal writing instruction focuses on the written product and a strict linear writing process; and arguing for a "re-visioning" of legal writing instruction in that the emergence of the "new rhetoric" should focus on the substantive writing process itself and the written product as a conversation between the writer and the audience).

50. See JOHN MOLLENKAMP & KAREN KOCH, ASS'N OF LEGAL WRITING DIRECTORS LEGAL WRITING INST. 2009 SURVEY RESULTS ii (2009), available at <http://www.lwionline.org/uploads/FileUpload/2009SurveyResults.pdf> ("Virtually all writing programs (163 out of 166) extend over the first two semesters of the first year, averaging 2.40 credit hours in the fall and 2.26 hours in the spring . . .").

51. See *id.* at iii (noting that while there has been a decline in the use of office memoranda, appellate briefs, pretrial briefs, and client letters in the legal writing courses surveyed, the most common assignments given remain appellate briefs, pretrial briefs, and client letters).

52. *Id.* at ii.

53. See *id.* at viii ("LRW faculty in most programs are on short-term contracts. 55 programs reported having 1-year contracts, 21 had 2-year contracts, and 52 had contracts of 3 years or more. 43 reported having ABA Standard 405(c) status . . . another 15 are on 405(c) status track . . . and 33 programs have tenured or tenure-track faculty. The vast majority of those on contract are not limited in the total number of years that they may teach at the law school . . .").

54. See SULLIVAN ET AL., *supra* note 14, at 162-80.

actually valid or reliable.⁵⁵ Critics note that qualities and characteristics such as creativity, problem-solving, research skills, influencing and advocating, and listening, are important to effective lawyering although not adequately assessed by the LSAT, law school exams, or bar exams. These critiques suggest that current assessment models do not allow professors flexibility in determining what actually works in improving the reliability and validity of assessment models.⁵⁶

This brief survey reveals preliminarily that there has been longstanding and diverse advocacy for curricular reform. The breadth and depth of the curricular reform dialogue intersects in important ways with recent shifts in the employment paradigm of today's legal market, as described in Section II.B. The intersection of curricular reform scholarship and the changing legal market reignites and expedites this dialogue.

B. A New Employment Paradigm in a New Economic Landscape

The practice of law is dynamic and fluid and it intersects with broader paradigm shifts in the employer-employee relationship. That relationship has undergone a "profound transformation" within the labor market in recent years.⁵⁷ The labor market has gradually shifted away from the primary employer model to a framework dominated by shorter employment relationships, higher turnover, and more employee-managed careers.⁵⁸ This model has dismantled much of the historical "internal labor market" in which jobs were structured in hierarchal categories whereby employees entered at the bottom and were promoted ver-

55. See Timothy T. Clydesdale, *A Forked River Runs Through Law School: Toward Understanding Race, Gender, Age and Related Gaps in Law School Performance and Bar Passage*, 29 LAW & SOC. INQUIRY 711 (2004) (analyzing the impact of current assessment models on diversification); James R. P. Ogloff et al., *More Than Learning to "Think Like a Lawyer": The Empirical Research on Legal Education*, 34 CREIGHTON L. REV. 73, 202-04 (2000) (analyzing data that shows a correlation in law school ranking and initial job opportunities for law school graduates); Grant H. Morris, *Preparing Law Students for Disappointing Exam Results: Lessons from Casey at the Bat*, 45 SAN DIEGO L. REV. 441 (2008) (addressing the way in which law school grades negatively impact students' self-esteem and cause them to disengage from the learning process).

56. See Greg Sergienko, *New Modes of Assessment*, 38 SAN DIEGO L. REV. 463 (2001) (explaining the problems with reliability and validity in current law school assessments); Steven Friedland, *A Critical Inquiry into the Traditional Uses of Law School Evaluation*, 23 PACE L. REV. 147 (2002).

57. See Katherine V. W. Stone, *The New Face of Employment Discrimination*, in FEMINISM CONFRONT'S HOMO ECONOMICUS 297 (Martha Albertson Fineman & Terrence Dougherty eds., 2005).

58. See *id.*

tically.⁵⁹ Largely spurned by increased global trade competition, businesses get more flexibility and utility in this framework.⁶⁰ Katherine Stone describes this as the “recasualization” of the employment contract, minimizing the value of longevity or loyalty and emphasizing flexibility.⁶¹ In this labor market, employees retain their loyalty to the work over the organization, exercise more independent management of their careers, and obtain more career fluidity.⁶² Stone concludes that this shift creates a “fundamental paradox in today’s workplace: firms need to motivate employees to provide the commitment to quality, productivity, and efficiency while at the same time they are dismantling the job security, and job ladders that have given employees a stake in the well-being of their firms for the past hundred years.”⁶³

The phenomenon that Stone describes as the “recasualization” of the employment contract can be seen in several aspects of the legal market. Corporations have shifted away from the model of hiring a law firm to do all of their legal work, instead positioning law firms to competitively bid for work in ways that “would have been unimaginable in the past.”⁶⁴ The need to obtain a competitive pricing and servicing advantage has led many law firms to outsource certain tasks and projects.⁶⁵ Temporary attorneys are cost-effective for law firms because they often save the employer overhead and benefits⁶⁶ and because of the possibility of marking

59. See *id.* at 299.

60. See *id.* at 297-99.

61. See *id.* (noting that firms are doing a lot to retain and attract top talent through family-friendly policies and flexibility in meeting employee preferences for work schedule and location).

62. See Stone, *supra* note 57, at 301-02.

63. See *id.* at 303.

64. George P. Barker & Rachel Parkin, *Empirical Studies of the Legal Profession: What Do We Know About Lawyers' Lives?: The Changing Structure of the Legal Services Industry and the Careers of Lawyers*, 84 N.C. L. REV. 1635, 1654-56 (2006) (analyzing the Martindale-Hubbell Law Directory to explore how changes in the relationships between law firms and their clients impact the structure of the legal services industry).

65. The American Bar Association identifies some of the benefits of outsourcing projects, such as document management, in ABA Formal Opinion 08-451. “Outsourcing affords lawyers the ability to reduce their costs and often the costs to the client to the extent that the individuals or entities providing the outsourced services can do so at lower rates than the lawyer’s own staff.” ABA Comm. On Ethics and Prof’l Responsibility, Formal Op. 08-451 (2008) (“There is nothing unethical about a lawyer outsourcing legal . . . services, provided the outsourcing lawyer renders legal services to the client with the ‘legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation,’ as required by [Model] Rule 1.1.”).

66. See Larry Smith, *Hot Leverage Tool . . . : Temp Lawyers Enter Next Phase as Corporate Giants Acquire Agencies Nationwide*, OF COUNSEL, Jan. 15, 1996, at 1 (reporting that the use of temporary attorneys can save a law firm 25-30% in costs); Deborah Epstein

up the rates.⁶⁷ It allows law firms to mobilize quickly a large number of resources,⁶⁸ often benefiting from very experienced lawyers.⁶⁹ The “recasualization” of the employment contract can also be seen in other aspects of the legal market. Today’s attorneys are staying in their law jobs for shorter periods⁷⁰ and employers are increasingly relying on lateral hiring.⁷¹ This broader employment framework is particularly acute in the current legal job market, exacerbated by economic pressures.

In this curricular, economic, and employment framework, law students, legal educators, and employers alike need to be versatile problem-solvers.⁷² Alice Thomas summarizes the professional objectives that law graduates must meet:

To be competitive, law graduates must possess a broader complement of problem-solving skills and a deeper understanding of legal concepts and concept frameworks. The measure of a law graduate’s worth will be her ability to shift the conceptual framework to transfer learning to new problems and contexts. The consuming public will not perceive all learning as equal. The type of learning that will satisfy the global market will be that type of learning that is more consistent with higher-order thinking, high transferability, creative problem-solving, and increased reasoning capacity.⁷³

Henry, *The Case for Flex-Time and Part-Time Lawyering*, PA. LAWYER, Jan.–Feb. 2001, at 47 (noting that contract attorneys are usually not entitled to benefits).

67. The mark-up on contract lawyers’ work used to be much bigger, but clients and competition drove out much of the profit. Now, contract lawyers are more likely to be expensed and reimbursed at cost. Lester Brickman, *No Recession for Tort Lawyers*, FORBES, July 23, 2009, <http://www.forbes.com/2009/07/23/tort-lawyers-class-action-opinions-contributors-lester-brickman.html>.

68. Samuel A. Frederick, *Controlling Compensation Costs by Using Temporary Attorneys*, L. PRAC. MGMT., July-Aug. 1995, at 34.

69. See Smith, *supra* note 66.

70. See Yvonne A. Tamayo, *Defining the Practice of Law in the 21st Century*, 2000 J. PROF. LAW. 33, 34 n.4 (2000) (stating that the majority of third and fourth year associates surveyed planned to leave their current law firm jobs within five years).

71. See Barker & Parkin, *supra* note 64, at 1676 (noting that lateral moves are a more common phenomena); William D. Henderson & Leonard Bierman, *An Empirical Analysis of Lateral Lawyer Trends from 2000 to 2007: The Emerging Equilibrium for Corporate Law Firms*, 22 GEO. J. LEGAL ETHICS 1395, 1411 (2009); James W. Jones, *The Challenge of Change: The Practice of Law in the Year 2000*, 41 VAND. L. REV. 683, 687 (1998) (concluding that lateral hiring has become “the rule rather than the exception”).

72. Thomas, *supra* note 42, at 53.

73. *Id.*

Thomas concludes that today's law graduates need to be substantive, analytical problem solvers capable of thinking holistically.⁷⁴

Whereas legal education once recognized that legal employers did considerable practical and skills-based training on the job,⁷⁵ these underlying assumptions may be changing. Longstanding models in which legal employers invest in the training and professional development of their employees may no longer be the governing paradigm and law schools need to adapt accordingly. Many legal employers are shrinking or canceling their summer training programs.⁷⁶ Other graduates are facing deferments that leave them to build and cultivate their skills autonomously.⁷⁷

C. *The Need to "Engender Hope"*

The changing models of legal education and the legal profession briefly highlighted in Sections II.A. and II.B. reignite the calls for legal education reform and transform the existing dialogue. It is in this framework that Martin and Rand's work carries great traction. Students are indeed struggling under existing models. As Martin and Rand note, "Law student discontent is no secret."⁷⁸ Martin and Rand's work surveys empirical data revealing how law school is a "breeding ground" for depression, anxiety, and other stress-related illnesses.⁷⁹ These problems stay with students as they enter the legal profession.⁸⁰

Martin and Rand conclude that hope is a personality strength that positively influences law student success and well-being.⁸¹ "[H]ope predicts both academic performance and psychological

74. *Id.* at 53-54.

75. Noble-Allgire, *supra* note 20 (describing the great discontentment in modern law practice and the dynamic whereby law firms currently leave it to law firms to teach practical skills).

76. See, e.g., Robert W. Denney, *Trends Report: Selections from the Legal Market Basket*, LAW PRAC., Sept. 2008, at 8 (describing the increasing number of law firms that are cancelling their summer associate programs due to a lack of work, supervisors, and typically high rates of turnover amongst law firm associates).

77. See, e.g., Lamm, *supra* note 3, at 9 ("Many graduates have had job offers deferred until the economy gets back on track").

78. Martin & Rand, *supra* note 22, at 205.

79. *Id.* at 206 (citing Ruth Ann McKinney, *Depression and Anxiety in Law Students, Are We Part of the Problem and Can We Be Part of the Solution?*, 8 J. LEG. WRITING 229, 229 (2002)).

80. *Id.*; see, e.g., Dopierala, *supra* note 36; 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. LEGAL EDUC. 80 (2003).

81. Martin & Rand, *supra* note 22, at 205.

well-being in the first semester of law school.”⁸² Martin and Rand respond directly to the Carnegie Foundation Report’s call for a reawakening of the “professional élan” by recommending that “legal educators can accomplish these goals [in one important way] by engendering hope in their students.”⁸³ Martin and Rand survey existing scholarship governing “hope theory,” which concludes that hope predicts academic performance and psychological adjustment at the undergraduate level.⁸⁴ They conduct empirical research to reinforce existing hope theory’s application to law school, concluding that “hope predicts academic performance and life satisfaction in the first semester of law school.”⁸⁵ Martin and Rand propose five principles of engendering hope: “(A) help law students formulate appropriate goals; (B) increase law students’ autonomy; (C) model the learning process; (D) help law students understand grading as feedback rather than as pure evaluation; and (E) model and encourage agentic thinking.”⁸⁶ Martin and Rand’s five principles thus provide a timely lens through which to assess WCL’s approach to first-year teaching.

III. SYNERGISTIC PEDAGOGY: A FRAMEWORK TO “ENGENDER HOPE” IN THE PROFESSION

It is in this framework that the WCL integrated curriculum launched an innovative teaching simulation. WCL had a long-standing institutional commitment to integrated teaching dating back to the late 1990s. It set out in 2009 to build on that commitment and re-invigorate its integrated curriculum through an “experimental doctrinal section.” Section III of this article explains the institutional history of integrated teaching at WCL, the pedagogical objectives and methodologies that shaped our development, and summarizes the content and structure of our curricular program. At bottom, we built the core binding principles of this innovation on identifying and leveraging pedagogical synergies. Section IV reveals how this approach “engenders hope” in its students using each of the criterion articulated by Professors Martin and Rand.

82. *Id.*

83. *Id.* at 204.

84. *Id.*

85. *Id.*

86. Martin & Rand, *supra* note 22, at 205.

A. *Institutional History of Integrated Teaching at WCL*

Commitments to integrated teaching have a long institutional history at WCL. Integrated teaching began in the late 1990s with an experiment across one doctrinal section. This experimental section implemented co-teaching, a joint exam question, and other dynamic curricular integration. In time, this pilot program expanded to include all first-year teaching. The content and extent of the Integrated Curriculum varied widely depending on the experiences, interest, and chemistry of the faculty involved. At its core, the Integrated Curriculum had four hallmark characteristics.

First, the Integrated Curriculum spanned the first-year program. A Section Coordinator under the direction of an Integrated Curriculum Director coordinated each doctrinal section with considerable assistance from student research assistants. Each section engaged in some element of “commons” programming in which faculty planned and implemented supplemental programming to enrich the existing course content. Historic programming, for example, included content on legal realism, the regulatory state, and legal narrative.

Second, the Integrated Curriculum sought to engage faculty in co-teaching opportunities. Faculty coordinated syllabi and identified organic opportunities for co-teaching to pull out the synergies across courses. For example, faculty might co-teach content on arbitration clauses across civil procedure and contracts or product liability across torts and contracts.

Third, the Integrated Curriculum also conducted institutional programming in which all students could attend supplemental programming on course selection, exam preparation, etc. These programs focused on meeting student academic and career needs on a more centralized level.

Fourth, the Integrated Curriculum at WCL historically had some integration of LRW within the programming, but it was often inconsistent. A tenured director leads the LRW program, formally titled “Legal Rhetoric,” at WCL with five full-time instructors supporting the program. The size of the Legal Rhetoric program at WCL requires adjunct teaching, which necessarily limits faculty engagement in integrated teaching. The Legal Rhetoric program uses a centralized curriculum with common deadlines and assignments. Thus, in certain instances historically, the contract and tenured writing faculty participated in strong integrated curriculum programming, such as legal narrative, which enhanced

the writing classroom richly as well. In other instances, legal rhetoric was not included in integrated teaching. Where it was not incorporated into the integrated curriculum model, its absence could reinforce existing negative perceptions of legal rhetoric among students. Not including legal rhetoric in the Integrated Curriculum on a meaningful level risked reinforcing that it was something *other* than the traditional first-year courses, leaving students to construe it as secondary to their doctrinal courses.

Thus, the Integrated Curriculum at WCL had a strong and rich institutional history with the highest levels of institutional support. It achieved complete integration across all first year courses and sections. The role of the Legal Rhetoric program, however, was integrated somewhat inconsistently, the consequences of which risked reinforcing existing issues of status for writing faculty and some students' negativity toward the writing program generally.

B. Pedagogical Objectives and Methodology: Locating Synergies

1. Framing Early Objectives and Roles

After ten years of maintaining the Integrated Curriculum model described in Section III.A., WCL set out to engage in the Integrated Curriculum on a more robust level. WCL sought to bring more consciousnesses to the rich existing offerings of the Integrated Curriculum. We sought to build on the existing strengths. We hoped to select a topic that had the appropriate depth and breadth to carry longevity across the curriculum and beyond our initial launch. We also sought to identify manageable substance for first-year students. We hoped to accomplish these pedagogical goals within the existing faculty syllabi. In other words, we sought to do what we do better, and find existing synergies without stretching resources or straining any one particular course or faculty member.

Examining our syllabi and teaching interests, we generated a litigation-based fact pattern weaving our courses together. Our client suffered a serious eye injury after a portion of her ceiling collapsed on her in her bedroom. The client believed that she contracted to buy an all-American home from a housing developer. She believed that the home developer's advertisements and oral and written assurances guaranteed her an all-American home made of American products. The client valued the all-American home guarantee heavily due to her prior military service, profes-

sional goals, and personal values. After a portion of her ceiling collapsed, it revealed to her that the drywall used in her home was likely of Chinese origin. Having seen news reports of “toxic Chinese drywall,” she feared that in addition to her existing injuries, the Chinese drywall would create other health and home issues. Her own personal investigation following the accident caused her to suspect also that her drywall may not have been installed properly. She uncovered facts that led her to conclude that the home developer likely installed the drywall using faulty products. These facts triggered causes of action in both tort and contract for the plaintiff to pursue against the home developer and in tort against the manufacturer.

We thus set out with a group of willing and enthusiastic doctrinal and writing faculty to engage in this endeavor. We selected a coordinator to implement this vision and to work with research assistant support to develop the materials and to launch the simulation. The coordinator would alleviate the individual pressures on each faculty member by centralizing the work and the follow-through.

This endeavor presented an important opportunity for the Legal Rhetoric faculty at American University to engage in the Integrated Curriculum teaching innovations. The methodology of developing large-scale simulations and fact patterns is something with which our faculty is experienced. The LRW faculty already administered its writing program to over 500 first-year students with a centralized syllabus and assignments. Thus, the Legal Rhetoric faculty brought experience in large-scale assignment design. The symbiotic value in strengthening first-year teaching stood to benefit the Legal Rhetoric program as well. It stood to strengthen the LRW program institutionally and to deepen the institutional pedagogical support for our teaching.

2. Synergies Emerge as a Binding and Workable Pedagogical Principle

The team of faculty began working several months before our anticipated launch to brainstorm the execution of these pedagogical goals. We set out on very broad terms to integrate our teaching and to build on the existing strengths of the Integrated Curriculum while meeting our student and course needs. Our early discussions were conceptual and broad. We defined our goals, exchanged information about our course structure and content, and considered spotlight standouts of the prior Integrated Curriculum

projects. From these broad exchanges, we sought to conceptualize a program that worked within our courses, our availability, our teaching interests, our teaching styles, and the identified institutional goals.

We set out with a grand *vision* for our goal, but less clarity on the *methodology* that we would follow to conceptualize this vision or the concrete steps that we would take. We did a lot of early brainstorming. Many ideas proved ineffective because they were too heavy in tort or in contract, too complex for 1Ls, too robust, too fluid, or too politicized.

Early reflections reveal that the strengths of our methodology and our simulation were squarely rooted in leveraging curricular synergies. Various synergies emerged and shaped these planning meetings. The methodology that we selected and the content that we implemented were unique to the faculty participating in this simulation, their teaching interests, and their existing syllabi content and sequencing. For example, the civil procedure professor already taught her course using a simulated litigation case with a tort cause of action that carried through the semester. This offered an existing framework and structure around which to build additional integration. The civil procedure course syllabus offered clear sequencing and a balanced workload. This framework also overlapped well with the writing course, which followed two clients through the semester producing an office memo and an advice letter for each. We then built out our home construction fact pattern by weaving it in carefully to each syllabus and subject area. From that general conceptualization, we sought to identify various synergistic anchor points and pivot points within the classroom. Anchor points refer to the substantive grounding across each course's doctrine. Pivot points were climactic moments within the curriculum upon which faculty could facilitate the program. The substance of our simulation is summarized more fully in Section III.C.

C. Simulation Content and Implementation

We rolled out this simulation in five primary phases over one semester, each of which are summarized briefly in the sections below.⁸⁷

87. The Washington College of Law is actively working to make formal teaching materials available to implement this simulation. Please contact the author or the institution for additional information or materials.

1. *Introducing the Client and the Integrated Curriculum*

The simulation launched during orientation week of the fall semester. Students attended a general orientation program during which they met their first-year faculty, received section-wide announcements, and asked questions about the upcoming semester. While engaging in the standard fare of this orientation session, a family member of our client-to-be interrupted our session to preview the legal issues involved by role-playing an urgent plea for legal advice. The family member of our client-to-be explained in broad strokes the issues facing our client and asked us to help her urgently. Faculty led the interview and then led a subsequent brainstorming session with students.

2. *Developing the Client Issue*

With that introduction in place, we let the project simmer for several weeks as students progressed through their course material. Students learned introductory concepts of negligence, contract offer, offer acceptance, and personal and subject matter jurisdiction in their respective doctrinal courses. In legal rhetoric, they began their closed universe memorandum in an unrelated subject area.

With these threshold topics covered and students' command of written legal analysis well underway, we formally launched the substantive content one month into the semester. Several weeks into the semester, we rolled out the second phase of the simulation. With foundational knowledge, students were now ready to meet our client directly and begin representing her. We distributed to students a collection of materials to introduce them to the client's issues, including an interview transcript; foundational documents, such as the home purchase agreement; some initial medical reports; and photos of damage. We also introduced students to the parties involved by revealing their corporate identifications, such as the principal place of business.

3. *Pre-Litigation Case Planning*

Students reviewed these preliminary materials and prepared a "Case Planning Memorandum." In this memorandum, they brainstormed whom they might sue, in what jurisdiction, and on what legal theory. The faculty worked through the case planning in each of their respective classes. In civil procedure, students considered jurisdictional questions and strategic decisions in filing

and pleading the case. This included rich discussions about the strategy in retaining or adding certain defendants and the procedural implications therein. It also revealed important lessons in case planning where students suspected that there were contractors, subcontractors, and suppliers that may be involved, but could not ascertain their identity. Importantly, the civil procedure case planning set up a split that was emerging in the case. Students sensed a question of whether the plaintiff would have personal jurisdiction over the out-of-state product manufacturer. This inevitably led to valuable brainstorming regarding the importance of factual investigation as students considered how they would determine jurisdictional facts.

In torts, students considered the possible theories in negligence, fraud, misrepresentation, product liability, and the defenses that may be available. This included important questions about the governing standards that would apply to the workmanship and products involved and the sources to ascertain governing standards. It also included questions of joint and several liability.

In contracts, students considered whether there was a valid contract, whether particular terms were in the contract, and the admissibility of extrinsic evidence. Students also considered the possible damages that might be available in both tort and contract.

4. *Litigation*

i. Complaint Drafting

With this initial planning underway, students then turned to litigating the case. Students settled on a strategy, with faculty facilitation to that end, drafting a complaint against two defendants, the home developer and the nail manufacturer, in federal court alleging theories of negligence, breach of contract, product liability, and misrepresentation. Students worked with a group to draft a complaint.

The complaint drafting process proved fruitful for the civil procedure and legal rhetoric faculty to co-teach principles of plain language drafting and notice pleading. In a collaborative class working session, these faculty members reviewed students' complaints and considered effective drafting strategies, creating an impactful reinforcement of LRW teachings.

ii. Responsive Pleadings

The case then proceeded down two separate procedural tracts to maximize the pedagogical impact. The case against the in-state defendant, the home developer, progressed with an answer and a cross-claim. These parties proceeded into discovery as described in the next section. The case against the out-of-state product manufacturer moved into a motion to dismiss for lack of personal jurisdiction. The motion first involved a fact hearing with a witness testifying on behalf of the product manufacturer. Volunteer students conducted this interview and prepared the witness to testify. Some students then argued the motion to dismiss in a simulated oral argument.

iii. Discovery

Students then drafted interrogatories to the in-state home developer. The substantive brainstorming for the interrogatories and the development of the legal theory began in their doctrinal contracts and torts classes. Civil procedure and LRW faculty co-taught a program in which we worked through draft interrogatories collaboratively to revise them and to finalize a global set to serve on the home developer.

5. Negotiation and Settlement

The simulation concluded with a negotiation and settlement exercise with heavy reinforcement in the legal rhetoric classroom. Students first attended a special "commons" program during which prominent local practitioners highlighted negotiation strategy and technique. This panel energized students for the negotiation exercise and added tremendous "real-world" relevance to our simulation conclusion.

We then divided students into sides, half representing the plaintiff and half representing the home developer. Students each received secret instructions articulating the financial settlement parameters, non-monetary parameters, and some additional legal and factual background materials. Following the initial program, students conducted a negotiation outside of class with their group and reached an agreement. Students brought the result of the settlement to the last class of legal rhetoric. In this class, legal rhetoric faculty facilitated a drafting exercise during which students finalized the negotiation in a written agreement.

IV. EXAMINING A SYNERGISTIC PEDAGOGICAL APPROACH THROUGH THE LENS OF ENGENDERING HOPE

WCL first conducted this teaching experiment in the fall of 2009. Students and faculty have anecdotally responded very favorably to the simulation content. As the faculty and university contemplate the next step in this innovation, threshold questions of assessment and replication potential emerge. How do we validate that the simulation produced measurable results? Is it capable of replication in other faculties and institutions?

Martin and Rand's work provides a constructive and timely lens through which to assess the simulation launch at WCL. Through the lens of "engendering hope," the initial responses to the simulation seem to track along the criteria Martin and Rand articulate, suggesting initially that a synergistic approach to first-year teaching is a positive pedagogical starting point toward "engendering hope."

A. Helping Law Students Formulate Appropriate Goals

This simulation called on students to establish and execute "approach goals" throughout the client representation. Martin and Rand emphasize the importance of teaching to "establish approach goals in which [students] move toward getting something accomplished instead of avoidance goals in which students try to prevent something from happening."⁸⁸ Perhaps the strongest pedagogical impact of this simulation came from the early dissonance created for "avoidance-inclined" students as they struggled to respond to the uncertainty of defining the "avoidance goal" precisely.

Approach-oriented goals framed the initial client introduction heavily. After our client's family member representative "interrupted" our orientation to reveal the client issue and seek counsel, students' responses keenly magnified the impact of this simulation along this assessment criterion. Students brainstormed important steps, such as preserving evidence, meeting the client, formalizing the representation, researching possible claims, contacting the developer, and many more. The facilitated discussion focused on how to approach and resolve the client's issue effectively. This brainstorming created some early dissonance to students inclined

88. Martin & Rand, *supra* note 22, at 222-23 (internal citations omitted); *see also id.* (explaining that an example of an avoidance goal is not failing torts, whereas understanding torts is an approach goal).

toward an avoidance strategy. Students collectively displayed some element of visible anxiety as they pondered whether this fact pattern involved issues of tort, contract, procedure, or whether it was a writing simulation exclusively. Students clearly prepared for law school with their well-tabbed and organized books and binders organized by course. Many of their instinctual responses to this introduction seemed to come from an avoidance perspective: Will I be tested on this? In what class? Avoidance-inclined students surfaced quickly as they came forward to ask their professors the questions that their physical responses had revealed in class: Is this for your class? Do I need to do anything on that case? Is this part of our grade? We ultimately resolved this dissonance several weeks later as the simulation progressed down a litigation track.

The benefit of this simulation viewed through an approach-oriented lens—perhaps fortuitously—carried over into a broader macro perspective. In the subsequent days and weeks while this fact pattern hovered, but before we revisited it for strategic litigation planning, several articles ran in major newspapers describing the pervasive legal and regulatory issues with Chinese drywall. News stories were emerging on a nearly daily basis regarding the toxicity risks of Chinese drywall,⁸⁹ federal and state regulatory responses to Chinese product imports,⁹⁰ litigation for homeowners influenced by Chinese drywall,⁹¹ and corporate responses of the developers.⁹² Students thus saw on a macro level that approach-oriented goals are transferable in practice and beyond the law school walls. Avoidance-oriented students may have experienced additional anxiety in this early period. The process of morphing to

89. See, e.g., Michael Corkery, *Chinese Drywall Cited in Building Woes*, WALL ST. J., Jan. 12, 2009, at A3; Elizabeth Razzi, *Chinese Drywall Linked to Irritation*, WASH. POST, Nov. 24, 2009, at A14.

90. See, e.g., Leslie Wayne, *Thousands of Homeowners Cite Chinese Drywall for Ills*, N.Y. TIMES, Oct. 8, 2009, at B1; Rich Phillips, *Preliminary Reports Link Chinese Drywall, Corrosion in U.S. Homes*, CNN, Nov. 23, 2009, <http://www.cnn.com/2009/US/11/23/chinese.drywall/index.html>.

91. See, e.g., Julie Schmit, *Drywall from China Blamed for Problems in Homes*, USA TODAY, March 17, 2009, http://www.usatoday.com/money/economy/housing/2009-03-16-chinese-drywall-sulfur_N.htm; Alex Veiga, *Lennar Named in Chinese-Made Drywall Lawsuit*, SUN SENTINEL, April 20, 2009, <http://www.sun-sentinel.com/news/broward/parkland/sfl-chinese-drywall-042009,0,1351204.story>; Kate Moran, *Homeowners with Chinese Drywall Have Gotten No Help, and in Many Cases, Have No Resources Left to Keep Their Families Safe*, THE TIMES-PICAYUNE, June 7, 2009, http://www.nola.com/business/index.ssf/2009/06/homeowners_with_toxic_chinese.html.

92. See, e.g., Tim Padgett, *Is Drywall the Next Chinese Import Scandal?*, TIME, Mar. 23, 2009, <http://www.time.com/time/nation/article/0,8599,1887059,00.html>.

a model of “approach-oriented goals” helped counter some of the insular thinking that can happen in students’ first-year.

Once the substance of the simulation launched several weeks into the semester, the approach-oriented frame crystallized for the students collectively with faculty facilitation. This crystallization occurred in the litigation-planning phase. Students had to prepare a case planning memorandum in groups to identify who they would sue, on what legal theory, and in what jurisdiction. This positioned students to approach the legal issue proactively and collaboratively and to think about the substantive doctrine of their civil procedure, torts, and contracts class and to use it effectively to represent a client. From this point forward, student work focused on approaching the client’s problem using legal rules and lawyering skills to reach the client’s desired result.

Thus, the simulation created an early dissonance for avoidance-inclined students in the lack of clarity they experienced regarding the target of framing an avoidance goal. Yet, as the simulation developed in the early weeks of the semester, the simulation turned squarely and clearly toward collective approach-oriented goal pedagogy. This positioned avoidance-oriented students early in the semester to reframe their perspective, preparing these students for more versatile and sustainable careers.

B. Increasing Law Students’ Autonomy

This assignment had strong components of individual autonomy and an element of class autonomy, the combination of which yielded important successes in this simulation. Yet implementing this simulation with student and class autonomy had to be tempered with the implementation challenges of launching a simulation across a full doctrinal section of eighty students. Martin and Rand conclude that perceptions of control positively correlate with hopeful students.⁹³ Students perform well and reveal healthier responses to stress with greater control over the learning process.⁹⁴

This simulation effectively licensed students with some collective and some individual autonomy over the learning process. This simulation was perceptively student-driven at every turn. Students identified who they would sue, in what court, and under what legal theory. While we had to temper this with the need for

93. Martin & Rand, *supra* note 22, at 223.

94. *Id.*

a central process and framework, students conceptualized the case autonomously first. The faculty managed and facilitated the student autonomy only to manage the scope. Faculty controlled the facts and the direction of the simulation to reign in the scope of the assignment and to keep it manageable. Any scope constraints were conducted with approach-oriented, autonomous brainstorming. For example, students brainstormed suing subcontractors for negligence, doctors for malpractice, the home inspection company, and other parties for other theories. We facilitated autonomous brainstorming and then reigned in the scope by responding with research memos from the research assistant assigned to this case, closing off unworkable theories with plausible explanations. For example, we reported to students after they suggested suing the doctor, that a doctor reviewed the file and concluded that there was no basis for recovery.

Students exercised collective autonomy at almost every turn in the assignment, tempered only by pedagogical scope concerns. Students brainstormed fact investigations, legal theories, discovery requests, negotiation techniques, client communications, and courtroom advocacy strategy. Most brainstorming occurred first in groups of three to four students outside of class. Students submitted memos summarizing their arguments and theories. The faculty then facilitated class discussion. This two-step process allowed students to see the autonomy in action and think collectively about the implications of various courses of action. For example, some groups sought to pursue the case in state court and others in federal court. The faculty led a discussion about the reasoning behind each group's decision.

The scope of student autonomy was particularly exciting in the negotiation exercise. The negotiation instructions focused on reinforcing for students the importance of thinking about monetary and non-monetary solutions. The secret instructions that each side had gave some provocative suggestions to help them brainstorm non-monetary solutions. Students negotiated a settlement to end the simulation during the final weeks of class. We compiled a chart summarizing the results of the simulation. Students saw a vast range of settlement outcomes and maintained control over the penultimate simulation ending.

There was also student autonomy in individual components of the simulation as well. For example, select student volunteers role-played lawyers taking and defending witness testimony in a factual hearing (in preparation for the motion to dismiss) and arguing the motion to dismiss for lack of jurisdiction.

In our first launch of the simulation, student autonomy was a particular strength of the simulation. Achieving student autonomy requires a faculty that is very flexible and adaptable during the simulation implementation.

C. *Modeling the Learning Process*

The greatest strength of this simulation was its effectiveness in modeling the learning process. Martin and Rand explain that students benefit from modeling the learning process through “stepping.”⁹⁵ Stepping is an educational process that emphasizes pathways thinking, whereby students break down larger goals into smaller sub-goals.⁹⁶ Martin and Rand identify that low-hope students struggle to “step” because they try to meet large goals all at once, leaving students feeling anxious and overwhelmed.⁹⁷ “Pathways thinking” breaks goals down into smaller steps, positioning students to better transfer skill into practice, think strategically about lawyering, and recognize that there are multiple paths to achieve a good outcome.⁹⁸

The simulation effectively modeled the learning process in both the academic and practical sense. The simulation walked students step-by-step through a litigation case from initial case theory and strategy to negotiated settlement. It did so in a paced sequence allowing students to focus on smaller sub-goals (discovery, fact-gathering, etc.). The combination of group work and facilitated debriefing was particularly effective at modeling the learning process. It allowed students to work through a sub-step using their own selected approach and then compare their approach to those selected by other groups. This methodology helped students see a civil case progress through each of its steps and it helped them see that there are many acceptable approaches to meet a particular legal objective.

One example of how smaller sub-goals cultivated more transferable skills and better prepared students for today’s law practice emerged from the initial client introduction. From the perspective of the legal rhetoric course, this initial client introduction at orientation—while brief—offered the first of many important synergistic pedagogical benefits in modeling the learning process. The Le-

95. *Id.* at 224.

96. *Id.*

97. *Id.*

98. Martin & Rand, *supra* note 22, at 225.

gal Rhetoric program had always begun our course with a client interview simulation, which led to a series of drafts and a final closed universe client memorandum. The initial simulation in the Integrated Curriculum provided a subtle, yet meaningful reinforcement of the pedagogical techniques used in legal rhetoric. It reinforced for our students that our cases begin with a real client and a real issue. While students did not draft a full office memorandum or advice letter for the simulation,⁹⁹ they nonetheless saw that these tasks are sub-goals in a broader client representation. They realized that the work they were about to tackle in both legal rhetoric and doctrinal courses replicated the practice of law holistically. This reinforced the transferability of smaller sub-goals that are approach-oriented, as Martin and Rand recommend. It helped diffuse negative student perceptions about the legal rhetoric course by positioning the course squarely within the same pedagogical approach as their doctrinal courses.

"Pathways" teaching also reinforced the broader pedagogy of the legal rhetoric classroom. Several components of the simulation required students to draft litigation documents, including a complaint and interrogatories. Our legal rhetoric curriculum framed writing around core planning strategies to shape writing strategies. We teach students to consider certain planning principles in starting any writing problem: Who is my audience? What is my purpose in writing this? What does my reader need to know to understand my answer? What constraints govern my writing? Seeing these writing strategies translate into the litigation context reinforced pathways thinking.

As writing and research permeated various sub-goals of the simulation, it had the impact of diffusing the tension toward the office memo and written analytical structure, anxieties that can fester in the legal rhetoric class and that can cause students to see the course as either overwhelming or tangential to doctrinal learning. Students saw that the writing and research processes are part of the legal framework more broadly. It also introduced the doctrinal faculty to the pedagogical approaches that we utilize in teaching writing institutionally. The grammatical rigor of our program, our emphasis on polished and proofread documents, and our plain language focus transferred into their doctrinal courses,

99. The ability to tie the simulation fact pattern to the legal rhetoric assignments was strained by the uniform legal rhetoric curriculum, by only a fraction of the 1Ls participating in the simulation, as well as the timing of our launch. As the simulation evolves, we may ground the LRW problems in the same client representations as the simulation.

which implicitly allowed the doctrinal faculty to reinforce those themes in their exams and written assignments.

As the case planning ended, the legal rhetoric course was beginning to teach legal research and to transition from the closed memorandum to the open universe memorandum, which required students to conduct independent research. The Legal Rhetoric program used discreet legal issues from the simulation to teach secondary source research. This allowed students to see that so many of the substantive and strategic legal questions that had gone unanswered in the tort, contract, and civil procedure planning sessions would have to be resolved through legal research. Students then saw the value of secondary sources to explore theories and concepts without incurring the expensive costs of case-based research. The simulation allowed students to visualize research strategy as steps in a larger process. In contrast, the pedagogical necessity of designing a discreet and manageable scope and substance to a legal writing problem necessarily stripped out some of the "real-world" complexity of research.

Students also saw that clients do not arrive as a tort client or a contracts problem. Rather, it is the work of the lawyer to issue-spot and to position the client's issues in the appropriate legal context. We instantaneously taught students a sophisticated message about the practice of law that would come to shape their legal experience and prepare more versatile, sophisticated lawyers.

On the academic level, the simulation also modeled the law school learning process effectively. Much of the early case planning process and the later negotiation exercise modeled the outlining process for exam preparation. Students had to synthesize legal concepts into meaningful responses to client problems. Students saw how course material fit together within the individual courses and they also saw a dynamic intersection of law, procedure, and lawyering skills. Students recognized the strategic challenges in filing a complaint and pleading a legal cause of action in the face of factual gaps and uncertainties. They wrestled with Rule 11 questions regarding the plausibility of legal theories. They considered the intersections of tort and contract theories and potential conflicts in pleading both, such as the difference between misrepresentation in contract and in tort. These strategic planning exercises led students to deconstruct intellectually the artificial boundaries of their first-year course of study. It engaged them in a holistic examination of their course content and a synthesizing exercise to understand concepts across the courses.

The simulation modeled the learning process on both an academic and a practical level. Students were able to see large-scale litigation as a series of sub-goals, making them more versatile lawyers. It allowed students to see the educational process as symbiotic both internally and externally.

D. Helping Students Understand Grading as Feedback Rather Than as Pure Evaluation

Martin and Rand recognize that providing feedback is a necessary part of student learning.¹⁰⁰ They explain that “high-hope” students effectively use feedback to find alternative strategies to achieve goals.¹⁰¹ Martin and Rand encourage educators to provide feedback and to help students view feedback as a path to achieving goals instead of as pure evaluation.¹⁰²

We assessed students’ participation in this simulation as a participation component of each class. The simulation also provided rich content for offshoot exam questions. Faculty were able to build on the fact pattern in an exam question knowing that the class had the foundational background to get at the legal issue without extensive fact pattern development on the exam. Much of the feedback that we provided focused on global feedback to the class. We wrote memoranda responding to the students’ drafts and planning memos to help them identify strengths and weaknesses. This reinforced both approach oriented goals (to learn the material) and the value of feedback.

We also saw benefits of this principle overlaid with the principle of modeling the learning process. Following the complaint drafting exercise, the faculty compiled a final complaint based on the student work product. Students saw in the final complaint the product of their edits and revisions from the classroom discussion and their initial drafts. This final complaint became the basis for our litigation going forward. Students thus saw feedback as part of the learning process and we modeled how to implement it effectively, skills that carried over effectively into both legal rhetoric and practice.

100. Martin & Rand, *supra* note 22, at 226.

101. *Id.*

102. *Id.* at 227.

E. Modeling and Encouraging Agentic Thinking

Martin and Rand explain that “high hope students” have a “can do” attitude that produces agentic thinking.¹⁰³ They explain that faculty can reinforce and model agentic thinking through positive approaches to teaching and enthusiasm for teaching. Students saw their faculty engage collaboratively and expansively in this simulation. They saw us as a team committed to preparing them for the practice of law and teaching them to think like lawyers in a holistic way. Thus, our structure aligned with our substance. The students seemed to value this and derive energy from it.¹⁰⁴

V. CONCLUSION

The legal academy has considered longstanding and ongoing calls for reform from both internal and external stakeholders. The academy has yet to achieve consensus on effective and workable responses to these calls for reform. While consensus is likely neither achievable nor desirable, the ongoing dialogue is reignited and intensified by the profound changes occurring in the legal profession. The employment model of deep and long-term investments in employees may be waning as attorneys work in more diverse and flexible work arrangements for shorter durations. Pressures are shifting keenly to employees to adapt to this market by positioning themselves as versatile problem-solvers.

The work of Martin and Rand offers a holistic principle from which to approach curricular reform that is focused on both the lawyer and the law student. Martin and Rand’s work is a timely lens through which to assess one recent curricular innovation at WCL. Our experiment in integrated teaching built on existing synergies in our teaching. It grew from organic and open discussions among faculty of what we already teach and how we could teach it better. From this synergistic approach, emerged a simulation that has struck strong initial successes along the metrics Martin and Rand propose and that stands to position our law students for success in today’s legal market.

103. *Id.* at 228.

104. See e.g., Margaret M. Russell, *Beginner’s Resolve: An Essay on Collaboration, Clinical Innovation, and the First-Year Core Curriculum*, 1 CLINICAL L. REV. 135, 149 (1994) (noting that students genuinely appreciated “the faculty team effort and ingenuity involved in identifying cross-cutting issues, themes, and cases in a diverse array of materials”).

