

Summer 1983

A Glimpse Forward: Toward Quality and Coherence in Law School Curricula, 16 J. Marshall L. Rev. 523 (1983)

Francis J. Conte

Follow this and additional works at: <https://repository.law.uic.edu/lawreview>



Part of the [Legal Education Commons](#)

Recommended Citation

Francis J. Conte, A Glimpse Forward: Toward Quality and Coherence in Law School Curricula, 16 J. Marshall L. Rev. 523 (1983)

<https://repository.law.uic.edu/lawreview/vol16/iss3/3>

This Article is brought to you for free and open access by UIC Law Open Access Repository. It has been accepted for inclusion in UIC Law Review by an authorized administrator of UIC Law Open Access Repository. For more information, please contact repository@jmls.edu.

A GLIMPSE FORWARD: TOWARD QUALITY AND COHERENCE IN LAW SCHOOL CURRICULA

FRANCIS J. CONTE*

Visions of shriveling law school budgets and incompetent (and perhaps unethical) practitioners accompanied him as he emerged from the meeting of the Dean's Ad Hoc Committee on Curriculum Development. Sam and Clint had remained steadfast in their view of the need for an unyielding core curriculum. No tampering—clinical programs, a variety of special and even interdisciplinary seminars, perhaps, should be available in the third year, but the root requirements of legal education and legal thinking were too intertwined with the case method . . . and Torts and Contracts and Property law. *Ipse dixit* flowed, disconnected, through his mental images. But the firm views of Sam, Clint and most of the others echoed around his doubts. Change in the first year and perhaps even the second would crumble the foundation upon which law schools, nay legal institutions, are constructed.

And Kirk, he'd thought we'd better reverse gears; *more* core-focused courses, more case analysis.¹ Furthermore, we had no money for change, even for decent clinical courses. In some ways, he conceded, Kirk may be right. Course topics had grown

* J.D., University of Texas School of Law, 1969; B.A., Pennsylvania State University, 1964; Member, Massachusetts Bar; Associate Professor, Detroit College of Law, Detroit, Michigan.

1. This view has commanded respect among some of the faculty at the two law schools where the author has taught. There seems to be little question among law academics of the fruitfulness of the "traditional" first year approach—Contracts, Torts and Property, the virtually inflexible core, bound up by the "Socratic" case analysis method of teaching. See Rowles, *Toward Balancing the Goals of Legal Education*, 31 J. LEGAL EDUC. 375 (1981) [hereinafter cited as *Goals of Legal Education*]. See also Bon-signore, *Law School Involvement in Undergraduate Legal Studies*, 32 J. LEGAL EDUC. 53, 61 (1982) [hereinafter cited as *Law School Involvement*]; Velvel, *Suggested Improvements in Legal Education*, 29 J. LEGAL EDUC. 194, 199-200 (1978). It has been observed that "[1]aw students and teachers have a high regard for the case method, since case analysis produces sharpness and tough-mindedness, both of which are considered to be highly desirable lawyer attributes . . ." and that the case method "reinforces the illusion . . . that the discussion is wide-ranging." *Law School Involvement*, *supra* at 61. Assuming the value of sharpness and tough-mindedness as "highly desirable" lawyer qualities, the observation insistently begs the question—can

wildly.² Gut courses proliferated among available electives. Students who had survived at the margins of examined competence in the first year were barely challenged thereafter. Hmmm, he shook his head. On the other hand, the Dean seemed open to change in his cautious, quiet way, and Charlie was absolutely sanguine about the fruitfulness of an experimental curriculum, but his noisy enthusiasm always exceeded the accepted level of prudent academic discussion to be taken seriously by his peers.

Why were the recommendations of the Cramton Report³ and the ABA's Special Committee For a Study of Legal Education⁴ barely paid lip service? And weren't the well-founded views of most practitioners⁵ and many judges⁶ simply being ig-

these qualities not be produced in "wide-ranging" discussion formats in clinical teaching or blended methods of teaching?

The first year experience has not escaped very cogent criticism. See, e.g., Holpern, *On the Politics and Pathology of Legal Education*, 32 J. LEGAL EDUC. 383, 384-89 (1982).

2. Velvel, *Suggested Improvements in Legal Education*, 29 J. LEGAL EDUC. 194, 199-200 (1978). Courses such as Moot Court (for graded credit), "Plato's Idea of Justice," "Law and Literature," "Law and Religion in India" and "The Law of Street Demonstrations" may well be stimulating and intellectually broadening, however, their availability at schools with limited and/or decreasing real resources is cause for critical concern.

3. ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF LAW SCHOOLS (1979) [hereinafter cited as the CRAMTON REPORT]. The CRAMTON REPORT emerged from a "blue ribbon Task Force of the bench, bar and academia, and recommended in fairly general terms that law schools provide instruction in fundamental skills critical to lawyer competence," and experiment with schedules to provide "opportunities for intensive instruction in fundamental lawyer skills." See CRAMTON REPORT, *supra*, at 104-05.

4. ABA SPECIAL COMMITTEE FOR A STUDY OF LEGAL EDUCATION REPORT AND RECOMMENDATIONS: LAW SCHOOLS AND PROFESSIONAL EDUCATION (1980). [hereinafter cited as the SPECIAL COMMITTEE REPORT]. The SPECIAL COMMITTEE REPORT provides a well-documented review of previous research and commentary on the goals and benefits or inadequacies of legal education. It also draws upon and integrates portions of the CRAMTON REPORT and its precursors. The Committee concludes with an endorsement of the "fundamental skills" recommendations of the CRAMTON REPORT, and the recommendation that a project be undertaken to identify and evaluate ongoing law school programs of this type "which have significantly augmented and enhanced the typical law school core curriculum." SPECIAL COMMITTEE REPORT, *supra* at 103-04. It was also recommended that the law school recruitment process "look to the practicing segment for its potential faculty members and seek creative ways to attract practitioners to teach" *Id.* at 105.

5. See, e.g., SPECIAL COMMITTEE REPORT, *supra* note 4, at 45-55; Baird, *A Survey of the Relevance of Legal Training to Law School Graduates*, 29 J. LEGAL EDUC. 264 (1978).

6. See *Final Report of the Advisory Committee on Proposed Rules for Admission to Practice*, 67 F.R.D. 159 (1975); Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 FORDHAM L. REV. 227 (1973). But see Pe-

nored? He recalled momentarily his own trepidation as his first client approached his office twelve years earlier. Visions of what to do and how to do it flashed by his young legal mind—adroit perhaps, but unprepared for this. All that education, yet he had somehow felt incompetent, and cheated.

Student noises buzzed amidst Professor Wilson's thoughts and memories. Barely conscious, he stepped down the stairs toward the library and suddenly felt his left foot slipping from under him. He slid and saw the scuffed, brown wall going by. His back and head were jarred and bounced along the wooden edges of the stairs. Thoughts, voices, faint images whirled in dizzying circles, until suddenly all was quiet and black.

In time, light, soft colors and quiet images and voices arrived. He felt weak, but warm; in an almost fetal curl. He tried to stand. His former Torts professor had asked a question about the *Palsgraf* case. He'd stand and recite, but managed only to lift his head, to look around briefly and . . . found himself not in Torts, but lying on a couch in a very comfortable parlor-like lounge. A young man, dressed in an unusual vest and blouse, hovered uneasily a few feet away. "Professor Wilson?" he inquired. "Are you alright? You took quite a tumble outside the door." The words and images reverberated. "Jeff went for help." Help? He thought, "this fellow seems to know me. A student?"

"I'm fine. A little dizzy, but I'll be fine." He started to rise, felt woozy again and laid back. "So," composing himself, "you and Jeff carried me here?" His voice creaked. The student nodded. "I'm sorry," Professor Wilson said, "I can't remember the fall. Must be getting old, I guess." He started up.

"Getting?" The student smiled to himself, helping this venerable man to his feet. "Professor Wilson!" He seemed quite surprised. "You passed out just outside the door. You'd been talking to a group of students about legal education dogma of the twentieth century—casebooks, core courses, cram courses, the fight for clinical programs and course integration. Sounded like an interesting time. Suddenly though, you just fainted. We thought you had a stroke!"

Professor Wilson's eyes widened. His head ached a little, but now he was seeing and hearing somewhat clearly. Twentieth century? Something was awry. He'd say nothing more for the time.

With the student, he passed from the lounge through a door marked "Law Data Center." His eyes widened again. Upon entering, he saw ten square, well-spaced tables in a spacious room. Smaller desk-like tables and chairs bordered the room. At the center of each square table a computer terminal was situated upon a swivel which could be drawn up to each side of the table. Four persons could work comfortably at each table. He recalled the Committee's debate over whether to add to its computer-assisted research facility, consisting of *one* Lexis terminal in the law library, by purchasing a Westlaw terminal.⁷ Smaller computer terminals and other unfamiliar data-processing equipment were situated on other desks throughout the room. These smaller desks could accommodate only one or two persons at a time. Stacks of printed, unbound pages about the size of law journal pages sat upon a number of the desks around the room. The four walls of the room were "decorated" with familiar-looking reporters, digests, treatises—familiar but faded. Archives? Museum pieces?

He stopped and thought for a moment, looking down at his trousers. They hung loose and baggy. His fingers were gnarled and covered with dry, wrinkled skin. His face, it felt crinkled, thin. It was the face of an eighty-year old man. This couldn't be. He stood and shook his head. "Ahem!" The student was standing by him. "Professor, are you sure you are well?"

"Well," he answered, "well, yes, I suppose, quite well. But I'd like to go back to my office for a bit. Would you mind taking me there?"

"Of course not," answered the concerned student.

As the two walked slowly down the hall, they passed bright, young students who dropped their voices as they passed. They walked by a large, colorful suite of offices, marked "Warren Teaching Clinics." The student interrupted Professor Wilson's observations to remind him of the P.C.D. meeting in the conference room in one hour. "P.C.D.?" he questioned aloud. "Professional Curricular Development, I believe," the student answered.

The Professor and student passed several small, court-like rooms—no amphitheatres, no "bowling alleys"—where were the classrooms? They came upon an office marked "Wilson." He asked the student to return for him in an hour.

As Professor Wilson entered the office, he was struck by its worn, comfortable look. There were only two shelves of books,

7. See Pye, *Legal Education Past and Future: A Summer Carol*, 32 J. LEGAL EDUC. 367, 373-76 (1982).

all well worn. However, the office was also fitted with small machines with keyboards—for information and data processing, he guessed. Probably there were directions somewhere. He was familiar with the disorderliness of his desk and its surroundings. The office suited him.

In the middle of his desk he found a blue and white pamphlet. Its title:

The Earl Warren Law School
2022
Information
Catalogue

2022? He thought. Smiled. Well, let's see what we're about.

He turned to the introductory pages. There he learned that the Earl Warren Law School had been founded in 1991 by a small group of law teachers dissatisfied with the failure of law schools to provide a coherent, morally responsible and stimulating educational experience. More pragmatically, the founders sought to keep pace with the growth and needs of law and society.⁸ Hmmm, he thought, there was a familiar ring to these phrases. Had it been Charlie?

Professor Wilson read on. The Earl Warren Law School, he learned, was dedicated to the ideal that the law and lawyers *serve* society; the school's aim was to foster understanding and competence in the law. Above all, the primary goal was betterment of the law and law practice.

He moved to the Table of Contents and located the section entitled *Curriculum*. A preliminary explanation indicated that all first-year students were required to take and pass two lengthy periods of a blended course, the first for sixteen weeks, the second for twenty weeks. This course, the only one available to first-year students, was entitled *Elemental Civil Process*. The initial period involved private law lecture and discussion taught by faculty members, and closely supervised research, writing and interpersonal responsibilities taught by Practitioner

8. The goals of legal education had been viewed as (1) preparation of students for the practice of law (without the overlay of coherence, a sequential progression of learning and moral responsibility) and (2) serious "intellectual" study in the context of the law. See *Goals of Legal Education*, *supra* note 1, at 377. According to many very thoughtful observers even these perhaps limited goals were not achieved by law schools. See Cramton, *The Current State of the Law Curriculum*, 32 J. LEGAL EDUC. 321 (1982); Klare, *The Law-School Curriculum in the 1980's: What's Left?*, 32 J. LEGAL EDUC. 336 (1982); Michelman, *The Parts and the Whole: Non-Euclidean Curricular Geometry*, 32 J. LEGAL EDUC. 352 (1982). Some commentators argue that rather than "intellectual stimulation," legal education is more effective in producing authoritarian-induced anxiety. See Halpern, *On the Politics and Pathology of Legal Education*, 32 J. LEGAL EDUC. 383, 389 (1982).

Fellows.⁹ According to the catalogue, these subjects, methods and their ethical dimensions were harmoniously blended and constructed in order to provide the student with an intellectually rigorous, yet realistic and responsible understanding of elemental prelitigation civil process and law.¹⁰ The second, twenty-week period blended in constitutional law in addition to private law, and continued the civil process through the pretrial stages of a lawsuit.¹¹ He turned to the detailed description of these "courses." He noticed that students received approximately ninety hours in private law during the first sixteen weeks.¹² However, the substantive lectures and discussions consisted of

9. See *infra* Appendix E. See also *infra* Appendix A, at I.

10. See *infra* Appendix A, at I. In some respects the course appeared to be a reshaping of the "traditional" first semester. The substantive areas involved an advanced state of traditional substantive areas—torts, contracts, property—and research and writing were basic to the new curriculum. However, the periods for teaching the subject areas were shorter and more intensive and these areas were taught functionally and transactionally rather than in isolation from each other. The expectation was that although a case analysis method of teaching would in part be used, other pedagogies including "lecture" and "discussion" would be at least equally relied on. Further, the phrases "interpersonal responsibilities" and "responsibly evolved understanding" clearly evoke teaching methods which are sensitive to ethics and skills, as well as the intellectual dimensions.

11. See *infra* Appendix A, at II. This second period would resemble a pretrial lawyering process course, drawing upon the doctrines of private law, civil procedure and constitutional law, without a field work component. The described course was presumably more thorough, though less broad in its coverage, than the lawyering process courses with which Professor Wilson had been familiar. Such courses may be found at a number of schools, including Northeastern and Stanford law schools (in the first year) and at U.C.L.A. and Gonzaga (as electives beyond the first year). Professor Wilson would recall that Vermont Law School offered a first year course, entitled *Litigation Workshop*, which supplemented Civil Procedure and which advanced students beyond the pretrial stage to trial. It is described in Shreve, *Bringing the Educational Reforms of the Cramton Report Into the Case Method Classroom—Two Models*, 59 WASH. U.L. Q. 793, 797-802 (1981); Shreve, *Classroom Litigation in the First Semester of Law School—An Approach to Teaching Legal Method at Harvard*, 29 J. LEGAL EDUC. 95 (1977). See also Marple, *The Basic Legal Techniques Course at Catholic University School of Law: First-Year Lawyering Skills*, 26 J. LEGAL EDUC. 556 (1974).

12. See *infra* Appendix A, at I. If these areas were divided into the traditional tort, contract and property coverages, they would involve approximately thirty hours per subject area, rather than the usual forty-two or more in the first semester. The coverage would be more selective and less dependent upon a long series of case discussions. Further, class meetings would be held more closely together, *i.e.*, three hours of private law per day, for a two-week period. Transition should be less of a problem than it was, and understanding should be heightened. Commercial law, rather than common-law contracts, predominated in the first year. Though the common law of contracts for services was not universally codified, the law school preferred that code and common-law doctrine be blended to provide a coherent, elemental commercial law course rather than stringing out the area over nine to twelve or more credit hours, as was the case in the 1970's and 80's.

two "concentrated" weeks at the outset,¹³ repeated for two-week periods at the 7th week and 12th weeks.¹⁴ The private law subjects were not encapsulated in the manner he had known, but were presented in a functional, transactional context.

The first series of substantive lecture/discussions was followed by training in elemental research and writing skills for two concentrated weeks in which the problems drew upon the substantive material previously covered.¹⁵ This two-week period was followed by two weeks of concentrated training in interviewing and counseling skills, also drawing upon material and research already covered.¹⁶ After the second two-week substantive lecture/discussion period, in the ninth and tenth weeks, the students were provided a problem with a mix of private law issues, drawing upon areas covered. In a closely supervised practice exercise, students would conduct a simulated initial interview, followed by research, writing a memorandum for a senior partner, and client-counseling.¹⁷ This was followed by the third substantive period.

In the last three weeks, the students would be provided a second problem, based upon information, material and skills previously learned which called for an initial interview and a critique of the interview. The students were required to research the simulated client's problem, write a memorandum and participate in a critique of the memorandum. Finally, the students counseled the client and participated in a critique of the counseling session. The student was evaluated for his understanding and performance over this final period.

13. Had he inquired, Professor Wilson would have found further changes in the subject matter of the courses taught. For example, litigation over interpersonal torts, such as vehicle collision, was virtually nonexistent due to the almost universal legislation insurance schemes. In professional negligence type cases, litigation was at a minimum because mediation and other alternative dispute resolution mechanisms had statutorily intervened. Although coverage of these areas and their respective mechanisms for resolution of disputes remained important, case law was in large part of only historical significance.

14. The separation of the periods of subject matter lecture/discussion provided an interim period in which the learned information could be applied and its values and consequences assessed in simulated situations. Further, the staged learning process allowed students to begin with basic and rather simple doctrinal concepts in applying the law, initial client contact, research and simple written exposition of legal ideas and position. Students could then progress to more difficult material as the stages of legal problem solving, interpersonal contact and adjudication increased in complexity.

15. See *infra* Appendix A, at I.

16. *Id.*

17. *Id.*

The second first-year period, twenty weeks, focused on the formal pretrial stage. During this period, one or more of the private law issues developed in the first sixteen-week period continued to be addressed.¹⁸ In addition, constitutional law and formal civil process were introduced. Approximately forty-five hours of lecture/discussion were devoted to civil process and alternative mechanisms for dispute resolution and thirty hours to constitutional law.¹⁹ Again, these subject areas were covered in concentrated periods, the first over three weeks at the outset of the twenty-week period and the second during the ninth and tenth weeks of the period. In this second period, students combined the knowledge and skills already absorbed, and new information in the constitutional and procedural realms, in planning litigation, conceiving and drafting pleadings, and conducting discovery, negotiations and other pre-adjudication responsibilities. The students also prepared and argued a Motion for Summary Judgment.²⁰ Professor Wilson noticed the repetition of the term "responsibilities," and guessed (or hoped) that this was intended to emphasize the ethical, moral or perhaps social dimensions.²¹

18. See *infra* Appendix A, at II. The private law issues raised and drawn upon in the simulated exercises would not, of course, encompass the broad range covered in the lecture/discussion format. However, the exercises would not involve single-issue problems and each task group of students meeting with Practitioner Fellows would have a different set of private law issues. Comparative analysis and discussion of the different private law questions and the values and responsibilities they perpetuate would provide nutritious fodder for the classroom appetite.

19. *Id.* at D. Constitutional law issues would also be introduced in the context of the pre-adjudication exercise, though, as with the private law areas, the classroom component's coverage would be much broader.

20. *Id.* Students engaged in or considered at least one nonadversarial alternative to the normal pretrial format, in addition to the summary judgment hearing. The use of the summary judgment format provides students with an opportunity to write a brief under thoughtful supervision and to make legal and somewhat factually-based arguments. It is more realistic and compatible with a first year course than the appellate advocacy format students are often introduced to in the first year. At Detroit College of Law, Research, Writing and Advocacy and Civil Procedure courses have been taught in combination. Students in the Research, Writing and Advocacy component participated in hypothetical cases from the early research stage through pretrial stages culminating in a summary judgment hearing before practicing attorneys and judges. The experience was complemented by parallel consideration of the areas covered in the Civil Procedure course.

21. The goals of the Earl Warren Law School do indeed emphasize these responsibilities. Were he to inquire further, Professor Wilson would learn that professional, individual *and* societal responsibilities are an important part of each of the courses and options provided in the school's curriculum. No discussion, Socratic or otherwise, no supervision, of interpersonal or inter-institutional background, would tarry long on doctrine without raising ethical, moral or social value dimensions.

It appeared that after the first year, the student was presented with a series of comprehensive options for the next two or three years.²² Most options available in the second year of study covered sixteen to eighteen weeks. Students were expected to select two options in the second year. They were described as follows:²³

OPTION 1. *Civil Trial and Appellate Process* (16 weeks)

Option 1 includes classroom components on Advocacy, Evidence, Remedies and Responsibilities to Client. The substantive areas will be covered by a Trial/Appellate problem. Further, it includes preparation for a simulated trial (including writing a trial brief), jury selection, trial and post-trial matters, and an appeal, including writing an appellate brief and making an appellate argument.

OPTION 2. *Criminal Trial Process* (18 weeks)

This option includes classroom components on Crime, Society and Lawyer's Responsibility, Criminal Law and Process, Evidence, Interviewing and Counseling the Accused, Mental Health Law, Criminal Trial Tactics and Appellate Procedure. The student will participate in a simulated criminal case beginning with the initial interview and continuing through trial. Students may also prepare appeals and/or seek post-conviction relief on behalf of their clients.

OPTION 3-4. *Corporate Law and Tax* (32-34 weeks option)

This option includes classroom components in Corporation Law, Securities Regulation, Taxation, Corporate Tax, Corporate Responsibility and Corporate Finance and Planning. Several problems involving corporate policy, finance and tax decisions and their ethical dimensions will be addressed in simulated situations.

OPTION 5. *Law of Commerce and Small Business* (16 week option)

Classroom components for this option include Commercial Law and Transactions, Small business Entities, Law and Planning and Debtor and Creditor Rights and Remedies. The option will include a simulated problem addressing the legal aspects of es-

22. See *infra* Appendices B and C. Students electing to specialize further, or desiring to cover a broader range of subject areas *and* perhaps benefit from the extensive Pretrial and Trial Simulation Courses, could continue into a fourth year, assuming that they would have been academically eligible for graduation after the third year and demonstrated high standards of motivation and performance. See *infra* Appendix D.

23. Beware: The author's ability to foretell the future is limited by his imagination which has, in turn, been affected by his own lengthy legal education and indoctrination. Further, he begs the forgiveness of those knowledgeable in subject areas which he is not intimately familiar with, and asks that they regard the proposed options as exemplary only.

establishing a small business and problems involving commercial transactions affecting that business.

- OPTION 6. *Property* (16 week option)
This option includes classroom components in Wills, Trusts, Real Estate and Mortgage Law and Estate Planning. Simulated problems involving the interviewing and counseling of clients and the drafting of instruments to meet their needs will be conducted during the semester.
- OPTION 7. *Natural Resources* (16 week option)
Classroom components include Energy Regulation, Oil and Gas Law, Wildlife and Environmental Law, Water Law and Natural Resources Management. Two major problems affecting these areas will be presented by students in a simulated administrative format.
- OPTION 8. *Public Law A* (18 week option)
This option includes classroom components of Administrative Law and Practice, Regulation of Telecommunications and Power and Antitrust Law. The subject areas will also be addressed in a simulated administrative hearing and pretrial federal court context by students representing consumers, governmental entities and the regulated entities.
- OPTION 9. *Public Law B* (16 week option)
This option includes classroom components of Administrative Law and Practice, Public Entitlement Law and Civil Rights. The student will handle a case from an initial interview through an administrative hearing and ultimately, disposition at a Summary Judgment hearing in federal court.
- OPTION 10. *Labor/Employment Law* (18 week option)
This option will include classroom components covering labor law, employment discrimination, arbitration and labor law policy. Students will also engage in simulated problems in the contexts of arbitration, NLRB hearings and pretrial federal court.
- OPTION 11. *Tort Litigation* (18 week option)
Classroom components include coverage of decisional law and prosecution and defense of cases involving professional and corporate defendants, negotiation, discovery, litigation tactics, and remedies. This option will briefly address special discovery and negotiation elements of tort litigation and then involve a simulated trial of a case involving injuries allegedly due to the negligence of a professional or corporate defendant.
- OPTION 12. *Family-Estate Law General Practice* (16-18 week option)
This option will include classroom components of Family Law, Children and the Law, Alternative Methods of Dispute Resolution and the Lawyer's Responsibility and Evidence. (This option may vary

from year to year and may include decedent's estates and estate planning as well.)

Students will engage in a simulated case beginning with an initial interview and including negotiation through evidentiary proceedings in court.

Wilson sat back, his eyes to the ceiling. "My, my," he exclaimed to himself out loud, "I didn't believe we'd go this far." Reading on, he learned that in the second year, depending upon a student's past performance, from one to four elective courses were available. The selections included many of the usual electives—Admiralty Law and Practice, International Trade, Transnational Corporations,²⁴ Evidence, Workers Compensation, Banking Law, Conflict of Laws, Legislation, Real Estate Law, Taxation and Legal History, among others.²⁵ These were rather traditional, and in some views, he remembered, limited—a retrenchment, perhaps?

In the third year²⁶ students could select from among a variety of specialized clinics: (1) a full year of civil and criminal clinical training, which involved closely supervised representation of actual clients (either the simulated civil trial, criminal trial, or the tort litigation option of the second year was a prerequisite); (2) a corporate/commercial clinic (for which options 3 and 4 or 5 were prerequisites); (3) a general practice clinic (for which options 5, 6 or 12 were prerequisites); (4) a labor law clinic (for which the labor option was a prerequisite); or one or two of the second year options. From two to six electives, again depending upon the past performance of the student, were also available in the third year. Additionally, an International option became available.²⁷

In terms of sequence and function, there was something quite coherent about all this. But, he thought, where coherence seems to lurk, small snakes and little demons may as well. And what had become of all the practical problems, especially faculty

24. A broad, eighteen-week International option was available, but was limited to the third or fourth year students who had taken the year long Corporate Law and Tax option in the second or third year, or to students who had performed well academically in certain related electives. The International option included the subject areas of International Law, International Trade and Dispute Resolution (which includes comparative commercial/corporate law), Transnational Corporations, Comparative and International Taxation and International Regulation. The option addressed two problems in a simulated format: one involving the legal aspects of tax and corporate policy planning in an international context, and the second a trade dispute involving private corporate parties before an international or other tribunal made available to resolve international trade disputes.

25. See *infra* Appendix E.

26. See *infra* Appendix C.

27. See *supra* note 24.

territoriality and cost-effectiveness? Problems of bygone days, apparently. And what about all those questions concerning the sacrifice of *intellectual rigor*?

He wondered what he was teaching. The Table of Contents led him to the 2022 Faculty Course Schedule.²⁸ He was teaching Course A, the first semester course for the first year students, sharing the responsibilities with three other faculty members and sixteen Practitioner Fellows.²⁹ He was also teaching an elective on Discovery. For the second semester he was scheduled for Option 8,³⁰ responsibility for which he shared with another faculty member, and was scheduled for a seminar in federal practice. He glanced at responsibilities for other faculty members. Professor Crandall, one of his colleagues in Course A, had a commercial law elective in the first semester. In the second semester, Crandall taught Option 5, Commercial Law and Small Business, along with a Consumer Litigation seminar. Professor Jeffries was a co-director of the third year clinic during the first semester, but also taught a Public Utility Regulation seminar. In the second semester, along with three other faculty members and the sixteen Practitioner Fellows, Jeffries shared responsibility for Course B, the Pre-adjudication Civil Process course for second semester, first year students. He counted twenty-five full time faculty members, sixteen Practitioner Fellows and seven full-time supervising attorneys, for approximately 500 students. Sounded like it *could* be cost-effective.³¹ It appeared to be more labor intensive than traditional scheduling,

28. See *infra* Appendix E.

29. The Practitioner Fellows were experienced, practicing attorneys who devoted at least ten hours per week during the weeks scheduled for nonclassroom activities to close supervision of students engaged in research, writing, interpersonal skills and responsibilities, and other adjudicative and nonadjudicative stages of the pretrial process. Prior to working with students, practitioner fellows were trained in the techniques and goals of the law school's blended courses.

30. Option 8, entitled Public Law A, like several other options, was an eighteen-week option as opposed to Public Law B. The period for options was usually sixteen to eighteen weeks. Breaks between periods were sufficiently long to permit eighteen-week options without eliminating at least a short vacation break. The 32 to 34-week Commercial Law option was a year-long option, and like the Family-Estate Law General Practice Option, varied in length depending upon the coverage addressed in each particular period. Shorter options were, from time to time, used (for example, twelve or fourteen-week options) leaving from two to six weeks for intensive elective courses. This was done because of individual or collective faculty initiative or as a result of student requests.

31. Reduced to 1982 dollars for the purposes of this article, the proposed annual full-time faculty budget, including fringe benefits (15%) at an average per faculty member of \$46,000 (average salary; \$40,000), would be \$1,150,000 for twenty-five full-time faculty members. The budget for sixteen Practitioner Fellows, at \$10,000 per year for each (approximately \$50 per hour for 200 hours at today's rates) was \$160,000. Full-time supervising at-

yet left chunks of time during the nonclassroom components of the first year courses for research and writing by faculty members teaching at that level. Options were not as labor intensive, over sixteen to eighteen weeks in any case, and seemed to be more specialized and coherent from the faculty member's perspective. Faculty schedules followed a fairly harmonious pattern. Each participated in two of the large courses or options, often with shared responsibility each year, and two electives or seminars. And there were plenty of offerings for students to select. Well, maybe not as many as Harvard or many other schools once scheduled.³² The Warren School had only about 500 students; a large school could presumably provide proportionately more offerings.

Professor Wilson was tinkering with one of the computer keyboards when the student returned to take him to the committee meeting. He wondered what was cooking. Upon entering the room, one of the six people present stepped forward. "Marcus, we had heard you had a fall?"

"I'm fine, fine." Wilson nodded briefly, scanning the room at the same time. Everyone smiled at him, two men and a woman, all easily past seventy and three others who appeared to be in their thirties or forties.

"Well," a younger man spoke up, "let's be started. The heart of the matter for our consideration is whether we must continue to abide the failure, or perhaps the incapacity, of our students to covet the doctrinal and analytical reaches of the law. Must a well-oiled machine continue to operate ceaselessly simply because it was well-built or may we risk its smooth functioning to hopefully produce a better product?"

torneys were paid \$20,000 each, for a total of \$140,000. Thus, the total budget was as follows:

Total Faculty Budget =	\$1,450,000
Remaining Law School Budget =	<u>1,330,000</u>
TOTAL BUDGET =	\$2,780,000

Including other budget items, a rough estimate places the cost per student, for a 500 student body, at \$5,500 per year. Of this, one would hope that tuition need account for no more than \$4,000 at 1982 rates, the remaining \$1,500 coming from private, bar and governmental sources. This assumes that the largesse of government is no more evident in 2022 than in 1982.

32. See, e.g., Harvard Law School Catalogue (1980). It lists 114 electives and seminars, a not unusually large number for law schools of the 1970's and 80's. The Earl Warren Law School includes many of these "elective" areas, about fifty, within the option courses as part of coherent wholes, rather than elective hodgepodes. From forty to fifty additional electives would be available in any school year.

"Ye gawds and little crawfish! I've heard this before," Wilson was thinking. And isn't this fellow impatient. A curriculum needs time.

"Time and again we have made the argument that we and our students need time to reflect, to ruminate upon the values and principles which all our advocacy builds upon. Law school should be a time for the philosophical, the cerebral inquiries beyond the intensity and confusion of practice."

My, he is direct. A small snake? What do the others think?

The small snake went on for another five minutes. Not a harangue, but a somewhat abrasive attack on the status quo. And this curriculum would certainly be great grist for his celestial mill.

Finally (Wilson's own patience was thinning), the older woman spoke up. "Well, I will not say that what is up must not come down simply because the effort to construct it was so great. However, the reasons for that construction, in many respects an innovation in its time, seem as well grounded today as they did years ago, do they not?" She spoke in slow, measured intervals. "Should ethical, competent law practice not be a primary focus of law school? Isn't social and moral responsibility the essential common apparel for young lawyers? Is responsibility to clients and the capacity to carry out that responsibility not the main purpose of the profession? There were many who gave these values short shrift in my day and they were recognized only incidentally in a formal law school education. I do fear a return to that."

"I do too, Lucy," a second older gent spoke up. "And further, as a practical matter, any significant change today would involve fairly wholesale alterations. Core courses, if that is what is meant by change, would involve juxtapositions which this curriculum could not absorb and remain the coherent whole it is."

"To say nothing of who would teach them," the third gent, cigar in mouth and twinkle in eye, added. The establishment was ganging up on the small snake, whose name, he learned, was Ephraim.

"But," a younger woman interrupted, "is it too much to ask that a curriculum be sufficiently flexible to accept a fresh breeze from time to time?" She had a pleasant, untroubled face, he thought. No small snake. "My dad tells me that it was curricular and territorial inflexibility that innovators forty years ago faced. Isn't it ironic that you are turning the tables now that former innovations are perceived as institutionally established? What harm is there in an experimental parallel curriculum? The

possibility of one or two, or even more core courses need not debilitate legal education in terms of its primary goals."

Familiar points. Even fresh. Had he made them? Thought them? His mind drifted. He wondered whether they had time to do significant research and writing. He thought of the labor intensiveness of the courses and remembered how much he'd enjoyed research and writing intervals, how they'd enhanced the fullness of his understanding.

"Professor Wilson," he perked up, his ears reddened, "has suggested that one section of Modern Tort Law utilizing case and problem analysis be taught during the entire first semester, apart from Course A, and that for the section taking this, the research and memo-writing problems be drawn from it. I understand that he'd be willing to rearrange his own Course A to make it properly compatible. Is that correct?"

He nodded quietly. It sounded reasonable. But what *was* his position in this debate. The demon?

"Who'd teach this *Modern Tort Law?*," one of the older faculty inquired. The senior members exchanged mutual "that's about that, isn't it?" smiles.

"Well, perhaps John Dalton," suggested Ephraim, although hesitatingly this time. Professor Dalton, of course, was not present. Again, several smiled with raised eyebrows. "I'd teach it myself if need be. Or we could find an interested specialist," the young instigator persisted.

"Would we be adding to the faculty then?," the genial gent with the cigar mentioned. "Or does the suggestion assume attrition of some sort?"

Is this a large question, Wilson asked himself, if Dalton and other faculty were in fact not interested in the experimental course? But this too had a very familiar ring. Clint had raised the same problem in the Dean's Ad Hoc Curriculum Development Committee meeting. Hmmm, that meeting, he'd almost forgotten. *He'd* answered that problem, he remembered. In part, at least. Faculty have a responsibility to the school, the profession and society to serve and advance curricular and other goals deemed in the school's best interests.

"Dalton should get involved, should lend the experiment the benefit of his expertise. There should be no other way." He heard himself speaking, at first softly, then emphatically. He explained further, as he had years before, albeit unsuccessfully.

Ephraim smiled. The gent with the cigar, Henry, leaned back in his chair, rolling his cigar in his mouth. Wilson knew what he was thinking—that's easier said than done. But Henry,

said, "You know, I need a cup of coffee. Let's take a short break."

The coffee break; another elemental matter unchanged. "Marcus," Henry said to him as they shuffled out of the room, "did I tell you what my eight year old granddaughter asked me the other day?"

"No," Wilson answered. His head was feeling a bit light. "You didn't." Henry smiled, a large, well-felt smile. "She asked me whether I liked old ideas better than new ideas. Imagine that. Well, I didn't know what to reply." Wilson felt dizzy. "I simply told her that I wasn't sure I knew the difference between the two, and," he smiled, "I'm not sure I do. Do you?" Wilson fainted.

Old ideas, new ideas, flexibility, Modern Torts or Course A, cost-effectiveness, territoriality, coherence . . . curricular visions danced amid the quiet whirling of his mind.

"Professor Wilson!," a young voice squeaked. "Professor Wilson, are you alright?"

Ohhh, his head ached. He tried to move. His shoulder was sore. He looked at his hand. The wrinkles were gone. He looked up at the old scuffed, brown wall.

"How did you ever fall like that?," the student breathlessly asked. "Just got knocked down by some old ideas," he smiled. He enjoyed being enigmatic with students and himself. He walked on into the faculty lounge—he needed a cup of coffee.

APPENDIX A

First Year Courses

- I. Course A—Elemental Civil Process (Sixteen Weeks)
 - A. Four Professors and sixteen Practitioner Fellows teach the course over the sixteen-week period for approximately 160 students.
 - B. The Professors alternate in responsibility for the classroom components and share ultimate responsibility for final evaluation of overall student performance.
 - C. Practitioner Fellows supervise groups of approximately ten students each in research, writing, interpersonal, pre-adjudicative and adjudicative responsibilities and skills.
 - D. Chronology—By Week
 - Weeks
 - 1-2. Thirty hours elemental private law (commercial, tort, property) lecture and discussion.
 - 3-4. Elemental research and writing skills including simple introductory memorandum on a subject area covered in first two weeks.
 5. Interview skills training.
 6. Counseling skills training.
 - 7-8. Thirty hours intermediate private law lecture and discussion.
 9. Practice private law problem in initial interview context and critique (two issues).
 10. Practice private law problem (same problem as above) research and memorandum to partner.
 11. Practice private law problem - counseling client and critique.
 - 12-13. Thirty-four hours continued private law lecture and discussion - thirty hours of large groups with professors and four hours of small groups with practitioner fellows.
 14. Evaluated initial interview in private law context (two issues).
 15. Evaluated private law research and memorandum to partner problem.
 16. Evaluated private law counseling client problem.

- II. Course B - Pre-Adjudicative Civil Process (Twenty Weeks)
- A. Four Professors (not the same faculty as first semester) and the same sixteen Practitioner Fellows for approximately 160 students.
 - B. Professors alternate responsibility for classroom components and share ultimate responsibility for final evaluation of overall student performance.
 - C. Practitioner Fellows supervise groups of approximately ten students each in drafting, negotiation, discovery, mediation, writing and advocacy skills and responsibilities.
 - D. Chronology - By Week
Weeks
 - 1-2-3. Forty-five hours elemental constitutional law and civil process.
 - 4-5. Practice drafting Complaint, Motion to Dismiss and Answer for practice private/constitutional law problem.
 - 6-7. Thirty hours intermediate civil process and constitutional law lectures and discussions.
 - 8-9. Basic discovery skills and responsibilities in context of practice problem.
 - 10. Basic negotiation skills and responsibilities in context of practice problem.
 - 11. Advice and mediation responsibilities in context of practice problem.
 - 12. Evaluated private/constitutional law problem, drafting Complaint, Motion to Dismiss and Answer.
 - 13-14. Evaluated interrogatories and deposition.
 - 15-16. Evaluated negotiation of settlement.
 - 17. Fifteen hours continued civil process and constitutional law lecture and discussion.
 - 18-19. Evaluated drafting of Summary Judgment motion and brief in support or opposition.
 - 20. Argument on Motion for Summary Judgment.

APPENDIX B

Second Year Courses

- I. Options
- A. (See text following note 23)

- B. One Option is required for each student each semester except for students selecting Option 3-4, the Corporate/Tax law option which is a year-long option.
- II. Electives
- A. See Faculty Schedule, Appendix E, for this year's available electives and seminars.
 - B. Second year students may select from one to four electives or seminars during the second year depending upon their respective evaluated capacity. Approximately twenty-one different electives and seminars are available each semester—forty-two in all for the year.

APPENDIX C

Third Year Courses

(Students may take one of the following two-option courses, a full year clinic, or one-option course and a half-year clinic plus electives available to them.)

- I. Options
- A. All options available in second year are available in third year.
 - B. The International Option is available to certain students in the third year.
 - C. An experimental Intellectual Property Option is available to third and fourth year students.
- II. Electives
- A. From two to six electives are available to each student in the third year, depending upon the student's evaluated capacity.
 - B. See Faculty Schedule, Appendix E, for this year's available electives.
- III. Clinics
- A. Main Civil/Criminal Clinic (Full Year)
 - 1. Two Faculty Co-Directors
 - 2. Four full-time supervising attorneys
 - 3. Prerequisite: Options 1, 2 or 11
 - 4. Thirty students
 - 5. Representation of indigent and referred actual clients in civil and criminal matters under close supervision
 - B. Corporate/Commercial Clinic (Half Year or Full Year)
 - 1. Two Faculty Co-Directors
 - 2. One full-time supervising attorney
 - 3. Prerequisite: Options 3-4, or 5

4. Twelve students per half-year
 5. Co-representation and representation of referred Corporate and Commercial clients in actual planning and litigation matters
- C. Labor Law Clinic (Half Year or Full Year)
1. Two Faculty Co-Directors
 2. One full-time supervising attorney
 3. Prerequisite: Option 10
 4. Twelve students per half-year
 5. Co-representation of referred labor and management clients in actual cases
- D. General Practice Clinic (Half Year or Full Year (Functions in Physical Conjunction With Main Clinic))
1. Two Faculty Co-Directors
 2. One full-time supervising attorney
 3. Prerequisite: Options 1, 5, 6, 11 or 12
 4. Twelve students per half-year
 5. Representation of indigent and referred actual clients in family, wills, estates and small business matters

APPENDIX D

Fourth Year Courses

- I. Fourth year is optional for students who have achieved sufficient course credit to graduate after their third year *and* have demonstrated high standards of motivation and quality of performance while at the law school.
- II. All options, electives, seminars and clinics are available to fourth-year students.
- III. Individual research and study under faculty and practitioner fellow sponsorship is available to fourth-year students.

APPENDIX E

*Faculty Course Schedule**

	<u>1st Semester</u>	<u>2nd Semester</u>
1. Wilson	Course A Discovery Seminar	Option 8 Remedies
2. Crandall	Course A UCC Articles 3 and 4 course	Option 5 Consumer Litigation Seminar
3. Jeffries	Co-Director, Main Clinic Public Utility Regulation Seminar	Course B Administrative Law
4. Hartley	Option 1 Evidence	Course B Institutional and Professional Negligence Seminar
5. Wicklow	Option 1 Environmental Law Seminar	Option 8 Water Law Seminar
6. Hernandez	Course A Family Law	Option 12 Criminal Procedure
7. Krankiewicz	Option 9 Criminal Procedure	Option 2 Evidence
8. Wright	Option 9 Workers Compensation	Course B Criminal Law
9. Mayo	Course A Evidence	Option 9 Constitutional Litigation Seminar
10. Parnelli	Option 3-4 Transnational Corporations	Option 3-4 Corporate Reorganization
11. Stearns	Option 3-4 Taxation	Option 13 (International Option) Philosophy of Law
12. Lincoln	Option 13 Corporate Tax	Option 3-4 Taxation

	<u>1st Semester</u>	<u>2nd Semester</u>
13. Perez	Option 10 Criminal Law	Co-Director, Main Clinic Advanced Constitutional Law
14. Canfield	Labor Law Clinic Legal History	Course B Arbitration
15. Gompers	Option 5 Public Employment Law	Option 10 Labor Law
16. Reuther	Option 11 Labor Law	Labor Law Clinic Employment Discrimination Seminar
17. Kerry	General Practice Clinic Decedents' Estates	Option 12 Small Business Planning
18. Bongiorno	Option 6 Real Estate Law	Option 7 Estate Planning
19. Watzky-Smith	Option 7 Models for Judicial Resolution	Option 11 Natural Resources Management Seminar
20. Beaver	Option 12 Land Use Planning	General Practice Clinic Family Law
21. Williams	Option 12 Corporations	Option 5 Commercial Transactions
22. Hussein	Corporate/ Commercial Clinic Banking Law	Option 1 Corporate Tax Policy
23. Spooner	Option 5 Debtor/Creditor Rights	Option 6 Corporate/ Commercial Clinic

	<u>1st Semester</u>	<u>2nd Semester</u>
24. Hercules	Experimental Intellectual Property Option Science and the Law	Option 11 Evidence
25. Dalton	Option 11 Advanced Tort Litigation	Option 1 Admiralty

* Each professor will conduct four courses per semester.

