

DESEGREGATING THE LAW SCHOOL CURRICULUM: HOW TO INTEGRATE MORE OF THE SKILLS AND VALUES IDENTIFIED BY THE MACCRATE REPORT INTO A DOCTRINAL COURSE

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Ten years ago, the MacCrate Report provided a detailed look at law schools and the legal profession, ultimately identifying fourteen “fundamental skills and values that every lawyer should acquire before assuming responsibility for the handling of a legal matter.”¹ Some of these skills, such as legal analysis and reasoning, have long been a mainstay of a legal curriculum aimed at teaching students to “think like a lawyer.”² Other skills, however, have only recently begun to take their place in the formal curriculum.³

Often, these new skills courses are segregated from the traditional, doctrinal courses and are taught in very different ways. In a typical first year law program, for example, courses like Property, Contracts, and Torts may be taught primarily through the Langdellian or Socratic methods, in which students learn substantive law and legal analysis by reading cases and discussing them in class with the professor.⁴ The professor also develops the students’ analytical and problem-solving skills by asking them to consider how these rules would apply to hypothetical cases. Most, if not all, of this learning takes place through oral exchanges in the classroom; not until the final exam are students asked to put their analysis into writing.

Other lawyering skills, on the other hand, have been introduced into the curriculum through stand-alone courses such as Legal Writing, Legal Research, Legal Ethics, Negotiation, Interviewing and Counseling, Pre-Trial Advocacy,

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¹ AMERICAN BAR ASSOCIATION TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – ‘AN EDUCATIONAL CONTINUUM 7 (Robert MacCrate ed., 1992) [hereinafter MACCRATE REPORT].

² *Id.* at 236 (stating that “courses . . . ‘teaching substantive law and developing analytical skills’ comprise the core of contemporary law school curricula”).

³ *Id.* at 237. Karl Llewellyn advised students at Columbia Law School in 1929 that they would have to learn skills such as trial advocacy, counseling, and drafting on their own because the law school would not teach them. KARL LLEWELLYN, *THE BRAMBLE BUSH* 112 (1960).

⁴ See Richard K. Neumann, Jr., *A Preliminary Inquiry into the Art of Critique*, 40 HASTINGS L.J. 725, 728-38 (1989) (describing the Socratic dialogue and explaining how it relates to law school teaching).

Trial Advocacy, and Alternative Dispute Resolution. In contrast to the traditional, doctrinal courses, most of the "skills" courses are taught from a more practical, rather than theoretical, perspective. Although "skills" courses include some theory relevant to the subject matter, the courses are typically more "hands-on" in nature, allowing students to experience and practice these skills, rather than simply discussing them in a Socratic fashion.

Much has been written in the last decade about the need to desegregate the traditional law school curriculum. Deborah Rhode, for example, has urged the teaching of legal ethics across the curriculum,⁵ and legal writing experts have urged the same for writing.⁶ The MacCrate Report also recognized the need for integration, suggesting that conventional law school courses and teaching methods could be revised "to more systematically integrate the study of skills and values with the study of substantive law and theory"⁷ These writings, combined with a sense that students were not being fully prepared for the practice of law under the traditional approach, motivated me to begin integrating skills into my doctrinal courses. Other law instructors are doing so as well.⁸

Doctrinal teachers may be overwhelmed by the thought of integrating additional skills into their courses, particularly if the teacher is already struggling with coverage issues – what to teach, what to omit – in a semester-long course. The object of this article is to suggest how to achieve desegregation without greatly sacrificing coverage. To the extent that some coverage is sacrificed, however, this article suggests that integration provides an offsetting benefit because it greatly enhances the students' understanding of substantive theories by placing them in a practical, hands-on context.

Part I of this article sets forth the skills and values identified in the American Bar Association's task force report and discusses the movement toward teaching these skills and values across the curriculum. Part II gives examples of how this author has integrated some of the skills and values into two doctrinal courses, Property and Trusts & Estates. This part also offers examples suitable for Contracts, Professional Responsibility, and other courses. Part III discusses some of the potential obstacles to integration and ways to overcome them.

I. WHY TEACH SKILLS AND VALUES ACROSS THE CURRICULUM?

The realities of a modern law practice have created considerable discontent with the traditional legal education system, which focused on substantive

⁵ DEBORAH L. RHODE, PROFESSIONAL RESPONSIBILITY – ETHICS BY THE PERVERSIVE METHOD 4 (2d ed. 1998) (describing the underlying strategy of her book as "the premise that law schools should address professional responsibility issues throughout the curriculum as well as in courses specifically focused on the legal profession").

⁶ See, e.g., Carol McCrehan Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 NEB. L. REV. 561 (1997).

⁷ MACCRATE REPORT, *supra* note 1, at 128.

⁸ See, e.g., Robert E. Keeton, *Teaching Torts Through Exercises on Drafting Verdict Forms*, 45 ST. LOUIS U. L.J. 779 (2001); Barbara J. Busharis & Suzanne E. Rowe, *The Gordian Knot: Uniting Skills and Substance in Employment Discrimination and Federal Taxation Courses*, 33 J. MARSHALL L. REV. 303 (2000); Barbara Bennett Woodhouse, *Mad Midwifery: Bringing Theory, Doctrine, and Practice to Life*, 91 MICH. L. REV. 1977 (1993).

law and analysis, leaving it to law firms to teach new lawyers other practical skills.⁹ Thus, there is a growing consensus that law schools need to teach students a wider range of skills that they will need as practicing attorneys.¹⁰ The MacCrate Report provided a list of skills and values that it perceived as “fundamental” to the competent practice of law.¹¹ These skills and values are discussed below, along with the pedagogical objectives that motivated this author to integrate them into several doctrinal courses.

A. *The MacCrate Report*

The MacCrate Report was released just a few months before I began my teaching career and was enthusiastically embraced by the dean and faculty at my law school. Accordingly, I was greatly influenced by the report as I began developing my doctrinal courses, and I aspired to help create the “well-trained generalist” that the report envisioned.¹²

The report sets out ten skills and four professional values that the well-trained generalist should have. The skills are: problem solving;¹³ legal analysis and reasoning;¹⁴ legal research;¹⁵ factual investigation;¹⁶ communication;¹⁷ counseling;¹⁸ negotiation;¹⁹ litigation and alternative dispute-resolution proce-

⁹ See Busharis & Rowe, *supra* note 8, at 304 (“Time constraints and financial pressures have reduced the time practicing attorneys can spend mentoring beginning lawyers; however, members of the bar increasingly demand that students arrive for their first jobs with more than minimal competence in practical lawyering skills.”).

¹⁰ See, e.g., MACCRATE REPORT, *supra* note 1, at 4-6.

¹¹ *Id.* at 138-41.

¹² *Id.* at 124 (stating that “competent representation of a client still requires a well-trained generalist – one who has a broad range of knowledge of legal institutions and who is proficient at a number of diverse tasks”).

¹³ This skill includes identifying and diagnosing the problem; generating alternative solutions and strategies; developing a plan of action; implementing the plan; and keeping the planning process open to new information and new ideas. *Id.* at 138.

¹⁴ This skill includes identifying and formulating legal issues; formulating relevant legal theories; elaborating legal theory; evaluating legal theory; and criticizing and synthesizing legal argumentation. *Id.*

¹⁵ This skill includes knowledge of the nature of legal rules and institutions; knowledge of and ability to use the most fundamental tools of legal research; and understanding the process of devising and implementing a coherent and effective research design. *Id.*

¹⁶ This skill includes determining the need for factual investigation; planning a factual investigation; implementing the investigative strategy; memorializing and organizing information in an accessible form; deciding whether to conclude the process of fact-gathering; and evaluating the information that has been gathered. *Id.* at 138-39.

¹⁷ This skill includes assessing the perspective of the recipient of the communication and using effective methods of communication. *Id.* at 139.

¹⁸ This skill includes establishing a counseling relationship that respects the nature and bounds of a lawyer’s role; gathering information relevant to the decision to be made; analyzing the decision to be made; counseling the client about the decision to be made; and ascertaining and implementing the client’s decision. *Id.*

¹⁹ This skill includes preparing for negotiation; conducting a negotiation session; and counseling the client about the terms obtained from the other side in the negotiation and implementing the client’s decision. *Id.*

dures;²⁰ organization and management of legal work;²¹ and recognizing and resolving ethical dilemmas.²² The values are: provision of competent representation;²³ striving to promote justice, fairness, and morality;²⁴ striving to improve the profession;²⁵ and professional self-development.²⁶ As mentioned above, legal analysis and problem solving have long been at the core of doctrinal teaching, and they remain at the forefront of my courses as well. I have tweaked some of my methodology, however, in an attempt to incorporate a few of the other skills and values identified in the MacCrate Report.

This integration of skills and doctrine is somewhat controversial because it challenges what many in the academy perceive as a substance/skills dichotomy.²⁷ The "substantive" label is applied to doctrinal courses that have long been a part of the law school curriculum, while a "skills" label is given to courses focusing on practical skills that new lawyers were once expected to learn on the job.²⁸ Unfortunately, there is also a perception that the latter courses and skills are of lesser importance to the law school curriculum.²⁹

²⁰ This skill requires a working knowledge of the fundamentals of litigation at both the trial court and appellate level; advocacy in administrative and executive forums; and proceedings in other dispute resolution forums. *Id.*

²¹ This skill includes formulating goals and principles for effective practice management; developing systems and procedures to ensure that time, effort, and resources are allocated efficiently; developing systems and procedures to ensure that work is performed and completed at the appropriate time; developing systems and procedures for effectively working with other people; and developing systems and procedures for efficiently administering a law office. *Id.* at 140.

²² This skill includes familiarity with the nature and sources of ethical standards; the means by which ethical standards are enforced; and the processes for recognizing and resolving ethical dilemmas. *Id.*

²³ This value includes a commitment to the values of attaining and maintaining a level of competence in one's own field of practice and representing clients in a competent manner. *Id.*

²⁴ This value includes a commitment to the values of promoting justice, fairness, and morality in one's own daily practice; contributing to the profession's fulfillment of its responsibility to ensure that adequate legal services are provided to those who cannot afford to pay for them; and the profession's responsibility to enhance the capacity of law and legal institutions to do justice. *Id.* at 140-41.

²⁵ This value includes a commitment to the values of participating in activities designed to improve the profession; assisting in the training and preparation of new lawyers; and striving to rid the profession of bias based on race, religion, ethnic origin, gender, sexual orientation, or disability, and to rectify the effects of these biases. *Id.* at 141.

²⁶ This value includes a commitment to the values of seeking out and taking advantage of opportunities to increase knowledge and skills, and selecting and maintaining employment that will allow the lawyer to develop as a professional and to pursue personal goals. *Id.*

²⁷ See Lisa Eichhorn, *Writing in the Legal Academy: A Dangerous Supplement?*, 40 ARIZ. L. REV. 105, 114 (1998) (stating that "[m]ost faculty members believe they can distinguish 'skills' courses from 'substantive' courses offered at their schools").

²⁸ See Ruta K. Stropus, *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 LOY. U. CHI. L.J. 449, 453 n.36 (1996).

²⁹ See Eichhorn, *supra* note 27, at 114-17; Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 TEMP. L. REV. 117 (1997); Pamela Edwards, *Teaching Legal Writing as Women's Work: Life on the Fringes of the Academy*, 4 CARDOZO WOMEN'S L.J. 75 (1997). This hierarchical thinking leads to alienation and second-class citizenship of "skills" faculty. Eichhorn, *supra* note 27, at 115, 117-18. At the same time, it undermines the credibility of skills courses by leading students to think that

As a teacher of a traditional "doctrinal" course, I agree with the commentators who have labeled this a false dichotomy.³⁰ Granted, there may be a distinction between analytical and practical skills.³¹ There is also a belief that because analytical skills are "more closely tied to the lawyer's cognitive processes, they are more frequently viewed as the components of thinking like a lawyer."³² However, the MacCrate Report recognized that both types of skills are essential to competent lawyering and that "individual skills and values cannot be neatly compartmentalized."³³

Indeed, legal writing experts point to a symbiotic relationship between writing and analysis. As Carol McCrehan Parker observed, "[p]roducing effective legal writing draws upon all aspects of a legal education, and the development of communicative skills is inseparable from the development of analytical skills."³⁴ Similarly, Deborah Rhode asserts that "[l]egal ethics deserves discussion in all substantive areas because it arises in all substantive areas. To confine its analysis to a single course undercuts its significance and its central message – that moral responsibility is a crucial concern in all legal practice."³⁵

Nor can it be said that practical skills such as writing are less important than the substantive law and analysis taught in a traditional, doctrinal course. To the contrary, a survey of new lawyers in Chicago and Missouri suggested that "written communication" skills were second in importance only to "oral communication" skills.³⁶ These lawyers ranked writing skills higher than "ability in legal analysis and legal reasoning," "knowledge of substantive law," and "knowledge of procedural law" – "in other words, ahead of the knowledge and skills promoted by the case method/final examination system."³⁷

B. The Benefits of an Integrated Curriculum

I have found that teaching skills and values in doctrinal courses benefits a legal education program in three ways. The first and most obvious benefit is the enhancement of skills and values education. Second, and less obvious, are

writing and other skills are not "real" or not as important as their substantive courses. *Id.* at 113, 131-33. Accordingly, students fail to recognize that a skill such as legal writing is fundamental to all of their other courses, to passing the bar, and to practicing law.

³⁰ See, e.g., Busharis & Rowe, *supra* note 8, at 304; Eichhorn, *supra* note 27, at 117-23; Norman Brand, *Legal Writing, Reasoning and Research: An Introduction*, 44 ALB. L. REV. 292, 295 (1980); Kurt M. Saunders & Linda Levine, *Learning to Think Like a Lawyer*, 29 U.S.F. L. REV. 121, 126 (1994).

³¹ See Saunders & Levine, *supra* note 30, at 125 (noting a difference between practical skills, such as writing, and analytical skills, such as case analysis, synthesis, and critical evaluation of issues).

³² *Id.*

³³ MACCRATE REPORT, *supra* note 1, at 136.

³⁴ Parker, *supra* note 6, at 562; see also Busharis & Rowe, *supra* note 8, at 314 ("Legal writing cannot be isolated from other law school experiences; learning to write in the legal context is intimately related to learning to think and analyze in the legal context.").

³⁵ RHODE, *supra* note 5, at 4-5.

³⁶ Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469, 473-78 (1993).

³⁷ Philip C. Kissam, *Lurching Towards the Millennium: The Law School, The Research University, and the Professional Reforms of Legal Education*, 60 OHIO ST. L.J. 1965, 2006 (1999) (citing Garth & Martin, *supra* note 36, at 473).

the benefits to the doctrinal courses themselves. Finally, there is a synergistic effect when students are simultaneously exposed to substance, skills, and values.

1. *Enhanced Skills and Values Education*

Integrating additional skills and values into doctrinal courses results in expanded opportunities for students to learn and reinforces these fundamental lawyering tools. Secondarily, integration underscores the importance of these skills and values.

The development of skills, whether practical or analytical, requires practice. To become effective legal writers, for example, students “need to write in the discipline – a lot – to really understand how it functions.”³⁸ The same can be said of other skills. A student is likely to become more proficient at counseling clients if the student has participated in such exercises in various parts of the curriculum, as opposed to just one experience in a Lawyering Skills or Interviewing and Counseling course. Similarly, students acquire a heightened awareness of ethical issues if they see these issues spring up in the context of a substantive course, rather than in a compartmentalized Professional Responsibility course.

Isolating skills and values courses, on the other hand, can breed contempt. Lisa Eichhorn, for example, found that students are quick to “pick up on the institutional message that [a Legal Writing course], although required, is not to be taken seriously.”³⁹ Deborah Rhode makes a similar observation about teaching ethics solely as a stand-alone course: “Curricular priorities are apparent not only in what is said but also in what is unsaid, and pervasive silence makes a statement that no single course can counteract.”⁴⁰

Integrating skills and values into doctrinal courses sends the opposite message – that law schools perceive these skills and values to be of equal importance to the substantive law and analysis traditionally taught in those courses. But, more importantly, integration reduces the current imbalance in the resources devoted to teaching skills versus substance. If practitioners view written communication as the second most important legal skill,⁴¹ it makes sense to teach this skill as vigorously as we teach substantive law and analysis.⁴²

³⁸ Parker, *supra* note 6, at 566-67.

³⁹ Eichhorn, *supra* note 27, at 113; *see also id.* at 131 (“Professionals in the legal writing field must recognize that students, for some reason, do not feel they are taking a ‘real’ course when they study legal writing.”).

⁴⁰ RHODE, *supra* note 5, at 5.

⁴¹ *See supra* notes 36-37 and accompanying text.

⁴² The traditional law school response has been: “We teach [students] how to think, we’re not trade schools, we’re centers of scholarship and learning, practice is best taught by practitioners.” MACCRATE REPORT, *supra* note 1, at 4. The MacCrate Report suggests, however, that “law schools provide a unique opportunity for exposing students to the full range of these practice skills, an opportunity that might not be readily available in actual practice.” *Id.* at 234. The report states that law school instruction, through simulations and live client contacts, “enables students to relate their later practice experience to concepts they have learned in law school, just as students are able to place the substantive knowledge that they

2. Enhanced Knowledge of Substantive Law and Analysis

Introducing skills into my "doctrinal" courses has also helped solidify the students' substantive knowledge and analysis. For one thing, skills exercises offer an alternative – and often better – way for students to grasp substantive concepts. Second, writing exercises can help diagnose thinking/analysis problems or substantive misunderstandings long before the final exam stage of a doctrinal course. Finally, skills exercises help students see the substantive law from various perspectives, e.g., from the perspective of a drafter of legal documents rather than that of a litigator.

Much has been written about the different ways that students learn, and many of these educational theories explain why skills exercises are often a better way for students to learn substantive law in a doctrinal course. To give just a few examples, skills exercises:

- are a means of active, rather than passive, learning;⁴³
- allow students to learn substance in context, rather than in the abstract;⁴⁴
- appeal to tactual learners, who need to manipulate material in order to remember it, and kinesthetic students, who learn by doing;⁴⁵ and
- appeal to students with various preferences under the Myers-Briggs Type Indicator.⁴⁶

acquire after law school in the framework of the concepts they have learned in their substantive courses." *Id.* at 234-35.

⁴³ See Gerald F. Hess, *Principle 3: Good Practice Encourages Active Learning*, 49 J. LEGAL EDUC. 401 (1999).

Students' learning in and out of the classroom can be thought of as a continuum of increasing levels of activity. At one end of the spectrum, students listen to teachers or guest speakers. Their activity increases as they take notes, monitor their own level of understanding, write questions in their notes, ask questions in class, and organize and synthesize concepts. They are even more active when they discuss concepts or skills, write about them, and apply them in a simulation or in real life.

Id. at 401.

⁴⁴ See Paula Lustbader, *Teach in Context: Responding to Diverse Student Voices Helps All Students Learn*, 48 J. LEGAL EDUC. 402 (1998). In a study conducted at nine law schools, "[s]tudents explained that the most effective teaching techniques were those premised on contextualized learning." *Id.* at 404. Lustbader described contextualized learning as involving three concepts:

First, when students interpret new information, they relate it to their own lives and their existing knowledge structure. Second, when students develop their own ideas about the new concepts, express them, and reflect upon them, they own the concepts. Third, when students can articulate the concepts in a conventional context, they translate them. In short, to understand and use new information, students must be able to relate it, own it, and translate it.

(footnotes omitted). Lustbader suggested that instructors use "experiential, writing, or collaborative exercises" to promote such learning. *Id.* at 411.

⁴⁵ Busharis & Rowe, *supra* note 8, at 317 (suggesting that tactual students may learn by writing or by using charts and graphs; kinesthetic students may learn best through role-playing and solving "real" client problems).

⁴⁶ See, e.g., Vernelia R. Randall, *The Myers-Briggs Type Indicator, First Year Law Students and Performance*, 26 CUMB. L. REV. 63 (1995). Randall describes the various preferences under the Myers-Briggs Type Indicator and suggests instructional styles that each type prefers. Among the examples she gives are: introverts "tend to prefer writing over talking." *Id.* at 82. Sensing students "do their best work with . . . first hand experience that gives practice in skills and concepts . . ." *Id.* at 90. Intuitives do their best work with "learning assignments that put them on their own initiative, individually or with a group." *Id.* "Thinking

I have found skills exercises particularly helpful in testing students' understanding during the course of a semester, rather than at its end. Writing exercises, for example, can reveal substantive or analytical problems that students may be having.⁴⁷ Other types of exercises, such as counseling or negotiation, also require knowledge and application of substantive law and, therefore, can help instructors detect deficiencies early on.⁴⁸ More significantly, mid-semester exercises provide an opportunity for feedback and corrective action,⁴⁹ i.e., the opportunity for students to see where they are weak and learn the material before the exam. Students are rarely afforded that opportunity with the traditional, end-of-the-semester exam.⁵⁰

Writing projects also have the correlating benefit of promoting clear thinking. In presenting an argument to a reader, "the student must be able to articulate each step along the path of logic by which she reached the conclusion."⁵¹ Thus, the task of writing forces students to evaluate and refine analytical skills.

Drafting exercises, in particular, provide a unique learning opportunity. These exercises allow students to see the law from a scrivener's perspective; thus, students begin to see how to use the law for dispute prevention, rather than the litigator's view of dispute resolution. To do so, however, requires a thorough understanding and analysis of the substantive law.

3. The Synergistic Effect

Combining skills with substantive law has a synergistic effect because it prompts students to think holistically, rather than in a compartmentalized fashion. Skills exercises allow students to see how substantive knowledge is applied to actual law practice. More importantly, these exercises help students recognize the interrelationships between various skills and values. Effective negotiation, for example, requires knowledge of substantive law and skill in legal research, analysis, fact investigation, problem solving, counseling, and spotting ethical issues.⁵² A series of skills exercises, such as those described in Part II of this article,⁵³ also helps students see the relationship between different tasks at various stages in the representation.

law students need activities, like exposure to real clients, early in their legal education . . . [to] help them develop their less preferred feeling." *Id.* at 93. Judging students "require exercises which get them to operate without structure." *Id.* at 98. Perceivers "do their best work when . . . their work feels like play." *Id.* at 100.

⁴⁷ Parker, *supra* note 6, at 570-71.

⁴⁸ The negotiation exercise described in Part II-B, *infra*, gives several examples of this.

⁴⁹ Kissam, *supra* note 37, at 2007.

⁵⁰ James D. Gordon III made this tongue-in-cheek observation of law school exams:

Studies have shown that the best way to learn is to have frequent exams on small amounts of material and to receive lots of feedback from the teacher. Consequently, law school does none of this. Anyone can learn under ideal conditions; law school is supposed to be an intellectual challenge. Therefore, law professors give only one exam, the FINAL EXAM OF THE LIVING DEAD, and they give absolutely no feedback before then.

James D. Gordon, III, *How Not to Succeed in Law School*, 100 YALE L.J. 1679, 1692 (1991).

⁵¹ Parker, *supra* note 6, at 570.

⁵² See MACCRATE REPORT, *supra* note 1, at 136.

⁵³ See *infra* Part II-B.

Anecdotal experience with the Multistate Performance Test (MPT) suggests that many law students are not learning this holistic approach under traditional law school programs that segregate substantive and skills courses. The MPT, adopted by more than half of the states as part of their bar examination,⁵⁴ is “designed to test an applicant’s ability to use fundamental lawyering skills in a realistic situation. Each test evaluates an applicant’s ability to complete a task which a beginning lawyer should be able to accomplish.”⁵⁵ Yet a significant number of law graduates are unable to perform these tasks in a satisfactory manner.⁵⁶

Students who took practice MPTs in some of my courses demonstrated an ability to spot issues, to read and analyze cases, and to make legal arguments – e.g., skills that are routinely practiced and tested in doctrinal courses. They stumbled, however, on skills that are rarely practiced in doctrinal courses, such as compiling a list of known facts contained in various documents from the client’s file or preparing a plan for obtaining other relevant facts.

These latter tasks should not be daunting; arguably, the students should have been able to reason their way through these exercises by using the basic analytical skills they learned in their doctrinal courses. But many have not learned how to apply their analytical skills to a variety of practical lawyering tasks. Integrating skills exercises into doctrinal courses would help students bridge this gap by demonstrating the interrelatedness of the various tasks that doctrinal instructors might ask them to perform.⁵⁷ In other words, students need to learn that the writing and analysis skills they use to prepare a memo in a Legal Writing class are the same skills they will use to prepare a fact investigation strategy for a Property exercise, a sale agreement for their Contracts class, a complaint for Civil Procedure, or a closing argument for a Criminal Law course.⁵⁸

Some may argue that law schools should not be in the business of teaching students how to pass the MPT, just as grade schools and high schools should not conform their curriculum to standardized tests. This argument, however, fails to recognize that the MPT is testing skills that every new lawyer should have. Thus, to the extent that law schools are failing to teach students the skills they need to pass the MPT, they are failing to produce competent lawyers.

⁵⁴ National Conference of Bar Examiners, Multistate Examination Use, *available at* <http://www.ncbex.org/tests/jur.htm> (last visited July 26, 2002).

⁵⁵ National Conference of Bar Examiners, The MPT Multistate Performance Test, Description of the Examination, *available at* <http://www.ncbex.org/tests/mpt/mpt.htm> (last visited July 26, 2002).

⁵⁶ See, e.g., Steven D. Jamar, *Using the Multistate Performance Test in a LRW Course*, 8 PERSPECTIVES 118, 122 (2000) (reporting that twelve percent of the students in a legal writing course would have failed the MPT and an additional ten percent were very close to failure); Barbara M. Anscher, *Turning Novices into Experts: Honing Skills for the Performance Test*, 24 HAMLINE L. REV. 224, 228-29 (2001) (reporting that one-third to one-half of the students in an advanced writing class fail their first attempt at a simulated MPT).

⁵⁷ See Anscher, *supra* note 56, at 232.

⁵⁸ *Id.* (“You must show them that all legal tasks are based on the same basic skills of identifying the elements of a cause of action and defenses thereto (or simply identifying the applicable law) and applying those elements and defense (or the law) to the facts of the client’s case.”).

II. EXAMPLES OF INTEGRATING SKILLS INTO DOCTRINAL COURSES

Integrating skills into a doctrinal course can be as simple as turning a classroom hypothetical into a writing exercise or as complex as building a number of writing and role-play assignments into a series of exercises that simulate how a real-life case might progress. A modest approach is discussed below in the context of a Property course for first-year law students. A more ambitious approach is applied to an upper-class Trusts and Estates course. Finally, this part of the article concludes with three additional exercises that are adaptable to other courses.

A. *A Modest Approach: Integrating Skills into a Property Course*

The Multistate Performance Test format provides an excellent tool for integrating case analysis, legal writing, problem solving, and factual investigation into a first-year Property course. The MPT format is similar to a typical law school essay exam in that students are asked to analyze a legal issue in the context of a hypothetical fact situation. Like many essay exams, the MPT format may require this analysis in the form of a law office memorandum or letter to the client. The MPT often goes beyond this more typical assignment, however, asking students to create such things as a fact investigation checklist, closing arguments for a trial, or a legal document like a will, contract, or lease. Thus, students learn how their basic analytical skills (analyzing and applying law and facts) are used in a variety of contexts – even if they have never before performed that particular type of task.⁵⁹

The MPT format also differs from the typical essay exam in the amount of information given to the students and in what they are expected to do with that information. In an essay exam, students generally are given most, if not all, of the key facts (and perhaps some red herrings) and are expected to apply the law that they have learned and memorized during the course of a semester. In contrast, the MPT format presents the law and facts in three separate components: (1) An instruction memo, which gives a brief description of the client's case and the nature of the assignment (i.e., whether the students are to produce a memorandum, closing argument, etc.); (2) a file containing depositions, reports, and exhibits from which students must extract the relevant facts; and (3) a library containing cases, statutes, or other legal authorities relevant to the assignment. This format tests the student's ability to not only spot legal issues, but to identify the applicable law by reading and analyzing legal authorities; to identify actual facts from a variety of sources (sorting the wheat from the chaff); to use legal reasoning skills to solve the client's problem; and to synthesize this analysis into a written product.

One final distinction between the MPT and an essay exam is the level of detail given in the instructions. A typical law school essay exam might simply instruct students to "explain and analyze the rights and responsibilities of the parties under these circumstances." The instructor is likely expecting students

⁵⁹ Although some of these tasks may seem daunting to a student who has never drafted such documents in law school, the MPT usually simplifies the task by providing a sample form or detailed instructions of how to create such a document.

to spot the issues, identify and explain relevant law, identify the relevant facts (including facts that may be missing from the hypothetical scenario), analyze how the law applies to the facts, and reach conclusions about how the issues are likely to be resolved. Whether a given student recognizes each of these tasks, however, can be a hit-or-miss proposition. The MPT format, on the other hand, is typically more explicit in stating these requirements. The instructions memo is likely to expressly define one or more legal issues and state that for each of these issues, students are to: “identify the applicable rule(s) of law; set forth the known facts that relate to each rule; identify additional facts that must be developed under each rule, if any; and make a legal argument as to how the rule applies under the known and discoverable facts.”

These detailed instructions are helpful in several ways. First, they reinforce the students’ analytical skills by explicitly reminding them of the analytical process they must use. Several written exercises of this sort will help students build up to a final exam in which they are implicitly expected to perform these tasks. Second, by compartmentalizing these tasks, the MPT format makes it easier for the instructor to review the assignment with students – either by grading the exercise or by discussing it in class – and to quickly isolate the students’ weaknesses. For example, one student may be having difficulty reading and analyzing cases to discover the law while another is having difficulty finding facts in the file or determining what other facts are needed to establish all of the elements of a client’s case. These defects may be considerably more difficult to recognize in the typical essay exam that lacks explicit directions about what to discuss and in what order.⁶⁰

Discussed below are two exercises, with progressive degrees of difficulty, which can be completed using the MPT format during a single semester in a Property course. The examples are from the second semester of a six-hour Property course, but can be easily adapted to a first-semester course or a one-semester course. Also included below is a mediation demonstration that introduces Property students to alternative dispute resolution.

1. Starting Simple

I began implementing my writing campaign during the first week of Property II by turning an oral hypothetical problem into a written exercise. The reading assignment for that class period covered commissions for real estate brokers. The assigned cases formed the “library” for this exercise. When students arrived in class, I gave them a one-page instruction memo describing the basic background of the case and instructing them to “prepare a memo to guide our development of this case.”

⁶⁰ Because I had students do these exercises in a second-semester course, the students had already experienced typical law school essay exams. For most students, the only feedback they received was a grade, which told them only that they had done well or poorly in comparison to their peers. Unless they met with professors to review the exam, however, students were likely unaware of exactly why they earned that grade. The MPT format of these second-semester exercises allowed many students to see that they were skipping steps in their analysis on their regular essay exams – i.e., jumping to conclusions after stating legal rules (without any discussion of facts) or discussing facts without first laying out the legal rules.

The students were told that our clients had tried to sell their home with the help of a real estate broker, but none of the broker's prospective buyers had made any offers. The clients ended up finding their own buyer and signed a contract with him. For reasons unknown at this time, the buyer backed out of the deal. Nonetheless, the real estate broker has demanded that our clients pay a commission to him based upon the sale price set forth in the contract.

The instruction sheet directed students to write a memo on two issues: (1) whether the broker is entitled to a commission even though the clients found the buyer for themselves; and (2) whether the broker is entitled to the commission even though the deal fell through. For each of these issues, students were instructed to:

- identify the applicable rule(s) of law in the materials they had been assigned to read;
- set forth the known facts that apply to each rule;
- identify additional facts they would need to develop under each rule, if any; and
- make a legal argument as to how the rule applied under the known facts.

The "file" consisted of the background facts set forth in the instructions memo and a one-page listing agreement between our clients and the real estate broker.

Students were given about twenty minutes to complete the exercise in class, and we spent the rest of the period reviewing their answers. I outlined their answers on the blackboard as we went along, allowing the class to see how the various elements fit into a general analytical framework. Along the way, I stressed that this was the basic analytical process they would follow for almost any legal problem, from law school exams to actual practice.

This exercise puts into writing what the class might otherwise discuss orally. By identifying the applicable rules of law, students demonstrate that they have read and understood the law set forth in the day's reading assignment. By identifying the applicable known facts, they demonstrate an ability to read and understand the listing agreement, as well as sift through the background facts that are relevant under the law. The assignment then requires them to think about what is missing from these background facts. They need to find one or two additional facts necessary to support or refute the broker's demand for a commission. Finally, the exercise requires them to complete the analysis by determining how the law applies to the facts in a legal argument.

The exercise provides several additional benefits that are not available from a purely oral discussion. One obvious benefit is the practice that students receive in organizing and putting their thoughts on paper. The exercise also requires all students in the class to participate – not just the one or two students who might be called upon in an oral discussion. Finally, and perhaps most importantly, this exercise ensures that students understand the analytical process that must be used to resolve the legal issue. In an oral discussion of a hypothetical, for example, the student who is called upon might simply give an answer to the professor's question, without carefully explaining the analytical process the student used to reach that conclusion. Accordingly, other students may not understand the analysis or, worse yet, may get the mistaken impression

that the analysis is irrelevant so long as they can come up with the right conclusion. Putting the exercise into writing and discussing the analysis afterward addresses that problem.

The exercise has the obvious benefits of building and reinforcing problem solving, legal analysis, fact identification, and writing skills. In addition, by completing the exercise early in the semester, students learn the significance of the Socratic exchanges during the rest of the semester – i.e., they learn to think their way through hypotheticals given orally in class. They also learn how to organize these components into a written product for which they get immediate feedback, rather than practicing this skill only once in an end-of-the-semester exam. Finally, the act of writing is a form of active learning, which promotes better retention and understanding of the material, and a means of learning in context rather than in the abstract.⁶¹

2. *More Practice on Written Analysis and Fact Development*

The second assignment, which came several weeks later, was very similar to the first but required students to synthesize and apply several different rules and principles presented across a series of cases in the textbook. The exercise had two main objectives: The first was to bolster the students' writing and analysis skills; the second was to build the students' fact investigation skills.

We began the exercise during the first of two class sessions on a seller's liability for physical defects in real estate. The students had already read materials on express warranties and the implied warranty of habitability for new homes. For the next class, they were to read materials on the seller's duty to disclose defects in residential property. In lieu of the usual Socratic discussion of these materials, students were asked to respond to a written hypothetical. The instructions for the exercise were as follows:

We have been retained by Jack and Jennifer Smith regarding an unfortunate incident involving their new home. I am scheduled to meet with them next week and need your help in preparing for the interview.

The Smiths told our receptionist that they had recently purchased a home in the Carbonville area. Three months after they moved in, however, the home started developing huge cracks in the foundation. Shortly thereafter, the ground underneath the home collapsed entirely, taking the Smith's home along with it. The local building inspector told the Smiths that the ground collapsed because the home was constructed on top of an abandoned underground mine.

The Smiths want to know if they can sue Deadeye Cheatem, the person who sold them the house. To answer their questions, I need to know the law governing a seller's liability for condition of the premises being conveyed. I also need a list of questions to ask the Smiths and other sources to gather all of the facts we need to pursue an action against Cheatem.

Accordingly, I want you to read the materials on pages 638 to 670 of your Property casebook and prepare a memo for me that states the applicable rule(s) of law set forth in those materials. Then, I want you to break each rule of law into its component elements and, for each element, list the questions or inquiries we need to make to discover the facts relevant to that element.

⁶¹ See *supra* notes 43-44 and accompanying text.

We started outlining the memo during the first class. I asked students to give me the "black letter" rules and principles established in the various cases they had read for that day. We then broke these rules into their component elements and analyzed each element, one at a time, pulling together various materials from the readings to clarify exactly what the element required, whether there was a split of authority on the requirement, whether there were any exceptions to the rule, and what policy or purpose the element serves.

Through this exercise, students were able to see how all of their readings fit together into a coherent theme. This is the type of synthesis that law professors generally expect students to conduct on their own time by preparing course "outlines." I have found that many students do not do their own outlines, however, because they do not know how to go about this task. Accordingly, these students were pleasantly surprised when I told them they had just "outlined" the materials on warranties and instructed them to do the same thing for the seller disclosure rules for the next class. Thus, the exercise helped them to not only see the big picture for this area of the law, but also learn how they could repeat this task themselves for other subjects.

The exercise also reinforced the importance of breaking multi-element rules into their component parts and analyzing each component separately. On my past exams – even in upper level courses – too many students sloughed over their analysis of multi-element rules. They could identify all of the elements of the rule, but would briefly muster facts for only one or two of the elements, rather than applying a systematic analysis of every single element of the rule. Through this exercise, I emphasized that lawyers who omit proof of any single element of the rule would suffer a directed verdict against them at trial.

Students also learned how the policy underlying a rule could be important in determining whether to follow a majority or minority viewpoint. With the implied warranty of habitability, for example, courts are divided as to whether the warranty applies only to the first owner of the property or if it extends to subsequent purchasers as well.⁶² To decide this issue, courts may focus on the perceived purpose of the warranty. If, as one court suggested, the policy is to protect innocent purchasers and hold builders accountable for their work,⁶³ one could argue that the policy is best served by extending the rule to subsequent purchasers (at least within a reasonable time after the home is built).

To achieve the second objective of the exercise – building fact identification skills – the instruction memo gave students only a few basic details and required them to figure out how they would fill in the gaps. As mentioned earlier, a typical law school essay exam generally provides students with most, if not all, of the facts they need to resolve the issue. This exercise, on the other hand, forced students to start with virtually nothing and discover for themselves how to find the facts to prove or disprove a legal theory.⁶⁴

⁶² See, e.g., *Richards v. Powercraft Homes, Inc.*, 678 P.2d 427, 429-30 (Ariz. 1984) (discussing split of authority on whether implied warranty extends to remote purchasers or to those not in privity with the builder-vendor).

⁶³ *Vetor v. Shockey*, 414 N.E.2d 575, 576 (Ind. Ct. App. 1980).

⁶⁴ In giving some practice MPTs to my students in prior semesters, I found this to be the greatest area of difficulty for them, probably because this skill is not often practiced in law

Significantly, the instructions asked students to identify these facts by preparing a list of questions *for the clients*. This task required the students to translate each legal theory into questions that a layperson could understand. I have found through the years that this task is often difficult for students, and their ability to ask good questions depends, in large part, upon how well they understand the legal theory. On the issue of express warranties, for example, a student might bluntly inquire: "Did the seller make any express warranties about the condition of the property?" This type of question is weak not only because it assumes the client knows what an express warranty is, but also because it asks for a legal conclusion, rather than disclosure of the underlying facts. What the student really wants to know is whether the seller made any *statements or promises* about the condition of the property at any time. By learning to ask the question in this form, a student learns to use language that the client understands and, at the same time, avoids the legal conclusion of whether the statements constitute a warranty or not. In short, the exercise helps students better understand these substantive issues.

This assignment also provides a good vehicle for emphasizing the need to ask the client to produce any written documents relating to the case. One of the first places to look for a warranty, for example, would be in the real estate sales contract. A client, however, may not stop to think of whether a warranty was made within the fine print of that document. Similarly, many law students fail to recognize the importance of this document and the need to specifically request documents of this sort from their clients as a matter of routine.

This assignment, like the first one, was not graded. I did, however, review all of the students' papers and made numerous suggestions for improvement. This saved time for me, as the instructor, but still gave students considerable feedback on their work.

3. *An Introduction to Alternative Dispute Resolution*

Early in my teaching, I was invited to participate in a mediation training sponsored by the law school's Alternative Dispute Resolution Clinic. This training heightened my awareness of ADR techniques and their effectiveness and encouraged me to include this as one of the additional subjects addressed in my doctrinal courses. At the outset, I introduced ADR into my Property course in a parochial way – by merely adding, in the course of our Socratic dialogue, questions about how the case might be resolved differently if the parties had engaged in mediation rather than litigation. More recently, however, the director of our ADR Clinic, Suzanne Schmitz, persuaded the Property teachers to let her try a more engaging approach.

After students read a given case in Property, Professor Schmitz had several ADR students demonstrate how the case might have been addressed in mediation. They acted out the parts of mediator and disputants, demonstrating the various steps in the mediation process as well as the potential for a result very different from the one reached through litigation that was presented in the

school classes. While they scored well in identifying the law and applying it to known facts – things tested on the typical law school essay exam – they were less adept at discerning how they would acquire other relevant facts that were not readily apparent from the materials in front of them.

casebook.⁶⁵ Professor Schmitz then questioned the Property students about what they observed and led a discussion about mediation theory, its advantages, disadvantages, and practical applications.

This type of demonstration gives first-year law students one of their first exposures to alternative means of resolving disputes – i.e., something other than the trial and appellate court results presented through the cases in their textbooks. Accordingly, it helps serve the MacCrate Report's goal of providing students with "[a]n awareness of the range of non-litigative mechanisms for resolving disputes," as well as "[a]n understanding of the factors that should be considered in determining whether to pursue one or another" of these mechanisms.⁶⁶ It also serves as a means for recruiting students for the ADR Clinic and ADR courses. Many students have later remarked that, prior to this exercise, they had not considered mediation as a career option or knowledge of ADR as a skill required of the "well-trained generalist."⁶⁷

The preceding exercises demonstrate a few, low-maintenance ways of integrating additional skills into the Property course. I have tried other, more demanding projects in the course as well, including two exercises described below in Section C.⁶⁸

B. A More Ambitious Approach: Imitating Real-Life Practice in Trusts & Estates

When I took Trusts and Estates in law school, the emphasis was on case analysis and legal theory, as is true for most traditional, doctrinal courses. We discussed some basic types of wills and trusts, reviewed some sample documents, and considered how they might be used in practice. But we never actually drafted any documents. As a result, I left that class with a significant fear of drafting wills and trusts because I knew a lot about how a lawyer could botch a client's estate plan, but very little about how to actually do it right.

When I started teaching this course myself, I wanted to ensure that my students learned not only the pitfalls of an estate-planning practice, but some of the practical tools to avoid them as well. To do so, I integrated two writing exercises into the course: a will-drafting exercise and a trust-drafting exercise.

⁶⁵ Professor Schmitz's demonstrations often use the landlord-tenant case of *Louisiana Leasing Co. v. Sokolow*, 266 N.Y.S.2d 447 (N.Y. Civ. Ct. 1966). This case, which is typically presented in Property casebooks to teach the doctrine of constructive eviction, began with a dispute between two tenants in the same apartment complex. The landlord is seeking to evict the upstairs tenants, the Sokolows, because the downstairs tenants (the Levins) have repeatedly complained about the noise generated by the Sokolow's children. The court ultimately holds in favor of the Sokolows, concluding that the noise from their apartment was "neither excessive nor deliberate . . ." *Id.* at 450. Thus, the Levins must live with what the court described as "the hazards of modern apartment house living." *Id.* at 449.

Professor Schmitz's demonstration illustrates, however, how mediation might help both parties. During the simulation, for example, the parties discuss a variety of ways that the Sokolows might temper the noise coming from their apartment, such as the installation of carpeting, restricting the children's play to certain rooms, or restricting the types of activities the children can do during the hours that the Levins are at home.

⁶⁶ MACCRATE REPORT, *supra* note 1, at 196-97.

⁶⁷ See *supra* note 12 and accompanying text.

⁶⁸ See *infra* Part II-C.

To make these exercises more realistic, I introduced students to their client through a simulated interview. Then, to underscore some of the deficiencies in the wills they drafted, I had them negotiate the settlement of a will contest action initiated after their client's death. Along the way, I sprinkled in some real-life ethical issues. Each of these exercises and their benefits are discussed below.

Some of these exercises are done during class. Students complete other exercises outside of class but are generally given release time – i.e., classes are suspended for several days while working on the assignment. This is time well spent in my four-credit Trusts and Estates course. Giving up this time may be more difficult in a three-hour course, but is likely to be handsomely compensated by the depth of knowledge gained from the exercises.

1. The Client Interview

Several weeks into the course, students “meet” their estate-planning client through a simulated interview. This exercise is designed to raise ethical and substantive legal issues while demonstrating the “people” skills required for an effective interview.

I typically ask two of my colleagues to help out, one acting as the client and the other as either a relative or friend who has accompanied the client to the law office. Two or three students are asked to come to the front of the room to participate in a mock interview. The rest of the class is instructed to observe and make appropriate suggestions if they think their classmates at the front table are missing something.

This exercise comes just after students have completed the textbook materials on mental competency and undue influence. Accordingly, I privately ask the “client” to exhibit behaviors that might suggest a competency problem. The client's friend or relative frequently steps in to explain the client's wishes, which includes giving a substantial portion of the client's estate to the friend/relative.

It generally does not take long for one of the students in the audience to recognize the ethical and substantive issues raised by the friend/relative's presence. Asserting rules of confidentiality, attorney-client privilege, or possible undue influence, the student insists that the friend/relative must leave the room. Now the hard part: I ask the student to step into the lawyer's role and ask the friend/relative to leave. The entire class gets to observe how difficult it is to put a legal theory into practice – i.e., how to find the right words to explain why the friend/relative must leave.

The students also struggle to connect legal theory with practice as it relates to the client's disability. They suspect a mental competency issue and know from their studies that such incompetency would render a will invalid. But how do they raise this delicate issue? How do they determine competency? It is easy for students to assert, in a class discussion, that the lawyer must determine whether or not a client is competent; but a good “bed-side” manner is required to accomplish that task without offending the client.

Two examples illustrate this point. In one exercise, the “client” was a woman who wanted to give her estate to a bartender friend. My colleague gave an Oscar-worthy performance of eccentric behavior, including rummaging

about in a huge shopping bag of junk, taking off her dress because she was hot, and offering the students a can of beer. The student lawyers were convinced she was mentally incompetent and wanted a physician's examination before they would proceed. But in the discussion period after the exercise, a student in the audience suggested that maybe the client was an alcoholic who was intoxicated, rather than incompetent.

In another exercise, a colleague struggled with her speech, much as an older client might do after a stroke. Again, the students were convinced she was mentally incompetent and they spent virtually the entire interview talking to the client's friend, rather than to the client herself. Afterward, my colleague explained how offended she was that the lawyers had treated her as if she suffered from mental retardation. She told them that many elderly clients have difficulties with speech, but are still fully competent.

These are just a few of the issues lurking about the exercise. Other substantive issues may include disinheritance of a child or whether the client wants relatives to take an estate per stirpes, per capita, or per capita with representation. Thus, the exercise presents an excellent vehicle for translating theory into understanding. The student lawyers also get one of their first opportunities to discuss fees, which forces them to really think about what an appropriate fee might be and to put that justification into words. These are tough lessons to learn, but experience is often the best teacher, particularly with respect to "people" skills. Moreover, it is better that students learn from a fictitious client, rather than a real one.

2. The Will-Drafting Exercise

After we have completed all of the readings on wills, my students get a chance to actually draft one for our client. This exercise requires students to recognize the substantive legal issues we have discussed in class and to create a document that competently accomplishes the client's goals by avoiding the drafting pitfalls we have analyzed in our class discussions.

This is actually a two-part exercise. I start by giving the students an "Estate-Planning Questionnaire" that our client – the one they met in the client interview – has filled out to identify her family and list her assets. This questionnaire is attached to a memo from the senior partner that summarizes what the client wants done with her property. Many details are conspicuously missing from these instructions, however, and students are told that they may submit up to five questions for the client to obtain further clarification. "Bonus" points are available for asking good questions.

This task teaches students to look for the issues we discussed in class, such as alternate guardians/executors (what if the client's first choice predeceases her?), exoneration (does the client want the house to pass subject to the mortgage or with the mortgage paid off from other funds?), abatement (what if the client no longer owns a 1995 Porsche at her death?), distribution of stocks (what if the client's IBM stock splits, so she owns 200 rather than 100 shares?), distribution of gifts among relatives (per stirpes, per capita, etc.), and clear identification of charity beneficiaries (the local or national chapter of the Red Cross?).

After the deadline for submitting these questions – which is usually within just a few days of giving them the assignment – I post the detailed answers to their questions. They use those answers as well as the initial instructions to draft the will. In some cases, however, students are not given full answers. For example, I will not answer questions that ask for a legal judgment about how to draft the document; the purpose of the exercise is to force students to make those judgments for themselves. In addition, there are some factual details I expect them to discover for themselves. If I identify the local Red Cross chapter as a beneficiary, for example, I expect them to find out the full, legal name of the organization and its address.

To keep this drafting exercise fairly simple, and to avoid the problem of comparing apples to oranges when I grade, I give the students a very basic form will and instruct them to fill in the blanks and otherwise alter the will as needed to accomplish our client's objectives. I ask them to make these changes in bold-faced type so that I can readily see all of the changes they have made to the document.

The drafting exercise teaches students several things: (1) preventive drafting, i.e., how to draft clear, unambiguous, and complete documents that will avoid litigation; (2) how to alter a form document by revising some of its provisions or drafting new language that meets the client's needs; (3) the need to read and truly understand all of the provisions – including the boilerplate – in the form document; and (4) the attention to detail required to make sure the document accomplishes all of the client's objectives and protects against potential changes in the client's life after the will is executed.

Obviously, other methods can be used to teach these points. I have had many students tell me, however, that they learn better by doing, rather than through readings and class discussions. In fact, one student told me that he had drafted a number of wills for clients in our legal clinic, but did not truly understand what many of the provisions meant until he did this exercise in my class.

This exercise is graded and counts as twenty percent of the students' grade. I tend to make voluminous comments as I grade the documents, pointing out issues they missed as well as deficiencies in their language.⁶⁹ I also ask three or four students who did exceptionally well on the project to post their documents on the course web page for the rest of the class to review and compare.⁷⁰

I give the students two or three days of release time (i.e., we do not have formal class meetings) while they are drafting the will. The time period generally includes at least one weekend. This gives them ample time to complete the exercise without detriment to their preparation for other classes.

3. The Will Contest and Negotiation Exercise

After students have turned in their wills, I tell them to pretend that our client has died and that one of the relatives has started proceedings to contest

⁶⁹ Although many students find this extensive feedback very helpful, at least one student commented on a student evaluation form that "the professor expects us to get it perfect the first time."

⁷⁰ I use The West Education Network for several reasons, but other web-based products would work just as well.

the will on the grounds of mental incapacity and/or undue influence. Their task is to attempt to negotiate a settlement of this will contest. As mentioned earlier, one of the purposes of this exercise is to get the students to see some of the weaknesses in the wills that they drafted.⁷¹ It is also an opportunity for them to test their negotiation skills in what can be a very emotional setting. In addition, I try to slip in an ethical issue or two when they least expect it.

I got the idea for this exercise from the teacher's manual to the textbook I use, which provides complete instructions and role play as developed by Michael Kadens at the University of Toledo.⁷² I used these materials the first year but have since developed my own materials based upon the client I am using in a particular semester.⁷³

The basic scenario presents one or more relatives who are contesting the client's will and one or more beneficiaries opposed to the will contest. Many of these disputants have their own attorney, but some are represented by the same attorney. One of the attorneys may be the attorney who drafted the will.

Each of these latter scenarios presents a potential conflict of interest that most students fail to recognize. In one of my exercises, for example, I had one lawyer represent both a father and a minor child. The father, who had separated from the decedent but not yet divorced, was contesting a will that had completely disinherited him but left the majority of the estate to the minor child.⁷⁴ Most students failed to recognize that father and son had conflicting interests. Similarly, in another exercise, students failed to recognize the potential conflict that existed when the lawyer who drafted the will later represented a person who contested the will. This illustrates the problem caused by segregation of ethics and substantive law in the curriculum. Because this exercise did not take place in an ethics class, students were not looking for an ethical problem or did not think it was relevant in a Trusts and Estates setting.

Prior to negotiation day, students must complete a Negotiation Preparation Sheet, which forces them to evaluate their case – considering the worst case scenario as well as the best possible outcome if the case were litigated – and to strategize about the negotiation style they will use. The case evaluation requires students to understand the ramifications and shortcomings of the will they have drafted. In the case involving the estranged husband, for example, students had to determine what property the disputants would take (1) if the will was totally invalidated for lack of capacity or undue influence; and (2) if the will was valid but the estranged husband took his elective share. The latter question was an eye opener for many students who failed to recognize that the husband could disrupt the estate plan with his elective share. The exercise also illustrated the problem of determining what portions of the will give way to

⁷¹ I have alternated between providing all students with a sample will that contains many of the drafting errors from the students' own wills and simply instructing them to use one of their own wills for the exercise.

⁷² See, e.g., ROGER W. ANDERSEN ET AL., *FUNDAMENTALS OF TRUSTS & ESTATES – TEACHER'S GUIDE* 54-70 (1996) (offering a full set of materials for a negotiation exercise).

⁷³ I try to develop at least three different sets of materials for a particular course so that students who have participated in a particular set of exercises have graduated (and, therefore, their work product is not readily available) by the time I recycle that set of materials.

⁷⁴ This challenge was based on both an alleged incapacity/undue influence claim, as well as the husband's claim to an elective share.

provide for the elective share. Thus, students gained a much better understanding of how an elective share statute operates.

The exercise also exposes students to non-legal issues, such as the personal and practical issues involved in negotiations of this type. The decedent's property typically includes items with significant sentimental value to one or more parties. The role plays also build in animosity among the participants, such as natural sibling rivalry, stepsiblings, adopted siblings, and substantial gifts to a beneficiary outside the family. As a result, emotions typically run high when all of the parties and their attorneys begin the negotiations as a group. The student lawyers, therefore, get to see clients acting "on principle" or emotions rather than rational analysis. They quickly learn the value of negotiating with opposing counsel without the clients' presence and, as allowed under the rules, soon resort to this tactic. Students who play roles as clients learn valuable lessons as well. They learn what it feels like to be left out of the picture as their lawyers negotiate their fate outside in the hall. Some learn that their lawyers are pushing for what the lawyer perceives as "the best deal," even though the client wanted to settle for much less.

After students have negotiated for about an hour in small groups, we come back together as a class to compare results and discuss negotiation techniques as well as the ethical, legal, and practical issues that came along. Students finish the exercise by completing a Negotiation Assessment sheet that requires them to assess whether they accomplished their goals and what they learned from the exercise. Students submit the Negotiation Preparation and Negotiation Assessment sheets for my review, but they are not graded on the exercise.

4. The Trust-Drafting Exercise

At the end of the semester, after we have wound up our discussion of trusts, I have the students revise the client's estate plan by using a trust and pour-over will in place of the simple will they drafted mid-semester. This allows them to correct some of the problems they had with their wills the first time around (to the extent those provisions are still needed), and to put their knowledge of trusts into practice. Most importantly, they learn how a trust can avoid some of the problems they encountered with the simple will.

Here again, all students start with the same form trust. Thus, they are forced to read the entire document to consider what parts must be revised to meet their client's needs. I also give them the opportunity, at the outset, to analyze the instructions from the client to see what details have been omitted – such as what qualifies for educational expenses in a trust that provides for a beneficiary's education; whether the trustee of a support trust may consider a beneficiary's other sources of income; and how the resignation or removal of trustees is to be handled. In addition, because this exercise follows the class discussion of powers of appointment, the client's wishes generally will include the creation or the exercise of a power of appointment. The power of appointment will also typically raise a Rule Against Perpetuities issue that students must work through and resolve through a perpetuities savings clause or other means.

As with the will-drafting exercise, I give the students three or four days of release time from class while they are working on the project. The time frame

also includes two weekends and the deadline for submission is before final exams so that their work on this project does not unduly interfere with other classes. This exercise is graded and counts as thirty percent of the grade.

5. Additional Exercise: Advance Directives

About halfway through the semester, students are presented with some readings and materials on advance directives. We discuss the difference between living wills, a health care power of attorney, and the provisions of the Illinois Health Care Surrogate Act.⁷⁵ To bring the message home, however, I have the students fill out their own health care power of attorney during class. We walk through the form and I tell the students to fill in the blanks and check the appropriate boxes to carry out their wishes. This exercise is not graded; students can destroy the document afterward or, if they want it to take effect, execute it properly outside of class.

Although students could be asked to fill out the form for a "client," along with the other exercises discussed above, this exercise has more impact if students are putting themselves in the client's shoes.⁷⁶ Personalizing the form this way seems to heighten their interest while vividly demonstrating some of the difficult decisions a client has to make, such as whom to select as her representative and how much authority to give that person. My hope is that the exercise will also heighten their understanding of the language and effect of these documents and, secondarily, that it will encourage them to begin doing their own estate planning.

C. Other Examples, Other Courses

Many of the activities in Sections A and B are adaptable to courses elsewhere in the curriculum. Client interviews and negotiations, for example, can be used within almost any substantive area of law. Creative professors can also find ways to work a relevant drafting exercise into their courses, such as drafting a complaint in Civil Procedure,⁷⁷ drafting legislation for a Statutory Interpretation course,⁷⁸ or drafting jury instructions in an Employment Discrimination course.⁷⁹ The most obvious application, perhaps, is drafting a contract in a Contracts course or a contract or lease in a Property course. An example of the latter is discussed below, along with two writing exercises on Professional Responsibility topics – all of which can be modified for other courses.

1. A Contract Negotiation and Drafting Exercise

The early part of our second-semester Property course focuses on the real estate transaction, covering such topics as the broker's commission, title insur-

⁷⁵ 755 ILL. COMP. STAT. § 40/1 (2000).

⁷⁶ It also requires less work and paper because the instructor need not give students a client information sheet; rather, students use their own personal information to complete the form.

⁷⁷ Two of my colleagues, Jill Adams and Keith Beyler, require this of their first-year Civil Procedure students.

⁷⁸ My colleague, Patrick Kelley, does this in his Statutory Interpretation course. Another colleague, W. Eugene Basanta, has the exercise in a Health Legislation course.

⁷⁹ My colleague, Jill Adams, does this in her course.

ance, mortgages, and a seller's liability for defects in the physical condition of the property. My colleague, Wenona Whitfield, and I bring these issues to life with a contract negotiation and drafting exercise.

In this simulated real estate transaction, my colleague acts as the seller and I as the buyer. To create a competitive spirit, my colleague's students represent her in the transaction and my students represent me. We have varied the scenario from year to year, but generally we try to present several issues that students must negotiate to finalize a deal for us and ask them to modify a form contract for us to sign. In a second part of the exercise, students are informed that a variety of problems have arisen between the time the contract was signed and the date designated for closing. The students are asked to review the contracts they drafted to see how well (or how poorly) their document addresses the problems.

The negotiation, which takes place outside of class, is to last no longer than an hour. Students then submit the contract they negotiated for the professor's review. This part of the exercise is not graded, but we provide students with written comments about the work. The second part of the exercise is graded and counts for about twenty-five percent of the students' grades.

The negotiation exercise obviously provides students with an additional opportunity to hone their negotiation skills, but we also try to include at least one ethics issue. Typically, this comes in the form of some negative selling point on the home that the seller's negotiators are loathe to disclose, such as an undesirable neighbor. One year, for example, our undesirable neighbor had been convicted on several child pornography charges and, therefore, was required to register under the Child Sex Registration Act.⁸⁰ Another year, it was a twenty-two year-old with a rock band that frequently practiced in the garage. These negotiations led to spirited classroom discussions of whether the information should have been voluntarily disclosed and, in some instances, claims that the other side had "lied" about the situation in response to questions from the opposing counsel.

The drafting aspect of the exercise is quite manageable for students because they are given two form contracts as examples. Many students simply choose one of the forms and fill in the blanks, but good students recognize that neither form is perfect and, therefore, they are required to modify the form to meet their client's needs. Like the will and trust-drafting exercises discussed above, this assignment gets students to actually read and comprehend the various provisions in the documents. Failure to do so can come back to haunt them later in the second part of the exercise. Accordingly, students learn more about these contracts than they would from merely discussing, in Socratic fashion, a form contract in a textbook.

The second part of the exercise puts into writing a variety of hypotheticals that might otherwise be discussed orally. The assignment raises issues, such as: who bears the risk of loss when there is property damage that occurs after the contract is signed; what happens if the buyers cannot sell the home they currently own and/or cannot obtain financing; what happens when the buyers want

⁸⁰ 730 ILL. COMP. STAT. § 150/1 (2000).

to back out of the deal because of the undesirable neighbor; and, if the deal falls through, is the real estate broker entitled to a commission?

Each of these issues requires students to analyze and apply the legal principles discussed in their textbooks and in class, much as they would on a final exam. Because the exercise is in writing, however, it has the added benefits of the MPT-type assignments discussed in Section II-A above – giving students practice at organizing and putting their thoughts on paper; forcing all students in the class to participate in the analysis (not just one or two students who might be called upon in an oral discussion); and allowing the instructor to give individualized feedback on each student's ability to follow the analytical process required for each legal issue. Moreover, because the exercise is done outside of class, students may take as much time as they need to work on both their analysis and their writing. Finally, this exercise helps students perfect their drafting skills by requiring them to analyze the sufficiency of the documents they drafted.

2. *An Ethics MPT*

The exercise described in this section is perhaps most appropriate in a Professional Responsibility course, but my use in a Property course illustrates how instructors can teach ethics across the curriculum and how they can take advantage of a “teachable moment.” The exercise was in response to a “cheating” incident, which provided the perfect context for students to analyze both the law school ethics code and the state's rules of professional responsibility.

The incident arose around mid-semester and involved a web-based, multiple-choice quiz that students were allowed to take on their own time. The quiz was graded, but students were told they could use their books and other materials. Shortly after the quiz period began, Student A informed me that some of her peers had been working together on the quiz in the school's computer lab. Student A declined to name the other students, however, because she did not want to be a “snitch.” I sent an e-mail to all students, informing them that working together was a violation of the law school's ethics rules against unauthorized collaboration. Afterward, Student B informed me that she, too, had observed students working together, but she also declined to provide names.

Seizing this as a “teachable moment” – a chance to reinforce writing skills in a real-life situation involving virtually every member of the class⁸¹ – I prepared an MPT-type exercise, asking students to write a memo for the “Property Law Ethics Board.” The exercise set forth the basic fact scenario and directed the students to analyze two issues: (1) What responsibility, if any, do Students A and B have to report the alleged misconduct of the students observed working together in the law school computer lab?; and (2) Whether the students working together in the law school computer lab should be prosecuted for Academic Misconduct – Second Degree.

The “library” for this exercise included the applicable provisions describing “Academic Misconduct – Second Degree” in the law school's ethics

⁸¹ The ramifications were obvious for students directly involved in the incident. The other students were indirectly involved, in that their grades could be affected by a student who obtained a higher score from cheating.

rules.⁸² It also included Rules 8.3 and 8.4 of the Illinois Rules of Professional Conduct. Rule 8.3 requires a lawyer to report another lawyer's misconduct and Rule 8.4 identifies what constitutes misconduct.⁸³ The final component was a law school ethics rule that describes when a law student can be disciplined for violating the Illinois Rules.⁸⁴

Although some students were vocally displeased,⁸⁵ the exercise taught them a great deal about personal and legal ethics while continuing to reinforce their writing and analysis skills. In answering the first question, for example, students had to understand the relationship between the law school ethics code and the Illinois Rules of Professional Conduct, as well as the interpretation of the actual text of these rules. Similarly, the second question left room for interpretation of the unauthorized collaboration rule, as applied to the unique context of a graded, open-book, web-based quiz. Significantly, both of these authorities are forms of positive law, something that first-year law students rarely encounter. The vast majority of law in their textbooks comes from court cases; thus, this exercise gave them some much-needed exposure to laws made by legislatures and other rule-making bodies.

Also important was the requirement that students analyze the legal issues objectively, regardless of their personal beliefs. My hope was that the students who had worked together would understand why some students thought the collaborators had been cheating and, conversely, other students would understand why the collaborators thought their conduct was appropriate. This task proved extremely difficult for many students. In fact, one of my better students did not do well on the exercise because, as he realized for himself later, he gave only his own personal view instead of performing an objective analysis.

Another one of my better students complained that the exercise had "nothing to do with Property" and, therefore, should not be a factor in his Property

⁸² SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF LAW, ETHICS PROCEDURES § II-B (1999).

⁸³ ILL. RULES OF PROF'L CONDUCT R. 8.3(a) (1990) provides that "[a] lawyer possessing knowledge not otherwise protected as a confidence by these Rules or by law that another lawyer has committed a violation of Rule 8.4(a)(3) or (a)(4) shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation."

Rule 8.4(a) provides, in pertinent part:

(a) A lawyer shall not:

- (1) violate or attempt to violate these Rules;
- (2) induce another to engage in conduct, or give assistance to another's conduct, when the lawyer knows that conduct will violate these Rules;
- (3) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (4) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

Id. R. 8.4(a).

⁸⁴ The rule states:

If, within the Clinical Program of the School of Law, any externship for which academic credit is awarded, or in any position as a law clerk for a law firm or legal organization, the student is guilty of conduct which, if committed by an attorney, would violate the Code of Professional Responsibility as adopted by the Illinois Supreme Court, such student violates this code.

SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF LAW, ETHICS PROCEDURES § II-G (1999).

⁸⁵ Some students came to my office to complain, among other things, that it was inappropriate to "punish" the entire class this way for a wrong committed by a few and that it was inappropriate to test students on an ethics issue in a Property class. Similar comments were repeated by a handful of students in their course evaluations at the end of the semester.

grade. To the contrary, writing and ethics are fundamental for every lawyer and deserve just as much attention as substantive Property issues. The need for a formal discussion of the issue was evident from the very fact that this "cheating" incident arose in the first place. Obviously these students were unfamiliar with the law school rules; otherwise, they certainly would not have been working together in a public place.

Moreover, the exercise presented a perfect way to let students know that while the law school ethics code did not require Students A and B to identify the alleged cheaters, they would be required to report certain misconduct of fellow lawyers in the future if they practice in states that have a mandatory reporting rule. Although this rule is taught in our Legal Profession class, this exercise underscored the personal impact of the rule on these future lawyers in a way that an abstract classroom discussion could not.⁸⁶

3. A "Novel" Exercise for Professional Responsibility

A proliferation of popular, law-related novels provided the springboard for a writing exercise in my Professional Responsibility course. As I was reading one such novel for pleasure, it struck me that the various ethical issues presented in the book would make an excellent essay exam for my course. Instead of condensing the facts into an exam, however, I decided to have my students read the entire novel on their own time and then write a paper analyzing the issues.

I have found several novels that present a plethora of legal ethics issues, ranging from client confidentiality and run-of-the-mill conflicts of interest to more controversial conflicts of interest, such as lawyers having sexual relations with clients.⁸⁷ This exercise, therefore, is much like an essay exam that tests students' abilities to spot a multitude of issues and analyze them in writing. It is unique, however, in that students must wade through a 300-page fact pattern, much as they might have to do with a lengthy trial transcript or a series of depositions. In addition, the take-home format of the project allows students to conduct an in-depth review of the rules of professional responsibility as they apply to the novel. As a result, numerous students told me that they had a better grasp of the rules after completing this project than they had acquired from merely reading the rules and discussing them in class. Although some students initially thought the reading assignment would be onerous, most of

⁸⁶ The exercise also snared students in a confidentiality problem. The instructions to the quiz stated: "Because there may be other students who have not yet taken the quiz, do NOT discuss the quiz with anyone (including students who have already taken the quiz) until your professor authorizes you to do so."

I included the instruction because I was teaching a second section of Property later that day and, because both sections would be graded on the same curve, I did not want the second section to have an advantage by knowing about the quiz ahead of time. When it became apparent that this instruction had been violated, I had an opportunity to discuss with students a lawyer's duty of confidentiality. Here again, this personal experience illustrated to students – in a way that no abstract discussion could – exactly what this duty entails.

⁸⁷ Some of the books I have used include: PHILLIP MARGOLIN, *THE LAST INNOCENT MAN* (Bantam paperback ed. 1995); ALAN M. DERSHOWITZ, *THE ADVOCATE'S DEVIL* (Warner Books paperback ed. 1995); and BARRY REED, *THE CHOICE* (St. Martin's Press paperback ed. 1992).

them later confessed to me that they enjoyed the change of pace from the monotony of their casebooks.

This exercise was graded and counted as fifty percent of the grade in Professional Responsibility. I gave the students the novel mid-semester, and their papers were due the week before final exams.

III. OVERCOMING OBSTACLES TO INTEGRATION

Several potential obstacles could thwart efforts to integrate skills into doctrinal courses, but many of these obstacles can be avoided. To the extent that some impediments remain, however, I have found that the benefits of integration outweigh any detriments.

One of the primary roadblocks to integration is the time and effort required of the instructor. As a general rule, it takes considerably more time to prepare skills exercises than to prepare for the traditional Socratic dialogue. Moreover, while class lecture notes are easily reused each year, instructors typically must prepare new skills exercises each year to prevent students from recycling the work product of colleagues who took the course in a prior year.⁸⁸ Similarly, grading these exercises requires a significant commitment of time, which is particularly hard to find mid-semester.

These obstacles need not be insurmountable. There are a variety of resources available, for example, to help with the preparation phase. An instructor who wants to give an MPT-type exercise, for example, can find past MPTs on the Internet.⁸⁹ The National Conference of Bar Examiners also will provide grading guidelines and point sheets for other past exams for twenty dollars each or a five-pack for eighty-five dollars.⁹⁰ Some textbooks and teacher's manuals are beginning to include skills exercises in their materials.⁹¹ Publishers also offer a variety of supplemental materials containing skills exercises, such as Deborah Rhode's compilation of exercises and materials on ethics⁹² and workbooks published by the National Institute of Trial Advocacy.⁹³ Finally, instructors can also get ideas and materials from articles such as this one,⁹⁴ from teaching workshops such as those offered by the Institute for Law

⁸⁸ See *supra* note 73.

⁸⁹ National Conference of Bar Examiners, 1997 MPTs and Point Sheets, *available at* <http://www.ncbex.org/tests/mpt/97mpt.htm> (last visited July 26, 2002) (providing 1997 exams and grade point sheets); National Conference of Bar Examiners, February 1998 MPTs and Point Sheets, *available at* <http://www.ncbex.org/tests/mpt/98mpt.htm> (last visited July 26, 2002) (providing February 1998 exams and grade point sheets).

⁹⁰ National Conference of Bar Examiners, Study Aids Order Form, *available at* <http://www.ncbex.org/pubs/pdf/Study%20Order.pdf> (last visited July 26, 2002) (listing MPT exams from February 1998 to July 2001 with grade point sheets).

⁹¹ See ANDERSEN ET AL., *supra* note 72, at 54-70; JAMES L. WINOKUR ET AL., *PROPERTY & LAWYERING* (West 2002).

⁹² RHODE, *supra* note 5.

⁹³ See, e.g., NANCY KNAUER, *TRANSACTIONAL PRACTICE – THE FIELDS FAMILY: ESTATE PLANNING* (National Institute for Trial Advocacy 1998) (examining the issues confronting the Fields family in drafting a will, preparing a prenuptial agreement, selling a home, and administering an estate).

⁹⁴ See *supra* note 8 for examples of other instructors who have described how to integrate skills into a doctrinal course.

School Teaching,⁹⁵ from colleagues within their area of expertise, and from practitioners.

The burden of grading also need not be overwhelming. First, as illustrated by the examples in Part II, instructors need not grade every exercise. Students can gain almost as much if the instructor simply reviews the exercise in class, pointing out common errors and highlighting examples of good work.⁹⁶ Other alternatives are to have a teaching assistant do the grading or have students within the class grade/comment on each other's work.⁹⁷ I have chosen to grade at least one exercise in each of my classes because I believe that this type of feedback, given by the actual instructor, has the greatest impact. Although I typically have from fifty to seventy students in each of these classes, I have not found grading to be an impossible task. In a large class with multiple graded exercises, such as my Trusts and Estates class described above, I have assigned students to work in pairs or groups in order to reduce the number of papers to be graded.⁹⁸ This is not to suggest that grading is effortless; far from it. However, to the extent that an instructor is willing to invest time in grading, this time is well spent because, as explained above,⁹⁹ it allows instructors to diagnose and correct substantive or analytical problems.¹⁰⁰

A corollary complaint might be that skills exercises take up too much class time and, as a result, exacerbate the problem of trying to cover all of the subject matter in a semester. However, as indicated in Part II, I have students perform some skills exercises outside of class. Moreover, when actual classroom time is used, it "is not lost; the benefits of involving all students in a communicative activity may outweigh the loss of time available for oral discussion."¹⁰¹

A final obstacle to integrating skills in doctrinal courses is what the MacCrate Report characterized as "a lack of interest on the part of some faculty in either learning new teaching methods or in the nature of the skills material

⁹⁵ The Institute, which is part of the Gonzaga University School of Law, publishes *The Law Teacher* newsletter twice a year and sponsors an annual conference on current issues and ideas in law teaching. Gonzaga University, Institute for Law School Teaching, available at <http://www.law.gonzaga.edu/ilst/ilst.htm> (last visited July 26, 2002). Conference materials can be ordered through the Institute's web site. Gonzaga University, Institute for Law School Teaching, Publications and Resources, available at <http://www.law.gonzaga.edu/ilst/PubsResources/main.htm> (last visited July 26, 2002).

⁹⁶ See Parker, *supra* note 6, at 576-77.

⁹⁷ See Kissam, *supra* note 37, at 2007. Instructors should be aware, however, of the perception that teaching assistants lack the competence or authority to assign grades. Similarly, when students have been asked to exchange papers with a classmate, some have shown a reluctance to hurt a classmate's feelings by making negative comments. This reluctance can be addressed, however, by providing students with specific guidelines for their critique, and by assuring them that they are helping their classmates improve by giving them tactful, constructive criticism.

⁹⁸ This method, however, presents a risk that some students will "freeload" off the work of others in the group. One way to address this problem is to have all students in a group sign statements in which they declare that they have "meaningfully participated" in the group effort.

⁹⁹ See *supra* notes 47-51 and accompanying text.

¹⁰⁰ Parker, *supra* note 6, at 576-77 (noting that grading "may serve the additional purpose of class preparation by providing the teacher with a more complete sense of the class's progress than may be evident in class discussion").

¹⁰¹ Parker, *supra* note 6, at 578.

itself.”¹⁰² Barbara J. Busharis and Suzanne E. Rowe fleshed out these complaints by observing that learning new teaching methodology “takes time away from more well rewarded faculty activities,” such as research and scholarship.¹⁰³ They also note that legal writing and analysis probably came easily to law professors when they were students. “Now as law teachers, they are required to break legal analysis into components that a novice can understand, which many professors find difficult to do.”¹⁰⁴

The latter obviously is an obstacle that can be overcome with a modicum of effort. Law teachers who have the intelligence to quickly master these skills certainly would also have the intellectual ability to break them into teachable concepts. That brings the argument back to the issue of time and effort. Although doctrinal faculty must make a substantial personal investment to integrate skills into their courses, that investment will pay off in the form of better teaching and better-prepared lawyers.¹⁰⁵ Whether they are motivated to do so, however, is a question that faculty members must decide for themselves, perhaps with some motivation from their deans.

IV. CONCLUSION

The traditional law school program, which segregates doctrinal courses from stand-alone “skills” courses, is not achieving the MacCrate Report’s goal of producing “a well-trained generalist” who is proficient at a number of diverse tasks. To improve the quality of new lawyers, law schools need to desegregate by encouraging doctrinal faculty members to introduce a wider variety of skills into their courses. This article offers a number of reasons why doctrinal faculty should consider doing so and, should they accept the challenge, provides some concrete examples of ways to achieve integration in Property, Trusts and Estates, Contracts, Ethics, and other courses.

¹⁰² MACCRATE REPORT, *supra* note 1, at 241.

¹⁰³ Busharis & Rowe, *supra* note 8, at 313; *see also* Kissam, *supra* note 37, at 2014-15.

¹⁰⁴ Busharis & Rowe, *supra* note 8, at 312.

¹⁰⁵ *See* Kissam, *supra* note 37, at 2014 (suggesting that one response to arguments against spending this time on skills “could be that much professorial time currently committed to scholarship and consulting is not as socially valuable as we commonly think and that law professors should be committing more time to effective teaching”).