

Nova Law Review

Volume 10, Issue 2

1986

Article 20

A New Direction In Legal Education: The CUNY Law School at Queens College

Charles R. Halpern*

*

Copyright ©1986 by the authors. *Nova Law Review* is produced by The Berkeley Electronic Press (bepress). <https://nsuworks.nova.edu/nlr>

A New Direction in Legal Education: The CUNY Law School at Queens College

Charles R. Halpern

Charles Halpern is the founding dean of the City University of New York Law School at Queens College, having previously taught at Stanford Law School and Georgetown University Law Center. He was a founder of The Center for Law and Social Policy (1969) and the Mental Health Law Project (1971) in Washington, D.C. From 1975-77, he served as the executive director of The Council for Public Interest Law. In his article, he describes the innovative and inspiring CUNY program, designed to train lawyers to serve the public interest.

I. Introduction

In the fall of 1981, while I was teaching at Georgetown University Law Center and working on a book about public interest law, I was offered the opportunity to become founding Dean of a new law school, the City University of New York Law School at Queens College. I had thought about the possibility of a deanship before, with varying degrees of interest, but I was always put off by the limited opportunities in existing programs where institutional forms had been shaped by prior generations. I was not an enthusiast of the conventional approach to legal education. It was, in my view, too narrowly focused on doctrine and insufficiently attentive to the roles that lawyers can play in serving the public interest. The opportunity to start a new program seemed especially attractive because the proposed CUNY Law School was expected to develop a new curriculum integrating clinical methods and emphasizing public interest and public service law. Since 1969, I had been involved in public interest advocacy and in developing and teaching a variety of clinical programs which brought second- and third-year law students into active public interest law settings. The invitation to set up a new law school curriculum along the lines indicated at CUNY seemed a natural extension of this work.

Through the spring of 1982, my main task was to recruit a small group to work together to plan and implement the new program. The

two academic appointments which I made during this period brought unique skills and resources to the task. Howard Lesnick, with whom I had worked for many years through the Center for Law and Social Policy, was appointed a Distinguished Professor in the City University. He was, at that time, a visiting professor at New York University, and had, for twenty years, taught at the University of Pennsylvania. John Farago was then the Associate Dean at Valparaiso Law School, having graduated from New York University Law School while completing the course work for a Ph.D. in higher education. For some years previously, Lesnick had been thinking about the process of legal education and how it might be reformed. Farago had been learning the practical side of how to run a law school, from admissions to placement, while writing theoretical articles on jurisprudence.¹

None of us foresaw or understood fully the difficulties of establishing this Law School. We began the task full-time in June 1982. At that point, we had a year in which to design a curriculum, recruit students, hire a faculty, locate a building, build a library, and obtain funding for the next year. We also had to establish our identity in the City University system, a sprawling, complex academic bureaucracy, as well as in the City of New York, a very much larger conglomeration, uniquely indifferent to new enterprises and often cynical about those which have an idealistic cast.

In fact, the time available was substantially less than a year. The critical time for recruiting students is the fall of the year preceeding their matriculation. Therefore, we had to be in a position only a few months after we began the planning process, to inform potential students and their pre-law advisors of our existence and of our program. We had a mandate to design a new curriculum and only a few months in which to do it. Similarly, recruiting a faculty was a matter which had to proceed in the fall of 1982. We had to have a good sense of what skills, experience, and qualities we were looking for in the faculty in very short order, and we had to tell them enough about the law school program so that they could decide whether they wanted to cast their lot with this new and untried venture.

1. Appointments made during the spring also included talented administrative staff members: Carlton Clark, Admissions Director, and Constance Mandina, Assistant Dean; Jack Himmelstein, a leading innovator in legal education during several years of activity while associated with Columbia Law School, worked with us as a consultant during the initial planning year, and his thoughts about legal education are reflected throughout the curriculum.

The summer and early fall of 1982 saw our basic educational concepts take shape. We sought to devise a program which would provide students the opportunity to learn in an informal environment, supportive of collaborative working relationships, in which the contributions of each person would be encouraged and valued. At the time we started to design the program, the pressure was tremendous. It was necessary to produce a description of the new curriculum to include in our first catalogue. Moreover, we had to rely on media accounts of the new school in order to attract students, and those accounts could only flow from our articulation of the program.²

We took an unconventional approach to faculty selection. We did not establish as the initial screen for faculty candidates a requirement that they had been editors of prestigious law reviews. We sought a mix of prior lawyering experience, particularly in public interest fields, prior teaching experience in clinical and classroom settings, and a commitment to the innovative goals of our program. We wanted to have a faculty which was broadly representative in terms of race, ethnic, and gender composition. We also wanted faculty members who were dedicated to teaching and enthusiastic about working with interdisciplinary materials. Necessarily, in recruiting the initial group of nine faculty members, we tried to balance their strengths. In starting a new institution, we also needed people with a sense of adventure and a willingness to tolerate predictably high levels of physical inconvenience, stress, and workload.

In student recruitment, we attracted over 1000 applicants for 140 places. Since we were not going to be a traditional law school offering the same program as most other schools, what we had to offer was special and unique — an emphasis on public interest and public service law and the promise of a curriculum that would be novel and engaging. As a publicly-supported school, our tuition was relatively low. These advantages were balanced against the facts that our curriculum was untested, our temporary building was inadequate, and our unaccredited status made our graduates' access to the bar outside of New York uncertain.

The students we drew were risk-takers and people committed to a different kind of law practice. While we took into account traditional numerical indicators, such as grade point average and Law School Ad-

2. Coverage that year in *THE NEW YORK TIMES*, *NEWSWEEK*, *NEWSDAY*, and other print media were absolutely critical to our ability to inform potential applicants that this new program existed.

missions Test scores, we tried to make a judgment based on a broader range of criteria. We asked the applicants to write essays about why they wanted to go to law school and, in particular, why they wanted to go to this law school. We evaluated their written statements and also their previous experiences. Many of our accepted students were older — the median age in the first-year class was 29 — and there was a good deal of life experience to consider. Some of our students had extremely high numerical indicators and would have qualified for admission to many law schools. They selected us because of our special program. Other students had relatively low numerical indicators and had other elements in their application materials that made us think they could perform well in our program and as members of the legal profession. The inaugural class had students in it who had been journalists and policemen, teachers and union organizers, nurses and social workers. The wide range of experiences which they brought to law study has greatly enriched the program of the school.

We were mindful of the fact that we were a part of the City University of New York, supported by public funds, and that the rich diversity of the City's population ought to be represented in our faculty and student population. This diversity is an outstanding characteristic of our faculty (half of whom are women and one-third minorities) and of our student body (56% women and 26% minorities).

My years as a Dean have been among the most difficult and rewarding of my professional career. We have undertaken an extremely ambitious task. We have restructured most of the courses that are studied in Law School. This meant that faculty members had to develop many of their own teaching materials. The new materials have to be tested and revised annually. Because we are committed to the integration of the study of lawyering skills with the study of legal doctrine, we had to develop new pedagogical approaches, relying heavily on simulation techniques. Some of our teachers were experienced in the use of simulations in instruction, and others had to learn the process. Altogether, the burden on faculty members was considerable. We expected the burdens to become less onerous as courses were taught for the second and third time. Though this has been true in part, we must still review our courses yearly and reshape them in light of our experience and resources.

We have relied heavily on faculty collaboration, and most of our courses are taught jointly by two or more of our faculty members. We want to continue this practice and the emphasis on extensive (and intensive) faculty-student contact. At the same time, we must balance

the faculty members' needs to explore some areas of law in greater depth and to continue their activities in the wider community outside the law school. We do not yet have a solution to this problem of balancing demands on faculty time, but our Curriculum Committee is working on it. I believe that it will take some significant modifications in the curriculum to permit faculty members to establish an appropriate balance between teaching obligations and the other elements of a full professional and personal life. At this point, it appears that we have sufficient flexibility to make the necessary adjustments, and we are hopeful of making further progress on this issue.

The Law School as an institution has developed a sense of community to an unusual degree, and the amount of student, faculty, and staff commitment and loyalty to the institution is unique and heartening. We have tried to engage the entire law school community in critical decisions relevant to their welfare, employing a structure which is less hierarchical than is conventionally found in law schools.

Our governance system allows students and support personnel to play a role in decisions through participation as members of policy-making committees. The Law School's central governance body, the Assembly, meets monthly to review committee actions. It is made up of all members of the faculty and administration, and representatives of the students and support staff. Most committees also include a similar membership mix. There is some disagreement about the adequacy of student and support staff representation. Efforts are underway to adjust our internal governance plan to increase the participation of these groups. Other attempts are underway, beyond adjustments in the governance structure and other technical approaches, to build a heightened sense of engagement in the whole community.

Within the Law School's current governance structure, few issues are subject to vote. We try to reach a consensus on policy issues. Though this form of governance is mostly successful, efficiency sometimes conflicts with the participatory decisional process. Hierarchy is not missing from the law school's structure. The most obvious hierarchical elements arise in areas such as evaluation of students' work by faculty and the necessity for the dean and faculty members to evaluate each others' work for purposes of reappointment, tenure and promotion. We are constantly working at achieving a balance and at resolving tensions on these points as the institution matures. Our main objective in this sphere has been to put in place a governance system which increases participation and individual responsibility. We hope this governance system will constitute an important part of the educational

process and will reinforce the curricular emphasis on personal responsibility in law study and law practice.

Obviously, any judgment about the success of our program as a whole will have to wait until the school has reached a level of institutional maturity. Many people look to bar passage rates as an indicator of the institution's success. We too seek success as measured by that standard. However, we are also aware of the insufficiencies of the bar examination as a test of lawyer competence. We plan to measure success by evaluating the performance of our graduates in law and law-related jobs over the coming years. I like to think that Governor Cuomo's prediction offered at the law school's inauguration will chart the future for the program. He said he believed that the Law School "will be a place where thoughtful, committed, compassionate lawyers are trained. . . . It will become one of the nation's most distinguished and distinctive legal institutions. It will be a school that produces idealists as well as pragmatists, citizens as well as lawyers."

Our Law School is an institution that is still evolving. We continue to build a community and apply our ideals in practice on a day-to-day basis. Even a faculty which shares a strong commitment on fundamental values can still differ sharply over particular curricular decisions and personnel matters. A governance system which is designed to empower students will inevitably fall short of fully achieving its goal. A law school which is a constituent element of a massive university system, as we are, has to adapt its internal procedures to the rules and customs of the larger institution. These shifts and adjustments will continue to shape the law school. One of our opportunities in starting a new institution was our capacity to experiment. Experimentation implies that we will systematically evaluate the results of our effort and adapt the program in light of what we are able to learn. At this stage of development, I am heartened by the progress we have made and often surprised by the extent to which we have succeeded in making a dream become a reality.

The Announcement which we published in the fall of 1982 captured the ideals and spirit we hoped to make real in this new institution. It conveys an approach to legal education with which most of us now at the law school feel closely identified. The most important section is called "Themes of the Educational Program." This section has been progressively refined each year and still incorporates the core concepts that appeared in our first Announcement. The next section of this piece draws heavily on our current "Themes" description. It reflects a collaborative effort of Lesnick, Farago, and me — in that order — with

significant input from the thirty faculty members who have joined us since we began.

Following the "Themes" section, I have included the current description of the Law School's courses for the required part of the curriculum — the first three semesters. The "Course of Study" section captures some essential elements of the Law School's philosophy translated into action. This section communicates the structure and content of the newly-created courses, which are quite different from those offered in the standard law school curriculum. Professor Lesnick is the primary draftsman of this section; it reflects the editorial hand of Professor Farago and input of the entire faculty.

The program places a great deal of emphasis on small group work and on close and frequent interactions between faculty and students. Our House System, one of the central elements that shapes the daily experience of students and faculty, is made possible by a favorable student/faculty ratio. There are elements in the program which cannot be replicated in all law schools, but others may suggest ways that a law school can deploy its resources to explore new techniques and to achieve some of the educational objectives which we continue to pursue.

II. Statement of Themes of the Educational Program

We seek to retain the strengths of traditional legal education while making significant innovations. Our central purpose is to create an educational program that honors students' aspirations toward a legal career built on a commitment to justice, fairness, and equality. These principles form the basis of the Law School's motto, "Law in the service of human needs." (*See also* Jan Costello's essay proposing a curriculum designed to train lawyers to represent the powerless, herein at page 431.)

Legal education too often teaches students, both implicitly and explicitly, to set aside their values. As a result, it can channel them into legal careers unrelated to the objectives that initially led them to study law. Through the curriculum, the career planning program, and the organization of our work and life at the law school, we hope to encourage students to think actively about their life choices, their evolving concepts of professionalism, and the content and processes of the law itself, in ways that foster their capacity to practice law in a socially useful manner.

We subscribe to many of the goals of the traditional curriculum,

specifically, the desire to give students mastery of legal knowledge, experience in the techniques of legal work, familiarity with a range of legal areas, and the facility to think critically about what they read, what they do, and what they see teachers, lawyers, judges, and other students do. We want to go beyond that, however. We want students to learn to perceive and understand the premises and choices implicit in the structure and work product of the legal system. We want them to exercise their reflective judgment in assessing their own responses to the world around them, and to enable them to reaffirm in their work the principles of justice that attracted them to a career in the law.

These objectives echo those expressed by many of our colleagues throughout legal education. They ricochet through the literature of our profession. What is special about our critique is that we have both the opportunity and the mandate to build an alternative program, matching our concerns regarding the incompleteness of the traditional with concrete forms of innovation.

A. A More Comprehensive View of Law As It Is Today

Legal education should present an expansive view of the function of law and lawyers in our current society. The traditional subjects of law study, especially in the crucial first year, excessively reflect the world (including the legal world) of nearly a century ago. The emphasis on private law, on litigation, and on transactions between individuals can distort students' views of what law is and what it does in today's world. They live in a world which should be concerned with the law's response to interactions between bureaucracies and ordinary people, to the protection of minorities, to the desire for democratic participation in administrative decisionmaking, and to such proposed alternatives to adversary litigation as mediation.

We have designed a curriculum responsive to these concerns. It pays far greater attention to theory and to practice (including the students' own work experiences), and integrates them into substantive courses. Our curriculum has fewer courses, and is broader in scope, to facilitate a more fully integrated approach and an emphasis on collaborative teaching efforts. It reflects a fresh look at the content of the curriculum, especially in the first year. Attorneys in practice are seldom presented with a legal problem neatly compartmentalized into analytically distinct subject headings as do traditional first-year courses; hence, a curriculum that brings together the subjects of study is at once intellectually preferable and better adapted to educate attorneys to be

able to address the many-sided problems with which they must deal on a daily basis.

The unusually broad scope of our courses facilitates teaching of related subjects in a single course in ways that are obstructed by the traditional curriculum. The compartmentalization of Contracts from Property, for example, or of Torts from Criminal Law, impedes learning as much as it facilitates it. Similarly, the traditional segregation of the study of lawyering skills and professional responsibility from the study of substantive law interposes an artificial distance between connected areas of study. Our courses interact in a purposive way with one another. The design of an overall curriculum enables teachers (and students) in one course to take explicit account of what is being examined in another, and on occasion to bring two courses together to study an area relevant to each. The use of mediation, for example, as a less adversarial means of resolving disputes, is studied in three of the first-year courses, each in the context of a particular subject. In this way, the law school's curriculum seeks to counteract the fragmentation of thought that is produced by the usual array of narrowly-defined subjects. Our students learn to address the law as a complex and internally interactive system.

B. Law As Interaction Among People

Legal education should place greater emphasis on law (and lawyering) as a process of human interaction, on the ability to see implicit premises and links with moral, social, and political theory. It should convey the specific content of legal rules and argument, in ways that do not focus excessively on learning as simply acquiring knowledge of specific content.

The overall theme of our integrated curriculum is especially reflected in our treatment of three areas, crucial to students' learning, that are given much heavier emphasis in our curriculum than has been done in traditional law schools. They are emphasized, not in separate courses, but by recurrent attention in varying contexts all through the curriculum. These areas are: *legal theory*, which teaches students that the doctrinal principles they are learning and evaluating do not arise out of logic or precedent alone, but are embedded in a social and ethical context; *clinical education*, which teaches students to take the actions and make the decisions that lawyers actually face; and *professional responsibility*, which teaches students that mastery of legal doctrine, theory, and lawyering skills is not an end in itself but a means

toward a legal practice that can reflect the professional person's choices, goals, and values.

In the first three semesters, the content of the courses is presented through a combination of lawyering simulations and substantive lecture/discussions. The analysis and criticism of legal doctrine receive significant attention, while the simulations encourage students to work with one another in many of the ways that lawyers do, including individual reading, research and writing, collaborative analysis and strategizing, counseling, negotiating, mediating, and litigating. In addition, they provide a context for reflection that is often missing in the sequential crises that lawyers face in practice.

Clinical work is comprehensively integrated into the course of study. Clinical training in law school teaches by immersing students in the daily work of the law and the actual decisionmaking of the lawyer. In the first three semesters, the integration of differing subject matter with clinical methods and professional responsibility is in significant measure accomplished through the institution that we call the Houses. The Houses are core working units of approximately 20 students. Clinical work in the fourth semester and the third year emphasizes the representation of actual clients, whether within the law school or through closely supervised clinical fieldwork.

Through role-play and with the aid of videotape, students can work on problems structured for maximum learning. In these ways, students learn from time spent with clients, colleagues, and adversaries, in libraries, conference rooms, and courthouses. From the first semester on, they begin to experience the institutions of the legal system and what it means to be a lawyer. They are invited to reflect on their own decisions and the varied interpersonal dilemmas and lessons that their work presents. They will understand the often contradictory emotional tensions inherent in their profession, because they will have lived through those tensions with the support and the opportunity for reflection that law school is uniquely able to provide.

By providing an opportunity not only to work as lawyers do, but to think about that work, the law school's curriculum, especially the work of the Houses, brings together practice and theory in order to foster a deeper and more realistic training for the practice of law. Legal doctrine is integrated with social, historical, and ethical theory as well as with clinical experience, and students are required to address the application of theoretical insights and hypotheses to that experience. Students graduate having already participated in, and having already reflected on, an unusually sophisticated and extensive range of actual

lawyers' work.

C. The Responsibility of Legal Practice

Legal education should pay attention to what students learn about law and lawyering from their extensive contacts with the working world during their law school careers. The clinical work that students do, and the vocational decisions that they make, involve significant latent issues of professional responsibility. Part of the law school's purpose must be to make these issues manifest, to help students address them with the same critical, analytic curiosity that they bring to bear on the substance of the law.

We believe that grappling with these questions is at the heart of public interest practice and that an awareness of personal and professional responsibility therefore should be integral to students' lawyering work. In order to encourage such a focus, members of the law school faculty work in their teaching and planning to help make explicit the consideration of these often elusive issues.

In addition, through our career planning and counseling functions, we seek to help each student identify the type of practice that best captures the principles that led him or her to want to be a lawyer. Our career planning efforts constitute a crucial part of the educational program. We devote time, energy, space, and support to assisting students in finding the legal work they want. The Career Planning Office develops and implements a process that goes beyond simply providing a meeting ground for students and employers. The faculty tries to make it a central part of the curriculum from the first year to ask students to think critically about questions of choice of work, and of individual and professional responsibility for the availability of legal representation to the non-wealthy. We also work actively to develop job opportunities — during the summers and after graduation — in public and private positions that enable students interested in one or another aspect of socially useful practice to develop relevant experience and skills. Upper-year courses pay particular attention to what students are learning (often implicitly) about the work of a lawyer from their academic and work experience.

In addition to the substantive attention that we give to questions of professional responsibility, we hope that the innovations to which we are committed — the curriculum, the collaborative teaching, the emphasis on reflection and theoretical inquiry, our admissions and placement programs, and, most especially, the House system — help create

an environment for work and study that fosters the development of a deep regard for the ethical foundations of the legal profession.

D. The Responsibility of Legal Education

Just as we encourage our students to practice law with conscious awareness of professional responsibility, we believe that the law school itself has an institutional responsibility to exemplify and embody a comparable approach to our practice as a school. To that end, we are committed to supplementing traditional classroom methods of legal education with ones that we feel capture most effectively the principles we seek to honor.

Thus, the Houses provide a context for practice, learning, and reflection that derives from our commitment to match our teaching method to our principles. Working together as colleagues in the Houses, students, faculty, and staff can develop relationships of mutual respect, reliance, and support that are far richer than is usually possible in educational settings. The familiar "Socratic" method of large-scale learning through professorial questioning of a few students is used only when it seems productive. An understanding of the practice, experience, and responsibility of being a lawyer is fostered through role-play, simulations, and other clinical techniques. Lectures are used when they most effectively present needed information, while student initiative and independence is encouraged by means of self-learning through library research and computer-assisted instruction (which at the same time provide a productive contrast to the uniform progression and deferred evaluation of the classroom). All students learn the emerging techniques of word-processing systems and computerized information retrieval systems that increasingly form the foundation of modern law practice. The law library invests heavily in computerized teaching materials and information retrieval systems, the use of which is integrated into the curriculum.

In encouraging collaborative student work as a valid method of learning, the law school intends to alter the traditional hierarchical structure of legal education. Teachers work as senior colleagues with students, fostering an emerging sense of individual ability and competence in place of the hostility, passivity, and alienation that are all too common among law students. Through learning to take responsibility for their own learning, students develop a more sharply honed critical sense and an approach to practice that respects the autonomy of the client. The school's small size and favorable faculty-student ratio en-

ables us to foster a supportive learning environment designed to maximize individual and professional development.

Finally, examinations are intended to be the servant and not the master of learning. (*See also* Janet Motley's critique of traditional, end-of-semester exams, herein at page 723.) To the extent feasible, evaluation is based on the quality of students' work done as part of the course itself. Where the aim is simply to assure that a body of basic doctrinal material has been learned, students are tested by a Mastery Examination, that is, one that is graded pass/fail. The Mastery Examinations seek to certify basic knowledge in particular areas, and to assure students, faculty, and potential employers that all graduates of the law school have a solid foundation in the traditional substance of the law. That foundation, and the test-taking experience that the Mastery Examinations provide, aids our students as they prepare to seek admission to the bar. Mastery Examinations are designed to assure all students that they have basic lawyering knowledge and skills. Students who experience difficulty in passing one or more examinations receive intensive individualized evaluation and guidance before trying again.

E. Conclusion

The themes of our educational program reflect our view of what law and legal education should do: teach the law as it is today, teach the importance of understanding the human roots of the legal profession, emphasize the central place that issues of professional responsibility should occupy in the curriculum, and fulfill the duty of the law school to devise a pedagogy that expresses the principles on which it is founded. The result is a law school that encourages its students to realize their own potential as professionals and that simultaneously realizes its potential as an institution to place the service of human needs at the core of its mission.

III. Course of Study

As the "Themes" section above suggests, we are attempting to develop a better way of preparing people for the responsible practice of law. We do not value change for its own sake, and have retained much of the content of traditional legal education. We do, however, believe that where change can work an improvement, it should not be shunned simply because it requires a departure from traditional practice.

The course descriptions that follow present a synopsis of our

House system and of the content of our first three semesters. The courses, which are the substantive elements around which student assignments are built, constitute the intellectual/theoretical core of the curriculum. The Houses are the curriculum's primary experiential core, the major way that the students participate in the courses.



Integrated learning community

A. The House System

Each student is affiliated with a House. With the renovation of our permanent building (to be occupied for the 1986-87 academic year), the core of a House will be a unit of approximately 20 students, each with his or her own desk, bookshelf space, and lockable personal space, adjacent to the offices of the faculty members affiliated with that House. In our permanent building, each pair of Houses will share a small classroom (with videotape equipment) suitable for simulated interviewing, negotiation and counseling sessions, and faculty-student conferences; a word processor and core library, including a Westlaw terminal; and a secretarial office. At present, the House System exists in an improvised form in the two buildings which the law school now occupies. It still provides students with their own work areas and an environment which is more like a law office than like a law school. The daily experience of students involves them in a mix of classroom work and lawyering work centered in the Houses. Each student's House experience is directed by a member of the faculty who serves as House Counselor.

Much of the material of each course is studied and applied in the work carried on in the Houses, rather than in a large class, and much of the faculty's teaching consists of supervision of students working in the Houses on problems introduced in the courses. The work of the Houses is carried on individually and in small groups. In appropriate cases, students' work is videotaped for critique by faculty and other students. It is through the Houses that we intend to achieve the integration of clinical methods and a lawyering focus with the substantive, theoretical or doctrinal material.

The work of the Houses continually places students in the role of lawyers, confronted with responsibilities that intersect with substantive material from the courses. For example, students do not simply study the premises of criminal law, but experience in role the choices facing a lawyer representing or prosecuting one accused of a crime.

The House system is intended to make the experience of being a student less sharply dichotomized from the experience of working. It allows us to move toward our goal of individualized learning in a context that values cooperation and community. As a result, students learn not only to take a more active, responsible part in their own education, but they learn to approach the practice of law in a way that is active and responsible as well, and less likely to embody reflexive adoption of role-defined acts and attitudes.

As discussed in the preceding section, the curriculum undertakes to integrate related materials. Several consequences of that integration, which make our curriculum different, warrant mention here. First, courses bear unfamiliar names, covering parts of several different traditional subject areas. Conversely, portions of particular traditional subjects may appear in two or more of our courses. We have taken special care to assure ourselves and our students that our curriculum includes basic coverage of the fundamentals: Contracts, Torts, Property, Criminal Law, Constitutional Law, Civil and Criminal Procedure. These and other familiar aspects of the law school curriculum constitute an important part of our students' intellectual preparation.

Second, in order to provide the common core experience that an integrated curriculum calls for, we have made the courses comprising the first three semesters of work required of all students. As a result, we are able to use varied teaching styles and groupings of students, depending on the nature of the material being taught. For some segments of a course, the entire class meets together. Other material is studied in the Houses, as described above. The faculty coordinates its teaching activities in all courses and, in almost all instances, teaches in

teams.

Third, our curriculum does not merely reallocate the intellectual content of the traditional law school program. It seeks to integrate two different sorts of learning: the development of lawyers' perspectives and skills with the acquisition of knowledge of the substance of the law. As students learn about the law, they are also learning about what it means to be a lawyer, and they are encouraged to reflect on the personal and professional responsibilities attendant on that role. In other settings, this latter sort of learning often is permitted to remain unconscious, and as a result, is not given the sort of attention that our curriculum demands.

In seeking to address that problem, our curriculum utilizes two different types of courses. One, like most college or law school courses, presents the content organized according to a clarifying intellectual organization. Recognizing the analytic value of grouping ideas, concepts, and themes, we present the content of the law through courses that reflect a series of organizing principles. A second kind of course, represented in the first year program by the *Work of A Lawyer* course, seeks to make conscious the acquisition of skills, role, and responsibility. This sort of course cannot exist in a void, but rather it requires the context that the other courses provide.

Together with the House system itself, the three-year progression of courses expresses the broad concept of clinical education to which the law school subscribes. One or another variety of clinical study is a part of the program of every student throughout the three years. In the first half of a student's course of study, clinical work is carried on through simulations and course work (The Work of a Lawyer, Lawyering and the Public Interest) because that format permits us to maximize the learning at the level of both skill development and reflection on lawyering role and choices. In the fourth-semester program of *Elective Concentrations*, students are introduced to the world of actual practice, in settings in which they are able to assist practitioners in legal work. At the same time, they learn the ways in which legal regulation is shaped by the forms in which legal representation is delivered to people who are the subjects of regulation. Students in third-year clinical programs use what they have learned to begin the representation of individuals and groups in selected practice settings, under faculty supervision; those taking the *Lawyering Seminar* study lawyering applications of one or more substantive subjects that they have elected to study as part of their third-year program.

B. The Required Courses

The required courses constituting the first three semesters' work are described here in greater detail. The first year Curriculum includes the following courses: *Adjudication and Alternatives to Adjudication; Liberty, Equality, Due Process, in Historical and Philosophical Context; Law and a Market Economy; Responsibility for Injurious Conduct; Law and Family Relations; and The Work of a Lawyer.*

Adjudication and Alternatives to Adjudication is offered in the fall of the first year. This course examines the structure of the judicial system for the resolution of legal disputes. It introduces students to what lawyers do in court and how they prepare a case. It integrates material dealing with civil, criminal and administrative litigation, studying the range of uses of adjudication, the bases for legislative choice among types of enforcement mechanisms (civil/criminal, judicial/administrative), and the varieties of legal remedies. The course includes a brief intensive summary of the New York and Federal Rules of Civil Procedure, designed to familiarize students with the process of a trial and the basic rules and issues of procedural law.

The aim of the course is to help students understand the adversary model and to become adept at working within it, without coming automatically to view all legal issues through its lens. It asks why we have courts, whether courts satisfactorily achieve their purpose, what impact adversarial procedure has on what lawyers and clients come to do and expect, and how lawyers might pursue alternatives to an adversarial approach to legal problems. The course encourages students to examine the concept of due process of law and the underlying premises of the adversary system, in order to understand better the values to which the concepts of fair procedure and adjudication respond and the ways in which the adjudicatory system both serves and disserves those values. The course explores the ways in which the very same issues are central to the development of existing and proposed departures from the litigative model, and in that connection considers in depth the premises, purposes, and promise of mediation.

The course seeks, further, to help students perceive and understand how one's conceptions of the lawyer's function influence the effect of any method of dispute resolution. In that connection, the course examines traditional and alternative conceptions of the lawyer's role. The purpose of any critique of the adjudicatory system or of the traditional conception of lawyering is not simply to applaud or to condemn the legal system, but to enable students more fully to understand, and to

take responsibility for, the impact of the choices that they will make with respect to their practice.

Liberty, Equality, Due Process, in Historical and Philosophical Context is also offered in the fall of the first year. This course studies the legal expression of our concepts of liberty and equality, and our commitments regarding them. It examines constitutional text, Convention and Reconstruction debates, and Supreme Court decisions in a framework that addresses the development of legal doctrine in its historical setting and examines its political and social significance. It commits significant time and effort to the study of historical events, including the antecedents of the Bill of Rights in the English and American Revolutionary periods; slavery, the antislavery movement and Reconstruction; the reign and fall of White Supremacy; the fear of Communism, 1880-1980; free immigration and the closing of the gate; and the rise of the labor movement, that have shaped our national consciousness of such issues as free speech and racial equality. The course similarly attempts to connect constitutional concepts to moral and political theory; it studies the first amendment as part of the study of liberty, and equal protection as part of the study of equality.

The course is designed to help students overcome the tendency to view law and legal doctrine as simply a system of analytic reasoning. Through studying legal doctrine in its historical and philosophical context, students can perceive the ways in which legal principles both express and shape fundamental human values and explore the content and implications of those values. Our aim is that students will better understand: a) the significance of choice in litigative or legislative issues with which the Supreme Court, Congress and the President have grappled; b) the presence of ambivalence or conflict in society's fidelity to the values in question; and c) the processes by which the law only partially expresses the values that it espouses, channels that expression in self-limiting ways, and tends to legitimate the persisting gap between those values and the prevailing social order.

This course helps students learn from the experience of grappling with emotionally charged and divisive issues, values, and perceptions sharply different from their own. They observe the ways in which the adjudicatory system, the Supreme Court, and the traditional conception of lawyering deal with these issues; and understand the ways in which such issues shape the evolution of legal doctrine.

In all of the foregoing, the aim is to enable students both to understand more fully the world in which we live, and to exercise a fuller, more responsible choice in their own work as lawyers. Many students

are drawn to law because of its capacity to express a commitment to the values with which the course deals. The course is designed to help students understand the ways in which the issues that it addresses are replicated in the day-to-day work experience of a lawyer, in relations within the law office and with clients, adversaries, and tribunals, and in the decisions that a lawyer makes in choosing areas of specialization, his or her clients, representational objectives, and methods of pursuing them.

Law and a Market Economy is a year-long, first-year course covering *Allocations and Transfers* in the fall semester and *Associations* in the spring. This course focuses on the ways that law shapes and responds to economic transactions between and among people, acting individually or in association with others. It studies the traditional core areas of Contracts, Property, Torts and Corporations in ways that address their functional and ideological interrelation, and it also introduces students to the study of antitrust, labor relations, and administrative regulation. The focus of the first semester is on transactions between individuals (Contracts and Property). The second semester focuses on the association of individuals, through corporations, trade associations, or labor organizations, and on governmental responses to such organizations (Corporations, Antitrust, Administrative Law, aspects of Torts dealing with enterprise liability, and aspects of Labor Law arising out of collective action among workers).

The two aspects of government involvement in private enterprise, facilitation and regulation of the marketplace, have traditionally been separated in the law school curriculum. The aim of uniting them and exploring the interactions between them is to help students understand the interpenetration of public and private law. Beyond that, integrated study is designed to help students to perceive the relevance of social and political theory to the development of the common law and regulation. It helps students to understand the role of market ideology in shaping the ways in which such concepts as autonomy, liberty, and equality tend to be defined and understood. It makes explicit the underlying premises reflected by market ideology, those regarding the human personality and the nature and purposes of human interaction.

The course teaches the skills of drafting and negotiation in a context that provides an opportunity to examine the implicit ethical content of apparently neutral substantive law. The interrelation of legal doctrine, legal theory, and professional responsibility is closely examined to the end that students can better understand the social consequences of the traditional approach to lawyering and the choices that

they can make in carrying on their own work as lawyers.

Responsibility for Injurious Conduct is offered in the spring of the first year. A central theme of Torts and Criminal Law is the function and content of the prevailing legal bases of civil and criminal responsibility. Malice and intent, causation and fault (including negligence), and the ideas of legally protected and unprotected interests, the requirement of a legal duty to act, and legally nonaccountable inflictions of harm are all addressed. In this course, students examine the types of injury for which the law gives a remedy, and the varieties of remedies available. They are asked to assess the political sources and social implications of the ways in which the concept of responsibility is defined and used, and to consider the justice and functions of varying allocations of risk, cost, and harm. The course also examines some fundamental aspects of the enforcement mechanisms of the law, primarily the negligence and criminal justice systems, including in that examination such private institutions as insurance.

Studying this material in an integrated way facilitates development of a more sophisticated understanding of the legislative choice in adopting criminal or civil sanctions to enforce new or existing duties. Beyond that, a goal of studying the law's concept of responsibility is to make explicit the premises on which it is based, and to consider the extent to which those premises are congruent with those underlying the *Market Economy* and *Adjudication* courses.

The course considers the relation among several themes by which the law shapes our notions of personal responsibility: the emphasis on adjudication, guilt, punishment, and deterrence; the orientation toward rights rather than responsibility; and the individualist stance that is presumed to inform human behavior and is legitimated by the law. In that connection, it examines the system of enforcement, the institution of public prosecution and the evolution of insurance from simply a cost-spreading system to one premised on the denial of responsibility. The course studies the emergence of such alternatives as no-fault liability, courtroom diversion projects, mediation, and the ways in which each can respond to an alternative set of premises about responsibility.

A major purpose of raising the above questions is to ask what it would mean for a lawyer to bring issues of responsibility into the lawyer-client relation, in light of the power imbalance that may exist between clients and their adversaries and between client and lawyer, and in light of the norms of professional ethics.

Law and Family Relations is offered in the spring as part of the required curriculum. This course examines the ways in which the law

reflects and reinforces fundamental premises about family and love relationships. The course raises uniquely vexing questions of the effect of the law on private autonomy; of the distinction between public and private law; and of the interaction between the law and race, gender, sexual orientation, and class. It requires students to address and take seriously the legal problems of ordinary people — of people in crisis — to grapple with acutely difficult aspects of the relationship between lawyer and client, and to understand and assess the impact of their own values on their work. It is designed to foster an awareness of cross-cultural differences and of the need for self-understanding in dealing with questions of professionalism and of law that may touch a lawyer deeply. It provides an occasion for study of the relevance of anthropology, sociology, and psychology to legal development, and it presents unusual opportunities for the study of drafting, counseling, negotiation and mediation.

The premises on which family law was built are now very much drawn in question, and there has been rapid change (as well as powerful demands to reaffirm prevailing norms). By studying the subject in the context of a first year largely devoted to asking similar questions about the immutability of basic premises, the course is intended to help students see the process of change in the family law area as an example of broader questioning and choice.

The re-examination of fundamental premises is intended to raise profound, and profoundly difficult, links to the practice of law. They include questions about access of women, children, the aged, and others to effective legal representation, and questions about our sense of the qualities needed to be a good lawyer. The issues are studied as ones facing the profession as a whole in setting norms of professional responsibility, and in regulating admission to law school and to work as a lawyer, and as ones of individual responsibility. What are the implications of the evolution of the area of law and family relations for the choices that each of us will make as a lawyer?

The *Work of a Lawyer* is a year-long course in the first-year curriculum. This course provides a framework for studying the ways that lawyers work and think. It teaches the fundamental lawyering skills of legal analysis and synthesis of cases and statutes, legal research and writing, interviewing, counseling, negotiation, and advocacy, including for the purpose material traditionally taught in courses in Legal Method, Civil Procedure, Professional Responsibility, Jurisprudence, and introductory clinical or Lawyering courses. Beyond that, the course introduces students to qualitative skills not often included in the law

school curriculum, such as listening (to clients, adversaries, others), exercising judgment and reflecting on one's decisions, and engaging in the process of moral reasoning.

While focusing students' attention on the development of their skills as lawyers, the course is also designed to develop in students the need for a critical awareness of social, legal, ethical, and psychological content that their work necessarily reflects. Students examine the philosophical, political and psychological premises of the lawyer's stance, as expressed in the Code of Professional Responsibility, legal reasoning, and the substantive law itself. The goal is not simply theoretical but practical — to develop realistic ways of fashioning a working conception of the lawyer's role expressive of the commitment to human needs. The objective is to teach what has been thought of simply as skills training in a way that does not fragment skill from values and reflection on choice. It combines the acquisition of skills with an inquiry into the professional role and responsibility that will be carried on throughout the three-year program.

This course is the focus of the law school's effort to integrate the mastery of substantive knowledge with the experience of the work of a lawyer. In order to achieve this integration of the study of lawyering with the study of law, the team teaching each first-year course works in collaboration with the team teaching *Work of a Lawyer* to develop applications of the subject matter to the practice of law. Moreover, the House system, and the simulations carried out in the Houses, provide a major link between *The Work of A Lawyer* and the other first year courses. The work done in the Houses for the courses is the work of a lawyer, and provides the medium for discussion, analysis, and reflection regarding the skills and issues that are central to the material of the *Work of A Lawyer* course. The Houses, then, serve as both context and subject matter. In the Houses, students initially garner the experience that permits them to go beyond learning the law in order to learn to be lawyers.

The Second-Year Curriculum includes the following required courses offered in the third semester (the fall term of the second year): *Raising and Spending Public Money; Taxes, Appropriations, and Benefit Programs; Public Institutions and the Law; Lawyering and the Public Interest.*

The purpose and contours of the Second-Year Curriculum are informed by the school's central mission, as described in its by-laws. They are first, to educate "men and women to be lawyers who will practice with a concern for the social responsibilities of the legal pro-

fession and for the public interest," and, second, "to teach in ways that help students to learn from their own experience and from their ability to reflect on that experience." The choice of both subject matter and teaching method is a conscious attempt to serve the objective of enhancing students' capacity for active, responsible learning and decision-making in their work while at the school, and to make responsible choices about the effect on society of their work as lawyers. To pursue this objective is to take seriously the question of the meaning of a career in law oriented to the public interest, to grapple with the difficulties in conception and application of the idea, to make a real attempt, in terms of education and job possibilities, to facilitate the development of a public-interest practice by those who are open to it, and to do all of this without imposing a particular conception of the public interest or of attorneys' work choices on students.

The Second-Year Curriculum maintains the emphasis on the study of law in full context, which includes a focus on lawyering and its integration with legal theory and doctrine. An immediate objective of the fall-semester work is to prepare students for lawyering in non-simulated field settings in the fourth semester and in the third year. This preparatory objective is served as much by the substantive component, which is designed to provide a deeper perspective on public-interest advocacy, as it is by the experiential side.

In the fourth semester, students work full-time for the entire semester in an area conceived and executed as a single integrated experience. This gives each student the opportunity to work extensively and intensively on a rich legal subject in a way that addresses its complexity, and encompasses the breadth of an academic perspective and the particularity of concrete applications.

Raising and Spending Public Money: Taxes, Appropriations, and Benefit Programs is offered as part of the required curriculum in the fall of the second year. The central purpose of this course is to give students a broader perspective on public allocations than is often found in the dispute-oriented focus through which the effect of the law on under-represented interests is often studied or questioned. To this end the course seeks an integrated look at taxation in the full range of its subjects (income, sales, property), and governmental authority (federal, state, local). It seeks then to integrate the study of taxation with the study of appropriations, with a particular focus on government benefit programs (old age insurance, public assistance, unemployment insurance, medicaid) and the redistributive purposes and effects of governmental taxing and spending power as a whole. The course examines the

effects, on clients' choices and activities and on society, of factors such as interstate competition for industrial development and the desire to facilitate the mobility of capital, which shape tax and spending policy.

Areas chosen for examination are drawn from revenue sharing, grants-in-aid, block grants, and the financing of benefits programs; the effects of financing methods on eligibility requirements and procedures, and on the level of benefits. The course also examines legislative and executive control of budgetmaking, including impoundment, zero-based budgeting, "sunset" legislation, and other attempts to control spending policy, the meaning and impact of budgetary balance and imbalance, questions of tax policy, including issues of federalism, choices among the subjects of taxation, progressivity, the tax expenditure concept and the choice between taxation and appropriation as vehicles of policy implementation, and the bases and effect of choice among the subjects of taxation (payroll, income, property, sales). Students learn the structure of the Internal Revenue Code, and acquire experience in working with it. In coordination with other third-semester courses, they examine legal problems in a legislative context, experiencing the lawyer's role both as legislator and as representative of interests seeking legislative responses.

Public Institutions and the Law is also offered in the fall of the second year. This course seeks to study the phenomenon of bureaucracy, to gain some understanding of a legal institution as a bureaucracy, to examine the bases and function of distinguishing public institutions (administrative law) from private institutions (corporations), and to consider the complexities and ambiguities of the idea of public-interest lawyering from inside as well as outside an institution. Lawyers working in governmental agencies tend to view their work as by definition public interest lawyering. Others, outside of government, may see the matter in a more complex way, often defining the public interest as opposing (or at least contending with) government agencies and their lawyers.

In this connection, the public-private distinction needs explicit examination. Administrative law can be seen as arising out of the attempt to create or empower public institutions to control private institutions, in a legal regime that tends to equate public power with coercion and private power with freedom. The ways in which public and private corporations or other large institutions are alike and different in their functioning as bureaucracies and in their need for regulation, is a central issue in the course.

The following areas illustrate the subject matter from which the

course material is drawn: a) the impact of the demand for fair procedures on agency decision-making, citizen protection, and the substantive law (including examination of the processes by which legal rules such as those involving welfare terminations and school suspensions tend to be absorbed by the institution); b) the evolution of efforts to structure public participation in agency decision-making (from judicially enforced rules of standing, intervention, or hearing, as well as substantive law, through less adjudicatory methods, such as mediated or negotiated decision-making, that seek to avoid replicating the unregulated discretion of an earlier time); c) the discretion of an agency to formulate policy, including legislative oversight as well as judicial review, and the ways in which an agency makes choices within its zone of discretion; and d) professional responsibility issues of government lawyering, such as the routine invocation of justiciability defenses and indictment, plea-bargaining, and the trial tactics of prosecutors.

Lawyering and the Public Interest is the third required course in the fall semester of the second year. The central objective of this course is to enable students to acquire some of the skills and understanding that they need to carry on a practice oriented to the public interest, and specifically to prepare them for the clinical practice that will be a focus of the fourth semester and third year. The content of the course centers on four areas: evidence, procedure, advocacy skills, and theoretical perspective. In each area, the emphasis is on combining a focus on litigation with a broader context. In addition, it considers advocacy in legislative or rule-making settings, pre- and post-litigation negotiation, settlement, and enforcement efforts, and the implications of several differing critiques of a rights-based orientation to legal aspects of human problems.

The course also is the vehicle for coordinating and carrying out the experiential side of the semester's work, drawing the subject matter of all three courses together in a program that combines further development of the educational potential of simulations with an introduction to the real world of lawyering. The course explicitly addresses questions about the role of law and lawyering, including questions involving the search for jobs and choice of legal work that have arisen for students in their legal work during the preceding summer, and that will arise in the semester as it goes on.

In the spring semester of the second year, students register for one of the *Elective Concentrations* (*Administrative Regulation and the Accountability of Public and Private Power; Criminal Justice; Equality and Inequality and the Role of Law and Lawyers; Housing and Urban*

Development). Thus, each student spends the entire fourth semester's work in an area of concentration defined, planned, and executed as a whole. The work combines three major aspects: a program of law-school based study that examines legal developments in the area in question from historical, theoretical, and social-science perspectives, a "field" placement in which each student works under the supervision of a practitioner, and of a faculty member, in a particular practice setting within the relevant area; and a law-school based program of reviewing the lawyering issues that are raised by the field work, in order to supply the reflection and perspective that an academic study can provide.

The Third-Year Curriculum provides substantial room for election of courses, departing from the first- and second-year course pattern, which seeks an integration and breadth that a more elective pattern could not achieve. The third year provides an opportunity for students to pursue their interests in greater depth; to fill in substantive areas that they wish to explore further; and to undertake intensive clinical activity, representing clients in courts and administrative agencies. Students approaching graduation often have a clearer sense of areas of law in which they intend to practice and, in this light, are better able to choose among the options available to them.

As with the institution as a whole, the course of study continues to evolve. The last remaining piece of the course of study is now in place, with the third-year curriculum having now been offered for the first time. Along with other facets of this innovative program, its implementation has been closely monitored, and modifications will be made as its effectiveness is tested in practice.