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Equipping Our Lawyers: Mitchell's Outcomes-Based Approach to Legal Education

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Equipping Our Lawyers: Mitchell's Outcomes-Based Approach to Legal Education

Abstract

It is timely that the William Mitchell Law Review has decided to dedicate an issue to outcomes in legal education. As a long-time innovator in pedagogy, professional skills education, and experiential learning, William Mitchell has once again emerged as a leader in its outcomes-based approach to course and curricular design. Amid the current climate of uncertainty in legal education and the legal profession, and as a relative newcomer to Mitchell's history, I believe in Mitchell's future – tied to the past, but innovative and distinct. In this essay, I share our vision for increasing emphasis on outcomes, expanding experiential learning opportunities, and creating more flexibility for students.

Keywords

legal education, pedagogy, curriculum, experiential learning, skills, outcome-based learning, legal writing, pilot program, course design

Disciplines

Legal Education

**EQUIPPING OUR LAWYERS: MITCHELL’S OUTCOMES-
BASED APPROACH TO LEGAL EDUCATION**

Gregory M. Duhl[†]

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It is timely that the *William Mitchell Law Review* has decided to dedicate an issue to outcomes in legal education. As a long-time innovator in pedagogy, professional skills education, and experiential learning, William Mitchell College of Law has once again emerged as a leader in its outcomes-based approach to course and curricular design. Amid the current climate of uncertainty in legal education and the legal profession, and as a relative newcomer to Mitchell’s history, I believe in Mitchell’s future—tied to the past, but innovative and distinct. In this essay, I share our vision for increasing emphasis on outcomes, expanding experiential learning opportunities, and creating more flexibility for students.

I. INTRODUCTION

During the economic recession of the past several years, law schools across the country have grappled with the “business” of legal education. Concerns have included increases in student debt load,¹ the declining job market for lawyers,² competition for applicants,³ *U.S. News & World Report* rankings,⁴ alumni giving,⁵ and

1. See, e.g., Jack Crittenden, *A Wise Investment?*, NAT’L JURIST, Mar. 2010, at 36, 36 (observing, with respect to law school generally, that “tuition and student debt loads have increased so much that the value proposition indeed appears out of whack, especially given the new realities of lower starting salaries”).

2. See, e.g., William R. Slomanson, *State Civil Procedure Plea*, 54 J. LEGAL EDUC. 235, 239 (2004) (“As our graduates face a declining job market, they will have to hone their practice skills to be competitive.”).

3. See, e.g., Bernard A. Burk & David McGowan, *Big but Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy*, 2011 COLUM. BUS. L. REV. 1, 107–08 (“In other words, the market among law schools for qualified applicants will become more competitive.”).

4. See, e.g., Paul D. Carrington, *The Pedagogy of the Old Case Method: A Tribute to “Bull” Warren*, 59 J. LEGAL EDUC. 457, 466 (2010) (“My Utopian law school would not do well in the rankings provided by *US News & World Report* because it could

tuition discount rates.⁶ Like all other law schools, William Mitchell College of Law is affected by these concerns.

Foremost among these concerns is the apparent uncertainty of the future of the legal market. Practitioners face widespread layoffs and reduced compensation, and many are considering alternative legal careers.⁷ Clients and law firms alike have been sending more legal work abroad.⁸ More and more clients are using flat-fee billing, as opposed to hourly billing, which requires more efficient legal work.⁹ In addition, consumers increasingly expect legal work to be delivered online.¹⁰

Despite these concerns and uncertainties, we have reason for optimism at William Mitchell. The “business” of legal education demands, above all, a strong academic program, and we have used the past several years to reflect on and strengthen our teaching and curriculum. William Mitchell has built on its history of innovation in professional skills education and experiential learning by

not compete in the expenditure of money.”).

5. See, e.g., Robert S. Chang & Adrienne D. Davis, *An Epistolary Exchange Making Up Is Hard to Do: Race/Gender/Sexual Orientation in the Law School Classroom*, 33 HARV. J.L. & GENDER 1, 47 (2010) (“On the other hand, law school administrators know that today’s student is tomorrow’s alum and that alumni giving is a big part of law school budgets and endowments.”).

6. See, e.g., Richard A. Matasar, *The Viability of the Law Degree: Cost, Value, and Intrinsic Worth*, 96 IOWA L. REV. 1579, 1586 (2011) (“In recent years, students have become significantly savvier about costs. They bargain for higher scholarships, ask about the standards for retaining scholarships, seek information about future tuition hikes, and induce schools to bid for their admission with ever higher awards.”).

7. See Jamie R. Abrams, *A Synergistic Pedagogical Approach to First-Year Teaching*, 48 DUQ. L. REV. 423, 425 (2010) (“Practitioners are likewise facing wide scale layoffs, reduced compensation, and greater career uncertainty. The changing legal market has positioned practitioners to explore non-traditional careers, to enter new fields, and to work in more temporary roles.” (footnotes omitted)).

8. See Cassandra Burke Robertson, *A Collaborative Model of Offshore Legal Outsourcing*, 43 ARIZ. ST. L.J. 125, 131 (2011) (“Just as the millennium bug sparked an increase in technology offshoring, the ‘Great Recession’ beginning in 2008 sparked a significant increase in the offshoring of legal work, pushing both clients and law firms to consider sending more legal work abroad.” (footnote omitted)).

9. See Natalie J. Spears, *Keeping Access Cases Affordable: Alternative Fee Arrangements*, COMM. LAW., Aug. 2011, at 22, 26 (outlining the economic pitfalls of the billable hour and the trend toward flat fees).

10. ALA Int’l News, *Trends in the Global Practice of Law*, June–July 2010, at 12, available at http://www.alanet.org/publications/issue/junjul10_an/ALANewsJuneJuly_Explore.pdf (“While this research was conducted in the United Kingdom, the UK legal market is not much different than the U.S. legal market. The research shows that more and more consumers are expecting legal services to be delivered online.”).

grounding more of our programs and courses in desirable student outcomes.

Recently, the goals of our curricular planning have been as follows: (1) to articulate core knowledge, skills, and professional attributes for students and (2) to align teaching and curriculum with desirable outcomes.¹¹ Out of this planning has emerged a new orientation program; an integrated first-year pilot curriculum; Pathways to the Profession of Law (“Pathways”); two new courses with explicit student outcomes in counseling, negotiating, and drafting in the transaction and settlement contexts;¹² a greater focus on experiential learning, including new externship courses, client-representation clinics, and project- and problem-based learning courses; the birth of the Keystone; and explicit writing outcomes with an emphasis on discursive writing, prescriptive writing, and instrumental practice documents. What transcend these developments are the emphases on desirable student outcomes and the renewed commitment to student access that underlies an emerging vision for William Mitchell’s future.

Part II discusses William Mitchell’s role at the forefront of innovative professional skills education. Part III reviews William Mitchell’s recent emphasis on outcomes-based education in our academic programs and courses. Part IV concludes by presenting what I perceive that many faculty members share as the vision for William Mitchell’s future.

II. HISTORY OF INNOVATION IN PROFESSIONAL SKILLS EDUCATION

William Mitchell has always been a leader in professional education, with such leadership defined by the publication *Educating Lawyers: Preparation for the Profession of Law* (“*Carnegie Foundation Report*”) as the “aim to initiate novice practitioners to think, to perform, and to conduct themselves (that is, to act morally and ethically) like professionals.”¹³ The authors of the *Carnegie Foundation Report* discuss three dimensions of professional work: the apprenticeships of thinking (knowledge), performing

11. FUTURE OF LEGAL EDUCATION TASK FORCE, STATUS REPORT 3 (2009) (on file with author) [hereinafter FUTURE OF LEGAL EDUCATION TASK FORCE STATUS REPORT].

12. These two new courses are Transactions and Settlements, and Deals and Dispute Resolution: A One-Week J-Term Simulation.

13. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 22 (2007) [hereinafter CARNEGIE FOUNDATION REPORT].

(skills), and behaving (professional identity and purpose).¹⁴ These practical tasks are consistent with William Mitchell's vision of instilling an ethic of service in graduates along with "the practical wisdom to put the law to work."¹⁵

As early as 1973, William Mitchell College of Law graduate and future Minnesota Supreme Court Justice Rosalie Wahl, along with our colleague Roger Haydock, began a clinical program for William Mitchell's students who attended school part-time.¹⁶ Rosalie ran the criminal clinic and Roger ran the civil clinic.¹⁷ Alberta Dowlin, affectionately known as "Bert," assumed the roles of administrator and secretary of William Mitchell's clinical program.¹⁸ In 1983, William Mitchell won the National College of Trial Lawyers Emil Gumpert Award for Excellence in Teaching Trial Advocacy for the work of Professors Roger Haydock and John Sonsteng in teaching trial advocacy to William Mitchell students and in further developing the National Institute for Trial Advocacy.¹⁹ When Rosalie Wahl was chair of the American Bar Association Section of Legal Education and Admissions to the Bar in 1987, she appointed what has become known as the MacCrate Commission, which produced the *MacCrate Report*.²⁰ According to former William Mitchell Dean and current faculty member James Hogg, "The MacCrate Report . . . is a landmark contribution to the business of encouraging law schools to pay considerably more attention to the training of law students in skills that will equip

14. *Id.* at 27–28.

15. *About William Mitchell College of Law: Mission and Vision*, WM. MITCHELL C. L., <http://www.wmitchell.edu/about/mission.html> (last visited Dec. 31, 2011).

16. Douglas R. Heidenreich, *Foreward: Thirty Years of Clinical Legal Education at William Mitchell College of Law*, 30 WM. MITCHELL L. REV. 1, 2 (2003) ("Still, because of the rules governing the unauthorized practice of law, these students had never been able to do real 'lawyer work' with real clients. As the idea of law school clinical programs began to take hold, states began to amend their rules to allow law students, working under supervision, to represent indigent civil litigants and to prosecute or defend against minor criminal charges."). For more on Rosalie Wahl's vision for clinics at William Mitchell, see Ann Juergens, *Rosalie Wahl's Vision for Legal Education: Clinics at the Heart*, 30 WM. MITCHELL L. REV. 9 (2003).

17. Heidenreich, *supra* note 16, at 3.

18. *Id.*

19. E-mail from Jennifer Miller to author (Oct. 27, 2011, 11:44 CST) (on file with author); Resumé of John O. Sonsteng, Professor of Law, William Mitchell Coll. of Law (on file with author); E-mail from Nancy Ver Steegh, Professor of Law & Vice Dean for Academic Programs, William Mitchell Coll. of Law, to author (Oct. 27, 2011, 20:20 CST) (on file with author).

20. James F. Hogg, *Rosalie Wahl: Her Extraordinary Contributions to Legal Education*, 21 WM. MITCHELL L. REV. 13, 13–14 (1995).

them to effectively function as practitioners and professionals.”²¹

Writing and Representation: Advice and Persuasion (“WRAP”) and Advocacy grew out of two previous simulation courses: Legal Writing²² and Lawyering, formerly known as Lawyering Skills.²³ WRAP was first offered in fall 2000, and the last Lawyering class was taught on November 29, 2001.²⁴ Advocacy was offered for the first time on January 8, 2002.²⁵ There is a great deal of William Mitchell folklore about the meetings between the skills professors that led to both the creation of WRAP and Advocacy, and the division of coverage among the courses.²⁶

21. *Id.* at 14. The title of my essay is inspired in part from this quote.

22. Professors Chris Kunz and Ken Kirwin coordinated the last year of the Legal Writing class before Professor Kunz stepped out of Legal Writing. According to Professor Kirwin, “One of Chris’s good ideas, which we retained in WRAP, was giving each large section’s set of writing profs a chance to meet together with one or both coordinators before each class.” E-mail from Ken Kirwin, Emeritus Professor of Law, William Mitchell Coll. of Law, to author (Oct. 26, 2011, 09:15 CST) (on file with author).

23. E-mail Peter Knapp, Professor of Law, William Mitchell Coll. of Law, to author (Oct. 21, 2011, 16:40 CST) (on file with author).

24. *Id.*

25. *Id.*

26. According to Professor Peter Knapp, tongue-in-cheek, “When WRAP and Advocacy were designed, Roger [Haydock], Ann [Juergens], Deb [Schmedemann], Ken [Kirwin], and I did sit around a table and work through the division of coverage, exercises, etc. I remember it as a very pleasant series of 92 weekly meetings, each approximately four or five hours long.” *Id.* Ken Kirwin responded, “Everything that Peter says sounds right except that although the five of us had a lot of long meetings, the meetings were probably not that many or that long.” E-mail from Ken Kirwin, Emeritus Professor of Law, William Mitchell Coll. of Law, to author (Oct. 21, 2011, 20:55 CST) (on file with author). WRAP coordinator Darlene Finch might be our most reliable historian. She recalls, “Oh yes, you mean those two-hour meetings that we had every Tuesday afternoon for about a year?” E-mail from Ann Juergens, Professor of Law, William Mitchell Coll. of Law, to author (Oct. 25, 2011, 11:30 CST) (on file with author). According to Ann Juergens, “[Darlene] remembers them well! She states that she was very glad to be part of them also because she then understood the reasoning behind the various components of the course, and that made her more effective in her work with the new course.” *Id.* Staff administrator Greta Hansen also attended the meetings. *Id.*

There also seemed to be a series of meetings about how much space legal writing would require. According to Chris Kunz, “The co-location [of Legal Writing and Lawyering] took place before I left the program in summer 1999. I remember being in one of the ‘space’ meetings and haggling over how much space legal writing would require. Later, when Darlene’s space was doubled, our prediction came true.” E-mail from Christina Kunz, Professor of Law, William Mitchell Coll. of Law, to author (Oct. 25, 2011, 16:56 CST) (on file with author). Ann Juergens adds, “In another testament to our youth, sometime around then we also co-located our physical offices so that staff could work together as they

A. *WRAP and Advocacy: Simulation Courses*

Students take two semesters of WRAP in their first year.²⁷ In the first semester, students learn fundamental research, analysis, and writing skills, as well as techniques for counseling and representing clients. In the second semester, these abilities are further refined and students acquire additional skills for use in the various settings where lawyers persuade other lawyers and judges, including in contract negotiation, dispute mediation, and motion practice.²⁸ Students are divided into four or five large sections, then further divided into homerooms of twelve students, where they are taught by two adjunct faculty members who are both practicing lawyers: one a professor of writing and the other a professor of representation. During most weeks, the writing professors teach two-hour homeroom classes and work with students on legal research, reasoning, and writing. During certain weeks, representation professors conduct and give feedback on exercises in “representation” skills, including interviewing, counseling, negotiation, and oral argument. In the first year, WRAP provides students with an intimate classroom experience.

administered these new skills courses.” E-mail from Ann Juergens, Professor of Law, William Mitchell Coll. of Law, to author (Oct. 25, 2011, 11:30 CST) (on file with author). As I was not a full-time faculty member when these meetings took place, I rely solely on the historical anecdotes of my colleagues. However, I do add that meetings of the skills faculty, of which I include myself, now take only an hour, every other week, and the meetings are still pleasant. In my three-plus years at William Mitchell, I have learned that Darlene is the cornerstone of the WRAP program. She was hired in June 1998 and Chris Kunz recounts, “Ken and I hired Darlene in a summer when Deb was rotated out of the program. I still remember her interview in Ken’s office and how well it went.” E-mail from Christina Kunz, Professor of Law, William Mitchell Coll. of Law, to author (Oct. 25, 2011, 16:56 CST) (on file with author). Darlene was hired in July 1998 just after the co-location of what became WRAP and Advocacy occurred. E-mail from Darlene Finch, WRAP Adm’r, William Mitchell Coll. of Law, to author (Nov. 1, 2011, 07:00 CST) (on file with author).

27. According to Professor Kunz:

Legal Writing received its 5th and 6th credits from the demise of the required course called Legal Process or Legal Method—I forget which. That occurred in the mid-1980s, I think, after Deb did some hard work studying the differences among the four sections of the course and came to the realization [that] the contents of the course could be taught with more uniformity and context in the Legal Writing course.

E-mail from Christina Kunz, Professor of Law, William Mitchell Coll. of Law, to author (Oct. 25, 2011, 16:51 CST) (on file with author).

28. *WRAP: Mastering the Fundamentals*, WM. MITCHELL C. L., <http://www.wmitchell.edu/Legal-Practice-Center/WRAP> (last visited Dec. 31, 2011).

Students also meet from time to time with reference librarians, and in their large sections, with one or both of the WRAP coordinators. Two full-time faculty members coordinate WRAP.

In fall 1994, my colleagues, Roger Haydock, Ann Juergens, and Peter Knapp, first offered Lawyering Skills—later called Lawyering. Lawyering grew out of Civil Practice and Trial Advocacy, and this required three-credit course explored a lawyer’s relationship with clients, decision makers, and opposing parties and counsel. Teaching methods included videotapes, live demonstrations, readings, class discussion, student performance, and critiques by adjunct professors.²⁹ According to Professor Knapp, one of the original teachers of the course,

Lawyering was a three[-]credit course that supplanted Trial Advocacy in, I believe, [s]pring of 1995. A pilot section of the course was offered in [f]all of 1994 to a group of 18 students (many of whom survived the experience and returned to Mitchell to teach as adjuncts—two of them in Tax). The course covered a broad range of representation skills and included exercises on interviewing, client counseling, contract negotiation, mediation, direct and cross-examination, and a final trial.³⁰

Professor Juergens adds,

For example, as Peter [Knapp] recounts, Lawyering was created in the mid-’90s. Teachers of Trial Advocacy and of Civil Practice—a 2[-]credit interviewing, counseling, negotiations course that was an elective—got together to redesign the second[-]year required skills course. We believed that students needed exposure to ICN [Interviewing-Counseling-Negotiation] skills in addition to trial skills. So we took what I believe were two two[-]credit courses (TA [Trial Advocacy] and Civ Practice), pulled them apart and knitted them back together to create [a] 3[-]credit Lawyering course. We wrote a textbook and created a series of videotaped ex[e]mplars.³¹

Taken in the second or third year of law school, students in

29. Deborah A. Schmedemann & Christina L. Kunz, *A Decade of Developments in Performance-Based Legal Education*, 21 WM. MITCHELL L. REV. 673, 674 (1995).

30. E-mail from Peter Knapp to author, *supra* note 23.

31. E-mail from Ann Juergens to author, *supra* note 26. Professor Juergens adds, “Yes, we were doing outcomes based planning and backward design decades ago.” *Id.*

Advocacy learn advanced research skills and how to conduct discovery, examine witnesses, make opening and closing statements, write appellate briefs, and present appellate oral arguments.³² Students convene in (1) a large group for weekly two-hour meetings with full-time faculty for role-play demonstrations, discussions, and critiques of videotaped performances; (2) small writing groups to facilitate the writing of two drafts of an appellate brief and the making of an appellate argument; and (3) six-person groups with a variety of adjuncts to perform skills exercises for depositing a witness, for direct and cross-examination, for making a closing argument, and for bench trials. Five full-time faculty members teach Advocacy on a rotational schedule—two per semester.

B. Clinics and Externships

Since its inception in 1973, our clinical program has allowed over 7,000 students to provide direct representation to over 18,000 clients.³³ Our clinics are committed to public service and learning through experience, and they are available to both full-time and part-time students. All full-time faculty who teach in clinics are tenure track or tenured; in addition, they teach other doctrinal and skills classes. We regularly offer eleven live-client clinics: Civil Advocacy, Community Development, Criminal Appeals, Immigration Law, Intellectual Property, Law and Business, Law and Psychiatry (with the University of Minnesota Medical School), Legal Assistance to Minnesota Prisoners (LAMP Clinic), LAMP/the Reentry Clinic, the Legal Planning Clinic for Tax-Exempt Organizations and Low-Income Clients, and the Misdemeanor Clinic.

In addition to the clinics, many students elect to participate in externships, which afford them the opportunity to work with expert practitioners and judges. We now regularly offer nine externship courses: the Administrative Law Externship, the Bankruptcy Law

32. *Advocacy: Preparation for Practice*, WM. MITCHELL C. L., <http://www.wmitchell.edu/Legal-Practice-Center/Advocacy> (last visited Dec. 31, 2011).

33. FUTURE OF LEGAL EDUCATION TASK FORCE STATUS REPORT, *supra* note 11, at 5. According to my colleague Roger Haydock, "I'd estimate we have served more than 18,000 clients. That's less than 3 clients per student. I'd estimate it at over 25,000 clients, maybe even closer to 30,000. The 7,000 students is a bit low to me as well." E-mail from Roger Haydock, Professor of Law, William Mitchell Coll. of Law, to author (Oct. 27, 2011, 14:48 CST) (on file with author).

Externship, the Court of Appeals Externship, the Criminal Justice Clinic, the District Court Externship, the Family Law Externship, the Federal Judicial Externship, the Law and Business Externship, and the Work of the Lawyer.³⁴ In these courses, students work under their field supervisor and also meet as a class, which is facilitated by a full-time or adjunct faculty member. Students also meet individually with that faculty member. Students may also arrange independent field placements, which are supervised by full-time faculty members.

C. *Practicum Courses*

In 1980, Professors John Sonsteng and Roger Haydock conceived of a course that would simulate law firm practice. Practicum was first offered in 1982; over the past thirty years, it has evolved considerably as Professor Sonsteng and other course directors have developed the cases and course materials.³⁵ Professor Sonsteng and Professor Haydock were writing about their design for the Legal Practicum course as early as 1995, sharing the course with the rest of the academy.³⁶ The Practicum course includes the features that characterize the courses we are designing today, such as desirable learning objectives,³⁷ formative and summative assessments,³⁸ positive learning environments,³⁹ active

34. In the summer of 1988, two of my current colleagues, Eric Janus and David Prince, along with Neal Hamilton, produced a study of small-group education at William Mitchell that led to the recommendation to make clinical faculty tenure-track faculty. See Eric S. Janus, *Clinics and "Contextual Integration": Helping Law Students Put the Pieces Back Together Again*, 16 WM. MITCHELL L. REV. 463, 463-64 n.1 (1990); E-mail from Eric Janus, Dean and President, William Mitchell Coll. of Law, to author (Oct. 26, 2011, 16:11 CST) (on file with author). Neal Hamilton and Dean Janus went on to design the Work of the Lawyer course, one of our current externship courses. See Eric S. Janus, *Clinical Teaching at William Mitchell College of Law: Values, Pedagogy, and Perspective*, 30 WM. MITCHELL L. REV. 73, 76 (2003) ("The course seeks to help students understand—and choose—an approach to being a lawyer that corresponds to their own values. As a means to this end, it adopts a pedagogy that brings to the fore the work of the lawyer and seeks to combine theory, practice, and a focus on values.").

35. Schmedemann & Kunz, *supra* note 29, at 674.

36. John Sonsteng, June Cicero, Resa Gilats, Roger Haydock & John McLachlan, *Learning by Doing: Preparing Law Students for the Practice of Law*, 21 WM. MITCHELL L. REV. 111 (1995).

37. *Id.* at 126-32.

38. *Id.* at 133 ("The Legal Practicum provides feedback through a variety of means which encourages the participants to improve and implement the skills learned from previous exercises. The use of assessment forms to critique oral and written work is one such tool. Additionally, class lectures, small group exercises

learning,⁴⁰ support for different learning styles,⁴¹ and a focus on the reflecting and hypothesizing necessary for experiential learning.⁴²

The course description for Legal Practicum: General Practice states the following:

Engages students in simulated learning experiences and exercises. Students practice law in two-person law firms under the supervision of faculty and tutors.

Simulated cases, problems and clients are presented to each law firm during the semester, requiring the student attorneys to handle a significant variety of integrated substantive and procedural law involving the following areas: personal injury, professional responsibility, employment law, criminal law, employment/labor law, administrative law and real estate law.

Each two-person law firm is involved in proceedings including a jury trial, oral arguments, motion arguments, arbitration, negotiation, and in-chambers settlement conference.⁴³

and oral presentations are designed to reinforce what the student is doing well, while suggestions and constructive criticism are used to modify participants' problem areas. For example, after each oral activity, the instructors provide an immediate verbal critique of the participant's performance. The instructors give advice, suggestions, praise, and the opportunity for the participant to ask questions.").

39. *Id.* at 133–35.

40. *Id.* at 135–37.

41. *Id.* at 137–38.

42. *Id.* at 139.

43. *General Practice: Skills Practicum*, WM. MITCHELL C. L., <http://web.wmitchell.edu/students/course-description/?course=8905> (last visited Dec. 31, 2011). There is also a Legal Practicum, Small Business Practice. See *Small Business Practice: Skills Practicum*, WM. MITCHELL C. L., <http://web.wmitchell.edu/students/course-description/?course=8900> (last visited Dec. 31, 2011) (“The Legal Practicum: [Small] Business Practice engages students in simulated learning experiences and exercises. Students practice law in two-person law firms under the supervision of faculty and tutors. The Legal Practicum: [Small] Business Practice course is designed to provide participants hands-on training representing a client in business matters through the start-up . . . of a company. . . . Student attorneys resolve a number of business-related issues for the client, such as representation agreements, ethics, negotiating purchase agreements, contracts, business planning, employee plans, developing finance and tax plans, re-zoning, intellectual property and product liability. Students interview the client, negotiate with the client and others, investigate facts, draft documents and prepare research memos and briefs. Each week, the student law firms attend seminars on business related issues and continuing developments in representing business clients.”).

In 2007, twenty-five years after first offering the Practicum course, Professor Sonsteng reported that “[s]tudents who took Legal Practicum identified legal practice simulations as a significant source of their legal practice and management skills training.”⁴⁴

III. MITCHELL’S OUTCOMES-BASED CURRICULUM

In spring 2009, the Future of Legal Education Task Force (the “Task Force”) recommended that William Mitchell focus less on inputs (“what students are taught”) and more on outputs (“what students ultimately know and can do”).⁴⁵ In designing curriculum and courses, the Task Force urged faculty members, in consultation with expert practitioners, to think about what knowledge, skills, and professional attributes a lawyer should possess.⁴⁶ The Task Force concluded that such “an outcomes-based approach has the *potential* to (1) assure that graduates have assessed proficiency in identified areas; . . . (3) make the steps to ‘practical wisdom’ transparent; and (4) promote program and faculty accountability.”⁴⁷

At the same time, legal education was contemplating a shift to measurable learning outcomes because of revised accreditation standards proposed by the American Bar Association Section on Legal Education and Admissions to the Bar.⁴⁸ While these proposed standards generated controversy elsewhere in the academy, William Mitchell has been at the forefront in integrating desirable student outcomes into its educational programs and

Students must complete a 235-hour minimum requirement for Phase I.”).

44. John O. Sonsteng, Donna Ward, Colleen Bruce & Michael Petersen, *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 421 (2007).

45. FUTURE OF LEGAL EDUCATION TASK FORCE STATUS REPORT, *supra* note 11, at 7–8.

46. *Id.* at 9.

47. *Id.* at 16 (emphasis added).

48. See Jerome Organ, *Missing Missions: Further Reflections on Institutional Pluralism (or Its Absence)*, 60 J. LEGAL EDUC. 157, 166 (2010) (“Even though law schools should have enough self-interested reasons to consider embracing a sense of mission, the accreditation process is likely to provide additional incentive. If the Standards Review Committee of the ABA’s Section on Legal Education and Admissions to the Bar continues in its efforts to promulgate revised accreditation standards that emphasize a more outcomes-based approach to setting standards, each law school going through the reaccreditation process will face increased pressure to embrace its own distinctive mission with meaning and vitality.”).

courses—as many faculty members long have been⁴⁹—consistent with *Best Practices for Legal Education* (“*Best Practices*”) and the *Carnegie Foundation Report*.⁵⁰

A. *First-Year Pilot Curriculum*

The first-year curriculum of law schools has traditionally been the most sacred.⁵¹ But according to the *Carnegie Foundation Report*, “[t]he dramatic results of the first year of law school’s emphasis on well-honed skills of legal analysis should be matched by similarly strong skill in serving clients and a solid ethical grounding.”⁵² The first recommendation that the *Carnegie Foundation Report* makes is to offer an integrated curriculum—teaching knowledge, skills, and professional identity⁵³—and this is what a group of faculty members at William Mitchell are doing with the first-year pilot curriculum.⁵⁴

In 2011–12, the faculty is running a pilot first-year section with the following goals: (1) to define desirable outcomes for each first-year course and for the first-year curriculum as a whole; (2) to match varied formative and summative assessments to those outcomes; (3) to enhance communication with students regarding course goals and expected competencies at the end of each course and the end of the first year; (4) to introduce students to a range of critical doctrinal foundations, including transactional, statutory, constitutional, and comparative law; (5) to integrate core skills, doctrine, and professionalism in each first-year course; (6) to achieve greater coordination among the doctrinal courses; (7) to achieve greater coordination and integration between the doctrinal courses and WRAP; (8) to foster better communication and collaboration among first-year professors; and (9) to concentrate

49. See, e.g., *supra* notes 16 & 29 and accompanying text (discussing the histories of Mitchell’s clinical programs and lawyering skills courses).

50. See Phillip Knott, *Thinking Like a Lawyer: An English Interpretation*, 10 TENN. J. BUS. L. 179, 179 (2009) (“Second, [law schools in England] are moving over to an outcomes-based approach, which is very similar to what is meant by Best Practices and also is, I think, very consistent with the Carnegie Foundation report.”).

51. CARNEGIE FOUNDATION REPORT, *supra* note 13, at 4.

52. *Id.*

53. *Id.* at 8.

54. My colleagues who are designing and teaching the pilot curriculum are Mary Pat Byrn, Mehmet Konar-Steenberg, Christina Kunz, Colette Routel, Ted Sampson-Jones, Eileen Scallen, Deborah Schmedemann, and Chris Ver Ploeg. I am the Director of the First-Year Pilot Implementation Committee and am assisting them in coordinating the curriculum.

course hours for each class to allow for more intensive, sustained study of each doctrinal area.⁵⁵

The pilot curriculum structure⁵⁶ is as follows:

Fall Semester

1. The Common Law Process: Torts	4 credits
2. Civil Dispute Resolution	4 credits
3. Statutory Interpretation: Criminal Law	3 credits
4. WRAP	3 credits

Spring Semester

1. Transactional Law: Contracts	4 credits
2. Jurisprudential and Comparative Analysis: Property	4 credits
3. Advanced Legal Reasoning: Liberties	3 credits
4. WRAP	3 credits

The pilot first-year section approved by the faculty incorporates this course sequence and ties each course to a core skill and to specific professional attributes. Each faculty member teaching in this section, engaging in “backward design,”⁵⁷ drafted a set of objectives and assessments consistent with the curricular

55. FIRST-YEAR PILOT TASK FORCE, REPORT OF THE FIRST-YEAR PILOT TASK FORCE (2010) (on file with author).

56. *Id.* In the first year, non-pilot, full-time students take Civil Procedure (3/2), Contracts (3/3), Property I and II (3/3), Torts I and II (2/3), and WRAP (3/3). Non-pilot, part-time students take Contracts, Torts I and II, and WRAP in the first year; most take Civil Procedure as well.

57. GRANT WIGGINS & JAY MCTIGHE, UNDERSTANDING BY DESIGN 338 (2005). Wiggins and McTighe, K–12 education scholars, define “backward design” as follows:

An approach to designing a curriculum or unit that begins with the end in mind and designs toward that end. Although such an approach seems logical, it is viewed as backward because many teachers begin their unit design with the means—textbooks, favored lessons, and time-honored activities—rather than deriving those from the end—the targeted results, such as content standards or understandings. We advocate the reverse of habit: starting with the end (the desired results) and then identifying the evidence necessary to determine that the results have been achieved (assessments). With the results and assessments clearly specified, the designer determines the necessary (enabling) knowledge and skill, and only then, the teaching needed to equip students to perform.

Id.

structure set out above.⁵⁸ Other faculty teaching in the section critiqued the objectives and assessments of all of the other pilot courses. Throughout the first semester, the faculty members teaching in this section have collaborated regularly to transfer knowledge and skills between first-year pilot classes.

B. Academic Preparation Workshop

As we began preparing for the pilot section, we thought about how to make better use of the week before classes when it came to priming students intellectually, emotionally, and physically to achieve the desirable outcomes we set for them for the first year. In summer 2011, we made available to all first-year students the inaugural Navigating Law School: Academic Preparation Workshop for Incoming Students. This was a twelve-hour academic program directed by me, which had the following objectives: By the end of the workshop, students were expected to (1) take steps toward becoming a self-regulated learner and assessing how they learn best; (2) analyze and brief a case with one issue, apply deductive and analogical reasoning, prepare a small part of a course outline, write a one-issue IRAC,⁵⁹ and take a short one-issue exam; (3) analyze the law's role in a civil dispute and the functional and ethical role of lawyers in resolving that dispute; and (4) transition to becoming professionals. Throughout the four-day course, the 120 students who registered for the two sections of the workshop followed the story laid out in John Humbach's *Whose Monet?*⁶⁰ An outcome of the workshop was that students had exposure to full-time faculty,⁶¹ as well as recent graduates who we hired as adjunct faculty⁶² and who gave students feedback on their work and mentored the first-year students on their transition to law school. On course evaluations completed when the workshop ended, *all* students reported that the workshop and workshop faculty met or

58. See *infra* Appendix A for an example of a set of objectives and assessments for The Common Law Process: Torts.

59. IRAC, of course, stands for Issue–Rule–Analysis–Conclusion.

60. JOHN HUMBACH, *WHOSE MONET? AN INTRODUCTION TO THE AMERICAN LEGAL SYSTEM* (2007).

61. In addition to myself, the full-time faculty members who taught in the workshop were Jim Hilbert, Eric Janus, Christina Kunz, Colette Routel, Ted Sampsel-Jones, Edward Touissant Jr., and Sally Zusman.

62. The adjunct faculty members were Leah Boomsma '09, Leanne Fuith '10, Jaclyn Millner '09, and Lindsay Siolka '11.

exceeded their expectations.⁶³ Furthermore, when they were asked to reevaluate their experience six weeks into law school, they found the workshop even more helpful in hindsight.⁶⁴

C. *Upper-Year Curriculum: Outcome Mapping*

In the 200708 academic year, the Curriculum Committee, chaired by Professor Denise Roy, developed Pathways to the Profession of Law (“Pathways”).⁶⁵ Pathways is an online course-mapping tool that enables students to plan their course of study in certain substantive areas (business law, estate planning, family law, FIC (foreign, international, and comparative law), Indian law, intellectual property, law and business, real estate law, and tax law), as well as in other areas where courses relate to one another (bar preparation, civil litigation, government practice, negotiation and alternative dispute resolution, and public interest). The two most recent additions are the Indian Law Pathway, created as a result of the rising interest among students in Indian law following the hiring of Indian law scholars, Professors Sarah Deer and Colette Routel, in fall 2009,⁶⁶ and the Law and Business Pathway, arising out of the work of the Center for Law and Business launched in fall 2010.⁶⁷ Students use Pathways to view (1) recommended sequencings of courses; (2) which courses are designated as skills or statutory courses; (3) the names of faculty who teach in their areas of interest; (4) sample schedules; and (5) links to other resources, among other things.

In the 201011 academic year, because of interest among

63. These course evaluations were completed on August 18, 2011, and are on file with the author.

64. See, e.g., E-mail from Michael Moseler to author (Oct. 4, 2011, 17:23 CST) (on file with author) (“I would recommend APW to anyone who is entering law school. I would recommend APW more now after having a few weeks under my belt. The course was more helpful than I thought it would be when I signed up for it. The biggest asset to APW is that it focuses your attention to the demands of law school. The course touch[es] on the core essentials of briefing, outlining, and the various forms of legal reasoning. It provided introductions to the legal system, and to the trial process. All of the items were extremely helpful to me.”).

65. *Pathways to the Profession of Law*, WM. MITCHELL C. L., <http://www.wmitchell.edu/pathways> (last visited Dec. 31, 2011).

66. Jeffrey Holth '12, a student member of the Curriculum Committee, had a principal role in creating the Indian Law Pathway.

67. The Center for Law and Business offered its core class, Law and Business: The Business Enterprise, for the first time in fall 2011; students heard from practitioners at the intersection of law and business and drafted business plans at the conclusion of the course.

faculty members in using Pathways as a curricular planning tool, the deans appointed a faculty coordinator for each Pathway to work with full-time and adjunct faculty who teach related courses to develop desirable learning outcomes consistent with William Mitchell's mission; map where and how outcomes are taught and assessed; and make recommendations for updating the Pathway, changing the curriculum, and reconfiguring faculty. In addition, in fall 2011, the deans appointed a Director of Adjunct Faculty,⁶⁸ who is responsible for hiring, training, mentoring, and evaluating the doctrinal adjunct faculty. The Director works closely with the Pathway coordinators to ensure that there is a yearly meeting that includes full-time and adjunct faculty who teach courses on each Pathway, to encourage Pathway coordinators to make recommendations about hiring adjuncts, and to give support to each adjunct professor teaching a course on the Pathway. As one example, our colleague Anthony Winer significantly revamped the FIC Pathway and, in doing so, recognized the need for an introductory comparative law course that William Mitchell offered in J-Term 2012. Professor Winer has also reached out to all of the adjuncts teaching courses on the FIC Pathway to offer them mentoring and connect them to William Mitchell's academic program. He has been working with Professor Mehmet Konar-Steenberg, Director of International Programs, to provide more opportunities for foreign lawyers to study at William Mitchell and for William Mitchell students to study abroad.

D. Professional Skills Curriculum

Professional skills and experiential learning are at the heart of William Mitchell's practical legal education. We first survey the new clinics and externships that have been created over the past several years, as well as the birth of the Keystone course. We then turn to new courses that enable students to meet critical outcomes in counseling, negotiating, and drafting in the transaction and settlement contexts.

68. We are not aware of any other law school that has appointed a Director of Adjunct Faculty devoted to hiring, training, mentoring, and evaluating adjunct faculty.

1. *Clinics, Externships, and Keystone Courses*

a. *Clinics*

Recently, we have added two for-credit clinics to our curriculum: the Intellectual Property Clinic (created and taught by Professor Jay Erstling) and LAMP/The Reentry Clinic (created and taught by Adjunct Professor in Residence Joanna Woolman). The Intellectual Property Clinic represents clients in a broad array of intellectual property matters, including filing and prosecuting patent and trademark applications before the U.S. Patent and Trademark Office, policy-making, and educating the business and arts communities about intellectual property protection. The clinic was one of seven law clinics nationwide originally selected to participate in the U.S. Patent and Trademark Office Law Clinic pilot program.⁶⁹ By contrast, the Reentry Clinic serves women leaving the state prison in Shakopee, Minnesota, and reentering society, using a holistic model of representation that includes offering civil legal services and providing other creative assistance to coping with barriers to reintegration.⁷⁰

Additionally, a group of students, advised by Professor Peter Knapp, created and now administer a not-for-credit pro se clinic that opened on September 12, 2009.⁷¹ These clinic students, advised by practitioners, give guidance to individuals representing themselves in court in three areas: uncontested dissolutions (divorces), child support modification, and criminal expungement.⁷² One of the students who created the clinic, Sarah McBroom '09, received a Skadden Fellowship to work for the Legal Aid Service of Northeastern Minnesota, providing legal services to indigent members of the Leech Lake Reservation community and manufactured-home communities in Itasca and Koochiching Counties.⁷³

69. See *Intellectual Property Law Clinic*, WM. MITCHELL C. L., <http://web.wmitchell.edu/students/course-description/?course=5111> (last visited Dec. 31, 2011).

70. Kim Ode, *The Transition to Freedom*, STAR TRIB., Dec. 27, 2009, <http://www.startribune.com/lifestyle/80071587.html>.

71. *Self-Help Clinic*, WM. MITCHELL C. L., <http://web.wmitchell.edu/self-help/> (last visited Dec. 31, 2011).

72. *Id.*

73. Mark Cohen, *Mitchell Grad's Fellowship Is a Big Feather in the School's Cap*, MINN. LAW. BLOG (Jan. 15, 2010), <http://minnlawyer.com/minnlawyerblog/2010/01/15/mitchell-grads-fellowship-is-also-a-feather-in-the-cap-of-the-school>.

b. Externships

Over the last several years, William Mitchell has created and added five new externship courses to the curriculum: the Bankruptcy Law Externship (for students interested in credit counseling and financial issues), the Criminal Justice Clinic (summer only), the Family Law Externship, the Federal Judicial Externship, and the Law and Business Externship. In each of these externship courses, students perform fieldwork under the direction of a lawyer, meet every other week as a class to discuss topics related to lawyering, and periodically meet one-on-one with the course instructor to reflect on their field placements.

c. Keystone Courses

Over the last several years, we have introduced Keystone courses into the curriculum. A Keystone course is a learning experience that represents both the culmination of law school learning and a transition to law practice and a lifetime of self-directed learning.⁷⁴ As stated in the Keystone course curriculum, “We are identifying and creating courses to be taken in the final year of law school that will add value relative to both traditional doctrinal courses and the first years of law practice.”⁷⁵ In order to be designed a Keystone course, a course must:

build on previous learning; require students to function as responsible professionals; require consideration of ethical issues and professionalism; involve real-world framing; integrate doctrine, skills, or theory; develop advanced skills; require substantial concrete manifestations of learning; offer repeated cycles of reinforcement, evaluation, and self-reflection; and be offered for sufficient credits to accomplish these goals.⁷⁶

We have developed and offer eight Keystone courses: Advising the International Humanitarian NGO; Business Buy/Sell Transaction Simulation; Elder Justice and Policy; Law and Business: Mergers and Acquisitions; Legal Practicum: General Practice; Legal

My colleague, Carolyn Grose, mentored Sarah McBroom in applying for the Skadden Fellowship.

74. *The Keystone Program*, WM. MITCHELL C. L., <http://www.wmitchell.edu/curriculum/keystone-program.asp> (last visited Dec. 31, 2011).

75. *Id.*

76. FUTURE OF LEGAL EDUCATION TASK FORCE STATUS REPORT, *supra* note 11, at 6.

Practicum: Small Business Practice; The Practice of Theory: A Critical Theory Seminar for Clinic Students; and Comparative Law: Lawyers—Opponents of Democracy? The Keystone courses on Comparative Law and Elder Justice and Policy both have fieldwork placements.

2. *To Improve Skills Training in the Transactional and Settlement Contexts*

All upper-year students take Advocacy, which emphasizes trial- and appellate-advocacy skills. Additionally, many of our students take Alternative Dispute Resolution in small sections of no more than thirty students. William Mitchell has now introduced two transactional courses to address counseling, negotiating, and drafting to expand our skills curriculum.⁷⁷

a. *Transactions and Settlements*

This three-credit course (offered in conjunction with the Center for Negotiation and Justice) provides hands-on, interactive instruction in interviewing, counseling, negotiating, and drafting in the transaction and settlement contexts. This course places heavy emphasis on negotiating and drafting, which require substantial practice to learn effectively. In addition to smaller exercises, the students negotiate and draft an international distributorship agreement, a standstill agreement, and a civil rights settlement, with course faculty coaching in their roles as clients.

There has been great demand for more transactional courses in legal education.⁷⁸ Unfortunately, many scholars equate

77. Both of these courses were designed by me with my colleague Jim Hilbert. William Mitchell also began offering a client counseling course in fall 2009 taught by Adjunct Professors Michael Gibbons and Stacy St. George.

78. See, e.g., Eric J. Gouvin, *Teaching Business Lawyering in Law Schools: A Candid Assessment of the Challenges and Some Suggestions for Moving Ahead*, 78 UMKC L. REV. 429, 431-32 (2009) (“Where law schools do an acceptable job of acculturating our students to the adversarial, litigation side of the profession, we do a less than satisfactory job in inculcating the skills and values of transactional lawyers, including lawyers with the sensibilities necessary to counsel entrepreneurs. . . . That is one example, but there are many others. If we keep cranking out new lawyers who see the world as a no-holds-barred battle to ultimate victory or defeat, we are going to have the unintended effect of retarding the development of good business lawyering generally.” (footnotes omitted)); Tina L. Stark, *Thinking Like a Deal Lawyer*, 54 J. LEGAL EDUC. 223, 223-24 (2004) (“It was then that I first began to develop a model for teaching students and associates to be transactional lawyers. . . . Deal lawyers start from the business deal. The terms of the business deal are the

transactions with business,⁷⁹ and believe that drafting should be taught independent of negotiation.⁸⁰ This course does not limit transactions to business transactions; rather, it takes into account that transactions occur between consumers, family members, and in the employment context, among other settings. With that in mind, the course has four goals: (1) to connect the transactional lawyering skills that students learn in WRAP with the skills they practice in client-representation clinics, externships, and Keystone courses; (2) to teach interviewing, counseling, negotiating, and drafting as interrelated skills; (3) to demonstrate the overlap in skills that lawyers use in negotiating and drafting transactions with the skills that lawyers use in negotiating and drafting settlement agreements; and (4) to integrate the ethical issues that potentially arise in negotiating and drafting transactions and settlements.⁸¹

William Mitchell offered this course as a pilot with twenty-four students both in fall 2010 and spring 2011, and we offered two sections of this course with thirty-two students each in fall 2011 and spring 2012, with plans to expand further in fall 2012.⁸² We are evaluating our advanced negotiation and drafting courses as well. After taking Transactions and Settlements, students are better

deal lawyer's facts. The lawyer must then find the contract concepts that best reflect the business deal and use those concepts as the basis of drafting the contract provisions. I call this skill 'translating the business deal into contract concepts.'").

79. See *supra* note 78.

80. See, e.g., Richard K. Neumann, Jr., Tina L. Stark & Howard Katz, *Negotiations*, 12 TENN. J. BUS. L. 153, 162-63 (2011) ("My thesis is that contract drafting—or at least some instruction in contract drafting—should be a prerequisite to teaching transactional negotiation. . . . We cannot teach students how to negotiate a contract unless they understand how a contract is put together and that means they know how to draft it and analyze it."). We believe the converse: students cannot learn drafting unless they understand what they are negotiating. Thus, we teach them both simultaneously. In Transactions and Settlements, we review the architecture of an agreement after the first class, and give the students samples of the agreements they are negotiating.

81. See *Spring 2012 Transactions and Settlements Syllabus*, WM. MITCHELL C. L., <http://web.wmitchell.edu/students/wp-content/uploads/2012/01/Trans-and-Settlements-Syllabus-Spring-2012.pdf> (last visited Dec. 31, 2011); *Transactions and Settlements*, WM. MITCHELL C. L., <http://web.wmitchell.edu/students/course-description/?course=9014> (last visited Dec. 31, 2011). Our adjunct faculty—Scott Cody '11, Vanessa Denis '10, Leanne Fuith '10, and Jaclyn Millner '09—have helped us greatly in the design and launch of the class.

82. Students who have excelled in Transactions and Settlements are representing William Mitchell in the Third Annual Transactional Law MeetSM. See *What Is LawMeets?*, LAWMEETS, <http://www.lawmeets.com> (last visited Dec. 31, 2011).

prepared to take alternative dispute resolution, advanced negotiation, and advanced drafting courses, which are general or are tied to substantive areas of law, such as the courses we offer in Estate Planning, Law and Business: Commercial Leasing, and Patent Prosecution.

b. Deals and Dispute Resolution

The faculty has long believed that we should use J-Term and short summer intervals to provide students with intensive skills training. The Center for Negotiation and Justice is offering a week-long, three-credit simulation course, beginning in J-Term 2012, in which students represent a client and gather facts, conduct legal research, negotiate and draft a deal, and negotiate and draft a resolution to a dispute. This course focuses on the student's role as a professional and enables the student to identify strengths and weaknesses for further development. Students all participate in the same simulation, but choose one of four areas on which to focus—international business transactions, intellectual property law, employment law, or public interest law—enabling us to tie the course into many different Pathways. Additionally, students experience in the concentrated one-week time frame the adversity, uncertainty, and unpredictability of legal practice.⁸³

E. Writing Across the Curriculum

The faculty decided during its spring 2009 retreat to develop desirable outcomes for student writing. In the 2009–10 academic year, the Writing Outcomes Task Force, chaired by Professor Eileen Roberts, mapped where and how three types of writing—discursive writing (e.g., application of legal rules and principles to factual situations), instrumental practice documents (e.g., pleadings), and prescriptive writing (e.g., agreements governing future conduct such as contract drafting)—were currently taught and assessed in order to identify curricular gaps, explore alignment between teaching and assessment, and compare the writing assigned with writing commonly used in practice.⁸⁴ The Task Force made several

83. *Deals and Dispute Resolution: A One-Week J-Term Simulation*, WM. MITCHELL C. L., <http://web.wmitchell.edu/students/course-description/?course=3014> (last visited Dec. 31, 2011). Professor Hilbert and I, with eight adjunct faculty, taught the course to approximately 100 students in January.

84. WRITING OUTCOMES TASK FORCE, CATEGORIES OF LEGAL WRITING WITH

recommendations, including (1) increasing curricular focus on instrumental practice documents and prescriptive writing to balance the extensive curricular focus on discursive writing; (2) providing students with more instruction in writing; and (3) increasing the correlation between writing assignments and writing done by practitioners in the course area of practice.⁸⁵

The faculty has begun to follow up on the recommendations of the Writing Outcomes Task Force in the following ways: (1) the WRAP coordinators, in collaboration with Sally Zusman, the Director of Academic Achievement, now test first-year students for basic composition skills early in their first semester, requiring the students to retest until they pass; (2) William Mitchell has created a new adjunct position—an assistant adjunct—to assist faculty, who assign a significant amount of writing, with student feedback; (3) individual faculty members have created courses or parts of courses that teach the types of writing done by practitioners (e.g., Professor Deborah Schmedemann teaches an employment law survey course in which students draft employment law policies, advice letters, and other documents written by employment lawyers; Professor James Hogg has students draft contracts in his first-year Contracts course and is expanding that drafting into a four-week simulation in spring 2012; and Professor Ted Sampsell-Jones assigns his students to write jury instructions in his Evidence and Criminal Law courses); (4) faculty members attended a development workshop in fall 2010, titled Teaching Writing Across the Curriculum, to discuss the recommendations of the Writing Outcomes Task Force and to showcase examples of how faculty have implemented the Task Force's recommendations; and (5) a subgroup of the Curriculum Committee, led by Professor Mehmet Konar-Steenberg, redrafted the Advanced Research and Writing ("ARW") Requirement⁸⁶ to enable a student to fulfill the ARW requirement by drafting instrumental practice or prescriptive documents. The requirement includes (1) legal research; (2) fact investigation; (3) writing, including organization, grammar, and style; (4) strong personal work ethic and time management; and (5) creative

DESCRIPTIVE PHRASES AND EXAMPLES 1-2 (2010) (on file with author).

85. WRITING OUTCOMES TASK FORCE, WRITING OUTCOMES TASK FORCE WORK SUMMARY 2009-2010 1 (2010) (on file with author).

86. *Advanced Research and Writing Requirement*, WM. MITCHELL C. L., <http://web.wmitchell.edu/students/academic-requirements/advanced-research-and-writing-requirement> (last visited Dec. 31, 2011).

problem solving.⁸⁷ The faculty passed the new requirement.⁸⁸

F. Professionalism

Consistent with William Mitchell's vision, we have continued to try to find ways to help students develop the professional identity of lawyers.

1. To Promote a Public Service and Pro Bono Ethic in Students

Our public service program is directed by Professor Peter Knapp⁸⁹ and is run in coordination with the Minnesota Justice Foundation ("MJF"), which administers the public service programs for all four of the area's law schools.⁹⁰ MJF has staff attorneys with offices in the Rosalie Wahl Legal Practice Center; they meet with students to help arrange volunteer law-related public placements. We encourage students to volunteer fifty pro bono hours in public service prior to graduation; almost fifty percent of our students do so.⁹¹ The program is strong: in November 2008, *National Jurist* ranked William Mitchell twelfth among the nation's best public interest law schools.⁹²

87. See ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 138 (1992) [hereinafter MACCRATE REPORT] ("factual investigation" and "problem solving" are "fundamental lawyering skills").

88. See *supra* note 86.

89. Peter Knapp won the Association of American Law Schools ("AALS") Deborah Rhode Pro Bono and Public Service Opportunities Award in 2011. Press Release, William Mitchell Coll. of Law, Professor Peter Knapp Honored by the AALS (Jan. 20, 2011), available at <http://web.wmitchell.edu/news/2011/01/professor-peter-knapp-honored-by-the-aals>. The Minnesota State Bar Association named Professor Knapp the winner of the State Bar Association's David Graven Public Service Award in 2011. Press Release, William Mitchell Coll. of Law, William Mitchell Professor Peter Knapp Recognized by MSBA for Public Service Work (Apr. 28, 2011), available at <http://web.wmitchell.edu/news/2011/04/william-mitchell-professor-peter-knapp-recognized-by-msba-for-public-service-work>.

90. For a history of Minnesota's public service program, see Sharon H. Fischlowitz & Peter B. Knapp, *From Here to Next Tuesday: The Minnesota Public Service Program, Ten Years After*, 26 HAM. J. PUB. L. & POL'Y 223 (2005).

91. *Public Service: Making a Difference*, WM. MITCHELL C. L., <http://www.wmitchell.edu/Legal-Practice-Center/public-service> (last visited Dec. 31, 2011).

92. See *id.*; Michelle Weyenberg, *Best Public Interest Law Schools*, NAT'L JURIST (May 27, 2009, 09:43 AM), <http://www.nationaljurist.com/content/best-public-interest-law-schools>.

We also want to encourage a public service ethic in students through new service-learning courses. Examples of courses that we have developed and offered in recent years include the following:

(1) In fall 2009, Professor Mary Pat Byrn formed a chapter of the Marshall-Brennan Constitutional Literacy Project at William Mitchell. The Marshall-Brennan project seeks to empower high school students to be responsible citizens and lifelong participants in the democratic process by teaching them about their constitutional rights and responsibilities through U.S. Supreme Court cases that affect students directly. Students selected to be Marshall-Brennan Fellows take a seminar, and are simultaneously placed in pairs in local high schools to teach Constitutional Law to eleventh- and twelfth-grade students. Students earn three credits for participating.⁹³

(2) For the first time in spring 2011 and again in spring 2012, Adjunct Professor Ellen Kennedy offered *Genocide Prevention: A 21st Century Challenge*. Dr. Kennedy is the Executive Director of World Without Genocide, which has its offices at William Mitchell. In this two-credit course, students “participate in selected advocacy efforts at the local, state, and national levels to prevent genocide; participate in programs to raise awareness about current conflicts; connect with local refugee communities to understand their legal and social challenges after genocide; and research lawyers’ involvement in both supporting genocide and in its prevention” in order to make this research widely available to educators around the country.⁹⁴

(3) As part of the *Elder Justice and Policy* six-credit Keystone, designed and taught by Professor Kim Dayton and Adjunct Professor Iris Freeman, students complete a placement with an elder justice organization (e.g., “a legal aid organization serving seniors, an elder advocacy project, or a senior rights organization”).⁹⁵ The work that the students complete in the placement is defined and supervised by Professors Dayton and Freeman.

93. *Marshall-Brennan Project*, WM. MITCHELL C. L., <http://web.wmitchell.edu/marshall-brennan/> (last visited Dec. 31, 2011).

94. *Genocide Prevention: A 21st-Century Challenge*, WM. MITCHELL C. L., <http://web.wmitchell.edu/students/course-description/?course=4601> (last visited Dec. 31, 2011).

95. *Elder Justice and Policy*, WM. MITCHELL C. L., <http://web.wmitchell.edu/students/course-description/?course=3832> (last visited Dec. 31, 2011).

2. *To Connect Students to Practicing Lawyers Who Can Model Professional Attributes and Values*

In addition to WRAP and Advocacy, students take other courses taught by adjuncts during their William Mitchell education. We are trying to identify other opportunities in the William Mitchell curriculum for lawyers to teach and mentor students, especially where lawyers can model professional attributes and values. As previously mentioned, we now have a Director of Adjunct Faculty who is working with practicing lawyers on creating those opportunities.

Recently, William Mitchell developed the Apprenticeship Program, which matches second- and third-year students with an attorney in a practice area of the student's interest "for active participation, critical observation, and the nurturing of a professional mentoring relationship."⁹⁶ The Apprenticeship Program, run by the Office for Career and Professional Development, is a one-credit course for students to bridge the gap between being a law student and becoming a lawyer. The course includes a seminar component on campus that involves readings, discussion, and guest speakers. The program is targeted primarily at students who have not yet had an off-campus experience working with an attorney.

G. *Outcomes-Based Course Design*

We have encouraged faculty to engage in outcomes-based (or "backward") course design, in which they first set desirable course objectives, then develop formative and summative assessment methods that will measure those objectives, add content and instructional strategies, and finally evaluate their courses.⁹⁷ For example, Professor Eileen Scallen developed group-learning outcomes and now has students in her Civil Procedure class complete Computer-Aided Legal Instruction (CALI) lessons and take quizzes collaboratively; at the end of the semester, the students evaluate themselves as well as other team members. Professor Carolyn Grose teaches the Trusts and Estates Survey course, in which, as a clinician, she wants students to learn about the lawyer-

96. See *Apprenticeship Program*, WM. MITCHELL C. L., <http://web.wmitchell.edu/careers/career-web-for-students/apprenticeship-program> (last visited Dec. 31, 2011).

97. See *supra* note 57 and accompanying text.

client relationship as well as trusts and estates doctrine. She has the students take cooperative quizzes, develop a fictional character and write about him or her over the semester, and draft an estate plan for the final examination.⁹⁸

Furthermore, as a result of professional development and informal conversation, faculty members are engaging in outcomes-based design one course at a time. Professor Mary Pat Byrn has designed and offered to adjuncts the course entitled Adjunct Professors Preparing to Educate All Learners (“APPEAL”). In fall 2010, she offered sessions on Designing Your Course (“Backward Design”), How to Be an Effective Teacher, Creating a Positive Learning Environment, Teaching the Class, and Interactive Instructional Strategies. Some full-time faculty attended those class sessions as well. Professor Byrn gave a presentation on “Backward Design” at the All-Faculty Dinner in August 2011 and held a daylong workshop with the Director of Adjunct Faculty for adjunct and full-time faculty members in November 2011. The Director of Adjunct Faculty works with new and seasoned adjuncts on the principles of “backward design,” experiential learning, and course development during their orientation and on a one-on-one basis, as do the Pathway coordinators. The full-time faculty members discussed outcomes-based course design at our faculty retreat in spring 2009, at a full-day faculty workshop in fall 2009 (moderated by Georgetown University Law Center faculty Jane Aiken and Deborah Epstein), and at a faculty development workshop in spring 2010. Furthermore, the faculty is planning such a discussion for spring 2012 with Albany Law School Professor Deborah Lynch.

98. Carolyn Grose, *Outcomes-Based Education One Course at a Time: My Experiment with Estates and Trusts*, 61 J. LEGAL EDUC. (forthcoming 2012).

IV. “MORE MITCHELL”: A VISION FOR THE COLLEGE’S FUTURE

Despite the uncertainty of the demand for legal education⁹⁹ and lawyers¹⁰⁰ in today’s changing legal market,¹⁰¹ William Mitchell continues to connect students to the practice of law and train them in the knowledge, skills, and professional attributes of the legal profession, equipping them to practice as lawyers. Students and full-time faculty members must continue to structure the student academic experience around traditional and emerging practice areas, and to form partnerships with practitioners, including alumni and adjunct faculty members, who are engaged in the ever-evolving practice of law.¹⁰² “More Mitchell” means taking a more outcomes-based approach to education, incorporating more

99. Compare Richard A. Matasar, *Does the Current Model of Legal Education Work for Law Schools, Law Firms (or Anyone Else)?*, N.Y. ST. B.J. (Oct. 2010), at 20, 21 (“In the light of this disturbing picture, one might expect that law schools are facing an imminent market collapse—declining applications, few students willing to take on financial risk, the need for significant internal cost savings, price cutting, and other similar measures. Surprise, surprise, surprise! The demand for legal education has remained strong throughout the economic downturn. Applications at many schools are at record levels. Enrollment has been solid, with many schools recording historically high yields of new students.”), with Douglas Mataconis, *College Students Skipping Law School Amid Stagnant Economy*, OUTSIDE THE BELTWAY (Sept. 27, 2011), <http://www.outsidethebeltway.com/College-students-skipping-law-school-amid-stagnant-economy> (“Well, it appears that college students finally appear to be getting the message the market is sending. The Minneapolis Star-Tribune notes today that applications to law school are down nationwide, an apparent reaction to a stagnant employment market and reluctance to incur massive student debt[.]”). See also Jenna Ross, *Slump in Law School Applicants*, STAR TRIB., Sept. 26, 2011, <http://www.startribune.com/local/130606993.html>.

100. See, e.g., *Law Job Outlook*, ABOUTLAWSCHOOLS.ORG, <http://www.aboutlawschools.org/law/jobs/outlook> (last visited Dec. 31, 2011) (“However, growth in demand for lawyers will be restricted as businesses, in an effort to decrease costs, gradually more use large accounting firms and paralegals to perform some of the similar functions that lawyers do. For example, accounting firms may provide employee-benefit counseling, process documents, or handle different other services previously executed by a law firm. Also, intervention and argument resolution increasingly are being used as alternatives to litigation.”).

101. See, e.g., Rena I. Steinzor & Alan D. Hornstein, *The Unplanned Obsolescence of American Legal Education*, 75 TEMP. L. REV. 447, 484 (2002) (“Law schools are under enormous, cumulative pressure to change the way they deliver legal education. They are in an unusually vulnerable position because of the uncertainty created by the staggering innovations of the World Wide Web, combined with the demands of the private bar, the agenda of the larger university, and the public’s low regard for the profession. For all these reasons, continuous curricular reform is a necessity and not just an option.”).

102. Cf. John Fisher, *There Is a Lot Happening*, W. VA. LAW., Mar./Apr. 2007, at 12 (“. . . to better prepare our graduates for the ever-evolving practice of law.”).

experiential learning, and creating more access for working students, other nontraditional students, and students who want to practice outside of the Twin Cities.

A. *More Emphasis on Student Outcomes*

We continue to place increased emphasis on desirable student outcomes, from individual courses in the first-year curriculum, to the skills and professionalism upward spiral of student learning, to Pathways. For adjunct and full-time faculty members engaged in designing individual courses, William Mitchell provides training, encouragement, and coaching in “backward design.” This involves identifying desirable outcomes, creating and matching formative¹⁰³ and summative assessments that enable students to measure their success in achieving those outcomes, selecting instructional materials, and then evaluating the success of the course.¹⁰⁴ As more and more faculty members engage in the process of “backward design,” students will become increasingly familiar with receiving a list of target competencies at the beginning of their courses, and will come to know what formative and summative feedback they can use to measure their progress in achieving the competencies.

Faculty members teaching in the first-year pilot section have already identified desirable outcomes for the first-year curriculum. Each course has specific objectives linked to knowledge, skills, and professional identity.¹⁰⁵ The first-year pilot curriculum seems to be initially succeeding at enabling students to understand the expected outcomes for each course,¹⁰⁶ by giving students multiple

103. Formative assessments boost student performance. See Carol Springer Sargent & Andrea Anne Curcio, *Empirical Evidence that Formative Assessments Improve Law Students' Final Exam Performance* 20 (Ga. State Univ. Coll. of Law, Legal Studies Research Paper No. 2011-25, 2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1939964 (“In sum, we have provided new evidence that shifting the law school culture away from a single summative assessment may advantage law students. We have also proposed how to do this work without unreasonably burdening law faculty. We believe this work highlights a win-win that should advance the wide-scale experimentation and adoption of good formative assessment practices in law classes.”).

104. See FUTURE OF LEGAL EDUCATION TASK FORCE STATUS REPORT, *supra* note 11, at 8.

105. See ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION 276 (2007) [hereinafter BEST PRACTICES] (“The first year should provide the building blocks for the progressive acquisition of knowledge, skills, and values in the upper class curriculum and in law practice.”).

106. See *id.* (“All teachers should explain their educational objectives and their methods of instruction.”).

formative and summative assessments (coordinated among faculty members),¹⁰⁷ which measure students' progress in meeting those outcomes,¹⁰⁸ and, perhaps most importantly, by making it possible for students to transfer learning between courses¹⁰⁹ through faculty collaboration. If the pilot curriculum expands, individual faculty members will be able to define some of their own desirable outcomes and all of their own assessments to customize courses that fit their teaching styles and areas of expertise. I believe that William Mitchell's future includes the adoption of the pilot curriculum college-wide, with each section developing into its own integrated learning community.¹¹⁰

Equally important to the content of the first-year curriculum is the foundation that we lay for incoming students through the academic orientation that precedes the start of first-year classes. The Office of Student Affairs has taken the lead in collaborating with me to convert the Academic Preparation Workshop into

107. See *id.* at 276-77 ("Teachers should coordinate reading and project assignments to ensure that student workloads are manageable and not overly stressful.")

108. See *id.* at 278 ("Multiple methods of assessing student learning should be used throughout law school. . . . Formative assessments should begin early and continue throughout each semester. Intermittent summative assessments should be conducted, leading up to final exams. Every summative assessment should also be a formative assessment. This means that students should receive feedback on all academic work during law school." (footnotes omitted)).

109. See Tonya Kowalski, *True North: Navigating for the Transfer of Learning in Legal Education*, 34 SEATTLE U. L. REV. 51, 52-53 (2010) ("While in law school, they would further benefit from a greater understanding about how to translate knowledge and skills to other courses and, eventually, to practice. . . . The need for greater integration of skills and doctrine within legal education has resulted in many calls to teach core lawyering skills across the curriculum. This integration will create a tremendous need for educational tools designed to help students transfer their learning from doctrine to practice and back again. Fortunately, an entire subfield of education and cognitive psychology called 'transfer of learning' has insights and tools to offer legal education." (footnote omitted)).

110. See Lauren Carasik, *Renaissance or Retrenchment: Legal Education at a Crossroads*, 44 IND. L. REV. 735, 788-89 (2011) ("Professors should be accessible for more than just a study question posed during office hours and limited to the substantive topic that arose in the classroom. Instead, faculty should immerse themselves in a vibrant learning community and seek out opportunities to engage in meaningful interactions outside the classroom in ways that foster the modeling and transmission of professional values. The level of commitment and structure of interaction can vary from fairly low-demand advising programs to more sustained and structured interactions." (footnotes omitted)); Jennifer E. Spreng, *It's All About the People: Creating a "Community of Memory" in Civil Procedure II Part One*, 4 PHOENIX L. REV. 183, 194 n.43 (2010) ("The concept of 'learning communities' is not new to law school classrooms.").

Academic Orientation Week, which we hope to implement college-wide for the incoming class of fall 2013. William Mitchell will focus on the intellectual, emotional, and physical well-being of each student as he or she makes the transition to law school. The orientation meets several of the critical principles of *Best Practices*, including giving students instruction on how to become self-regulated learners¹¹¹ and how to work in collaborative groups,¹¹² teaching students about professionalism,¹¹³ and providing them with access to practicing lawyers. These lawyers will include both the recent graduates, who will give students feedback and mentoring during Academic Orientation Week, and the writing and representation professors who will teach the students from orientation through their first year in WRAP.¹¹⁴

Our Skills and Professionalism Task Force,¹¹⁵ in conjunction with the Skills and Professionalism Subgroup of the Curriculum Committee, has concluded that, as a supplement to our strong first-year WRAP and second-year Advocacy programs,¹¹⁶ we need to provide students with the opportunity to practice critical legal skills in client counseling, negotiation, and drafting in the context of both transactions and settlements. Students are currently exposed to interviewing, counseling, negotiating, and drafting in WRAP, but should also develop these skills more extensively in their middle

111. See BEST PRACTICES, *supra* note 105, at 277 (“Students should also receive instruction in how to be expert self-regulated learners so they develop the skills of controlling their learning process; managing their workload, time, and stress; self-monitoring their learning process while it is in progress; and reflecting on their learning afterward, thereby continuously improving themselves as learners.”).

112. See *id.* (“[S]tudents should be assigned group projects, some to take place during class meetings and others outside of class. Students should be trained in how to work in collaborative groups and be closely supervised to ensure these experiences reflect aspects of law practice collaboration and build their collaborative skills.”).

113. See *id.* (“Academic responsibility should be taken seriously by everyone at the school, and students should be expected to conduct themselves as professionals from the moment they enter law school guided by a student code of professionalism. A similar code of professionalism should apply to faculty and staff.”).

114. See *id.* (“Students should have contact with practicing lawyers and judges from orientation throughout their first year of law school. This can occur through a variety of methods, including preceptorships or other forms of mentoring arrangements . . .” (footnote omitted)).

115. See SKILLS AND PROFESSIONALISM TASK FORCE, SKILLS AND PROFESSIONALISM TASK FORCE STATUS REPORT (2011) (on file with author).

116. See MACCRATE REPORT, *supra* note 87, at 138–39 (“counseling” and “negotiation” are “fundamental lawyering skills”).

years and have the opportunity to practice these skills intensively in client-representation clinics, externships, and Keystone courses during their final years of study. We envision further development of the Transactions and Settlements course, which gives students the opportunity to meet desirable outcomes in counseling, negotiating, and drafting, both in transactions and settlements. These outcomes are tied to the issues of professional responsibility and ethics that students are likely to confront in those contexts. Transactions and Settlements is a sister course to Advocacy and, when the capacity exists, we would like all students to take the two courses in their second year of law school. This is consistent with *Best Practices'* suggestion that:

Emphasis in the second year should be placed on helping students develop their knowledge and understanding about professional skills and values, including sensitivity to client-centered practice. Basic introductory courses in professional skills, especially transactional and pretrial skills, should be offered to all students during both semesters [of the second year]. Instruction in legal writing, drafting, and research should continue.¹¹⁷

As these foundational skills courses require that students confront professionalism and ethics within real-world contexts, I can even envision a future at William Mitchell with no separate course in Professional Responsibility.

The transfer of learning and outcomes should not be limited to the first year, nor to the skills and professionalism sequence. Some William Mitchell faculty members are considering the design of integrated learning communities that enable students to transfer their learning and outcomes among sets of courses on particular Pathways—or across Pathways—to enable learning in one course to reinforce that of others. For example, a student following the Estate Planning Pathway could take a common set of courses in Transactions and Settlements, Trusts and Estates, and Estate and Gift Tax, with each having a distinct set of outcomes relating to knowledge, skills, and professional identity, and which all reinforce each other.¹¹⁸ A Pathway coordinator currently works with the full-

117. See BEST PRACTICES, *supra* note 105, at 279 (footnote omitted).

118. Cf. *Integrated Transactional Program*, TEMPLE U., http://www.law.temple.edu/Pages/Academics/Degrees_ITP_CourseDescription.aspx (last visited Nov. 15, 2011) (describing the university's Integrated Transactional Program which provides exposure to "Trusts and Estates, Professional Responsibility, and training in lawyering skills that are central to the practice of law for all lawyers").

time and adjunct faculty members teaching on each Pathway, in order to ensure that students interested in the Pathway meet the established desirable outcomes. As we work with practitioners to define emerging areas of law, such as energy law, health law, poverty law, and government practice, we can also add Pathways and other Keystone and second-year opportunities for the transfer of learning.

B. More Experiential Learning

Experiential learning¹¹⁹ can come in many forms.¹²⁰ Experiential learning is more than active learning, and the experiential learning “model may be summarized in three stages that form a cycle: Do, Reflect, and Hypothesize.”¹²¹ *Best Practices*, for example, recommends that students participate in simulations in all of their courses,¹²² and this is certainly a goal for the first-year

119. Professor Jack Himmelstein offers the following useful explanation of experiential learning:

Experiential learning complements the cognitive approach by providing students with an experiential base. It provides the student with the *subjective experience* of the idea that is being taught, and relates ideas to the reality that is being experienced. This way the student can examine the validity of a concept he has learned by comparing his experience of it with his intellectual understanding of it. The experience also anchors the learning, makes it easier to grasp and remember, and reminds the student that ideas affect people’s experience and lives, not only their minds.

Jack Himmelstein, *Reassessing Law Schooling: An Inquiry into the Application of Humanistic Educational Psychology to the Teaching of Law*, 53 N.Y.U. L. REV. 514, 550 (1978) (emphasis in original).

120. Barbara J. Durkin, *A Whole New World*, N.Y. ST. B.J., Sept. 2011, at 34, 39 (“During law school, each student must assume responsibility for developing a career plan, identifying areas of interest and establishing goals and timetables. Using the myriad resources available, including the law school, its alumni and other lawyers in the student’s chosen field of interest, the student will be able to develop realistic expectations concerning the actual work performed and the opportunities available in the practice area. The development of lawyering skills and core competencies requires experiential learning, and law schools and students must explore the opportunities offered by simulations, clinics and externships. Individuals must become more aware that getting a job and moving up the professional ladder will be linked to their proficiencies in the core competencies. Lifelong learning and acquiring new skills will be increasingly valued by law firms.”).

121. Susan J. Bryant, Charles R. Calleros, Mehmet K. Konar-Steenberg & Calvin Pang, Joint Plenary Session—Experiential Learning 1 (undated) (on file with author) (emphasis omitted).

122. See BEST PRACTICES, *supra* note 105, at 277 (“Simulations should be incorporated in every course to strengthen students’ understanding of legal

pilot and upper-year courses at William Mitchell. Practical wisdom, which, in part, involves connecting students to the practice of law, is at the heart of the William Mitchell educational philosophy.¹²³ It is crucial that we expand on such opportunities in the coming years.

One area of emphasis for William Mitchell's future is the provision of more client-representation clinics and externships, in which students work with clients and lawyers. William Mitchell needs to get more students in externship placements in their middle years in order to connect them to the practice of law—especially given the declining job market.¹²⁴ While we want students to continue to have the opportunity to enroll in independent clinics, where they choose their own field placements, we envision creating more externship courses with non-litigation institutional placements, especially in the areas of government, non-profit, and small business practice. Students are likely to gain the most from externship placements that enable them to engage in faculty-facilitated discussions about their experiences with other students working in similar placements. We hope to hire an externship coordinator or free up full-time faculty members to build institutional placements and coordinate and facilitate externship courses in non-litigation practice areas.

At the same time, my colleagues Chris Ver Ploeg and Jim Hilbert have helped William Mitchell envision more project-based learning that does not involve a traditional externship or client-representation clinic. Chris Ver Ploeg has designed a new course for spring 2012, Advising the International Humanitarian NGO, in which groups of students will collaborate with Mano a Mano, a Minnesota nonprofit organization that creates “partnerships with impoverished Bolivian communities that improve health and increase economic well-being” by collaborating with counterpart organizations in Bolivia “to build sustainable solutions that improve

concepts and to give them opportunities to assume professional roles. Some simulations can be conducted during class time, while others may be conducted outside of class.” (footnote omitted)). The first-year pilot curriculum attempts to expand “experiential learning opportunities” by “increasing the integration of skills, doctrine, and professional identity in the curriculum.” Catherine E. Smith, *Seven Principles: Increasing Access to Law School Among Students of Color*, 96 IOWA L. REV. 1677, 1682 (2011).

123. See Eric S. Janus, *A Law School for the Real World*, WM. MITCHELL C. L., <http://www.wmitchell.edu/about> (last visited Dec. 31, 2011).

124. See *supra* notes 100–102.

quality of life for the long-term.”¹²⁵ In addition, the Center for Negotiation and Justice is partnering with the Office of Multicultural Affairs to design a project-based, social justice advocacy class starting in 2012-13, in which groups of students will work together to provide advice to social justice organizations that do not have the resources to create solutions on their own. Such work leads to real “outcomes,” both for the students and for the organizations that they serve.

Project-based learning requires collaboration among students, as well as teamwork.¹²⁶ Part of what is learned is how to work with others and leverage the strengths within one’s group. Students’ project-based learning work mirrors another element of real work: dealing with others on a jointly pursued project.¹²⁷ With faculty oversight, the group dynamic of project-based learning pushes students to work together more efficiently.¹²⁸

We would also like to strengthen our upper-year, problem-based learning courses.¹²⁹ There are numerous advantages to problem-based learning, including its ability to achieve defined learning objectives in controlled situations without the unforeseen legal and factual issues that can arise with real clients and lawyers.¹³⁰

125. *About Mano a Mano*, MANO A MANO, <http://manoamano.org/about-mano-a-mano/> (last visited Dec. 31, 2011).

126. See Matasar, *supra* note 6, at 1602 (defining “Project Based Learning” as students working in teams to assist faculty in their research by “doing some outward work in the subject area of the faculty member’s research”).

127. See Stephen Ellmann, *The Clinical Year*, 53 N.Y.L. SCH. L. REV. 877, 880 (2008/09) (describing the types of project-based learning initiatives students complete at New York Law School).

128. See BEST PRACTICES, *supra* note 105, at 277 (“Students should be assigned group projects, some to take place during class meetings and others outside of class. Students should be trained in how to work in collaborative groups and be closely supervised to ensure these experiences reflect aspects of law practice collaboration and build their collaborative skills.”).

129. Problem-based learning traditionally refers to using simulated situations that students must solve, rather than learning from lectures. See Keith H. Hirokawa, *Critical Enculturation: Using Problems to Teach Law*, 2 DREXEL L. REV. 1, 36 (2009) (describing the benefits of having students work through realistic problems to learn about the practice of law); Kowalski, *supra* note 109, at 99 (“*Problem-based learning* calls for ‘immersing’ students in the active use of knowledge by engaging them in problem-solving.” (emphasis in original)); John R. Mergendoller et al., *The Effectiveness of Problem-Based Instruction: A Comparative Study of Instructional Methods and Student Characteristics*, 1 INTERDISC. J. PROBLEM-BASED LEARNING 49, 49 (2006) (“Rather than reading or hearing about the facts and concepts that define an academic field of study, students solve realistic (albeit, simulated) problems that reflect the decisions and dilemmas people face every day.”).

130. See Myron Moskowitz, *From Case Method to Problem Method: The Evolution of a*

Traditional bar courses, such as Professor Kunz's U.C.C. Sales course, follow this approach, in which students work together with a faculty member to solve problems. We will introduce a new problem-based course, Law and Business: Mergers and Acquisitions, in spring 2012, to accompany longstanding courses such as Business Buy/Sell Transaction Simulation, Legal Practicum: General Practice, and Legal Practicum: Small Business Practice. Outside practitioners are brought in to teach these courses, further connecting students to legal practices. Experiential problem-based education at William Mitchell largely began with the practicum courses, and in areas of law where project-based learning is not feasible, problem-based learning continues to offer students a strong option.

What we envision at the forefront of William Mitchell's future innovation, however, is a series of courses that form a "Keystone," combining multiple or alternative types of experiential learning with a seminar or long paper that ties the classes together. This series of courses might act like a group of Lego pieces that students can combine in different ways to achieve desired outcomes on a Pathway. Keystone courses are courses "to be taken in the final year of law school that will add value relative to both traditional doctrinal courses and the first years of law practice."¹³¹ The Keystone courses Elder Justice and Policy and Comparative Law—Lawyers: Opponents of Democracy? involve placement and classroom experiences, and we envision a final-year program at William Mitchell in which students take similar, interlinked courses in an area of law or practice that together form a Keystone.

C. *More Access for Students*

Up until roughly 1980, all students attended William Mitchell part-time, taking their classes in the evening.¹³² Starting in 1980, students were allowed to take day classes and attend William Mitchell full-time.¹³³ William Mitchell's roots, dating back to 1900,

Teacher, 48 ST. LOUIS U. L.J. 1205, 1206 (2004) ("While clients ramble on in all directions, I could control the story. I could invent a tight little tale that raised only the issues I wanted raised, in a way that challenged the students to organize and analyze the issues as a good lawyer might.").

131. *The Keystone Program*, WM. MITCHELL C. L., <http://www.wmitchell.edu/curriculum/keystone-program.asp> (last visited Dec. 31, 2011).

132. *See Our History: Over a Century of Distinction*, WM. MITCHELL C. L., <http://www.wmitchell.edu/about/history.html> (last visited Dec. 31, 2011).

133. *See id.*

lie with working students,¹³⁴ and, even today, William Mitchell caters to nontraditional working students who attend school part-time during the day or evening, as well as to students with children and those who for other reasons choose to attend school part-time. In accordance with William Mitchell's mission to offer working and other nontraditional students access to education, we provide both day and evening scheduling options. After their first year, it is common for students to take both day and evening courses, and they are allowed to switch back and forth between full-time and part-time courses of study.¹³⁵

Today, we aim to continue increasing the flexibility provided to our students. We currently offer a reduced schedule over the summer, with limited offerings, but envision using our building more effectively during this period to offer more doctrinal courses (especially bar courses), problem-based simulations, and other experiential options. As the market for summer jobs has declined,¹³⁶ students should now be given the opportunity to complete more coursework over their summers. We might consider moving to a trimester system, with a fall, spring, and summer term. This would increase flexibility for faculty members, who might only have to teach in two of the three trimesters, and, more importantly, for students, who might be able to get a law firm, government, or public interest externship, or a paid clerkship, in the fall or spring, but need to attend classes full-time in the summer. A trimester system also opens the possibility of students

134. *See id.*

135. During an academic year, William Mitchell schedules sections of all bar and required courses during both the day and evening. There is not enough student demand to offer all electives in both the day and evening. Consequently, all students likely take some night classes, even if they have part-time evening jobs or family commitments that make doing so difficult. William Mitchell consciously rotates day and evening offerings of elective courses to make as many as possible available to part-time students who primarily attend class in the evening.

136. Press Release, LawCrossing, Paid Positions for Summer Associates Decreasing as Law Firms and Their Clients Look to Cut Costs (June 16, 2010), <http://www.prlog.org/10740369-paid-positions-for-summer-associates-decreasing-as-law-firms-and-their-clients-look-to-cut-costs.html> ("Law students are finding that paid positions for summer associates are being offered without pay, if at all in a tough economy. Citigroup Inc[,] has announced that it will not be paying its outside counsel for the law students' time. Other big law firms like Skadden, Cravath, and Dewey & LeBoeuf, among others, are also taking on substantially fewer summer associates this summer compared to 2009 according to the National Association for Law Placement.").

completing a J.D. in two years.¹³⁷

As we increase the number of institutional externships, especially outside of the Twin Cities, where jobs are increasing,¹³⁸ we also need to develop technological flexibility in the form of additional online and blended courses that students can take, at least in part, from a distance. Online and blended courses increase access for students, especially nontraditional students who live far from William Mitchell's campus or work full-time jobs, cater to different learning styles (such as students who need to reflect before answering questions),¹³⁹ and achieve learning outcomes just as effectively as traditional in-person classes.¹⁴⁰ We have had a high level of success with faculty development and implementation of blended courses in the past, where up to one-third of the course hours are devoted to online discussion and other out-of-class learning.¹⁴¹

137. At our Curriculum Committee meeting on October 25, 2011, one Committee member referred to a two-year J.D. as a "lightning J.D."

138. See, e.g., Eric Cooperstein, *Small Towns Have Jobs for Young Lawyers*, LAWYERIST.COM (Sept. 7, 2010), <http://lawyerist.com/small-town-jobs-lawyers> ("I met with a lawyer a couple of weeks ago in a small town about two hours outside of the Twin Cities. Our conversation turned to operating a law firm in a small town and the lawyer told me two things I probably knew but did not really appreciate. One was a complaint about how difficult it is to attract new lawyers to join law firms in rural areas. The other was the lawyer's prediction that in the next ten years, half the lawyers in her quarter of the state were going to retire from the practice of law. That prediction probably is not unique to Minnesota. New lawyers unable to find a job in a major American city may want to broaden their job searches beyond their local beltways.")

139. See David P. Diaz & Ryan B. Carnal, *Comparing Student Learning Styles in an Online Distance Learning Class and an Equivalent On-Campus Class*, 47 C. TEACHING 130, 130 (1999).

140. See U.S. DEP'T OF EDUC., EVALUATION OF EVIDENCE-BASED PRACTICES IN ONLINE LEARNING: A META-ANALYSIS AND REVIEW OF ONLINE LEARNING STUDIES 18 (2010), available at <http://www2.ed.gov/rschstat/eval/tech/evidence-based-practices/finalreport.pdf> ("The overall finding of the meta-analysis is that classes with online learning (whether taught completely online or blended) on average produce stronger student learning outcomes than do classes with solely face-to-face instruction."); Gary A. Munneke, *Managing a Law Practice: What You Need to Learn in Law School*, 30 PACE L. REV. 1207, 1245 (2010) ("Just as legal services are no longer bound by the four walls of the law office, education without walls is not only feasible, but desirable. Without denigrating the value of face-to-face contact, distance learning, like distance representation of clients, provides opportunities to enhance and expand the scope of communications.")

141. Examples include: Health Law—Biomedical Ethics (spring 2010); Criminal Procedure (spring 2011); Family Law (summer 2010, fall 2010, fall 2011); Land Use (fall 2010); Transactions and Settlements (fall 2010, spring 2011, fall 2011). These courses met in person only once a week (twice in the case of the Family Law summer course), giving nontraditional students and students who live far away

We have had less success in offering fully online courses,¹⁴² but envision a future in which we are able to do so more effectively. We need more courses that are fully online, especially bar courses, which enable students to complete externships in rural parts of Minnesota and still take other William Mitchell courses, minimizing their need to travel to and from our physical campus.

D. "More Mitchell": Conclusion

William Mitchell continues to hold its reputation among the practicing bar as the "lawyer's law school,"¹⁴³ but we cannot rest on that reputation alone. We need to continue to shift our focus toward outputs (what our students can perform) and away from inputs (what our students are taught), which will give our students the "practical wisdom" that employers seek. In light of how the structure of the profession is changing, and the emerging areas in which a demand for lawyers exists, we must connect our students and curriculum more closely to the realities of the legal profession.

No longer is William Mitchell the lawyer's law school solely for litigators. We have recognized that a lot of what lawyers do is counsel clients, negotiate, and draft settlements and transactions, and we are quickly becoming the lawyer's law school for *all* lawyers in the region.

We also plan to stay true to our roots and cater to nontraditional students. Our faculty members teach, write law review articles and books, serve the community, and do pro bono work. William Mitchell is not the "night" law school that it started

from the campus more flexibility in scheduling. Because blended courses offer this flexibility at the same time that they demand a low student-to-faculty ratio, we plan to use assistant adjuncts when necessary to work with full-time faculty in offering these courses.

142. We offered a synchronous one-credit Federal Tax Law Research course in spring 2009 and fall 2010. Additionally, Professor Jim Hogg developed and now teaches Insurance Law, an asynchronous three-credit course (last taught in spring 2012), and Professor Emeritus Marcia Gelpe designed and now teaches Environmental Regulation Seminar: Policy Issues, an asynchronous three-credit course (last taught in spring 2012). Professors Hogg and Gelpe have students respond to course problems and readings, respectively, on threaded discussion boards as primary teaching vehicles.

143. See Allie Shah, *100 Years Strong: As It Celebrates Its Centenary, St. Paul's William Mitchell College of Law Is Looking Ahead to Its Next Set of Challenges*, STAR TRIB., Nov. 26, 2000, at B1; Eric S. Janus, *A Law School for the Real World*, WM. MITCHELL C. L., <http://www.wmitchell.edu/about> (last visited Dec. 31, 2011); *William Mitchell College of Law*, L. SCH. ADMISSIONS COUNCIL, <http://www.lsac.org/llm/Guide/6942.asp> (last visited Dec. 31, 2011).

as back in 1900,¹⁴⁴ but it is still a law school where students come first. With that in mind, we want to create as many flexible educational options for our students as possible. Creating more access, with a focus on our outcomes-based and experiential academic program—even during a time of uncertainty in legal education—will enable William Mitchell to continue to “equip our lawyers.”

144. See *Our History: Over a Century of Distinction*, WM. MITCHELL C. L., <http://www.wmitchell.edu/about/history.html> (last visited Dec. 31, 2011).

V. APPENDIX A

The Common Law Process: Torts

Course Objectives By the end of this course, students will be able to:	Assessments
Read, analyze and apply the holding, reasoning, and rule of a case to new factual situations.	Class discussion and in-class exercises Case-briefing exercises Essay final exam requiring students to read a new case(s) and then apply the holding, reasoning, and rule to a new factual situation
Articulate the elements and related doctrines of several intentional torts, negligence, and strict liability, and apply those legal rules to new factual situations.	Class discussion and in-class exercises Cooperative quizzes Multiple-choice final exam Essay final exam requiring students to state and apply tort law to a new factual situation
Anticipate and articulate the arguments lawyers would make representing the parties in a tort case.	Class discussion and in-class exercises Analyzing hypotheticals Essay final exam requiring students to identify issues and analyze facts from the perspective of both parties
Explain the purposes of the tort law system and evaluate its ability to provide adequate remedies for injuries.	Write a three-page essay analyzing assigned tort case or cause of action based on the four purposes of the tort law system discussed in class
Critically evaluate the role lawyers and judges play in the common law process.	Write a dissent or concurrence to one case read during the semester in which you critique a lawyer or judge for failing to fulfill her professional responsibilities in the common law process

