Author: Beatrice A. Moulton
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LOOKING BACK AT
THE LAWYERING PROCESS

Bea Moulton*

This article, by one of the co-authors of The Lawyering Process text, explores the origins of the book and its supplemental materials. The author describes how the evolving course materials fit into the goals of the early clinical courses in which she and Gary Bellow were involved, and tentatively assesses the extent to which those goals were met. She then details the process of writing and editing the book and its supplements from 1970 until its publication in 1978. Finally, she comments on connections between the book and her current teaching, and on the unfinished agenda for clinical legal education.

In the Woody Allen movie "Annie Hall," there is a scene where Woody's character Albie Singer and Diane Keaton as Annie are standing in line outside a theater. Their own attempts at conversation are drowned out by a man standing behind them, who is loudly proclaiming his views on the work of Federico Fellini and Samuel Beckett. When he invokes the name of Marshall McLuhan, the communications theorist whose book The Medium is the Message was being widely read and discussed at the time, Albie finally becomes annoyed enough to step up to the camera and complain to the audience. The stranger steps up, too, claiming it's a free country. Albie answers him, ultimately asserting that the man knows nothing about McLuhan's work. "Really. I happen to teach a class at Columbia called 'TV, Media and Culture'," the stranger responds. "Oh, do you?" says Albie, walking over to the edge of the scene and pulling a bookish-looking older man into camera range. "Well, that's funny, because I happen to have Mr. McLuhan right here. . . ." "I heard what you were saying," McLuhan tells the noisy stranger. "You know nothing of my work. . . . How you ever got to teach a course in anything is totally amazing. . . ."

I was reminded of this scene at the colloquium that was held at American University to plan this symposium, at the point when I asked what people thought I should write about. I took it as a suggestion that I could use this opportunity to straighten people out on what Gary Bellow and I really meant, when we wrote The Lawyering Pro-

* Professor of Law, University of California, Hastings College of the Law.

1 For a description of the colloquium, see Susan Bryant & Elliott S. Milstein, Reflections Upon the 25th Anniversary of The Lawyering Process: An Introduction to the Symposium, 10 CLIN. L. REV. 1, 2 (2003).
As Sue Bryant and Elliott Milstein have noted in their introduction to this symposium, not everyone who was invited to participate was able to do so. Furthermore, the decision by the editors of the Clinical Law Review to limit participation to authors of existing or forthcoming clinical texts — certainly a justifiable way to make this enterprise manageable — excluded others in the clinical community who might have been interested and could have contributed valuable insights. At the same time, because the contributors to this issue have pulled together their own thoughts about some of the subjects we addressed in The Lawyering Process, the symposium takes us well beyond what might have been a series of book reviews to examine much of clinical scholarship as it has evolved since the late seventies. More importantly, perhaps, several of the authors begin to sketch out some of the work that is still needed if we are to refine and expand on our theories of lawyering and improve our teaching. It is, again, gratifying to be even a starting point for such a wide-ranging and productive discussion.

When I asked those assembled at the colloquium what they would like me to write about, they were not hesitant to express their views. Much of what follows is an attempt to respond to their suggestions. I first look back at what Gary and I were trying to do, in both The Lawyering Process text and its supplemental materials, and hesitantly assess the extent to which I think we were successful. I then go into some detail on how we worked together over the seven or eight years it took to complete what still strikes me as a very ambitious project. Finally, I look at what my collaboration with Gary and the

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2 Id.
I. GOALS AND POSSIBLE ACCOMPLISHMENTS

As several authors in the symposium have pointed out, our Introduction to the Lawyering Process text is quite explicit about what we were and weren’t trying to do, and it still captures my memory of how we expected the text and problem supplements to be used in a clinical course. We cautioned that the materials in the text were designed to stimulate discussion, but could not be the primary focus of the course. The starting point for a clinical course on lawyering was to have students assume lawyer roles in actual or simulated cases, and help them analyze and learn from their own experience and that of their classmates. Doing this well would involve capturing the actual experience for discussion or providing closely-related examples by way of case files, videotapes, transcripts, and so forth. In live-client clinics it would also involve providing instruction on the substantive law and procedural rules applicable to the cases the students were handling. The function of the Lawyering Process text was “to suggest ways of looking at the particular tasks or relationships involved and to raise issues and concerns relevant to describing, evaluating and doing them.” We hoped it would help both students and teachers to clarify and make explicit their own images of what is involved in “good lawyering” in day-to-day practice. At the same time, we cautioned that because of typical clinic caseloads at the time, the “entire book is tilted toward lawyering in conflict situations. . . . Non-litigation planning and collaborative bargaining receive only scanty treatment, but are obviously essential to any full understanding of the law-making and law-applying activities in which lawyers engage.”

Reading our Introduction for the first time in many years, I was struck by how overwhelming it would be, for a new clinical teacher looking at the book for the first time, to try to put together the kind of course we described. We stated that we considered role-playing and other forms of individualized instruction to be “an essential part of the course,” but went on to say that while our own problem supplements would offer “some assistance” with these methods, their effectiveness would be enhanced if “they are only part of a larger body of simulation and practice materials more directly related to the particular jurisdiction.” An 1100-page text and a 600-page supplement still weren’t enough; really thorough clinical courses would make substitutions or assign even more! No wonder teachers limited the scope of their classroom components and assigned simpler, more straightforward texts. Even in “high credit” clinics — awarding, say, 8 units of
credit in a single semester — it would seem a student would be hard-pressed to get through all the readings, do all the exercises, and still have time to work on actual cases. At the time we were writing, however, that is exactly what we were asking our own students to do.

As I have recounted before,\(^3\) I first met Gary when I worked for him in the summer of 1968, when I was a law student at Stanford and he was Deputy Director of California Rural Legal Assistance. That fall, he began teaching at the Law Center at the University of Southern California and also began to take on an eclectic mix of both civil and criminal cases on a pro bono basis. During my final year at Stanford I applied for and obtained a Reginald Heber Smith Fellowship that allowed me to return to work with Gary at the Western Center on Law and Poverty, then located at USC, in the fall of 1969. At that point my chief responsibility was to help him with cases, but it was difficult not to be drawn into his law school work as well. In 1969-70 he was teaching an ambitious course in civil litigation (among other courses) and laying the groundwork for USC's first live-client clinic — involving an entire semester's credit — that would begin the following year. So as early as the spring of 1970 I was helping him prepare teaching materials for that first clinical course. By the time we both went to Harvard in the fall of 1971 — he as a visiting professor and I as a CLEPR fellow,\(^4\) to work in the school's new clinical program — we had a very clear idea of the kinds of teaching materials and readings we wanted to pull together.

Looking back at our CLEPR-backed invasion of Harvard Law School and its nearby legal services and defender programs, I am a bit astounded at what we attempted and the extent to which we pulled it off. Gary took his family to Washington D.C. and taught in the summer session at Catholic University that summer, and I stayed on in California to assure an orderly transition in the legal matters we were handling. As I recall, we both got to Cambridge some time in August, and set about getting the new program up and running for its September start.\(^5\) The readings were pretty much ready to go, based on the materials we had used at USC. But because we had changed jurisdictions — and there were substantial differences between California and Massachusetts law in the areas that affected clients who would be

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\(^4\) These initial fellowships were funded by the Ford Foundation's project on Clinical Legal Education for Professional Responsibility (CLEPR), headed by the "funding" father of American clinical legal education, Bill Pincus.

\(^5\) I refer here only to the civil program, which is the only one in which I was substantially involved at Harvard. Probably Gary was simultaneously engaged in planning for the new criminal clinic, but I believe that was not scheduled to be taught until the spring semester.
served in the clinic — we had to start from scratch in developing case files. We also had to learn Massachusetts law and procedure well enough and quickly enough to use it in our teaching and case supervision.\(^6\) The program we were planning involved placing students in the Harvard Legal Aid Bureau (a student-run organization that had long relied on student volunteers to provide legal assistance to indigent clients) and in the legal services offices in Cambridge and nearby Somerville, where they would be supervised by one of the five clinical teaching fellows. The students would be required to spend sixteen hours a week at their fieldwork placements. They would also take a weekly 3-hour class on the lawyering process taught by Gary and a 2-hour seminar on Massachusetts law and procedure taught by their own clinical supervisor. Because I took on the task of developing all six case files — three for Gary’s class and three to be used in the seminars — my own learning was necessarily accelerated.

I no longer have copies of all the case files we developed, though I remember what we were attempting to do with them. The three we used in Gary’s Lawyering Process class were designed to provide examples of lawyer decision-making in relatively complex cases. Because we wanted students to be able to see and evaluate the various choices the lawyers in these cases had made at certain stages, the files included pertinent statutes and cases and were full of detailed “memos to the file” that laid out the lawyer’s thinking in making a particular decision (e.g., whether to file in state or federal court, what causes of action to include in the complaint, etc.). I still have the almost verbatim notes I took while sitting in on two semesters of the civil lawyering process class — in essence the “script” for the movie Leah Wortham remembers so fondly\(^7\) — and Gary did indeed engage students in an exhaustive examination of these examples of lawyer decision-making, referring to our background readings as he did so. The files developed for the seminars were similar, because decision-making was always a focus, but they were primarily designed to expose students to the Massachusetts law and procedure they would most likely need in their placements.\(^8\) Thus there was a landlord-ten-

\(^6\) This was probably even more difficult for the other four teaching fellows that year — David Barnhizer, Bob Bohn, John Denvir and Rob Dokson — who may have arrived even later. All five of us had legal services experience in other states but, to the best of my memory, none of us had any prior practice experience in Massachusetts.


\(^8\) To avoid conflicts with the fieldwork and my supervisees’ other classes my own seminar, I recall, met on Friday afternoons from 4:00 to 6:00 PM. It was such a horrendous meeting time that we immediately acquired a one or two-gallon thermos and took turns bringing it to class filled with some alcoholic beverage, breaking it out around 5:00 PM and sipping from paper cups of its contents for the final hour. My particular favorites were a
ant case that included the governing law and focused on pre-trial and
trial procedure; a government-benefits case that included administra-
tive regulations as well as materials for court challenges to administra-
tive actions; and another file in a substantive area I no longer
remember that focused on appellate procedures.9

Obviously substantial fieldwork combined with so much reading
and class time would not be possible for students unless they were
receiving at least half of their credit for the semester in the clinic, and
both Gary and I worked in high-credit clinics that year and subse-
quently. It may also be that Harvard had a high percentage of learn-
ers who liked to begin with theoretical material and a general
orientation to particular tasks before actually doing them, though I
remember a similar tolerance for the workload when I taught at Ar-
izona State.10 However it is explained, the combination of methods
and materials we described in our Introduction to The Lawyering Pro-
cess had seemed to work for us. The problem supplements were our
attempt to help people replicate what we had done, but we were sin-
cere in pointing out that “generic” case files like those in the supple-
ments had their limitations.

Why would anybody want to do what we had done? What had
we accomplished? Given the contents of the text and the call for ex-
tensive “coverage” of relevant law and procedural rules through the
use of case files, the Lawyering Process course described in the Intro-
duction resembles nothing so much as a survey course on lawyering,
particulated for specific cases and jurisdictions if the students were
handling actual cases. If we were trying to improve students’ profi-
ciency in all the skills we addressed in the “tasks and relationships”
chapters, there was no way we could succeed, as David Binder and
Paul Bergman so forcefully point out.11 If that wasn’t our focus, what
was?

Again, I think the Introduction spells it out. We assumed that in

9 The landlord-tenant file, given a “national” focus by substitution of the Uniform
Residential Landlord and Tenant Act, appears in GARY BELLOW & BEA MOULTON, THE
LAWYERING PROCESS: CIVIL PROBLEM SUPPLEMENT (1978) as Appendix C. Appendices D
and E are similar teaching files that were developed by Harvard teaching fellows after I
left.

10 Leah Wortham discusses the “fit” between the approach of the course and her own
learning style, and John DiPippa and Marty Peters also comment on this aspect of the
materials. See Wortham, supra note 7, at 405-07; John M. A. DiPippa & Martha M. Peters,
The Lawyering Process: An Example of Meta-Cognition at its Best, 10 CLIN. L. REV. 311
(2003).

11 David A. Binder & Paul Bergman, Taking Lawyering Skills Training Seriously, 10
the mid-seventies, for the vast majority of law students, a one-shot immersion in law practice, for a total of 4-8 units, was the most they were going to get as part of their legal education. What could they learn in that time frame that would best equip them for their entry into practice and the ongoing process of learning from their own experience? In our view it was (1) an awareness of "how one learns (or conforms) to a professional role" and the kinds of role demands they were likely to face as they entered practice; (2) a preliminary framework for discussing and evaluating "whether the values and attitudes that are embraced in this [professionalization] process are satisfying or justifiable;" and (3) a critical perspective and some common understanding about what the tasks and relationships of day-to-day lawyering actually involve, at least in the context of adversarial practice. In relation to this last goal, we offered "explanatory models and analytic frameworks" that were not meant to be learned, but to stimulate reflection and discussion, as I have already said.

For me, it is a fortunate circumstance that one of the pieces in this symposium was written by Leah Wortham, who as a student actually enrolled in the course Gary and I put together that first year at Harvard. Reading her article was like getting a student evaluation years after the course was completed, providing an opportunity to see whether there were, in fact, long term benefits for at least one person. Its value to me was enhanced by the fact that in her first section Leah looked back at the course without looking at the published version of The Lawyering Process text and its problem supplements. With a surprising amount of detail, she provides us with her best recollection of what she learned from the course she took, and particularly from the three-hour-a-week classroom component, which was almost exclusively taught by Gary.

Leah begins by describing how the teaching methods used in the course differed from those used in other law school classes, and really aided her learning: "[the] combination of big picture, visual image, experience, and reflection was an optimum match with my learning preferences,"12 she writes. The course was also different in acknowledging that there was an emotional dimension to lawyering, and in balancing the large firm practice focus of the rest of law school with a message that representing poor people could be exciting, challenging work. While the vividness of Leah's memories no doubt have a lot to do with Gary's charismatic personality and inspired teaching, it seems to me the methodology was at least part of the message, creating more awareness of how one learns and how one has already been affected

12 Wortham, supra note 7, at 407.
by the socialization process of law school. With that kind of awareness one becomes more able to see shaping influences in the future, resist when necessary, and take greater control over one's own learning.

In her section entitled "A Framework for Learning to be a Lawyer," Leah begins by saying that the model of decision-making she learned in the course has "bec[o]me second nature to me and structures many of the decisions I make in all facets of my life."\(^{13}\) She describes the model, how it was taught, and how she has used it in detail, and notes that it was hard to locate in the set of lawyering process materials that was ultimately published. I had not realized it before, but I agree with her that our decision-making model, which was the starting point of the course when she took it and even at USC, as I recall, somehow got folded into the complexity of *The Lawyering Process* text and lost the centrality it once had. I still see versions of it at various points in the text and supplements, but there's a lot to be said for the more straightforward version she remembers and for its earlier introduction as an overarching, unifying concept for the entire course. Leah goes on to discuss "frameworks" for other stages and tasks of lawyering that she also took away from the course: "elements" of causes of action and defenses as a focus in constructing the case; a negotiation paradigm that allowed her to "get through" and even feel competent at an unfamiliar, intimidating task; the concept of trying a case as akin to directing and performing in a play before the "audience" of judge and jury; and the ethical framework set by the *ABA Code of Professional Responsibility*, which she encountered *only* in the Lawyering Process course, in those days, where it was distributed with the other class materials.

Under the heading "Conformity, Effectiveness, Purposefulness and Consequences" Leah reflects on some of the attitudes or perspectives she learned from Gary. Foremost was approaching every task, in every setting, from a critical perspective: refusing to do things just because one was told "this is the way we do it here." I, too, heard Gary use that phrase countless times. For him it summed up all the pressures to conform that students would encounter in practice, pressures ranging from closing their eyes to injustice or the stretching of ethical boundaries to simply filing the same form answer in a "routine" case. Established, unquestioned ways of doing things had to be recognized as the enemy of responsible, effective lawyering that they were, and it is gratifying that for Leah, at least, that message endured. As she goes on to say, that critical stance went beyond thinking creatively and do-

\(^{13}\) *Id.* at 408.
ing the best possible job for clients: it also meant looking critically at the effects of one’s actions on others in the process, on society, and on oneself. Leah’s descriptions of how she has used that concept in her own teaching illustrate how powerful a concept it is. Finally, she identifies “thinking systemically,” as another legacy of the course, particularly in the context of representing the poor and disenfranchised. This meant looking for connections and patterns, seeing the experience of individual clients as reflective of “systemic” problems in a welfare department or housing authority or other system that might call for actions other than reversing a particular decision or obtaining some other limited result through administrative advocacy or litigation. It meant broadening the alternative solutions to be considered in connection with a particular problem to include things like media campaigns, legislative advocacy, public pressure and so forth. It was, again, an important way of opening up a student’s thinking about causes and solutions, the larger possibilities of lawyering, and some of the forces affecting a particular status quo. I would like to think it is a lesson that many others learned, as well.

After looking back at the course she experienced as a student without reference to the written materials that then accompanied it, Leah examines the published Lawyering Process text and problem supplements she consulted as a teacher in considerable depth. Comparing what the book seems to be trying do with what she remembers from the course, she still sees more inclusive teaching methods, an attempt to make decision-making and creative problem-solving a central focus, and attention to the ways in which values affect and are affected by lawyering activities. The book’s more complex and comprehensive treatment of legal ethics seems new, and indeed that was a significant change from earlier drafts of the course materials. She also found a more explicit attempt to raise questions about the integration of one’s life as a lawyer with one’s life overall, and more explicit statements of learning objectives along with direct advice to students about methods to learn. Again, I think both of these goals did receive more emphasis as the book went through successive drafts: the epilogue entitled “The Lawyer’s Life” being a particularly late addition. Finally, Leah identifies a goal that I think was always there: attacking the “radical separation of theory and practice in law training” and bringing theory to bear on practice itself. As Leah and others have pointed

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14 Leah acknowledges that if she hadn’t taken the course, she might not have looked for and found this as a unifying theme, as others haven’t. Id. at 424-27. As I said earlier, I agree that what had been a central focus became obscured in the ultimate organization of the text.

15 See discussion infra pp. 62-63, 69.
out, that aspect of the book has had the effect of helping to legitimize clinical education in the eyes of academics both here and abroad, but not without controversy.16

I hope Leah doesn’t feel I am being unfair in using her as stand-in for all the students and teachers we were trying to reach at the time the book was published. When I agreed to write an article for the symposium, I had no idea that someone would give us so much feedback on the extent to which we had reached at least some of our goals. Hers is the only account I know of by someone who actually experienced how the combination of readings, class exercises and real-life experience came together to produce useful learning that has affected a lifetime of practice and teaching. However, it is also clear from her reflections that the fact that Gary himself was her teacher made a tremendous difference. Gary was an immensely talented teacher who inspired legions of law students to follow him into public interest practice. Whether Leah would have learned as much from me, or any one else using the same materials, is a serious question. But assuming at least some of her learning was related to methods and materials rather than Gary’s charismatic personality, and that other students took away the same or similar lessons, I could see what we were doing and encouraging others to do as a largely successful and worthwhile effort.

It seems to me Leah and those assumed other students did carry away an awareness of how one learns a professional role and were more ready to deal with the pressures to conform they would encounter in practice. They seem also to have learned to step back, from time to time, and question whether the values and attitudes that appear to be required in the lawyer’s role in particular contexts are in the long run satisfying or justifiable, both for themselves and society. And finally, there are indications they began to get a sense of what some of the day-to-day tasks and relationships of lawyering actually involve, and took away analytical frameworks and a vocabulary they could use in continuing to evaluate and learn from their ongoing experience, doing so, at least in Leah’s case, while maintaining a critical perspective on the whole enterprise. I still believe, twenty-five years later, that if a clinical teacher has only a one-shot opportunity to balance all the other influences of law school, this is a respectable set of goals and accomplishments. Clinicians now realize there are other important goals toward which we might work in that single course, and that might lead to a shift in emphasis, but the original goals still seem worth pursuing.

16 Wortham, supra note 7, at 43-44. See also David Chavkin, Spinning Straw Into Gold: Exploring the Legacy of Bellow and Moulton, 10 CLIN. L. REV. 245, 253-54 (2003).
II. THE EVOLUTION OF THE COURSE AND THE BOOK

While most of this section is going to tell the story of how Gary and I worked together on the Lawyering Process text, and some of the changes it went through, I want to emphasize that the problem supplements were an important part of the undertaking. As Leah Wortham’s description of the Harvard course makes clear, the readings were background. It was the cases and materials in the problem supplements (or our more localized versions of them), that were actually discussed in the classroom component of our courses, especially in the early years. By the time the book and problem supplements were published, we were also using videotape a good deal more, both inside and outside of class, and ours was one of the first books to make videotapes available as part of the teaching package. Thus I digress for a few pages to discuss the development of the files and videotapes that make up the bulk of the civil problem supplement (the one that was my primary responsibility), and some of the other videos that were used in the course.

A. The Relationship Between The Lawyering Process and New Lawyer Training

It is probably apparent from what I’ve already said that working with Gary was more than a full time occupation for me. I had fallen under his spell like everyone else, and helping him do whatever he was doing seemed like the most important work I could find, those first three years out of law school. I had jumped at the chance to work with him on cases because I thought I would learn more about being a top-flight legal services lawyer from him than from anyone else. And when I understood that what he was trying to do with the rest of his time was to increase the competence and commitment of the new lawyers going into legal services and public defender work, by changing legal education, the multiplier effect of helping him do that had even greater appeal. Gary really did envision a world in which there would be expanding opportunities for committed lawyers to find work serving segments of the population that had long been ignored by the legal system, and he knew how hard it would be for them to find training and mentors who could teach them what they really needed to know if they were to provide high quality representation. Those prospective public interest lawyers had to get much of the training they needed in law school, and Gary had the temerity to believe he could help bring that about. So all the work he was doing was linked more or less directly to the same cause, and he worked incredibly long hours. He also needed as much help as he could get. An occasional secretary or research assistant could treat working for Gary as a regular job, but
for many others it became a calling, and in my case it consumed my total time and energy. In the spring of 1972 I realized I needed more than work in my life, and decided I would have to leave Harvard to bring that about.

Leaving the work in which Gary and I were engaged was not an easy decision. That first year at Harvard he had seemed to become almost dependent on having me as a sounding board and helpmate in putting the course together. When Gary really had to get something done, he couldn’t stay in his office: there were too many interruptions, too many other demands on his time. And though he worked late into the night at home, on a variety of projects in which he was involved, he seemed to need a change of scene when it came time to prepare for class. So time after time we would meet and work on a particular class together, in an out-of-the-way corner of the faculty library, or one of the cheesy restaurants he had loved since his student days. I helped write his first exam and took over anything else I could do, for even then one could see the toll that his workload was taking on his health. But at the end of the day Gary at least had his family to go home to, for whatever time he was able to carve out for them, while I was alone and too tired to even think about a social life. He would have liked it if I had been willing to stay in that helper role even longer, but he also understood my need to get away.

Consequently, in the late summer of 1972, after a few more months of helping to revise the course materials and refine the case files, I moved to Washington, D.C. to become an Associate Director of the Legal Services Training Program, a grantee of the Office of Economic Opportunity located at the Catholic University of America, Columbus School of Law. It was more a continuation of some of the things I had been doing at Harvard than an abrupt break, and indeed, Gary had lined me up with the job. When the training program had been funded, in the fall of 1971, Gary had sold its director, Dick Carter, on the notion that simulation should be a part of almost any training they did. LSTP had already developed training on federal litigation, management skills and even consumer law that included simulation elements. When it came time to expand their staff and develop skills training for new lawyers with an even heavier reliance on simulation techniques, they asked Gary if he knew anyone who could help do that. Well, it so happened that he did. So I moved easily into a leadership role in creating the first round of what logically came to be called New Lawyer Training for people in their first few months

17 From the time I met him until the publication of The Lawyering Process Gary was married to his first wife, Jean McElroy Bellow, and in the three years we worked most closely together, their son Douglas was a pre-schooler.
with legal services.

The model of training we were using at that time, some seven years after OEO-funded legal services had gotten their start (with Gary’s considerable involvement), was a “national” one. This means that we put on large conferences, usually in hotels, in centrally-located cities in various parts of the country. The conferences usually lasted 3-4 days, and although the trainees might come from a particular part of the country, the trainers were recruited nationally, and tended to operate as a kind of team in putting on the training in each location. New Lawyer Training was our most complex undertaking to date, and it required substantial lead time. We had to develop a case file and figure out how to run as many as 100 trainees at a time through a mix of sessions that included four four-person simulations in three days, and we had to recruit and train significant numbers of new trainers, for most experienced legal services lawyers were unfamiliar with simulation techniques. In addition, for the first time we planned to build a number of sessions around the use of videotapes, developed in-house and designed to illustrate the skills we were trying to teach.

Videotape has become such a staple in clinical teaching, not to mention everyday life, that it may seem incredible that thirty years ago we were just beginning to use it. Nevertheless, in those days it was very new, especially in legal education. Gary and I brought one tape to Harvard from USC, but I don’t remember its origins. During my year at Harvard we also got permission from a client and her clinical student-attorney at Harvard’s Legal Aid Bureau to let us film their interview in a divorce case, and I think that was the first time I personally operated a video camera. Cassettes hadn’t come on the scene yet. One had to thread the half-inch tape through a series of slots to make sure it contacted the audio and video “heads,” then manually start it winding around an empty reel. Using it in class was a risky business, for tapes broke, slipped off track and misbehaved generally, and the play-back equipment itself tended to be quirky. Nevertheless, we were in the vanguard in using it. One of my side-trips that year in Washington was a visit to the brand new Antioch Law School, to introduce the faculty to this revolutionary new technology.

In any event, I felt strongly enough about the value of showing videotaped “models” in teaching lawyering skills, that a package of tapes became part of the plan. A small group of clinical teachers and legal services lawyers helped us develop the case file, Quality Furniture vs. Mary Joyce Allen. It was a consumer case involving the door-to-door sale of a food/freezer “plan,” with a possible counterclaim for

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18 This video was used by Gary for several years, and still survives in transcript form in BELLOW & MOULTON, CIVIL PROBLEM SUPPLEMENT, supra note 9, at 9-13.
When the file was completed, I recruited legal services attorneys and others from the Washington area to play the parts of client, witness, and attorneys on the videotapes, and set up their filming at the offices of the training program. I thought the interactions would be more realistic if they were unscripted. So though I gave detailed instructions to the non-lawyer actors about how to play their parts, I basically asked my volunteer attorneys just to conduct the interview, deposition or negotiation as they would in a real case. I was lucky in finding the right people, and the tapes turned out to be very useful for training purposes, despite their rather haphazard origins. And since once the training got underway we relied heavily on clinical teachers as trainers, the Allen case and its accompanying videotapes soon made their way into the classroom components of clinical programs as well. As David Chavkin has suggested, there was a strong sense of community among those who helped plan and deliver legal services training in those days. It was a mix of people who were still working in legal services and those who had recently left to become clinical teachers, and there was very much a feeling that we were all engaged in the same enterprise. Ideas and materials were freely shared.

I don't know exactly when it struck me, but at some point in the development of New Lawyer Training, I realized that there was a glaring gap in the materials we were assembling. For the first time we were going to be teaching new lawyers how to conduct client interviews, engage in investigation, discovery, and negotiation, and even examine witnesses in a rather complex consumer case. Most of them would not be graduates of clinical programs, and more importantly, most of the trainers would not be graduates of clinical programs, and many of them would have no experience in teaching skills. How could we ask trainers to teach skills — in both large group sessions and individual critiques — without giving them some idea of what to say? Don't get me wrong: I realized that many of the trainers might be skilled interviewers or negotiators or whatever. But I also realized that most of us in those days had no framework or vocabulary for describing what the task involved, and how to get better at it. We just did it, perhaps imitating whatever senior lawyers we had been fortunate enough to be around. If we just turned people loose to pass on their own ideas in the training, we could wind up with war stories or worse, even instilling trainers' bad advice instead of the effective models we were striving for. Perhaps if we had planned to continue doing only nationally-run training conferences I would have relied on inten-

19 A portion of this file is contained in Appendix A. Id.
20 Chavkin, supra note 16, at 250 & n.21.
sive trainer-training, but plans were already in the works to turn the new lawyer materials over to local programs to use in-house, since national programs were expensive and couldn’t always be timed to meet local training needs. So I decided I had to write relatively short, how-to-do-it (or, at least, how-to-think-about-it) pieces for each of the skills areas we planned to cover, except the area of trial practice, where I felt decent how-to-do-it books already existed.

I remember I stayed home, where I could be free from interruptions, for the three weeks it took to write three 12 to 15-page expositions on the skills of client interviewing, investigation/discovery, and negotiation. I relied principally on the notes I had taken in Gary’s classes, and on some of the more useful readings in our materials. I actually remember worrying about Gary’s reaction to what I was doing, for I knew I had to oversimplify some very complex tasks in boiling them down to a length that could be used in the training. It wasn’t that I was revealing trade secrets — keys to understanding these skills that only he possessed at the time — but a fear that people would see these expositions as enough to teach and learn for the time being, without grappling with the more nuanced, complex views we had begun to incorporate in our teaching materials. I was afraid they might offer an “easy way out,” especially for clinical teachers, and I wasn’t sure he would like that. Despite my reservations, I finished them and included them in the materials, for it was clear to me that the success of the training might depend on them.

In the end, I think both my hopes and fears were justified. I think the skills write-ups were necessary to the training: people teaching the lecture sessions on these topics studied them the night before, and they were turned into “critique sheets” for the individual simulations. And yes, I think some clinical teachers did rely on them to a certain extent for the next few years. A few people who knew I had written them told me they had assigned one or more of them to students and had found them very useful. And I now realize that quite a few others used them without realizing I had written them. They were always distributed to trainers at the training conferences, and I’m not sure the distributed versions contained an attribution to me or Gary. In the manuel for the training of legal services lawyers in which they were published, along with the Allen case materials, for use by local programs, the following statement appears, on the blue cover sheet that precedes them:

The discussions of lawyering skills which follow were written by

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Bea Moulton for the Legal Services Training Program. They rely heavily on lectures given by Professor Gary Bellow in his course on the Lawyering Process at Harvard Law School, and on the materials used in that course. We also wish to acknowledge the contribution of Alan Rader to some of the sections on investigation and discovery.22

It made a lot of sense to remove that cover sheet, if one were going to reproduce these write-ups for students or others, so I’m not surprised that my how-to-do-it pieces got out there and attained a certain life of their own. But I am glad to have this opportunity to let people know that even those refreshingly straightforward, usable pieces had the same origins as the complex book we later produced.

I stayed with the training program only one year, helping with other projects once New Lawyer Training was underway, and in the spring teaching a course called “Basic Legal Techniques” at the program’s host institution, Catholic University. In the summer of 1973, I left for a teaching job at Arizona State, where I stayed for the next five and a half years. I continued to be involved with training, however, both as a member of the National Advisory Committee on Training and as a trainer in new lawyer events. By 1975, the Mary Joyce Allen case was getting old, and I became part the planning team to develop an updated version of New Lawyer Training. By then The Lawyering Process book project was well underway, and I saw a way to get two things done at once: I would produce the new set of videotapes at Arizona State in exchange for permission to use both file and tapes in the Civil Problem Supplement. In November I wrote Gary a letter that included the following paragraph:

One thing I am planning for December is the filming of videotapes for the civil case file. I can’t remember if I mentioned that I planned to join forces with the Legal Services Training Program with the thought that the combined effort would produce better pleadings, etc. They had already come up with a fact situation, and we have now worked out a joint version that should meet both our needs. A copy of the new facts, the complaint, answer and counter-claim are enclosed. . . . We are having a meeting on the case file, additional drafting assignments, etc. in Seattle during the NLADA conference so I will be there after all. We will be meeting in the Board Room of the Olympic Hotel all day on Friday, November 14. It might be very helpful if you could drop by for a little while, if you still plan to be in Seattle. There are problems inherent in designing a case file that is both simple enough to be taught in 3-day sessions

22 Id. At III-1. Alan Rader is a law-school classmate of mine whose career in legal services intersected mine at several points. He and his wife, Valerie Vanaman, were important contributors to our early training efforts.
and complicated enough to be used week after week in class, and I am the only one arguing for complexity . . . .

As I recall, Gary didn’t make the meeting, but work on the case of Valley Marine Bank vs. Terry James went on. By early January, the file was more complete, and filming the videotapes was scheduled for the end of that month and early February, 1976. I wrote Gary again, inviting him to come to Arizona for the taping, especially of the tapes on direct and cross-examination. I also told him I would be sending a more complete set of the pleadings and other documents in a few days, adding, “We will want to add more memos to the file and maybe build in a couple of motions or whatever. Look the materials over when you get them, if you will, and let me know what you think.”

Again, Gary couldn’t attend the taping, but it got done, and the James case was used for the first time in New Lawyer Training in late February. Looking at it recently to see if we actually had made any additions when we included it in the supplement, about all I could identify were fact sheets for witnesses to be used in witness interviews. I’m quite sure those weren’t part of the training.

So that is the story I was asked to tell about how the New Lawyer Training videotapes and case files, which were so widely used in clinical programs in the seventies and early eighties, came about. I wasn’t the only one to cut side-deals that resulted in permission to use videotapes that were produced for another purpose as part of the Lawyering Process package, however. In 1977, Gary, working with Jeanne Charn (then using her married name, Jeanne Kettleson) made a similar deal with the ABA’s Consortium on Professional Responsibility. Gary and Jeanne contributed the “story lines” for a series of videotapes produced by the ABA called “Dilemmas in Legal Ethics” (the most well-known of which is Valdez vs. Alloway’s Garage), and in exchange secured permission to use the transcripts of these tapes in our ethics sections.

B. The Writing of the Lawyering Process Text

In February, 1979, seven or eight months after The Lawyering Process was published, I packed up my office at Arizona State and moved to Washington, D.C., to head the Office of Program Support at the Legal Services Corporation. The boxes I packed were initially stored in my Arizona house, which I rented out for the next few years, and when I decided to stay on at the Corporation and resigned from my teaching position, they were shipped to Washington with the rest

23 Letter from Bea Moulton to Gary Bellow (November 5, 1975) (on file with the author).
24 Letter from Bea Moulton to Gary Bellow (January 6, 1976) (on file with the author).
of my household goods. Ronald Reagan had been elected president by then, so those of us in management jobs at LSC had a lot to do in preparation for what we feared would be a hostile takeover. Returning to teaching didn’t seem nearly so urgent. By the end of another year my LSC colleagues and I had completed the process of transferring the knowledge and resources that had been devoted to training at the national level to regional training centers and field programs, and those of us on the senior staff knew we would soon be replaced. During the same period, my personal life had taken a happy and wholly unexpected turn, resulting, this time, in the shipment of my boxes and household goods to the roomy, fortuitously rather empty house of my old friend and new love, Ralph Abascal, in Berkeley, California. And there they have been, ever since. The furniture, linens, and dishes have been well-used and even used up in the ensuing years, but the boxes have sat, untouched, in the basement the whole time. I had planned on going through them after I retired (an event that is not far off), but as I began to think about writing this article, I realized I should at least look into them and see what they contained. Perhaps I’d find the handwritten manuscripts that were so laboriously turned into *The Lawyering Process*’s printed pages! Perhaps clues to who wrote what, and when, and where! They were my own personal time capsule, sealed nearly 25 years ago, and they did indeed offer an interesting glimpse into how Gary and I worked together, so long ago, and left me a bit awestruck at how much we accomplished in a relatively short period of time. The sections that follow draw, at least in part, on the contents of my basement boxes.

1. The Early Stages

I have told this part of the story several times before, most recently in the tribute I wrote as part of the Harvard Law Review’s memorial to Gary in December, 2000,\(^25\) so I will not go into detail here. The capsule version is that when Gary and I began to pull together materials for the clinical course at USC, we realized that the existing literature on law practice wasn’t going to be much help to us. Most of the books took a strong, “this is the way to do it” perspective, and much of the advice they offered wasn’t very good, making no allowance for context or a host of other variables. That’s probably when Gary began thinking that if he wanted readings that conveyed a sense of what law practice was really about, he would have to write them himself. As a stop-gap measure, however, perhaps he could borrow from other fields. Thus we began to have the discussions I have previ-

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\(^25\) Moulton, *supra* note 3, at 416-17.
Looking Back at The Lawyering Process

Firstly described (most of them during our morning and evening commutes between USC and Manhattan Beach, where we both lived) about what particular lawyering tasks actually involved.

Gary would begin by asking a question like, “What are the goals of a client interview?” And I would come up with something, and he would refine it, or add to it, and then we might qualify it, and eventually we'd develop some sort of list. And then he'd say, “Who else conducts interviews like that?” And that would be a hard one, because client interviewing wasn't like therapy, or social science research, though there were some common aspects. Perhaps doctors did something similar, or journalists, if they writing about sensitive subjects. . . . Anyway, it was good that the law school at USC was part of a larger campus, because we would come up with a list of possibilities that took us to the main library or other libraries to skim practically every book or article that had the word “interview” or other clues in the title. It was a process that was repeated in respect to almost every lawyering task except trying cases, and even there, Gary wanted to track down examples from literary criticism and drama that would flesh out his story-telling and performance analogies. Happily, we did find things written in other fields that seemed much more sophisticated and helpful, and we began to pull together the eclectic set of materials that evolved over the next few years. When we got to Harvard, with some of the best libraries in the world, the results of our treasure hunts were even richer.

It is obvious that we came to these conversations with very different amounts of experience in law practice. Gary was only four years older than I, but when I joined him at USC, he had been in practice for eight years. In 1961, when I graduated from college, Gary completed a post-graduate year at Northwestern that had given him intensive training in criminal law and practice, then went right to work at the public defender program in Washington, D.C. After compiling a remarkable record as a criminal defense lawyer, he then helped establish civil legal services for the poor and handled a range of civil cases as Deputy Director, in successive periods, for both the United Planning Organization in Washington and California Rural Legal Assistance, where I first met him in 1968. In those same years I worked at the Highlander Folk School (an adult education institution active in the civil rights movement) in Tennessee; was a Peace Corps Volunteer in the Philippines; traveled for six months; wrote a history of the Scripps Institution of Oceanography in La Jolla, California; worked in and briefly directed an OEO-funded community service project in San Diego; and, starting in 1966, finally attended law school myself. My background wasn’t totally irrelevant to what we were doing, but the
knowledge and experience of law practice that Gary brought were a function not only of the years he put had in, but also of his consistent, disciplined efforts to learn all he could from each situation in which he had found himself.

At the same time, my relative inexperience may even have been of some benefit to the enterprise. In a way I was in the role of participant-observer in the cases Gary and I were handling together. I was able to do much of the research and drafting of pleadings, interrogatories and so forth, and I did some client and witness interviews, but when it came to taking depositions, negotiating, arguing motions and trying cases, especially in the first year, Gary wasn't about to entrust "his" cases to a novice. As a painfully shy person, that was fine with me, especially since I almost always had the opportunity to sit in and watch Gary perform, hear his comments on the mistakes of other lawyers, and debrief many other experiences on the ride home. I was rapidly learning a lot about lawyering, from an unusually objective perspective. And when it came to writing or talking about lawyering, I know my inexperience helped, for I was still in touch with the audience we were trying to reach. "That's confusing," I would say, as we discussed a class. "You need an example." Often as not, he would ask me if I could think of one, and usually, I could. Gary saw connections that others didn't, and did so with lightening speed. One of my functions was to help make those connections clear to others. It became particularly important in writing and editing the "Notes and Questions" sections that followed the excerpts we selected as the successive compilations of readings became a book.26

As Mike Meltsner has written, the Lawyering Process materials went through several drafts, and from 1971 on the drafts were widely shared with other clinical teachers, whose reactions and contributions helped shape them.27 I found hardly a trace of those earlier drafts in my basement boxes. My hunch is that, because I was responsible for all the mechanics of putting together the final draft and getting it to the publisher, I ruthlessly got rid of anything that had been superseded. Or perhaps I just did a really thorough job of cleaning out my office that February. However it happened, I am left only with my memory of how earlier drafts differed from the final one, and it is a bit hazy. I think in the early drafts some of the "Notes and Questions"

26 Probably the most extreme example of this function is my drawing of the cartoon-like picture on page 362 of THE LAWYERING PROCESS that Leah Wortham mentions in her article. See Wortham, supra note 7, at 429. I thought the experimental situation discussed in the excerpt was too difficult to visualize on the basis of the verbal description alone.

sections were either non-existent or much shorter. My clearest memories of working on the text in the last few years before it was published involve writing those sections or editing those Gary had written, as well as working on the overview chapters at the beginning and the ethics sections, which were definitely a later addition. On the basis of my class notes for that first year at Harvard, I think the materials in 1971-72 began with an excerpt from a dusty little book entitled *How Lawyers Think*, then dealt with ethics (perhaps simply by reference to the Model Code), then provided background readings on interviewing, counseling, investigation, discovery, advocacy (with reference to administrative proceedings as well as courts), and negotiation, in that order. There is an occasional reference in the class notes to a particular reading, and in a few instances the content of a lecture can be directly linked to something that made its way into the final version of *The Lawyering Process*, but for the most part the lectures were free-standing, full of rich examples from the case files and countless lists and diagrams that were probably drawn from our own class preparation process as well as that day’s readings. My best guess, then, is that at the time I left Harvard, the readings were a useful but still changing collection of excerpts from interdisciplinary materials and the law practice literature, with less in the way of original writing to link them together and help readers see their utility.

My reason for trying to reconstruct those 1971-72 materials in my imagination is because it was sometime during the following year, during one of our occasional meetings while I was working at the Legal Services Training Program, that I proposed to Gary that the two of us turn the materials into a book. It was probably in the spring of 1973, because by then I knew I would be going into law teaching, and would have more time to take on such a large project. At the time I think I was only vaguely aware that I would have to write something anyway, if I wanted to get tenure. What I wanted to do was to continue to help Gary in some way, both to stay in contact with him and be part of the enterprise I had helped him launch, and getting the materials into publishable form seemed obvious as a joint enterprise. I know Gary readily accepted my offer, and we spent some time in the summer of 1973, before I drove across the country to Arizona, dividing responsibilities and blocking out what needed to be done.

2. The Middle Stages: 1973-76

My basement boxes yielded only a little evidence as to exactly what we worked on in this period. My travel records indicate I went

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28 CLARENCE MORRIS, HOW LAWYERS THINK (1937).
to Cambridge for over a week in January, 1974 for "a presentation to clinical teaching fellows, Harvard Law School, on decision making; and collaboration on a textbook with Professor Gary Bellow, Harvard Law School." From 1974 through 1977 I know I also spent parts of each summer in Cambridge, for a number of reasons. First, I was still single and could relocate for long periods without inconveniencing anyone else. Second, daytime temperatures in Tempe, Arizona that time of year averaged well over 100 degrees, making trips almost anywhere else a welcome relief. And third, at least part of the time Gary and I were still searching for "replacement" readings for excerpts in the materials that had received a lukewarm reception from students and colleagues, as well as additional excerpts for the notes, and the Harvard library holdings were much more extensive than those at ASU. I think in the first year we may have done most of our work on the book during the summer, because I was teaching a full load for the first time and Gary was always involved in a variety of other projects. My arrival in the summer would give him an incentive to shift focus for awhile and concentrate on the book. By the fall of 1975, however, it is clear that we were also doing quite a bit of work during the semester. The November 5 letter in which I discussed progress on the new case file for the Civil Problem Supplement also acknowledges my receipt of parts of Chapter Two from him, and laments that my classes aren't going as well as usual, because "in part I think my primary focus this fall has been the book, and I'm giving less thought as well as less time to class preparation."

When I was asked at the colloquium to write about how Gary and I worked together, I was also pressed to focus on my particular contributions. People felt I had a tendency to cast myself solely in a helper role, yet speculated that I had done at least some of the original, conceptual work. So I have thought hard about who did what, especially in this period for which the written record is so sparse, and have a few answers. To begin, Gary was consistently the "big picture" person. A significant change from earlier drafts of the materials was the addition and/or expansion of chapters one and two, the "perspective" chapters, ultimately entitled "Becoming a Lawyer: The Problem of Conformity," and "Being a Lawyer: the Problem of Values." While I became intimately familiar with this material in the editing process, and am very involved with issues of role and ethics in my current teaching, I could not have written these chapters at the time. Gary brought a considerable breadth of knowledge to law teaching and practice and,

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29 As late as the summer of 1976 this material was still divided into three preliminary chapters, and Chapter 4 still covered both interviewing and counseling. Letter from Bea Moulton to Gary Bellow (August 24, 1976) (on file with the author).
Looking Back at The Lawyering Process

Despite his enormous workload, managed to stay current in his reading. He had no doubt identified some of the key readings before he put these chapters together, and knew how they would frame the concepts and distinctions he wanted to introduce. And in contrast to the "tasks and relationships" chapters, for which we had both been hunting, discovering and gleefully sharing books and articles for years, for the perspectives chapters Gary did most of the research on his own.

In revising the tasks and relationships chapters, we divided up responsibilities to some extent on the basis of our experience. I had very little trial experience, so Gary did the initial work on what became Chapter Six, "Witness Examination, the Case Reconstructed." I did some of the initial revisions on what was then a chapter on interviewing and counseling, and what ultimately became Chapter Four: "Constructing the Case: Preparation and Investigation." I think that Gary took the lead on the chapters on negotiation and argument, although I did some of the original writing on those chapters, as well. What emerges from my limited, one-sided correspondence with Gary in 1976 is that we had completed quite a bit of the work and had wildly unrealistic hopes about finishing the book by the end of that year. On January 6, 1976, I wrote:

I will try to work on the investigation chapter in the next month or so, but won't have large amounts of time, as I'm teaching two courses I haven't taught before. . . . I am hopeful we can finish the writing by mid-summer, however, and work on details if necessary after that. I am absolutely committed to seeing the book to conclu-

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30 Bloch, Brooks, Hurder and Kay comment that the Wasserstrom and Fried pieces in Chapter Two are still seen as seminal articles that continue to frame the debate about the tensions in the lawyer's role between zealous advocacy for clients and the promotion of justice. Frank S. Bloch, Susan L. Brooks, Alex J. Hurder & Susan L. Kay, Filling in 'the Larger Puzzle': Clinical Scholarship in the Wake of The Lawyering Process, 10 CLIN. L. REV. 221, 225 (2003).

31 As could be expected, people assumed I had been involved in writing as well as editing these chapters, and that got me into situations where I was out of my depth more than once. I can't resist sharing a paragraph from a letter I wrote to Gary in February, 1977:

This weekend I have agreed to comment on Jack Himmelstein's paper at the SALT conference in Tiburon, replacing Richard Wasserstrom, who had to change his plans at the last minute. I understand you did this in New York not long ago. When Howard Lesnick called me I said I wasn't the person they wanted, that I'm not a very profound thinker and kind of inarticulate, etc., and I finally convinced him. Ten minutes later Jack Himmelstein himself called and said he knew I could do it if I wanted to. I've never met him, but he had formed some definite ideas about me on the basis of references made by you and Jeanne. It's good to know you say nice things about me, but I still think I'm not the person they want, and I'm a little foggy on how I got talked into it. After a long spate of weekends of working on the book, however, the trip will probably do me good.

Letter from Bea Moulton to Gary Bellow (February 23, 1977) (on file with the author).
sion this year — at least as regards whatever I can do — and I hope you mean it when you say you will let something like the current version go to the publisher.\(^{32}\)

On August 24, at the end of a rather short visit to Cambridge, I wrote again, laying out a schedule I had worked out on the plane ride home that had us finishing the book by January 10, 1977. At that point I was still laying out what I planned to do, with only indirect suggestions to Gary about his deadlines. I planned to edit Chapter 7, on argument, between August 21 and September 15 and send it to him soon after. On September 22 I sent part of it, along with a letter that provides considerable insight into how we were working at that point:

Enclosed are portions of Chapter 7 on Summation and Legal Argument, consisting of these sections of the outline we had agreed on:

I. Introductory Perspectives
  A. Images
     Notes
  B. A Preliminary Model
     Notes

II. The Basic Elements
  A.
  B. Preparation: Constructing the Argument
     1. Invention
     Notes

Note that II.A., Assessment, is missing. I didn’t realize until a couple of weeks ago that the readings in that section, and many of the excerpts in the notes, were missing from the manuscript you gave me. I now have a research assistant collecting them, but may have to write you for any we can’t track down. Next week I should be able to send you the selections on arrangement and style, and possibly something on delivery, which is the performance aspect.

I don’t know if Cheryl has told you,\(^{33}\) but the box I left to be sent to me still hasn’t arrived. It wasn’t sent until two weeks after I left, and has now been in the mail for 2 1/2 weeks. Cheryl has put a tracer on it from that end, I think. This is a real problem, as it contained everything I need to edit Chapter 8 on Direct and Cross-Examination as well as some of what I need to finish up details on Chapter 7. You may have to use the old material for direct and cross [in class] if the box doesn’t arrive soon, though I should be able to do the “Images” and “Preliminary Models” sections fairly

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\(^{32}\) Letter from Bea Moulton to Gary Bellow (January 6, 1976) (on file with the author). Mike Meltsner speculates that I played this “prodding” role — and it’s clear that I at least tried. See Meltsner, supra note 27, at 335.

\(^{33}\) This refers to Cheryl Burg Rusk, who was Gary’s secretary at the time and is now Associate Director of the Hale and Dorr Legal Services Center of Harvard Law School.
rapidly once I get the materials. If the box never arrives, we have a lot of collecting and xeroxing to do over again.

One thing that I believe is in the box is information on the source of the reading at page 23 of the enclosed materials. It was from a chapter called “The Precepts of Rhetoric” and came, I believe, from one of the books you gave me at your house. Those books were in a box under the table to the left of your desk. You should have the author, book etc. typed in before you reproduce these materials.

I am behind schedule, as must be apparent, and things will be even more fouled up if the box is lost. Nevertheless, I have plenty to do on the other chapters and I am still hopeful about getting much of the work done this fall. My classes are going well and it is a delight to have Dave Binder here to discuss some of this with.

Hope things are going well for you, and that the enclosed materials get you started on your first class or two. I'll get more in the mail as soon as I can. If you want to call sometime I can give you an idea of what I’ve left out and why, but won’t take time to explain that now, as this should get in the mail.\footnote{Letter from Bea Moulton to Gary Bellow (September 22, 1976) (on file with the author). Dave Binder was a visitor at Arizona State that fall, working on his own book and teaching innovative classes, and it was, indeed, wonderful to have him as a colleague for that brief period.}

3. \textit{The Stretch Run: 1977-78}

One thing that I had forgotten, until I delved into my boxes, was that the contract with Foundation Press for publication of \textit{The Lawyering Process} wasn’t signed until early in 1977. I think Gary had been discussing the project with Harold Eriv, Foundation’s President, for some time, but we probably waited until we could commit to a firm deadline before we made it official. I sent the signed original to Harold on February 23. It was a rather brief form contract calling for a book “on the subject of the lawyering process,” not exceeding 1,100 pages, to be submitted on the first day of October, 1977. There was no mention of the problem supplements, and indeed, later correspondence indicates that Harold had his doubts that we could actually produce them for the 1978-79 academic year.

After the signing of the contract, our work on the book moved into high gear. I sent a sample chapter to Foundation’s production facility in St.Paul and got an estimate of its length, to use as a guide in preparing the rest of the manuscript. The news wasn’t good: we were heading toward a very long book, and had to begin editing ruthlessly and making choices. The situation was complicated by the fact that it was at this point, sometime in the spring or early summer of 1977, that
we decided to add the ethics sections to each of the tasks and relationships chapters. Since I now think, along with most of the symposium authors and many others, that the inclusion of so much material on legal ethics is one of the strengths of *The Lawyering Process*, I wish I could take credit for these sections, but I can't. I had basically been teaching the same lawyering process course for several years, beginning with considerations of role and introducing ethics, but moving fairly quickly to an examination of the tasks and relationships of practice. Gary, however, had become increasingly convinced that ethical considerations had to be brought in at every stage of lawyering. The five *Dilemmas in Legal Ethics* videos he had helped develop for the ABA, which were produced that year, were organized by task: depicting ethical issues that might arise in the context of client interviewing, counseling, negotiation, investigation, and advocacy. The transcripts for these videos provided a perfect starting point for adding ethics sections to our own chapters on those same subjects.

I don't remember our specific discussions about adding the ethics sections, but I imagine I was resistant, because squeezing the materials with which we were already working into 1,100 pages, and doing so by October 1, already seemed like an impossible task. Also, since I was the one who had the major responsibility for *doing* that, Gary had to be the one to write the initial drafts of the new material. The ABA pamphlets that accompanied the tapes provided some assistance, for in each area a panel of experts had identified the issues, cited the relevant rules and opinions, and even flagged issues for discussion. Gary no doubt found these discussions helpful in writing his first note in each segment, entitled "[major issue]: The Guidance of the Code," but the other notes — "Reflections" in a few chapters and "The Larger Puzzle" in all of them — were his unique contribution.35 I definitely *edited* the ethics sections, for by that time we had allocated a certain number of pages to each chapter, and I was the enforcer.

Before I looked in my basement boxes, I would have said that Gary and I both went over every word in every chapter, and the correspondence confirms that. I was in Cambridge for the month of July in 1977, and Gary and I spent a lot of time going through the most recent versions of various chapters page by page, discussing any disagreements we had and assigning responsibility for making revisions. One conversation, in particular, has always stayed in my mind, for reasons that will become apparent. It involved a note in the "preliminary perspectives" part of the chapter on negotiation, after our "orienting model" of negotiation as exchange. Gary had written the first drafts

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35 *See* Bloch, Brooks, Hurder & Kay, *supra* note 30, at 222, 233-34.
of the two notes in that section: the first entitled “Satisfaction, Power & the Subprocesses of Bargaining: An Observer’s Perspective;” and the second “Why Parties Settle: The Need for a Participant’s Perspective.” The second note was full of charts and graphs and I thought it was totally incomprehensible, and said as much to Gary. “I couldn’t do the editing,” I said, “because I couldn’t figure out what you were trying to say. What are you trying to say?” Gary explained that what he thought was missing from the model was a theory of convergence, an explanation of how parties with limited information influenced each other in the negotiation process and why they settled at a particular point, and that’s what he was trying to provide. I told him I thought I could write that, went back to wherever I was house sitting, and did. When Gary read it a few days later, he gave me one of his rare compliments, which is what makes the occasion so memorable. “You’re going to get credit for the ethics sections,” he said, “and I’m going to get credit for that.”

Before I left Cambridge at the end of July I wrote a detailed memo to Gary summarizing the status of each chapter and laying out a set of deadlines that began with what he should try to finish before I got on the plane and ended with his coming to Arizona for the “final edit” on September 21. By August 2, back in Tempe, I realized that with Gary’s staff out of town, there was still some confusion, and wrote:

It seems like I am doing nothing but making lists at the moment, but I wanted to set the record straight once again on just what needs to be done on the book, who has what, etc. . . .

*I have, and need to work on:*

- Chapter One – to be typed in final, sent to you.
- Chapter Five – edited by you, needs to be re-edited by me. Will send my re-edit.
- Chapter Six – edited by you, only partly typed. I will re-edit, incorporating your changes, get it typed and sent to you.
- Epilogue – I need to add a section to this, edit it and send my edit to you.

*You have, and need to work on:*

- Chapter Two – needs final reading and editing from you, should be sent to me soon.
- Chapter Three – same.
- Chapter Four – this has to be finished, edited by you, and

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36 The note appears in Gary Bellow & Bea Moulton, The Lawyering Process: Materials for Clinical Instruction in Advocacy 456 (1978), virtually unchanged from my draft. It is definitely in the adversarial tradition, but at the time introduced a perspective we had been unable to find anywhere else.
sent to me.

First Section of Chapter Six

Chapter Seven – has to be edited by you and sent to me for re-edit.

Chapter Eight – You have materials for this. Needs to be blocked out by you, sent to me with readings so that I can write first draft.

Ethics Sections in Chapters 3 (one note), 5, 6, 7 (and 8??).

As we discussed, Chapter 8 is probably the top priority. I would like to finish my work on it by August 29, when my classes begin, since I find it easier to edit than do original work once school starts. For purposes of spreading out the load on the typists, however, getting chapters 2 and 3 fairly soon would also be desirable. Going over these two chapters once more shouldn’t be very time-consuming for you.37

Gary and I were also trying to communicate more regularly by telephone, although that was never easy. When I sent a reworked Chapter Six to him on August 11, we had apparently had a recent conversation, and it prompted me to add a pair of specific requests:

1) Leave the footnote numbers as they are (forget the parentheses). There is no problem differentiating them from section heads etc. because of the variety of type faces available. Let me and Foundation worry about the mechanics. I will make sure they are all consistent in the final draft.

2) Please don’t add anything to this chapter without taking the equivalent number of pages out. With ethics added, I am afraid it is already around 150 pages long, and clearly our chapters have to average around 100 pages if we are to have a reasonable-length book. Chapters 5 and 7 promise to be about 200 pages each.

We can discuss this further. Maybe we do want a 1300-1500-page book, but I doubt it. Anyway, I heard a gleeful note in your voice when you mentioned “adding things back in.”38

A week or so later we had another telephone conversation, and Gary told me he had done as much as he could on Chapter Eight and was putting it in the mail. When it arrived, it was accompanied by one of the few letters Gary ever wrote to me during the writing and editing process. The letter is short, but says a lot about how hard all of us were working:

Dear Bea:

We are so far behind in typing that I decided to send this to you untyped. The last part really trails off. I just ran out of gas. I was going to finish with [4. Termination], but I just gave up.

37 Letter from Bea Moulton to Gary Bellow (August 2, 1977) (on file with the author).
38 Letter from Bea Moulton to Gary Bellow (August 11, 1977) (on file with the author).
Please see if it's possible to get it typed, edited, and completed.
I'll keep struggling with the other stuff here.
Sincerely. . .39

In my return letter I acknowledged receipt of the chapter and enclosed copies of the excerpts in Chapters One and Two for which we had been unable to track down publishing information at ASU, meaning we couldn't finish footnotes or begin the process of writing for permissions. Both Gary and I had excellent research assistants at that point, and I knew he could turn this work over to someone else, and gave detailed instructions on what was needed. I also asked, rather casually:

Also, do you mind if I write Harold Eriv telling him we'll be a few weeks beyond the October 1 deadline? Seems to me it would help them plan their fall schedule if they had some notion of when our book is coming in.40

As might have been expected, with so much to do in such a short period of time, the rest of August and all of September passed, and though we made substantial progress, we were far from done. Foundation paid my travel expenses for a joint editing session in Cambridge from October 13 to 21, and I sent a progress report to Harold Eriv on my return:

Gary and I had a productive week together and got about half of the Lawyering Process book ready to be typed in final manuscript. We went through the chapters we did word by word and succeeded in cutting out quite a bit. Given our current ruthless approach, I think we will be able to bring the final version within the 1000-1100 page limit. Gary plans to come to Arizona either Thanksgiving vacation or the week before to edit the remaining chapters. It will be tight, but if we each work on our own in the interim, we should be able to meet the December 15 deadline.41

This last deadline must have been extended in a telephone call, for there is nothing in the correspondence that explains why, when I next wrote Harold on December 14, we were aiming at the first of the year. On December 14, Gary was due "in less than a week" for our final editing conference, so something must have interfered with the November meeting. The letter to Harold enclosed a "Summary of Contents" of the book for Foundation to make available at the upcoming AALS meeting. For the most part the summary tracks the exact language of our eventual Table of Contents in the book, though

39 Letter from Gary Bellow to Bea Moulton (August 18, 1977) (on file with the author).
40 Letter from Bea Moulton to Gary Bellow (August 23, 1977) (on file with the author).
41 Letter from Bea Moulton to Harold Eriv (October 26, 1977) (on file with the author).
it isn't quite so detailed, but there are some interesting differences. It clearly indicates which chapters were changed after mid-December, and which were not. Chapter One seems to have been left intact, and in Chapter Two we seem only to have switched the order of two subparts and changed some headings. In Chapter Three on interviewing we elevated what had been a subpart of "Inquiry" to a separate section entitled "Understanding." We seem to have done something similar in Chapter Four on planning and investigation, grouping subparts that had been labeled "Developing a Preliminary Theory of the Case" and "Deciding on Specific Lines of Inquiry" under a new, more general heading entitled, "Developing a Preliminary Approach to the Case." Chapter Five on Negotiation was unchanged, as was Chapter Six on witness examination. We changed a few headings in Chapter Seven, on argument, but left its basic structure intact. As might be expected, the most changes were made in Chapter Eight and the Epilogue, which had been written in (or scheduled for) the late summer and fall that same year.

The summary outline of Chapter Eight on counseling is different enough from what was eventually published that it might be interesting to set it out here, so that curious readers can make a comparison, if they are so inclined:

Chapter Eight – Counseling: The Circle Closes

I. The Counseling Task: Preliminary Perspectives
   A. Images and Fragments
   B. An Orienting Model: Counseling as Education

II. The Skill Dimension
   A. Assessment
      1. Thinking Through the Kind of Relationship You and the Client Want
      2. Imagining the Future of the Problem
   B. Advice: Helping the Client Choose
      1. Communicating Your Predictions and Explanations
      2. Working Through the Value Choices
      3. Testing Ambiguities and Coping with Emotions

III. The Ethical Dimension

I have no explanation for why the chapter underwent so much change. I was incredibly busy in the fall and winter of 1977-78 (more of what I was doing is detailed below), so the whole time period is something of a blur in my memory. What surprised me even more is what happened to the Epilogue. On December 14, 1977, the Epilogue we contemplated was entitled "Learning Lawyering" and consisted of

three sections: “I. Clinical Education: the Challenge of Learning a New Role; II. Role Theory: The Lawyer in the System, the System in the Lawyer; [and] III. The Difficulties of Learning How to Learn.”

Talk about meta-cognition! If this Epilogue was actually written, it did not survive in my files, sharing the same fate as all of the earlier drafts of all of the other chapters. Which is too bad, for I would have liked to find it and see what it said. I can only speculate about what happened. My insecure side says that because I was scheduled to write parts of the epilogue (and we had reserved 50 pages for it), it turned out to be awful, and we scrapped it. Another possibility is that it hadn’t been finished at that point, and we had to scrap the original idea because we could no longer afford to allocate 50 pages to it (a theory supported by the fact that the published epilogue is only 17 pages long). Whatever the reason, the summary we gave Harold makes clear that the published Epilogue was a very late addition.

Anyway, it appears that Gary came to Arizona for a final editing session a week or so before Christmas in 1977, and that we had lots of revisions and even some original writing to do after that. I think the manuscript was finally sent to St. Paul on February 1, 1978. When it was set in print, it was 1,121 pages long. In that era Foundation required that the final manuscript be submitted on special, heavy stock, color-coded so that headings were on separate yellow sheets, text on white sheets, text in slightly-smaller type on blue sheets, and footnotes on pink. I still have a copy of the manuscript that was sent, and there are 1,819 numbered pages (including the dense, photocopied pages of many of the excerpts), plus all the footnotes on unnumbered pages, so it would have been sent in a fairly large box. I didn’t manage to include a cover letter. In fact, Foundation’s letter acknowledging receipt, written February 7, and my cover letter of February 8 crossed in the mail.

4. Parallel and Subsequent Tasks: 1977-78

During February and March of 1978, I read the entire manuscript once more and found numerous small errors, ranging from misplaced commas and quotation marks to more substantive errors that had changed our meaning. Fortunately Foundation had a sort of grace period that allowed such changes to be made before the book was actually set in type, and seemed to take my rather lengthy lists of corrections in stride. They were concerned, however, about producing clear, readable charts and graphs from the photocopies we had sub-

43 Id.
44 For a definition of this term, see DiPippa & Peters, supra note 10, at 311-12.
mitted, and sent me a list of all the items for which they needed original copy. This meant I had to track down all the books from which we had borrowed excerpts that contained charts and graphs and send the books themselves to St. Paul to be photographed. Since only about half of those books were available at ASU, I also had to get someone at Harvard to find the rest of the books and send them off, never an easy task, given how much work Gary, his staff and research assistants always had to do. Gary himself was still tinkering with the ethics sections, and I sent off his changes on March 15, when I shipped the first batch of books to St. Paul, warning them that we were still trying to shorten a couple of chapters, and other changes might come.

It has been a long time since I have worked 12 or 15-hour days as well as weekends, so I find myself amazed that we were still planning to complete the problem supplements and teacher's manual for *The Lawyering Process* for use in the fall semester of 1978. As I mentioned earlier, Harold Eriv had doubts as well. I wrote Gary a sort of "housekeeping" letter on March 29 that shows we hadn't slowed down, however:

Enclosed is a draft of our "Acknowledgments." Look it over and think about whether there should be any additions or changes. I assume we'll have to submit it in final form when the galleys go back.

I am now working on the Civil Problem Supplement and want to remind you to send/do a couple of things. . . .

1. Send a transcript of the Arthur Miller tape (film?) for use in Class One — and any alternatives you want me to consider.
2. Send the current versions of the case files you are using, where they don't appear in your class assignments, which I have. E.g., I need an update on *In re Thomas*, possibly *Carlson v. Murphy*, etc.
3. (I'm not sure on this) Are the videotapes for the Joseph Smith case ready or are they being revised? It seems to me you were going to have them transcribed, so maybe they're ready. Anyway, just a reminder that the main criminal case and tapes are your department.

I wish they'd let us know when we can expect the galleys, and how much time we'll have. My hunch is they'll arrive in mid-April, and we'll only have a couple of weeks. . . .

Harold Eriv called me this morning and read me a promotional notice they're sending out. I made one or two suggestions. He hadn't emphasized the Problem Supplements and Teacher's Manual (hadn't even mentioned the latter), and when I suggested he should I gathered he doesn't have a great deal of confidence that we will produce them for the fall semester. I said we definitely will, but he still seems to need reassurance. I still feel people won't adopt the
book without them, and need to know they're on the way.\textsuperscript{45}

Gary called Harold and committed to submitting the camera-ready problem supplements by June 15, which was the latest date Foundation believed would ensure their inclusion in the \textit{Lawyering Process} packet that would be mailed for the fall semester. "It is wasteful, and psychologically wrong, we feel, to have a separate mailing for the supplements," Harold wrote in his letter confirming their agreement.\textsuperscript{46} They also agreed on a one-semester delay for the completion of the teacher's manual.

So in between reading galleys and page-proofs, we also put together two lengthy sets of materials that we expected to be the actual subject of class discussions, keyed to the chapters of the book (the civil supplement totaled 653 pages, the criminal 618). It is true that the appendices, which made up about two-thirds of the civil supplement and half of the criminal supplement, were for the most part existing case files, and some of these were in camera-ready condition when we started. Nevertheless, there were gaps that had to be filled in, choices that had to be made, and a surprising amount of new material to be written. As a result, we appear to have missed the June 15 deadline, at least in regards to the Criminal Problem Supplement (Gary supplied most of the materials for this, but I had to pull together the final version). I wrote the following to Harold Eriv on July 12:

Enclosed is copy for a promotional mailing on the problem supplements. Gary wrote the first draft, and I revised it a little. It's not very punchy, but I'm so bogged down in the second of our two supplements that I'm not feeling very creative. Hope this is of some use to you.

It will certainly be a joy to have all of this behind us.\textsuperscript{47}

I must say that Foundation Press was extremely understanding and consistently professional in dealing with what must have been a difficult situation for them. I'm sure other authors have missed deadlines, and no doubt others have made extensive changes at the page-proof stage, but much of what we asked them to do was entirely new to them, and they rose to the challenge. By the end of it Harold Eriv had become a friend, and I have a faint memory of going to Foundation's production facility on a trip to Minneapolis, a year or two later, just so I could meet and thank Dale Chapman, the production super-

\textsuperscript{45} Letter from Bea Moulton to Gary Bellow (March 29, 1978) (on file with the author). It turned out that Harold was right on the Teacher's Manual; it never did get written.

\textsuperscript{46} Letter from Harold Eriv to Gary Bellow (April 6, 1978) (copy on file with the author).

\textsuperscript{47} Letter from Bea Moulton to Harold Eriv (July 12, 1978) (on file with the author).
visor with whom I had exchanged so many letters and phone calls. I had always been sorry the book was not more of a money-maker for them, and was relieved to learn from Mike Meltsner that Harold never expected it to be, considering it a kind of public service.48

The mention of making money brings me to the final “parallel process” that was going on in 1977-78: securing permission to reprint over a hundred and fifty long and short excerpts from published works in many different fields. The last letter in my Lawyering Process correspondence file (closed when I left Arizona at the end of February, 1979) is dated February 15 and came from Foundation’s accountant. It advises me that the $3,414.50 royalty I would have earned for 1978 was used in full by Foundation to pay various publishers for granting copyright permissions, and advises me how to take it as an offset on my tax return. Gary would have gotten the same letter. I know the permissions also ate up the authors’ share for the entire spring semester and part of the fall in 1979, though that fall we each finally got a check for something like $171.00. Thus I estimate that permissions for the book must have cost us at least $9,000 - $10,000, though I didn’t keep a list. And by the time we had paid off our copyright debt and begun to receive royalties, most teachers had decided against assigning the book to students, so our periodic royalties never reached “four figures” again.

One of the things I finally threw away when I went through my basement were the two large boxes of permissions requests. I had sent Foundation copies of all the signed contracts, but probably saved my files as evidence that we actually had secured permission from all those publishers and authors for all those reprints. I think by now the statute has probably run. There was no clearinghouse for copyright permissions in those days, so writing all the letters, following up on them, including the attributions they requested and notifying Foundation was enormously time-consuming. One of Gary’s research assistants had begun to secure a few permissions as early as 1976, but in August of 1977 I took over the process and brought what had been done to Arizona State, where I also enlisted the aid of some very able research assistants. We were tracking down the last permissions well into the summer of 1978.

For the most part the permissions process was time-consuming but routine. We sent one of two form letters to a publisher, they responded, usually naming a price, detailing how they wanted the credit to read, and requesting one or two copies of the book upon publication. Once in a while a publisher required that we also get the au-

48 See Meltsner, supra note 27, at 338-39.
Looking Back at The Lawyering Process

Author's permission, and then I would write a more personal letter, telling the author exactly how her writing would be used. Sometimes it would be hard to track down an author, or publisher, or both, and the process would get dangerously delayed. One time, we got an outright refusal to print parts of Alfred Benjamin's *The Helping Interview*, and I had to call on Harold Eriv to intervene. And with *The Lawyering Process* we faced an additional problem that better-managed, more short-term projects probably avoided: there were excerpts in the materials that we really wanted to use, some of which had been there for years, for which no one had written down the publishing information. Thus our research assistants got to play detective. We would track down anything we could in Arizona, and then I would write to Gary (or directly to his current research assistant) with any clues I could come up with. As far as I can tell, we eventually found everything, requested permission, and received it.

As I said, the permissions files have now been discarded, but I looked through them one last time and pulled out a few letters that made me smile, and seem worth sharing. The first illustrates the “tracking down” task I just described. On May 26, 1978, I wrote Professor Phillip Zimbardo in care of the Psychology Department at Stanford University, and enclosed the excerpts that were by then in page proofs in our chapter on investigation:

Dear Professor Zimbardo:

I urgently need a few minutes of your time. Could you possibly identify the enclosed excerpts and tell us who has the copyright on them, so that we can request permission to use them *soon* in a law school textbook? We have tried to find them in those of your works which are available locally, but have been unsuccessful. A direct appeal to you seemed the most hopeful approach, for even if there is another Zimbardo who writes on attitude change, you would probably have some idea where he or she is located.

If you are curious as to how I find myself in this predicament, I will explain. . . . [I then tell him about the book, how his work would fit in, how it appeared in one of my co-author’s recent drafts, and the efforts I had made to track it down]. . . . Professor Bellow has finally informed me that these excerpts were provided by one of his colleagues who now has no idea where she got them. The title might be that of the book from which they are drawn or a separate chapter heading, but hopefully bears some relation to the original source. Anyway, at a very late stage in the production of our 1100-page text we have a serious problem, and we would be most grateful if you could help us. . . .

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49 Letter from Bea Moulton to Phillip Zimbardo (May 26, 1978) (on file with the author).
Either Professor Zimbardo or someone in his department was able to give us the information we needed, and I subsequently obtained permission from his publisher, Academic Press, only to have them make it conditional on securing his permission as well. By then Professor Zimbardo had left for a sabbatical in Italy and my attempts to reach him by letter and long-distance telephone were unavailing. The very understanding administrator of Stanford’s Psychology Department finally gave us her authorization, and Academic Press finally went along.

The other letters I kept mainly came from authors from whom I had to seek separate permission, who responded to my very personalized entreaties with gracious words of their own. Warren Bennis, from whose chapter entitled “Toward Better Interpersonal Relationships” we had borrowed liberally in Chapter Eight, responded:

Ordinarily I would not give permission for this essay, as it is an integral part of the book. (Selfish reason.) But I am so pleased that someone from a law school is using it that you have my permission. . . .50

The poet Marge Piercy, whose poem “To Be of Use” we wanted to include in our epilogue, wrote:

I would be very interested in having “To be of use” in your law text. Oddly enough, a number of my poems have been used in texts in sociology, psychology, history (recent) and criminology. . . .51

Finally, some of my most interesting correspondence was with the American Economic Association, from whom we had requested permission to reprint portions of Thomas Schelling’s classic “Essay on Bargaining,” later reprinted in the book, The Strategy of Conflict. They told me to write to the author, negotiate a price to be paid directly to him, and when we had reached agreement, send them a copy, after which permission would be forthcoming. Professor Schelling responded to my letter as only an economist might:

I am happy you want to use my “Essay on Bargaining” in your forthcoming textbook. I think it would be best if you used the version that appeared in the book, The Strategy of Conflict, because the book version has the benefit of a few very minor editorial changes and, more important, the book has other chapters that could be of interest to anyone who, using your book, would like to pursue the subject further. Alternatively, you could cite the American Economic Review and indicate that it is reprinted in The Strategy of

50 Note from Warren Bennis to Beatrice Moulton (June 23, 1978) (on file with the author).
51 Letter from Marge Piercy to Beatrice Moulton (June 12, 1978) (on file with the author).
Conflict.
The American Economic Association set the $150 price in the late 1960's. If we reduce the fee because you wish to use only 6 or 7 pages and increase it in proportion to the consumer price index, we come very close to $100, which would be fine with me.52

III. MY OWN EPILOGUE

I think it is fair to say that the Epilogue that came to be published as part of The Lawyering Process, which turned out to be a very late addition, was probably pulled together by Gary at the eleventh hour. It contains some excerpts that had been in earlier drafts of the materials, but the framework for them was new, and Gary's imprint seems clear. I love the Piercy poem with which it begins, but I don't think it speaks to me in the way it spoke to Gary. It is essentially a poem about the joy of joining with others in "work that is real." Coincidentally, it is also the poem that Alan Houseman chose to begin his tribute to my late husband, Ralph Abascal, in the P.A.G. newsletter at the time of Ralph's death in 1997.53 I eventually married another of those who "pull like the water buffalo, with massive patience, who strain in the mud and the muck to move things forward, who do what has to be done, again and again"54 in the interests of social justice. Gary and Ralph were both like that, and so is Alan, but I have come to realize over the years that I am not, and most of my students are not. I was more than willing to give the original epilogue my stamp of approval at the time it was written, but now I think I might write something different. I will get back to that shortly, but first I want to join the rest of the symposium authors in looking, very briefly, at what has happened in the twenty-five years since our book was published, and where we might go.

A. A Brief Sermon for the Choir

To begin, I think Mike Meltsner is absolutely right when he says that the two "most substantive goals" of the whole Lawyering Process enterprise — greater access to legal services for the poor and a major

52 Letter from Thomas Schelling to Beatrice Moulton (June 1, 1978) (on file with the author).
53 20 Proj. Adv. Group NewsL. 2 (Special Edition #1, Mar. 25, 1997). The Project Advisory Group, was the free-standing, national organization of legal services programs. It has since merged with the National Legal Aid and Defender Association. Alan Houseman is a career legal services lawyer who was my colleague at the Legal Services Corporation, and since has been the Director of the Center on Law and Social Policy, in Washington, D.C.
shift in legal education — are not even close to having been reached.\textsuperscript{55} As he says, in the great majority of law schools clinics are courses, part of a curriculum that in other respects has changed very little. At least there \textit{is} a clinic of some kind in the majority of law schools, and for that all of those who have written teaching materials and articles and/or worked on the political front can take some credit. But many clinical teachers face the same choices we did about what is most important to teach in their students’ “one-shot” chance to learn about actual practice. Should the focus be on theories of progressive lawyering, or skills, or interpersonal relations, or ethics, or the substantive law and procedures they need to properly represent their clients? Some combination often makes sense, and many teachers still pull together their own eclectic sets of materials, but it’s a plain fact that in a single course they can’t do it all. We need carefully-planned sequences of the sort Mike proposes, and at a few pioneering institutions, these are already in place, and seem to work well. We need \textit{multiple} courses, as Dave Binder and Paul Bergman argue, and not all of them, in my view, need to be of the most expensive, live-client variety. I think that nothing can replace a live-client clinic in teaching what it means to be a responsible, effective lawyer, but I think a variety of other courses could and probably should precede that experience to both inform and enrich it.

I have been at U.C. Hastings since 1984, first as an adjunct professor and part-time administrator of an extensive externship program and then, since 1990, as a member of the full-time faculty. I helped get our in-house clinic up and running, and keep up on its activities, but I have not supervised work on cases for a long time. For the last seven years I have taught or co-taught a four-unit course called “Roles and Ethics in Practice” every semester, and have added courses on negotiation and/or mediation, or a seminar on Law and the Homeless, to round out my teaching load. Roles and Ethics was designed by me and my colleagues Kate Bloch and Miye Goishi as a sort of “clinic prerequisite,” though we knew actually requiring students to complete it before enrolling in a clinic would be difficult at a large school like Hastings. Still, it seemed worthwhile to develop the course and see where it led. Maybe multiple sections would be feasible someday, and allow the clinical faculty to build on what we had done in designing their own classes.

Teaching Roles and Ethics to a group of 18-24 students each semester is the most rewarding experience I have had as a teacher. Most students are attracted by its reputation for being a course in

\textsuperscript{55} Meltsner, \textit{supra} note 27, at 342-43.
Looking Back at The Lawyering Process

which they will learn more about themselves and about what lawyers actually do on a day-to-day basis, and a course in which ethical questions are posed in a very personal way and lead to lively discussions. Some are profoundly affected. I have had students who were being courted by big, corporate firms realize that no, what they really want to do is child advocacy or family law, and shift their focus to finding that exact niche. Others, starting with little information about what adversarial practice involves, realize it will require compromises they are unprepared to make, and think concretely for the first time about other legal careers. Even the students who are pursuing public interest careers realize they also will face troubling ethical issues, and that they may be charting new ground in devising principled ways to deal with them.

All that we knew of clinical teaching methods was brought to bear in designing the Roles and Ethics course, and all of it has worked: specially-designed videotaped "scenarios," small group discussions, in-class role plays, videotaped simulations and critiques, reflective writing, student presentations, psychological instruments, all of it. My anecdotal information is that those who take one of the clinical courses after completing Roles and Ethics do, indeed, have a head start: that they participate in class discussions with a higher level of sophistication, and see issues others don't. I know from personal reports that students themselves find the sequence beneficial. And even standing alone, as the only exposure to law practice that some students have had, the course is an eye-opening experience they wouldn't have missed. In writing their heartfelt evaluations at the end, a great many students say that it should be a required course, and I agree with them. A course like this should be in the first-year curriculum at every law school. Then students would have a better idea of what they want to get out of law school, and the career options that make the most sense for them. And if we have done our job, they will also realize that they have an obligation to societal interests beyond those of themselves and their clients.

B. Back to the Epilogue

When Gary died, as sick as he had been, I'm sure he was involved in cases and connected to others in multiple ways as well as teaching classes. That was who he was. He had his first heart attack, fortunately a mild one, in 1973, as we were just starting work on the Lawyering Process project, and he was only 38. He actually did slow down

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56 It is an upperclass elective, not a first year course at Hastings, but many of those who enroll are in their second year.
a little, resigning from some national boards and traveling less, but I know how hard he continued to work in the Boston area. As I tried to convey in the tribute I wrote after he died, the amazing thing about Gary's work on *The Lawyering Process* text is that it was only one of dozens of projects in which he was involved in those years. In his spare moments, he managed to make ground-breaking contributions to a theory of lawyering that has endured and informed clinical teaching and scholarship ever since. For me, as you have probably gathered, moving the book toward publication was my only major project, requiring all of the time I had outside of a few board memberships and teaching responsibilities during a five-year period.

In the fall of 1981, after working for almost three years at the beleaguered Legal Services Corporation on the heels of sending *The Lawyering Process* and its supplements off to the publisher, I was exhausted, and planned to take some time off. I intended to get back into music and creative writing, and to fund my own sabbatical in the hills of West Virginia. Instead, in February, 1982, I moved to California to start a new life with Ralph, and within a month, I learned I was pregnant. Our daughter Pilar was born on November 30, 1982, when I was 43 and Ralph was 48. It was then I realized that my priorities had shifted. Although Ralph himself had taken off six weeks when Pilar was born, and that was a magical time for our little family, he soon returned to a demanding work schedule. I knew that I could not do the same: I felt our daughter deserved at least one parent who placed her interests above everything else. And so I sought part-time teaching jobs in the Bay Area, and was lucky to find them. As Ralph was pulled further into his old, workaholic routines, I strengthened my resolve not to do the same, and it wasn't until Pilar entered Kindergarten and became a full-time student that I gradually increased my hours and returned to full-time teaching. The fact that Ralph's considerable energies were directed toward improving the lives of poor people made a big difference as I made these choices. If I was going to do a greater share of the parenting and keep the home fires burning for someone, it was almost a privilege to be doing it for someone whose contributions to the causes I cared about were so immense.

I think it is wonderful that people like Ralph and Gary come

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57 Moulton, *supra* note 3, at 420.

58 I remember running into Derrick Bell, who was then Gary's colleague at Harvard, shortly after *The Lawyering Process* was published, perhaps at the 1979 AALS conference, which that year was held in Chicago. "Congratulations on the book!" he exclaimed. "Anybody who knows Gary knows you did most of the work." I have no doubt that I spent considerably more time than Gary did. But I thought then, and think now, that if there was ever an example of why senior partners command more than associates for an hour's work, Gary and I were it.
into the world, work as hard as they do, and manage to accomplish so much in a single lifetime. We can all think of others like them, both men and women, who are part of the clinical community: people who plunge into work like the seals in Piercy's poem and swim off with sure strokes. That was what progressive lawyering was for Gary: steady work, as he called it, that was always there, needing to be done. But few people are up to a life of such total dedication, and for those who are, there are often trade-offs in terms of health, or their closest personal relationships. I think I would write an epilogue, now, for those who will simply do the best they can — work in public interest jobs for a few years or at a slower pace for a lifetime, enter private practice and do pro bono work, or try law practice and abandon it for any number of other occupations, including raising children. I would try to remind them to remain more self aware, more watchful for the dangers and temptations of "the way we do things here," and more committed, whatever they do, to trying to improve the profession and the larger society in any way they can.

In their take-home exam at the end of the semester, the Students in Roles and Ethics in Practice write an essay in which they have to articulate their "personal philosophy of lawyering." They have already written two reflective essays during the semester, and when it comes time to pull the entire experience together, the great majority of them try hard to visualize the kind of life they really want to have as lawyers. They focus on a specific practice area, detail some of the ethical issues they are likely to encounter in that field, and spell out exactly how they plan to deal with them. If the ethics of associates and superiors are part of the problem, they describe the steps they would take to handle the matter internally, and the point at which they would be forced to resign. They also identify the personal satisfactions they are seeking in life, how they hope to make room for them, and how that competing set of needs has affected their career choice. Finally, they turn to the institutional issues facing the profession that concern them: issues like discrimination, access to justice for the poor, and the excesses of the adversary system itself. They describe how they plan to work on that set of issues as well. If I wrote an epilogue for them, it would contain helpful ideas and encouragement for sticking to their plans, and for maintaining the level of con-

59 We are indebted to Nathan Crystal for this concept, which is the organizing principle around which he structures his text. See NATHAN CRYSTAL, PROFESSIONAL RESPONSIBILITY: PROBLEMS OF PRACTICE AND THE PROFESSION (2d ed. 2000). When we designed our course, we discovered that he had not only provided lucid, straightforward background readings on legal ethics, but also had a focus on helping students understand the role their personal values would inevitably play in their day-to-day decisions as lawyers. Nathan, by the way, was one of Gary's teaching fellows in the mid-seventies.
sciousness that made them aware of some of the pressures and pitfalls that lie ahead. It is hard to plunge in and swim with sure strokes these days, but I would remind them that there are lifelines that will keep them connected to the people and principles they hold most dear.