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Gary S. Laser

IIT Chicago-Kent College of Law

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EDUCATING FOR PROFESSIONAL COMPETENCE IN THE TWENTY-FIRST CENTURY: EDUCATIONAL REFORM AT CHICAGO-KENT COLLEGE OF LAW*

GARY S. LASER**

I. INTRODUCTION

The legal profession increasingly has recognized that American law schools do not adequately educate their students for the practice of law.¹ In response to that concern, I asked the faculty of the Chicago-Kent College of Law to approve a new educational program entitled “Dispute Resolution: Litigation and Its Alternatives.”² It did so on October 20, 1992. The program will begin with the class admitted for the 1993-94 academic year.

The new dispute resolution program is designed to give students a comprehensive and balanced professional education to prepare them adequately for the practice of law, with a concentration in litigation and

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** Associate Professor of Law and Director of Clinical Education, Chicago-Kent College Of Law, Illinois Institute of Technology.

I wish to acknowledge the important legal research on this paper conducted by my research assistants, Brian Saucier and Joel Berg, and thank them for their helpful comments and suggestions. I also wish to thank many other research assistants and other students and colleagues with whom I have discussed my theories of legal education. Of course, any defects or errors are my own.

1. See, e.g., Task Force on Law Schools and the Profession, Legal Education and Professional Development—An Educational Continuum, 1992 A.B.A. SEC. LEGAL EDUC. & ADM. BAR 5 [hereinafter ABA Task Force Report] (“Surveys understandably indicate that practicing lawyers believe that their law school training left them deficient in skills that they were forced to acquire after graduation.”); John Elson, The Case Against Legal Scholarship or If the Professor Must Publish, Must the Profession Perish, 39 J. LEGAL EDUC. 343, 345-46 (1989) (“The most obvious failing of the traditional law school curriculum is that its three-year concentration on legal doctrine as an objectively rational subject of discourse results in the neglect of a multitude of competencies that mark the excellent practitioner.”); John O. Mudd, Beyond Rationalism: Performance-Referenced Legal Education, 36 J. LEGAL EDUC. 189, 189-91 nn.1-9 (1986) (citing a number of articles and studies which argue that law schools do not adequately educate their law students for the practice of law and that this has been a concern of the profession ever since the inception of law schools).

The Legal Realists recognized the lack of adequate preparation and proposed educational reform including expanded clinical education more than fifty years ago. See Jerome Frank, A Plea for Lawyer-Schools, 56 YALE L.J. 1303 (1947); Jerome Frank, Why Not a Clinical Lawyer-School?, 81 U. PA. L. REV. 907 (1933); Karl N. Llewellyn, The Current Crisis in Legal Education, 1 J. LEGAL EDUC. 211 (1948); Karl N. Llewellyn, On What is Wrong With So-Called Legal Education, 35 COLUM. L. REV. 651 (1935).

2. The program curriculum was developed during the summer of 1992 by Dean Richard Matasar and me, in consultation with the Chicago-Kent clinical faculty and several members of the law school's non-clinical faculty.
alternative methods of resolving conflict. Because the program is experimental, it will be limited to 30 students in each class. Yearly, up to three graduates of the program will be eligible for selection as Research Fellows who will spend a fourth year at the Law School.

The curriculum of the new program includes a significant number of traditional legal method and doctrinal courses. It requires theoretical and practical education in the fundamental lawyering skills, such as legal research and writing, as well as classroom and simulated education in the other basic lawyering skills. It requires education in the fundamental lawyering values, including the professional and social responsibilities of lawyers, and the role of lawyers and the legal profession in promoting justice. Finally, it requires an extensive and concentrated education in the "art of lawyering"—the additional body of knowledge needed when applying legal doctrine, skills, and values in the real world of practice. The art of lawyering will be learned through live-client clinical education under close faculty supervision in an environment resembling real practice.

The dispute resolution program is designed with important underlying assumptions regarding the knowledge and education lawyers need before they undertake fully their roles as members of the legal profession. First, it assumes that, in addition to knowledge of legal doctrine and legal method, lawyers need knowledge of all the fundamental skills and values that competent, ethical, and socially responsible practitioners use in solving legal problems. Second, it assumes they need knowledge of the art of lawyering. Third, it assumes that a significant amount of education in legal doctrine, skills, and values as well as education in the art of lawyering should occur in law school. And finally, it assumes that law students learn the art of lawyering best through reflective, live-client clinical education in a realistic setting under the close supervision of experienced clinical professors. The program recognizes that legal doc-

3. To receive a J.D. degree from Chicago-Kent, students must earn 84 credits. To be awarded a certificate for completing the new dispute resolution program, however, the students must successfully complete 90 credits as follows: They must take a minimum of 53 credits of traditional classroom courses (General Knowledge—28, Legal Writing—7, Theory and Ethics—8, and Dispute Resolution—Doctrinal—10) and a minimum of 25 credits from clinical and other non-traditional courses (Clinical Education—18 and Dispute Resolution—Non-Doctrinal—7). The remaining 12 credits consist of 7 credits of distributional requirements in the Dispute Resolution curriculum and 5 credits of Electives and may be taken from the traditional or non-traditional curriculum. See the Appendix for a detailed description of the new dispute resolution program.

4. I am indebted to Donald Schön, who speaks of the art of practice in the professions generally and whose work I discuss at some length. I apologize in advance to Mr. Schön for any misinterpretations.

5. For a description of the fundamental lawyering skills and values, see infra part II.

6. For a description of this type of knowledge and education, see infra part III.
trine, skills, and values—in contrast to the art of lawyering—can continue to be taught in a classroom or simulated setting.

In sum, the new dispute resolution program offers an innovative curriculum that stresses the connection between legal doctrine, skills, and values, and the art of lawyering; it is one designed to educate the students to become reflective practitioners with a lawyering identity developed during law school that incorporates high standards of competence, ethics, and social responsibility.

How can we ascertain the fundamental lawyering skills and values, and what are they? What is the art of lawyering, and how is it best learned? To what extent should all this education take place in law school, and how should it be taught? Is the new dispute resolution program well designed to meet its educational objectives? These are the questions that I shall address in this paper.

II. The Skills and Values

What are the fundamental skills and values that all lawyers should know before assuming fully their roles as practicing members of the bar? To determine what skills and values lawyers need, we should ascertain what tasks lawyers perform (skills), how they solve legal problems (skills and values), and how they meet their ethical and social obligations (values).

Only recently have law schools and the practicing bar given these concerns the kind of concentrated attention they deserve. An increasing number of articles and studies have begun to take a closer look at what lawyers do, how they solve problems, and what their professional and social obligations are. These articles also define and analyze the funda-

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7. For those law students who do not intend to practice, the new dispute resolution program may not be as appropriate.


mental lawyering skills and values. In the past, law professors have mistaken one aspect of lawyering, the cognitive or rational dimension, to be the whole of lawyer performance, and they have structured legal education accordingly. To overcome this conceptual barrier requires looking beyond the curriculum to the world of lawyering in all its dimensions as the proper starting point for evaluating a law school’s academic program.

In the absence of a sound empirical analysis of what lawyers do and thus need to know:

everyone who has addressed the problem of defining lawyers’ skills has had no choice but to extrapolate from his own experience and knowledge, and as a result there has been little agreement beyond the tautological observation that the fundamental skill acquired by law students is “learning to think like a lawyer.”

A major step in examining the world of practice and in seeking widespread acceptance of a definition of lawyering skills and values occurred last summer with the issuance of a report by the American Bar Association’s Task Force on Law Schools and the Profession (“ABA Task Force”), entitled Legal Education and Professional Development—An Educational Continuum (“ABA Task Force Report”). Formed to evaluate the way in which law graduates are prepared for practice, the ABA Task Force conducted what it described as an “in-depth study of the full range of professional skills and values necessary for a lawyer to assume professional responsibility for handling a legal matter.” The second section of the Task Force Report contains a comprehensive “Statement of Fundamental Professional Skills and Values” (“SSV”).

The ABA Task Force Report has done important work for the profession in setting forth the ten fundamental skills and four fundamental

9. ABA Task Force Report, supra note 1, at 123-201; Mudd, supra note 1, at 198-200 (describing several attempts from the 1940s to 1980 to define the basic lawyering skills). See also Anthony G. Amsterdam, Clinical Education—A 21st Century Perspective, 34 J. LEGAL EDUC. 612 (1984); Elson, supra note 1.

10. Mudd, supra note 1, at 191.

11. Id. at 196 (quoting Barry Boyer & Roger Crampton, American Legal Education: Agenda for Research and Reform, 59 CORNELL L.Q. 221, 270 (1974)).


13. Id. at xi.

14. Id. at 135-221. The ABA Task Force recommends that the SSV “should be made available to all entering law students to inform them about the skills and values they will be expected to possess as lawyers and to help them seek appropriate educational opportunities in law school, in work experiences, and in continuing legal education.” Id. at 331. To facilitate that goal, the SSV was issued both as part of the ABA Task Force Report, id. at 135-221, and in pamphlet form. Task Force on Law Schools and the Profession, Statement of Fundamental Lawyering Skills and Professional Values, 1992 A.B.A. SEC. LEGAL EDUC. & ADM. BAR [hereinafter SSV Pamphlet] (describing and commenting on each of the ten skills and four values).
values with which it states that "every lawyer should be familiar prior to assuming the full responsibilities of a member of the legal profession."\textsuperscript{15}

Although the ABA Task Force did not itself conduct an empirical study of what practicing lawyers do, it considered recent empirical studies,\textsuperscript{16} theoretical articles,\textsuperscript{17} and the written and oral statements of practicing lawyers, judges, and traditional and clinical law professors. The ABA Task Force also had within its ranks considerable knowledge and experience. It cannot be accused of mere "extrapolat[ion] from [its] own experience and knowledge."\textsuperscript{18}

The ten fundamental lawyering skills set forth in the SSV are:

1. \textit{Problem Solving}: "The term 'problem' include[s] the entire range of situations in which a lawyer's assistance is sought . . . ."\textsuperscript{19} This skill encompasses "identifying and diagnosing a problem, generating alternative solutions and strategies, developing a plan of action, implementing the plan, and keeping the planning process open to new information and ideas."\textsuperscript{20}

2. \textit{Legal Analysis and Reasoning}: This skill encompasses "identifying legal issues, formulating legal theories, elaborating and enhancing the theories, and evaluating and criticizing the theories."\textsuperscript{21}

3. \textit{Legal Research}: This skill encompasses "a working knowledge of the nature of legal rules and legal institutions, the fundamental tools of legal research, and the process of devising and implementing a coherent and effective research design."\textsuperscript{22}

4. \textit{Factual Investigation}: This skill encompasses "determining whether factual investigation is needed, planning an investigation, implementing an investigative strategy, organizing information in an accessible form, deciding whether to conclude the investigation, and evaluating the information that has been gathered."\textsuperscript{23}

5. \textit{Communication}: This skill encompasses "both written and oral forms of communication—in a wide variety of ways and in a wide range of contexts."\textsuperscript{24}

\textsuperscript{15} SSV Pamphlet, \textit{supra} note 14, at 2.

\textsuperscript{16} \textit{See}, \textit{e.g.}, ZEMANS \& ROSENBLUM, \textit{supra} note 8; Marjorie A. McDiarmid, \textit{What's Going On Down There In The Basement: In-House Clinics Expand Their Beachhead}, 35 N.Y.L. SCH. L. REV. 239 (1990); Garth \& Martin, \textit{supra} note 8.

\textsuperscript{17} For a full list see, ABA Task Force Report, \textit{supra} note 1, at xi-xiv, 341-411 app. a-e.

\textsuperscript{18} Mudd, \textit{supra} note 1, at 196.

\textsuperscript{19} SSV Pamphlet, \textit{supra} note 14, at 15 n.1. All cites to the ten fundamental skills and four fundamental values are to the SSV Pamphlet and not the ABA Task Force Report.

\textsuperscript{20} \textit{Id.} at 15. See \textit{infra} text accompanying notes 59-60 for a discussion of the distinction between the \textit{skill} of problem solving as opposed to the \textit{art} of problem solving. See also \textit{infra} note 60 for a discussion of the educational implications of classifying problem solving as a "skill," not as both an "art" and a "skill."

\textsuperscript{21} SSV Pamphlet, \textit{supra} note 14, at 25.

\textsuperscript{22} \textit{Id.} at 31.

\textsuperscript{23} \textit{Id.} at 38.

\textsuperscript{24} \textit{Id.} at 47.
6. **Counseling:** This skill encompasses "establishing a proper counseling relationship with a client, gathering information relevant to the decision to be made by the client, analyzing the decision to be made by the client, counseling the client about the decision, and implementing the client's decision."\(^{25}\)

7. **Negotiation:** This skill encompasses "preparing for a negotiation, conducting a negotiation, counseling a client about the terms obtained from the other side in a negotiation, and implementing the client's decision."\(^{26}\)

8. **Litigation and Alternative Dispute-Resolution Procedures:** This skill encompasses "a working knowledge of the fundamentals of trial-court litigation, appellate litigation, advocacy in administrative and executive forums, and alternative dispute resolution."\(^{27}\)

9. **Organization and Management of Legal Work:** This skill encompasses "efficient management, including appropriate allocation of time, effort and resources; timely performance and completion of work; cooperation among co-workers; and orderly administration of the office."\(^{28}\)

10. **Recognizing and Resolving Ethical Dilemmas.**\(^{29}\)

The four fundamental lawyering values set forth in the SSV are:

1. **Provision of Competent Representation:** This value encompasses "Attaining [and maintaining] a Level of Competence in One's Own Field"\(^{30}\) and "Representing Clients in a Competent Manner."\(^{31}\)

2. **Striving to Promote Justice, Fairness, and Morality:** This value encompasses such striving "in One's Own Daily Practice" and "Contributing to the Profession's Fulfillment of its Responsibility to Ensure

These include: communications designed to advocate or persuade (such as, for example, written briefs; oral arguments on motions; bargaining with an adversary); to advise or inform (for example, opinion letters to a client; orally counseling or giving legal advice to a client; briefing a senior partner); to elicit information (for example, interviews of clients or witnesses; discovery letters, interrogatories, and other informal or formal requests for discovery); and to establish legal obligations or effectuate legal transactions (for example, drafting of contracts, wills, trust instruments, corporate charters, separation agreements, leases, documents transferring interests in real property, consent decrees, statutes, and administrative regulations).

\(^{Id.}\)

25. *Id.* at 51.
26. *Id.* at 60.
27. *Id.* at 67. With regard to Skill 8, the SSV notes that:

[Although there are many lawyers who do not engage in litigation or make use of alternative dispute resolution mechanisms, even these lawyers are frequently in a position of having to consider litigation or alternative dispute resolution as possible solutions to a client's problem or to counsel a client about these options or to factor the options into planning for negotiations. To accomplish these tasks, a lawyer needs to have at least a basic familiarity with the aspects of litigation and alternative dispute resolution described in Skill § 8.]

\(^{Id.}\) at 3.
28. *Id.* at 76.
29. *Id.* at 80.
30. *Id.* at 87.
31. *Id.* at 88.
that Adequate Legal Services Are Provided to Those Who Cannot Afford to Pay for Them," and to "Enhance the Capacity of Law and Legal Institutions to Do Justice." 32

3. Striving to Improve the Profession: This value encompasses "Participating in Activities Designed to Improve the Profession;" "Assisting in the Training and Preparation of New Lawyers and the Continuing Education of the Bar;" and "Striving to Rid the Profession of Bias Based on Race, Religion, Ethnic Origin, Gender, Sexual Orientation, Age, or Disability and to Rectify the Effects of These Biases." 33

4. Professional Self-Development: This value encompasses "Increasing One's Own Knowledge and Improving One's Own Skills" 34 and "Selecting and Maintaining Employment That Will Allow the Lawyer to Develop As A Professional and To Pursue His or Her Professional and Personal Goals." 35

The SSV is an important step forward in the profession's attempt to improve the quality of both legal education and practice and the ABA Task Force should be commended. 36 The SSV should be read by all law students and lawyers, and I believe it will be the starting point for all serious discussions regarding law school curriculum reform. 37

Acknowledging that the SSV is an excellent beginning does not

32. Id. at 93.
33. Id. at 96.
34. Id. at 98.
35. Id. at 99.
36. The ABA Task Force Report did not explicitly state the extent to which the skills and values mentioned in the SSV should be taught either during law school through supervised mentoring situations or after law school through continuing legal education. I consider this a weakness in the Report, because I think it essential to teach all the fundamental skills and values during law school. See infra part IV. The Report does correctly recognize, however, that the professional education of lawyers should take place during the entire career of each lawyer and that the practicing bar and the law school community have joint responsibility for such education. ABA Task Force Report, supra note 1, at 3.
37. Another excellent formulation of the fundamental lawyering skills and values views these competencies from the particular to the most general:

[T]asks specific to different practice specialties, such as drafting wills, taking depositions of experts, planning for take-over battles, or arranging and closing real estate deals. At a higher level of generality are behaviors common to a variety of lawyering practices across specialty areas such as framing a problem to be solved from the unstructured ambiguous welter of facts confronting the practitioner; creating innovative approaches to problem solving; analyzing risks of alternative courses of action and planning strategic and tactical approaches; learning rhetorical performance skills in contexts such as negotiation, trials, and appellate arguments; planning and conducting thorough and creative fact gathering; working cooperatively with colleagues to solve mutual problems; learning to interview and counsel the client; learning to think and act from a partisan perspective; understanding and coping with the economic realities of law practice; and developing methods for learning from one's own learning experiences. A still higher level of generality encompasses the dispositional working habits of practitioners which would include the development of competence in their own judgment and ability, dedication to their professional duties, ethical sensitivity, prudence in judgment, and the sensitivity and the assessment and cultivation of personal relationships.

Elson, supra note 1, at 346.
mean that the lists are perfect or that they could not have contained different items. Preliminary data from a recent study indicates that, at least for lawyers who will practice in private law firms, the "ability to obtain and keep clients" and the ability to inspire confidence are important skills which are not mentioned in the SSV. Also, it seems that as society becomes more complex and lawyers more specialized, the insights of other fields—such as economics and philosophy—in solving legal problems will become an increasingly necessary component of a lawyer's knowledge. The ABA Task Force itself recognizes that the SSV is not a final product. It should and will be continually revised as the legal profession itself evolves and takes a deeper interest in studying what lawyers do and how they deal with their professional and social obligations.

III. THE ART OF LAWYERING: PRACTICE IN THE INDETERMINATE ZONE

A. The Art of Lawyering as Knowledge

Although lawyers must know legal doctrine and fundamental lawyering skills and values, such knowledge is not sufficient to enable lawyers to perform as competent, ethical, and socially responsible practitioners. To so perform, they need to acquire an additional body of knowledge which lawyers use when applying legal doctrine, skills, and values in the real world of practice.

My views on the importance of this type of knowledge have been influenced by the work of Donald Schönh, who uses the more general phrase the "art of practice" and has written about professional knowledge and education generally, not primarily about the legal profession. In applying Schönh's model to the legal profession, I have called the art of practice the "art of lawyering."

The need for this additional knowledge results from the way in which professionals encounter and solve problems: "in the varied topography of professional practice, there is a high, hard ground overlooking a swamp." "On the high ground," professional problem solving is often based on the "application of research-based theory and technique," by which I understand Schönh to mean knowledge gained from the traditional curricula of professional schools. Whereas in the "swampy low-

38. ABA Task Force Report, supra note 1, at 380.
39. See id.
40. Id. at 123-24.
42. Id. at 3.
43. Id.
land [of practice] messy, confusing problems defy technical solution."\textsuperscript{44} Ironically, "the problems of the high ground tend to be relatively unimportant to individuals or society at large, however great their technical interest may be, while in the swamp lie the problems of greatest human concern."\textsuperscript{45}

The dilemma of the professional is whether to "remain on the high ground where he can solve relatively unimportant problems according to prevailing standards of rigor, or . . . descend to the swamp of important problems and non-rigorous inquiry."\textsuperscript{46} The difficulty is that "as we have come to see with increasing clarity over the last twenty or so years, the problems of real-world practice do not present themselves to practitioners as well-formed structures. Indeed, they tend not to present themselves as problems at all but as messy, indeterminate situations."\textsuperscript{47} They are indeterminate in that each such situation may involve "uncertainty, uniqueness, and value conflict"\textsuperscript{48} and thus cannot be resolved by the simple "application of research-based theory and technique."\textsuperscript{49} But it is precisely these "indeterminate zones of practice" that are central to professional practice.

Schön speaks of the art of practice in the following way:

We should start not by asking how to make better use of research-based knowledge but by asking what we can learn from a careful examination of artistry, that is, the competence by which practitioners actually handle indeterminate zones of practice—however that competence may relate to technical rationality . . .

Inherent in the practice of the professional we recognize as unusually competent is a core of artistry.

Artistry is an exercise of intelligence, a kind of knowing, though different in crucial respects from our standard model of professional knowledge. It is not inherently mysterious; it is rigorous in its own terms; and we can learn a great deal about it—within what limits, we should treat as an open question—by carefully studying the performance of unusually competent performers.

In the terrain of professional practice, applied science and research-based technique occupy a critically important though limited territory, bounded on several sides by artistry. There are an art of problem framing, an art of implementation, and an art of improvisation—all necessary to mediate the use in practice of applied science and

\textsuperscript{44. Id.}
\textsuperscript{45. Id.}
\textsuperscript{46. Id.}
\textsuperscript{47. Id. at 4.}
\textsuperscript{48. Id. at 6.}
\textsuperscript{49. Id. at 3.}
There is "uncertainty" in most aspects of professional practice—in how to resolve problems and in how to relate one aspect of the problem to another. The artistry is in turning an "ill defined mélange" into a well defined problem. When the problem is defined by the practitioner, "[she] chooses and names the things [she] will notice." By the way she defines the problem, she "selects things for attention and organizes them, ... and sets a direction for action." Significantly, "depending upon our disciplinary background, organizational roles, past histories, interests and political/economic perspectives, we frame our problematical situations in different ways."

Problems regularly arise which are "unique." When the question falls outside the categories of existing theory and technique, the practitioner cannot treat it as an instrumental problem to be solved by applying one of the rules in her store of professional knowledge. The case is not 'in the book.' If she is to deal with it competently, she must do so by a kind of improvisation, inventing and testing in the situation strategies of her own devising.

"Value conflicts" arise when "there are no clear and self-consistent ends to guide the technical selection of means." The practitioner will not be able to resolve the professional problem successfully simply by using her "research-based theory and technique."

Schön's general model of professional knowledge applies well to the legal profession. The practicing lawyer finds that to solve most problems, knowledge of legal doctrine, skills, and values is not enough. Most problems lie in the swamp and have some mixture of uncertainty, uniqueness, and value conflict. Thus, their solution requires knowing an additional body of knowledge, the art of lawyering.

Schön's art of practice consists of "an art of problem framing, an art of implementation, and an art of improvisation." It is important to distinguish the "art" of problem solving from the "skill" of problem solving. In the SSV, the first fundamental lawyering skill is called "problem solving." Its description of the skill of problem solving sounds similar...
to Schönh's description of the art of practice. However, there is an enormous difference between the "skill" of problem solving and the "art" of problem solving.

In the legal profession, the "art" of problem solving is another way of describing the art of lawyering. In an indeterminate environment, "art" must be used to solve the problem because the problem will contain uncertainty, uniqueness, or value conflict. The "skill" of problem solving, as complex as it may be, occurs on the high ground. It is a skill like any other and in Schönh's terms is based on "research-based theory and technique." Thus, it may be applied to solve problems in a defined or definite environment, but is insufficient to solve problems in an indeterminate environment.

In law practice, most problems lie in the indeterminate environment, where use of the art of problem solving is essential. The lawyer's artistry or lack of artistry in dealing with the indeterminacies will have a far greater impact on the success of her performance than has hitherto been appreciated, even by those like the ABA Task Force, which has recognized the importance of the skill of problem solving.60

1. Uncertainty

The lawyer, in agreeing to represent a client, will be faced with both factual and legal uncertainties. There is artistry in how the lawyer frames the problem to her client in light of these uncertainties. Here, problem framing will have an impact on the client's goals and objectives in the case and on what action she authorizes the lawyer to take on her behalf.

The ways in which the lawyer frames to herself each separate uncertainty in the case and the way in which she balances all of the uncertainties in framing the overall problem or problems of the case to herself are also functions of her artistry. There is artistry in strategizing, given the uncertainty of a client's or adversary's case. The lawyer must decide whether the client should admit the weaknesses in her case as a preemptive strike or ignore them in the hope that the other party will not identify them. The lawyer must decide whether to resolve a particular

51; SSV Pamphlet, supra note 14, at 15-24 (defining, describing, and commenting on the skill of problem solving).

60. Failing to make a sharp distinction between the skill of problem solving and the art of problem solving (the art of lawyering) has serious educational implications. Though the skill of problem solving can be learned in law school through traditional classroom education and simulation, the art of lawyering can be learned only through reflective, live-client clinical education. See infra part III.D.
factual uncertainty with or without aid of discovery. If she chooses discovery, she must implement a discovery plan deciding which discovery devices should she use, and in what order. With a legal uncertainty, such as the likelihood of prevailing on a motion for summary judgment, deciding whether to bring the motion and how to present the issue to the client are also functions of the lawyer's artistry.

There is often much uncertainty in deciding whether to settle or go to trial; some law firms bring in a different team of lawyers to negotiate, for fear that their litigators would resolve the uncertainty in favor of going to trial for the unacceptable reason that litigators like to try cases. There is artistry in evaluating the uncertainty present at trial—for example whether the case is being well received by the judge and jury. Finally, there is artistry in considering the uncertainties of an appeal. The art of lawyering in the face of uncertainty involves the way in which the lawyer selects and formulates the issues, organizes them, and chooses the strategy for the case.  

2. Uniqueness

Uniqueness is a hallmark of the legal profession. There is artistry in deciding what factors to pull out of a case, or cases out of a line of cases, because each client's problem presents a unique fact pattern. Moreover, every person is a unique individual. How the lawyer deals with one client will be different from how she deals with another, based on "swamp-like" factors such as the emotions involved in the attorney-client relationship and the client's way of handling the stresses of litigation. Even when representing a client for a second time, the lawyer's relationship with the client will be unique because there is a different problem and there is a different opposing counsel, judge, or jury. Not only does each individual bring her own uniqueness to the situation, but each constellation of individuals presents the lawyer with a unique problem. The art of lawyering in the context of uniqueness requires "a kind of improvisation, inventing and testing in the situation strategies of [her] own devising." It requires improvisation because the uniqueness of the situation means the lawyer has to respond to a situation she has not seen before.

3. Value Conflict

Value conflict arises frequently in law practice as well. There is always the tension between pressing hard to further the client's goal and

61. See SCHÖN, supra note 41, at 4.
62. Id. at 5.
recognizing the lawyer's ethical obligations. It may be that the client's actions or goals, though not in conflict with the lawyer's professional responsibility, are at odds with the lawyer's own personal values. The lawyer may be repulsed by a client's desire for revenge, or may want revenge herself because she has overidentified with the client's case (even where the client would rather settle and be done with it). A young associate may find morally repugnant something the senior partner wants her to do. Situations of value conflict present a serious problem for lawyers because "there are no clear and self-consistent ends to guide the technical selection of means."^63

In the presence of uncertainty, uniqueness, or value conflict, the lawyer cannot rely solely on her knowledge of legal doctrine, skills, and values to resolve the problem. She is in a swamp; and thus, she needs to use the art of lawyering as well.

B. Learning the Art of Lawyering: The Reflective Practicum

Traditionally lawyers learned basic legal doctrine, legal method, and legal research and writing in law school. They honed their skills in these areas and learned the rest—specialized legal doctrine, the whole range of lawyering skills, the basic lawyering values, and the art of lawyering—after graduation. The lawyers obtained this knowledge either from their own experiences, from other lawyers for whom they worked or with whom they collaborated, or from continuing legal education programs.

Schön is most concerned with the educational question of how professionals learn the artistry of their professions. Learning the art of lawyering presupposes that the lawyer (or law student) has learned or contemporaneously is learning the relevant legal doctrine, skills, and values. Schön describes three ways in which a professional can acquire that additional body of knowledge which he calls the artistry of practice: "Rarely, he may learn the practice on his own, as people sometimes learn hunting, carpentry, or the criminal trades. He may become an apprentice to senior practitioners, as many craftsmen, industrial workers, and professionals still do. Or he may enter a practicum."^64

Schön is skeptical about the value of learning the art of practice "on one's own." He states that learning the artistry of practice "on one's own has the advantage of freedom—freedom to experiment without the constraints of received views. But it also has the disadvantage of requiring each student to reinvent the wheel, gaining little or nothing from the

63. Id. at 6.
64. Id. at 37.
accumulated experience of others." 65

He also finds fault with learning the artistry of practice through apprenticeship, even though it "offers direct exposure to real conditions of practice and patterns of work. But most offices, factories, firms, and clinics are not set up for the demanding tasks of initiation and education. Pressures for performance tend to be high; time, at a premium; and mistakes costly." 66

Schön concludes that such learning should take place in a practicum which he describes as

a setting designed for the task of learning a practice. In a context that approximates a practice world, students learn by doing, although their doing usually falls short of real-world work. They learn by undertaking projects that simulate and simplify practice; or they take on real-world projects under close supervision. The practicum is a virtual world, relatively free of the pressures, distractions, and risks of the real one, to which, nevertheless, it refers . . . . It is also a collective world in its own right, with its own mix of materials, tools, languages, and appreciations. It embodies particular ways of seeing, thinking, and doing that tend, over time, as far as the student is concerned, to assert themselves with increasing authority. 67

Schön calls the educational environment in which the art of practice is learned a "reflective practicum." 68 To understand why the reflective practicum is the best way to learn the art of practice requires an understanding of how a novice first approaches the "swampy lowland," those important aspects of problems which contain elements of uniqueness, uncertainty, and value conflict.

The student's knowledge of "research-based theory and technique" 69 does not address these elements. Thus, when the student comes across a "swamp" problem, she must use what Schön calls her "tacit knowledge"—knowledge acquired from prior lawyering practice, if any,

65. Id.
66. Id.
67. Id.
69. Not all professional problems contain elements of uniqueness, uncertainty, or value conflict. Schön states that in situations that do not contain these elements, it is possible to solve the problem with a routine application of existing rules and procedures to the fact of particular problematic situations. Schön, supra note 41, at 35. It is not clear whether any lawyering problem involving a client does not contain at least uncertainty and uniqueness.
or from other experiences relevant to the professional problem at hand. This knowledge of the art of practice is often characterized as knowledge of how problems are solved or the procedures used in solving problems (knowledge of "an art of problem framing, an art of implementation, and an art of improvisation")71. Prior to using their tacit knowledge, professionals may not know they have such knowledge, and even if they do know it, they probably cannot easily describe it.

In everyday life, we bring our tacit knowledge to bear on problems by what Schöen calls "knowing-in-action":

the sorts of knowledge we reveal in our intelligent action—publicly observable, physical performances like riding a bicycle and private operations like instant analysis of a balance sheet. In both cases, the knowing is in the action. We reveal it by our spontaneous, skillful execution of the performance; and we are characteristically unable to make it verbally explicit. Nevertheless, it is sometimes possible, by observing and reflecting on our actions, to make a description of the tacit knowing implicit in them. Our descriptions are different kinds depending upon our purposes and the languages of description available to us. We may refer, for example, to the sequences of operations or procedures we execute; the clues we observe and the rules we follow; or the values strategies, or assumptions that make up our "theories" of action.72

In professional problem solving we use "knowing-in-practice," distinguished from "knowing-in-action" because the knowing "is exercised in the institutional settings particular to the professional, organized in terms of its characteristic units of activity and its familiar types of practice situations, and constrained or facilitated by its common body of professional knowledge and its [values]."73 When the professional is solving a problem which contains elements of uncertainty, uniqueness, and value conflict, her "knowing-in-practice" will include her tacit knowledge in addition to her knowledge of "research-based theory and technique."

For the student to be educated through a reflective practicum, she must not merely engage in the performance of a lawyering activity through "knowing-in-practice," but also must analyze the performance while it takes place and afterwards. Schöen refers to this activity (whenever it occurs) as reflection. Through reflection, the tacit knowing in the action is recognized and considered. He calls the reflection which occurs while the student is engaged in the performance "reflection-in-action;"

70. To see how the students' lack of tacit knowledge is overcome by the reflective practicum, see infra part III.C.
71. SCHÖN, supra note 41, at 13.
72. Id. at 25.
73. Id. at 33.
when it occurs again, afterwards, he refers to it as “reflection on our past reflection-in-action.”

Schön emphasizes the necessity for “reflection-in-action.” Because professional problems arise in an “indeterminate environment,” “[r]outine responses [may] produce a surprise—an unexpected outcome, pleasant or unpleasant, that does not fit the categories of our knowing-in-action. Inherent in a surprise is the fact that it gets our attention.” Surprises occur because the student is solving problems in an indeterminate environment, and her knowledge of legal doctrine, skills, and values is insufficient. Faced with the indeterminacy, she uses tacit knowledge to solve the problem, knowledge the student may never have realized that she had. A professional uses tacit knowledge when “she responds to the unexpected or anomalous by restructuring some of her strategies of action, theories of phenomena, or ways of framing the problem; and she invents on-the-spot experiments to put her new understandings to the test.”

Just as surprise leads to the use of tacit knowledge, it should also lead simultaneously to “reflection-in-action.” Schön points out that “reflection-in-action” has a critical function, questioning the assumptional structure of knowing-in-action. We think critically about the thinking that got us into this fix or this opportunity; and we may, in the process, restructure strategies of action, understandings of phenomena, or ways of framing problems. Reflection gives rise to on-the-spot experiment. We think up and try out new actions intended to explore the newly observed phenomena, test our tentative understandings of them, or affirm the moves we have invented to change things for the better.

But just because the student has been surprised and has used tacit knowledge to help her solve a professional problem does not mean that she will engage in “reflection-in-action.” The student may reflect on the professional activity only after she has completed it. On the other hand, the student may engage in “reflection-in-action” and then reflect on the activity again after she has completed it. Since reflecting at both stages is important to the reflective learning process, a well-run reflective practicum encourages both. In either case, the reflection that takes place after the completion of the action, leads to the construction of “a good verbal

74. Id. at 31.
75. Schön notes that “reflection-in-action” is quite different in the context of professional practice than it is in everyday life. See id. at 32-36.
76. Id. at 28.
77. Id. at 35.
78. Id.
description" of it. This is also important to the reflective learning process as a "good verbal description ... may indirectly shape our future action." The next step in the reflective learning process is for the student to reflect on her "good verbal description," as a way of refining her knowledge and becoming more adept at the art of practice. In all, "these several levels and kinds of reflection play important roles in the acquisition of artistry."

A student cannot be taught the art of lawyering but can be coached. Thus, the final key to understanding the reflective learning practicum is the practitioner-teacher whom Schön calls the coach. Outstanding coaches are those professionals who have learned well the art of practicing in the "swamp" and who have learned well the "art of coaching," i.e., the art of helping students learn, through reflection, the art of practice in the "swamp." Coaches may teach by traditional means but mostly "function as coaches whose main activities are demonstrating, advising, questioning, and criticizing." In the reflective practicum the student and coach engage in a dialogue that has three necessary features: "[It] takes place in the context of the student's attempts to [perform]; it makes use of actions as well as words; and it depends upon reciprocal 'reflection-in-action'".

The coach herself engages in "reflection-in-action" during all her communications with the student about the various learning techniques she uses. She may show the student how to perform or tell the student what to do. She may "demonstrate some part or aspect of the process [s]he thinks the student needs to learn, offering it as a model to be imitated; and [s]he can, with questions, instructions, advice, or criticism, describe some feature of [the practice]." Whichever techniques she uses when communicating with a student about the student's performance, she is always testing her "diagnosis of a student's understanding and problems and the effectiveness of [her] own strategies of communication. In this sense, [s]he reflects-in-action."

As she seeks to understand the coach's interventions and communi-
cations by testing her understanding of them through applying them to further performances, the student engages in "reflection-in-action." In other words, by using the coach's "reflection-in-action" to solve a professional problem, the student then "reflects-in-action." 88

"Reflection-in-action" becomes reciprocal when the coach treats the student's further [performance] as an utterance, a carrier of meanings like "This is what I take you to mean" or "This is what I really meant to say," and responds to [the student's] interpretations with further showing or telling, which the student may [again] decipher . . . and translate into new [performances]. 89

The process continues throughout the reflective practicum experience, moving "toward convergence of meaning and toward the student's increasing capacity to produce what she and her coach regard as competent [performances]." 90

In the reflective practicum:

[the student learns to recognize and appreciate the qualities of good [professional practice] and competent [professional practice], in the process by which she also learns to produce those qualities. She learns the meanings of technical operations in the same process by which she learns to carry them out. And as she learns [to perform the professional practice], she also learns to learn [to perform]—that is, she learns the practice of the practicum. 91

C. The Reflective Practicum in Law School: Clinical Legal Education

What does the reflective practicum look like in law schools? Generally, the practicum takes the form of a live-client clinical legal education program. 92 Clinical education, which appeared on the scene in the late 1960s, starts from the premise that "a major function of law schools is to give students systematic training in effective techniques for learning law from the experience of practicing law." 93 Thus, clinical educators understand that their programs must be "designed precisely to teach students

88. See id.
89. Id.
90. Id. at 102.
91. Id.
92. I refer to live-client clinical education because clinical education is often defined to encompass all experiential learning in which the student assumes a role as a lawyer, including simulation. See, e.g., Sec. on Clinical Legal Educ., Am. Ass'n of Law Schools, Final Report of the Comm. on the Future of the In-House Clinic (1990) [hereinafter In-House Clinic Report]; ABA Task Force Report, supra note 1, at 234; Gary Bellow, On Teaching The Teachers: Some Preliminary Reflections on Clinical Education as Methodology, in Clinical Education for the Law Student 374, 380-86 (1973). For a discussion of live-client versus simulated experiential learning, see infra part III.D.
93. See generally Amsterdam, supra note 9; Bellow, supra note 92; David Barnhizer, The Clinical Method of Legal Instruction: Its Theory and Implementation, 30 J. Legal Educ. 67 (1979); Robert J. Condlin, Socrates' New Clothes: Substituting Persuasion for Learning in Clinical Practice
how to learn systematically from experience, and simultaneously to educate them in a broader range of legal analyses and skills than had theretofore been taught in law schools." In the law school reflective practicum the students engage in lawyering performances and simultaneously learn to reflect on the practice in which they engage. That is how they learn to become reflective practitioners.

Let me describe more concretely how the reflective learning process might look in a law school in-house clinical setting. In the beginning stages, students know very little about the practice of law. Thus, they have little tacit knowledge about lawyering to call upon while they engage in their performances. Yet, to solve the professional problems with which they are presented, they will need to use tacit knowledge because such problems will contain elements of uncertainty, uniqueness, or value conflict.

Since the students have so little relevant tacit knowledge, their "knowing-in-practice" in seeking solutions to the indeterminacies of their lawyering problems will most likely be quite sophomoric. Their "reflection-in-action," if it occurs at all, will happen at a very rudimentary level.

Thus, especially throughout the initial clinical semester, the clinical professor (as coach) should regularly engage in reflective activity with the student while the student is working on the lawyering activity assigned. For example, if the clinical professor has asked the student to draft a response to a motion for summary judgment, the clinical professor should confer with the student on a regular basis while the student is researching and drafting it. In the conferences, the clinical professor may communicate information about, for example, the law of summary judgment, but she will mostly function as a coach, aiding the student to solve problems or aspects of problems that lie in the swamp by "demonstrating, advising, questioning, and criticizing."

Instruction, 40 Md. L. Rev. 223 (1981); Menkel-Meadow, supra note 8; Mark Spiegel, Theory and Practice in Legal Education: An Essay on Clinical Education, 34 UCLA L. Rev. 577 (1987).

4. Amsterdam, supra note 9, at 616.

5. See infra part VI.B for a discussion of the difficulty faced by clinical education today in educating law students to become reflective practitioners.

6. See infra part III.A.

7. Most students do not have the opportunity to take even one clinical course and very few more than one. It is my view that in order for students to be educated to become reflective practitioners, they need a sequenced clinical curriculum which takes place at least over the last two years of law school.

8. Students may learn the concepts and theories underlying the skills associated with drafting a motion for summary judgment as well as the skill of drafting such a motion in their legal writing courses; however, such courses do not educate students in the art of lawyering. For that students need live-client clinical education. See infra part III.C-D.

9. See supra text accompanying note 84.
Several issues will arise that are in the indeterminate zone of practice and cannot be resolved by simply using traditional knowledge. Why did the student frame the legal issue the way she did in light of the legal and factual uncertainties? Did the student simply use the movant's description of the issue, and is movant's characterization based on a different resolution of factual or legal uncertainties than is favorable to the student's client? How did the student deal with uncertainty concerning the facts? Can the movant's factual assertions be refuted by the record, or does the student need to plan and implement a fact-gathering strategy? What is likely to be this particular client's unique response to a discussion of the weaknesses in her case brought out by movant's motion? Does the motion demonstrate that our case is tottering on the thin line between legitimate and frivolous litigation and thus opposing it could subject the clinical lawyers to sanctions under Rule 11? If the client still wishes to pursue the litigation, how is this values conflict best discussed with this client and most appropriately resolved?  

Satisfactory answers to most of the above questions are beyond the capability of the novice student. However, the clinical professor is experienced in the art of lawyering, i.e., has acquired that additional knowledge necessary to solve problems in the swamp. Thus, the clinical professor will use her own knowledge of the practice of law to assist the student in drafting the response and answering the questions. She will use her knowledge of problem framing to criticize the student's characterization of the issue. She will use her knowledge of implementation to explain to the student how to plan a factual investigation. And she will use her knowledge of handling matters involving value conflict to assist the student in determining what to do when the situation may present a conflict between the student's role as zealous advocate for her client's interests and the student's role as officer of the court.

In completing the assignment the student will use the "knowing-in-practice" of the clinical professor. By discussing her performance with the clinical professor while she is working on the assignment, the student will engage in "reflection-in-action" (albeit using the tacit knowledge of the clinical professor in so reflecting). The student, then, in a sense will be engaging in vicarious "reflection-in-action." The student will attempt to understand the clinical professor's communications by reformulating

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100. Students may learn the "skills" associated with resolving these issues through classroom or simulated education, but learning the "art" requires the uncertainty, uniqueness, and value conflict of real life situations. See infra part III.C-D.
the legal issue, by acquiring the necessary facts, and by drafting the response.

The clinical professor will review the draft of the response, in which the student will have attempted to incorporate the professor's suggestions. In so doing, the clinical professor will again critique the response and the student will again seek to understand the criticisms until a draft is submitted which both the student and clinical professor consider a competent performance.

Through this process the law student learns to engage in two important aspects of the reflective learning process: "knowing-in-practice" and "reflection-in-action." The student can use what she learns from this process as acquired tacit knowledge about practice, which will enable her to engage in more appropriate "knowing-in-practice" and "reflection-in-action" in subsequent lawyering performances.

After the student completes the assignment, the clinical professor will expose the student to the later steps of the reflective learning process. The clinical professor will ask the student to reflect on what she did to complete the response to the motion for summary judgment and how she used tacit knowledge to deal with any elements of uncertainty, uniqueness, or value conflict which arose in the assignment. In other words, the clinical professor will ask the student to articulate a "good verbal description" of her lawyering performance, which would include a discussion of how the student framed the legal issue, what the student did to resolve the factual uncertainty, and how the student resolved the potential value conflict raised by the Rule 11 question. It would also include a discussion of the response itself.

The clinical professor will then ask the student to reflect on that "good verbal description." Here the student might be asked to consider such things as whether the response was sufficiently adversarial, whether it was legally correct, and whether its style was appropriate. Was the student satisfied with the way the legal issue was finally framed in the response? Is the student satisfied with the way that the facts were acquired? Was the Rule 11 question resolved satisfactorily? It is through this process that the clinical professor will assist the law student to learn to engage in these later steps of the reflective learning process.

In the in-house clinical setting, many of the oral lawyering activities performed by a student, such as a student's performance in court or a

101. The articulation of a "good verbal description" is "reflection on [her] past reflection in action." See supra text accompanying notes 79-80.

102. The reflection on the "good verbal description" is reflecting on the "reflection on past reflection in action." See supra text accompanying notes 80-81.
student’s interview of a client, will be witnessed by the clinical professor. If the performance is a written document (such as the response to the motion for summary judgment), the clinical professor will review the document before discussing it with the student. Thus, the professor will know a great deal about the student’s performance independent of the student’s reflection or “good verbal description” about it.

The independent knowledge base of the clinical professor will enhance the reflective learning process. The clinical professor will use this base to critique the accuracy of the student’s “good verbal description” of her performance and to critique the performance itself. This independent knowledge will enable the clinical professor to provide better critiques of both the student’s reflective activity and her performance than if the clinical professor had relied solely on the student’s description of the performance.\textsuperscript{103}

As a result of the student’s reflective learning, the quality of her future performances in the zone of indeterminacy will improve. First, the performance will improve because the student has acquired tacit knowledge for dealing with uncertainty, uniqueness, and value conflict, i.e., those aspects of lawyering problems situated in the indeterminate zone. Second, her performance will improve because through reflection and the assistance of her coach, the student has acquired a method—reflective learning—which she will use to acquire more knowledge of the art of lawyering in the future. She is becoming a reflective practitioner.\textsuperscript{104}

\textsuperscript{103} For a discussion of the characteristics of supervision and how it develops throughout the semester in clinical education programs, see Peter T. Hoffman, \textit{The Stages of The Clinical Supervisory Relationship}, 4 \textit{Antioch L.J.} 30 (1986); see generally Nina W. Tarr, \textit{The Skill of Evaluation as an Explicit Goal of Clinical Training}, 21 \textit{PAC. L.J.} 967 (1990).

\textsuperscript{104} But in what kind of clinical settings should the reflective learning take place, in-house clinics or externships? In my view, in-house clinics and externships are essential components of a clinical program and their respective development should be encouraged. However, since in-house programs are operated by the law school and the supervisors are full-time members of the faculty, the in-house clinic can more easily accomplish the educational goals of a reflective learning practicum than can an externship placement. Externship settings are not established primarily to further the education of the student externs, and the supervisors in the externship settings are practitioners, not full-time members of a law faculty.

If the students first receive enough reflective learning in the in-house setting to learn the rudiments of the art of lawyering before being sent out to extern, the concerns about externships are largely abated. See \textit{IN-HOUSE CLINIC REPORT}, supra note 92, at I-I-1-13 (describing the pedagogical goals of in-house, live-client clinics). Externships can play a key role in enabling students to learn the art of practice. They can offer specialized practice experiences which are unavailable in the typical in-house clinic. In some cases the externship supervisors are master practitioners (and more adept at lawyering than many current in-house supervisors) who do provide an outstanding educational experience for their externs. See Janet Motley, \textit{Self-Directed Learning and the Out-Of-House Placement}, 19 \textit{N.M. L. REV.} 211 (1989). Externships give students the opportunity to experience the real world of practice as opposed to an in-house approximation and still be able to come back to law school to reflect on and critique that experience.
D. Clinical Legal Education: Live-Client vs. Simulation

There are many in the legal profession who recognize the value of experiential learning in law school but are not convinced that live-client learning is necessary. In defining the reflective practicum, Schön himself suggests that students may "learn by undertaking projects that simulate and simplify practice; or... [by undertaking] real-world projects." Although simulated learning can play an important supplementary role in teaching lawyers the artistry of practice, simulation cannot serve as a substitute for experience with real clients. I reach this conclusion because the goal of reflective-practicum education is to teach the art of solving lawyering problems in the indeterminate world of practice—to deal with precisely the kind of authentic messiness and surprise that inheres in reality, but not in simulation. The best way to do this is in a practicum that approximates real life as opposed to one that merely simulates it.

The strengths of simulation over live-client experiential learning are considered to be uniformity of experience among students, simplification of difficult problems with an orderly progression to the more complex, repetition of student performance when necessary, susceptibility to interruption and videotaping, minimization of harm to real clients with allowance for experimentation, lack of costliness, and a higher student-teacher ratio.

On the other hand, simulation is considered to lack the factual complexity and uncertainty of real cases. Furthermore, students do not become as emotionally involved. Because the emotional investment is less, the motivation and level of learning decreases as well. Also, real cases present students with ethical dilemmas in their emotional context. Many consider this necessary for teaching professional responsibility. To be truly effectual, simulation is seen to require the same level of supervision,

105. See, e.g., Bergman et al., supra note 81; ABA Task Force Report, supra note 1, at 234.

106. SCHÖN, supra note 41, at 37. Although Schön states that reflective learning can occur with simulated or real-life projects, an examination of the practicums he recounts makes it clear that he recognizes the importance of real-life projects in helping students to become reflective practitioners. See generally id. In this connection, Schön notes that "[s]tudents learn by practicing the making or performing at which they seek to become adept, and they are helped to do so by senior practitioners who... in Dewey's terms—initiate them into the traditions of practice: 'The customs, methods, and working standards of the calling constitute a tradition and... initiation into the tradition is the means by which the powers of learners are released and directed.' " Id. at 16-17 (citing JOHN DEWEY ON EDUCATION 151 (R.D. Archambault ed., 1974)).

making it just as expensive as live-client learning.108

The heightened motivation present in live-client learning has been discussed from the early days of clinical legal education, as in Alan Stone’s article in which real cases were said to offer students the “opportunity to explore [a case’s] social and psychological implications in as great a depth as his motivation allows.”109

Andrew Watson, writing in the 1960s and 1970s, considered the emotional component in live-client learning essential in creating a lawyering identity in students that would later enable the students to deal responsibly with conflicts that would arise in their roles as professionals,110 Examples are conflicts between a lawyer’s personal desires and the needs of her clients or between her conflicting obligations, such as advocate versus officer of the court.111 Only when the lawyering identity of a competent, ethical, and socially responsible practitioner has been formed in the presence of real conflicts can it be expected to hold up when the real conflicts in fact occur.

The increased motivation in the live-client situation has also been suggested to arise from a peculiarity of adult as opposed to child learning.112 To the extent adults (law students) are self-directed and ready to acquire a social role, they can benefit from a learning environment which includes “a spirit of mutuality between teachers and students as joint inquirers.”113 Believing herself to be a “partner” to the teacher and seeking a solution to a problem together, the student is highly motivated to learn.114 But “joint inquiry” requires live-clients. Even an


109. Alan Stone, Legal Education On The Couch, 85 HARV. L. REV. 392, 429-30 (1971) (noting that “[i]f those who control legal education believe that students should develop human relations skills in law school, then the legal clinic is the single best vehicle for doing so”).


111. Id. at 338 (quoting M. KNOWLES, THE MODERN PRACTICE OF ADULT EDUCATION 41 (1970)).

112. See, e.g., Gary Bellow & Earl Johnson, Reflections on the University of Southern California
effective, competent simulation must be preplanned so that even if the instructor participates in the simulation, the law student knows that there is nothing like shared inquiry or a co-counsel relationship between student and teacher. In fact, it is likely that the instructor would not participate at all in the simulation and instead let the student work through the problem alone.115

Because simulation also cannot equal the “factual richness” of the real case,116 “epistemological integrity” has been advanced as another reason to prefer live-client learning to simulation.117 Nothing but reality has the complexity of reality, it is argued, and “we cannot be said to truly understand anything until we understand it in context and in complexity.”118

It has also been noted that students tend to lose interest in their studies as they progress in law school. In live-client in-house clinics, students move from spectator to actor. This change has a profound impact, in that the personal identification with clients and the assumption of the lawyering role bring with them a heightened desire to learn.119

Schön’s analysis informs the live-client versus simulation debate in several ways. Crucial to the reflective practicum is that a student learns by doing, in a setting designed for teaching the student and with a teacher who can guide the student through the reflective process. Thus, the emphasis is on reflective learning as a process, not the substance to be learned. In this respect, the reflective learning process can be used both in simulation and live-client experiential learning.

Next we consider what is to be learned. Here we return to Schön’s topographical metaphor. The “swamp” is where the most important problems lie, says Schön, because only in the swamp, i.e., in the real world of practice, do we encounter the real emotional conflicts faced by the learner combined with the indeterminate messiness of the problem with all its complexities. That is what makes these problems confusing,

Clinical Semester, 44 S. Cal. L. Rev. 664, 688-89, 694 (1971) (describing the distinctive “two-way street” of the clinical experience in contrast with traditional legal education).

117. McDiarmid, supra note 16, at 286 (Despite their high costs, live-client, in-house clinics provide education which “cannot be replicated by any other teaching methods, [including simulated education].”). The article analyzes data collected concerning in-house law school clinics from a 1987 survey questionnaire sent by the Clinical Section of the American Association of Law Schools to member law schools.

118. Id. The article notes that clinics do have a high cost and suggests that one way to lower the cost is to have many of the subjects that clinics currently teach such as lawyering skills, substantive law, and law office management be taught in larger classroom settings and to leave the actual live-client learning in the clinic as a way of lowering costs. Id. at 289. Although these are valuable cost-saving devices and are educationally sound, I would suggest another way to dramatically lower the cost of clinical education to the law school is through the fee-generating model we use at Chicago-Kent. See infra part VII.D.

119. Id. See also Bellow, supra note 92, at 380-86.
imprecise, and non-rigorous, yet so important. The practitioner who has not learned to practice in live-client as opposed to simulated settings, has failed to learn that which Schön contends is central to professional practice. The law student graduates only to find that there is a swamp out there. If she has been taught only through simulation, not through reflective live-client education, she will not have learned the art of practicing in it.

Traditional law school education generally teaches legal doctrine and legal method. Through live-client clinical education, we can teach students to be critical about whether to accept the standards of behavior which exist in their legal communities, and we can assist them in developing critical decision-making skills. This can be done through students' role identification which will motivate them to find answers to questions in the swamp—in other words, to act similarly to the way competent, ethical, and socially responsible lawyers act in practice.120

IV. THE NEED FOR LEARNING THE ART OF LAWYERING IN LAW SCHOOL

What about those who say that even if the art of lawyering is ideally learned in a law school reflective practicum (live-client, in-house, clinical education program), the traditional model for learning the art of lawyering on one's own or through an apprenticeship after law school works well enough?

Historically, most law school educators rejected the idea that a law school education ought to include broad-based instruction in skills and values and in the art of lawyering.121 The traditional approach to legal education essentially borrowed a liberal arts methodology and applied it to professional education.122 It assumed that students needed three years to learn legal method or legal problem solving and to be exposed to a broad range of legal doctrine. It also assumed that a law school connected to a university ought to teach research-based theory and theoretical skills and not the practical skills and values associated with trade

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120. McDiarmid, supra note 16, at 249.
121. For a detailed discussion of the historical approaches and ideals of legal educators, see E. Gordon Gee & Donald W. Jackson, Bridging The Gap: Legal Education and Lawyer Competency, 1977 B.Y.U. L. Rev. 695.
122. The Liberal Arts method is based largely on a notion that the focus of the university should be on research and knowledge for its own sake. The goals of the clinic in the university law school setting are in apparent conflict and have been the subject of numerous articles. See, e.g., David Barnhizer, The University Ideal and Clinical Legal Education, 35 N.Y.L. Sch. L. Rev. 130 (1990); William Pincus, The Clinical Component in University Professional Education, 32 Ohio St. L. J. 283 (1971).
schools. And finally, it assumed that once students learned to "think like lawyers" they would learn the fundamental skills and values as well as the art of practice after they graduated.

Students took a wide variety of courses designed to help them think like lawyers and learn legal doctrine. This approach offered students a broad knowledge of the law with strong emphasis on analysis. It worked reasonably well for students who in their early years of practice received their training from highly competent, ethical, and socially responsible practitioners. It did not work as well for the majority of students, who were not trained by such practitioners. Those new lawyers often opened their own offices or worked in relatively unsupervised or poorly supervised work environments.

For students who learned the art of lawyering in unsupervised settings, it has been difficult to learn to practice law in a highly competent manner or to learn how best to apply the ethical and social obligations of lawyers in their practices. If these new lawyers had primary responsibility for representation of clients during the early years of their practices, many of those clients may not have been adequately served.

Too many settings in which young lawyers have been employed are "apprenticeships" in name only. In fact, the young associate's supervisor has provided little or no supervision and the young lawyer essentially has learned the art of lawyering on her own. Further, in many apprenticeships the supervisor has not herself performed with sufficient competency, ethics, or social responsibility. In those settings, the young lawyers have not learned to practice law in a highly competent manner or with high ethical or socially responsible values.

Sometimes a highly competent lawyer has been willing to provide young associates with a well-supervised apprenticeship, but has not been a good model of professional ethics or social responsibility. And finally, even in those (relatively few) settings in which the young associates have been closely guided and have learned the art of lawyering in a highly competent, ethical, and socially responsible environment, they may not have been exposed to new practice techniques or to new ways of considering questions of values or social responsibility.123

123. For example, a significant number of very competent lawyers are not familiar, I suspect, with the newest theories of interviewing and counseling such as those found in Binder et al., Lawyers as Counselors, supra note 8, generally considered a significant advance by clinical professors. If law students were to learn to apply these relatively new techniques of interviewing and counseling in a law school reflective practicum, they would take this knowledge with them to their first job after graduation. By so doing, knowledge of the theory would spread more quickly than would be the case if the theory is disseminated only by articles and continuing legal education programs.
I would like to put in perspective my comments concerning the difficulty most lawyers have in learning a desirable model of practice after graduating from law school. I do not mean to imply that the majority of lawyers (or even a high percentage) practice incompetently, or unethically, or with a lack of social concern. Large numbers of lawyers have learned to practice well in all respects in spite of the lack of supervision and poor apprenticeship training available to them. Also, lawyers and the legal profession have been at the forefront of social reform in this country, from their support of affirmative action programs, to legal aid for the poor, environmental concerns, and human rights in the international arena. We can be proud of the many courageous stands taken by segments of the organized bar with regard to many of the social issues of our time.

Nevertheless, there are serious problems in the legal profession today. To illustrate their depth and breadth, I pose the following questions: Are we satisfied with the overall quality of the practice of law? With the ethics of lawyers? With the role of lawyers and the legal profession in seeking solutions to poverty and other social problems which confront society today? With the quality of judicial decision making? With the operation of legal institutions? With the legal profession as a whole? Are we content with the contributions our graduates are making to improve the level of practice in these areas? I say "no" to each question.¹²⁴

Among the practicing bar, there is too much incompetence, a widespread lack of professionalism, and not enough of a sense of social obligation. For most people, obtaining justice is too expensive and thus depends on the litigant’s resources and choice of lawyer, rather than the legitimacy of the cause. For many, any legal assistance is simply beyond their economic reach. Basic institutions of society with which lawyers are intimately connected, such as the criminal justice system and the welfare rights system, are dysfunctional.

Why aren't lawyers doing better at all of this? And what does professional education have to do it? Obviously solutions to the above problems present profound questions, most of which are beyond the

scope of this paper. Certainly improved education alone cannot provide complete solutions to our deep societal problems. But I am convinced that reforming legal education to include programs such as the new dispute resolution program, can play an important role in helping lawyers and the legal profession do better. If not, we as legal educators ought to pack up and go home.

According to Schön, professional inadequacy, as I have described it in the world of law, exists in all professions today. Why should society continue "to grant [the professions] extraordinary rights and privileges"125 if they cannot deal effectively with the societal problems they are supposed to solve? Schön notes that "[t]he crisis of confidence in professional knowledge corresponds to a similar crisis in professional education. If professions are blamed for ineffectiveness and impropriety, their schools are blamed for failing to teach the rudiments of effective and ethical practice."126

To teach such rudiments, law schools ought not teach the students only "research-based theory and technique." Students must also learn the art of lawyering in order to educate them to solve problems which do not easily lend themselves to rigorous inquiry because they are in the "indeterminate zone of practice," i.e., they involve uncertainty, uniqueness, or value conflict.

Why is it so important to provide this type of education in law school? Not simply because a reflective practicum is a better way to learn the art of lawyering than learning it on one's own or through an apprenticeship after graduation.127 Rather, it is because too many lawyers are not learning to practice with sufficient competence, ethics, and social responsibility. And it is because more lawyers will practice with higher standards if they receive sufficient education in the art of lawyering while in law school.

Law school offers a unique opportunity to teach the art of lawyering through the reflective learning process. The clinical educators from whom the students learn are full-time members of a law school faculty and thus are expected, unlike lawyers in practice, to engage the students in the reflective learning process. They have hopefully been selected for high standards of competence, ethics, and social responsibility.128

Moreover, law school is the time when a student's professional iden-
Law students do acquire a lawyering identity while they are in law school even under the current model of legal education. The problem, however, is that the lawyering identity they acquire is inadequate because legal education focuses primarily on the intellectual or analytic aspect of lawyering, which though important, is only one facet of what lawyers need to know.

First, it is inadequate because the current model of legal education discounts the importance of the emotional aspects of lawyering. Thus, the students acquire a lawyering identity which suggests that the practice of law is not concerned with emotional conflict. Yet, in practice, lawyers encounter a great deal of emotional conflict, e.g., between their own interests and the interest of the client; between their obligation to zealously represent their client and their obligation as officers of the court.

Second, it is inadequate because the current model of legal education does not teach them all the fundamental lawyering skills and values and does not educate them in the art of lawyering. Thus, the lawyering identity they form in law school does not embody that knowledge essential for the practice of law.

If the law schools teach the art of lawyering, the student’s profes-

129. See articles cited supra note 110.

130. As one author noted, educating the student to “think like a lawyer” without considering the emotional content of lawyering can too easily result in the student learning to feel like a lawyer who is “controlling, cool, dispassionate, unfeeling [and] arrogant.” Michael Meltsner, Feeling Like a Lawyer, 33 J. LEGAL EDUC. 624, 624 (1983).

131. Here I again part company with the ABA Task Force Report. Although it increases our understanding of the fundamental lawyering skills and values and gives us insights into the process by which law students are educated to become responsible practitioners, it does not recommend that law students be required to receive live-client clinical education in law school. The Report does not note the importance of live-client clinical education which it considers of limited value because it “would rarely be able to duplicate the pressures and intensity of a practice setting.” ABA Task Force Report, supra note 1, at 234.

Why does the ABA Task Force Report so delimit clinical education? The Report fails to recognize what this paper seeks to demonstrate, that the professional knowledge used by lawyers to solve problems in the “swamp,” includes—in addition to legal doctrine, skills and values—a separate body of knowledge, the “art of lawyering.” Since the SSV considers “problem solving” merely a skill, not both a “skill” and an “art,” see supra note 21, it does not see the need to teach it though live-client rather than simulated education. As I have noted, supra text accompanying notes 59-60, the art of lawyering is equivalent to what may be described as the “art of problem solving.” I have no problem with the Report’s recommendation that law students receive their skills training in either simulated or live-client experiences, because I agree that the Report calls “the concepts and theories underlying the skills and values” can be taught through classroom and simulated education. ABA Task Force Report, supra note 1, at 331. However, the Report does not recognize what I have concluded is essential, i.e., that students learn the art of lawyering while in law school and that the “art” of problem solving which is the art of lawyering must be learned in reflective, live-client clinical education programs.

As to the Report’s view that live-client clinical education cannot duplicate important aspects of practice, I would refer the reader to the attempt being made to approximate more closely a real practice setting at the Chicago-Kent Law Offices. See infra part VII.D.
sional identity will include a model for practicing in the swamp, *i.e.*, for dealing with uncertainty, uniqueness, and value conflict. The emerging lawyer will have at her professional core a body of knowledge arguably more important than any other, because it will enable her to apply legal doctrine, skills, and values in practice. She will have internalized knowledge with which to deal with emotional conflict, once thought and taught to lie outside the realm of legal education and practice. In addition, the student will have internalized a method—the reflective learning process—that will remain with her throughout her professional life.

The power of a professional identity to affect future practice should not be underestimated, for once a professional identity is formed, the lawyer will most likely pattern her professional behavior on the model she has internalized, rather than a less desirable model to which she may be exposed in the real world of practice.132 If students acquire a lawyer identity with high standards while in law school, then a greater number of lawyers will be competent, ethical, and socially responsible practitioners. Thus, reforming legal education in this way will most likely improve the quality of lawyering and the legal profession.

It is the obligation of the law schools to seize the opportunity they have to reform the profession, something that some legal educators have long understood:

> Professional skill can be gained only through direct guided experience with one who is already practicing in the image of this desired goal. The tensions affecting professional behavior demand the ultimate of psychological maturity, and this skill, like any other, is the product of learning and experience. Just as no human being could in a lifetime develop all of the intellectual content of the law, so he cannot retrace the intricate steps of developing professional images on his own. The distillate of centuries of slow and painful learning must be transmitted in the first instance by someone who knows it. Then and only then may the elements of professionalism be tailored and modulated to fit the individuality and the personal skills of the practitioner. This should be the focus of intensive assistance at the academic level. *It must not be entrusted to chance or to the casual teaching which comes from practitioners whose major interest lies elsewhere.* I do not mean to depreciate the concern of the practice bar; indeed, I trust that I have made it obvious that their assistance is valuable and that they have much more to contribute than they have ever been asked to provide. But I do believe that this concern must be focused by those who devote their life primarily to teaching the overall range of concerns.133

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132. See Watson, *Quest for Professional Competence, supra* note 110, at 103; Watson, *Teaching Professional Responsibility, supra* note 110, at 3-5.
This point was strongly made again in a later article:

Because law students do not habitually conceptualize their future roles as lawyer-professionals, those who teach them how to behave as lawyers become extremely important in the ultimate shaping process. It thus borders on irresponsibility to leave the professionalizing process to the random adventitious experiences of post-law school encounters. It is critical then that legal educators avoid reinforcement of inappropriate lawyer behavior and avidly grasp every opportunity to reinforce positively those behaviors which are vital to effective and appropriate professional practice. 134

V. LAW SCHOOL EDUCATION: THE PRESENT

Admittedly, legal education looks quite different today than it did 25 years ago at most American law schools. Today all law schools require legal writing in the first year. They offer trial advocacy programs, and in-house or externship clinical education programs are electives in virtually every law school in the country. In addition, law schools offer courses that cover most of the fundamental lawyering skills discussed in the SSV and ABA accreditation standards require every law school to provide instruction in professional responsibility to all students. 135

Probably the most important catalyst for change in law school education was the introduction of clinical education into the law school world in the late 1960s and early 1970s. In 1967, a time of increasing social unrest and a heightened national consciousness about poverty, the Ford Foundation created and funded the Council On Legal Education for Professional Responsibility ("CLEPR") for the purpose of establishing legal clinics in law schools to provide legal assistance to those who could not afford it. 136 Although there were law schools with legal clinics prior to 1968, a large number of law school clinics were created nearly overnight because of grants received from CLEPR.

134. Watson, Lawyers and Professionalism, supra note 110, at 250.
135. At Chicago-Kent College of Law, the changes in the curriculum in the past 25 years have also been extensive. In addition to a traditional curriculum, we now offer six clinical education programs which enroll about 250 students each year and simulated skills courses in such diverse areas as trial practice, which is taken by almost every student in the school, interviewing and counseling, negotiation, and alternative dispute resolution. Legal writing is required during the entire three years of the curriculum. And we teach a variety of computer competencies. A course on Justice is a first year required course, and in selected upper-level courses we pay attention to ways in which the insights of other fields might positively impact on the solution to legal problems. We have added a range of doctrinal courses to respond to the evolution of society in such areas as international and environmental law. In the environmental law field we have established an interdisciplinary concentration which considers the insights of the related fields of philosophy, economics, history, and engineering.
Clinical education was an entirely new method of education that moved law school learning out of the classroom and into the world of practice. Pedagogically, its salient features were subsequently described as:

- students are confronted with problem situations of the sort that lawyers confront in practice;
- the students deal with the problem in role;
- the students are required to interact with others in attempts to identify and solve the problems; and, perhaps most critically, the student performance is subjected to intensive critical review.\(^\text{137}\)

When first introduced, the clinical method was employed primarily to teach students a variety of lawyering skills previously ignored by the law schools, such as interviewing, counseling, negotiation, pretrial litigation including drafting pleadings and conducting discovery, and trial skills. Most of the early programs in clinical education dealt with problems of poverty and thus involved the law schools in performing services for the poor as well as addressing the issue of how problems of the poor could best be solved.\(^\text{138}\) Since traditional law school education did not teach law students about the problems of poverty, clinical education by its very existence challenged the validity of both the methodology and the content of the traditional curriculum.

In addition, in a very short period of time the clinical education movement brought into the law schools a large number of teachers whose role and expertise was quite different from that of the traditional teachers. Clinical teachers for the most part were politically to the left and some were political activists. Neither they nor their clinical work was considered quite appropriate for the academy, because the clinical professors were not scholars and their work was too practice (and perhaps too poverty law) oriented. Also, for the most part clinical faculty were funded by "soft money" and were not given faculty status. All of this made for quite a volatile mix.

\(^\text{137. In-House Clinic Report, supra note 92, at I-I. The first modern definition of clinical legal education is found in Bellow, supra note 92, at 379, where the clinical education teaching method is said to have "three main features: 1) the student's assumption and performance of a recognized role within the legal system; 2) the teacher's reliance on this experience as the focal point for intellectual inquiry and speculation; and 3) a number of identifiable tensions which arise out of ordering the teaching-learning process in this way." See also Robert J. Condlin, The Moral Failure of Clinical Legal Education, in The Good Lawyer: Lawyers' Roles and Lawyers' Ethics 317-18 (David Luban ed., 1984) (defining clinical education "as instruction in interpersonal skills... and professional ethics... in the context of fieldwork... (... with live cases in law offices created by law schools for this purpose) under the supervision... of a law teacher"); David R. Barnhizer, The Clinical Method of Legal Instruction: Its Theory and Implementation, 30 J. Legal Educ. 67 (1979).}

\(^\text{138. In those earliest days, clinical education generally assumed a live-client setting. CLEPR, the major source for funding, required students to serve real clients. See Pincus, supra note 122, at 283.}
Because the clinical faculty and their programs were marginalized by the law schools, clinicians were forced to justify themselves. They did so by examining the pedagogical validity of their work. In addition to critiquing their own programs, they compared clinical methodology to traditional education and began a reexamination of what professional education ought to be. Thus, a process was begun in which the entire educational program of the law school was put under a microscope. This has resulted in a number of thoughtful studies by the American Bar Association and the American Association of Law Schools as well as important scholarship by both clinical and traditional faculty on the question of how sound professional education ought to look.\textsuperscript{139} In recent years, traditional legal education and traditional scholarship, as well as clinical education, have been critiqued by such movements as law and economics, critical legal studies, and law and feminism.\textsuperscript{140} The studies and the critiques have served as stimuli for change.

VI. LAW SCHOOL EDUCATION: WHY WE HAVE NOT YET SUCCEEDED

Although the changes in the law school curriculum in the past twenty-five years represent positive developments, there remain serious problems in the legal profession and in legal education calling for even more far-reaching educational reform.

Legal education to date has not yet adequately educated most law students to become reflective practitioners. There are a number of reasons for this, which can be fairly summarized by stating that the current state of both skills and values education and clinical education are still lacking.\textsuperscript{141}

\textsuperscript{139} Eg., Herbert L. Packer & Thomas Ehrlich, New Directions in Legal Education (1972); ABA Task Force Report, supra note 1; Clinical Legal Education, 1980 Ass'n Am. L. Sch.-A.B.A. Comm. on Guidelines for Clinical Legal Educ.; Barnhizer, supra note 137; Kreiling, supra note 68; Menkel-Meadow, supra note 8.

\textsuperscript{140} See, e.g., Elson, supra note 1 (critiquing legal scholarship in general); Phyllis Goldfarb, A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education, 75 Minn. L. Rev. 1599 (1991) (critiquing legal education from a feminism perspective); Duncan Kennedy, Legal Education as Training for Hierarchy, in The Politics of Law (David Kairys ed., 1982) (critiquing the ideological content of the law school curriculum from a Critical Legal Studies perspective); Robert H. Lande, A Law & Economics Perspective on a "Traditional" Torts Case: Insights for Classroom and Courtroom, 57 Mo. L. Rev. 399 (1992) (proposing a means of learning from a law & economics perspective).

\textsuperscript{141} See ABA Task Force Report, supra note 1; Garth & Martin, supra note 8.
EDUCATING FOR PROFESSIONAL COMPETENCE

A. What Is Wrong with the Current State of Skills and Values Education

Notwithstanding the substantial increase in skills and values training in law schools in the past twenty-five years, while they are in law school the majority of law students are not educated in most of the fundamental skills mentioned in the SSV. Though course offerings cover most of the SSV's skills, most law students take no more than one or two skills courses while in law school, in addition to legal writing and trial advocacy.\(^\text{142}\)

Empirical studies asking lawyers about their skills training in law school have concluded that law schools do not provide most students with sufficient education in a number of the skills which are crucial to the practice of law.\(^\text{143}\) One recent study noted that law school graduates reported a significant gap between the skills they believed could be taught and the skills they were actually taught in law schools.\(^\text{144}\) This gap included the two skills which they deemed the most important, oral and written communication, as well as all of the other practical skills such as drafting of legal documents, diagnosing and planning solutions for legal problems, negotiation, fact gathering, and counseling.\(^\text{145}\) Moreover, most lawyers wished that they had received more skills training in law school.\(^\text{146}\)

Education in professional values has amounted mostly to the ABA mandated course in the Code of Professional Responsibility which is not sufficient education in the fundamental values we expect lawyers to use in the practice of law.\(^\text{147}\) If the goal of values education is to change behavior, learning must include live-client experiential as well as doctrinal learning. Examples of values which are not taught by most law schools, and as far as I know are not required by any, include the lawyer's obligation to society, strategies for reducing the cost of the delivery of legal services, or the effectiveness of legal institutions such as the juvenile or criminal justice systems.

B. What Is Wrong with the Current State of Clinical Education

Clinical education has made great strides in its twenty-five-year hi-
tory. It exists in virtually every fully-accredited school in the country. Many of the programs, in-house clinics and externships, are well run with sound educational goals. They make herculean efforts to provide their students with a solid education in the practice of law. A significant number of clinical professors are well respected and accepted as peers by the academy. Yet, there persist important problems with the current state of clinical education.

First, too many students receive no in-house clinical education while in law school. A recent study reported that "[a] live-client clinical experience taught by the faculty of a law school is available on average to only 30% of law students in the schools which offer such courses."\(^{148}\) Even a law school like my own, which has a large clinical program compared to most, has been able to offer only a small number of in-house clinical credits to less than 50% of the class.

Second, a significant amount of clinical education is necessary to educate students to become reflective practitioners, and law schools simply do not provide enough. Schön argues that the reflective practicum "demands . . . duration far beyond the normal requirements of a course."\(^{149}\) One can only speculate about how much is enough, but in my judgment students should receive at least one year's worth of credits (out of the current three-year J.D. program) in clinical education and related skills and values instruction.

Sequenced learning cannot occur in the current world of clinical education because there are too few courses in clinical education programs to permit the development of a progression of clinical courses. One way to structure a sequenced clinical curriculum could be to require students to enroll in an in-house clinic in their second year and then in an externship in their third year of law school. The externship placement could build on the student's second year in-house experience, and the classroom components of each clinical course could do likewise.

Third, clinical professors are often hired with limited amounts of practical experience. Most have not worked in traditional law offices and therefore have not been exposed to the practice of law in settings in which most law graduates will eventually find themselves. Many schools require their clinical professors to do too much. Clinicians are often required to supervise a full compliment of in-house students, the most labor intensive of all teaching assignments, and at the same time supervise

\(^{148}\) McDiarmid, supra note 16, at 246.

\(^{149}\) SCHÖN, supra note 41, at 311.
an externship program, teach a traditional course, perform administrative work, and engage in scholarship.

To the extent clinical professors are not scholars, they have been treated like second class citizens. They are typically paid less than traditional professors at the same law school.\textsuperscript{150} They frequently have low faculty status and limited job security.\textsuperscript{151} Not surprisingly, there is a fairly high turnover. Some leave clinical teaching to become traditional teachers and others go into private practice. The result of all this is that students are often taught by fairly inexperienced practitioners who are also inexperienced teachers and who have inadequate time to teach reflective learning.

Fourth, most clinical programs do not sufficiently resemble the real world of practice. I recognize that clinical programs must temper the harsh reality of practice by enabling students to perform at low risk and allowing time for inefficiency, repetition, and reflection. "A practicum may fail because its striving for realism overloads students with practical constraints [just as it might fail] because it leaves out too many important features of real-world practice."\textsuperscript{152} But it is this latter concern that is the more serious problem faced by in-house clinical programs today. Most in-house clinical programs are not set up like law firms. They are often funded with short term government grants and modelled after small legal aid offices which handle large numbers of small individual cases. In such programs, cases are not selected with sound economic decision making in mind. Students are not taught to be efficient. They do not keep time sheets. Decisions on how to handle cases and whether to settle are not necessarily made by considering the economic value of the case in the same way as decisions are in private practice. Students are not taught the mechanics of fee-generating practice and are not exposed to important ethical problems which arise only in fee practices.

Fifth, in these settings students usually handle the entire case themselves with the clinical supervisor acting only as supervisor and not as lawyer. Students may only be exposed to small routine cases (as they are incapable of handling more sophisticated cases on their own) and do not

\textsuperscript{150} Roy T. Stuckey, a professor at the University of South Carolina School of Law, in his official capacity as a member of the Council of the ABA Section on Legal Education and Admissions to the Bar has reviewed data taken from the Annual ABA Questionnaire on Law Professors' Salaries over a number of years. From that data, he has observed that clinical professors are typically paid less than traditional professors at the same law school. Telephone conversation with Roy T. Stuckey (Feb. 9, 1993).

\textsuperscript{151} Results of Surveys and Questionnaires Regarding the Status of Professional Skills Teachers 1984-1991, Memorandum C9192-67 by Roy T. Stuckey to Council of the ABA Section on Legal Education and Admission to the Bar (Jan. 19, 1992).

\textsuperscript{152} SCHÖN, supra note 41, at 170.
learn from observing their supervisors as role models. These are serious educational limitations because non-routine cases (or at least a mix of routine and complex cases) offer richer learning experiences for understanding the art of lawyering, and modelling (in addition to performing) is and has always been a key way lawyers have learned to practice.  

Sixth, there are problems associated with externships, which are a prevalent form of clinical education today largely because they are less expensive than in-house programs. Too many externship programs are not well supervised by the law schools, and the students do not subject their lawyering experiences to the reflective learning process. Externship supervisors are often selected without careful screening and without the law schools explicitly informing the externship supervisors of the particular goals of the program. There is often very little interaction between the supervisor and the law school or between the student and the law school during the externship period.

A law school’s clinical education program is the reflective practicum in which the students should learn the art of lawyering. But for the clinical education program to educate the students to become reflective practitioners, it must have certain attributes. It must provide the students with enough clinical education, provide teachers who are master practitioners and master educators, and provide an environment which closely resembles real practice while engaging students in the reflective learning process. Only then will clinical programs educate students to become highly competent, ethical, and socially responsible practitioners.

VII. THE FUTURE—THE NEW DISPUTE RESOLUTION PROGRAM

A. Introduction

The new dispute resolution program will make a serious effort to educate law students adequately for the practice of law. It will do this by supplying the students with a sufficient amount of traditional education in legal doctrine and legal method and the other fundamental lawyering skills and values, as well as enough clinical education to enable them to become reflective practitioners. By providing the students with a comprehensive professional education, we expect them to acquire a lawyering identity which incorporates high standards of competence, ethics, and social responsibility.


154. For further thoughts about externships, see supra note 104.
B. Traditional Legal Education

By broadening the curriculum to require sufficient education in the fundamental lawyering skills and values and in clinical education courses, will we take away too many credits from the traditional curriculum? Historically, the goals of traditional legal education have been to educate students in the legal doctrine of the basic law (usually in courses which are offered in the first year of law school) such as torts, contracts, property, criminal law, civil procedure, and constitutional law; legal method including legal problem solving, appellate case analysis, and statutory analysis; legal research and writing; and some advanced or specialized legal doctrine. Thus, the question is, how many credits are necessary to provide a sound education in these areas?

In the new dispute resolution program, of the 90 credits required for graduation, students will take a minimum of 53 credits in traditional courses. They will be required to take a minimum of 25 credits from the clinical and other non-traditional courses. The remaining 12 credits may be taken from the traditional or non-traditional curriculum.

The first-year curriculum will be virtually identical to the first-year curriculum for the remainder of the student body, except for an additional non-credit requirement which will expose students in the program to dispute resolution practice. Thus, to the extent that basic legal doctrine, legal method, and legal research and writing are taught in the first year of law school, students in the new dispute resolution program will receive the same education as will other students.

During their second and third years, students will take approximately one additional year of traditional law school credits. Since basic legal doctrine, legal method, and legal research and writing are usually learned by the students in their first year or year and one-half of law school, the new dispute resolution program should provide adequate education in this regard. If so, the remaining legitimate question is: Does the new program offer enough doctrinal training in upper level courses to expose students to a sufficient amount of advanced and specialized legal doctrine?

The short answer is yes. To solve the crises in the legal profession,

155. It should be noted that Chicago-Kent law students who are not in the program must complete only 84 credits for graduation. Thus, students in the new dispute resolution program must take an additional six credits. Upon completion of the program, the students will receive a J.D. and a certificate for completing the dispute resolution program.

i.e., the acknowledged lack of competency, ethics, and social responsibility in law practice today, law students must be educated to become reflective practitioners and to acquire a lawyering identity while in law school which incorporates high standards of competence, ethics, and social responsibility. Since law school remains a three-year program, the number of credits devoted to traditional legal education courses must be reduced to make credits available to fulfill these expanded educational objectives. If this means less exposure to advanced or specialized legal doctrine, so be it.

Even with the new dispute resolution program, the students will take some courses in advanced or specialized legal doctrine. They should be able to learn whatever additional legal doctrine they need after they graduate, while working on particular legal problems in their law practices or through continuing legal education programs. Of all the bodies of knowledge that lawyers need to acquire, advanced or specialized legal doctrine is probably the most accessible after law school.157

Moreover, I am not sure that we are giving up as much legal doctrine as one thinks simply because 53 to 65 credits instead of 84 credits will be allocated to traditional course work in the new program. Of the 25 to 37 credits devoted to non-traditional courses, a minimum of 18 credits will be in clinical education courses. In virtually all clinical education courses, students learn some legal doctrine through their practice. In a number of clinical programs and especially in those in which the caseload focuses on a single subject matter, the classroom component of the clinical course also teaches some legal doctrine. Such is the case in the classroom components of all three of our in-house clinical programs. We teach some substantive law of employment discrimination in the civil division, we teach some criminal procedure law in the criminal division program, and we teach a two-credit course in tax procedure in the tax division.

As law schools come to recognize the need to broaden the law school curriculum to include education in skills, values, and the art of lawyering, they can experiment with more efficient ways to teach legal doctrine. If we conclude that the students should receive more instruction in advanced or specialized legal doctrine than is possible with the new dispute resolution curriculum as presently constituted, I would recommend adding to the curriculum several upper-level doctrinal courses taught primarily by the lecture method. These courses could teach the

157. Continuing legal education courses have always stressed legal doctrine, both on the national and local levels.
basic legal doctrine of several related areas of law. We ought to think creatively about this. We might decide that students need to learn the equivalent of only one hour of credit in each advanced subject rather than two or three or four. Thus, we could devote, say, one three-credit course in each semester in the third year to this survey approach and by so doing, teach the students up to six additional doctrinal subjects.

C. Education in Skills and Values

In the new dispute resolution program, we have allocated enough credits to skills and values education for the students to be educated in all the fundamental skills and values described in the SSV, plus those additional skills and values we consider necessary for the practice of law. To accomplish our goal, the new dispute resolution program will include a number of non-clinical courses in skills training: Legal Writing I, a three-credit course; Legal Writing II, a two-credit course; Pre-trial Litigation, a two-credit course; Trial Advocacy I, a three-credit course; Alternative Dispute Resolution II, a three-credit course; and a third-year writing Seminar, a two-credit course. In addition, students may take other skills courses in fulfillment of their twelve credits of electives and distributional requirements, and skills training will be included in the classroom components of the clinical courses.

The program will provide a broad values education by allocating eight credits to the following courses: Justice, three credits; Professional Responsibility, two credits; and Perspectives, three credits. In addition, students may take other values courses as part of the twelve credits of electives and distributional requirements, and values training will be included in the classroom components of the clinical courses as well as in the special programs which will be offered to the students in the new dispute resolution program during their first year of law school.

D. Clinical Education

Finally, the new dispute resolution program will require the students to take a minimum of four clinical legal education courses, one course in each semester of their second and third years, for a total of 18 credit hours. Three of the required clinical courses will be taught in the in-house setting, and one will be taught as an externship placement. The clinical education sequence will be the vehicle through which the students will learn the art of lawyering because they will apply the relevant

158. See supra part II.
legal doctrine, skills, and values to solve legal problems in the indeterminate world of practice. The clinical education sequence will educate through the reflective learning process, which will enable students to become reflective practitioners. Its goal is to turn out lawyers who have acquired in law school a lawyering identity of a highly competent, ethical, and socially responsible practitioner.

Is there enough clinical education and is it of sufficient quality to do the job? How much is enough? The clinical education curriculum must provide the students with a broad range of practical experiences to which the reflective learning process can be applied. Students should interview and counsel clients, engage in various types of discovery, draft pleadings and other documents, engage in legal research, write briefs, participate in court and alternative dispute resolution proceedings, plan the litigation, and participate in important decisions regarding their cases. Each significant lawyering performance should be subjected to the reflective learning process described by Schön.159

Because the new program allocates 18 credits in four separate courses to clinical education, the clinical education sequence will give sufficient time to expose the students to enough areas of live-client practice and enough reflective learning to enable them to become reflective practitioners. But learning to be a reflective practitioner, though a necessary condition for a wise and moral practice, is not a sufficient one.160 Thus, a critical inquiry is: Does the clinical education in the new dispute resolution program enable the students to develop the quality of lawyering identity we have set out to achieve?

To accomplish this, the standards which must be met by the clinical education courses are: 1) outstanding clinical professors who have mas-

159. See supra part II.B-C. Let me briefly describe three examples of how the clinical supervisors currently use reflective practicum education in the Chicago-Kent clinical education program:
1. The supervisor's conference in the in-house clinical programs. This is the most widely used reflective learning device in the law school world today. The student and clinical professor maintain continuous dialogue regarding their lawyering while working together on real cases. In this way, the students' work is critiqued by the clinical professor and the students are simultaneously encouraged to reflect on their lawyering experiences.
2. The classroom component of the Judicial Externship program. Here we use the classroom component to encourage students to reflect on the nature of the externship work in which they are engaged. In one class we use Herman Melville's Billy Budd and ask the students to analyze the profound questions of justice in the book and to use them to reflect on their experiences in assisting judicial decision makers.
3. The classroom component for returning students in the Advanced Externship program. Here we assign readings on the nature of the adversary system and require each student to prepare a paper in which he or she reflects on the impact of the adversary system on the practice goals of the office in which they extern. Each student orally presents his or her paper and the class reflects on the presentation.

160. Schön, supra note 41, at xiii.
tered the art of lawyering and the art of clinical teaching; 2) an environment which closely resembles a real practice setting and allows for sufficient reflective learning; and 3) sequenced clinical learning, including externships, in which education in the advanced courses builds on what is taught in earlier skills and values courses and the earlier clinical education courses.

At Chicago-Kent, we have sought to deal with the problems faced by clinical programs, both in terms of quantity and quality, by introducing a feature unique, so far as we know, to any in-house clinical program. We have a fee-generating practice in which the salaries of the in-house clinical professors are linked to the fees they generate. Our fee-generating practice with its link to the salaries is key to creating a program which can accomplish our educational goals. Although a detailed analysis of our fee-generating model of clinical education is beyond the scope of this paper, I will summarize the features of the program which are relevant here.

Each in-house clinical professor whose salary is linked to fees is expected to generate fees equal to her salary. The Law School funds the clinical professor's operating expenses and fringe benefits. If the clinical professor generates fees in excess of her salary in a given year, she receives a bonus. Linking the clinical professor's salary to her fees and permitting her to earn a bonus is important to the success of our model, as it enables the law school to pay successful clinical professors much higher salaries than are usually earned by clinical professors. Also, the cost to the law school is far less than if the salary of the clinical professor were paid for with law school funds.

As Schön emphasized, professionals must learn from those who have mastered the art of practice. We have staffed our in-house program with experienced practitioners who remain in their positions long

161. Of the nine full-time clinical professors, six have their salaries linked to fees and another is funded mostly through a government grant. Two are funded by the law school; one supervises the externship program and the other is the Director of Clinical Education.

162. Nine full-time clinical professors are presently employed in the Law Offices. The Director of Clinical Education is a tenured member of the faculty. Since 1981, the clinical professors have been eligible for faculty status, but cannot vote on promotion and tenure. Clinical professors do not have tenure but receive renewable long-term contracts.

163. If the clinical professor generates fees lower than her salary in a given year, she must pay back a penalty to the law school. By incorporating this provision in the clinical law professor's contract, the law school can more easily predict the costs of its clinical program for the year because it is more likely that the clinical professor will bring in fees at least equal to her salary. In the entire thirteen years in which the fee-generating model has been in existence at Chicago-Kent, no clinical professor has had to pay a penalty under this provision. I plan to provide an analysis of the fee generating contract and explain how the program works in detail in a future article.

164. SCHÖN supra note 41, at 13.
enough to become experienced clinical teachers as well. Our method of compensation enables us to reward the clinical professors for developing their lawyering and clinical teaching skills, whereas many law schools paying low salaries overload clinicians with clinical, non-clinical academic, and administrative responsibilities, all to the detriment of their becoming master practitioners and remaining clinical professors.

Our fee-generating model will enable us to offer the students in our new program clinical practice experiences in non-poverty law fields such as estate planning, real estate transactions, and corporate litigation. Our students can perform in a more realistic practice environment encompassing problems of economic decision-making, caseload management, and issues of professional responsibility—problems which only arise in fee settings. And it will provide our students with the opportunity to learn about the mechanics of fee practice, including charging and collecting fees.

Finally, students will have sequenced clinical education from the start of their second year through graduation, including simulation, live-client in-house practice, and externships. All clinical courses will have reflective practicum components.

VIII. CONCLUSION

If the new program is as successful as we believe it will be, we will suggest offering it to a greater number of students, perhaps to most of the student body. How costly would that be? I believe that we could provide the entire student body with an extensive clinical curriculum and sufficient education in skills and values at much less cost than one might expect through the judicious use of our fee-generating model and externships.

The new program is a work-in-progress. The mix of courses may not be correct; our teaching methodologies may need improvement. But it is a beginning, and true to the spirit of reflective learning we will perform, reflect on our performance, and from that process, learn to do it right.

165. Every case in the Law Offices is the responsibility of a clinical professor. Students assigned to the case assist the clinical professor in the same way a newly-hired associate assists a partner in a law firm, through performing themselves and by observing performances of their supervisors. Thus, we emphasize learning by modelling as well as by doing.
APPENDIX

Dispute Resolution: Litigation and its Alternatives

The program will be limited to 30 students in each class, beginning with the class admitted for the 1993-94 academic year, chosen from applicants on the basis of their academic potential, performance in law school, and reasons for entering the program. Even though the remainder of the student body will be required to complete 84 credits to receive a J.D., students in the program will be required to complete 90 hours of credit to receive a J.D. Students in the program will take a standard first-year load and will be given some special extra-curricular programs. See infra Appendix endnote 3. Yearly, no more than three graduates of the program will be eligible for selection as Research Fellows who will spend a fourth year at the law school as practicing clinical lawyers (1/2 time), teaching assistants (1/4 time), and researchers (1/4 time).

Current Curriculum

<table>
<thead>
<tr>
<th>First Year</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Torts</td>
<td>3</td>
</tr>
<tr>
<td>Criminal Law</td>
<td>4</td>
</tr>
<tr>
<td>Justice</td>
<td>3</td>
</tr>
<tr>
<td>Legal Writing</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>13</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Second Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>In-House Clinic</td>
</tr>
<tr>
<td>Evidence</td>
</tr>
<tr>
<td>Pretrial³</td>
</tr>
<tr>
<td>Con. Law</td>
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<td></td>
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</tr>
</tbody>
</table>

1. During the first year of this program, students will be selected for the program sometime after their first semester of law school. Thereafter, some students will be selected during the summer preceding their first year of law school and some will be selected after their first semester of law school. Starting sometime during their first year of law school, the students in the program will have programmatic obligations in addition to their first year course requirements, as follows: Students will become active members of selected bar associations, attend selected continuing legal education programs, and enroll in several intensive weekend law school seminars in which they will receive classroom and simulation instruction about the skills necessary to handle a legal dispute.

2. Students will be required to choose from two of the three clinics: tax, civil, or criminal. Each semester one credit of the clinical course will be graded on the basis of performance in the classroom component of the clinic. In addition, the clinical faculty will teach the materials currently required as Advanced Legal Research. By consolidating that required course with the in-house clinic, the students will gain additional hours in which to take elective courses.

3. This is a new course to be taught either by a clinical faculty member or an adjunct. A number of people who teach in the trial advocacy program might be interesting pretrial teachers. This course also will include materials in legal drafting sufficient to fulfill the legal drafting writing requirement.

4. This course will encompass the underlying principles and the relevant legal doctrine regarding the full range of alternative dispute resolution devices including negotiation, mediation, arbitration, and court-annexed dispute resolution devices. In addition to this course, students will be expected to take ADR II. See infra note 9.

5. To the extent that students want to take additional hours in the second year, they may take courses that will fulfill their distributional requirement, see infra, or they may take elective courses.
In addition to these requirements, students will be required to fulfill additional distributional requirements: seven credit hours of "dispute resolution" courses; and nine hours of other core courses. The remaining five hours could be taken as electives from the remainder of the curriculum including the clinical education, dispute resolution, or core curricula. Each student will be assigned to a program advisor who will guide the student in determining which distributional and elective courses to take.

**Dispute Resolution (3 hours)**

<table>
<thead>
<tr>
<th>Courses</th>
<th>Credit Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Courts</td>
<td>3</td>
</tr>
<tr>
<td>Conflicts</td>
<td>3</td>
</tr>
<tr>
<td>Complex Litigation</td>
<td>3</td>
</tr>
<tr>
<td>Remedies</td>
<td>3</td>
</tr>
<tr>
<td>Law Office Management</td>
<td>2</td>
</tr>
<tr>
<td>Trial Advocacy II</td>
<td>3</td>
</tr>
<tr>
<td>Appellate Procedure</td>
<td>2</td>
</tr>
</tbody>
</table>

**Core (9 hours)**

<table>
<thead>
<tr>
<th>Courses</th>
<th>Credit Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Law</td>
<td>3</td>
</tr>
<tr>
<td>Bankruptcy</td>
<td>3</td>
</tr>
<tr>
<td>Corporations</td>
<td>3</td>
</tr>
<tr>
<td>Commercial Law I</td>
<td>3</td>
</tr>
<tr>
<td>Criminal Procedure</td>
<td>3</td>
</tr>
<tr>
<td>Personal Income Tax</td>
<td>3</td>
</tr>
</tbody>
</table>

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6. Students will have the choice of taking either a judicial or advanced externship course to fulfill their externship requirement. If students wish to take two semesters of externships, they will be required to take one of their in-house clinic courses during a summer semester.

7. The seminar requirement could be met by taking any approved seminar. Students will be encouraged to take a course (or independent study in lieu of a seminar) that will compliment the dispute resolution curriculum.

8. The students would begin their law school careers with our orientation program about the relationship of justice and legal rules, take a course in justice in their first year, take a course in professional responsibility, and end with a perspectives course in which they would consider matters of justice in the context of their educational program. The perspectives requirement would be fulfilled by the standard course in jurisprudence, a comparative law course, or any other approved perspectives course.

9. The advanced Alternative Dispute Resolution course would be a skills course and would expose students to performance in a variety of dispute resolution situations. We have not yet decided whether the students will obtain their skills training in a live-client or simulation setting.

10. This course could be taken in either the second or third year.

11. This would be a new course dealing with the economic, legal, and practical concerns of running a legal practice. The course would deal with issues relevant to solo and firm practice. It also would deal with issues such as providing legal services to the poor and fulfilling the pro bono obligations of the lawyer and firm.

12. This is not an exhaustive list. The courses listed have traditionally been high enrollment
Completion of this program will ensure that a student receives a well-rounded education including traditional doctrinal and case analysis education, an understanding of the theoretical and ethical foundations of law, training in legal writing, serious concentration in the skills and subjects of dispute resolution, and clinical instruction in using all of their professional knowledge to represent clients with legal disputes. Students who graduate from the program must take a minimum of 53 credits of traditional classroom courses (General Knowledge—28, Legal Writing—7, Theory and Ethics—8, and Dispute Resolution—Doctrinal—10) and a minimum of 25 credits from clinical and other non-traditional courses (Clinical Education—18 and Dispute Resolution—Non-Doctrinal—7). The remaining 12 credits consist of 7 credits of distributional requirements in the Dispute Resolution curriculum and 5 credits of Electives and may be taken from the traditional or non-traditional curriculum.

### Distribution of Courses (hours)

<table>
<thead>
<tr>
<th>Category</th>
<th>Courses</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General Knowledge</strong></td>
<td>Criminal Law (3)</td>
</tr>
<tr>
<td></td>
<td>Torts (4)</td>
</tr>
<tr>
<td></td>
<td>Contracts (4)</td>
</tr>
<tr>
<td></td>
<td>Property (4)</td>
</tr>
<tr>
<td></td>
<td>Con. Law (4)</td>
</tr>
<tr>
<td></td>
<td>Plus 9 hours</td>
</tr>
<tr>
<td><strong>Legal Writing</strong></td>
<td>Legal Writing I (3)</td>
</tr>
<tr>
<td></td>
<td>Legal Writing II (2)</td>
</tr>
<tr>
<td></td>
<td>Advanced Research (part of In-house clinic)</td>
</tr>
<tr>
<td></td>
<td>Legal Drafting (part of Pretrial course)</td>
</tr>
<tr>
<td></td>
<td>Seminar (2)</td>
</tr>
<tr>
<td><strong>Theory and Ethics</strong></td>
<td>Justice (3)</td>
</tr>
<tr>
<td></td>
<td>Ethics dimension of skills (part of in-house and externships)</td>
</tr>
<tr>
<td></td>
<td>Prof. Resp. (2)</td>
</tr>
<tr>
<td></td>
<td>Jurisprudence (3)</td>
</tr>
<tr>
<td><strong>Clinical Education</strong></td>
<td>In-house clinic and externships (18)</td>
</tr>
<tr>
<td><strong>Dispute Resolution</strong></td>
<td>Civil Pro. I (4)</td>
</tr>
<tr>
<td><strong>Doctrinal</strong></td>
<td>Evidence (3)</td>
</tr>
<tr>
<td></td>
<td>ADR (3)</td>
</tr>
<tr>
<td></td>
<td>Plus 7 hours(^\text{13})</td>
</tr>
<tr>
<td><strong>Dispute Resolution</strong></td>
<td>Pretrial (2)</td>
</tr>
<tr>
<td><strong>Non-Doctrinal</strong></td>
<td>Trial Advocacy I (3)</td>
</tr>
<tr>
<td></td>
<td>ADR (2)</td>
</tr>
<tr>
<td><strong>Electives</strong></td>
<td>5 hours</td>
</tr>
</tbody>
</table>

### The Fourth Year Program

After completion of the requirements for the three-year program for a J.D., students will receive a certificate and become eligible to serve as a Research Fellow. Research Fellows will spend a fourth year at Chicago-Kent. Each year, no more than three graduates of the program in dispute resolution (and possibly one or two other highly qualified classes at the law school. Hence, they have evolved into “core” courses. This list might be enlarged to accommodate other large enrollment courses that the faculty view as critical to a lawyer’s career.

\(^{13}\) To fulfill this requirement students could enroll in doctrinal or non-doctrinal dispute resolution courses.
law school graduates) will be selected as Research Fellows on the basis of their academic performance at the law school. As Research Fellows they will receive a $15,000 a year stipend\textsuperscript{14} to spend the year refining their talents as lawyers.

First, they will be required to take the Illinois Bar Exam in the summer following graduation.\textsuperscript{15} This will enable them to serve as associate attorneys in the Law Offices of Chicago-Kent. As associates, they will be expected to work half-time as lawyers. Second, each Fellow will teach quarter-time in the Dispute Resolution curriculum in the ADR, Pretrial, or Law Office Management course. They also will help in the classroom component of the In-House Clinics. Third, each Fellow will be expected to spend quarter-time writing a research paper, in consultation with a faculty member, concerning a topic relevant to Dispute Resolution. The goal will be to publish these papers in a law review.

\textsuperscript{14} The law school is looking for external funding either from a donor or from a funding agency to pay these stipends. Because the Law Offices bills for its services, the hours worked by the Fellows could be charged to paying clients and, hence, the law school would be reimbursed for the cost of the fellowships.

\textsuperscript{15} The law school would work to secure funding to pay for the bar review course since Research Fellows would likely lose the opportunity to have someone else pay for their preparation course.