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CELEBRATING
THE LAWYERING PROCESS

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This article describes the origins and shaping of the classic text, with special emphasis on the goals of the authors and the developmental phase of clinical legal education from which their work emerged. The author surveys Gary Bellow's unique role and influence from the perspective of a contemporary, and identifies innovative teaching approaches that the text facilitated. Comments from law teachers over the years highlight the utility and importance of the book. The article raises a major concern about the failed effort to alter conventional modes of legal education by employing clinical role methodologies as an alternative curricular organizing principle to use of doctrinal materials and case analysis.

"First, you know, a new theory is attacked as absurd; then it is admitted to be true, but obvious and insignificant; finally, it is seen to be so important that its adversaries claim that they themselves discovered it. Our doctrine . . . is at present in the first of these three stages, with symptoms of the second stage having begun in certain quarters."
(William James)

"Changing a curriculum is like trying to move a graveyard."
(Attributed to Woodrow Wilson)

1. When published in 1978, The Lawyering Process1 by Gary Bellow and Bea Moulton was the first comprehensive text written especially for clinical law students and, despite being out of print, twenty-five years later it still has no rivals. With clinical programs beginning in almost every American law school, the seventies were an active period for clinicians trying to meet the demand for course materials. My own attempts began when Philip Schrag and I published two soft cover sets of specialized clinical teaching materials—one dealt with aspects of cause lawyering, Public Interest Advocacy2 (1974) and the other was a treatise and teacher's manual focused on educational sim-

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In 1978, Louis Brown of USC and Edmund Dauer of Yale offered *Planning By Lawyers*, a book aimed at training future lawyers in "preventive law" (non-litigative means to protect clients from legal harm) and at analyzing the social and institutional functions of law office practice. Brown and Dauer's volume was in many ways closer in spirit to Bellow and Moulton than any of the other books published at the time in its attempt to bring together a range of readings bearing on a broad set of interrelated legal skills, and with its focus on how lawyers behave and should behave in particular, low visibility settings. In other respects, *Planning By Lawyers* approached its subject traditionally. The authors were not writing for the law clinic. Though the subject was what lawyers did and decided, students were asked to consider, not to do and decide.

Though published the same year as *The Lawyering Process*, Brown and Dauer's book might be best thought of as a forerunner, a sort of pre-clinical deviation from the mainstream of legal education. The authors' transactional emphasis was not readily adopted by many law teachers, but it appealed to an innovator like Gary Bellow and may have influenced development of *The Lawyering Process*. As Bea

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Moulton recalls:

Gary and Lou [Brown] were colleagues at USC, and Lou loved to talk about his “preventive law” program with a truly interested listener like Gary . . . . I remember Gary saying things like, “You know, Lou has been thinking about some of these things for years.” . . . Gary and I began pulling together our materials in 1970 or so, and were sending out multiple sets to clinical teachers by 1972. So the books probably were developed on parallel tracks.10

Writing about his co-author, Dauer observed that for “Brown the law office is the laboratory and the law school is the place to refine and convey . . . . Louis rails against the notion that the scholastic and the pragmatic are distinct points in space.”11 Nevertheless, it took the rapid growth of law school clinics to bring the “points in space” closer. In addition to Planning By Lawyers and the other texts mentioned above, there were also scores of school-specific teaching materials, or fragments thereof, in circulation in the mid- to late seventies that were eagerly passed from the hands of one clinician to the next. But for most of the new teachers, the only book was The Lawyering Process, the one Bellow was writing with Bea Moulton.

2. It was the book long before it was actually sent out in the world between hard covers. So many drafts of The Lawyering Process had been in circulation and imitated, cannibalized and commented upon that some clinical law teachers felt a bit like minority owners of the franchise. So many of the book’s most important lessons were shared with early clinicians long before the book was offered for sale that it is hard to distinguish what we gathered from talking to Gary Bellow and Bea Moulton—and of course Jeanne Charn who was a spiritual partner in the enterprise—from what was present in the text of The Lawyering Process itself. I want to emphasize that before publication the book had already spawned dialogue that may have been as powerful as written text. Much of the influence of the book was based on a series of unplanned and unstructured conversations that predated actual publication. As the text itself grew and emphasis shifted, it became clear that Bellow and Moulton defined the scope of clinical education grandly, as asking lawyers to make “lawyering a subject of inquiry,” not as part of a sociological project but as an essential piece

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10 E-mail from Bea Moulton to Michael Meltsner (Sept. 30, 2002) (on file with the author). The flowering of negotiation and alternative decision making as subjects for serious contemplation as well as rigorous skills training in law school seems also to have been on a parallel track. I want to thank Frank Sander for reminding me of Louis Brown’s pioneering work.

of connecting theory with practice. An anti-sectarian synthesis, hardly any discipline was ignored that touched on what lawyers did and how they did it. While The Lawyering Process was not the first text to serve as a basis for role playing or to include case files, split pages, and transcripts, Bellow and Moulton envisioned rigorous use of such devices in an active, clinic-related classroom. Supplements that were critical to the authors’ approach included typical legal aid and public defender case files and transcripts keyed to its chapters. Videotapes of several aspects of the problem sets were increasingly available, many emerging from the effort to train new legal service lawyers. As I wrote in 1986 in one of the (surprisingly) few reviews the book received: “The wealth of detail, the precision with which The Lawyering Process identifies a range of difficult questions—philosophical, ethical, behavioral, even mathematical—renders it imposing even for the most intelligent, knowledgeable and motivated an audience.”

3. I can’t emphasize enough, especially to the present generation of clinicians who may take such things for granted, how novel it was to be introduced to the rigorous perspective on lawyer training implied by The Lawyering Process in the context of legal work, rather than as a largely academic inquiry. My own career is illustrative. With an early interest in what later was called public interest law, the Yale Law School offered me magnificent training in the legal, historical and policy aspects of political and civil rights, mental health and criminal law but largely nothing about how to make policies and rights operative legislatively or judicially. But then I began to practice law at the NAACP Legal Defense and Educational Fund Inc. with a set of experienced and extraordinarily thoughtful lawyers—Jack Greenberg, Constance Baker Motley, James M. Nabrit III, Derrick Bell, Anthony

12 BELLOW & MOULTON, supra note 1, at xix.
13 Id. at xxiii (“. . . we consider role-playing and other forms of individualized instruction to be an essential part of the course”).
15 E-mail from Bea Moulton to Michael Meltsner (Sept. 30, 2002) (on file with author).
17 The exception was a volunteer, non-credit program under the tutelage of a single, overworked public defender. For my classmate Louise G. Trubek’s experience as a volunteer civil lawyer during our law school years see Louise G. Trubek, U.S. Legal Education and Legal Services for the Indigent: A Historical and Personal Perspective, 5 MD. J. OF CONTEMP. LEGAL ISSUES 381, 382-84 (1994).
Amsterdam—and had my share of demanding assignments as a 1960s civil rights lawyer. It was only because of these colleagues, my true lawyering teachers, and the total embrace the work required that an often dissatisfied and distracted law student like me could have been induced to return to law school (Columbia in 1970) to start a clinic. During the sixties I had acquired what, speaking about these years, Gary would call “an oppositionist social vision,” a politics seeking “radical extensions of democracy, equality and racial justice . . . deep-seated structural, and cultural change.”18 But I gave little thought about how to pass on the strategy and tactics of my work to others. Powerful as my practice experience was, I had never been taught to think and talk systematically and conceptually about what lawyers did, why they did it and how they should change it—much less how they felt about it. What little I knew came from war stories, my own and my colleagues’ on the fly reflections, and our many trials and errors. I was probably a prisoner of what Bellow and Moulton would (later) consider an unexamined role acquisition.

Until I had to figure out how to teach what previously was just done, I never sought to understand lawyering in anything approaching the rigor that a law teacher would apply in parsing doctrine. I had certainly not encountered an organized way of thinking about what lawyers actually did or should do in practice at the Yale Law School. The tacit assumption there was not merely that doctrine (broadly conceived) or policy studies was what counted and “you’ll learn all that simple practice stuff later on your own or at a firm” but that a focus on practice was intellectually unchallenging—just too thin, even demeaning. The study of how lawyers worked and should work took you nowhere that really mattered. Such notions were, of course, based on an artificial, mythic split between legal thinking and legal practice. It didn’t seem to count that a decent number of the Yale faculty had made their marks, and bright marks they were, as practicing lawyers. Once returned to the academy, however, only grand thoughts supposedly many notches up the ladder of theoretical abstraction would do. There followed a strange indifference to the link—as old as Aristotle—between habits of practice and communal virtue.

The purpose of the work in progress Gary and Bea called The Lawyering Process was to remedy this gross inadequacy in legal education. It linked theory and practice and was not “intended to communicate a particular body of information,” nor was it to be “learned,” nor aimed at depositing propositions in student brains. Rather the goal was to “clarify and make explicit your own images of

what ‘good lawyering’ seems to be about.”19 It contained readings on hard boiled craft skills but also chapters with titles like, “Becoming A Lawyer: The Problem of Conformity.”20 As Mark Spiegel put it some years later: “At one level such analysis is a sophisticated way of training lawyers to perform various lawyering tasks . . . at another level Bellow and Moulton’s analysis can be used as a way to assess critically the validity of these roles and to open up the possibility of seeing them differently.”21 In short, the proper study of law was of lawyers.

4. There were, of course, other reasons why the book and the book before the book were influential. One was the esteem in which Gary Bellow was held. He published relatively little, but when he did, made it count as in his 1973 paper, On Teaching the Teachers,22 which produced a role analysis that would change forever the way clinicians thought about training lawyers. He combined dedication to the poor, intellectual rigor and a set of standards that were not affected by personal loyalties. With a powerful critical intelligence and an equally strong sense of the importance of the work he was doing, until his death in 2000 Gary devoted his career to the interests of underserved clients.

But his leadership role among clinicians was more than a matter of intellect and dedication. There were many smart and committed poverty lawyers among the seventies clinicians. Gary, however, connected with you around the work you shared with special intensity; he cared about how you did what you did more than many of your own colleagues, and his richly textured critiques seemed the sincerest form of flattery. He held himself and others to very high standards. Sometimes these standards got in the way of desirable collaboration with others. It can’t be an accident that during most of his time at Harvard Law School (HLS), he couldn’t relinquish his role as the school’s only tenured clinician. But his rigor testified to the high aspirations of the clinical enterprise. We were an embattled group, struggling for recognition amidst the often skeptical, sometimes hostile forces of non-clinical law teachers. Among the early clinicians themselves this could breed a need for supportive permissiveness, a willingness to find a ready apology for lacks and imperfections. Gary seemed unmoved by such concerns, even if it cost him friends. Some thought this a function of teaching at Harvard, but Gary’s relation to HLS was deeply

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19 BELLOW & MOULTON, supra note 1, at xxiv.
20 Id. at 2-34.
complicated, worthy of a whole psychoanalysis, and did not fully explain his problematic evaluation of many clinical teachers.

Don't misunderstand. Gary could be a generous supporter but he was not always an easy man to work with—"Saints should always be judged guilty until they are proved innocent," Orwell writes—because he cared so much. An overloaded workaholic his failure to return phone calls was legendary. He was never personally hostile to those who favored approaches that didn't conform to his vision—say a more educational and less service oriented model of supervision or a greater focus on technique than he thought wise—but he was an unyielding analyst, and he loved to debate. Even in adversity, however, Gary made you feel a privileged collaborator in the process of working out his own understandings.

Sometimes these understandings were painful to hear. He rejected, for example, the test case, impact litigation bias of Public Interest Advocacy and let me know it. On the other hand, he could be remarkably generous to people, especially colleagues in trouble, and loyalty to clients for him seemed almost genetic. He saw right away as others did not that simulation was an essential training device for the clinician's toolbox and not an attack on client service. Thus he persuaded Foundation Press to give away a copy of Toward Simulation in Legal Education—essentially a 600 page plus teaching manual that couldn't be sold to students and would make no money for the publisher—to any law teacher who adopted The Lawyering Process.

To the virtues of The Lawyering Process itself and the tie to Gary Bellow, one must add the importance of the HLS connection. Gary was training clinical teachers as well as large numbers of students, and he was using the materials that would become The Lawyering Process to do so. He had the institutional support to assemble a group of "Bellow Fellows" to work with, and he had persuaded Harvard and the Ford Foundation to pay the rent. To the growing band of clinical innovators, struggling to bring about massive changes in both poverty law and legal education, this was a powerful counter to the often bizarre attitude of some faculty colleagues who were worried that we were turning legal education into a "trade school," spending all sorts of valuable resources just to show novices where the courthouse was.

24 For more on Gary Bellow's impact on co-workers, colleagues and friends see CLINICAL NOTICES (Office of Clinical Programs, Harvard Law School) Summer 2000, passim.
25 The Fellows Gary brought to Cambridge were a remarkably talented group of men and women, many of whom later came to direct and staff clinics at law schools across the country, and to shape the future of clinical education with their scholarship.
and trying to do something law firms did better. The last complaint brings to mind what Karl Llewellyn asked about mentoring over sixty years ago, "How many get it? And with whom? And under what conditions favorable to learning?"  

Fresh from the trenches, I could ask myself whether the colleagues who traded in such quips really thought of themselves as lawyers. Why apparently did they think they would lose academic legitimacy if legal education produced graduates who were trained both in thinking and acting and thinking about acting? It was here that Gary's passion for serving poor clients, for providing them with lawyers as good as any others, and his consummate skill at designing rigorous educational encounters to bring that about – from classes to videos to readings to lawyering events to structural analysis of social institutions – came into play. The traditionalists, if I can call them that, could of course disagree with him, but few dared to take Gary Bellow less than seriously in an argument or to oppose directly his plans for high quality delivery of legal services. This was reassuring to the rest of us mortals. At root, it was a belief that law could produce justice that drove him on, one which trumped the ethical relativism and exploitive instrumentalism that characterizes so much of the contemporary perception of the profession and its works. For if "truth and justice have no reality or coherence, what does the lawyer have to do? And why should a trade school – for that is what it would – occupy space on a university campus?" The Lawyering Process answer was that an efficiently functioning clinical teaching facility was essential to producing lawyers committed to social justice. Gary forced the skeptics to dignify and even sometimes to confront this message, and thus empowered us all. In a fight over faith it was comforting to be able to hold up The Lawyering Process like the true cross to ward off satanic intrusions.

5. About the origins of The Lawyering Process one might also say tersely as Bea wrote in a memorial tribute to Gary in the Harvard Law Review, "Clinicians were starting from scratch in school after

26 Some other choice comments were: clinical programs teach "finger exercises"; clinics are "sucking the life blood from the law school"; and from a legal historian: "We'll have a history clinic where we'll do grave rubbings of Alexander Hamilton's tomb."
28 Roger C. Crampton, The Ordinary Religion of the Law School Classroom, 29 J. LEGAL EDUC. 247, 263 (1977-78). Harry Subin reminds me of some of Langdell's observations on this score such as, "If law not be a science, a university will best consult its own dignity in declining to teach it. If it not be a science, it is a species of handicraft, and may best be learned by serving an apprenticeship to one who practices it . . . " CHARLES WARREN, 2 HISTORY OF THE HARVARD LAW SCHOOL 374 (1970).
school, helping students represent thousands and thousands of poor people. They needed a book.\textsuperscript{29} With a larger-than-life figure like Gary Bellow, it is easy to find yourself in the shadows, but without Bea Moulton’s involvement Gary might never have stopped “improving” the text. \textit{The Lawyering Process} would not have moved from circulating work in progress to actual publication. Of particular importance to the authors’ vision of how the book would be used was Bea’s work creating seminal training tapes in 1972 for the Legal Services Training Program, an Office of Economic Opportunity grantee, where she became Associate Director for New Lawyer Training. There she worked with a small committee of legal services trainers to develop materials such as the oft-used early video, \textit{Quality Furniture vs. Mary Joyce Allen}. She helped draft the documents and was responsible for the casting and production of videotapes that were used in lawyer and law student training and wrote the lecture summaries of lawyering skills that were used by trainers. In the late seventies, while at Arizona State College of Law, she produced the \textit{Terry James} case, another video frequently employed both by legal services programs and clinical law teachers.

6. The imposing readings in \textit{The Lawyering Process} were tightly yoked to the clinical enterprise.\textsuperscript{30} Gary and Bea couldn’t have been clearer on this. The materials cannot be the primary focus of the course . . . a course about lawyering taught clinically should place students . . . in a variety of lawyer roles . . . afford them . . . practice in describing, evaluating and solving problems connected with that experience . . . encouraging them to generalize about what they learned and how . . . students and instructors will have to find some way to capture their out-of-class experience so it can be observed and discussed.\textsuperscript{31}

It was the last point—bringing the data of student lawyering to a place of review and reflection—that offered the greatest challenge. In the mid-seventies at Columbia, we first tried to bring the experience of practice into class by exploring technological options in what in those pre-computer, pre-digital, even pre-cassette times, was a big way. Despite our modest budget, we bought audio tape recorders to use in class, in client counseling sessions and in actual hearings before administrative agencies. We also acquired a videotape rig called the Sony Portapack. Weighing close to sixty pounds, the Portapack was

\textsuperscript{31} \textit{Bellow & Moulton}, supra note 1, at xxiii-xxiv.
portable only in the same way a radial tire or a set of barbells is portable. With the recorder strapped to my back, holding a camera, I lurch clumsily behind our students as they played out their roles in lawyering exercises and at other times actual events in their student practice. We shot them at work, in depositions, dry runs of arguments, client interviews and practice negotiations.\textsuperscript{32} And we spent more and more of our teaching preparation time studying the tapes like football coaches before the big game, going over excerpts with the students in small groups and in class itself.

The Lawyering Process elaborated the justification for what we and others around the country were doing. By exhorting clinicians to bring the data of lawyer behavior into class and to make it the source of study by students \textit{while they were practicing law}, it told us we were on the right track. It didn’t hurt that students were fascinated by what they saw in themselves even if at first they winced at their own level of performance.\textsuperscript{33} Gary was an early believer in videotape and always showed great interest in our use of it. He had encouraged the making of the Legal Services training tapes and made a few of his own. The oft-used \textit{Valdez v. Alloway’s Garage} negotiation segment in The Lawyering Process\textsuperscript{34} came from a series of four or five tapes on typically encountered ethical issues that Gary and Jeanne Charn helped the American Bar Association produce.

Gary’s decision to support a range of experimental teaching in the book and in his own work was particularly important to me personally. At an AALS meeting in San Francisco earlier in the seventies I had presented the first Meltsner-Schrag simulation tapes to a crowded meeting of the clinical section. In a front row, next to Bill Greenhalgh of Georgetown, sat our great benefactor William Pincus of the Council on Legal Education for Professional Responsibility (CLEPR). Pincus warily eyed the tapes and listened to my breathless enthusiasm for their potential to train better clinic lawyers, and loudly said nothing. But Bill Greenhalgh—for whom the polemic was as mother’s milk\textsuperscript{35}—was anything but silent. He seemed to speak Pincus’ thoughts when he accused me of selling out the poor who needed

\textsuperscript{32} For similar developments on the west coast, see Paul Bergman & David Binder, \textit{Thirty Years of Developing Professional Skills}, 24 UCLA LAW MAG. 4, 6 (2000-01).
\textsuperscript{33} Bellow and Moulton discussed dramatic technique in the context of trial work but it wasn’t difficult to apply the literature on acting and directing to everything a lawyer did. \textit{See BELLOW & MOULTON, supra} note 1, at 645-49.
\textsuperscript{34} \textit{Id.} at 586.
student practitioners, not students acting in classroom exercises and certainly not game players. I took a tough criminal lawyer like Bill seriously but stuck to my guns—simulation had to be an essential part of lawyer training as well as the research of clinicians into what lawyers do and should do. Faced with such skepticism, it was reassuring to have Gary Bellow on your side. He must have been ambivalent. Gary valued both a broad definition of the clinical method of education—which he played an important role in creating—and intense client service. But when he actually put his views into print with the publication of The Lawyering Process it was clear that the two needed to travel together.

7. Like most readers of this piece, I am deluged by a flood of law review articles. Some are seductive, largely because I think I’ll learn something I should know and can acquire at least by serious skimming; some broadcast tedium by excessive length, use of jargon and overwrought footnoting; some are written atrociously; a few are elegant and incisive, making going through the pile worthwhile. The pounds of print make me suffer—how I wish more of the writing was alive on the page—though both my friends’ and my own labors add to the pile. I am ultimately accepting of this mix—one never knows what gems turn up—while still believing much of this writing is unnecessary, a kind of distracting intellectual clutter. Thus rather than repeating myself and in an effort to be true to my principles, let me urge you to an independent examination of my 1985 “review” of The Lawyering Process and more importantly Carrie Menkel-Meadow’s ex-

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36 Here are two excerpts regarding The Lawyering Process:

A book of this sort would be impossible without a number of developments: the arrival of clinical legal education, which brought the process by which lawyers work into the mainstream of legal education; the growing awareness of the profession about the way in which lawyers are trained, and organize their work, which affects the quality and character of the service they render; the sense of obligation of many members of the profession to serve the disadvantaged; the place of lawyering in rendering American democracy just and workable; and the growing attention to lawyer competency, a by-product of the increasingly complex, demanding, and technical work of contemporary lawyering.

Meltzer, supra note 16, at 381.

How you become a lawyer—the questions you ask, the values you accept and reject, the arrangements you confront and what your reaction to them is—and what you actually do as a lawyer are central themes. ‘Are the values and attitudes that are embraced in this process of becoming a lawyer,’ the authors ask, ‘satisfying or justifiable?’ For example, “[b]asic to all of the ethical issues they confront, the authors conclude, is the lawyer’s ambiguous moral relationship with clients.’ Client loyalty is the justification for everything the lawyer does but this places the lawyer again and again in a situation where lawyering actively produces troubling consequences. What is our responsibility for the use of our skill and position? When do we legitimately consider the consequences of what we do? How do we make choices that preserve both client loyalty and the public interest? How do we think and talk about these
emplary summary of the theoretical premises of the book (and others published at the same time) in a 1980 symposium issue published by the Cleveland State Law Review.

Here is a sample of Menkel-Meadow's description of how The Lawyering Process works:

The separation of professional functions into discrete areas or processes permits generalizations to be made about each of the functional "hats" or roles that a lawyer must perform. Bellow and Moulton liken the lawyers' roles to those of actors in a theatrical production. By studying the character (i.e., the part or role of interviewer in the initial lawyer-client contact), the actor can master its constituent elements, its essence and its gestalt, and thereby learn to perform the role. Thus, the lawyer's professional life can be divided into distinct roles such as the interviewer, planner, investigator, negotiator, examiner or interrogator, advocate, debater and counselor. In this way, the particular skills or talents which are necessary for each role can be analyzed, conceptualized, practiced and mastered . . .

The lawyer, thus, begins to learn about what she does by considering the roles she plays, examining what skills are necessary to play those roles, analyzing the constituent elements of those skills and finally, evaluating which elements of each skill can be used for what purposes and with what effects. This model of examining what a lawyer does is simultaneously procedural, instrumental and evaluative. It causes the lawyer or clinician to ask a series of analytic questions about what the individual seeks to achieve, what is needed to accomplish these things and how well adapted the means chosen are for the ends desired. The Bellow and Moulton scheme of dividing the lawyering process into constituent roles, skills, models and issues proceeds in similar fashion for all of the attorney functions.37

8. You get a sense of the high expectations and pent up demand for The Lawyering Process by initial sales of 1,750 copies, or units as the publisher likes to say, in 1979. By 1981, however, the total was down to 1,000, though sales of the supplements were over 2,500.38 Steve Errick, the present Foundation Press publisher considers these impressive totals for the times, but ten years later the total book sales

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issues? How do we balance loyalty to clients with loyalty to the profession, the courts, adversaries, witnesses, the law itself and the public interest? What does managing the tension between loyalty and consequences do to us as people and to our society?

Id. at 382


38 E-mails from Steve Errick, Foundation Press, to Michael Meltsner (Sept. 27, 2002) (on file with the author).
were only 60 a year. While now out of print, Foundation Press still sells about 300 copies of the "Negotiation" spin out to students in seven schools. The Lawyering Process was sent out into the world by Foundation's dedicated leader, Harold Eriv, who also once told me he never expected to make a profit and saw publication as a public service. Eriv eventually wanted to bring out a new edition, but Gary Bellow was never able to find the time to do it. During the last decade of his life, when congestive heart failure and conditions related to a heart transplant severely restricted Gary's practice, he and Jeanne made notes for a new edition, but the project never got further than this. As such, copies of the first and only edition are now closely guarded by their owners and otherwise found only in law libraries.

Several clinical teachers have weighed in on the difficulties of using the book as a teaching text. Philip Schrag thought that the . . . Lawyering Process casebook is a brilliant book in bringing together relevant knowledge from many other disciplines - from economics, psychology, management science, and literature, among others. It is a very rich book, and it was designed to be used in clinics. The resistance of students to reading that book has been extraordinary. Clinical teachers all across the country tried to assign the book, but students will not take the time to read it.

Mark Spiegel put it this way:

Skills training is easier to achieve than the "softer" [the personal, interpersonal, ethical and political] goals of clinical teaching. It can be objectified and assimilated to teaching doctrine . . . . This, I think, is a partial explanation of why most clinical teachers I know (including me) find it easier to teach from Binder and Price's book on interviewing than . . . from Bellow and Moulton's more ambitious book.

Students may not use The Lawyering Process anymore, and most of the instructors who assigned it in 1979 have moved on, but today's clinical teachers have absorbed much of its approach through their own training and through the culture of clinical education whether or not they all realize it. For some law teachers and graduates who are familiar with the book from class use, it remains an invaluable source of ideas for case planning, strategy and tactics.

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39 Id.
40 Jeanne Charn, Gary Bellow's widow, liberally uses excerpts in the two volumes of duplicated materials for her Harvard course. See the ITA-Civil: The Lawyering Process Reader (Spring 2002) (on file with the author). The full text of The Lawyering Process may, however, soon be resurrected electronically.
42 See Spiegel, supra note 21, at 578, 608 n.132.
9. *The Lawyering Process* failed—a failure shared with the rest of clinical education—to realize one of its central aspirations: to lead law schools away from the distorting and defeating impact of the *exaggerated* role played by doctrinal teaching. Though many approaches associated with clinical education have been incorporated into the standard curriculum, *The Lawyering Process* view of the world did not succeed in its goal of altering the basic structure of legal education. Bellow had first proposed a theory of instruction—clinical education as methodology—at the first national conference of clinicians at Buck Hills Falls in 1973.43 As Spiegel explained in a brilliant 1987 article,44 by treating clinical education as methodology, Bellow was ultimately arguing that with a pedagogy based on lawyers’ role experience legal education could bring together doctrinal, ethical and instrumental concerns in a manner that transcended a foolish split between theory and practice. Put bluntly, clinical legal education should not be thought of as something that takes place in a clinic or a course or as simply “learning by doing” but as a way of organizing a curriculum and a way of teaching throughout it.

None of this had been worked out in 1973. When Bellow first spoke about clinical education as methodology, few in the audience understood the implications. I certainly didn’t. Nor had he fully explored the implications of his own theory by 1978; even in *The Lawyering Process*, the message is more latent than patent, embedded in the book’s structure. Still Bellow and Moulton went as far as anyone had gone and may ever go to provide the roadmap for a clinical pedagogy that could be employed in almost any course in the curriculum.45 While *The Lawyering Process* assumes students in a clinic are its audience, and they were, of course, its first student readers, any law professor who doesn’t wish to convey that explicating doctrine is the primary mission of legal education can adapt to classroom use its concern with synthesizing the multiple layers of lawyer activity. And many of the avenues suggested or explicitly recommended in the text and its accompanying spin out volumes have escaped far beyond the clinical garden. Data from direct student experience, role playing,

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43 See Bellow, supra note 22.
44 See Spiegel, supra note 21.
45 As Bellow flagged the issue as early as 1973:

Lastly, we must answer questions concerning the appropriate role of sequence and progression in the contents we convey. If learning involves the continual reconstruction of knowledge in light of new experience, then we might well be more concerned with what we consider basic, how it relates to what else is taught, and whether more explicit and well-conceived progressions in our ideas and in the curriculum generally can be identified and developed.

Bellow, supra note 22, at 400.
pervasive ethical methods, alternative dispute resolution, skills training simulations, analysis of videotape, trial practice exercises, professionalism modules and courses, problem solving approaches and integration of the learning of other disciplines are now commonplace.46 Use of some of these methods predated the arrival of rigorous clinical legal education and the creators of others imagined and fashioned their methods with little conscious thought of what was happening in the clinics, but it is undeniable, I think, that all these approaches derived much of their appeal from the very synthesis Bellow talked about when he labeled clinical education as a methodology.

Alas, today clinical education is promoted as a general method that should organize law teaching only by a narrow band of law teachers, as often by legal writing or first year lawyering program instructors as clinical teachers. If anything, the arguments for a shift in the dominant methodology of legal education to some form of integration of doctrine and/or theory and practice, have grown intellectually stronger since publication of The Lawyering Process and Anthony Amsterdam’s 21st Century Perspective in 1984.47 The MacCrate Report (1992)48 has received its share of criticism, but nothing has been said that detracts from its central predicate that law students and young lawyers are not being trained in essential craft skills; increasingly, law firm economics mean that such training as is done will be bare necessity. It no longer takes much imagination or courage for that matter to point to faculty self interest in protecting a system that keeps repetition of doctrinal analysis privileged. When it isn’t dominated by war stories, students tend to appreciate education with a direct professional impact. They often lament the absence of a practice perspective in their classes and criticize professors who lack one. But when bar examinations focused on traditional approaches, debt repayment, job anxieties and consumer attitudes are factored in, more often than not students do not support major curricular change; they represent a force to maintain the status quo.

In short, while individual teachers are far more creative in rendering case law than ever before, signs of a paradigm shift are absent. The torch may have passed from influential clinicians to legal writing directors, a group even lower down in the academic pecking order. While their efforts are earnest and arguments stemming from the importance of tightly joining writing, problem solving and analysis at-

48 See infra note 65.
tractive, the idea that “[t]he future is very bright for the integration of the law school curriculum” is unsupported by more than enthusiasm. Indeed the teacher who made the statement spends most of her perceptive article pointing out obstacles to change throughout the law schools and in the end emphasizes dismantling barriers set up by legal writing faculty themselves. Suffering with outsider status, some clinicians certainly limited their aspirations in the face of resistance from conventional law teachers, but as to self-censorship significantly explaining curricular stasis, as they say, I respectfully dissent.

In contemporary law schools, clinics are first and foremost courses. They may be courses that employ the clinical methodology set out in The Lawyering Process—though the book itself is no longer used—or they may have a more limited agenda to train students in technical skills—interviewing, counseling and negotiation, for example—but they are courses none the less. Elsewhere in the curriculum, clinical methodology is mostly a sideshow, a grab bag of techniques for enlivening class—not an organizing principle. As Spiegel concisely and effectively set it out, there are good reasons why clinical education has become dominated by skills training and just as good reasons why the phenomenon leaves the mainstream of legal education pretty much where it always was, though much richer for adoption of a more colorful palette of educational tactics.

10. To sum up, The Lawyering Process along with its spin outs influenced the agenda and methodology of clinical work in law schools as no other work has. The book remains the most comprehensive attempt we have to set out a theory of lawyering and to provide the materials necessary to teach it. It is frustrating, even painful, to admit that neither significant positive changes in the access of the poor to legal services nor a major shift in legal education—the two

49 Christine Hurt, Erasing Lines: Let the LRW Professor Without Lines Throw the First Eraser, in ERASING LINES: INTEGRATING THE LAW SCHOOL CLASSROOM 80 (Pamela Lysaght, Amy E. Sloan & Bradley G. Clary, eds., 2002).

50 Former Stanford dean Paul Brest is just one of the seasoned academics to point out that aside from a diverse student body “a student from the 1960s would feel quite at home in most classrooms of the 1990s” taking courses mostly taught mainly from “the standard doctrine-policy perspective.” Paul Brest, Plus Ca Change, 91 MICH. L. REV. 1945, 1948 (1993). Compare the reform efforts described in Mark Neal Aaronson, Thinking Like A Fox: Four Overlapping Domains Of Good Lawyering, 9 CLINICAL L. REV. 1, 38-44 (2002).

51 See Spiegel, supra note 21.

52 PHILIP SCHRAG & MICHAEL METSNER, REFLECTIONS ON CLINICAL EDUCATION 313-17 (1998) (concluding “clinics have not systematically altered the legal landscape” but more likely “influenced the values and future careers of the students who have passed through them”). Compare with Frank Askin, A Law School Where Students Don’t Just Learn the Law; They Help Make the Law, 51 RUTGERS L. REV. 855 (1999); Jeanne Charn, Quality Assurance at the Provider Level: Integrating Law Office Approaches with Curricular Needs, (discussion draft, International Research Conference, Oxford, England, March
most substantive goals of *The Lawyering Process*—have taken place. Indeed, after years of assault from the political right, we are fortunate to have any national legal services program at all. Despite glorious success in particular cases and thousands of students who profited mightily from individualized supervision of their first lawyering experience and who, as Harry Subin reminds me, thought the clinic their finest law school moment, the results to date fall short of the Bellow and Moulton vision.

In the end clinical legal education is about education for public not merely private ends. Hence clinicians with ambitions like those that brought *The Lawyering Process* to life would do well to focus on transcending (though certainly not ignoring) the training in technique that characterizes many of today’s clinics. One modest approach might be to support a specialization in lawyering that begins in the first year, with a legal writing, enriched research and analysis curriculum characterized by “interactive, fact-sensitive and interpretive work that is fundamental to excellence in practice” — what might be termed a pre-clinical focus on problem solving, ethics and skills. Ideally, this foundational preparation would be followed with a two year clinical sequence — perhaps leading to a certification — of training and practice in both transactional work, litigation and community development. Such a move certainly will not materially change lawyer efforts to alter the course of poverty and alienation in American life, but it might invigorate a movement that seems stalled and initiate a healthy fight in the academy where, for all its limitations, clinics got their start. More significantly, it might wake up some teachers and students with better ideas than this.

11. Gary Bellow and Bea Moulton were not alone in seeking to

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53 SCHROG & MELTSNER, supra note 51, at 313-17.

54 See the description of the NYU Lawyering Program, at http://www.law.nyu.edu/lawyeringprogram/ and the Harvard Program at http://www.law.harvard.edu/academics/FYL/. Because I currently direct a first year lawyering program my perspective may be distorted but I believe this is an area which has potential to change legal education for the better. See Kent D. Severud, *The Caste System and Best Practices in Legal Education, in Erasing Lines: Integrating the Law School Classroom* 12 (Pamela Lysaght, Amy E. Sloan & Bradley G. Clary, eds., 2002).

radically change the way law schools went about their task. In an address before a national conference in 1984, it took Anthony Amsterdam only eight pages of text to paint a portrait of pedestrian and narrow-minded legal education, to define the agenda of a clinical methodology that would serve as a remedy and to conclude, with obvious irony, that—most fortunately—wisdom would prevail in the 21st Century to deploy "scarce teaching resources" into "clinical methods of teaching."56 "Clinical methods" would displace the excessive reliance on large class doctrinal teaching and the "multiplication" of courses in substantive law. Redundant case reading would be replaced with "all of the legal analyses and skills that have not been touched upon at all—such analyses and skills as ends-means thinking, information acquisition, contingency planning, and the rest."57 Using one of his favorite rhetorical devices—an initial framing that radically shifts expected perspective58—Amsterdam looks back from his 21st Century vantage to remind us that "by the mid-nineties...clinical methods...had gained sufficient exposure so that their values could be realistically assessed in comparison with the values of the law schools' traditional commitment of the overwhelming bulk of teaching resources to the multiplication of classroom courses in a wide variety of substantive subject matters."59 Of course, the "redemption" to a clinical method was politically difficult: resources had to be shifted, law teachers needed "remotivation" and "retraining." But fortunately the job was done—"from our 21st Century perspective, we can now see that the gains were well worth the difficulties."60

Bellow and Amsterdam in their different but synchronous ways were both pursuing a political objective.61 While both engaged in many a battle for social justice they also devoted great energy to reaching their ends through attempting changes in legal education.

56 Amsterdam, supra note 46, at 618.
57 Id. at 615.
59 Amsterdam, supra note 46, at 618.
60 Id.
61 As one who worked with both, the absence of citation to the other's work is striking but, in so far as I know nothing personal explains this, I conclude it a matter of individual paths taken by truly unique thinkers toward similar ends. See MICHAEL MELTSNER, CRUEL AND UNUSUAL: THE SUPREME COURT AND CAPITAL PUNISHMENT 78-86 (1972); MELTSNER & SCHRAG, supra note 3 (The dedication in the first edition to Gary Bellow was inadvertently omitted from the second 1979 edition by the publisher.)
This choice, increasingly inexplicable, may be a total mystery to those who were not situated in a time when many of us believed law reform verged close to revolution, or as close as we would ever come. Both Bellow and Amsterdam provided maps and an itinerary for the triumph of clinical methodology, but today it seems utopian to think that simply by differently schooling lawyers we will be able to alter basic societal arrangements for the benefit of the poor and disadvantaged. 

Neither law schools nor the legal profession nor the rule of law itself, with its "double-edged capacity" to sanctify orderly arrangements despite their injustice, supports such a conclusion. Perhaps it is enough to say that as extraordinarily successful scholar-lawyers, the ultimate test of any idea turned for them on a professional's sense of practical, human consequences, and that there were then as now no shortage of people needing legal help.

Both created exceptional and hardy institutions—Amsterdam, the Lawyering Program at NYU; Bellow, the Hale and Dorr Legal Services Center in Jamaica Plain, Massachusetts—but neither program nor the intellectual output on which they were built threatens to topple the orthodoxy in the foreseeable future. 

It should be clear that neither man had any illusions on this point. Tony Amsterdam let this be known in the strategic, paradoxical way he wrote in 1984 that "of course" change would come because it was so obviously the wise course and "the gains were worth the difficulties." I believe Gary Bellow told us he saw things the same way when he failed to revise The Lawyering Process and instead devoted his energies to building the very best legal services office he could, well beyond the Charles River, far from his classroom teaching platform in Cambridge.

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62 To oversimplify, The Lawyering Process provided the wherewithal to realize the promise of On Teaching the Teachers. And 21st Century... built on Amsterdam's pioneering Lawyering curriculum for NYU's first year. Both positions stand for a legal education that is seriously changed not by new courses but by a radical difference of pedagogy and allocation of resources.


64 See supra note 53; Crampton, supra note 28; John Henry Schlegal, Walt Was Right, 51 J. LEGAL EDUC. 598 (2001).

65 Amsterdam, supra note 46, at 618.

66 The most imposing effort to bring serious instruction blending theory, practice, doctrine and ethics out of the course-bound world of clinics into the mainstream of legal education was the 1992 MacCrate Report. AMERICAN BAR ASSOCIATION SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992). The Task Force identified fundamental skills and values that every new lawyer should acquire, needs that were not being met as long as the overwhelming portion of law school efforts and resources went towards teaching substantive law and doctrinal analysis. While noting changes in legal
That such purposes have so far failed or faded, does not excuse the rest of us from working to realize them.\textsuperscript{67} A characteristic of both men is unwillingness to concede defeat. Resignation never seemed to appear in their vocabulary. Bellow held to his “steady work” even as death snatched him from us and as anyone who follows the nation’s dysfunctional romance with capital punishment knows, Anthony Amsterdam remains steadfast, an imposing presence on the legal landscape who continues to use his energies challenging the death penalty. I think Bellow and Amsterdam would endorse the sentiment typed on the card over my desk: “It is not necessary to hope in order to work, and it is not necessary to succeed in order to persevere.”\textsuperscript{68} But whether they would or would not, perseverance is essential to learn the fullness of our craft, to make the necessary changes in educational policy and ultimately it is at the heart of the book we have come to celebrate.

12. Because they arrived from legal services and civil rights backgrounds and “responded to the social ferment and legal rights explosion of the sixties” the founders of the clinical movement saw their work “not only as a way of enriching legal education . . . but as a means of stimulating law schools to attend to the legal needs of the poor, and engaging students in the pursuit of social justice.” But “experiential learning and skills training” were also intended “to transcend the limitations of traditional legal education” as well as empower lawyers for the poor.\textsuperscript{69} Clinicians have always disputed the relative emphasis to be placed on a social justice and an educational (in the sense of training in discreet skills) agenda. Speaking for many,

education including increased numbers of offerings in skills areas that suggested greater recognition of their importance, increased numbers of clinical programs and faculty members better prepared to deliver high quality skills and values teaching, the Task Force was forced to conclude that the total number of offerings that would advance the skills and values agenda, was small. Only a minority of law students went beyond basic writing, research and trial advocacy courses and of that minority “only a small number has taken more than one additional skills training offering that employs the methodologies of skills instruction.” \textit{Id.} at 259-60. A decade later, despite the prestige of the Task Force (on which Amsterdam served) the tireless efforts of Robert MacCrate to bring its message home to both the law schools and profession and the continued use and development in discrete settings of methodological innovation, clinics are still just courses, doctrine still dominates, theory and practice travel different groves in the brains of the professorate, specific training in problem solving is an oddity, and the direct experience of representing the poor, which was supposed to both train \textit{and} humanize young lawyers, has been marginalized.

\textsuperscript{67} One can say of Bellow and Amsterdam what Robert H. Bork spoke (in eulogy) of a former teacher of mine: “But there will always be a difference in the things we choose to do and the way we do them because we knew Alex Bickel.” Alexander M. Bickel 8-9 (1975) (pamphlet published by the Yale Law School) (on file with the author).

\textsuperscript{68} Attributed to William of Orange (1533-1584). I thank Sidney Kentridge for making me aware of this quote.

Stephen Wizner laments a failure “to sustain and pass on to our students the passion for social justice that many of us had when we first started practicing and teaching.” But for a variety of “reasons some pedagogical, others . . . students’ pragmatic concerns, clinical legal education has tended to emphasize skills training and professional development . . . .” Whether or not students eventually make just use of their systematic training in effective techniques when they practice law, law schools only touch upon the matter remotely and indirectly by offering ad hoc mentoring, career counseling, bar-focused professional responsibility courses and public interest advising. Nor is exposure to philosophic systems of justice a prominent feature of American legal education. Many books and articles written and used by clinicians have no particular political tone unless it is the tone of the apolitical, of the technician. Others, though it seems fewer all the time, take an explicit political lawyering stance.

*The Lawyering Process* straddled this fence also. It includes “skill dimensions,” that encouraged clinicians to work on interviewing, counseling and negotiation as well as readings that raise painful questions of both personal and professional morality. You cannot work through its 1,121 pages without learning how to be a more effective practitioner regardless of who your client is; on the other hand, it would also take a pronounced sense of moral denial, one bordering on the morally inert, to avoid confronting in these pages the question of the proper use of the powers they impart. Here is another legacy of Gary and Bea’s work: a reminder that we can embody even if we cannot dictate social ends. Nor finally can our purpose be to produce other than learned counsel even if the skills imparted are used in ways we might disapprove. That’s the accommodation. In its most generous fullness, Gary might call it an “alliance” with the just part of our students and ourselves. This may be the best that can be done and on those days when we are cornered by doubt and plot an escape to more peaceful pursuits, we need to remember Gary’s loyalty to his work and struggle to persevere.

70 *Id.* at 330-32.