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**LEGAL EDUCATION IN THE AGE OF INNOCENCE:  
INTEGRATING WRONGFUL CONVICTION  
ADVOCACY INTO THE LEGAL  
WRITING CURRICULUM**

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I. INTRODUCTION .....	131
II. BACKGROUND OF THE INNOCENCE MOVEMENT .....	134
III. THE TRADITIONAL ROLE OF LAW SCHOOLS IN THE INNOCENCE MOVEMENT .....	137
A. <i>The Clinical Model</i> .....	137
B. <i>Other Wrongful Convictions Courses with an Optional         Clinical Component</i> .....	142
IV. THE EVOLUTION OF LEGAL EDUCATION IN THE WAKE OF <i>MACCRATE AND CARNEGIE</i> .....	143
A. <i>Recommendations for the Reform of Legal Education under         the MacCrate and Carnegie Reports</i> .....	144
B. <i>Integrating Social Justice into the Law School Curriculum         to Satisfy the Mandates of the MacCrate and Carnegie         Reports</i> .....	147
V. EXPANDING WRONGFUL CONVICTIONS ADVOCACY IN THE LAW SCHOOL CURRICULUM .....	148
A. <i>Wrongful Convictions and the Advanced Legal Writing         Seminar Model</i> .....	150
1. Course Parameters .....	150
2. Learning Objectives .....	152
a. <i>Acquiring a Knowledge of the Law of Wrongful                 Convictions</i> .....	153
b. <i>Development of Lawyering Skills Required for a                 Comprehensive Case Review</i> .....	154

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c.	<i>Development of Research, Writing and Analytical Skills</i> .....	157
d.	<i>Development of Oral Communication and Advocacy Skills</i> .....	159
3.	Course Benefits to Students, Faculty and Clients .....	160
4.	Logistics and Administrative Considerations .....	161
a.	<i>Course Preparation</i> .....	161
b.	<i>Case Assignment</i> .....	162
c.	<i>Student Access to Documents</i> .....	162
VI.	CONCLUSION .....	163

#### ABSTRACT

*Law students today are being educated in the age of innocence. Thanks in large part to the pioneering work of the Innocence Project and its progeny, public perception, of the American criminal justice system has changed dramatically over the last two decades. Indeed, a month rarely goes by without media coverage of a new exoneration, and a recently-established registry now counts the number of exonerations in the United States since 1989 as over 900. Legal scholars agree that this number reflects merely “the tip of the iceberg,”<sup>1</sup> and that countless factually innocent prisoners remain incarcerated.<sup>2</sup>*

*During the fall of 2011, students at Suffolk University Law School compiled a post-conviction petition which may result in yet another exoneration to add to the list. As part of a course called Advanced Legal Writing: Innocence Project Seminar, students reviewed and investigated the case of a Rhode Island man who had adamantly maintained his innocence since his 1992 conviction for second-degree murder. As in so many other wrongful conviction cases, the case was not as it appeared to be on the surface. The state’s theory at trial was that the defendant bludgeoned the young female victim to death with a metal pipe. After the murder, the investigation stalled and languished for nearly ten years. Upon the defendant’s arrest, the state pieced together its case, relying on the testimony of several witnesses who said that the defendant admitted to the murder. Most of the witnesses’ accounts were utterly implausible. In spite of their questionable credibility—each had a significant criminal history, and a motive to lie—the witnesses were able to turn the jury’s attention away from the fact that the state had no direct evidence of the defendant’s guilt. No eyewitnesses identified the defendant. Additionally, although numer-*

<sup>1</sup> Daniel S. Medwed, *Actual Innocents: Consideration in Selecting Cases for a New Innocence Project*, 81 NEB. L. REV. 1097, 1108 (2003).

<sup>2</sup> See THE INNOCENCE PROJECT, <http://www.innocenceproject.org> (last visited July 7, 2012).

*ous samples were taken from the bloody crime scene, no physical evidence connected the defendant to the attack.*

*What the students uncovered during the course of the semester completely altered their perception of the case. Most significantly, the students learned that physical evidence existed which tended to exonerate the defendant. Specifically, although not available at the time of trial, DNA testing established that a hair grasped in the victim's hand at the moment of her death did not belong to the victim, contrary to the state's assertion at trial. More importantly, it did not belong to the defendant. Thus, the evidence strongly suggested that someone other than the defendant was the attacker.*

*The students assessed this new DNA evidence relative to the circumstantial evidence presented at trial. They researched Rhode Island law in order to determine what, if any, avenues for relief were available to the defendant. Their research led them to the Rhode Island statute governing post-conviction relief based on newly discovered evidence. Based on their research, the students drafted a petition for post-conviction relief on behalf of the defendant. Essentially, they argued that, had the DNA evidence been presented at trial, the jury's verdict would likely have been different. The students ultimately presented their findings to the New England Innocence Project ("NEIP") Case Review Committee and recommended that post-conviction litigation begin as soon as possible. The top three student briefs were submitted to NEIP. Since the students' presentation, NEIP assigned pro bono counsel, who is preparing to litigate the post-conviction claims.*

*Overwhelmingly, the students reported that their experiences in this class were the most challenging and rewarding of their law school careers. Their efforts allowed them to apply their newly-developed lawyering skills in a context that held meaning for them. More importantly, they gained an understanding of the criminal justice system, and how it can go awry. Finally, the students began to see themselves as playing a significant role in remedying the flaws in the justice system.*

## I. INTRODUCTION

The above scenario is just one example of how integrating wrongful convictions advocacy into the legal writing curriculum can help produce law graduates who have well-developed lawyering skills and a sense of their own professional identity. An upper-level writing course that partners with a wrongful convictions organization is a model that allows students to perform a valuable pro bono service, as well. The model can be replicated at other law schools, and is enormously rewarding to both students and faculty alike.

Given the success of the innocence movement since the dawn of forensic DNA testing in the late 1980s, the opportunity to expand live-client wrongful conviction advocacy in law school continues to grow. The Innocence Project,

and the various organizations that make up the Innocence Network, have been at the forefront of this movement, and since its inception, have been responsible for 292 DNA exonerations.<sup>3</sup> Experts agree that there are countless other convictions of the innocent which remain unproved.<sup>4</sup> The Innocence Project and the other innocence organizations in the United States have historically partnered with law schools in pursuing their objectives to identify and exonerate wrongfully convicted individuals while pursuing policy changes to reform the criminal justice system.<sup>5</sup> The law school clinic has evolved as the primary model of integrating wrongful conviction work into legal education.<sup>6</sup> While in many ways the clinical model provides a beneficial environment for students to become immersed in this area of law,<sup>7</sup> the model is expensive and, given the competing interests for clinical offerings, not likely to be adopted broadly.<sup>8</sup> At the same time, caseloads at the various innocence organizations are enormous, and many projects face a daunting backlog of cases.<sup>9</sup> These backlogs result in significant delays for inmates who are seeking relief.<sup>10</sup>

As the efforts of the Innocence Network have evolved into a full-blown national civil rights movement, the legal academy has simultaneously begun to examine the law school curriculum. In particular, the *MacCrate* and *Carnegie Reports* have emphasized the importance of providing law students with oppor-

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<sup>3</sup> See THE INNOCENCE PROJECT, <http://www.innocenceproject.org> (last visited July 7, 2012).

<sup>4</sup> See *id.* (commenting that while exact numbers of innocent people who are incarcerated are unknown, studies indicate that approximately 2.3-5.0% of the current prison population—between 40,000 and 100,000 individuals—is actually innocent).

<sup>5</sup> See *id.* (identifying the mission statement of the Innocence Project as “nothing less than to free the staggering numbers of innocent people who remain incarcerated and to bring substantive reform to the system responsible for their unjust imprisonment.”).

<sup>6</sup> Jan Stiglitz, Justin Brooks & Tara Shulman, *The Hurricane Meets the Paper Chase: Innocence Projects’ New Emerging Role in Clinical Legal Education*, 38 CAL. W. L. REV. 413, 421 (2002) (discussing recent proliferation of law school clinics following Cardozo’s Innocence Project model and noting the existence of fifteen such clinics as of 2002); see *infra* note 47 for a complete list of sixty-three innocence clinics at U.S. law schools as of 2012.

<sup>7</sup> Anthony G. Amsterdam, *Telling Stories and Stories About Them*, 1 CLINICAL L. REV. 9, 39 (1994) (“The heart of clinical teaching is immersion in immediate experience and reflection on it.”).

<sup>8</sup> Stiglitz et al., *supra* note 6, at 429-30 (discussing administrative expenses associated with clinic model).

<sup>9</sup> *Id.* at 425 (commenting that “[t]he obvious problem with an open intake system is the resulting flood of requests” and noting the one-year delay between application and initial case review at the California Innocence Project); see also THE INNOCENCE PROJECT, <http://www.innocenceproject.org> (last visited July 7, 2012) (noting that the Innocence Project receives over 3,000 inquiries per year and, at any given time, is “evaluating between 6,000 and 8,000 potential cases”).

<sup>10</sup> Stiglitz et al., *supra* note 6, at 425.

tunities to improve on their practical legal skills, while developing a professional identity.<sup>11</sup> These suggestions identify the shortcomings of the traditional law school curriculum, including overreliance on the casebook method, and promote a more harmonious marriage of theory and practice in legal education.<sup>12</sup>

This Article suggests that as law schools reexamine curricular choices in response to the *MacCrate* and *Carnegie Reports*, there are untapped opportunities to expand the teaching of wrongful convictions advocacy beyond the clinical model. This Article reviews the existing models of teaching wrongful convictions in the law school curriculum and proposes that the model developed at Suffolk University Law School, which partners an upper-level legal writing seminar with a local innocence organization, can be easily replicated at other law schools. Allowing more students to work on innocence cases will serve the objectives of the *Carnegie Report* by producing well-rounded students who have begun to develop their professional identities through experiential learning, specifically by working on live-client cases in the post-conviction context.<sup>13</sup> Additionally, in keeping with the recommendations of the *MacCrate Report*, this work will help students more fully realize their ethical obligation to public service within the legal profession.<sup>14</sup> Working on innocence cases also acts as a natural motivator for students, as the students understand that their work will potentially help free an innocent person from prison, and more broadly, help promote fairness in our criminal justice system.

Part I of this Article discusses the background of the innocence movement and the work of the Innocence Project and its progeny. Part II addresses the role that law schools have played in the innocence movement, and how the skill set, dedication, and enthusiasm of law students have helped fuel the success of the Innocence Network nationally. Part III discusses how the *MacCrate* and *Carnegie Reports*' recommendations for reform in legal education, and the focus on experiential learning in particular, support the development of further opportunities for students to work on innocence cases. Finally, Part IV proposes that an upper-level legal writing seminar which partners with a local innocence organization is an ideal alternative model for introducing law students to wrongful conviction work. This section discusses the *Advanced Legal Writing*:

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<sup>11</sup> SECTION ON LEGAL EDUC. & ADMISSIONS TO THE BAR, AMERICAN BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, 1992) [hereinafter *MacCrate Report*]; WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter *Carnegie Report*].

<sup>12</sup> See generally *Carnegie* and *MacCrate Reports*, *supra* note 11.

<sup>13</sup> See generally *Carnegie Report*, *supra* note 11.

<sup>14</sup> See generally *MacCrate Report*, *supra* note 11; See Nantiya Ruan, *Experiential Learning in the First-Year Curriculum: The Public-Interest Partnership*, 8 LEGAL COMM. & RHETORIC: JALWD 191, 195-96 (2011) (discussing the *MacCrate Report*'s focus on "professional self-development").

*Innocence Project Seminar* taught at Suffolk University Law School and describes how this model can be replicated at other law schools.

## II. BACKGROUND OF THE INNOCENCE MOVEMENT

The Innocence Project<sup>15</sup> was founded by Barry Scheck and Peter Neufeld in 1992 at Benjamin N. Cardozo School of Law at Yeshiva University in New York City.<sup>16</sup> Since then, a loose affiliation of legal organizations with similar missions has developed around the country to make up the Innocence Network.<sup>17</sup> While the scope of each project varies, the fundamental mission of these non-profit legal organizations is to provide representation for factually innocent men and women who have been wrongfully convicted of a serious crime.<sup>18</sup> Thus, the organizations which make up the Innocence Network differ from many legal services organizations which provide post-conviction legal representation more broadly to all prisoners seeking relief for substantive and procedural violations, which may or may not involve claims of factual innocence.<sup>19</sup>

Since its inception in 1992, the Innocence Project and the other Innocence Network organizations have achieved astonishing success, and have been responsible for using DNA technology to exonerate 292 factually innocent individuals who were wrongfully convicted of serious crimes.<sup>20</sup> Of these exonerations, seventeen had been sentenced to death and were serving time on death

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<sup>15</sup> For purposes of this article, the term “Innocence Project” is used to refer to the original project established in New York City in 1992.

<sup>16</sup> See THE INNOCENCE PROJECT, <http://www.innocenceproject.org> (last visited July 7, 2012) (discussing history of the Innocence Project as the founding member of the Innocence Network).

<sup>17</sup> See *id.* (listing local innocence organizations which are now housed at over 30 law schools around the country, and noting several projects affiliated with journalism schools, law firms, public defenders’ offices, or operating as independent legal organizations).

<sup>18</sup> Keith A. Findley, *The Pedagogy of Innocence: Reflections on the Role of Innocence Projects in Clinical Legal Education*, 13 CLINICAL L. REV. 231, 231-32 (2006) (discussing scope and mission of Innocence Projects nationally).

<sup>19</sup> *Id.* at 250-51 (noting that the standard scope of the Innocence Project representation does not include “cases in which a defendant might have a viable claim that his or her rights were violated, that the sentence imposed is excessive, or any other such legal claims that might challenge the fact or duration of confinement—unless, at least, those claims are coupled with a viable claim of actual innocence”); see also Hugo Adam Bedau, Michael L. Radelet & Constance E. Putnam, *Convicting the Innocent in Capital Cases: Criteria, Evidence, and Inference*, 52 DRAKE L. REV. 587, 598-600 (2004) (discussing the distinction between “legal” and “factual” innocence generally, and the Innocence Project’s mission’s focus on “factual innocence”); Findley, *supra* note 18, at 251 (“[M]ost innocence projects limit their mission to representing individuals with provable claims of actual innocence.”).

<sup>20</sup> See THE INNOCENCE PROJECT, <http://www.innocenceproject.org> (last visited July 7, 2012) (listing numbers of DNA exonerees).

row at the time they were cleared of their crimes.<sup>21</sup> Many more were serving life sentences or other lengthy periods of incarceration for crimes they did not commit.<sup>22</sup> Further, University of Michigan Law School and the Center on Wrongful Convictions at Northwestern University School of Law have recently developed the National Registry of Exonerations, an innocence archive which includes a comprehensive list of exonerations of serious crimes beginning in 1989.<sup>23</sup> This database was compiled and analyzed by researchers and has identified 927 exonerations as of July 2012.<sup>24</sup>

The founding mission of the Innocence Project was originally to use recently-developed DNA technology to help effectuate exonerations in criminal cases.<sup>25</sup> The types of cases which lend themselves to DNA-related exonerations tend to be those involving rape and murder charges.<sup>26</sup> This is true, in part, because these crimes involve close human contact by their very nature, and thus include forensic evidence such as blood, hair, and semen, which is amenable to DNA testing.<sup>27</sup>

While the missions of the individual organizations which make up the Innocence Network vary greatly, some have expanded their representation to non-DNA cases in recent years.<sup>28</sup> These non-DNA cases tend to be more complex and challenging, given that they frequently involve a dearth of irrefutable evidence establishing factual innocence. For example, even a recanting witness, who now states that the convicted prisoner was not, in fact, the perpetrator of the crime, can be challenged by a prosecutor or judge who doubts the witness's

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<sup>21</sup> See *id.* (listing numbers of DNA exonerations including those who had previously served time on death row).

<sup>22</sup> See *id.*

<sup>23</sup> See THE NATIONAL REGISTRY OF EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/about.aspx> (last visited July 26, 2012).

<sup>24</sup> See *id.* (listing 927 exonerations in the United States since 1989).

<sup>25</sup> See THE INNOCENCE PROJECT, <http://www.innocenceproject.org> (last visited July 7, 2012) (identifying the Innocence Project mission statement as “nothing less than to free the staggering numbers of innocent people who remain incarcerated and to bring substantive reform to the system responsible for their unjust imprisonment”); BRANDON L. GARRETT, CONVICTING THE INNOCENT: WHERE CRIMINAL PROSECUTIONS GO WRONG (2011) (chronicling and analyzing the first 200 DNA exonerations in the United States).

<sup>26</sup> GARRETT, *supra* note 25, at 12-13 (“If DNA is a ‘truth machine,’ it tells us about a sliver of very serious convictions, most for rape. . . .”); Bedau et al., *supra* note 19, at 601 (commenting that DNA evidence is helpful in limited context where physical evidence available for DNA testing is present at the crime scene).

<sup>27</sup> GARRETT, *supra* note 25, at 5-6 (noting that 68% of the first 250 DNA exonerations involved rape convictions).

<sup>28</sup> See THE INNOCENCE PROJECT, <http://www.innocenceproject.org> (last visited July 7, 2012) (noting that of the members of the Innocence Network from around the world, “[t]he organizations vary in size, scope and criteria for case acceptance, but all coordinate to share information and expertise.”).

credibility.<sup>29</sup>

The pioneering work of the Innocence Project and other Innocence Network members, and its impact on the criminal justice system, cannot be overstated. Indeed, this work has dramatically altered public perception of the American criminal justice system, once thought to be essentially fool-proof and a model for the rest of the world.<sup>30</sup> In addition to the impact on the hundreds of prisoners who have been freed from wrongful imprisonment—along with their family and friends who have suffered with them—the organization has been responsible for countless legal reforms in the criminal justice system as well.<sup>31</sup> For example, the members of the Innocence Network have been instrumental in promoting the enactment of DNA access laws in virtually every state in the country.<sup>32</sup> Additionally, moratoria on the death penalty in states such as Illinois are the direct result of the concrete results of Innocence Network exonerations.<sup>33</sup> Particularly, the exoneration of death row inmates has undermined confidence in our jury trial system and contributed to a collective understanding that the innocent can be sentenced to death, and potentially executed. Finally, the prominent role of erroneous eye-witness identification in wrongful convictions has led to sweeping reforms in law enforcement regarding how police identification procedures are conducted.<sup>34</sup> These are just a few of the reforms in the justice system which the innocence movement has helped to bring about.

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<sup>29</sup> Daniel S. Medwed, *Actual Innocents: Consideration in Selecting Cases for a New Innocence Project*, 81 NEB. L. REV. 1097, 1108 (2003) (“[W]here there is no scientific proof of innocence, prosecutors and judges could conceivably be even more skeptical of claims than they were in the past.”).

<sup>30</sup> GARRETT, *supra* note 25, at 5-6 (commenting that before the dawn of DNA testing, “[m]any doubted that wrongful conviction could occur,” and citing to Judge Learned Hand’s famous characterization of an “innocent man convicted” as an “unreal dream”).

<sup>31</sup> See THE INNOCENCE PROJECT, <http://www.innocenceproject.org> (last visited July 7, 2012) (highlighting the role of the Innocence Project in developing model legislation which has since been adopted by a significant number of states, in areas such as DNA evidence preservation and access, recording of interrogations, and eyewitness identification reform); Findley, *supra* note 18, at 232 (noting the role of innocence organizations in bringing about “reforms needed to minimize the risks of convicting the innocent”).

<sup>32</sup> As of July 2012, Oklahoma remains the only state without a DNA access law.

<sup>33</sup> Barbara J. Hayler, *Moratorium and Reform: Illinois’s Efforts To Make the Death Penalty Process “Fair, Just, and Accurate,”* 29 JUST. SYS. J. 423, 428 (2008) (“In January 2000, Illinois governor George Ryan declared an open-ended moratorium on executions in Illinois, the first full moratorium on executions in the United States.”).

<sup>34</sup> See Comment, *Evidence—Eyewitness Identifications—New Jersey Supreme Court Uses Psychological Research to Update Standards for Admissibility of Out-of-Court Identifications—State v. Henderson*, 27 A.3d 872 (N.J. 2011), 125 HARV. L. REV. 1514, 1516 (Apr. 2012) (discussing *State v. Henderson*, where the New Jersey Supreme Court revised the test for admissibility of out-of-court identifications “to better reflect the current state of science and to generally heighten courts’ scrutiny of eyewitness identifications”).

### III. THE TRADITIONAL ROLE OF LAW SCHOOLS IN THE INNOCENCE MOVEMENT

The dramatic success of the Innocence Network organizations nationally can be attributed, in part, to the participation of law students. The symbiotic nature of this relationship is apparent. Post-conviction work is undoubtedly time-consuming and complex. Innocence organizations around the country gain valuable “man power” by relying on law students for case review, fact investigation, and legal research and writing. These organizations benefit from the energy and enthusiasm which students bring to the work as well. Law students, for their part, are able to use their new legal training in a live-client context to help pursue the cause of justice. It is not surprising that students are naturally drawn to the compelling nature of innocence cases.<sup>35</sup> Regardless of political leanings or personal beliefs, it is human nature to be outraged by the notion that our criminal justice system is capable of convicting the innocent.<sup>36</sup> More broadly, students who work on these cases begin to understand the flawed nature of our criminal justice system, and more importantly, the students use their newly-developed legal skills to further the cause of justice.<sup>37</sup> Thus, the nature of the work is naturally motivating to law students.<sup>38</sup>

#### A. *The Clinical Model*

By far, the most common model for incorporating innocence work into the law school curriculum is the clinical model.<sup>39</sup> Under this model, students work on live-client cases while under the supervision of law school faculty.<sup>40</sup> Some of the most widely-touted benefits of a clinical experience in law school are the opportunity to become immersed in the subject matter,<sup>41</sup> to learn to work col-

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<sup>35</sup> Findley, *supra* note 18, at 234 (“One of the tremendous virtues of innocence projects is that the dominant mission—to free the innocent—is one that engenders passionate commitment by clinical faculty, students and volunteers alike.”).

<sup>36</sup> *Id.* (“The specter of a wrongful conviction and imprisonment or execution of an innocent person is . . . abhorrent . . .”).

<sup>37</sup> *Id.* at 255 (“[S]tudents . . . recognize the potential for using their legal skills to challenge injustice, both by assisting individuals who have been wrongly convicted, and by working to create new and better laws and institutions.”).

<sup>38</sup> *Id.* at 234 (“[T]he possibility of helping to exonerate one so wronged by the state is so dramatic, that energy and attention naturally focus primarily on the client service aspect of the work.”).

<sup>39</sup> Stiglitz et al., *supra* note 6, at 421 (discussing recent proliferation of law school clinics following Cardozo’s Innocence Project model and noting existence of fifteen such clinics as of 2002); *see infra* note 47, for a complete list of sixty-three innocence clinics at U.S. law schools as of 2012.

<sup>40</sup> *See* Stiglitz et al., *supra* note 6, at 415-20.

<sup>41</sup> Amsterdam, *supra* note 7, at 39 (“The heart of clinical teaching is immersion in immediate experience and reflection on it.”).

laboratively with other students,<sup>42</sup> and to gain practical experience in a specified legal discipline. In the context of wrongful conviction work, the clinical model is desirable for several reasons.

First, clinics offer an intensive, long-term immersion into the area of wrongful convictions law. For example, while these clinics vary by law school, many innocence clinics are two semesters long, and offer up to ten credit hours.<sup>43</sup> Some clinics offer summer “boot camp” training sessions before the clinic begins as well, and typically include a classroom component focusing on the legal issues which give rise to wrongful convictions, the procedural avenues of relief available to the wrongly convicted, and ethical issues involved in handling post-conviction cases.<sup>44</sup> This model allows students a sustained period of time to adequately review the materials in each of their assigned cases while developing a more nuanced understanding of the applicable law.

The first law school clinic relating to the Innocence Project began in 1992 at Benjamin N. Cardozo School of Law at Yeshiva University in New York.<sup>45</sup> As of 2002, there were approximately sixteen Innocence Project clinics in U.S. law schools.<sup>46</sup> However, in the last ten years, the number of such clinics has nearly quadrupled, with sixty-three law school clinics around the country now handling cases involving post-conviction claims of actual innocence.<sup>47</sup> Of these

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<sup>42</sup> David F. Chavkin, *Matchmaker, Matchmaker: Student Collaboration in Clinical Programs*, 1 CLINICAL L. REV. 199, 204 (1994) (“[T]he major justification articulated for [student collaboration] . . . is that students will teach each other and learn from each other during the course of working together on cases—that two heads will be better than one.”); Stiglitz et al., *supra* note 6, at 426 (emphasizing that an important component of clinical legal education is “learning the benefits and frustrations of working in teams and relying on the efforts of others”). Collaborative learning in law school has also been identified as a factor which increases professional satisfaction in practice. See, e.g., Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 VT. L. REV. 459, 460 (1993).

<sup>43</sup> See, e.g., Stiglitz et al., *supra* note 6, at 426 (discussing parameters of the California Innocence Project Clinic at California Western Law School).

<sup>44</sup> *Id.* at 421-22 (discussing the proliferation of law school clinics following Cardozo’s Innocence Project model, with 15 such clinics in existence as of the date of the article’s publication in 2002).

<sup>45</sup> *Id.* at 421 (discussing the Innocence Project law school clinic model in detail).

<sup>46</sup> *Id.* (discussing the differing models offered at various Innocence Projects clinics in American law schools).

<sup>47</sup> A review of online course catalog materials at the 223 accredited law schools within the United States as of June 2012 revealed that there are sixty-three law school clinics which focus on actual innocence claims in the post-conviction context. They are listed below alphabetically by state (note that this list is not limited to clinics which are part of the Innocence Network): Capital Defense Clinic (University of Alabama School of Law), Arizona Justice Project (Sandra Day O’Connor School of Law), Innocence Project Clinic (University of Arkansas School of Law), California Innocence Project (California Western School of Law), Capital Post-Conviction Defense Clinic (Golden Gate University School of Law), Pro-

sixty-three clinics, fifty of them focus exclusively on actual innocence claims in the post-conviction context, while the remaining thirteen clinics handle criminal appeals and post-conviction relief more broadly, and may handle cases re-

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ject for the Innocent (Loyola Law School Los Angeles), Northern California Innocence Project (Santa Clara University School of Law), Stanford Three Strikes Project (Stanford Law School), Innocence Project Clinic (Columbus School of Law), Innocence Project Clinic (Florida State University College of Law), Innocence Clinic (University of Miami School of Law), Capital Defenders Clinic (Georgia State University College of Law), Capital Assistance Project (University of Georgia School of Law), Hawaii Innocence Project (William S. Richardson School of Law), Illinois Innocence Project (University of Illinois College of Law), Life After Innocence Project (Loyola University Chicago School of Law), Wrongful Convictions Clinic (Northwestern University School of Law), The Exoneration Project (University of Chicago Law School), Wrongful Convictions Clinic (Indiana University School of Law), Postconviction Clinic (Valparaiso School of Law), Paul E. Wilson Project for Innocence and Post-Conviction Remedies (University of Kansas School of Law), Kentucky Innocence Project (Northern Kentucky University School of Law), Kentucky Innocence Project (University of Louisville School of Law), Kentucky Innocence Project (University of Kentucky School of Law), Innocence Project Clinic (University of Baltimore School of Law), Appellate and Post-Conviction Advocacy Clinic (University of Maryland School of Law), Innocence Project Clinic (Thomas M. Cooley School of Law), Appellate Advocacy Clinic (University of Detroit Mercy School of Law), Michigan Innocence Clinic (University of Michigan Law School), Innocence Clinic (Hamline University School of Law), Innocence Project (University of Minnesota Law School), Criminal Appeals Clinic (William Mitchell College of Law), Mississippi Innocence Project (University of Mississippi School of Law), Innocence Project Clinic (University of Missouri School of Law), Midwestern Innocence Project Clinic (Kansas City School of Law), Innocence Project (University of Montana School of Law), Rocky Mountain Innocence Center Clinic (William S. Boyd School of Law), Appellate Defender Program (University of New Hampshire School of Law), Innocence Project (Benjamin N. Cardozo School of Law), Brooklyn Law School Innocence Clinic/Exoneration Initiative (Brooklyn Law School), Innocence Clinic (Cornell Law School), Criminal Appellate Defender Clinic (New York University School of Law), Post-Conviction Project (Pace University School of Law), North Carolina Center on Actual Innocence (Charlotte School of Law), Duke Law Innocence Project (Duke University School of Law), Innocence and Justice Clinic (Wake Forest University School of Law), Ohio Innocence Project (University of Cincinnati College of Law), Oklahoma Innocence Project (Oklahoma City University School of Law), Pennsylvania Innocence Project (Earle Mack School of Law), The Post-Conviction DNA Project (Duquesne University School of Law), Pennsylvania Innocence Project (Beasley School of Law), Pennsylvania Innocence Project (Villanova University School of Law), Innocence/Wrongful Convictions Clinic (University of Tennessee College of Law), Innocence Project Clinic (Thurgood Marshall School of Law), Actual Innocence Clinic (University of Texas School of Law), Actual Innocence Clinic (South Texas College of Law), Rocky Mountain Innocence Center Clinic (S.J. Quinney College of Law), Innocence Project Clinic (William and Mary Law School), Institute of Actual Innocence (University of Richmond School of Law), Innocence Project (University of Virginia School of Law), Innocence Project Northwest Clinic (University of Washington School of Law), Innocence Project (West Virginia University College of Law), Innocence Project (University of Wisconsin Law School).

ardless of factual innocence.<sup>48</sup> In total, thirty-one states and the District of Columbia have at least one law school which houses a wrongful conviction clinic focusing on claims of actual innocence.<sup>49</sup> Notably, other states, such as Massachusetts, have a local innocence organization which may partner with law schools in the area, but is not housed at a law school.<sup>50</sup> For example, the New England Innocence Project (“NEIP”) has historically been housed at a law firm in Boston, and was housed at Goodwin Procter as of 2012.<sup>51</sup>

Innocence clinics around the country perform a host of tasks relating to the investigation and litigation of post-conviction claims of actual innocence.<sup>52</sup> For example, students participating in these clinics review case files for prisoners who have applied to the innocence organization for legal services.<sup>53</sup> This entails reading transcripts of an array of court proceedings including trial, grand jury proceedings, and pretrial motions.<sup>54</sup> Additionally, this case review process involves reading police reports, medical and other scientific reports, and reviewing photographs, newspaper articles, and other investigative materials.<sup>55</sup> Further, in the context of a wrongful conviction clinic, students may be responsible for conducting follow-up investigation, including locating and interview-

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<sup>48</sup> Capital Defense Clinic (University of Alabama School of Law), Capital Post-Conviction Defense Clinic (Golden Gate University School of Law), Capital Defenders Clinic (Georgia State University College of Law), Capital Assistance Project (University of Georgia School of Law), Postconviction Clinic (Valparaiso School of Law), Appellate and Post-Conviction Advocacy Clinic (University of Maryland School of Law), Appellate Advocacy Clinic (University of Detroit Mercy School of Law), Criminal Appeals Clinic (William Mitchell College of Law), Appellate Defender Program (University of New Hampshire School of Law), Criminal Appellate Defender Clinic (New York University School of Law), Post-Conviction Project (Pace University School of Law), The Post-Conviction DNA Project (Duquesne University School of Law), Innocence/Wrongful Convictions Clinic (University of Tennessee College of Law).

<sup>49</sup> The following states have at least one law school which houses an innocence clinic: Alabama, Arizona, Arkansas, California, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin.

<sup>50</sup> See NEW ENGLAND INNOCENCE PROJECT, <http://www.newenglandinnocence.org> (last visited Sept. 27, 2012).

<sup>51</sup> *Id.* Although not directly affiliated with Goodwin Procter, NEIP was housed in the firm’s soffice space, and the firm donated overhead such as office supplies and staff.

<sup>52</sup> See, e.g., Findley, *supra* note 18, at 232-35 (noting that students participating in Innocence Project clinics may be involved in “case screening,” “extensive fact investigation,” and other types of preparation for post-conviction litigation).

<sup>53</sup> *Id.* at 236.

<sup>54</sup> Medwed, *supra* note 29, at 1122 (“Reviewing the trial transcripts, police reports, and appellate briefs . . . provides insight into the legal and factual issues involved and may add to the list of people with whom members of the project wish to speak.”).

<sup>55</sup> *Id.*

ing witnesses, and determining whether physical evidence still exists from the case.<sup>56</sup> Additionally, under some models, the students prepare to litigate claims of post-conviction relief by drafting memoranda and preparing witnesses to testify.<sup>57</sup> In the process of completing these tasks, students also may be responsible for meeting and corresponding with the client, and his or her family, to communicate status updates on the case, and to obtain necessary information. They may also contact trial or appellate counsel when necessary.

Without a doubt, innocence clinics pose challenges to both the faculty who operate and administer them and participating students.<sup>58</sup> And indeed, over the years, as the number of innocence clinics has proliferated in American law schools, a debate has emerged among clinical teachers regarding the appropriate role of students involved in these complex cases.<sup>59</sup> Professor Keith Findley, former Director of the Wisconsin Innocence Project, argues that allowing students full control of post-conviction innocence cases enriches the educational experience of the students, while effectively serving the interests of the clients.<sup>60</sup> Specifically, Findley supports a model in which students are involved in the initial case screening process all the way through the ultimate representation of the client in the post-conviction litigation, if applicable.<sup>61</sup>

By contrast, Professor Daniel Medwed, formerly of the Rocky Mountain Innocence Center, argues in favor of a more limited student role.<sup>62</sup> In particular, Medwed suggests that given the size and complexity of post-conviction innocence cases, students can more effectively aid in the case screening or case review process.<sup>63</sup> In this limited role, students are responsible for review of the entire case file in order to assess the client's claims of innocence, but are not involved in the subsequent litigation. In spite of this debate, the number of law school clinics involving wrongful conviction advocacy continues to increase.<sup>64</sup>

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<sup>56</sup> Medwed, *supra* note 29, at 1135-38.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 1128 ("Innocence cases . . . are among the most time-consuming and cumbersome matters to litigate, much less navigate politically, and their inherent unpredictability makes it difficult for supervisors to cede control of case strategy and to foresee what skills a student might glean from working on them.").

<sup>59</sup> *See, e.g.*, Findley, *supra* note 18, at 234-36 (discussing Medwed's argument that post-conviction innocence cases are unmanageable for law students, and that the student role in innocence clinics should be limited to "case screenings").

<sup>60</sup> *Id.* at 236 (arguing that allowing students to gain "ownership" of their case, with proper supervision, effectively serves the needs of the client in post-conviction innocence cases).

<sup>61</sup> *Id.*

<sup>62</sup> Medwed, *supra* note 29, at 1141-42 (discussing the pedagogical value of limiting students' role in law school innocence clinic primarily to case review process rather than allowing them to handle all aspects of post-conviction litigation).

<sup>63</sup> *Id.*

<sup>64</sup> *See supra* note 47 for complete list of sixty-three law school clinics relating to Innocence Project work.

Students who are fortunate enough to participate in these clinics relay overwhelmingly positive learning experiences.<sup>65</sup> While some students participate in clinical work relating to the limited “case review” role, and others are involved in more expansive client representation including client interviews, witness investigation, and sometimes actual litigation of post-conviction claims, the clinical model is a beneficial framework for exposing students to important social justice work, and can be a transformative experience for law students.<sup>66</sup>

B. *Other Wrongful Convictions Courses with an Optional Clinical Component*

As an alternative to the expansive clinic model discussed above, other law schools offer a hybrid wrongful conviction seminar with an optional clinical component.<sup>67</sup> Under this model, all participating students are enrolled in the wrongful convictions seminar. Additionally, students participating in the optional clinical component are assigned to a case by a local innocence organization, individually, or in teams of two or three, and are responsible for the “case review”. . In this capacity, the students assess prisoners’ claims of innocence and available legal avenues, and they ultimately recommend a course of action to the local innocence organization. This hybrid model differs from the more comprehensive clinic model in that the students’ participation is necessarily more limited. Under this model, each student typically works on a single case.

Notably, the “student review” process, which is the focus of the hybrid seminar-optional clinic approach, typically does not involve activities such as meeting with the client-prisoner or conducting witness investigation. These activities are reserved for pro bono counsel, if the case ultimately moves forward following the “student review” process, and an attorney is assigned to the case. Similarly, the students are not typically involved in litigating any post-conviction issues which are identified as viable. Thus, under this model, the students may not get the breadth of experience involved in the comprehensive clinic model.

However, students participating in the hybrid model often have the added

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<sup>65</sup> Medwed, *supra* note 29, at 1135 (“Merely participating in an innocence project and striving toward the exoneration of a wrongfully convicted prisoner has a certain intrinsic value: a chance for a student to associate herself with a socially desirable objective and, accordingly, derive some personal fulfillment from that association.”).

<sup>66</sup> See *Carnegie Report*, *supra* note 11, at 138-39 (recognizing that student perception of a pro bono experience depends greatly on the overall culture of the law school and the degree of institutional support for the program, but noting that “a good pro bono experience can strongly influence a student’s future involvement in public service and even become a highlight of the law school experience”).

<sup>67</sup> For example, at New England School of Law, Professor David Siegel teaches a *Wrongful Convictions Seminar* course with an optional clinical component. Professor Stanley Fisher has taught a similar course, *Wrongful Convictions and the U.S. Criminal Justice System*, at Boston University School of Law for the last ten years.

benefit of participating in a final presentation to the local innocence organization board or case review committee. The students must first write a case review memorandum which summarizes the facts of the case, identifies the relevant factual and legal issues, and assesses the client's claims of innocence. Ultimately, through the memorandum and oral presentation, students recommend what action the organization should take—that is, whether the organization should accept or reject the prisoner's case. Given that the committee is typically comprised of prominent law professors and criminal defense lawyers in the area, this process gives students an opportunity to have a professional interaction with experienced legal scholars and practitioners.<sup>68</sup>

In addition to the clinic and optional-clinic models discussed above, many law schools around the country also offer wrongful convictions seminars.<sup>69</sup> While some of these courses are connected to clinics offered at the law school, many of them are free-standing courses. The most common model is a seminar which focuses on the causes of wrongful convictions. Many of these courses include a policy component where students discuss the possibility of reform of the criminal justice system in order to address some of the most common causes of wrongful convictions (such as eyewitness misidentification and false confessions).

#### IV. THE EVOLUTION OF LEGAL EDUCATION IN THE WAKE OF *MACCRATE* AND *CARNEGIE*

Over the last two decades, as the efforts of the Innocence Project and other members of the Innocence Network have evolved into a full-blown civil rights movement, recommendations for reform in legal education have gained prominence as well.<sup>70</sup> In particular, beginning in 1992 with a report published by the ABA Section of Legal Education and Admissions to the Bar entitled “Legal Education and Professional Development—An Educational Continuum” (“*MacCrate Report*”),<sup>71</sup> the legal academy began to place more emphasis on teaching students professionalism and the importance of promoting “justice, fairness, and morality”\* in the law school curriculum.<sup>72</sup> Subsequently, in 2007,

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<sup>68</sup> The approach described in this paragraph has been adopted by the New England Innocence Project (“NEIP”) in Boston, Massachusetts. NEIP works with professors and students at several area law schools, including Boston College Law School, Boston University School of Law, Harvard Law School, Northeastern University School of Law, and Suffolk University Law School (Suffolk model to be discussed in more detail below).

<sup>69</sup> As of June 2012, a comprehensive online search of course catalogs at accredited American law schools revealed that forty-four law schools offered courses relating to wrongful convictions or post-conviction relief.

<sup>70</sup> See, e.g., *Carnegie and MacCrate Reports*, *supra* note 11.

<sup>71</sup> *MacCrate Report*, *supra* note 11.

<sup>72</sup> See Nantiya Ruan, *Experiential Learning in the First-Year Curriculum: The Public-Interest Partnership*, 8 LEGAL COMM. & RHETORIC: JALWD 191, 195-96 (2011) (discussing the *MacCrate Report*'s “four ‘fundamental values’ that law schools must prepare students

additional recommendations regarding legal education reform were proffered in the *Carnegie Report on Educating Lawyers* ["*Carnegie Report*"].<sup>73</sup> The *Carnegie Report* focused on the need to incorporate additional "new learning initiatives" into the law school curriculum in order to support the development of students' "professional identit[ies]."<sup>74</sup> Together, the *MacCrate* and *Carnegie Reports* have made sweeping recommendations for reform of legal education, focusing primarily on a need to further emphasize skills in conjunction with doctrine.<sup>75</sup>

#### A. *Recommendations for the Reform of Legal Education under the MacCrate and Carnegie Reports*

Historically, American law schools have almost universally adopted the casebook method, developed by Harvard Law School Dean Christopher Columbus Langdell in the 1870s.<sup>76</sup> This approach to legal education primarily focuses on imparting students with "formal knowledge" at the expense of practical skills training.<sup>77</sup> Specifically, the Langdell pedagogy emphasizes theory and the accessibility of legal thinking in the judicial context.<sup>78</sup> During the 1960s and 1970s, although many law schools expanded their curricula to incorporate practical skills training, particularly in the context of clinical legal education, criticism arose among the ranks of legal academia that law schools were in danger of becoming "trade schools."<sup>79</sup> However, thanks in part to the *MacCrate* and *Carnegie Reports*, the traditional fear that law school prestige would diminish with more emphasis on skills has been replaced with a new understanding that teaching students practical skills should be at the heart of legal education.<sup>80</sup> In short, the legal academy has come to understand that law stu-

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for in entering the legal profession," including "competent representation and professional self-development").

<sup>73</sup> See *Carnegie Report*, *supra* note 11.

<sup>74</sup> Ruan, *supra* note 72, at 196-97 (noting the *Carnegie Report's* three pillars of professionalism: doctrine or substantive law, "development of professional skills," and ethical issues).

<sup>75</sup> See *Carnegie* and *MacCrate Reports*, *supra* note 11.

<sup>76</sup> *Carnegie Report*, *supra* note 11, at 4 ("Harvard's president, Charles Eliot, and . . . Langdell, were drawn to a somewhat idealized model of the German university, then at the apex of its worldwide influence. Their model was an institution largely shaped by academic intellectuals, not simply teachers but scholars and researchers.").

<sup>77</sup> *Id.* at 7 ("The triumph of formal knowledge and the stance of objectivity . . . extended to American law [teaching].").

<sup>78</sup> *Id.* at 11 ("At its best, law teaching in this mold makes accessible and intelligible to students the salient aspects of legal thinking in the judicial context.").

<sup>79</sup> *Id.* at 7 ("Thanks in part to the development of legal scholarship, the law schools of the leading universities no longer fear being dishonored as mere 'trade schools.'").

<sup>80</sup> *Id.* at 9 ("The mark of professional expertise is the ability to both act and think well in uncertain situations. . . . [S]tudents need access to forms of social interaction that embody

dents need exposure to legal practice while in law school in order to have a framework for their newly acquired knowledge.<sup>81</sup>

The authors of the *Carnegie Report* look critically at Langdell's Socratic casebook approach which has historically dominated legal education, and seek to find an alternative model, with the fundamental motive of "revitalizing legal preparation."<sup>82</sup> In particular, the *Carnegie Report* suggests that the legal academy as a whole should find ways to "combine the elements of professionalism—conceptual knowledge, skill, and moral discernment—into the capacity for judgment guided by a sense of professional responsibility."<sup>83</sup> The *Carnegie Report* goes on to recommend that the legal academy embrace the opportunity to fuse "formal knowledge" and "the experience of practice" in order to produce law graduates who are well-trained and practice-ready.<sup>84</sup> The authors begin with the premise that the development of analytical skills is fundamental to a meaningful legal education.<sup>85</sup> However, these skills are recognized as a means to an end, rather than the unfettered goal of legal education.<sup>86</sup> Further, the *Carnegie Report* acknowledges that doctrinal knowledge "often comes most fully alive for students when the power of legal analysis is manifest in the experience of legal practice."<sup>87</sup>

The authors of the *Carnegie Report* also emphasize the importance of encouraging pro bono work as a component of legal education,<sup>88</sup> and lament the decline in the once-prominent presence of legal services in the law school curriculum.<sup>89</sup> Indeed, the authors refer to pro bono legal service as "a vivid enact-

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the basic understanding, skill, and meaning that, together, make up the professional activity.").

<sup>81</sup> *Id.* at 8 ("Learning the law loses a key dimension when it fails to provide grounding in an understanding of legal practice from the inside.").

<sup>82</sup> *Id.* at 12, 19 ("Our . . . hope is that this volume will stimulate an interest in and support for better teaching and more effective programs of legal education wherever possible.").

<sup>83</sup> *Id.* at 12.

<sup>84</sup> *Id.* ("The framework we propose seeks to mediate between the claims for legal theory and the needs of practice, in order to do justice to the importance of both while responding to the demands of professional responsibility.").

<sup>85</sup> *Id.* at 13 ("Recognizing the priority of analytical thinking in preparing lawyers, we place formal knowledge as the first element within the integrative framework we propose for legal education.").

<sup>86</sup> *Id.* ("Legal analysis—the categorizing and grasping of particular matters in terms of general principles and doctrines—is prior to legal practice, but not because practice is simply an application of general principles. Legal doctrine does not apply itself; rather, legal analysis is the prior condition for practice because it supplies the essential background assumptions and rules for engaging with the world through the medium of the law.").

<sup>87</sup> *Id.* at 13-14.

<sup>88</sup> *Id.* at 138-39 (likening "the legal services provided free *pro bono publico*" to the obligation within the medical profession to provide "charity" health care services).

<sup>89</sup> *Id.* at 138 (noting the great "decay of this aspect of the law's profession of service").

ment of law's professional identity."<sup>90</sup> While recognizing the varying degrees to which legal services opportunities are offered or emphasized in law schools around the country, the authors praise the transformative role that these experiences can play in a student's legal education.<sup>91</sup>

In the wake of the *MacCrate* and *Carnegie Reports*, law school clinics and other legal laboratories for experiential learning have proliferated.<sup>92</sup> These clinical and other similar programs have allowed a greater number of students to work on live-client cases in different contexts, under the close supervision and guidance of a law school professor.<sup>93</sup> For example, in recent years, clinics focusing on specific areas of law such as intellectual property, housing, family, and juvenile policy have been added to the curricula in law schools around the country.<sup>94</sup>

The *MacCrate* and *Carnegie Reports* have resulted in further emphasis on the teaching of legal writing in the law school curriculum as well.<sup>95</sup> In particular, these recommendations for reform in legal education have focused on the need for more of the very kind of teaching which legal writing faculty are already doing: teaching students to use analytical skills to apply principles of doctrinal knowledge and thus develop practical lawyering skills.<sup>96</sup> For example, legal writing curricula are typically focused on developing fundamental

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<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 138-39 (recognizing that student perception of a pro bono experience depends greatly on the overall culture of the law school and the degree of institutional support for the program, but noting that "a good pro bono experience can strongly influence a student's future involvement in public service and even become a highlight of the law school experience")

<sup>92</sup> Margaret Moore Jackson & Daniel M. Schaffzin, *Preaching to the Trier: Why Judicial Understanding of Law School Clinics Is Essential to Continued Progress in Legal Education*, 17 CLINICAL L. REV. 515, 527-28 (2011) (commenting that "[w]hile clinical education did gain some traction as a means of delivering skills training in the years following the *MacCrate Report*, it has remained an optional add-on within the overall structure of individual institutions," and noting further expansion of clinical offerings in the wake of the *Carnegie Report*).

<sup>93</sup> Ruan, *supra* note 72, at 203.

<sup>94</sup> See April Land, "Lawyering Beyond" *Without Leaving Individual Clients Behind*, 18 CLINICAL L. REV. 47, 64 (2011) ("Thanks to the success of the clinical movement, the types of clinical programs operating across the nation defy simple categorization.").

<sup>95</sup> Kirsten A. Dauphinais, *Sea Change: The Seismic Shift in the Legal Profession and How Legal Writing Professors Will Keep Legal Education Afloat in its Wake*, 10 SEATTLE J. SOC. JUST. 49, 71 (2011) (noting that a "stable cadre of experts in the pedagogy of lawyering skills can implement the Carnegie apprenticeships" and emphasizing that Carnegie supports "connecting the three apprenticeships—the theoretical, the practical, and the ethical—through legal writing").

<sup>96</sup> *Id.* at 103 (noting that "[l]egal writing pedagogy is multi-modal by its very nature . . . [because] students must master legal analysis and communication, not just to complete the course, to succeed in law school") (internal quotations omitted).

lawyering skills, such as legal writing, research, and analysis, through frequent formative assessments throughout the course.<sup>97</sup>

B. *Integrating Social Justice into the Law School Curriculum to Satisfy the Mandates of the MacCrate and Carnegie Reports*

Incorporating a live-client social justice component into the law school curriculum is an ideal way to satisfy the mandates of the *MacCrate* and *Carnegie Reports* while also motivating students to do their best work.<sup>98</sup> This is particularly true when students are given the opportunity to work directly on post-conviction cases involving a claim of actual innocence.<sup>99</sup> First, in this context, students are able to develop their professional identities while working to correct a discrete injustice for a particular client. Thus, students see their role in the criminal justice system. Consequently, they begin to recognize the need for reform, and gain insight into “professionalism in the legal realm, and their professional obligation to perform public service.”<sup>100</sup> Specifically, students who are exposed to flaws in the criminal justice system—especially as it applies to an individual prisoner in whose case they are involved—begin to see how their newly-developed legal analytical skills can be harnessed in order to help right a wrong.

Additionally, in the context of a live-client social justice course, students are able to learn in an environment which effectively marries both skills and doctrine.<sup>101</sup> Specifically, students must apply substantive concepts relating to criminal procedure and the causes of wrongful conviction to the particular case before them.<sup>102</sup> For example, students will need to learn and develop the organizational skills necessary to review voluminous court documents and summarize relevant information in a meaningful way.<sup>103</sup> Students must also gain a

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<sup>97</sup> Beverly Petersen Jennison, *Saving the LRW Professor: Using Rubrics in the Teaching of Legal Writing to Assist in Grading Writing Assignments by Section and Provide More Effective Assessment in Less Time*, 80 UMKC L. REV. 353, 358 (2011) (“Assessments within the context of LRW programs are fairly common throughout programs in the United States, according to the *ABA Writing Programs*. . .”).

<sup>98</sup> Ruan, *supra* note 72, at 202-03 (commenting that, without a live-client social justice component, the “element of being responsible for forging a solution for a person or organization that is dependent on the student’s own legal skills is lacking and, ultimately, may engender apathy towards the problem. This lack of connection and realism can lead to students’ lack of motivation to do their best work for a problem they know was contrived by the professor and ultimately destined for the recycling bin.”).

<sup>99</sup> Medwed, *supra* note 29, at 1135.

<sup>100</sup> Ruan, *supra* note 72, at 203 (noting that when students use “canned” fact patterns in legal writing courses which are not connected to social justice issues, there is less opportunity for development of their professional identities).

<sup>101</sup> See *MacCrate Report*, *supra* note 11; *Carnegie Report*, *supra* note 11, at 13-14.

<sup>102</sup> Land, *supra* note 94, at 65.

<sup>103</sup> Medwed, *supra* note 29, at 1135.

sophisticated understanding of criminal procedure topics which directly relate to the most common causes of wrongful convictions. For example, students must understand the law relating to eye-witness identifications, coerced confessions, and ineffective assistance of counsel, to name a few, in order to be able to apply these concepts to a particular client.<sup>104</sup>

Further, students must hone their legal research skills in order to determine the legal avenues, if any, available to their client in the post-conviction context. Finally, students will have to formulate arguments as to how the applicable rules—and reasoning behind them—support the result sought, i.e., a new trial or outright dismissal of the case.<sup>105</sup> Perhaps most importantly, given that these cases necessarily involve an argument that the client is factually innocent, students are offered the transformative experience of arguing for justice and fairness.<sup>106</sup>

#### V. EXPANDING WRONGFUL CONVICTIONS ADVOCACY IN THE LAW SCHOOL CURRICULUM

While the clinical model provides students with a meaningful opportunity to work on innocence cases while in law school, the potential exists to incorporate wrongful conviction advocacy elsewhere in the law school curriculum as well. The clinical model is expensive to operate and thus, expanding clinical offerings to include innocence cases is not a feasible option for many law schools.<sup>107</sup> This is particularly so given the recent downturn in the economy, the legal job market, and law school enrollment generally.<sup>108</sup> Students who are interested in participating in a clinic are frequently turned away because there are more ap-

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<sup>104</sup> Richard J. Wolson & Aaron M. London, *The Structure, Operation, and Impact of Wrongful Conviction Inquiries: The Sophonow Inquiry as an Example of the Canadian Experience*, 52 DRAKE L. REV. 677, 678 (2004) (“The rising tide of postconviction DNA exonerations has shed a harsh and unflattering light on the staples of classic investigative tools and trial evidence: investigative and prosecutorial tunnel vision, eye-witness fallibility, hair and fibre junk science . . . induced false confessions.”).

<sup>105</sup> Jackson & Schaffzin, *supra* note 92, at 529 (discussing how clinical pedagogy encourages “the clinical student to ‘explore and to think about lawyer decision making’”).

<sup>106</sup> Medwed, *supra* note 29, at 1135 (“Merely participating in an innocence project and striving toward the exoneration of a wrongfully convicted prisoner has a certain intrinsic value: a chance for a student to associate herself with a socially desirable objective and, accordingly, derive some personal fulfillment from that association.”).

<sup>107</sup> Stiglitz et al., *supra* note 6, at 429-30 (listing some of the primary costs associated with Innocence Project clinics as faculty and staff salaries, administrative costs such as “mailing, copying, telephones, computers and software,” and office space); *see also* Ruan, *supra* note 60, at 203 (noting the “resource intensive” nature of clinical legal education and citing the typical eight-to-one student-teacher ratio).

<sup>108</sup> Dauphinais, *supra* note 95, at 49-55 (discussing the profound impact of the recent “Great Recession” on the legal profession).

plicants than available slots.<sup>109</sup> Additionally, innocence organizations around the country experience significant backlogs in their caseloads.<sup>110</sup> Thus, prisoner applicants face longer waits in their pursuits of justice. Presumably, innocent prisoners are wrongly incarcerated for longer periods of time because of these delays.

An upper-level legal writing course offers an ideal alternative model of bringing live-client wrongful conviction advocacy to the law school curriculum. A skills-oriented course which partners with an innocence organization directly promotes the educational goals proffered in the *MacCrate* and *Carnegie Reports*.<sup>111</sup> Specifically, this model exposes students to experiential learning in the context of evaluating claims of actual innocence as a basis for post-conviction relief. At the same time, students develop a more nuanced understanding of professionalism and ethics while working collaboratively with other students. Further, the students' work necessarily integrates both theory and practice, as they must apply relevant legal principles to their client's facts in order to articulate a persuasive argument in favor of relief. Finally, the students' efforts on behalf of a particular client help them identify flaws in the broader criminal justice system. This process allows students to develop their professional identities. Ideally students will recognize their individual roles in seeking justice for a particular person, and more broadly, helping to effectuate policy change to help reduce the number of wrongful convictions in the future.

Furthermore, in the context of an upper-level legal writing seminar where the focus is on development of analytical skills and persuasive techniques, the students have the benefit of comprehensive written and oral feedback on their assignments.<sup>112</sup> Indeed, legal writing faculty typically specialize in teaching these skills and providing students with meaningful guidance on their written work.<sup>113</sup> Scholarship on legal writing pedagogy has proliferated in recent decades, and dozens of conferences are held annually which focus on the pedagogy of research, writing and analytical skills.<sup>114</sup>

Further, the underlying premise that a potentially wrongfully convicted per-

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<sup>109</sup> See, e.g., Stiglitz et al., *supra* note 6, at 428 (describing the rigorous student selection process at California Western School of Law's Innocence Project Clinic).

<sup>110</sup> *Id.* at 425 (identifying the "obvious problem with an open intake system [in a law school Innocence Project clinic] . . . [as] the resulting flood of requests").

<sup>111</sup> Dauphinais, *supra* note 95, at 68-69 (discussing the goals advocated by the *MacCrate* and *Carnegie Reports*).

<sup>112</sup> *Id.* at 123 ("Legal writing professors are experts within the legal academy on assessment because we have been doing, particularly, formative assessment from the beginning . . .").

<sup>113</sup> *Id.* at 70-71 (commenting that the *Carnegie Report* "set[s] the stage for the rise of the legal writing professor" and noting that "[t]here are no others who can do the job [of effectively teaching the blend of theory and practice advocated in the *Carnegie Report*] as effectively").

<sup>114</sup> *Id.* at 86-91 (discussing the "enormous contributions" of legal writing scholars to the

son is serving time in prison for a crime he or she did not commit can ignite a passion in students and motivate them to do their best work, thus improve their lawyering skills.<sup>115</sup> Although post-conviction work is notoriously complex and laborious, students who understand that a person's life and liberty are at stake are likely to invest more time and effort in their work.

#### A. *Wrongful Convictions and the Advanced Legal Writing Seminar Model*

Since 2010, I have taught a course called *Advanced Legal Writing: Innocence Project Seminar* [hereinafter *Innocence Project Seminar*] at Suffolk Law School. This small seminar is unique in its approach, and offers students a live-client experience in an upper-level legal writing course. There are many legal writing courses offered in American law schools which incorporate a social justice component into the curriculum, but not in the context of wrongful convictions advocacy.<sup>116</sup> Partnering with a local innocence organization in an upper-level legal writing course is a model which could be easily replicated.<sup>117</sup> This section will focus on the parameters of the *Innocence Project Seminar*, with particular emphasis on the learning objectives and curricular components of the course, including the primary course assignments. Additionally, this section will discuss how this model offers benefits to students, faculty, and clients alike, while addressing some of the course's inherent challenges.

##### 1. Course Parameters

The Suffolk *Innocence Project Seminar* is offered in the fall semester. It is a three-credit course which is largely restricted to third-year students.<sup>118</sup> The course is a seminar limited to fifteen students. Limiting the course to a rela-

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legal profession, including the creation of a legal writing vocabulary in order to aid assessment of written analysis).

<sup>115</sup> See Ruan, *supra* note 72, at 210-11 (commenting that “[b]y having a client who will receive their research and advocacy documents, students understand more deeply that quality counts. Ensuring that all relevant legal authorities in their jurisdiction have been evaluated and making the best legal arguments are not just academic exercises but necessary to advise the partner fully and competently.”)

<sup>116</sup> *Id.* (discussing first-year legal writing public interest partnership at University of Denver Sturm College of Law). Similar courses are offered by the legal writing faculty at Seattle University and Rutgers Camden Law Schools.

<sup>117</sup> As of the writing of this article, a comprehensive online search of law school course offerings reveals that there is no comparable upper-level legal writing course which relies on live-client innocence cases taught in any other law school. However, Professor Carrie Sperling, Director of the Arizona Justice Project, teaches a skills course which focuses on written advocacy using wrongful conviction fact patterns at Arizona State University, Sandra Day O'Connor School of Law. Although this course historically has not involved a live-client component, the fact patterns are based on wrongful conviction cases from the Arizona Justice Project.

<sup>118</sup> Although not required, it is strongly recommended that students take Evidence and

tively small group allows the students to work more effectively in a collaborative way. The one-semester, three-credit model could easily be expanded, and it is challenging to fit all the necessary material into the allotted class time.<sup>119</sup>

Because the framework of the course is an advanced legal writing model, students who satisfactorily complete the course satisfy Suffolk's upper-level writing requirement.

This course is premised on a partnership with the New England Innocence Project ("NEIP"). Rather than operating a full-scale innocence clinic or wrongful conviction center at the law school, our partnership with NEIP is more limited. Specifically, NEIP assigns a single case for the course each fall for "student review." This process involves reviewing the case file in order to assess the client's claims of factual innocence, and ultimately, to make recommendations to NEIP as to the suggested course of action on the case.<sup>120</sup> For example, following student review, the students may recommend that NEIP accept the case and conduct further investigation, or immediately begin post-conviction litigation. Alternatively, if there is no viable claim of actual innocence, the students may recommend that NEIP not accept the case. In summary, students participating in this course will conduct the case review, assess the client's claims of innocence, and ultimately draft a brief in support of post-conviction relief. The students will also have the option, if selected, to participate in the NEIP Case Review Committee presentation.

The *Innocence Project Seminar* model can be beneficial to the partnering innocence organization as well. In particular, members of the Innocence Network typically carry substantial caseloads and frequently operate with significant backlogs of prisoner applications requiring review.<sup>121</sup> While many prisoner applications present cases which are appropriate for a law school clinic setting, some of the cases are far too large and complex to be handled by a single student, or small team of students, over the course of one semester, or

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Criminal Procedure as prerequisite courses. A basic fluency in these topics is helpful, if not necessary, to effectively reviewing trial transcripts.

<sup>119</sup> Indeed, students at Suffolk frequently elect to continue work on the assigned Innocence Project case even after the semester is complete. Last year, for example, four students stayed involved with the case after the course ended, receiving independent study credits to collect and review documents, and continue with investigative tasks which we did not have time to complete during the course of the semester.

<sup>120</sup> The New England Innocence Project employs a multi-stage review process for prisoner applications. First, NEIP staff conduct an initial intake screening of each application. If appropriate, the case file is assembled, and the case is then assigned for student review. The student review process can take a semester, a full year, or more. Finally, the student review process culminates with a presentation to the Case Review Committee (CRC). In preparation for this meeting, the students write a CRC memo and then orally present their recommendations to the Committee.

<sup>121</sup> See Stiglitz et al., *supra* note 6.

even one academic school year.<sup>122</sup> Many law school innocence clinics are modeled on an arrangement where each student reviews multiple cases in a single semester or year-long clinic.<sup>123</sup> Further, as discussed in Part II above, Professor Keith Findley has discussed the importance of “allowing students to see a case through from beginning to end” in the context of an innocence clinic, and has noted the challenges raised by “big cases” in the clinical context.<sup>124</sup>

By contrast, an upper-level legal writing seminar course which partners with an innocence organization provides a more effective framework for a comprehensive “student review” of a “big case.” In particular, this model differs from a clinic in that, rather than working individually or in pairs on a specific case, the entire group of seminar students works as a collaborative legal team, under the close supervision and guidance of the professor. A single case is assigned to the class as a whole. Thus, one of the benefits of partnering with a local innocence organization in the context of an upper-level writing course, rather than developing a full-blown law school clinic, is that much of the messy, administrative intake work is not involved.<sup>125</sup> While the assignment of a large, complex case to a group of 15 students can admittedly pose administrative and logistical challenges, planning and organization can help orchestrate the review process more efficiently.

## 2. Learning Objectives

Given that the framework of the course involves an upper-level legal writing curriculum in the context of live-client wrongful conviction advocacy, the course, not surprisingly, has dual goals. The first goal is that the students will gain an understanding of the law relating to wrongful convictions and post-conviction relief.<sup>126</sup> Second, students will develop the skills necessary to assess and prepare to litigate claims of innocence.<sup>127</sup> Specifically, students acquire a working knowledge of the substantive causes of wrongful convictions and develop the lawyering skills necessary to complete a comprehensive case review of a post-conviction case. These skills include critical reading, organization, time management and teamwork. Additionally, students develop their research

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<sup>122</sup> See Findley, *supra* note 18, at 265 (noting that “big cases can present problems for clinics,” in that they do not allow students to take “ownership” of the case).

<sup>123</sup> Stiglitz et al., *supra* note 6, at 425 (noting that Innocence Project Clinic at California Western Law School assigns each student to a caseload of approximately 25 cases).

<sup>124</sup> Findley, *supra* note 18, at 266 (discussing problem of big case assignments in innocence clinics generally, “because of their complexity and . . . high-stakes nature”).

<sup>125</sup> Stiglitz et al., *supra* note 6, at 429-30 (noting the need for a full-time administrator to handle phone calls, correspondence, and file maintenance).

<sup>126</sup> *Id.* at 430 (discussing the necessity of training students in background substantive and procedural post-conviction issues before students are ready to assess claims of innocence).

<sup>127</sup> *Id.* at 422 (noting that the course content of an Innocence Project clinic should incorporate both “substantive and skills topics necessary to work effectively on . . . cases [involving post-conviction claims of innocence]”).

and writing skills in the context of wrongful conviction advocacy—and for a cause that they come to care deeply about.<sup>128</sup> Finally, they hone their oral advocacy skills in preparing the class recommendations to the NEIP Case Review Committee.

a. *Acquiring a Knowledge of the Law of Wrongful Convictions*

The first component of the course involves a study and discussion of substantive issues giving rise to wrongful convictions. Using *Actual Innocence*<sup>129</sup> as our text, supplemented with news media accounts of recent exonerations and changes in the law, the students study the formative causes of wrongful convictions, including witness misidentification, coerced confessions, police misconduct, unreliable forensic evidence, ineffective assistance of counsel and “snitch” testimony.<sup>130</sup> The students write about and orally present on these topics in class. Class discussion focuses on narratives involving actual wrongful convictions which were caused by these issues, along with current news stories involving recent exonerations and related reforms in the criminal justice system.

Beginning the course with the study of the law of wrongful convictions helps lay the foundation for the case review work which the students are about to undertake. Many students come to the course with a strong belief that the American criminal justice system is a model for the rest of the world, and that wrongful convictions are extremely rare, if not virtually non-existent. These same students are shocked to read chapter upon chapter about how the system has undeniably gone awry in so many known cases—not to mention the countless cases of wrongful convictions that remain unproven. The exoneration narratives are gut-wrenching and compelling: a prosecutor who hid exculpatory evidence; a defendant with a low IQ who broke under the pressure of hours of relentless interrogation and confessed to a crime he did not commit; a witness who identified the defendant as the perpetrator with “100% certainty” at trial, but was later proven to be mistaken with DNA evidence.<sup>131</sup>

The primary assignment for this component of the course is a short research paper and presentation on the various causes of wrongful convictions. Each student is assigned to a wrongful conviction topic. These topics roughly correspond to the chapters of the *Actual Innocence* textbook, such as eyewitness identifications, coerced confessions, DNA evidence, and ineffective assistance of counsel. For this assignment, each student writes a short paper and leads a

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<sup>128</sup> *Id.* at 430 (emphasizing the amount of writing involved in an Innocence Project clinic, and noting in particular, that each student writes approximately 25 short memos).

<sup>129</sup> BARRY SCHECK, PETER NEUFELD & JIM DWYER, *ACTUAL INNOCENCE: WHEN JUSTICE GOES WRONG AND HOW TO MAKE IT RIGHT* (2003).

<sup>130</sup> GARRETT, *supra* note 25, at 12-13 (discussing the primary causes of wrongful convictions as “eyewitness identifications, confessions, forensics, and informant testimony”).

<sup>131</sup> See generally SCHECK ET AL., *supra* note 129.

class discussion on their assigned topic. The class is assigned to read the corresponding *Actual Innocence* chapters, which act as the catalyst for each student's paper and class discussion. Typically, the presenting student will also focus on a recent case or exoneration that illustrates their wrongful conviction topic, or a recent development in the law that attempts to address the issue.<sup>132</sup> Developing a basic understanding as to how so many innocent people can be erroneously convicted in our criminal justice system provides students with a lens through which to review their assigned case.

b. *Development of Lawyering Skills Required for a Comprehensive Case Review*

Once the students have studied some of the formative causes of wrongful convictions, they are ready to begin reviewing our assigned NEIP case. The students' primary objective is to read the available case materials, including trial transcripts, police and medical reports, and witness statements in order to assess the client's claim of actual innocence. This case review process provides students with the opportunity to exercise valuable legal practice skills which they may not have had the chance to develop while in law school, including critical reading,<sup>133</sup> organization, professionalism, time management, collaboration,<sup>134</sup> and oral presentation skills.

First, students gain experience reading and summarizing lengthy trial transcripts—a unique opportunity in law school. Third-year law students typically have experience reviewing various documents in preparation for writing an objective or persuasive memorandum in their first-year legal writing course. Additionally, while most law students have reviewed some legal documents by their third year, few have had the opportunity to read an entire trial transcript.

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<sup>132</sup> For example, in the fall of 2011, a student in my class presented on the topic of DNA evidence. At the time, Massachusetts was one of just two states with no DNA access law in place. The bill was in the committee process at the state legislature at the time. The students were able to discuss the importance of DNA access legislation, given the role that DNA has played in exonerating hundreds of wrongfully convicted individuals. Additionally, this topic was further brought to life by a guest speaker, Betty Ann Waters, on whom the movie *Conviction* is based. Ms. Waters shared her inspiring story with the class, detailing how she went back to college and law school as a single mother in order to exonerate her brother, who had been convicted of a Massachusetts murder he did not commit. Ms. Waters had recently testified before the state senate about the lengthy delays she encountered in attempting to access the physical evidence from her brother's case during his incarceration. Because Massachusetts did not have DNA access legislation at the time, her brother languished in prison for years waiting for the evidence to be found and tested.

<sup>133</sup> See Leah M. Chistenson, *Legal Reading and Success in Law School: The Reading Strategies of Law Students with Attention Deficit Disorder (ADD)*, 12 SCHOLAR 173, 178 (2010) (discussing importance of developing critical reading skills in law school).

<sup>134</sup> See Stiglitz et al., *supra* note 6, at 429-31 (discussing student development of organizational skills and opportunity to work collaboratively in innocence clinic setting).

Comprehensive review and analysis of a lengthy transcript teaches students to glean critical information from voluminous materials in order to support legal arguments on behalf of their clients.<sup>135</sup> Reading voluminous transcripts is a labor-intensive task, which also requires the development of time management skills

This comprehensive case review and subsequent factual investigation also give rise to an array of ethical issues. For example, students sign confidentiality agreements and treat their work on the assigned case as an attorney-client relationship,<sup>136</sup> although the students' role is limited to case review and they technically do not legally represent the client.<sup>137</sup> On occasion, students who work with, or have previously worked with, any of the prosecuting agencies involved in the assigned case have had to drop the class in light of the potential conflict of interest. The conflict of interest discussions which occur during the first week of class help students begin to understand how their work history can potentially give rise to an actual or perceived conflict which can impede their effective work on a case. These discussions can help students recognize the nuances of the ethical concerns surrounding conflict of interest norms in the legal profession.<sup>138</sup> Overall, the ethical issues raised in the post-conviction actual innocence cases provide students an opportunity to understand rules of ethics and professional norms in the context of practice.<sup>139</sup>

The case review component of the course also helps students develop an ability to collaborate effectively. The primary assignment requires students to work collaboratively to create a digest of the trial transcript, along with other relevant investigatory materials. This digest will later be used by the assigned pro bono attorney(s), who will litigate the case if it moves forward.<sup>140</sup> In addi-

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<sup>135</sup> Findley, *supra* note 18, at 243 ("Few experiences in the law teach students about the importance and role of facts as well as work with an innocence project.").

<sup>136</sup> *See id.* at 252 (discussing student "duty of confidentiality" issues posed in actual innocence post-conviction cases); *see also* Medwed, *supra* note 29, at 1125 (noting that, in the context of a law school clinic, "essentially any information procured during the questionnaire and preliminary investigation phases by an innocence project should be treated as confidential and only disclosed with the consent of the inmate").

<sup>137</sup> Instead, under the model employed by NEIP, the students enrolled in the course are involved in the "student review" process of the case, which culminates with a written memo and oral presentation to the NEIP Case Review Committee recommending a course of action on the case. Although the students draft a legal memorandum in support of the post-conviction relief sought, any litigation is conducted by assigned pro bono counsel. Thus, NEIP is not deemed to be legal counsel for the prisoner until the case is officially accepted (following the student review).

<sup>138</sup> Findley, *supra* note 18, at 251-52 (discussing conflict of interest issues arising in actual innocence post-conviction work generally).

<sup>139</sup> *Id.* at 253 (discussing Innocence Project work as providing "rich opportunities for teaching and learning about professional responsibility, in context").

<sup>140</sup> Whether or not pro bono counsel is ultimately assigned depends on the outcome of the

tion to the litigating attorneys who will ultimately rely on the students' work product, the students themselves must rely on each other's summaries when they begin to draft their arguments for post-conviction relief.

Specifically, each student is assigned to a small number of trial witnesses (or possibly one witness if the testimony is particularly long and complex). Each member of the class must read the entire trial transcript and create a digest for their assigned witness(es). The digest is created using an Excel spreadsheet format and includes the basic identifying information of each witness, along with the relevant information from their testimony and the page number(s) where the cited testimony appears in the transcript. Additionally, the students are responsible for reviewing any related documents—police reports, witness statements, medical records, etc.—relating to their assigned witness(es). The students also do follow-up research on each witness in order to determine where the witness is now, or what the witness has been doing since the trial.<sup>141</sup> Ultimately, the students write a summary of the relevant information and present it orally to the class. The class responds with questions and ideas about the relevance of the trial testimony to the client's claims of innocence, and the possible need for further investigation.

The students' work can be combined into a single document, using an online file-sharing program such as Google Docs or Dropbox.<sup>142</sup> The final product can then be forwarded to counsel assigned to litigate the case. This assignment allows the students to practice several critical lawyering skills in the context of a live-client setting, with the knowledge that their work is necessary and important to the litigation process. For example, students learn that summarizing twenty pages of testimony into ten pages of digest is not particularly helpful to the litigating attorney. Thus, the students begin to use their judgment in order to determine which details are important to include and which are not. Additionally, because the students present the summary of their witness's testimony to the class, they also have the opportunity to practice their oral communication

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Case Review Committee presentation and meeting. See *supra* note 132 for further discussion of this process.

<sup>141</sup> Many law students are remarkably adept at Internet research, and I have been amazed at the information the students have been able to uncover. For example, one student learned that the first responding officer in a bombing case had committed suicide within a year of testifying at trial. In another case, a student uncovered the significant criminal record of a neighborhood teenager who had originally been a suspect in the murder for which our client was convicted. Notably, the witness's criminal conduct involved residential burglaries and dog thefts, which was consistent with the *modus operandi* of the perpetrator of the charged murder. While I had assumed that a criminal record would only be accessible via a trip to the courthouse, or possibly through a *subpoena duces tecum*, the students stunned me by turning up the information in an online search lasting just a minute or two.

<sup>142</sup> Note that there are relevant confidentiality considerations with the use of either of these programs.

skills. They must be clear and must present this information in a logical way for the listeners.

c. *Development of Research, Writing and Analytical Skills*

Once the students have assessed the viability of the client's claims of actual innocence, they must also determine what legal avenues are available to the client in order to write a brief in support of post-conviction relief. This component of the course provides the framework for students to hone their legal research, writing, and analysis skills. Innocence cases may involve convictions which occurred ten or twenty years ago, and thus, claims are often time-barred. Waiver can also present an obstacle to relief.<sup>143</sup> Additionally, the restrictions on federal habeas corpus relief under the Anti-Terrorism and Effective Death Penalty Act (AEDPA) frequently limit the substantive claims a client may raise.<sup>144</sup> However, I advise students to focus on developing their arguments in support of post-conviction relief, and assure them that a legal avenue can be found if a viable claim of actual innocence exists.<sup>145</sup>

In researching the legal avenues for relief and developing persuasive arguments on behalf of the client, the students begin to apply their doctrinal knowledge using practical skills. In this way, as the *Carnegie Report* suggests, the substantive law "comes . . . alive" for students.<sup>146</sup> The students begin to use their knowledge of the law, along with their recently-developed lawyering skills, to help undo a discrete injustice, and more broadly, to promote fairness in our criminal justice system. In this way, the upper-level legal writing course is an ideal environment to promote the teachings of the *MacCrate* and *Carnegie Reports*. Students begin to understand how their knowledge relating to the causes of wrongful convictions, and their lawyering skills in the realm of research, writing, and analysis can operate in harmony to achieve results on behalf of the client.

The assignments for this final component of the course are the most heavily-weighted, as they act as the culmination of the students' efforts over the course of the semester. Specifically, the students complete a research trail and a brief in support of post-conviction relief. Collectively, these assignments are worth

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<sup>143</sup> Findley, *supra* note 18, at 243-44 (identifying waiver as an "omnipresent obstacle in postconviction litigation").

<sup>144</sup> Brandon Segal, *Habeas Corpus, Equitable Tolling, and AEDPA's Statute of Limitations: Why the Schlup v. Delo Gateway Standard for Claims of Actual Innocence Fails to Alleviate the Plight of Wrongfully Convicted Americans*, 31 U. HAW. L. REV. 225, 236 (2008) (discussing the injustice created by AEDPA's restrictions and arguing in favor of "an actual innocence exception to hear habeas petitions for prisoners with valid claims after AEDPA's one-year statute of limitations has passed").

<sup>145</sup> See Findley, *supra* note 18, at 243 (discussing the approach taken at the Wisconsin Innocence Project to focus on fact-finding to develop a "compelling claim of actual innocence" without regard to procedural bars).

<sup>146</sup> *Carnegie Report*, *supra* note 11, at 13.

over 50% of the students' final grade. First, the students submit a research trail to document the legal research they have conducted and the law that supports their argument for post-conviction relief. Typically this involves locating the applicable statute for post-conviction relief in the relevant jurisdiction, i.e., in the context of newly discovered evidence, and identifying what is required to secure relief. The students must then locate caselaw in the relevant jurisdiction which interprets this statute. This portion of the research may also use persuasive authority, including secondary sources and cases from other jurisdictions. For the research trail, the students cite the relevant authority and provide summaries to show the relevance of each statute or case.

Finally, the students draft a brief in support of post-conviction relief on behalf of the client. The specific parameters of the argument, and the potential avenues for relief, will of course vary depending on the assigned case. While the students are not directly involved in litigating these post-conviction claims as part of the course, they are advised that the top three briefs in the class will be submitted to the assigned pro bono counsel, who will ultimately litigate the case. This assignment is the culmination of all the other components of the course. Having first studied the various causes of wrongful convictions, and then reviewed the assigned case to determine the applicability of these issues to the client, the students are now ready to combine theory and practice in the interest of pursuing justice.

In drafting these often complex arguments for post-conviction relief, the students have the opportunity to develop a multitude of fundamental lawyering skills. On a basic level, the students develop written communication skills by articulating the legal arguments in a clear and persuasive way. This depends on the students' ability to understand the applicable law, explain it concisely to the reader, and apply it to the client's facts in order to articulate a compelling argument. These analytical skills, cited in the *Carnegie Report* as fundamental to legal education, require the students to use both facts and reasoning.<sup>147</sup> Specifically, the students must demonstrate in their arguments how the facts of the case support post-conviction relief in order to promote the interests of justice.

Post-conviction advocacy, particularly in the context of an actual innocence claim, provides an ideal platform for law students who are developing their legal writing skills. First, post-conviction cases provide students with rich and complex legal issues for their research and writing topics. For example, many actual innocence post-conviction claims relate to newly discovered evidence tending to exculpate the defendant. The law governing newly discovered evidence varies by jurisdiction but typically involves a statutory test with multiple

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<sup>147</sup> See Stephanie Roberts Hartung & Shailini Jandial George, *Promoting In-Depth Analysis: A Three-Part Approach to Teaching Analogical Reasoning to Novice Legal Writers*, 39 CUMB. L. REV. 685, 688 (2008) (discussing the importance of integrating both facts and reasoning in legal analysis).

elements.<sup>148</sup> Thus, the analysis is heavily fact-oriented and requires students to have a mastery of the facts in order to use them to support their argument. Further, the analysis lends itself to compelling policy arguments as well. Many of the newly discovered evidence and post-conviction relief statutes cite the “interests of justice” as their purpose.<sup>149</sup> The broad legislative intent behind these statutes provides fodder for students to develop nuanced legal and factual arguments, while also providing a natural segue to claims of actual innocence. These arguments are compelling by nature, which increases their persuasive value. Finally, these arguments will hinge on an appeal to fundamental fairness and the repulsive notion that our criminal justice system has operated to incarcerate an innocent person.

d. *Development of Oral Communication and Advocacy Skills*

Finally, while not required as part of the *Innocence Project Seminar*, students have the option to stay involved in the case during the spring semester.<sup>150</sup> This involvement can take a number of forms. First, two or three students from the class are selected to present our recommendations on the assigned case to the NEIP Case Review Committee [CRC]. In preparation for the CRC meeting, students draft a memorandum which summarizes the case facts, identifies the relevant factual and legal issues, and assesses the ultimate viability of the client’s claims of innocence. Specifically, the memo makes recommendations to NEIP regarding what action, if any, should be taken on the case. For example, based on their comprehensive review of the case materials, the students may recommend that NEIP assign counsel, conduct further investigation, or pursue judicial—or extrajudicial—avenues of relief. Typically two or three students who have written the top briefs in the class are chosen to draft the CRC memo. In preparation for their oral recommendation to the CRC committee, the students practice their oral presentation before their peers and anticipate questions likely to be raised by the committee.

Although this additional work on the case extends beyond the parameters of the course, the students can sometimes receive course credit or independent study hours for their work. Alternatively, when outstanding legal research and writing projects are necessary to complete the case, students may work as the professor’s research assistant for work-study or course credit hours once the course is complete.

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<sup>148</sup> See, e.g., MASS. R. CRIM. P. 30(b); R.I. GEN. LAWS 1956 § 10-9.1-1 (2012).

<sup>149</sup> See, e.g., MASS. R. CRIM. P. 30(b) (“The trial judge . . . may grant a new trial at any time if it appears that justice may not have been done.”).

<sup>150</sup> Over half the students in my Fall 2011 class opted to remain involved in the case after the course had concluded, either conducting further investigation, reviewing documents, or aiding in the drafting of the Case Review memorandum in preparation for the Case Review Committee presentation.

### 3. Course Benefits to Students, Faculty and Clients

Overall, the *Innocence Project Seminar* model offers significant benefits to students, faculty and clients alike. As discussed above, the students benefit from an opportunity to learn and develop critical lawyering skills, such as research and writing, in the context of a live-client setting. Students work with the knowledge that their efforts will be put to good use and specifically understand that the fruits of their labor will potentially benefit an individual who has suffered a profound injustice at the hands of our criminal justice system.<sup>151</sup> This not only allows students to feel good about their work, it also motivates them to devote additional time and effort to their often challenging and labor-intensive assignments. In short, students will become better writers because they care about the work they are doing.

These benefits closely parallel the recommendations of the *MacCrate* and *Carnegie Reports*, and their collective articulation of the legal education ideal. Specifically, in the parlance of the *MacCrate Report*, when students are directly involved in all stages of post-conviction litigation, including reviewing an entire case file, assessing claims of innocence, and preparing an argument in favor of relief, they learn “competent representation and professional self-development.”<sup>152</sup> They begin to see themselves as important actors who are playing a role in the larger criminal justice system. As suggested in the *Carnegie Report*, this process helps students begin to develop their “professional identities.”<sup>153</sup> Finally, incorporating live-client wrongful conviction advocacy into an upper-level legal writing seminar fully embodies the recommendations of the *Carnegie Report*, by fusing “formal knowledge” and “the experience of practice.”<sup>154</sup> Students more meaningfully learn and improve their analytical skills in this context because they know that their efforts are for a good cause.

Notably, this course offers significant personal and professional rewards for the professor as well. Inherent in the framework of this course is a slightly altered role for the professor. Rather than merely a lecturer or resident expert on the course subject matter, the professor takes on the role of group leader and facilitator. In this capacity, the professor helps direct the class discussion and provides any necessary guidance in assessing the claims of actual innocence and formulating the theory of the post-conviction case. Witnessing students become increasingly motivated to achieve justice for a wrongly convicted individual—and begin to help remedy the flaws in the legal system which convicted him—is particularly rewarding.

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<sup>151</sup> See Medwed, *supra* note 29, at 1135 (commenting that “merely participating in an innocence project and striving toward the exoneration of a wrongfully convicted prisoner has a certain intrinsic value: a chance for a student to associate herself with a socially desirable objective and, accordingly, derive some personal fulfillment from that association”).

<sup>152</sup> See *MacCrate Report*, *supra* note 11.

<sup>153</sup> *Carnegie Report*, *supra* note 11.

<sup>154</sup> *Id.*

In addition to the substantial benefits to students and faculty, incorporating innocence work into an upper-level legal writing course has a positive impact on clients as well. Prisoners who apply to an innocence organization often wait years to secure legal representation. Further, cases which are too big or complex for the standard wrongful conviction clinic model frequently languish even longer. Thus, expanding the pool of law faculty and students who are exposed to wrongful conviction advocacy can only operate to alleviate the existing backlog.

#### 4. Logistics and Administrative Considerations

While integrating live-client wrongful conviction advocacy into an upper-level legal writing course can be enormously rewarding to students and professor alike, this model presents inevitable challenges as well. In particular, the significant workload, the need to coordinate with an innocence organization, and the logistical considerations necessary to facilitate the review of voluminous records will all need to be recognized and addressed.

##### a. *Course Preparation*

Without a doubt, the additional workload involved in preparing for a live-client course is substantial.<sup>155</sup> First, the professor will need to develop and maintain a relationship with a local innocence organization. Once the relationship is established, the professor will be assigned a case each year for the course. The professor will have to carefully review the assigned case materials before the semester begins in order to develop the syllabus and curriculum. This typically involves reading all relevant trial transcripts, police reports and other investigatory materials, appellate documents, and any other materials relating to claims of innocence.

The issues raised by the particular assigned case should direct the course curriculum. For example, if a client's claim of innocence centers on a "junk science" issue, such as bite mark or arson evidence, the students' assigned reading can be geared toward understanding this topic and the emerging judicial trend toward viewing forensic evidence with more careful scrutiny. Similarly, if the assigned case involves "snitch" testimony or eye-witness identification, these subjects should be emphasized in class using additional reading assignments, discussions, or other media.<sup>156</sup> Guest speakers also can be an effective

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<sup>155</sup> See Ruan, *supra* note 72, at 213 ("Preparing and teaching . . . [a first-year legal writing] public-interest-partnership model takes significantly more time and effort than simulations. . . . [E]ach year the LRW professor must connect with a nonprofit organization and meet and communicate regularly with the partner to establish common goals and coordinate classroom appearances.").

<sup>156</sup> There is a plethora of investigative television journalism, including several *Frontline* or *60 Minutes* episodes, on topics relating to wrongful convictions. While students enjoy watching these programs, it is difficult to find enough class time for in-class viewing. An-

way to help bring some of these topics to life. Having an exoneree come speak to the class can bring the reality of the wrongful conviction epidemic home in a way that cannot be matched by reading material or a lecture.

b. *Case Assignment*

The case assignment is critical to the success of the class, and great care should be taken in fostering an apt assignment. For example, it is important that the case is “pre-screened” to ensure a viable claim of innocence. Given that the entire class is centered on a single case, it is critical that the claim of innocence have some life. This pre-screening process addresses many of the concerns voiced by legal scholars about innocence clinic case assignments as well.<sup>157</sup> Having a good working relationship and ongoing dialog with the partnering innocence organization is essential to ensuring a desirable case assignment.

c. *Student Access to Documents*

Additionally, because post-conviction cases involving claims of actual innocence tend to be comprised of complex and voluminous documentation, it is critical that students have adequate access to the relevant documents. In fact, it is not unusual for a post-conviction case file to contain thousands, if not tens of thousands, of pages. There are a number of ways to ensure that students have meaningful access to the necessary documents during the course of the semester. In some cases, it may be feasible to scan and post all documents on a secure course website.<sup>158</sup> Even if some or all of the relevant documents can be made available digitally, students benefit from having access to the materials in hard copy as well. In order to facilitate an environment where students have access to a voluminous case file—while also having the ability to work collaboratively and to discuss their issues as they arise—it is essential for the students to have a shared work space. Given that some of the materials will be

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other option is to assign the students to watch a particular episode outside of class in order to prepare for an in-class discussion.

<sup>157</sup> Medwed, *supra* note 29, at 1135-36 (“The pedagogical problem with many actual innocence claims is that it is difficult to anticipate at the outset whether any particular case may be worthwhile for students. For innocence projects, the educational component of the matters chosen for representation is often a secondary consideration; there is an element of ‘take what you can get’ with innocence claims and there are usually not enough meritorious claims within a project’s specific mandate to provide the luxury of picking them based on educational value.”).

<sup>158</sup> In one case assigned by NEIP for Suffolk’s *Innocence Project Seminar*, a previous advocate for the client had created a public-access website which included links to all documents relating to the case, including pre-trial and trial transcripts, police reports, newspaper articles, investigatory reports, and all other related materials. This arrangement allowed the students easy access to all relevant documents. However, the documents were essentially made public by virtue of their appearance on the website.

confidential, a locked room is ideal.<sup>159</sup>

## VI. CONCLUSION

Law students who are educated in the age of innocence should have the opportunity to be involved in live-client wrongful conviction advocacy. The *Innocence Project Seminar* model at Suffolk Law School is an ideal way to expand wrongful convictions teaching in the law school curriculum. This model allows students to apply their new lawyering skills in a context which holds meaning for them. Students learn first-hand the importance of critical reading skills and the benefits of working collaboratively as part of a legal team. Finally, playing a meaningful role in the pursuit of justice on behalf of a client allows students to recognize the flaws in the criminal justice system and to begin to see how, as lawyers, they can help to remedy them. From the professor's perspective, it is difficult to imagine a more satisfying role than to help guide students toward developing a passion for the practice of law. There is no better opportunity to do this than to engage students in the process of exonerating someone who has been wrongly convicted.

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<sup>159</sup> At Suffolk, students enrolled in the *Innocence Project Seminar* are typically given a key to a locked library conference room which houses all of the case documents.

