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## Ten Years In: A Critical View of the Past, Present, and Future of Skills Education at UC Irvine Law School

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# Ten Years In: A Critical View of the Past, Present, and Future of Skills Education at UC Irvine Law School

Rachel Croskery-Roberts\*

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## INTRODUCTION

Lawyering skills programs have come a long way. In the early days, law schools often arranged for particularly bright upper-division law students to teach first year students the critical skills of research, writing, and analysis. The idea that students with no experience with the practice of law could somehow teach other students foundational lawyering skills has always struck me as profoundly odd and exceedingly short sighted. Yet for many years, that was the way.<sup>1</sup> Out of necessity, the topics covered in such courses were limited to only the most basic skills.

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\* Associate Dean of Lawyering Skills, University of California, Irvine School of Law (“UCI Law” or the “Law School”). I would like to thank Professors Jonathan Glater, Grace Tonner, and Trilby Robinson-Dorn for providing invaluable feedback on this essay and Professor Annie Lai for taking the time to discuss with me the direction my essay would take. I would also like to thank my Lawyering

A long foray into the reasoning behind the old ways or the development of better models is largely beyond the scope of this Essay, though I have one observation relevant to the subject of this Article. It is true that there was a financial benefit to having inexperienced students rather than experienced professionals and academics do the teaching. However, in light of the equally obvious drawbacks to having students teach students, it has always confused me why law schools would prioritize limited financial savings over sound pedagogy. Having studied the issue, perhaps the best reason I have come up with as to why schools chose this route is that many early curricular decision makers possessed a fundamental misunderstanding as to what it is, exactly, that the course entails. In an early article on legal writing programs, Professor Joe Kimble observed,

Unfortunately, there is a profound misconception among non-writing teachers that [a legal writing course is about] style and mechanics. We do have to teach those things, certainly, but in addition, the legal-writing courses are the only courses in which legal analysis is systematically taught. [In the writing courses,] [w]e have to teach . . . the structure of analysis: how to analyze cases, how to connect one case to the other, and how to apply them by deduction or analogy to a client's problem, a client's story.<sup>2</sup>

Put more plainly, what we teach is far beyond basic writing. In addition to other skills, the course addresses how to express complex legal analysis and sophisticated legal concepts in both written and oral form to widely varying audiences and for various purposes.

Although that model long ago gave way (for the most part) to a model where full-time professors or experienced adjuncts teach the course, many schools still have programs that lack the sort of institutional support necessary to develop a sophisticated and integrated approach to true skills training across the curriculum.

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Skills colleagues for being so responsive to requests for information and for taking the time to discuss innovations in the Lawyering Skills Program and in our individual classrooms. All errors in this essay are my own.

1. Although it is possible some programs like this still exist, the vast majority of programs now use full-time faculty members (many tenured or tenure-track) or experienced adjuncts (or a combination of the two). According to the ABA, there are “203 institutions and programs that confer the first degree in law (the J.D. degree),” one provisionally accredited. *ABA-Approved Law Schools*, A.B.A., [https://www.americanbar.org/groups/legal\\_education/resources/aba\\_approved\\_law\\_schools](https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools) [<https://perma.cc/FP7E-7HLT>] (last visited Sept. 22, 2019). The Association of Legal Writing Directors and the Legal Writing Institute regularly survey lawyering skills programs on a number of different issues, including staffing models. In the 2016–2017 survey, 149 schools responded to the question, “For the Current Academic Year, please identify the answer below that best describes the staffing model your school uses for the [First-Year Legal Research and Writing Program].” ASS’N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., *ALWD/LWI ANNUAL LEGAL WRITING SURVEY REPORT 9 (2016–2017)* [hereinafter *ALWD/LWI REPORT*]. The choices were full-time faculty, teaching fellows, part-time faculty, adjunct faculty, graduate students, or a hybrid of these staffing models. None of the 149 schools responded indicating they used graduate students to teach the course. *See id.*

2. Joseph Kimble, *On Legal-Writing Programs*, 2 *PERSPECTIVES* 43, 44 (1994). As programs have evolved over the years, I would argue even this description represents a quite limited view of what the best lawyering skills programs are doing.

We largely have that support at University of California, Irvine School of Law (“UCI Law” or the “Law School”). Faculty members in all areas agree that we should be teaching our students sophisticated doctrine and skills. For years, I argued to a mostly unsympathetic audience of academics that the divide between practical skills and theory/doctrine was an artificial one. I believed then and now that we only elevate students’ understanding of key doctrine and theory by integrating the teaching of skills and doctrine.<sup>3</sup>

I came to UCI Law because it was clear this would be a place where top academics, policymakers, and practitioners in various areas could come together to create a new kind of law school. Although I do not believe we have yet achieved the ideal approach to skills training in law school, UCI Law has all the right ingredients to work with and the attitude necessary to continue to evolve in a way that few law schools are capable of.

Part One of this essay provides a look back to the start of the Lawyering Skills program at UCI Law eleven years ago. It discusses the vision of the program at the founding of the Law School and the development of the program over the years into the sophisticated, robust program we have today. Part Two summarizes where we are now, having grown from a program with two full-time lawyering skills faculty members<sup>4</sup> and sixty first-year students to one with approximately 230 students, six full-time Lawyering Skills faculty members, and three experienced visitors.<sup>5</sup> Part Three looks forward, identifying what we as a law school can do to ensure that the students’ skills education remains robust while identifying areas for improvement and growth.

#### I. PART ONE: LOOKING BACK—THE VISION

Founding faculty member, Professor Grace Tonner, was the inaugural Associate Dean of Lawyering Skills at UCI Law. I had the great pleasure of working with her first at the University of Michigan Law School and now here at UCI Law.

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3. In fact, I put my theory on this issue into practice by writing a book focused on teaching employment discrimination from a practical perspective and teaching my employment discrimination course through the lens of a sophisticated practitioner working in the area. *See generally* RACHEL CROSKERY-ROBERTS & MARGARET CURTISS HANNON, FROM THEORY TO PRACTICE: EMPLOYMENT DISCRIMINATION LAW (2014). I found students’ ability to engage with the doctrine extraordinary, particularly when they had to do so on behalf of a client. The book was initially planned as one in a series. Disappointingly (though unsurprisingly), we found it difficult to convince professors used to teaching doctrine separate from practical skills to agree to draft similar volumes in other subject areas.

4. In the first and second years of the Law School, the 1L Lawyering Skills program had two professors primarily dedicated to teaching Lawyering Skills. As this was not sufficient to provide the one-on-one interaction necessary to provide a robust lawyering skills experience, two professors who also taught in the clinical program joined the Lawyering Skills faculty in teaching Lawyering Skills in the beginning.

5. A seventh full-time faculty member, Beatrice Tice, has helped teach the course recently, though she is not a member of the Lawyering Skills faculty. Because the class was so large this year, she stepped in to help lower the class sizes in the first-year Lawyering Skills classes.

Professor Tonner developed and administered the program at Michigan, which was, for many years, arguably the most sophisticated lawyering skills program offered at a top-10 law school.<sup>6</sup>

At the start, the 1L Lawyering Skills program at UCI Law was designed to introduce students to five major competencies: (1) “effective communication skills”; (2) “research strategies and methodologies”;<sup>7</sup> (3) “effective lawyering”; (4) “problem solving”; and (5) “self-education.”<sup>8</sup> The goal was “to introduce first year students to the legal skills they w[ould] need as lawyers while acknowledging the necessity for additional course instruction to complete this part of their legal education.”<sup>9</sup>

The course introduced these competencies through a two-semester, six-credit scaffolded curriculum. At the outset of the program, Lawyering Skills I was primarily designed to teach students how to perform predictive legal analysis and how to express that analysis in both oral and written form. Students also learned how to address research results to varying audiences, including assigning attorneys and clients. Through a series of legal memoranda, students learned critical basic skills like reading the law in an individual case closely, synthesizing rules from multiple cases where one case does not fully address a given rule, and applying that synthesized understanding of the law to a client’s case through detailed analogies and distinctions. Students also learned hierarchy of authority, basic legal research skills, and large- and small-scale organization of a legal memorandum. Throughout the semester, students learned how to draft both formal and informal memoranda.

Lawyering Skills II was originally designed to run largely as a simulation where students represent a client in a case from the time of the filing of a Complaint, through discovery, to one or more discovery motions. (The culminating assignment in all sections was a summary judgment brief.) Typically, the simulation culminated in a settlement negotiation in the case the students had been working on all

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6. It might seem counterintuitive, but many of the strongest lawyering skills programs have not historically been at top law schools. Unfortunately, the traditional law school education has placed too little emphasis on teaching the practical skills needed by every new associate entering the workforce, and many (most?) schools have not committed the necessary resources to appropriately preparing students for practice. In the past, top law schools seemed to believe that smart students could simply learn these critical skills on the job. As the job market has changed and employers have increasingly expected new attorneys to come armed with more than their intellect, many law schools are recognizing that a student’s legal education is incomplete if it does not provide the student with a solid foundation in some of the key practical skills and ethical issues facing new lawyers.

7. In the first few years of the Law School’s existence, law librarians coordinated with Lawyering Skills professors to come into the Lawyering Skills classroom to provide the introductory research instruction as part of the six-credit Lawyering Skills course. Now, 1L students take a one-credit Legal Research Practicum course with the law librarians in addition to the Lawyering Skills course. Research instruction in the Lawyering Skills course builds upon what the students have learned in the basic research course.

8. Memorandum from Grace Tonner, Professor of Lawyering Skills, Univ. of Cal., Irvine Sch. of Law, on the Lawyering Skills Program to UCI Law Faculty (2010) (on file with author).

9. *Id.*

semester. Students drafted briefs, and they argued before judges at least twice (typically one practice argument and one before real judges and practitioners).

A cornerstone of the program was and is regular individualized feedback tailored to the needs of each student. Students receive extensive written feedback on assignments and participate in a series of individual meetings with professors to receive guidance and instruction on how to improve. So they can begin to develop the ability to self-educate, students are also expected to self-critique.

Furthermore, and perhaps most importantly, the founding faculty members envisioned a first-year course that exposed students to a broader range of skills than just legal writing and analysis. Thus, from the outset, the program introduced students to client counseling, client interviewing, professionalism, contract drafting, fact investigation, and other skills.<sup>10</sup>

In that vein, another incredibly unique aspect of the program at UCI Law from the beginning was the introduction of a live client experience in the 1L Lawyering Skills class. At either the end of the first semester or the beginning of the second semester, students receive basic instruction in client counseling and client interviewing techniques.<sup>11</sup> Typically, this occurs through basic lecture, modeled interviews, and/or simulations. Then each student at the Law School is assigned to a public interest organization we partner with to receive training from the organization, observe a real client interview, conduct an interview under observation, and then receive feedback. The inaugural class was sixty students. Each student completed this part of the assignment with either the Orange County Public Defender's Office, the Public Law Center, or the Legal Aid Society of Orange County (now Community Legal Aid SoCal). In addition to providing students with critical skills, this experience also allowed students to make professional connections and to build bridges between the Law School and the community we serve.

The 1L program at its outset rivaled the offerings of some of the best programs in the country and offered some unique additions not seen in even those programs. Nevertheless, from the start, UCI Law recognized that “[d]ue to the limitations of time, the differences in students’ abilities, and the limitations of first-year students’ knowledge of legal doctrine,” a sophisticated program would have to expand beyond the first year.<sup>12</sup>

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10. Recognizing the critical importance of skills like fact investigation (and the relative absence of teaching on this subject in most law schools), UCI Law hired a veteran journalist, Henry Weinstein, as one of the founding faculty members. Professor Weinstein, who served as a writer for the L.A. Times for thirty years (fifteen as a Legal Affairs Writer), brought his expertise to bear on this aspect of the original curriculum.

11. As part of this training, students typically gain exposure to (1) the basic structure and purpose of a client interview; (2) methods of questioning to elicit various types of information; and (3) the importance of cultural competency in serving an increasingly diverse client base.

12. Tonner, *supra* note 8 (recognizing that “[t]he challenge [wa]s to cover as many skills as possible without overburdening the students” and observing that it would be “essential to develop an

The founding faculty members agreed that they wanted students to develop a number of skills and proficiencies throughout their three years of law school. These “skills and proficiencies included legal research, legal writing, statutory analysis, procedural analysis, constitutional law analysis, common law analysis, international law analysis, negotiation, mediation, drafting, problem-solving, client interviewing and counseling, oral communication, and fact investigation.”<sup>13</sup> Although the first-year curriculum (in Lawyering Skills and in other courses) covers a number of these skills and competencies, it cannot cover all of them.<sup>14</sup> Thus, for example, although students receive a very basic introduction to negotiation and other forms of alternative dispute resolution in the Lawyering Skills class, the course cannot possibly cover all that students need to know in this important area.<sup>15</sup>

In her initial memorandum outlining the vision for the Lawyering Skills Program at UCI Law, Professor Tonner outlined a number of steps the Law School should take in developing the upper-level curriculum as the Law School grew. Having a “firm foundation in analytical methods” after taking Lawyering Skills and other first-year courses, the idea was that the Law School would introduce “advanced skills such as negotiation, client counseling, fact investigation, trial advocacy, appellate advocacy, mediation, and drafting in the second and third year.”<sup>16</sup> Obviously, one way to do that would be skills-focused courses in the areas mentioned and others. However, as a law school devoted to teaching skills across the curriculum and to interdisciplinary teaching and research, UCI Law wanted to do more. Thus, Professor Tonner suggested additional ways to build out the upper-level skills curriculum, including the following: (1) developing practicums and capstone courses for students to learn skills in a particular practice area; and (2) developing “capstone courses where students under the supervision of a faculty member and/or an adjunct could work with the legislature or other public agency to draft legislation or regulations in a particular area of the law.”<sup>17</sup>

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upper level curriculum that builds on these skills” by “design[ing] courses that develop problem solving skills which benefit both transactional and litigation lawyers”).

13. *Id.*

14. From the outset, the school has placed a lot of thought into sequencing skills in the curriculum. For example, after the first year, students participate in a mandatory clinic in their second year or third year. The Lawyering Skills faculty members and the clinicians have met multiple times to discuss the transition from simulations in the first year to clinics in the second year. Many students also do externships in the second or third year.

15. Thus, as discussed below, UCI Law offers upper-division courses in negotiation and mediation. Similarly, although students receive a significant amount of research instruction in the first year, more sophisticated research topics like legislative history research or detailed research on agency guidance are offered as upper-division courses. The same is true for the introduction to drafting, where students get only a basic introduction in the 1L course and can then take *Advanced Legal Writing: Business Drafting* if they want a more in-depth introduction to drafting.

16. Tonner, *supra* note 8.

17. *Id.* (noting that the Law School could “establish relationships with the Attorney General’s office, the California Legislature, and the Governor’s Office . . . [so] our students could provide research and position papers or draft legislation or regulations”). Recognizing the interdisciplinary

As Professor Tonner has observed, “[o]ne of the major benefits of [a] practicum is that it allows us to use an interdisciplinary approach.” While at Michigan Law School, Professor Tonner developed more than one practicum, including

a Securities Regulations practicum with . . . a full time professor[] and an experienced adjunct. Students either took [a] Securities Regulation course prior to or concurrently with the practicum. In the practicum, students learned specialized research, prepared the documents . . . associates are generally asked to draft, engaged in typical negotiations securities lawyers engage in, and addressed ethical problems securities lawyers often face.<sup>18</sup>

She offered a blueprint for developing similar practicums at UCI Law that would take advantage of the interdisciplinary nature of our Law School.<sup>19</sup> She observed:

A Mergers and Acquisitions practicum would allow us to work with MBA students. An Environmental Law practicum would offer an opportunity to work with the Social Ecology and Natural Resources departments. An Intellectual Property or Copyright practicum could offer an opportunity to work with the Engineering department and possibly the Medical School.

In the beginning, the vision for the skills curriculum at UCI Law was grand. It envisioned a robust and sophisticated first-year Lawyering Skills program, mandatory clinics for all students, and an array of upper-division offerings designed to expand upon and deepen students’ understanding of the basic skills they learned in the first year. It also envisioned an interdisciplinary and across-the-curriculum approach to skills teaching. In the next part of this Essay, I summarize where we are today and where we still have room to continue to grow and develop in these critical areas.

## II. PART TWO: CELEBRATING EXCELLENCE—A SOPHISTICATED AND ROBUST LAWYERING SKILLS PROGRAM

### *A. 1L Program*

What we are doing is working. This year, the UCI Law Lawyering Skills program ranked 14th in the nation in the *U.S. News and World Report* specialty rankings.<sup>20</sup> In fact, we are one of only four top-25 law schools with a Lawyering Skills program ranked in the top-20 Legal Writing programs.<sup>21</sup> The program remains a six-credit, two-semester comprehensive course designed to introduce students to

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nature of our Law School, Professor Tonner also noted that “we could also include graduate students and professors in other disciplines when appropriate.” *Id.*

18. *Id.*

19. *See id.*

20. *See Best Legal Writing Programs*, U.S. NEWS & WORLD REP., <https://www.usnews.com/best-graduate-schools/top-law-schools/legal-writing-rankings> [<https://perma.cc/8BXR-U4JG>] (last visited Sept. 22, 2019).

21. The four top-25 law schools with top-20 Legal Writing programs are Michigan, Northwestern, Georgetown, and UCI Law. *See id.*

a number of foundational skills and competencies, including legal writing, research, analysis, problem solving, and fact investigation. Because our program is not a lockstep program (meaning each Lawyering Skills faculty member designs and creates their own course), each professor's course looks a bit different than the next. However, we all coordinate regularly with each other to ensure students get a consistent set of foundational skills. Thus, at a minimum, students continue to learn predictive and persuasive analytical writing through the drafting of formal and informal memoranda and briefs. Students also get fairly extensive training in legal research, problem solving, and oral argument. Finally, students get at least a basic introduction to fact investigation, client interviewing and counseling, negotiation, and drafting.

Although significant aspects of the original course remain today, the program is constantly reassessing the demands of the profession and the needs of our students. One way in which we ensure that we are meeting current practice expectations is through a survey of students returning from their summer jobs to determine what types of documents they drafted, client experiences they had, and other assignments they completed. We also ask for feedback regarding where the students felt prepared for practice and where they wish they had received more guidance. Where necessary, this has resulted in curricular changes, both small and large.

For example, with the rise of electronic communication and increasing demand for more cost-effective legal advice, we have added instruction and significant formative assessment on drafting analytical e-mails (e-mail memoranda providing substantive legal analysis or advice). Furthermore, many in the program have moved to an even more simulation-based experience for the students. As one example, a number of us now introduce facts for problems at least in part through simulated client interviews that we both model and allow students to conduct.<sup>22</sup> Another example is the fact that all of us have students engage in at least one simulated settlement negotiation.<sup>23</sup> Because we have built a top-notch faculty with a wide range of experience with both practice and pedagogy, we are able to experiment and learn from each other in ways that we might not otherwise have been able to do with a more homogeneous faculty.<sup>24</sup> We have also added exercises

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22. These simulations continue into the upper-division curriculum. For example, Professors Ezra Ross and Alison Mikkor have worked with actors in UCI's Drama Department to provide an even more realistic "client" experience for students in their *Depositions* courses.

23. In fact, Professor Mikkor records all of her students' negotiations, reviews them, and provides feedback on students' techniques and approaches. Other professors have students draft all or part of the settlement agreement. Most of us also provide training and information on specific types of questioning, negotiation preparation, negotiation ethics, and the academic literature regarding negotiating styles.

24. Just among our current faculty members teaching the course, for example, we have professors with both significant and recent practice experience (Professors Robinson-Dorn and Mikkor); a professor with a mix of very recent litigation experience and significant teaching experience (Professor Ross); professors with practice experience, administrative experience, and 18–30+ years of teaching experience at multiple law schools (myself and Professor Tonner); and a veteran journalist

and instruction related to helping our students develop skills related to professionalism and professional judgment.<sup>25</sup> Additionally, to ensure that students are fully prepared to hit the ground running during their summer jobs and externships, most professors in the program now assign one or more quick turnaround assignments. These assignments run as true simulations, with students assigned a 24–48-hour time period to complete a research and writing assignment and provide feedback or advice to an assigning attorney or client in character. (Most of these involve written e-mail responses, though some of us have occasionally required students to present results orally in character.)<sup>26</sup>

A few years ago, we moved to seven skills credits in the first year by adding a one-credit Legal Research Practicum taught by librarians. This course covers the basics, which permits professors in the Lawyering Skills program to provide more advanced training and to reinforce what students have learned in the one-credit research course.

In addition to the simulations and exercises in the course, every 1L student continues to have the opportunity to conduct at least one live client interview through the client interviewing program. As our class size has grown, we have added organizations. Over the past few years alone, we have worked with and placed students at Community Legal Services of SoCal,<sup>27</sup> the Public Law Center, the Orange County Public Defender's Office, Inland Counties Legal Services, Elder Law and Disability Rights Center, the Labor Commissioner, Bet Tzedek, Asian Americans Advancing Justice, Camp Pendleton, the Veterans Legal Institute, and the Learning Rights Law Center. When our class size moved to over 230 last year, our Director of Public Interest Programs, Anna Davis, worked tirelessly with me to identify pro bono projects that could supplement the placements we have used in the past.

We also work to ensure that we are continually adapting to the demands of a changing and evolving legal profession. To do so, we try to cultivate close ties with the legal community to maintain open lines of communication with those who will employ our students in the future. For example, in addition to the significant communication we have with outside organizations through the client interviewing program, Professor Henry Weinstein arranged and moderated a panel of judges,

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who has now also been teaching Lawyering Skills for ten years (Professor Weinstein). We have also had recent help from Professor Beatrice Tice, the former Associate Dean of the Law Library and a veteran teacher.

25. For example, Professor Robinson-Dorn created an assignment designed to help students learn to take initiative in a legal matter.

26. This is another assignment that permits teaching and assessment of professional judgment and professionalism. For example, I instruct students for the quick turnarounds that they may not contact me to ask questions unless (1) they do so in character; and (2) they feel it would be appropriate and professional in practice to ask the question of the attorney who gave them the assignment or the client who sought their advice. Part of the students' grade comes from assessing their professional judgment in communicating with the assigning attorney or client throughout the simulation.

27. This organization was formerly the Legal Aid Society of Orange County.

attorneys, and alumni at the Western Regional Legal Writing Conference<sup>28</sup> to allow them to share with us and others in the legal writing community what we are doing well and what we could do differently to offer students the best training possible. Furthermore, Professor Trilby Robinson-Dorn, UCI Law's second Associate Dean of Lawyering Skills,<sup>29</sup> has regularly engaged in outreach with members of the larger legal community to (a) educate the community regarding what we are doing; and (b) get feedback regarding what skills potential employers hope to see law students attain before entering the profession.

### B. Upper-Division Skills (Non-clinic)<sup>30</sup>

Beyond the 1L curriculum, UCI Law offers students the opportunity to further develop their skills in various areas through a number of upper-division course offerings. Some courses focus on helping students build upon and improve their skills in legal analysis and writing.<sup>31</sup> Other courses focus on expanding upon skills introduced in the first-year curriculum. For example, the 1L Lawyering Skills course provides a basic introduction to negotiation and contract drafting. Time constraints, however, make it impossible to provide any sort of deep dive into that material. Thus, the upper-division curriculum offers courses in negotiation, mediation, and the like. Furthermore, students interested in transactional practice may take skills-focused courses like *Advanced Legal Writing: Business Drafting*, a course I have offered for a number of years while at UCI Law. Students interested in litigation may take courses like *Pretrial Advocacy*, *Trial Advocacy*, and *Depositions*.<sup>32</sup>

Here is a survey of some of the upper-division skills courses offered at UCI Law over the course of a recent year:<sup>33</sup>

#### **Survey of upper-division skills courses offered in fall 2017**

1. Legal Analysis and Writing for Law Practice
2. Advanced Legal Writing: Business Drafting

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28. UCI Law hosted the Western Regional Legal Writing Conference in 2018. Marisela Galindo and Professor Robinson-Dorn organized the conference, with assistance from other Lawyering Skills faculty members and our Lawyering Skills Program Assistant, Hannah Fraley.

29. As of January 2020, Professor Robinson-Dorn is now UCI Law's Senior Associate Dean for Academic Affairs.

30. Although this essay focuses on skills training outside of the clinics, it bears mentioning that Lawyering Skills faculty members have been involved with the clinics in various capacities. For example, Professor Ross supervised a team of students in the *Appellate Litigation Clinic*. Professor Mikkor recently provided a crash course in taking depositions for a group of UCI Law clinic students.

31. For example, one course is *Legal Analysis and Writing for Law Practice*. As described in the course catalog, this "three-unit course is designed for students who want to devote significant effort to improving their legal analysis and writing skills in preparation for real-life legal practice as well as the written portion of the bar exam." *Course Catalog, LAW 5170 SEC 1 – Legal Analysis & Writing Practice 1*, U.C. IRVINE SCH. L., <https://apps.law.uci.edu/CourseCatalog/Detail.aspx?id=1954> [<https://perma.cc/T732-F48B>] (last visited Sept. 22, 2019).

32. Two professors in our program, Professors Ross and Mikkor, currently teach the *Depositions* class.

33. Although these course offerings vary each year, this is a fairly representative sample.

3. Juvenile Justice Practicum
4. Pretrial Advocacy
5. Negotiation and Mediation
6. Trial Advocacy
7. Copyright Practicum
8. Public Interest Litigation

**Survey of upper-division skills courses offered in spring 2018**

1. Business Litigation Advocacy
2. Applied Lawyering and Law Practice Management
3. Mediation Workshop & Seminar
4. Advanced Legal Research
5. Depositions
6. Trial Advocacy

*C. Program Structure*

Three years ago, Professor Tonner stepped down as Associate Dean of Lawyering Skills, and she is currently working on developing an interdisciplinary Veterans' Clinic at UCI Law. Professor Robinson-Dorn, a professor with significant recent practice experience as an employment partner with a large international law firm, took the helm as the program's second Associate Dean.<sup>34</sup> Prior to this point, some skills-related programming and experiences for students did not reside under the Lawyering Skills umbrella.<sup>35</sup> As we have grown and evolved as a school and as a program, it has become necessary to restructure a bit to allow for a centralized location for these programs. Thus, in recent years, Dean Richardson placed most skills-related activities under the purview of the Associate Dean of Lawyering Skills.<sup>36</sup>

III. PART THREE: A VISION FOR THE FUTURE

Many UCI Law faculty members came here from highly successful law schools with strong programs. Still others came from successful careers in private practice. Many of us arrived when the Law School was not yet accredited, let alone ranked.

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34. As of January 2020, Professor Robinson-Dorn is now UCI Law's Senior Associate Dean for Academic Affairs.

35. For example, I have served as the faculty advisor for the Experian/Jones Day Moot Court competition since my arrival. I have historically either done so as the sole faculty advisor along with the Dean and/or with one additional faculty member. External competitions have often fallen under the purview of the Associate Dean of Students.

36. One notable exception is that the Vice-Dean has been working with adjuncts, even those teaching skills-related courses. Beginning in January 2020, that task will shift to Professor Robinson-Dorn as the Senior Associate Dean for Academic Affairs. This will likely facilitate easier communication with the Associate Dean of Lawyering Skills and permit greater continuity in our skills programming, in the future.

What would make people do such a thing? What has made UCI Law worth the risk? What makes me continue to believe we will be able to offer the most sophisticated, future-thinking legal education in the country? I believe the key components are an entrepreneurial spirit, a clear vision, and a willingness to be self-critical and adapt when some aspect of the curriculum is not working or could work better. Simply put, we are too young to be set in our ways.

In Part Three, I place that critical eye on our skills curriculum. I address three key areas. First, I offer my view of what an outstanding program should look like. Second, I analyze potential hurdles to maintaining the best aspects of the program as we grow. Finally, I assess where we could continue to innovate to make our already great program even better.

#### *A. An Ideal Lawyering Skills Program*

To truly offer students the best lawyering skills experience possible in law school and to “prepar[e] students for the practice of law at the highest levels of the profession,”<sup>37</sup> a school should infuse lawyering skills across the curriculum, not just cabin it in the first-year lawyering skills course. The ideal program in my mind would contain at least four critical components, only one of which is the required first-year course:

**1. A first-year course offered in very small sections (20 or below) over two semesters.** Ideally, the course should be a minimum of six credits and taught by full-time tenured or tenure-track professors. Although I have taught in programs with as few as four credits in the first year, I believe it takes at least six credits to cover the full range of topics necessary to provide students with true exposure to the basic skills necessary to lay a foundation for upper-division skills work, clinical work, or practice.

**2. A wide array of upper-division skills courses offered regularly.**<sup>38</sup> Examples include drafting, depositions, advanced legal research, trial advocacy, pretrial advocacy, and appellate advocacy. In schools that do not infuse skills across the curriculum, ideally students would have at least one required upper-division skills course. Where possible, full-time faculty members should teach at least a core set of these skills-based courses, though adjuncts or visitors with experience teaching skills courses may be appropriate to ensure regular course coverage.<sup>39</sup>

**3. A wide array of subject-matter focused courses regularly offered**

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37. Erwin Chemerinsky, *The Ideal Law School for the 21<sup>st</sup> Century*, 1 U.C. IRVINE L. REV. 1, 13 (2011).

38. I believe that a third semester skills course should be required at all law schools to fully prepare students for the practice of law. However, that idea is a non-starter at a lot of schools. Thus, at a minimum, the upper-division skills curriculum should be available in the form of a range of elective offerings.

39. The benefit of working with adjuncts is the ability to bring in those with expertise in given fields. The drawback, of course, is that adjuncts may lack experience in skills pedagogy and may also have less time to devote to individualized instruction while balancing the demands of practice and teaching.

***and taught from a skills perspective (skills across-the-curriculum).***

Examples include an employment discrimination practicum I have taught in the past or the securities regulation or bankruptcy practicums discussed above. Professor Robinson-Dorn has also regularly taught her Employment Law course as a blended course, with at least a third of the course devoted to introducing students to skills in the area. We have also offered juvenile justice and copyright practicums at UCI Law, among others. Where lawyering skills professors have expertise in a given area, they are particularly well-suited to teach these subject-matter focused skills courses. As with other upper-division skills courses, however, it may be appropriate to bring in experienced adjuncts at times. An even more sophisticated program would offer the sort of interdisciplinary programs envisioned by Professor Tonner and discussed in Part One.<sup>40</sup>

***4. Additional individualized help for struggling students in the first year.*** Legal writing and analysis is difficult. Although many students will find they are able to perform well within the regular courses, a significant number of students arrive at law school lacking skills in one or more areas. Lawyering skills professors do a lot of individualized remedial work with students, but some schools have added a writing specialist whose sole job is to plan workshops and work one-on-one with students on critical skill-building.<sup>41</sup> An ideal program would offer a full range of programming for students in all three years of law school. This fourth component can be part of a lawyering skills program or a separate program as it is here at UCI Law (the Academic Skills Program). Arguably, a writing specialist hired to work with first-year students, though, would work within the lawyering skills program or at least closely in connection with that program.

I believe the program we have created at UCI Law bears almost all of the hallmarks of a great program as I have described it. In particular, the first-year Lawyering Skills program is outstanding, with the exception of class sizes that should arguably be smaller than they currently are. I address this issue below. We have also offered a significant number of upper-division skills courses to students, but we have not yet developed the sort of coordinated, consistent program that I hope we will have in the coming years. This, too, is an issue I fully explore below. As we grow, however, there are some possible hurdles to maintaining the excellent program we have developed at UCI Law.

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40. In an ideal law school, almost *every* class would offer some skills training. This is arguably outside the scope of this article, though, as such systemic curricular change has to happen at the law school level, not the program level.

41. In fact, over 30% of law schools surveyed recently indicated they employed one or more writing specialists to work with their students. *See* ALWD/LWI REPORT, *supra* note 1, at 197. The vast majority of those specialists had a J.D., a Ph.D. in English, or both. *Id.* at 201. Over 90% of the writing specialists hired work specifically with first-year students, and over 64% also work with upper-division law students. *Id.* at 202.

*B. Hurdles to Maintaining Excellence*

Perhaps the single largest challenge to maintaining excellence and continuing to innovate is scaling up as the Law School grows. Fifty-eight students graduated as part of the UCI Law inaugural class. When I arrived in year three of the Law School's existence, there were roughly eighty 1L students for four lawyering skills professors. In the fall of 2019, we had approximately 230 law students.<sup>42</sup> In some respects, offering a world-class, cutting-edge lawyering skills experience, particularly in the first year, is relatively easy when the class sizes are small. But individualized feedback and innovative programming is labor-intensive. As class sizes have increased, the workload on faculty members has also increased significantly. Innovation requires a willingness to take risks and explore new ideas. It also requires a lot of time and energy to develop new programs and try new things, time that becomes increasingly scarce as the student-to-professor ratio rises in the lawyering skills classes.<sup>43</sup>

Another example of a place where scaling up has proven quite difficult (though again, not impossible) is the client interviewing project. I have managed this program since my arrival at the Law School. Placing eighty students and coordinating with the three organizations we worked with at the time was challenging, but it was doable. I was able to develop individual relationships with every supervising attorney the students worked with. I collected preference forms from every 1L, assigned them to an organization, arranged for the organizations to come to the Law School to conduct training sessions, and created the schedules. As we grew, we hired an outstanding Lawyering Skills Program Manager, Marisela Galindo, to help me with this (and other tasks related to the Program's coordination), and I cultivated relationships with multiple additional organizations. However, as the class size moved beyond around 120, it became more difficult to guarantee a consistent experience across organizations. This year, we worked with our pro bono office to find additional placements, as our list of organizations simply could not handle the larger number of students. Though we were able to find placements for all students through this hybrid model, we were not able to have the kind of close relationships with the supervisors working with all of our students that we have enjoyed in the past. It has also taken significantly more time to coordinate for people both in the Lawyering Skills program and in the pro bono office. To continue to offer this program as we grow, we will have to assess whether the hybrid model works or whether we will need to adjust again in future years.

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42. Though the yield was unusually high in 2019, the goal has always been to eventually end up with class sizes around 180. Thus, the days of 60–100 1Ls are likely behind us.

43. For example, a number of years ago, I decided to take students in my Lawyering Skills course to a day-long program designed to introduce new lawyers to a day in the life of the courts. Students had the opportunity to interact with judges and practitioners, tour the courthouse, and sit in on mock arguments, voir dire, and the like. We were a small and nimble law school. I was able to communicate with the Dean to arrange to secure the funding and to take the students with relative ease. This would be more difficult (though not impossible) now.

At the end of this essay, I discuss ways to address some of the challenges we face while continuing to innovate and become the best program in the country.

### *C. How to Make a Good Thing Better*

#### *1. Smaller Class Sizes in the First Year*

It should come as no surprise that most skills-intensive courses are smaller than large lecture courses. It takes significant time and energy to provide the kind of structured, individualized feedback and one-on-one instruction that a good lawyering skills course requires. The 2016–2017 ALWD/LWI Annual Legal Writing Survey demonstrates, for example, that the average class size for first-semester lawyering skills classes is twenty-two students, while the average class size for second-semester lawyering skills classes is 21.6.<sup>44</sup> Top programs in the country recognize the critical importance of maintaining a low professor-student ratio in both skills courses and in clinics and have largely moved these numbers even lower. Of the top-ten lawyering skills programs as ranked in *U.S. News and World Report*, only one had an average class size larger than twenty students (Georgetown).<sup>45</sup> UNLV, the current number one writing program in the country, maintains first-year sections of 14–20 students.<sup>46</sup> Most schools in the top ten programs privately reported to me that they aim for lawyering skills sections in the first year of law school to have around 16–18 students.<sup>47</sup> Clinical programs maintain similarly low faculty-student ratios, with most top programs setting a goal of an 8-to-1 faculty-student ratio.<sup>48</sup> UCI Law has accomplished an 8-to-1 ratio or better in its mandatory clinics each year since the Law School's inception.<sup>49</sup>

In the early years at UCI Law, Lawyering Skills classes had 20–25 students per section, a number that was arguably already a bit too large. One of the biggest pedagogical benefits to a smaller class size is that it allows for a classroom dynamic conducive to in-class activities and regular voluntary participation. Skills courses are not lecture courses. They require regular, sustained engagement on the part of each student. Furthermore, a small class size allows for significantly more one-on-one

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44. See ALWD/LWI REPORT, *supra* note 1, at 27–28.

45. *Best Legal Writing Programs*, *supra* note 20.

46. See *Lawyering Process Program, Our Curriculum*, UNLV WILLIAM S. BOYD SCH. L., <https://law.unlv.edu/lawyering-process/curriculum> [<https://perma.cc/92BL-RBFF>] (last visited Sept. 22, 2019).

47. E-mails on file with author. It is true that some of these schools have professors teach two sections rather than one as we do here at UCI Law. However, at those schools, teaching an additional upper-division course is typically optional and paid as an overload.

48. In the 2016–2017 Survey of Applied Legal Education, the median faculty-student ratio for the classroom component of law clinics was 8-to-1. Less than ten percent of programs responding had ratios greater than 10-to-1. See ROBERT R. KUEHN ET AL., THE CTR. FOR THE STUDY OF APPLIED LEGAL EDUC. (CSALE), THE 2016–2017 SURVEY OF APPLIED LEGAL EDUCATION 21–22 (2017).

49. E-mail from Professor Carrie Hempel, Associate Dean for Clinical Education and Service Learning, Univ. of Cal. Irvine Sch. of Law, to Rachel Croskery-Roberts (Apr. 8, 2019 at 6:47 a.m.) (on file with author).

time with students in office hours and in conferences. It also permits for a greater number of simulations and opportunities for formative assessment.

In small skills courses, an increased number of students in the classroom negatively impacts student learning. There are only so many hours in a day, and professors cannot always spend as much time with each student as is necessary to optimize student learning. However, the amount of time a professor has to spend with the additional students in the class (above an ideal number) is only one negative effect of larger class sizes. Office hours become more crowded, and the number of simulations and assessments must decrease. Additionally, the in-class dynamic changes, and the student experience overall necessarily diminishes.

As our class size has increased at UCI Law, so has the number of students in each section of Lawyering Skills. In some years, the number has come close to thirty students per section. In a non-skills course, such small increases in numbers might seem insignificant. In a skills course, however, there are marked differences in what one can accomplish in a class of 16–20 and one approaching 25–30 students. Consider the following estimate of the time spent with one individual student in a lawyering skills course during the first semester alone:

1. Providing written feedback on four papers (two first submissions and two final submissions): 5–10 hours.<sup>50</sup>
2. Holding individual conferences on two papers: 2 hours.
3. Grading research lists and logs: 2–3 hours.
4. Grading miscellaneous assignments: 3–5 hours.

At a minimum, then, each student in a first-year lawyering skills course requires 12–20 hours of individualized instruction and attention from the professor per semester. To quantify even further, in years where a Lawyering Skills section has twenty-eight rather than twenty students, the professor will have a *minimum* of 192–360 extra hours of work per year, an amount of time equal to an additional 4.8–8 full-time 40-hour work weeks. This does not include any time devoted to additional support for struggling students, responses to e-mails, added office hours, etc.

To continue to maintain and develop innovative programming for our students, we should aim to have class sizes closer to the 16–20 student range. Given our current staffing model, that would be impossible.<sup>51</sup> One solution, of course,

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50. These numbers are, of course, estimates. The amount of time varies by assignment and by student. The colleagues I spoke with largely felt my estimates were overly-conservative.

51. UCI Law has always planned to have seven lawyering skills professors once we are at full capacity. With a 1L class size of 180 (the original goal), that would mean classes with an average of 25.7 students per class if all seven professors were teaching (The number would go even higher in any semester in which a professor takes a leave for any reason). Thus, our goal staffing model places our class sizes at larger than the average at other schools. It is true that professors at other schools often teach two sections rather than one. However, those professors typically only teach additional courses beyond the first-year writing course as a paid overload. Lawyering Skills professors at UCI Law teach upper-division courses in addition to the 1L course as part of their regular teaching package. Were we

would be to hire additional full-time Lawyering Skills professors. That would be the ideal solution, though it is admittedly a costly solution. Short of hiring additional full-time faculty members, I would recommend that the Law School institute a distinguished visitor program where we bring in one or more distinguished visitors from other institutions each year. Such a program would allow UCI Law to benefit from the rich community of academics at other institutions who could (1) collaborate with existing faculty; (2) lead teaching and skills workshops; (3) teach a first-year Lawyering Skills section; or (4) offer additional upper-division skills courses to our students. Another possibility would be a fellowship program, though I would not recommend the sort of fellowship program offered at other schools like the Climenko Fellowship Program at Harvard.<sup>52</sup> These fellowship programs permit scholars who wish to enter the academic teaching market to spend time working on publications and preparing to enter the market. While doing so, they teach lawyering skills, but this is not the primary focus of the fellowship. I do not recommend a fellowship program where the critical skills taught in the first year are taught by people using the course as a stepping stone to something else. Rather, in keeping with the idea that UCI Law is an innovative institution founded to be a different kind of law school, any fellowship program should aim to prepare sophisticated skills teachers to meet the changing demands of the legal profession. Thus, if UCI Law wanted to start a fellowship program, I would recommend we consider one in which we hired accomplished practitioners or seasoned adjuncts who wanted to transition to teaching skills courses at a law school.

In sum, there are several routes to maintaining low class sizes (or even decreasing them) as the Law School grows. The Law School should explore one or more of those routes to ensure that we are able to continue to offer innovative, cutting-edge skills training competitive with the training offered by top skills programs.

## 2. Robust Upper-Division

Although I firmly believe we have one of the best 1L lawyering skills programs in the country, as discussed in Part One, a robust skills curriculum must span beyond the first year if we hope to fully prepare students for the rigors of the profession.<sup>53</sup> UCI Law offers a significant number of upper-division skills courses. However, to become even better at “preparing students for the practice of law at the highest levels of the profession,”<sup>54</sup> the upper-division skills curriculum should

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to lower the class sizes by having Lawyering Skills professors teach additional sections, the upper-division skills curriculum would markedly suffer.

52. See generally *Climenko Fellowship*, HARV. L. SCH., <https://hls.harvard.edu/dept/climenko-fellowship/> [<https://perma.cc/3RYZ-FDKF>] (last visited Sept. 22, 2019).

53. At UCI Law, every law student is required to take a clinic. This is an innovation that permits every one of our students to have an opportunity to represent real clients in law school. This portion of the article focuses not on clinics but on upper-division skills classes designed to teach targeted skills and competencies.

54. Chemerinsky, *supra* note 37.

ideally be expanded, with additional courses offered and a core set of courses offered every year. It should go without saying that “schools with strong legal writing programs offer not only a required, introductory legal writing course but also numerous upper-division electives on this topic.”<sup>55</sup> What separates a good program from a great program is that a great program will have a sophisticated, robust upper-level skills curriculum.<sup>56</sup>

We currently offer UCI Law students a number of upper-division skills courses and practicums, but some courses are offered only sporadically, and others, like my Business Drafting course, routinely have more demand for spots than availability.<sup>57</sup> Although no law school can guarantee availability of every course to every student, a more systematic approach to skills training in the upper-division is critical. As I mentioned in outlining my vision of an ideal lawyering skills program above, we should ensure that we offer a wide array of upper-division skills courses each semester. We should also offer a variety of subject-matter focused courses taught from a skills perspective. The current issue with providing the necessary course coverage is simply a lack of bandwidth among current Lawyering Skills faculty members. Solutions are similar to those identified in the section above, including (1) hiring additional full-time Lawyering Skills faculty members (the ideal solution); (2) starting a distinguished visitor or fellowship program; or (3) hiring adjuncts or visitors with experience teaching skills courses.

Having been the Associate Director in a program (the University of Michigan Law School Legal Practice program) that used experienced adjuncts to teach subject-matter focused practicums, I believe the latter solution works best when the adjuncts or visitors have regular supervision and support from the Associate Dean of Lawyering Skills or some other administrator charged with building out the upper-division skills curriculum. Knowing the subject matter is not enough to be a good teacher. Understanding sound pedagogy related to experiential learning is critical to providing good skills education. At Michigan Law School, we had both a Director and an Associate Director. Both had reduced 1L teaching loads to allow for time to create and develop new programming, manage adjuncts, and teach

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55. Ilana Kowarski, *Choose a Law School That Emphasizes Legal Writing*, U.S. NEWS & WORLD REP. (Nov. 2, 2017, 9:00 AM), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2017-11-02/assess-the-quality-of-a-law-schools-legal-writing-program> [<https://perma.cc/V8U2-283H>].

56. Mary Bowman, the former director of the legal writing program at Seattle University School of Law (consistently ranked #1 or #2 in the specialty rankings for Legal Writing), noted that “[m]any, many schools have a course in the first year and have little true upper-division legal writing programming that’s taught by legal writing professors.” *Id.* Kirsten Davis, professor of law and Director of the Institute for the Advancement of Legal Communication at Stetson University Law School, another top-ranked legal writing program, similarly observed the importance of the upper-level skills curriculum, noting that “although the experience of writing an academic paper about a legal discipline can be useful, it is essential to practice producing the types of documents that lawyers create on a daily basis.” *Id.*

57. Some other skills courses that regularly have a wait list include *Depositions*, *Negotiations*, and *California Motion Drafting and Procedure*, among others.

writing courses to the LLM students.<sup>58</sup> Although that is not the only solution, of course, other top schools have similarly devoted substantial resources to developing their skills programming by, for example, having one administrator for the 1L program and one for the upper-division curriculum. An example of such a program is the one at the #2 ranked lawyering skills program, Seattle University School of Law. As discussed in earlier parts of this article, others have simply hired additional lawyering skills faculty to provide for smaller class sizes and more course coverage.

What I have described so far is, in my view, the bare minimum necessary to provide a sophisticated upper-division skills curriculum. However, we have always aimed higher at UCI Law. For example, as discussed in Part One, in her role as the inaugural Associate Dean of Lawyering Skills, Professor Tonner suggested that the Law School should consider developing a number of interdisciplinary practicums to provide legal services to the community and to engage law students in interdisciplinary work with graduate students in other departments.

And in 2011, Professor Carrie Hempel, Associate Dean of Clinical Education and Service Learning, noted that, “in future years,” UCI Law would “offer an experiential learning component for numerous upper-division classroom courses.”<sup>59</sup> As examples, she noted that “students enrolled in a seminar on copyright law might provide legal assistance addressing copyright questions for clients such as the University [or] . . . [s]tudents taking property m[ight] represent pro bono clients in unlawful detainer actions under the supervision of volunteer attorneys from a local private firm.”<sup>60</sup> Although some of that is happening at UCI Law, this is an area where we have moved more slowly than I would have hoped. Hopefully, some of my suggestions in this essay will help provide a blueprint regarding some of the steps we should take to continue to create the ideal law school.

In sum, as we move into the second decade of the Law School’s existence, our most critical tasks related to the skills curriculum will be addressing issues related to growing class sizes in the 1L Lawyering Skills course and developing and maintaining an innovative, robust, and systematic upper-division skills curriculum. The best solution is arguably to devote additional resources to a larger number of Lawyering Skills faculty members and an administrator tasked solely with building out the upper-division experiential learning curriculum. Nevertheless, I have offered alternative solutions that would also allow us to maintain our place among top schools and to offer students the best legal education possible.

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58. The Associate Dean of Lawyering Skills has never had course relief at UCI Law.

59. Carrie Hempel, *Writing on a Blank Slate: Creating a Blueprint for Experiential Learning at the University of California, Irvine School of Law*, 1 U.C. IRVINE L. REV. 146, 151 (2011).

60. *Id.* (noting also that faculty members would be encouraged “to incorporate both simulated skills exercises and experiential learning into their classroom courses”).

## CONCLUSION

I hope this Essay has provided a useful historical view of the goals UCI Law had in the beginning for skills education in the first-year Lawyering Skills course and in the upper-division. The essay also summarized the program as it exists today. In its current form, the UCI Law Lawyering Skills program has one of the best (if not the best) first-year courses in the country, though class sizes have regularly been too high. Finally, the essay identified areas for improvement and growth and provided a blueprint for taking steps to ensure that UCI Law continues to provide the most cutting-edge, sophisticated skills training for law students both in the first year and beyond. There is still work to be done. But with a world-class faculty; a supportive administration; bright, dedicated students; and a growing alumni base standing behind the unique approach to law training we have at UCI Law, the future is bright.