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A Legal Education Renaissance: A Practical Approach for the Twenty-first Century

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A LEGAL EDUCATION RENAISSANCE: A PRACTICAL APPROACH FOR THE TWENTY-FIRST CENTURY

John O. Sonsteng with Donna Ward, Colleen Bruce and
Michael Petersen

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Preface

This project began for me more than a decade ago. Two colleagues* and I talked about how little we knew about the practice of law when we graduated from law school. We agreed that as new lawyers, we did not understand what it meant to be a lawyer. My colleagues asked why no one was doing anything to improve the legal education system and challenged me to do something about it. The idea for this article was born.

For more than a century, law school teaching has relied on an education model that focuses on theory, providing minimal opportunity for students to learn and apply the practical problem-solving skills critical to becoming a competent lawyer in real world settings. Modern learning theory provides direction, and the tools are available for improving the legal education system to prepare students for the practice of law.

The perspectives and recommendations in this article are presented with the intent of encouraging discussion about the future of modern legal education.

This article has two sections. The first section provides an overview of the history and status of legal education. The second section suggests a model for change, and incorporates modern learning theory and teaching tools. It provides answers to criticism as it addresses curriculum, teaching, faculty, and costs.

With great hope for the future of the profession and the legal education system, I invite you to consider and address the ideas presented. It is not only possible, but essential, to create a Legal Education Renaissance.

John Sonsteng
St. Paul, Minnesota, 2007

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THE HISTORY AND STATUS OF LEGAL EDUCATION

I. THINKING OUTSIDE THE BOX AND RICHARD FOSBURY¹

Under a system governed by the Rule of Law,² it is a great

1. In the 1960s, Richard Fosbury went from a mediocre athlete to a world champion when he introduced the “Fosbury Flop.” In athletics, the challenge is to run faster, jump farther, and leap higher. In the high jump, like in every other athletic event, rules control. However, no rule existed that controlled how the athletes jumped over the bar. The high jumpers had gone over the bar face down until Fosbury thought outside the box and “Fosbury Flopped,” face up, revolutionizing the high jump and dramatically increasing the height to which the athletes could leap. The National Collegiate Athletic Association, Olympic Committee, or Fosbury had not changed the rules. Rather, Fosbury made a revolutionary change within the rules. Pat Bigold, *The Flop that Flabbergasted: Dick Fosbury's Unusual Method Won Him Olympic Gold and Revolutionized the High Jump*, HONOLULU STAR-BULLETIN, Feb. 13, 1999, available at <http://starbulletin.com/1999/02/13/sports/story2.html>; *The Fosbury Flop*, TIME, July 12, 1968, available at <http://www.time.com/time/magazine/article/0,9171,712152,00.html>.

2. Rule of Law is defined as:

1. A substantive legal principle . . . 2. [t]he supremacy of regular as opposed to arbitrary power . . . 3. [t]he doctrine that every person is subject to the ordinary law within the jurisdiction . . . 4. [t]he doctrine that general constitutional principles are the result of judicial decisions determining the rights of private individuals in the courts . . . 5. [l]oosely, a legal ruling; a ruling on a point of law . . .

BLACK'S LAW DICTIONARY 1359 (8th ed. 2004). See also Richard H. Fallon, Jr., “*The Rule of Law*” as a Concept in Constitutional Discourse, 97 COLUM. L. REV. 1, 1–2 (1997); James A. Noe, *Defining the Rule of Law*, EXPERIENCE, Spring 2005, at 5.

That ‘rule of law,’ then, which forms a fundamental principle of the constitution, has three meanings, or may be regarded from three different points of view.

It means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government . . . [A] man may with us be punished for a breach of law, but he can be punished for nothing else.

It means, again, equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts . . . [and] excludes the idea of any exemption of officials or others from the duty of obedience to the law . . . or the jurisdiction of the ordinary tribunals . . .

. . . [L]astly, [it] may be used as a formula for expressing . . . that with us the law of the constitution . . . are [sic] not the source but the consequence of the rights of individuals, as defined and enforced by the courts . . . thus the constitution is the result of the ordinary law of the land.

Thomas M. Riordan, Note & Comment, *Copping an Attitude: Rule of Law Lessons from the Rodney King Incident*, 27 LOY. L.A. L. REV. 675, 681–82 (1994) (quoting

responsibility to teach and to train students to be competent lawyers. It should be the commitment, and the promise of law schools, that upon graduation law students will be prepared to practice law.³ A February 2007 report of the Carnegie Foundation

GEOFFREY DE Q. WALKER, *THE RULE OF LAW: FOUNDATION OF CONSTITUTIONAL DEMOCRACY* 129 (1988) (quoting ALBERT V. DICEY, *INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION* 202–03 (10th ed. 1960)).

3. A comparison of a school's self-study and mission statements (required by the 2006–2007 American Bar Association Standards for Approval of Law Schools, Standards 202 & 203, *available at* <http://www.abanet.org/legaled/standards/2006-2007StandardsBookMaster.PDF> [hereinafter 2006–2007 ABA STANDARDS]) with its curriculum and teaching methods and a study of its graduates will demonstrate whether a law school prepares its students for the practice of law. A March 2007 search of sixty law school websites and online view books, bulletins, and brochures found that most provide general statements about the legal education the law school would provide. Below are examples of excerpted quotations:

- “As a professional school, the School of Law has a particular obligation to develop students who have the character, maturity, skills, and values needed to assume leadership positions in a profession charged with responsibility for maintaining and improving our nation's system of justice.” Baylor Law School Mission Statement, <http://law.baylor.edu/MissionStatement.htm> (last visited Nov. 8, 2007).
- “Your first-year experience at BU Law forms the core of your legal education, helping you ‘think like a lawyer’ by conveying not only the basics of legal doctrines and rules, but building the skills and confidence that allow you to frame, interpret and apply those rules effectively.” Boston University School of Law, J.D. Program Overview, Your First Year, <http://www.bu.edu/law/prospective/jd/first/index.html> (last visited Nov. 8, 2007).
- “The mission of the J. Reuben Clark Law School is to teach the laws of men in the light of the laws of God.” Brigham Young University, Mission & Goals of the J. Reuben Clark Law School, http://www.law2.byu.edu/mission_goals_learning_outcomes/missiongoals.php (last visited Nov. 20, 2007).
- “The Law School remains extraordinarily committed to training citizen lawyers, just as was true in Jefferson's day.” WILLIAM & MARY LAW SCHOOL 4 (2007), <http://www.wm.edu/law/prospective/documents/brochure07-08.pdf>.
- “Our aim should be to keep its instruction strong, its standards high, and so to send out a fair number of well-trained, large-minded, morally-based lawyers in the best sense.” Cornell Law School, Dean's Welcome, <http://www.lawschool.cornell.edu/about/welcome.cfm> (last visited Nov. 8, 2007).
- “Emory Law is dedicated to integrative, international, and interdisciplinary legal study. We are committed to promoting scholarly

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excellence in a diverse community. We educate leaders in society based on our common quest for knowledge, pursuit of public service, and advocacy for justice.” Emory Law School, Mission, <http://www.law.emory.edu/about/mission.html> (last visited Nov. 25, 2007).

- “Our students are prepared for success in a broad cross-section of careers in law.” George Mason University School of Law, A Message from Dean Daniel D. Polsby, <http://www.law.gmu.edu/geninfo/dean.html> (last visited Nov. 3, 2007).
- “It will reward you by exposing you to ideas that will captivate and inspire you, by teaching you skills and ways of thought that will serve as the foundation of your career” Harvard Law School, Dean’s Welcome, <http://www.law.harvard.edu/dean/> (last visited Nov. 3, 2007).
- “The primary component of the School of Law’s mission is to teach about the law and its role in society.” The University of Kansas School of Law Mission Statement, <http://www.law.ku.edu/mission.shtml> (last visited Nov. 3, 2007).
- You’ll see that our educational goals go well beyond providing future lawyers with the basic tools of the profession. Of course we are scrupulous about preparing our graduates to practice at the highest levels of competency; we want them to have a spectacular foundation on which to build an intellectually-demanding and satisfying career in whichever area of the law they ultimately choose.
New York University School of Law, Welcome from Dean Richard Revesz, <http://www.law.nyu.edu/prospective/welcome.html> (last visited Nov. 8, 2007).
- “Northwestern Law empowers students to meet the challenges of the complex, competitive, and ever-changing legal and business worlds.” Northwestern University School of Law, A Welcome Message from Dean David Van Zandt, <http://www.law.northwestern.edu/difference/> (last visited Nov. 8, 2007).
- Notre Dame Law School seeks to enroll and educate men and women who will be dedicated to attaining the highest levels of professional competence while also examining their practice of law within the context of their responsibilities as members of the bar, as participants in an active faith community, and as citizens of the world community.
University of Notre Dame Law School Admissions, <http://www.lawadmissions.nd.edu/admissions/index.html> (last visited Nov. 8, 2007).
- “Our faculty and staff are committed to our Law School’s mission—providing a first-rate legal education for tomorrow’s lawyers.” University

of Alabama Law School, <http://www.hg.org/law-schools-alabama.asp> (last visited Nov. 3, 2007).

- “Boalt Hall seeks to educate outstanding lawyers who will serve the legal needs of society.” University of California, Berkeley School of Law – Boalt Hall, Preparing to Study Law, <http://www.law.berkeley.edu/admissions/welcome/> (last visited Nov. 8, 2007).
- The mission of the School of Law of the University of California, Davis, is to be a nationally and internationally recognized leader in the development and dissemination of legal knowledge, as well as the training of students to become socially responsible lawyers committed to professional excellence and high ethical standards, and to provide significant public service through law reform and professional activities. Through its faculty, students, and graduates, the School of Law seeks to make substantial contributions toward solving the complex legal problems confronting our society.
University of California, Davis School of Law, Quick Facts, <http://www.law.ucdavis.edu/about/quickFacts.shtml> (last visited Nov. 8, 2007).
- “You will also come to see that talk is cheap; schools, like applicants, can market themselves with optimistic claims. Yet we will try hard to learn about you and your interests, and to let you see us for what we are, a great law school that is not like any other.” The University of Chicago Law School, Dean’s Message, <http://www.law.uchicago.edu/prospective/deanletter.html> (last visited Nov. 8, 2007).
- “The purpose of the academic program at the University of Cincinnati College of Law is to provide its graduates with the opportunity to equip themselves for effective and creative participation in the roles lawyers play in our society.” University of Cincinnati College of Law, Program Objectives, <http://www.law.uc.edu/academics/overview.shtml> (last visited Nov. 8, 2007).
- “Mission Statement: A law school dedicated to advancing human dignity, social welfare and justice through knowledge of the law.” University of Florida Levin College of Law, About UF Law, <http://www.law.ufl.edu/about/> (last visited Nov. 8, 2007).
- “Our mission is to train well-rounded, critical, and socially conscious individuals to become outstanding lawyers.” University of Illinois College of Law, College Profile, <http://www.law.uiuc.edu/prospective/profile.asp> (last visited Nov. 8, 2007).
- “Turning law students into exceptional lawyers is our first priority.” University of Maryland School of Law, A Message from Dean Karen Rothenberg, http://www.law.umaryland.edu/faculty/krothenberg/deans_message.asp (last visited Nov. 8, 2007).

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- “[T]o a degree rarely found at other law schools, the students sustain this stimulating intellectual environment while nurturing a wonderfully supportive, collegial, and open atmosphere.” University of Michigan Law School, Message From the Dean, <http://www.law.umich.edu/PROSPECTIVESTUDENTS/Pages/default.aspx> (last visited Nov. 8, 2007).
 - We ground students in the reality of the law: letter and spirit, theory and practice. Not only will you learn the functions and structures of legal rules and argument—you’ll learn how lawyers work, through honors programs, clinics, internships, and externships. . . . USC Law’s scholarly yet practical approach ensures that you gain the skills and perspective every lawyer needs to practice, enter public service, teach, or work in business.
University of Southern California Gould School of Law, The USC Law Curriculum, <http://law.usc.edu/academics/curriculum.cfm> (last visited Nov. 8, 2007).
 - “We expect you to have a full life. The best lawyers do.” UNIV. OF UTAH S.J. QUINNEY COLL. OF LAW, BULLETIN 20 (2006), http://www.law.utah.edu/_webfiles/prospective/Bulletin2006.pdf.
 - “Virginia has a national reputation for producing highly skilled lawyers with a healthy combination of legal acuity and personal balance.” University of Virginia School of Law, The Mission, <http://www.law.virginia.edu/html/about/about.htm> (last visited Nov. 8, 2007).
 - “The hallmark of Wisconsin Law School is its ‘law in action’ approach to teaching” University of Wisconsin Law School, Law in Action, <http://www.law.wisc.edu/law-in-action/index.html> (last visited Nov. 8, 2007).
 - “The skills of lawyers, including the skills of analyzing complex issues, asking the right questions, advocating for clients, and managing disputes and organizations, are best taught in a rigorous setting by first-rate faculty, in the company of outstanding classmates.” Vanderbilt University Law School, Why Vanderbilt Law School?, <http://law.vanderbilt.edu/about-the-school/deans-letter/index.aspx> (last visited Nov. 8, 2007).

Surveyed law schools include: American University Washington College of Law; Arizona State University Sandra Day O’Connor College of Law; Baylor University Law School; Boston College Law School; Boston University School of Law; Brooklyn Law School; Brigham Young University J. Reuben Clark Law School; Cardozo School of Law; Case Western Reserve University School of Law; College of William & Mary Marshall-Wythe School of Law; Columbia Law School; Cornell University Law School; Duke University Law School; Emory University School of Law; Florida State University College of Law; Fordham University School of Law; George Mason University School of Law; George Washington University Law School (D.C.); Georgetown University Law; Harvard University Law School; Indiana University School of Law–Bloomington; New York University School of

for the Advancement of Teaching⁴ corroborates the independent findings, conclusions, and recommendations of this article and earlier studies.⁵

The law school legal education system seems successful at a glance:

- The general law school curriculum is a significant source of training in eight of seventeen important legal

Law; Northwestern University School of Law; Ohio State University Moritz College of Law; Southern Methodist University Dedman School of Law; Stanford University School of Law; Temple University Beasley School of Law; Tulane University Law School; University of Alabama School of Law; University of Arizona James E. Rogers College of Law; University of California, Berkeley School of Law; University of California–Davis School of Law; University of California–Hastings College of the Law; University of California–Los Angeles School of Law; University of Chicago Law School; University of Cincinnati College of Law; University of Colorado at Boulder Law School; University of Connecticut School of Law; University of Florida Levin College of Law; University of Georgia School of Law; University of Illinois College of Law; University of Iowa College of Law; University of Kansas School of Law; University of Maryland School of Law; University of Michigan Law School; University of Minnesota Law School; University of North Carolina School of Law; University of Notre Dame Law School; University of Pennsylvania Law School; University of Southern California Law School; University of Texas at Austin School of Law; University of Utah S.J. Quinney College of Law; University of Virginia School of Law; University of Washington School of Law; University of Wisconsin Law School; Vanderbilt University Law School; Wake Forest University School of Law; Washington and Lee University School of Law; Washington University in St. Louis Law; and Yale University Law School [hereinafter Survey Schools].

4. Founded by Andrew Carnegie in 1905 and chartered in 1906 by an Act of Congress, The Carnegie Foundation for the Advancement of Teaching is an independent policy and research center whose charge is “to do and perform all things necessary to encourage, uphold, and dignify the profession of the teacher and the cause of higher education.” Carnegie Foundation for the Advancement of Teaching, About the Carnegie Foundation, <http://www.carnegiefoundation.org/about/index.asp> (last visited Nov 8, 2007) [hereinafter About the Carnegie Foundation]. See also WILLIAM M. SULLIVAN ET AL., THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 15–19 (2007).

5. AM. BAR ASS’N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereinafter MACCRATE REPORT]; AM. BAR ASS’N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS (1979) [hereinafter CRAMTON REPORT]; ALFRED Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW (1921) [hereinafter REED REPORT]; John Sonsteng & David Camarotto, *Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction*, 26 WM. MITCHELL L. REV. 327 (2000).

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practice skills: library legal research; knowledge of the substantive law; legal analysis and legal reasoning; sensitivity to professional ethical concerns; computer legal research; knowledge of procedural law, written communication; the ability to diagnose and plan for legal problems;⁶ and legal practice management training in technology, computers, and communication skills.⁷

- In increasing numbers, law graduates perceive themselves to be prepared upon graduation.⁸
- National standards implemented by the American Bar Association (ABA) ensure a consistent level of legal education.⁹
- State bar examinations ensure students have a basic competency in prescribed legal doctrines¹⁰ by standardizing testing.
- In the late 1970s and early 1980s, students began enrolling in law schools in record numbers.¹¹
- The number of minority students increased.¹²

6. *See infra* Table 4.

7. *See infra* Table 6.

8. *See infra* Table 2.

9. AM. BAR ASS'N, THE AMERICAN BAR ASSOCIATION LAW SCHOOL APPROVAL PROCESS, LEGAL EDUCATION AND ADMISSION TO THE BAR, (2007), <http://www.abanet.org/legaled/accreditation/abarole.html> (last visited Nov. 23, 2007).

10. *Id.*

11. OFFICIAL AMERICAN BAR ASSOCIATION GUIDE TO APPROVED LAW SCHOOLS 454 (Rick L. Morgan & Kurt Snyder eds., 2001).

12. "The percentage of African-American law students in the entering class was up in 2006, after declining the previous five years, but not much higher than it was in the mid 1990s. Some law schools still do not have a critical mass of under-represented minority students, even if they are permitted by law to use affirmative action in admissions." Nancy H. Rogers, *President's Message: Reassessing Our Roles in Light of Change*, AALS NEWS, Feb. 2007, at 3, available at <http://aals.org/documents/newsletterfebruary2007.pdf> (citation omitted); see also GITA Z. WILDER, LAW SCHOOL ADMISSIONS COUNCIL, THE ROAD TO LAW SCHOOL AND BEYOND: EXAMINING CHALLENGES TO RACIAL AND ETHNIC DIVERSITY IN THE LEGAL PROFESSION, RESEARCH REPORT 02-01, 3-4 (2003); Edward Iwata, *Legal Industry Still Lacking in Minorities*, USA TODAY, Sept. 9, 2004, at 3B, available at 2004 WLNR

- Women and men graduate from law school in equal numbers.¹³
- The number of older students is increasing,¹⁴ as is the number of students seeking a legal education to prepare for a second career.¹⁵
- Small classes have doubled or tripled in size and the law has become more specialized.¹⁶
- Law professors are talented, highly educated, successful, and ambitious.¹⁷
- Students are bright, educated, successful, motivated, and ambitious.¹⁸

6676736; *African American Matriculation Drops*, No. 2006-2 LSACREPORT (Law School Admissions Council, Newton, PA.), July 2006, at 4.

13. Seth Stern, *Traffic on the off-ramp: Women are still second-class citizens in the legal profession. What can be done about it?*, HARVARD LAW BULLETIN, Fall 2006; OFFICIAL AMERICAN BAR ASSOCIATION GUIDE TO APPROVED LAW SCHOOLS 454 (Rick L. Morgan & Kurt Snyder eds., 2001); see also Joe G. Baker, *The Influx of Women into Legal Professions: An Economic Analysis*, MONTHLY LAB. REV., Aug. 2002, available at <http://www.bls.gov/opub/mlr/2002/08/art2full.pdf>.

14. Bridget Heos, *Several Students Pursue Law as a Second Career at University of Missouri-Kansas City*, DAILY REC. (Kan. City, Mo.), Aug. 29, 2006, available at 2006 WLNR 15092708.

15. *Id.*

16. See generally N. William Hines, *Ten Major Changes in Legal Education Over the Past 25 Years*, AALS NEWS, Nov. 2005, at 3–4, available at http://www.aals.org/documents/aals_newsletter_nov05.pdf [hereinafter Hines, Part 2]. See, e.g., University of Oregon Law School, History, <http://www.law.uoregon.edu/prospective/history.php> (last visited Nov. 8, 2007).

17. Vernellia R. Randall, *Increasing Retention and Improving Performance: Practical Advice on Using Cooperative Learning in Law Schools*, 16 T.M. COOLEY L. REV. 201, 208 (1999) [hereinafter Randall, *Increasing Retention*]. See also Okechukwu Oko, *Laboring in the Vineyards of Equality: Promoting Diversity in Legal Education Through Affirmative Action*, 23 S.U. L. REV. 189, 206 (1996); Robert J. Borthwick & Jordan R. Schau, *Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors*, 25 U. MICH. J.L. REFORM 191, 206 tbl.7 (1991) (noting that almost sixty percent of the law faculty hired in the 1960s served on law review).

18. See generally Clare Dalton, *How It Was, How It Is*, 86 MICH. L. REV. 1346 (1988).

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- The system provides law professors the opportunity to conduct scholarly legal research.¹⁹
- The volume of publications produced by law faculty is significant.²⁰
- Law schools provide a substantial source of income to the universities with which they are associated.²¹

In spite of this evidence, a closer examination of the legal education system reveals that the legal education system does not:

- live up to its promise;²²
- meet the needs of today's students;²³
- equip its graduates with the skills to understand and thrive in the practice of law;²⁴

19. In 2005, law reviews published almost 5,000 articles, in addition to books, commentary, and articles in journals and other organizations. This was found by using a terms and connectors search of "SO(LAW LEGAL /5 SCHOOL COLLEGE UNIVERSITY) & DA(2005)" in the Westlaw Online JLR [Journals & Law Reviews] database. The SO [SOURCE] includes the publisher's name and copyright notice. This search retrieved 4613 documents in JLR and provides the most accurate information because it searches for the source of the article, not just the citation field.

20. *Id.*

21. During the legal education market of the 1920s, law schools experienced enormous increases in revenues, only to see much of the money siphoned away by their affiliated universities. Harry First, *Competition in the Legal Education Industry*, 53 N.Y.U. L. REV. 311, 341 n.173, 397 (1978). Rather than providing the law schools with secure financing, many universities treated the law schools as a source of funds for other programs. *See id.* at 397. The alliance with universities as funding mechanisms "backfired badly: universities consistently tapped the law schools." *Id.* "The degree of the university 'tax' on law schools' revenue remains an issue of concern in ABA-accreditation and AALS-membership inspections today." Andrew P. Morriss, *The Market for Legal Education & Freedom of Association: Why the "Solomon Amendment" Is Constitutional and Law Schools are not Expressive Associations*, 14 WM. & MARY BILL RTS. J. 415, 433 n.83 (2005).

22. *See* CRAMTON REPORT, *supra* note 5; MACCRATE REPORT, *supra* note 5; REED REPORT, *supra* note 5; Sonsteng & Camarotto, *supra* note 5; SULLIVAN ET AL., *supra* note 4.

23. *See* CRAMTON REPORT, *supra* note 5; MACCRATE REPORT, *supra* note 5; REED REPORT, *supra* note 5; Sonsteng & Camarotto, *supra* note 5; SULLIVAN ET AL., *supra* note 4.

24. *See* CRAMTON REPORT, *supra* note 5; MACCRATE REPORT, *supra* note 5; REED REPORT, *supra* note 5; Sonsteng & Camarotto, *supra* note 5; SULLIVAN ET AL., *supra*

- utilize modern teaching techniques;²⁵
- learn from criticism;²⁶ or
- follow recommendations for reform.²⁷

In addition, the legal education system does not provide a significant source of training in nine legal practice skill areas: (1) understanding and conducting litigation; (2) drafting legal documents; (3) oral communications; (4) negotiations; (5) fact gathering; (6) counseling; (7) organizing and managing legal work; (8) instilling others' confidence in the students; and (9) providing the ability to obtain and keep clients.²⁸ Nor does the legal education system provide training in eight important legal practice management skills areas: (1) project and time management; (2) efficiency, planning, resource allocation, and budgeting; (3) interpersonal communications and staff relations; (4) fee arrangements, pricing, and billing; (5) governance, decision-making, and long-range strategic planning; (6) marketing and client development; (7) capitalization and investment; or (8) human resources, hiring, and support staff.²⁹

Today's method of teaching law students is not a model of maturation and modernization;³⁰ it is older than the telephone,³¹ the game of basketball,³² blue jeans,³³ and Coca-Cola.³⁴ For more

note 4. See also Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?* 42 FORDHAM L. REV. 227 (1973).

25. See *infra* Part V.

26. See *infra* Part III.

27. See *infra* Part IV.

28. See *infra* Table 4.

29. See *infra* Table 6.

30. See *infra* Part II.

31. The telephone was invented in 1876. <http://www.loc.gov/exhibits/treasures/trr002.html> (last visited Dec. 2, 2007).

32. The game of basketball was purportedly invented in 1891. RON SMITH ET AL., *THE COMPLETE ENCYCLOPEDIA OF BASKETBALL* 12 (2002). The first public game was held in the spring of 1892. *Id.*

33. Denim blue jeans emerged in 1873, when Levi Strauss and Jacob Davis patented the idea of placing copper rivets on the stress points of work pants. http://www.levistrauss.com/Downloads/History_Levi_Strauss_Biography.pdf.

34. Coca-Cola was invented on May 8, 1886, in Georgia. http://www.thecoca-colacompany.com/heritage/chronicle_birth_refreshing_idea.html.

than one hundred years, the primary source of training in legal practice skills and management skills has been the lawyer's own experience, law-related work during law school, and observations of other lawyers. This training is not provided by the law school curriculum.³⁵ More than one hundred years ago lawyers received most of their training by themselves outside the classroom. They continue to do so today.³⁶

The criticisms of the legal education system began early and continue today. Before Theodore Dwight introduced Socratic dialogue to the law school classroom at Columbia Law School, and Harvard Law School Professor Christopher Langdell introduced the case method in the 1870s,³⁷ the apprentice system was criticized for its lack of legal theory and inherent inconsistencies.³⁸ When university-based law schools first emerged they amounted to "an undemanding, gentlemanly acculturation into the profession."³⁹ Langdell's legal education reforms received more than a decade of opposition before they were embraced and finally took hold.⁴⁰ Critics conclude the system has not evolved with the changing needs of law students and the profession.⁴¹ Law schools continue to use this system despite its outdatedness, criticisms, and challenges.⁴²

35. See Daniel J. Givelber et al., *Learning through Work: An Empirical Study of Legal Internship*, 45 J. LEGAL EDUC. 1, 16–18 (1995).

36. See Fournier J. "Boots" Gale, III, *Mentoring—Past and Present*, 67 ALA. LAW. 404 (2006).

37. Stephen M. Johnson, *www.lawschool.edu: Legal Education in the Digital Age*, 2000 WIS. L. REV. 85, 87 (2000) ("Professor Theodore Dwight, at Columbia Law School, outlined black letter rules of law through lecture, but posed questions to his students that encouraged the students to analyze the law and to apply it to new factual situations. This method of dialogue, known as the 'Socratic dialogue,' has become a cornerstone of law school instruction. In the late nineteenth century, legal education was transformed profoundly when Christopher Columbus Langdell, a professor at Harvard Law School, introduced the 'case method' of legal instruction."). See also *infra* Part II; Sacha Pfeiffer, *Twice a Time For Change*, BOSTON GLOBE, May 7, 2006, at D1.

38. Charles M. Hepburn, *The Inns of Court and Certain Conditions in American Legal Education*, 8 VA. L. REV. 93, 94–95 (1921).

39. Bruce A. Kimball, *Students' Choices and Experience During the Transition to Competitive Academic Achievement at Harvard Law School, 1876-1882*, 55 J. LEGAL EDUC. 163, 164 (2005) [hereinafter Kimball, *Students' Choices*].

40. See generally *id.*

41. See *infra* Part III. See also James E. Moliterno, *Legal Education, Experiential Education, and Professional Responsibility*, 38 WM. & MARY L. REV. 71, 92 (1996); Gary A. Munneke, *Legal Skills for a Transforming Profession*, 22 PACE L. REV. 105, 123 (2001) ("While society and the practice of law have undergone radical changes, legal education has changed little in the past one hundred years."); David S. Romantz, *The Truth About Cats and Dogs: Legal Writing Courses and the Law School*

If a new legal education system were designed from scratch, it would look far different than the one in place today. Imagine a system designed with no preconceived notions about training new lawyers: a system without the ABA's Standards and Interpretations; without an American Association of Law Schools' (AALS) criteria and certification; without existing buildings and libraries; and without law school faculty with turf to protect and preconceptions about how, when, and what to teach.⁴³

A new legal education system can be designed with a fresh perspective without being limited by what currently exists. A new legal education system can use what is working well in the existing system and discard the rest. It can borrow from other places, systems, and professions. Systemic changes can be made by thinking outside the box.⁴⁴ The experience of Richard Fosbury exemplifies thinking outside the box and using innovation within the rules. Significant reform of the legal education system can be made within existing ABA and AALS rules.⁴⁵ A new system can control cost escalation⁴⁶ and teach students what they need to know.⁴⁷ Driven by competition and by a need to respond to the

Curriculum, 52 U. KAN. L. REV. 105, 125 (2003) ("Yet despite these successes, two decades after the realists first attempted to deconstruct Langdellian formalism, nearly all American law schools had adopted, in some fashion, the case method."); H. P. Southerland, *English as a Second Language—Or Why Lawyers Can't Write*, 18 ST. THOMAS L. REV. 53, 65 (2005).

42. See LAURA KALMAN, *LEGAL REALISM AT YALE 1927–1960* 12 (1986); MAGALI SARFATTI LARSON, *THE RISE OF PROFESSIONALISM: A SOCIOLOGICAL ANALYSIS* 171 (1977); JOSEF REDLICH, *THE COMMON LAW AND THE CASE METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS* 50–51 (1914); *infra* Part III.

43. See *infra* Part VII.

44. W. Bradley Wendel, *Professionalism as Interpretation*, 99 NW. U. L. REV. 1167, 1229 (2005) (discussing how Justice Department lawyers preparing a legal analysis of restraints on torture were advised that the administration sought "forward-leaning" advice, interpreted to mean that "[l]awyers were expected to take risks, think outside the box, and in effect approach the law from an adversarial point of view, rather than as a set of legitimate reasons upon which to act."); Ed Bernacki, *Exactly What is 'Thinking Outside the Box'?*, CANADA ONE, April 2002, http://www.canadaone.com/ezone/april02/out_of_the_box_thinking.html; PCMAG.com, *Outside the Box Definition*, http://www.pcmag.com/encyclopedia_term/0,,t=outside+the+box&i=48679,00.asp (last visited Nov. 23, 2007) ("To think differently. One thing the computer industry has always fostered is newness, and thinking outside the box implies change and doing away with old methods in research, design and implementation.").

45. See *infra* Part VII.

46. See *infra* Tables 2 & 5; Part VII.

47. See *infra* Part IV.

demands of students, lawyers, clients, and society, changes will occur and there will be a Legal Education Renaissance.

II. A BRIEF HISTORY OF LEGAL EDUCATION IN THE UNITED STATES

Before law was taught in schools in the late 1700s, aspiring lawyers received little formal education.⁴⁸ In fact, legal training continued to be informal into the twentieth century.⁴⁹ Many lawyers were self-taught,⁵⁰ while others trained as apprentices and received practical education by working under experienced professionals. Few self-taught lawyers achieved a level of competence necessary to adequately serve their clients.⁵¹ The obvious insufficiency of self-taught training found its way into modern fiction. A lawyer discussing his frontier education before the Civil War stated:

That night I flipped through the law books, reading here and there from several volumes, and found that despite their mighty efforts toward incoherence, they were ultimately penetrable, at least after frequent consultations with Dr. Johnson's *Shorter Dictionary*. About all it took to be a lawyer back then was to have read the books and understood a little bit of them. And also to own a black suit of clothes and a white shirt of moderate cleanliness. For anyone even remotely sharp-witted, frontier lawyers was said to be a fine profession.

. . . .

I entered the profession quite ill prepared, having only read law in my books and not ever seen it accomplished in a courtroom. And it was just like French, not at all what I had imagined.⁵²

The apprenticeship system worked well as it adapted easily and apprentice labor could fill a number of necessary functions.⁵³

48. See Steven B. Dow, *There's Madness in the Method: A Commentary on Law, Statistics, and the Nature of Legal Education*, 57 OKLA. L. REV. 579, 580 (2004).

49. See KERMIT L. HALL, *THE MAGIC MIRROR: LAW IN AMERICAN HISTORY* 218 (1989); Dow, *supra* note 48, at 580.

50. LAWRENCE M. FRIEDMAN, *AMERICAN LAW IN THE 20TH CENTURY* 33 n.4 (2003).

51. See Susan Katcher, *Legal Training in the United States: A Brief History*, 24 WIS. INT'L L.J. 335, 339-42 (2006).

52. CHARLES FRAZIER, *THIRTEEN MOONS* 110, 169 (2006).

53. See A. Christopher Bryant, *Reading the Law in the Office of Calvin Fletcher: The Apprenticeship System and the Practice of Law in Frontier Indiana*, 1 NEV. L.J. 19, 23

Despite the benefits, apprentice training was unstructured and uneven.⁵⁴ Time was often spent on menial tasks rather than study, and even the best lawyers could not always dedicate adequate time to their apprentices.⁵⁵ While apprentices were assumed to be prepared to conduct the day-to-day task of a lawyer's business, the profession could not guarantee the quality of the practitioner.⁵⁶

The first law schools grew out of specialized law offices that employed several apprentices at one time.⁵⁷ The earliest school of this kind was founded in 1784⁵⁸ in Litchfield, Connecticut, by Judge Tapping Reeve.⁵⁹ Reeve's school proved successful; it grew rapidly in size, gained a national reputation, and attracted students from all over the country.⁶⁰ Originally, law schools were a supplement to the apprenticeship program, and justified their existence on the ground that they were specially adapted to provide one phase of a student's multi-phased preparation for lawyering.⁶¹

Harvard Law School, the first university affiliated law school, was in operation by 1817.⁶² The law degree (LL.B.) was not a post-graduate degree. It was not standard for law schools to require any prior college work.⁶³ Classes at Harvard generally consisted of

(2001).

54. See William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View From the First Floor*, 28 AKRON L. REV. 463, 465 (1995) [hereinafter William Quigley].

55. Davison M. Douglas, *The Jeffersonian View of Legal Education*, 51 J. LEGAL EDUC. 185, 190 (2001).

56. Bryant, *supra* note 53.

57. See LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 238 (3d ed. 2005).

58. Patricia Mell, *Not the Primrose Path: Educating Lawyers at the Turn of the Last Century*, 79 MICH. B.J. 846, 847 n.16 (2000).

59. See FRIEDMAN, *supra* note 57, at 239; MARIAN C. MCKENNA, TAPPING REEVE AND THE LITCHFIELD LAW SCHOOL 59-60 (1986); Mell, *supra* note 58.

60. FRIEDMAN, *supra* note 57.

61. William Quigley, *supra* note 54 (quoting ALFRED Z. REED, PRESENT DAY LAW SCHOOLS IN THE UNITED STATES AND CANADA 210 (1928), reprinted in WILLIAM S. HEIN, HISTORICAL WRITINGS IN LAW AND JURISPRUDENCE (1987)).

62. HARVARD LAW SCH. ASS'N, CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL 1817-1917 4 (1918).

63. FRIEDMAN, *supra* note 57, at 465. In contrast to the United States, the degree of Bachelor of Laws (LL.B.) is the principal academic degree in law in most common law countries (e.g., Canada, England, Turkey, Australia, Scotland, and South Africa) other than the United States, where it has been replaced by the Juris Doctorate degree. The Bachelor of Laws is considered a professional degree as one of the main purposes of the degree is to provide the academic training for those who wish to become lawyers. Kimball, *Students' Choices*, *supra* note 39, at 164-69. See also Karen Barton et al., *Valuing What Clients Think: Standardized Clients*

students gathered in a hall to listen to a professor lecture on the law.⁶⁴ Harvard had the financial ability to provide a first-class legal education, yet it could not compete with the practical skills training students received from studying under a practitioner.⁶⁵

In the 1850s, there was a growing need for legal advice in the “increasingly legalistic and regulatory society of the Industrial Revolution.”⁶⁶ By 1860, few states required any sort of apprenticeship.⁶⁷ Twenty-one law schools⁶⁸ had become popular alternatives for law students.⁶⁹ The proprietary law schools (those not affiliated with a university) provided a structured and systematic approach to legal education.⁷⁰ In addition, they offered students a more significant practice component than university-based law schools.⁷¹ The universities distinguished themselves with a mission to teach theory, history, and philosophy of the law. Unlike proprietary schools, they operated under the assumption that skills training would take place in practice.⁷²

The lecture method was predominant in all schools. It demanded little from the students and offered very little practical information about how to apply what had been learned. Legal education was now becoming centralized, but instruction was still inconsistent. How much a student learned depended greatly on the teacher.⁷³

and the Assessment of Communicative Competence, 13 CLINICAL L. REV. 1, 10–15 (2006); Nickolas J. James, *A Brief History of Critique in Australian Legal Education*, 24 MELB. U. L. REV. 965 (2000).

64. Kimball, *Students’ Choices*, *supra* note 39, at 165–66. See also Michael L. Richmond, *Teaching Law to Passive Learners: The Contemporary Dilemma of Legal Education*, 26 CUMB. L. REV. 943, 945–46 (1996).

65. Richmond, *supra* note 64.

66. Daniel R. Hansen, *Do We Need the Bar Examination? A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives*, 45 CASE W. RES. L. REV. 1191, 1197 (1995).

67. ROBERT B. STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* 7–8 (Chapel Hill, U.N.C. Press 1983).

68. William Quigley, *supra* note 54, at 465–66.

69. *Id.* at 466.

70. William R. Trail & William D. Underwood, *The Decline of Professional Legal Training and a Proposal for its Revitalization in Professional Law Schools*, 48 BAYLOR L. REV. 201, 206 (1996).

71. *Id.*

72. *Id.* at 207; see also *infra* Tables 4, 5 & 6 (showing the most significant sources of legal training are the lawyer’s own experience, law-related work while in law school, advice from other lawyers, and observations of other lawyers).

73. FRIEDMAN, *supra* note 57, at 84.

Harvard and other law schools struggled to compete with the education provided to law students studying under a practitioner,⁷⁴ and they sought to make changes that would further their recruitment efforts.⁷⁵ The first changes were organizational. Harvard created a separate law school presidency along with a position for a dean. In 1870, Christopher Columbus Langdell became the first Dean of Law at Harvard.⁷⁶ During the 1870s, Dean Langdell⁷⁷ and Harvard's President, Charles William Eliot,⁷⁸ began to "segregate[] legal education from lawyers and the practice of law."⁷⁹ They developed what would become the "prototype for model legal education in the United States: the three-year, postgraduate . . . curriculum of private-law courses staffed by a faculty of full-time academics teaching by the 'case method'—the interrogation of students primed with the reading of appellate cases."⁸⁰

A. *Langdell's Reform*

Langdell began making academic changes when he became dean, because there had been "no academic requirements for admission [to law school] beyond English literacy."⁸¹ At that time, law school education lasted eighteen months or less and the curriculum consisted of ungraded, elementary courses.⁸² There

74. Richmond, *supra* note 64.

75. See FRIEDMAN, *supra* note 57, at 241 (describing recruitment efforts in the early days of law schools).

76. HARVARD LAW SCH. ASS'N, *supra* note 62, at 27.

77. Christopher Columbus Langdell (1826-1906), could be argued as the most influential reformer in the history of legal education in the United States. He worked as a lawyer in New York City on Wall Street from 1855 until 1870, when he joined the faculty at Harvard Law School. Langdell left Wall Street in response to the corruption of the judiciary and the complicity of eminent lawyers in Boss Tweed's New York. Langdell joined the Harvard Law School faculty in January 1870, and was named dean in September. Bruce A. Kimball, *Young Christopher Columbus Langdell, 1826-1854: The Formation of an Educational Reformer*, 52 J. LEGAL EDUC. 189, 200-04 (2002); Bruce A. Kimball & R. Blake Brown, "The Highest Legal Ability in the Nation": *Langdell on Wall Street, 1855-70*, 29 LAW & SOC. INQUIRY 39, 39-41 (2004); Kimball, *Students' Choices*, *supra* note 39, at 163-64.

78. FRIEDMAN, *supra* note 57, at 467 (stating that Eliot, who had become President of Harvard in 1869, appointed Langdell to the newly-created position of dean of the law school).

79. Trail & Underwood, *supra* note 70, at 207 (alteration in original).

80. Robert W. Gordon, *The Case For (and Against) Harvard*, 93 MICH. L. REV. 1231, 1231 (1995) (alteration in original).

81. Kimball, *Students' Choices*, *supra* note 39 (alteration in original).

82. *Id.*

were no exams or attendance requirements, and faculty taught part-time while maintaining full-time legal or judicial work.⁸³ Langdell elevated law to a post-graduate level of study and increased the length of study to three years. He introduced entrance exams, graduation exams, rigorous coursework, and the case method.⁸⁴

“Langdell viewed law as a science and the law library as the laboratory, with the cases providing the basis for learning those ‘principles or doctrines’ of which ‘law, considered as a science, consists.’”⁸⁵ His method required students to extract the law from appellate court decisions as a way of learning core legal principles.⁸⁶ Students were exposed to the law itself rather than the law as construed by any particular professor.⁸⁷ Langdell’s case method was considered novel because it replaced textbooks with appellate cases “arranged to illustrate the meaning and development of principles of law.”⁸⁸

In addition to the case method, Langdell incorporated Socratic dialogue into classroom discussion. The Socratic method of instruction engaged students in continual conversation and required them to distill the applicable rule of law from the superfluous facts of a case. The method motivated students to reason rather than recite. The professor encouraged intelligent analysis and required students to determine the overriding legal doctrine.⁸⁹

83. *Id.*

84. The Case Method is the predominant method of teaching most courses at nearly all law schools. The student reads and analyzes the original sources of the law. From that reading, the student is to understand the main classifications of the law and within each, the general doctrines and their applications to various fact situations, with an examination of the reasoning used to reach the results. The reading of cases is augmented with the class discussion—the so-called Socratic dialogue. A student is asked to orally summarize a case. The professor may then ask questions about the case, apply the legal principles of the case and its reasoning to a new set of facts—a hypothetical—and predict the result or argue for a result, using sound legal reasoning. See Friedman, *supra* note 57, at 530–31; Gordon, *supra* note 80; Kimball, *Students’ Choices*, *supra* note 39.

85. Dorsey D. Ellis, Jr., *Legal Education: A Perspective on the Last 130 Years of American Legal Training*, 6 WASH. U. J.L. & POL’Y 157, 166 (2001) (citing CHRISTOPHER COLUMBUS LANGDELL, A SELECTION OF CASES ON THE LAW OF CONTRACTS: WITH REFERENCES AND CITATIONS (1871)).

86. Richmond, *supra* note 64, at 946.

87. David D. Garner, *The Continuing Vitality of the Case Method in the Twenty-First Century*, 2000 B.Y.U. EDUC. & L.J. 307, 317–18 (2000).

88. *Id.* at 317.

89. Sandra R. Klein, *Legal Education in the United States and England: A*

When Christopher Langdell initiated radical change at Harvard Law School, he faced resistance from both students and colleagues. As Samuel Batchelder recalled:⁹⁰

His attempts were met with open hostility, if not of the other instructors, certainly of the bulk of the students. His first lectures were followed by impromptu indignant meetings.—“What do we care whether Myers agrees with the case, or what Fessenden thinks of the dissenting opinion? What we want to know is: What’s the Law?”⁹¹

Students encountering Langdell’s system had to embrace the new competitive culture with its entrance exams, rigorous academic requirements, demanding pace, and additional year of schooling. Professors had to accept heavier teaching loads due to the three-year curriculum, and had to become accustomed to the case method of teaching. In the period of reform, 1870 to 1883, tuition rose from \$100 to \$450 for a full course.⁹² When the three-year curriculum requirement took effect in 1876, enrollment steadily plummeted from 199 students to a low of 138 in 1882.⁹³ Harvard graduates were defecting to other law schools, some prospective students were excluded by the new admission requirements,⁹⁴ and others were prompted to reject the program by family alums who opposed Langdell’s reforms.⁹⁵ While this troubled Langdell, and drew much criticism, by 1883 enrollment increased, the faculty expanded, and the new legal education culture finally took hold.⁹⁶

Comparative Analysis, 13 LOY. L.A. INT’L & COMP. L.J. 601, 617–18 (1991).

90. Langdell had known Batchelder personally as a student at Harvard Law School between 1895 and 1898 and as the clerk of Christ Church in Cambridge, where Langdell and his wife were longstanding members. In addition, Batchelder was the grandson of Harvard Law professor Emory Washburn, who served on the Harvard Law School faculty from 1855 until 1876 and opposed most of Langdell’s reforms in the early 1870s. Batchelder wrote a biographical essay about Langdell in the three weeks following Langdell’s death. See Bruce A. Kimball, *The Langdell Problem: Historicizing the Century of Historiography, 1906–2000’s*, 22 LAW & HIST. REV. 277, 284–85 (2004).

91. Steve Sheppard, *Casebooks, Commentaries, and Curmudgeons: An Introductory History of Law in the Lecture Hall*, 82 IOWA L. REV. 547, 598 (1997).

92. Kimball, *Students’ Choices*, *supra* note 39, at 167.

93. *Id.* at 166.

94. *Id.* at 167.

95. *Id.* at 189.

96. Bruce A. Kimball, “Warn Students That I Entertain Heretical Opinions, Which They are not to Take as Law”: The Inception of Case Method Teaching in the Classrooms of the Early C. C. Langdell, 1870–1883, 17 LAW & HIST. REV. 57, 125 (1999). See also W. Burlette Carter, *Reconstructing Langdell*, 32 GA. L. REV. 1, 38 (1997) (noting a larger acceptance of the case method at Harvard Law School).

B. Regulation by the ABA and the AALS

The ABA was founded by one hundred lawyers from twenty-one different states on August 21, 1878.⁹⁷ At the very onset, in 1878, the ABA directed the newly formed Committee on Legal Education and Admission to the Bar to prepare a plan for establishing uniform requirements.⁹⁸ Three years later, the Committee on Legal Education presented three proposed resolutions: (1) implementation of a thorough three-year course of study in all law schools, (2) admission to the bar after having passed an oral and a written examination and receipt of a diploma, (3) authorization that time spent in law school is equal to time spent in an attorney's office.⁹⁹ All three resolutions were adopted in 1881.¹⁰⁰

The ABA did nothing further in the area of legal education for nine years, until "in 1890, the committee filed a report in which it considered the general status of legal education and urged the Association to develop and present a plan for an adequate course of study in the law schools."¹⁰¹ In 1893, the Section of Legal Education was formed.¹⁰² "Almost every conceivable question affecting legal education was raised and discussed, during the closing decade of the Saratoga Era,¹⁰³ in the Section of Legal Education, or in the Committee, or in the Assembly of the Association."¹⁰⁴ By 1916, the ABA had adopted standard rules for

97. AM. BAR ASS'N, PROFILE OF THE AMERICAN BAR ASSOCIATION 1 (2005).

98. EDSON R. SUNDERLAND, HISTORY OF THE AMERICAN BAR ASSOCIATION AND ITS WORK 72 (1953) (citing 1 ABA Rep. 26 (1878)).

99. *Id.* at 73.

100. *Id.* at 72-73 (citing 4 ABA Rep. 28, 30, 237-301 (1881)).

101. *Id.* at 73 (citing 13 ABA Rep. 327-35 (1890)).

102. *Id.* at 74.

103. From 1878 until 1902, the first twenty-five years of the establishment of the ABA were known as the "Saratoga Era." It was during that period when the ABA met annually, or bi-annually, at Saratoga Springs, N.Y. Sunderland terms this period as "a period of conservative and leisurely activity." *Id.* at 73-74.

104. *Id.* at 74. The variety and scope of issues raised were: "The preliminary education requisite for admission to the law school; the need for a three-year law course; law school degrees; numerous addresses on the general importance to the profession and to the public of sound legal education; courses of study for law clerks; legal education in other countries, such as England, Canada and France; the teaching of law in arts colleges as part of a liberal education; the relation of the law school to the university; law school examinations; general discussion of the curriculum of the law school; office study of law; law as a field for women; the inductive method of teaching law; the place of various subjects in the law school curriculum, such as legal ethics, civil law, federal jurisprudence, medical jurisprudence, common law procedure, comparative jurisprudence; historical studies of the development of legal education; review of the current status of law

admission to the bar, and educational standards for law schools.¹⁰⁵ The ABA had fifty-six standards with interpretations in 2006–2007.¹⁰⁶

To create more demanding and uniform legal education requirements, the ABA pressed the Carnegie Foundation¹⁰⁷ to study the state of legal education.¹⁰⁸ The Carnegie Foundation commissioned Alfred Z. Reed¹⁰⁹ to conduct this study. The Reed Report, published in 1921, recommended the creation of a differentiated bar.¹¹⁰ However, the ABA was unhappy with Reed's conclusions and published the Root Report in favor of a unitary bar.¹¹¹ As a result of the ABA's push for a more uniform legal

school education; standards of legal education; teaching practice; law school libraries; and the wage of law teachers." *Id.* at 74–75.

105. *Id.* at 141 (citing 41 ABA Rep. 652–55 (1916)).

106. See generally 2006–2007 ABA STANDARDS, *supra* note 3.

107. About the Carnegie Foundation, *supra* note 4.

108. See Michael Ariens, *Law School Branding and the Future of Legal Education*, 34 ST. MARY'S L.J. 301, 309 (2003) (stating in 1913 the Carnegie Foundation commissioned Alfred Reed to study the state of legal education).

109. Alfred Z. Reed was a non-lawyer and staff member at the Carnegie Foundation in charge of the study of legal education and admissions to the bar of the ABA.

110. Ariens, *supra* note 108, at 310. In Reed's view, there was no such thing as a unitary bar or a standard lawyer. The bar was stratified on both the type of legal education obtained and the lawyer's work in the public profession of the law. *Id.* See also ALFRED ZANTZINGER REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 238 (R.H. Helmholtz & Bernard D. Reams, Jr. eds., William S. Hein Co. 1986) (1921) (stating the need for the more highly trained lawyers to "undertake the task of making the law of the community better," and those less highly trained to administer "the law as it is").

111. Ariens, *supra* note 108, at 310. "A year before publication of the Reed Report, the ABA's Section of Legal Education and Admissions to the Bar, prodded by legal academics, created a Special Committee on Legal Education." *Id.* (citing *Proceedings of the Section of Legal Education and Admissions to the Bar*, 45 ABA Rep. 465, 465–66 (1920) (reporting on the formation of the committee and election of members to serve on the committee)). "That committee, called the Root Committee after its chairman, Elihu Root, rejected the idea of a differentiated bar." *Id.* (citing *Report of the Special Committee to the Section of Legal Education and Admissions to the Bar of the American Bar Association*, 46 ABA Rep. 679, 681–83 (1921) (expressly rejecting the proposal for a differentiated bar and recommending instead that all applicants for bar admission be graduates of a law school)). "The Root Committee, given advance copies of the Reed Report, published its findings promoting a unitary bar shortly before the Reed Report was published in August 1921." *Id.* (citing SUSAN K. BOYD, THE ABA'S FIRST SECTION: ASSURING A QUALIFIED BAR 26 (1993) (noting that "[t]he Root Committee was given advance copies of Reed's book")). "Adopting the Root Committee's report, the ABA created several bare-bones standards for law schools and listed the schools that complied with those standards." *Id.*

education requirement, by the end of the 1930s nearly every American law school had adopted the ABA standards.¹¹²

The AALS was founded in 1900 by thirty-two charter members at Saratoga Springs, New York.¹¹³ The AALS's first president was Professor James Bradley Thayer of Harvard Law School.¹¹⁴ In 1963, Professor Michael H. Cardozo of Cornell University Law School became the AALS's first Executive Director and the national office was established in Washington, D.C.¹¹⁵ The AALS was incorporated as a non-profit educational association in February 1971.¹¹⁶ Its stated purpose is "the improvement of the legal profession through legal education."¹¹⁷ The AALS serves as the "learned society for law teachers and is legal education's principal representative to the federal government and to other national higher education organizations and learned societies."¹¹⁸

One hundred and sixty-eight member law schools and twenty-seven non-member fee-paid schools are listed on the 2007 AALS website.¹¹⁹ The member law schools are visited periodically to review compliance with the AALS Bylaws and Executive Committee Regulations.¹²⁰ The AALS's annual meeting is held every January at

112. See *infra* Part VII. See generally 2006–2007 ABA STANDARDS, *supra* note 106.

113. ALLS Archive Homepage, <http://web.library.uiuc.edu/ahx/aals/default.asp> [hereinafter AALS Archives] (last visited Dec. 1, 2007).

114. *Id.* Professor Thayer was born in Massachusetts in 1831 and graduated from Harvard Law School in 1856. James Bradley Thayer, http://www.1911encyclopedia.org/James_Bradley_Thayer (last visited Dec. 1, 2007). He was Royall professor of law at Harvard from 1873–1883, and held the Weld professorship from 1883 until his death in 1902. *Id.* He took a special interest in the historical evolution of law. *Id.* Some of his works include: *The Origin and Scope of the American Doctrine of Constitutional Law* (1893), *Cases on Evidence* (1892), *Cases on Constitutional Law* (1895), *The Development of Trial by Jury* (1896), *A Preliminary Treatise on Evidence at the Common Law* (1898), and *A Short Life of John Marshall* (1901). *Id.*

115. Ass'n of Am. Law Schools, What is the AALS?, <http://www.aals.org/about.php> [hereinafter What is the AALS?] (last visited Dec. 1, 2007).

116. AALS Archives, *supra* note 113.

117. What is the AALS?, *supra* note 115.

118. Ass'n of Am. Law Schools, AALS Section on Contracts, <http://www.aalscontracts.com/index.htm> (last visited Nov. 21, 2007).

119. Ass'n of Am. Law Schools, Member Schools, http://www.aals.org/about_memberschools.php (last visited Nov. 21, 2007). See also ASS'N OF AM. LAW SCHOOLS, STATISTICAL REPORT ON LAW SCHOOL FACULTY AND CANDIDATES FOR LAW FACULTY POSITIONS: PRELIMINARY TABLES 2005–2006 (2006), <http://www.aals.org/documents/statistics/20052006statisticsonlawfaculty.pdf> (showing for the year 2005–2006 there were 10,384 faculty members, 35.9% of whom were women and 16% were minority).

120. See Ass'n of Am. Law Schools, Executive Committee Regulations of the

various locations, and workshops and conferences are sponsored throughout the year. Sections or interest groups within the AALS are composed of members of the faculty and professional staff from AALS member schools. Currently, eighty-nine sections provide newsletters and other activities such as mentoring, exam exchanges, directories, and list servers for their membership.¹²¹

C. *The Clinical Movement*

In the early part of the twentieth century, law schools attempted to address students' lack of preparation for lawyering by introducing clinical education.¹²² Law school clinics began as a series of individual programs frequently undertaken on a volunteer basis and for which students received no credit.¹²³ Law students at several schools established volunteer, non-credit "legal dispensaries" or legal aid bureaus to provide hands-on opportunities to learn and practice lawyering skills and legal analysis. They also sought to serve a social justice mission by providing legal assistance to those who could not afford to hire lawyers.¹²⁴ John Bradway, one of the most prolific early scholars of clinical legal education,¹²⁵ and Judge Jerome Frank¹²⁶ promoted clinical legal education methodology from the 1920s through the 1940s. Bradway and Frank advocated an in-house clinic as an

Association of American Law Schools, http://www.aals.org/about_handbook_regulations.php (last visited Nov 21, 2007).

121. Ass'n of Am. Law Schools, Sections, http://www.aals.org/services_sections.php (last visited Nov. 21, 2007).

122. William Quigley, *supra* note 54, at 467. See also Suellyn Scarnecchia, *The Role of Clinical Programs in Legal Education*, 77 MICH. BAR. J. 674 (1998) (discussing emergence of classes giving students practical experience).

123. William Quigley, *supra* note 54, at 467.

124. Margaret Martin Barry et al., *Clinical Education for This Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 6 (2000).

125. Bradway founded the first in-house teaching clinic at Duke University Law School in 1931 and assisted in the development of clinics at the University of Southern California Law School, Temple Law School and other law schools. Alexander Scherr, *Lawyers and Decisions: A Model of Practical Judgment*, 47 VILL. L. REV. 161, 178 (2002). See also William Quigley, *supra* note 54, at 468.

126. Respected legal educators such as John Bradway and Jerome Frank championed the need for clinical legal education during the first half of the twentieth century. In 1933, Jerome Frank proposed that each law school develop a legal clinic, staffed by full-time teacher-clinicians. Jerome Frank, *Why Not A Clinical-Lawyer School*, 81 U. PA. L. REV. 907, 917 (1933); see also *Submission of the Association of American Law Schools to the Supreme Court of the State of Louisiana Concerning the Review of the Supreme Court's Student Practice Rule*, 4 CLINICAL L. REV. 539, 541-42 (1998).

essential component of sound legal education.¹²⁷ Despite the efforts of Bradway and Frank, only a handful of law schools instituted in-house clinical courses through the first half of the 1900s.¹²⁸

The second wave of clinical legal education lasted from the 1960s through the 1990s. It began as a method to integrate clinical studies into mainstream legal education. The Council on Legal Education for Professional Responsibility, Inc. (CLEPR), in connection with the Ford Foundation, provided substantial grants to law schools to institute legal clinics.¹²⁹ The factors that contributed to this transformation included demands for social relevance in law school, the development of clinical teaching methodology, the emergence of external funding to start and expand clinical programs, and an increase in the number of faculty capable of and interested in teaching clinical courses.¹³⁰

In the post-Watergate years, an increased demand for law schools to add legal ethics to the curriculum was realized.¹³¹ The ABA responded by requiring that all law students take a course in professional responsibility.¹³² In 1996, the ABA enacted accreditation standards to encourage law schools to provide opportunities for students to participate in pro bono activities followed by the 1997 AALS Commission on Pro Bono and Public Service Opportunities.¹³³ A study investigating the effects of approaches in stimulating pro bono representation by young lawyers indicated that “the type of law school pro bono program graduates experienced [was] much less strongly associated with the actual performance of pro bono work in practice than [were] workplace incentive structures and a personal sense of moral

127. Barry et al., *supra* note 124, at 8.

128. *Id.*

129. William Quigley, *supra* note 54, at 469.

130. During the 1990s, the raw number of persons teaching in clinical programs increased steadily as did law school commitments to in-house programs and to job security and status for all clinical faculty. By the end of 1999, 183 United States law schools had clinical programs. The increase in the number of clinical faculty and programs during the between the 1980s and 1990s created the critical mass necessary to develop clinical teaching methodology and scholarship about clinical legal education. Barry et al., *supra* note 124, at 30–32.

131. Hines, Part 2, *supra* note 16, at 3–4.

132. *Id.* However, Standard 302(a)(5) requires substantial instruction in the responsibilities of the legal profession. See AM. BAR ASS'N, 2007–2008 STANDARDS FOR APPROVAL OF LAW SCHOOLS (2007), <http://www.abanet.org/legaled/standards/standards.html> [hereinafter 2007–2008 ABA STANDARDS].

133. Hines, Part 2, *supra* note 16, at 4.

obligation to help others.”¹³⁴ Nevertheless, “[i]nstill[ing] in law students an appropriate sense of their professional obligations is obviously an important element of a quality legal education,” so this is a debate that continues to take shape.¹³⁵

D. Recommendations for Reform

In 1979, the ABA commissioned Roger Cramton to conduct a study on the state of legal education.¹³⁶ The results of the Cramton Report¹³⁷ concluded that, at best, legal education was providing students a two-year program with a fairly useless third year.¹³⁸ But, as with the Reed Report, Cramton’s recommendations were largely ignored.¹³⁹

In the late 1980s, the ABA formed another task force to address concerns with the state of the legal education system. Studies were conducted, and in 1992 the MacCrate Report was published.¹⁴⁰ Unlike its predecessors, the MacCrate Report was acknowledged. The report outlined the successes of legal education, as well as what needed to be changed. Much talk followed about implementing the changes recommended by the report, but in the following years, schools reverted to the status quo with very little movement toward reform.¹⁴¹ In February 2007, the Carnegie Foundation for the Advancement of Teaching issued a report entitled “Educating Lawyers.”¹⁴² The report made five observations and seven recommendations about legal education.

134. *Id.* (citing an empirical study by Deborah Rhode, who appointed the Pro Bono Commission during her term as AALS President).

135. *Id.*

136. Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109, 115 (2001).

137. *See infra* Part IV.

138. Barry et al., *supra* note 124, at 36 n.142.

139. *See generally* John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157 (1993) (noting that the ABA has not responded to the Cramton Report).

140. AM. BAR ASS’N, THE REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992), available at <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html>. The MacCrate Task Force’s purpose was to “stud[y] and improv[e] the processes by which new members of the profession are prepared for the practice of law.” Ann Juergens, *Using the MacCrate Report to Strengthen Live-Client Clinics*, 1 CLINICAL L. REV. 411, 411–12 (1994) (citation omitted); Engler, *supra* note 136, at 113.

141. Engler, *supra* note 136; *see also* Russell Engler, *From 10 to 20: A Guide to Utilizing the MacCrate Report Over the Next Decade*, 23 PACE L. REV. 519 (2003).

142. SULLIVAN ET AL., *supra* note 4.

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Observations:

- Legal education provides socialization in the standards of legal thinking.
- It relies heavily on case method teaching.
- The case dialogue method has strengths and consequences.
- Learning assessment remains underdeveloped.
- Improvements are approached incrementally rather than comprehensively.

Recommendations:

- Offer a three-part curriculum.
- Join lawyering professionalism and analysis at the start.
- Make better use of students' second and third years.
- Faculty should work across the curriculum.
- New program design should include disparate knowledge and skills.
- Recognize a common purpose.
- Work together within and across institutions.

The history of the legal education system shows that in spite of criticism and attempts at reform, the system remains similar to that of the late 1800s.

III. ROADBLOCKS TO INNOVATION

Innovation and reform are hindered by obstacles that include tradition, failure to recognize the cause and effects of stress, outdated curriculum, teaching and assessment practices, law school

rankings, faculty resistance, ineffective use of available technology, and the rising costs of legal education.¹⁴³

A. Tradition

The current legal education system does not focus on effective teaching for the adult learner, does not require curriculum aimed at teaching the basic skills necessary to practice the law,¹⁴⁴ and does not communicate the importance of balancing life with the stresses of a legal career.¹⁴⁵ While law schools do manage to produce outstanding lawyers, the system is less than effective for the majority of its graduates.¹⁴⁶

Law graduates report having learned many important lawyering skills in places other than law school, and in many cases, after they graduate.¹⁴⁷ In fact, “[t]he United States may be the only country claiming to be governed by law that turns an unskilled, law graduate loose on some unsuspecting client whose life, liberty or property may be at risk.”¹⁴⁸ In such a system, new lawyers are often

143. See *infra* Part III; see also SULLIVAN ET AL., *supra* note 4, at 185–202.

144. See Linda S. Anderson, *Incorporating Adult Learning Theory into Law School Classrooms: Small Steps Leading to Large Results*, 5 APPALACHIAN J. L. 127, 134 (2006) (“In general, law school professors were high achievers in law school. Most have little practice experience and no particular training in education.”); see also Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37, 46–47 (1995) [hereinafter Fran Quigley] (noting different instructional approaches for the adult learner). See generally Filippa Marullo Anzalone, *It All Begins with You: Improving Law School Learning Through Professional Self-Awareness and Critical Reflection*, 24 HAMLINE L. REV. 324 (2001) (discussing methods to improve learning in law school from a professor’s prospective).

145. Anderson, *supra* note 144, at 135.

146. See CRAMTON REPORT, *supra* note 5, at 8 (“Chief Justice Burger and others have spoken, in recent years [before 1979], of a serious problem of ‘incompetency’ among those lawyers trying cases before the federal courts and among the trial bar generally.”); Sonsteng & Camarotto, *supra* note 5, at 330; *infra* Tables 4 & 6.

147. Sonsteng & Camarotto, *supra* note 5, at 330.

148. Klein, *supra* note 89, at 633; Jerome F. Kramer, *Scholarship and Skills*, NAT’L L.J., Jan. 9, 1989, at 15. In the United States, doctors, nurses, teachers, and certified public accountants must complete supervised internships prior to receiving certification or licensing. Ironically, a lawyer often holds not only a client’s health, education, and finances at risk but also his very liberty, yet a lawyer is able to practice law merely by passing a series of examinations that largely ignore the practical application of the law to real cases. See generally Steven Keeva, *Stars of the Classroom: Will Top Profs Who Instruct via Internet Dominate Teaching?* 83 A.B.A. J. 18 (1997) (discussing the effects of technology on the law school curriculum); Alan Watson, *Legal Education Reform: Modest Suggestions*, 51 J. LEGAL

forced to hone their skills on clients, with little or no supervision and feedback.¹⁴⁹

Modern legal education closely mirrors that of the 1870s,¹⁵⁰ yet today's law students are much different than the homogenous male-populated classes of that time period.¹⁵¹ Law schools were originally designed for social and economic elites.¹⁵² In 1869, few women attended law schools or practiced law,¹⁵³ and not until the 1970s did women in law schools become the norm.¹⁵⁴ Today, students' backgrounds, training, college education, and problem-solving skills are vastly diverse, and each student brings a variety of learning and problem-solving techniques to the classroom:

The presence of diverse groups, including especially groups that traditionally had been marginalized by the law, make[s] it clear that law and law school could not be unitary in the way that they had been in the traditional law school. Doctrine and theory are not unitary, because different life experiences give different perspectives on doctrine and theory. The methods of legal education cannot be unitary, because students of different backgrounds have different learning needs.¹⁵⁵

“Studying a body of law case by case is analogous to studying an entire forest by looking at one tree at a time.”¹⁵⁶ Students studying legal theory by the case method miss out on learning how the different areas of the law coalesce, and do not learn how to meet the real-life needs of clients.¹⁵⁷ The case method of teaching

EDUC. 91 (2001).

149. Klein, *supra* note 89, at 633. See also Thomas Disare, *A Lawyer's Education*, 7 MD. J. CONTEMP. LEGAL ISSUES 359 (1996) (explaining that law schools inadequately prepare lawyers for the legal profession).

150. See Keith A. Findley, *Rediscovering the Lawyer School: Curriculum Reform in Wisconsin*, 24 WIS. INT'L L.J. 295, 300–01 (2006).

151. See Hines, Part 2, *supra* note 16, at 3–4.

152. See Jay M. Feinman, *The Future History of Legal Education*, 29 RUTGERS L.J. 475, 477 (1998).

153. See Karen Tokarz, *Lemma Barkeloo, and Phoebe Couzins: Among the Nation's First Women Lawyers and Law School Graduates*, 6 WASH. U. J.L. & POL'Y 181, 181–82 (2001).

154. See OFFICIAL AMERICAN BAR ASSOCIATION GUIDE TO APPROVED LAW SCHOOLS 454 (Rick L. Morgan & Kurt Snyder eds., 2001) (showing the rise in law school enrollment); Kathrym M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law Schools' Dirty Little Secrets*, 16 BERKELEY WOMEN'S L.J. 3, 8 (2001).

155. Feinman, *supra* note 152, at 483.

156. Klein, *supra* note 89, at 628.

157. *Id.* See also Findley, *supra* note 150, at 301–02.

is a one-size-fits-all approach that critics argue is ineffective.¹⁵⁸ Although the method helps prepare students to meet some of the challenges of the legal profession, it only provides a fraction of what is required for graduates to be competent lawyers.¹⁵⁹

The tradition continues because of momentum:

Faculty may conform to the Langdellian method because we do not want to appear stupid, unfit, and because we are afraid to challenge the collective judgment about how best to teach. Thus, we carry the current paradigm of law school teaching on through sheer momentum; while, like the emperor without clothes, we persist in pretending that all is well.¹⁶⁰

Like the case method, the Socratic method of teaching is also ineffective. In a Socratic classroom, “[t]he law professor . . . does not teach at all; but only provides the framework through which the students will, on their own, learn the legal principles involved.”¹⁶¹ First-year classes at most law schools are large, and students who are not regularly involved in class discussion may not develop a complete understanding of the course material.¹⁶² At

158. See, e.g., Stephen M. Feldman, *The Transformation of an Academic Discipline: Law Professors in the Past and Future (or Toy Story Too)*, 54 J. LEGAL EDUC. 471, 482 (2004) (arguing the ineffectiveness of case method); Cynthia G. Hawkins-Leon, *The Socratic Method–Problem Method Dichotomy: The Debate over Teaching Continues*, 1998 BYU EDUC. & L.J. 1, 16–17 (1998); Michael Jordan, *Law Teachers and the Educational Continuum*, 5 S. CAL. INTERDISC. L.J. 41, 43–45 (1996); Cathaleen A. Roach, *A River Runs Through It: Tapping into the Informational Stream to Move Students from Isolation to Autonomy*, 36 ARIZ. L. REV. 667, 670 (1994); Ron Zemke and Susan Zemke, *30 Things We Know For Sure About Adult Learning*, 4 INNOVATION ABSTRACTS 8 (1984) (arguing that use of Socratic method does not fit with adult learning theory); *Law Student’s Motto: Be Unprepared*, PALM BEACH DAILY BUS. REV., Jan. 15, 1999, at C1 (discussing flaws in Socratic method).

159. See Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 81 (2002) [hereinafter Hess, *Heads and Hearts*]; Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 NEB. L. REV. 113, 118–23 (1999); Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 125 (2002); Ruta K. Stropus, *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 LOY. U. CHI. L.J. 449, 456 (1996). See generally Sonsteng & Camarotto, *supra* note 5, at 330; Jamison Wilcox, *Borrowing Experience: Using Reflective Lawyer Narratives in Teaching*, 50 J. LEGAL EDUC. 213, 230–32 (2000).

160. See Randall, *Increasing Retention*, *supra* note 17, at 209.

161. See Klein, *supra* note 89, at 630 (citation omitted).

162. See Jennifer S. Holifield, *Taking Law School One Course at a Time: Making Better Lawyers by Using a Focused Curriculum in Law School*, 30 J. LEGAL PROF. 129, 134 (2006); Klein, *supra* note 89, at 629–30.

best, only a portion of each class period is used to its fullest. The remainder of the time is wasted on the irrational and discretionary rather than the logical, obvious, or useful material, often disregarding settled principles of the law.¹⁶³

B. Stress

The traditional method of teaching can cause unnecessary psychological distress in an already stressful environment.¹⁶⁴ The Socratic method breeds stress through the arbitrary and sometimes ruthless questioning of students about cases and legal principals that are often subtle, minor, and obscure.¹⁶⁵ Students become distressed about being called on because such questioning creates situations where they inevitably fail, even if their original answer or thought was correct.¹⁶⁶ The method has been characterized as “infantilizing, demeaning, dehumanizing, sadistic, a tactic for promoting hostility and competition among students, self-serving, and destructive of positive ideological values.”¹⁶⁷ Students are often pitted against peers and competition is intense.

Adding to the pressure of classroom culture, the traditional law school model does not provide regular or relevant performance feedback, so students have little opportunity to improve.¹⁶⁸ Without

163. See James R. Beattie, Jr., *Socratic Ignorance: Once More into the Cave*, 105 W. VA. L. REV. 471, 486 (2003) (“Socratic teaching is . . . an inefficient and unfair way to communicate information that the teacher possesses but does not reveal.”); David D. Garner, *Socratic Misogyny? — Analyzing Feminist Criticisms of Socratic Teaching in Legal Education*, 2000 BYU L. REV. 1597, 1610 (listing as a complaint about the Socratic method that it is an inefficient way to convey large amounts of information); Kerr, *supra* note 159, at 120 (“[T]he [Socratic] method’s question and answer format is also a terribly inefficient means to teach doctrinal rules.”); Bernard D. Meltzer, *The University of Chicago Law Schools Ruminations and Reminiscences*, 70 U. CHI. L. REV. 233, 241 (2003) (arguing that the Socratic method is “notoriously inefficient” at teaching black letter law); STEVENS, *supra* note 67, at 59 (discussing arguments that the case method is limited by its focus on the doubtful part of the law rather than what is settled and clear).

164. See generally SULLIVAN ET AL., *supra* note 4, at 75; Sonsteng & Camarotto, *supra* note 5.

165. See Stropus, *supra* note 159, at 460–62.

166. See RALPH WARNER ET AL., 29 REASONS NOT TO GO TO LAW SCHOOL 34 (3d ed. 1987); Beattie, Jr., *supra* note 163, at 472 (“Socratic teaching . . . inevitably humiliates, intimidates, and silences students.”); Susan Daicoff, *Lawyer, Know Thyself: A Review Of Empirical Research On Attorney Attributes Bearing On Professionalism*, 46 AM. U. L. REV. 1337, 1414 (1997).

167. Alan A. Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392, 407 (1971).

168. See Hess, *Heads and Hearts*, *supra* note 159, at 78.

a reliable means by which to evaluate and improve performance, students may perceive their inability to achieve certainty and correctness on a subject as a sign of failure. This sense of failure often manifests itself in the student through depression or anxiety.¹⁶⁹ Prior to law school, many students had outstanding scholastic records and developed a belief system that equates self-worth with achievement.¹⁷⁰ Students arrive at law school with control issues because they have become accustomed to, and expect to continue, a record of outperforming other students.¹⁷¹ Law school may be frustrating and damaging to those whose self-esteem depends on repeated demonstrations of success.¹⁷² A significant number of law students lose self-confidence and their motivation to learn.¹⁷³

Law school's stress-inducing culture intensifies as students realize the consequences for perceived failure. Opportunities for the highest paid jobs and entry into the most prestigious law firms are based primarily on grades; frequently, the grades received in the first year of law school have the greatest impact.¹⁷⁴ The stakes are highest early on, at a time when students are just beginning to get acclimated to the law school environment. As they are graded and ranked, the stress elevates, and if students are not able to maintain top status, they may experience profound loss of self-confidence.¹⁷⁵ A sense of ill-preparedness to practice upon

169. See Phyllis W. Beck & David Burns, *Anxiety and Depression in Law Students: Cognitive Intervention*, 30 J. LEGAL EDUC. 270, 287 (1979).

170. *Id.* (noting that many law students' success in prior academic settings leads them to develop "a belief system which equates self-worth with achievement" and that the "law school experience may be damaging to an individual whose self-esteem depends on continual demonstrations of success").

171. Hess, *Heads and Hearts*, *supra* note 159, at 78.

172. Beck & Burns, *supra* note 169, at 287.

173. Hess, *Heads and Hearts*, *supra* note 159, at 75.

174. Roger C. Cramton, *The Current State of the Law Curriculum*, 32 J. LEGAL EDUC. 321, 329 (1982) (remarking that "[f]irst-year grades control the distribution of goodies: honors, law review, job placement, and, because of the importance placed on these matters by the law-school culture, even the student's sense of personal worth").

175. Hess, *Heads and Hearts*, *supra* note 159, at 78. See G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. B. FOUND. RES. J. 225, 247-48 (1986). The authors ask whether it is "possible that law schools could have such a pervasive socializing influence on their students? We believe that the answer is yes." *Id.* at 251. The authors then conclude that "law schools appear to be the most invasive among all graduate education." *Id.* at 252. See also Stephen B. Shanfield & G. Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65, 69 (1985).

graduation adds yet another element of stress to the equation.¹⁷⁶

Stress is an important consideration for law school reform, because it is the most highly correlated predictor of depression, and lawyers are the most frequently depressed occupational group in the United States.¹⁷⁷ A healthy dose of stress can be a powerful motivator to achieve, and can create a unique bond between students. But:

[S]tudies of stress in law school and the experience of psychological counselors of law students indicate that not all law school stress is productive or motivational.

....

... In general, moderate levels of stress improve student performance while low or high levels of stress decrease performance. The more difficult the learning task, the greater the negative effects of stress in learning. Stress inhibits students from receiving and processing information when anxiety distracts them from the learning task.¹⁷⁸

Prolonged exposure to stress can cause burnout and withdrawal from active engagement in education.¹⁷⁹ Too much

(comparing law school to medical school in a discussion of stress factors).

176. One novel sums it up this way:

[A]ll of them our students, all of them hopelessly young and hopelessly smart and thus hopelessly sure they alone are right, and nearly all of whom, whatever their espoused differences, will soon be espoused to huge corporate law firms, massive profit factories where they will bill clients at ridiculous rates for two thousand hours of work every year, quickly earning twice as much money as the best of their teachers, and at half the age, sacrificing all on the altar of career, moving relentlessly upward as ideology and family life collapse equally around them, and at last arriving, a decade or two later, cynical and bitter, at their cherished career goals, partnerships, professorship, judgeships, whatever kind of ships they dream of sailing, and then looking around at the angry, empty waters and realizing that they have arrived with nothing, absolutely nothing, and wondering what to do with the rest of their wretched lives.

STEPHEN L. CARTER, *THE EMPEROR OF OCEAN PARK* 109 (2002).

177. See Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 CLINICAL L. REV. 425, 427 (2005); Alan Reifman et al., *Depression and Affect Among Law Students During Law School: A Longitudinal Study*, 2 J. EMOTIONAL ABUSE 93, 102 (2000) (using the term “distress” interchangeably with depression).

178. Hess, *Heads and Hearts*, *supra* note 159, at 86.

179. *Id.* at 80.

psychological distress provides no benefit and does not aid in the long-term goal of training effective lawyers.¹⁸⁰

C. Outdated Curriculum, Teaching, and Assessment Practices

A major obstacle to innovation is a failure to take into account students' individualized learning styles and capacities.¹⁸¹ The personal preferences of professors often drive curriculum design.¹⁸² Barriers to change are also apparent in the faculty attitudes which define and tend to separate substantive and skills-based courses. Despite the MacCrate Report's emphasis on the need for skills courses, faculty who have not previously taught such courses are reluctant to take them on, often regarding that kind of teaching as less prestigious than a doctrinal area of focus.¹⁸³ The skills classes are also presumed to be less analytically rigorous and thus not as desirable to teach.¹⁸⁴ Skills or clinical courses are viewed as an expensive drain on law school budgets as compared to traditional lecture-based courses.¹⁸⁵ Unfortunately, the MacCrate report was very theoretical and was not accompanied by any explanation as to how the goals it outlined can be financially accomplished.¹⁸⁶

The majority of law schools require students to take a separate first year course in legal research and writing.¹⁸⁷ In most schools these courses are not taught by traditional tenure-track faculty, but

180. See B.A. Glesner, *Fear and Loathing in the Law Schools*, 23 CONN. L. REV. 627, 635 (1991); see also Gregory A. Kalscheur, S.J., *Law School as a Culture of Conversation: Re-Imagining Legal Education as a Process of Conversion to the Demands of Authentic Conversation*, 28 LOY. U. CHI. L.J. 333, 336-42 (1996) (arguing that the culture of law school causes students to lose or at least moderate their commitments to any specific ideological goals they had that led them to law school in the first place).

181. Andrew J. Pirie, *Objectives in Legal Education: The Case for Systematic Instructional Design*, 37 J. LEGAL EDUC. 576, 582 (1987).

182. See Harry T. Edwards, *Another "Postscript" to "The Growing Disjunction Between Legal Education and the Legal Profession"*, 69 WASH. L. REV. 561, 568 (1994).

183. Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth about Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199, 261 (1997); see also Deborah Jones Merritt, *Who Teaches Constitutional Law?*, 11 CONST. COMMENT. 145, 154 (1994).

184. Juergens, *supra* note 140, at 413.

185. *Id.* at 414.

186. Patrick R. Hugg, *Comparative Models for Legal Education in the United States: Improved Admissions Standards and Professional Training Centers*, 30 VAL. U. L. REV. 51, 57 (1995).

187. N. William Hines, *Ten Major Changes in Legal Education Over the Past 25 Years*, AALS NEWS, at 18 (Aug. 2005), http://www.aals.org/documents/aals_news_letter_aug05.pdf [hereinafter Hines, Part 1] (last visited Nov. 3, 2007).

by “instructors who specialize in teaching legal research and writing.”¹⁸⁸ The presence in law schools of these Legal Research and Writing (LRW) instructors has grown exponentially over the past twenty-five years.¹⁸⁹ In fact, LRW instructors are asking the ABA to require that law schools give them faculty status, including the perks that accompany such status, that are now typically given to clinical faculty.¹⁹⁰

Each year the National Association for Law Placement Foundation (NALP) surveys the graduating Juris Doctorate class and publishes the resulting data¹⁹¹ in the Employment Report and Salary Survey (ERSS), which examines the employment experiences of new law graduates. More than half of the law graduates surveyed from 1982 to 2004 report that they obtained their first job at a law firm.¹⁹² The survey also revealed that small firms of two to ten lawyers supplied relatively more jobs than any other size firm.¹⁹³ While larger law firms have the resources to administer in-house skills training to new hires, these smaller firms do not.

The current curriculum does not train students to view the practice of law as both a profession and a business. Few lawyers “have formal training in business basics such as law-leadership,

188. *Id.*

189. *Id.*; Stanchi & Levine, *supra* note 154, at 6–9; see Jan M. Levine, *Voices in the Wilderness: Tenured and Tenure-Track Directors and Teachers in Legal Research and Writing Programs*, 45 J. LEGAL EDUC. 530, 548 (1995).

190. Hines, Part 1, *supra* note 187, at 18.

191. NALP, Jobs & JD's: Employment and Salaries of New Law Graduates, <http://www.nalp.org/content/index.php?pid=304> (last visited Dec. 1, 2007). “For three decades, NALP has been conducting an annual survey to determine what types of jobs and salaries were obtained by members of the most recent law school graduating class. Law schools submit data on their graduates as of February 15 following the year of graduation.” *Id.*

192. NALP, Trends in Graduate Employment — 1985–2004, <http://www.nalp.org/content/index.php?pid=274> (last visited Dec. 1, 2007).

193. *Id.*

After declining through much of the 1980s and reaching a low of about 25% in 1989, the percentage of jobs [at firms of 2-10 lawyers] climbed back to about 41% in 1993. Another decline started in 1996 and continued through 2001. These changes were mirrored by opposing changes for firms of more than 100 lawyers. The percentage of law firm jobs accounted for by these firms doubled during the 1980s, dropped noticeably between 1990 and 1993, and started to rise again in 1994. During the last seven years, the number of jobs taken in firms of more than 100 lawyers has outnumbered those taken in firms of 2-10 despite a narrowing of the differential in recent years.

Id.

management, profitability, and business development.”¹⁹⁴ While law firms and law schools agree that some skills must be learned on the job, competent lawyers—especially those in small firms or solo practice—would benefit from a curriculum that included the fundamentals of how to run a business.¹⁹⁵ Such curriculum includes classes in project management, time management, efficiency, planning, resource allocation, budgeting, interpersonal communications, staff relations, fee arrangements, pricing and billing, governance decision-making, long-range strategic planning, marketing, client development, capitalization, investment, human resources, hiring, and support staff.¹⁹⁶ Nevertheless, new lawyers must obtain training on their own.¹⁹⁷

During the first clinical movement in legal education in the early half of the twentieth century, Judge Jerome Frank¹⁹⁸ criticized the legal education system and called for the expansion of clinical education by including some parts of a modified version of the apprenticeship system. Professor John M. Burman has re-iterated many of Judge Frank’s theories, noting that:

[T]he required curriculum at many, if not most, American law schools virtually ignores at least half of the fundamental skills every lawyer should have.¹⁹⁹

Indeed, Judge Frank argued forcefully that traditional ways of teaching law were ineffective at preparing law students to become successful attorneys:

The trouble with much law school teaching is that, confining its attention to a study of upper court opinions,

194. Marci M. Krufka, *Teaching Lawyers to be Managers, Law Schools and Firms Have Recently Initiated Law Office Management Courses*, NAT’L L. J., Nov. 22, 2004, at 14.

195. Business is defined as “the occupation, work, or trade in which a person is engaged.” THE AM. HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 252 (4th ed. 2004). Profession is defined as “An occupation or career An occupation, such as law, medicine, or engineering, that requires considerable training and specialized study The body of qualified persons in an occupation or field.” *Id.* at 1400.

196. Krufka, *supra* note 194. Rehnquist offered opinions denouncing the recent domination of the legal profession by market capitalism, focus on profit, and the billable hour. See William H. Rehnquist, *Remarks of the Chief Justice: The Catholic University of America, Columbus School of Law Commencement*, 46 CATH. U. L. REV. 1, 3 (1996).

197. See *infra* Tables 4 & 6.

198. See *infra* Part II.

199. John M. Burman, *Oral Examinations as a Method of Evaluating Law Students*, 51 J. LEGAL EDUC. 130, 132 (2001).

it is hopelessly oversimplified . . . is it not plain that, without giving up entirely the case-book system or the growing and valuable alliance with the so-called social sciences, the law schools should once more get in intimate contact with what clients need and with what courts and lawyers actually do [T]he practice of law and the deciding of cases constitute not sciences but arts—the art of the lawyer and the art of the judge. Only a slight part of any art can be learned from books. Whether it be painting or writing or practicing law, the best kind of education in an art is usually through apprentice-training under the supervision of men some of whom have themselves become skilled in the actual practice of the art. That was once accepted wisdom in American legal education. It needs to be rediscovered.²⁰⁰

In 1969, Chief Justice Warren E. Burger stated:

The law schools of this country on their part have superbly trained students in legal principles and analysis but the question is whether that is enough. In my view that is not enough The modern law school is not fulfilling its basic duty to provide society with people-oriented counselors and advocates to meet the expanding needs of our changing world The shortcomings of today's law graduate lies not in a decent knowledge of law but that he has little, if any, training in dealing with facts or people—the stuff of which cases are really made.²⁰¹

In spite of this criticism, law schools continue to graduate students who may have some grasp of legal theory, but little idea as to how to apply what they know.²⁰²

Legal education's assessment systems are as outdated as the standard curriculum, and are neither effective nor appropriate.²⁰³

200. William Quigley, *supra* note 54, at 468–69.

201. *Id.* at 469–70.

202. *See infra* Part IV.

203. Nicholas L. Georgakopoulos, *Relative Rank: A Remedy for Subjective Absolute Grades*, 29 CONN. L. REV. 445, 453–54 (1996) (discussing the advantages and disadvantages of the “relative rank system,” a new alternative to traditional methods of determining a student's class rank); Jeffrey Evans Stake, *Making the Grade: Some Principles of Comparative Grading*, 52 J. LEGAL EDUC. 583, 584–86 (2002) (emphasizing the fact that although great weight is placed on a student's class rank, because these ranks are “based entirely on grades, these statistics add no new information to the thin account published in the individual grades”); Paul T. Wangerin, *Calculating Rank-in-Class Numbers: The Impact of Grading Differences Among Law School Teachers*, 51 J. LEGAL EDUC. 98, 117 (2001) (noting that traditional grading practices show “only information about relative standings and tells

Rather than using assessment as a tool to refine teaching methods, achieve greater learning objectives, and ensure consistent grading, students are tested and assigned grades primarily for the purpose of compiling a class rank.²⁰⁴ The assessment process is based on a narrow set of standards, suited to a small subset of the student population, and is intended to spotlight the most talented lawyers for potential employers.²⁰⁵

In the competitive world of legal education, Law School Admission Test (LSAT) scores, undergraduate grades, and undergraduate class rank determine if an individual will get into a school, how much money it will cost, which campus organizations will consider adding the individual to their ranks, which type, size, and caliber of employer will grant the individual an interview for a summer clerkship, and eventually which career tracks will be an option.²⁰⁶ A student's ultimate path to success is often set during the first year of law school,²⁰⁷ and first-year grades are considered by many as the most important of a law student's academic career.²⁰⁸ Although second- and third-year students have a chance to improve

outsiders nothing whatsoever about the objective quality of students' work"); *see infra* Part V.

204. Philip C. Kissam, *Essay: Law School Examinations*, 42 VAND. L. REV. 433, 436 (1989) ("[T]he immediate function of law school grading practices is to establish a highly disaggregated class ranking system."); *see* Bruce A. Kimball, *The Principle, Politics, and Finances of Introducing Academic Merit as the Standard of Hiring for "The Teaching of Law as a Career," 1870-1900*, 31 LAW & SOC. INQUIRY 617, 617-18 (2006) [hereinafter Kimball, *The Principle*] (noting that when considering candidates for positions as professors, law schools place a high priority on the candidate's law school grades and class rank).

205. Kissam, *supra* note 204, at 436; *see* Kimball, *The Principle*, *supra* note 204, at 617-18.

206. Akshat Tewary, *Legal Ethics as a Means to Address the Problem of Elite Law Firm Non-Diversity*, 12 ASIAN L.J. 1, 11-12 (2005) (emphasizing the fact that "[i]n making their hiring decisions, law firms place inordinate importance on 'signals' of lawyerly skill and merit, such as grades, law review membership, and law school status.>").

207. *See* Kathy L. Cerminara, *Remembering Arthur: Some Suggestions for Law School Academic Support Programs*, 21 T. MARSHALL L. REV. 249, 260 (1996) (advocating for the use of academic support systems in a law student's first year to help students who are "concerned not only with surviving their first year of law school but also with doing well so that they will be able to obtain jobs."); *see also* Kissam, *supra* note 204, at 465.

208. Paula Lustbader, *Construction Sites, Building Types, and Bridging Gaps: A Cognitive Theory of the Learning Progression of Law Students*, 33 WILLAMETTE L. REV. 315, 320 (1997). Lustbader appropriately notes that "[l]aw schools create anxiety more than other graduate schools because there are more students in each course, more capable students competing for grades, more potential employers placing a great emphasis on first year grades, and little feedback." *Id.* at 320 n.9.

their grades, they will have already been labeled “bright,” “mediocre,” or “less intellectually talented,” and will continue to be labeled by the grades they were assigned at the conclusion of their first year.²⁰⁹

Beyond providing a basis for class rank, grades function as signals to students about whether they are studying correctly or enough, and whether they have what it takes to succeed as a lawyer. “Grades can influence the ways students think about themselves, swelling their heads or shaking their confidence.”²¹⁰ With so much emphasis placed on grades and class rank, the assessment system should serve as a much broader tool, and should recognize a greater spectrum of professional strengths.

After all, grades say little. Grades generally purport to tell only who performed better and who performed worse on an instrument of assessment, usually a single exam or paper. . . . The nearly ubiquitous grade point average is usually just a weighted average of all of a student’s classes, a numerical combination of incommensurable grades measuring various dimensions of ability and learning. And class rank is normally derived from GPAs. Being based entirely on grades, these statistics add no new information to the thin account published in the individual grades.²¹¹

Most law schools encourage or require professors to base grades on a curve with a forced mean and a predetermined standard deviation.²¹² The reality of comparative grading systems is that employers and other readers of law school transcripts have no background information on what grades mean for individual teachers.²¹³ A grade from one teacher may mean something entirely different than the same grade from another.²¹⁴ The grade that is awarded depends on each teacher’s individual grading style.²¹⁵ Even when teachers appear to seek shared goals and are constrained by rules and customs, some grade lower, and some higher.²¹⁶ Dramatic differences in definitions of letter grades exist

209. Linda Morton et al., *Not Quite Grown Up: The Difficulty of Applying an Adult Education Model to Legal Externs*, 5 CLINICAL L. REV. 469, 513 n.161 (1999).

210. Stake, *supra* note 203, at 584.

211. *Id.*

212. *Id.* at 599.

213. *Id.* at 587.

214. *Id.*

215. *Id.*

216. *Id.*

within a university, and within different sections of the same course.²¹⁷ The fact that the importance of a person's law school grades diminish significantly with each passing year of professional practice offers little comfort to the two-thirds of the class who are not graduating at the top.²¹⁸

Law school assessment is infrequent, consisting of only one or two exams per semester, which does not provide an adequate opportunity for improvement throughout the duration of a course.²¹⁹ In addition, timed essay exams are almost exclusively the only method of testing. A single method of testing does not utilize a variety of learning and problem-solving methods²²⁰ and ignores underlying character attributes that are important predictors of a student's success as a lawyer.²²¹ The system of timed essay exams unfairly benefits students who write well, while not rewarding those who may have an advantage in an oral examination setting.²²² "[A]

217. *Id.*

218. See Richard A. Matasar, *The Rise and Fall of American Legal Education*, 49 N.Y.L. SCH. L. REV. 465, 487 (2004) (recounting that graduates often regret not pursuing more challenging classes in order to maintain grades and secure employment).

219. Alice M. Thomas, *Laying the Foundation for Better Student Learning in the Twenty-First Century: Incorporating an Integrated Theory of Legal Education into Doctrinal Pedagogy*, 6 WIDENER L. SYMP. J. 49, 96 (2000) (concluding that meaningful learning experiences require that a student be given the opportunity to be tested throughout the learning period, receiving both qualitative and quantitative feedback so the student can adapt before the final assessment).

220. Kissam, *supra* note 204, at 470 (recognizing that classroom instruction and the text teach students very little about what they need to know to be successful on a Blue Book examination); Vernellia R. Randall, *A Reply To Professor Ward*, 26 CUMB. L. REV. 121, 121-22 (1995) [hereinafter Randall, *Reply*].

221. Richard A. Ippolito, *The Sorting Function: Evidence from Law School*, 51 J. LEGAL EDUC. 533, 552 (2001); Matasar, *supra* note 218, at 485-86.

222. For example:

[t]he spectacle of a student trying to record an adequate sampling of his gains from a four-hour course of several months' duration in the English prose which he can produce in three hours under the conditions and circumstances of college examination week, and the correlative spectacle of the college professor passing judgment on that student on the sole basis of the product of those three hours of writing, seem, on *a priori* grounds alone, quite incompatible with current ideals of educational measurement and administration.

Ben D. Wood, *The Measurement of Law School Work*, 24 COLUM. L. REV. 224, 226 (1924). See Gregory S. Munro, *How Do We Know if We Are Achieving Our Goals?: Strategies for Assessing the Outcome of Curricular Innovation*, 1 J. ASS'N LEGAL WRITING DIRECTORS 229, 239 (2002) (noting that oral examination methods show faculty members that "some students who do poorly on written work excel in demonstrating their knowledge and understanding in an oral presentation.").

system of evaluation that relies primarily on one system or the other benefits some and penalizes others,” whereas²²³ “a system which relies almost exclusively on students’ performance on one exam at the end of each course is neither an accurate method of evaluating students, nor an effective method of teaching them.”²²⁴

The traditional assessment system creates an illusion of higher achievement when there may actually be a deficiency in actual lawyering skills.²²⁵ Professors routinely observe students excel in written exams, but then watch as they struggle with interviewing and counseling clients.²²⁶ Much emphasis is placed on raw grades without considering life experience and other factors related to professional potential:

Some people erroneously equate GPAs with work ethic, enterprise, or ability to excel at legal work. They fail to consider the heroism of the student who graduates despite battles with unseen disabilities, major health issues, psychological demons, ill loved ones, or draining relationships. They don’t think about the student with exceptional grades who can’t express her passion for the law in a job interview.²²⁷

Clinical professors see students at the bottom of their class flourish in clinical settings that allow them to demonstrate communication or persuasion skills.²²⁸

Recently, a slight increase in the use of multiple-choice exams has been realized.²²⁹ While essay exams are ineffective in providing a true assessment of important lawyering skills, multiple choice exams provide even less information. Multiple-choice exams provide little to no opportunity for students to display what they actually know about a particular topic.²³⁰ Objective exams are

223. Burman, *supra* note 199, at 138.

224. *Id.* at 131.

225. See Matasar, *supra* note 218, at 484–87 (explaining that employers rely on grades and prestige of a school as “a long-term bet on ‘talent’ over training”).

226. Burman, *supra* note 199, at 131.

227. Dennis J. Tonsing, *Grades Count, but Don’t Allow Them to Define You as a Lawyer*, STUDENT LAW., Jan. 2006, at 12.

228. Burman, *supra* note 199, at 131.

229. Maureen Straub Kordesh, *Reinterpreting ABA Standard 302(f) in Light of the Multistate Performance Test*, 30 U. MEM. L. REV. 299, 334 (2000). See AM. BAR ASS’N COMM’N ON PROFESSIONALISM, “. . . IN THE SPIRIT OF PUBLIC SERVICE:” A BLUEPRINT FOR REKINDLING OF LAWYER PROFESSIONALISM 17 (1986) (noting concern that multiple-choice exam may socialize students to the lowest acceptable standards).

230. Kenney F. Hegland, *Law School Examination: On Essay Exams*, 56 J. LEGAL EDUC. 140, 147 (2006). See Kissam, *supra* note 204, at 444 (explaining that

successful at producing a bell curve.²³¹ However, this testing format allows a student who guesses correctly to obtain a high grade, while a prepared student who was unable to choose the subjectively best answer receives a poor grade.²³² This is a particular risk in certain areas of study, such as contracts, where the same set of facts can reasonably be construed in more than one way. Such exam conditions produce unnecessarily high levels of anxiety in students,²³³ and can have an undeserved negative impact on an otherwise impressive academic transcript.

D. Rankings

Law schools have had a bittersweet relationship with the *U.S. News & World Report* rankings since their inception in 1987.²³⁴ Each year the magazine uses its own criteria to rank ABA approved law schools in descending order. While leaders of legal education agree that the system is deeply flawed and should not be taken seriously, consumers of the rankings—i.e., university officials, boards of trustees, legislators, alumni leaders, potential donors, faculty candidates, upwardly mobile faculty, and current and prospective students—pay them high regard.²³⁵ The rankings affect which faculty members are retained, where students enroll, which professors will accept or reject offers, and which graduates law firms hire.²³⁶

A growing concern exists among critics of legal education that the rankings are prompting law schools to change their operations in hopes of increasing their scores.²³⁷ Considerable weight is given

quantitative methods of grading Blue Book exams are the same as applied to multiple-choice and other forms of exams).

231. Kissam, *supra* note 204, at 442–43.

232. William D. Henderson, *The LSAT, Law School Exams, and Meritocracy: The Surprising and Undertheorized Role of Test-Taking Speed*, 82 TEX. L. REV. 975, 982 (2004); Gerald F. Hess, *Monographs on Teaching and Learning for Legal Educators*, 35 GONZ. L. REV. 63, 96 (2000).

233. Denise Riebe, *A Bar Review for Law Schools: Getting Students on Board to Pass Their Bar Exams*, 45 BRANDEIS L.J. 269, 305 (2007).

234. David A. Thomas, *The Law School Rankings are Harmful Deceptions: A Response to Those Who Praise the Rankings and Suggestions for a Better Approach to Evaluating Law Schools*, 40 HOUS. L. REV. 419, 420–21 (2003); see Paul Tosto, *Law Deans Hate Rankings, Love New Ranks: U.S. News Ignores Important Criteria, the Educators Say, But Schools Rely on its Lists to Keep Their Reputations*, ST. PAUL PIONEER PRESS (Minn.), Apr. 9, 2007, at A1.

235. Hines, Part 1, *supra* note 187, at 2.

236. *Id.* at 3.

237. Leigh Jones, *Law Schools Play the Ranking Game: Resources Used to Boost*

to LSAT scores and grade-point averages (GPA) in the publication's rankings,²³⁸ and there is reason to believe that a substantial number of schools have adjusted their admissions practices accordingly. For example, students with high GPAs but less than outstanding LSAT scores, who might enhance the student body, are placed at a disadvantage.²³⁹ Schools may try to raise their score on the rejection rate factor by encouraging applications from students who have virtually no chance of being admitted.²⁴⁰ Schools may shift students with lower LSAT scores to part-time programs to improve their LSAT showings because part-time programs are given less weight in the ranking computations.²⁴¹ Other ways to move up the list include reducing first-year class size (which the publication uses to compute some of its data), closely tracking graduates' job placements to gain an advantage over those whose data is incomplete, and down-rating the competition when completing the survey.²⁴²

The rate of student employment at graduation is another factor emphasized in the rankings. "There is reason to believe that law schools have manipulated this reporting by such practices as treating students temporarily employed in non-legal jobs as fully employed as lawyers, or by hiring all of their own students who are unemployed at graduation as temporary employees of the school."²⁴³ Also, a school's reputation determines "40% of the ranking."²⁴⁴ Some schools produce promotional materials to raise the visibility of their program in the eyes of those who complete the questions.²⁴⁵

Rank; Critics Say it Hurts Schools, NAT'L L.J., Apr. 18, 2005, available at <http://www.law.com/jsp/article.jsp?id=1113555914350>; Thomas, *supra* note 234, at 437, 446. See also Paul D. Carrington, *Tanking the Rankings: Grading Law Schools by Conventional Measurements is More Than Shallow: It's Pernicious*, AM. LAW., Apr. 2000, at 39 (discussing factors considered when ranking law schools).

238. Law School Admission Council, *Ranking Law Schools*, available at http://officialguide.lsac.org/Information/ChoosingALawSchool/CALS_RankingLawSchools.aspx (2007) (last visited Nov. 25, 2007).

239. Hines, Part 1, *supra* note 187, at 3; Jones, *supra* note 237.

240. Thomas, *supra* note 234, at 446.

241. Jones, *supra* note 237.

242. Thomas, *supra* note 234, at 446–47; Jones, *supra* note 237. See also Carrington, *supra* note 237, at 39 (discussing factors considered when ranking law schools).

243. Hines, Part 1, *supra* note 187, at 3.

244. *Id.*

245. *Id.*

The factor weighted most heavily in the *U.S. News & World Report's* rankings is peer assessment.²⁴⁶ Peer assessment is determined subjectively by ratings submitted by law school deans, deans of academic affairs, chairs of faculty appointments, and recently tenured faculty members.²⁴⁷ This system leaves substantial room for inaccuracy, while slightly more balanced and legitimate means of evaluation, such as bar passage rates, are given less weight.

The Law School Admission Council denounces the rankings and discourages its use by law school applicants.²⁴⁸ The National Association for Law Placement (NALP)²⁴⁹ posted a message on its website stating, "NALP does not rank law schools or legal employers and discourages the use of rating systems or rank-ordered lists in evaluating law schools, legal employers, or individual candidates for employment" and suggests the *NALP Directory of Law Schools*, school websites or law school career services offices as alternatives for more accurate information.²⁵⁰ The AALS agrees that the ratings should not be taken seriously.²⁵¹ Despite the consensus that the rankings are unscientific and imprecise,²⁵² a

246. *America's Best Graduate Schools 2008: Law Methodology*, U.S. NEWS & WORLD REP. (2007) available at http://grad-schools.usnews.rankingsandreviews.com/usnews/edu/grad/rankings/about/08law_meth_brief.php.

247. *Id.*

248. Law School Admission Council, *supra* note 238.

249. Founded in 1971 as the National Association for Law Placement (NALP), the Association for Legal Career Professionals is a non-profit educational association established to meet the needs of all participants in the legal employment process (career planning, recruitment and hiring, and professional development of law students and lawyers) for information, coordination and standards. NALP, *Principles and Standards for Law Placement and Recruitment Activities*, available at <http://www.nalp.org/content/index.php?pid=16>. NALP's membership includes virtually every ABA-approved law school in the U.S., Canadian law schools, and hundreds of legal employers from both the public and private sectors. *Id.*

250. NALP, *Ranking or Rating of Law Schools, Legal Employers, and Candidates for Employment*, available at <http://www.nalp.org/content/index.php?pid=250>.

251. Hines, Part 1, *supra* note 187, at 2.

252. See Thomas, *supra* note 234, at 429 ("[T]he criteria used to rank law schools are either irrelevant or unknowable.").

In the U.S. News & World Report law school rankings, the publisher forces the readers to assume credibility, because it does not publish enough data or methodology information to enable a reader to validate either data accuracy or the rankings computations. The magazine does not publish all the relevant data, does not describe all the measures it takes to ensure the accuracy of the data, and does not describe its methodology in enough detail to enable anyone to actually check the

feeling exists that “persons familiar with law schools would categorically deny that a unitary or consensual judgment about law school quality could be made from assessing a canonical list of criteria.”²⁵³ “The publication receives enormous attention . . . because it has virtually no competition”²⁵⁴ Law schools have difficulty in avoiding the *U.S. News & World Report*’s ranking system because, if a school chooses not to respond to the annual request for information, the magazine estimates the data and publishes a ranking on estimation.²⁵⁵

E. Faculty Resistance

The world of academia is structured in a way that is not conducive to significant change.²⁵⁶ It is difficult to get everyone in a particular institution to agree to find leaders who will initiate elaborate and slow procedures for approval, and to meet the complex challenges in designing a plan that will accomplish the desired objectives while complying with necessary standards.²⁵⁷ Competing interests make agreement difficult as change may positively impact one part of an organization and negatively impact another.²⁵⁸ The academic calendar also makes it difficult to sustain faculty interest crucial to implementation of change.²⁵⁹

The legal academic community places a higher value on research than on teaching. Professors struggle to balance legal scholarship with teaching duties and are often pressured to sacrifice the needs of the students for scholarly pursuits.²⁶⁰ The

results or to isolate and identify the influence of individual factors on the rankings. . . .

Id. at 422.

253. Thomas, *supra* note 234, at 427. *See also* Carrington, *supra* note 237, at 39 (discussing factors considered when ranking law schools).

254. Jones, *supra* note 237 (quoting Robert Morse, the director of data research for *U.S. News & World Report*). *See* Tosto, *supra* note 234.

255. Hines, Part 1, *supra* note 187, at 3.

256. Lewis D. Solomon, *Perspectives on Curriculum Reform in Law Schools: A Critical Assessment*, 24 U. TOL. L. REV. 1, 37 (1992).

257. *Id.*

258. *Id.* at 35.

259. *Id.* at 37.

260. As one author noted:

Nowadays, I earn my bread by writing learned articles too arcane to have any influence and, several mornings a week, trying to stuff some torts (fall term) or administrative law (spring term) into the heads of students too intelligent to content themselves with B’s but too self-absorbed to waste their precious energy on the tedious details one must master to

publish-or-perish mentality diminishes quality of teaching and offers greater reward and recognition for scholarship than for teaching-related accomplishments.²⁶¹ More time and money is put into scholarship, and, consequently, law courses are not developed, maintained, or improved.²⁶² “Teaching tuition-paying students is becoming an evil necessary to finance the theoretical scholarship of the faculty.”²⁶³ This focus on scholarship also impacts teaching content because teachers inevitably teach law students the subject of their scholarship, therefore “[s]cholarship is . . . increasingly the engine that drives the teaching train in law school.”²⁶⁴

Law professors, often among the most academically successful under the traditional education system, may resist change because they prefer to replicate the environment in which they achieved success.²⁶⁵ Although professors may have been excellent students, one of the most prevalent criticisms of law school faculty is that

earn A's. Most of our students crave only the credential we award, not the knowledge we offer; and as generation after generation, each one more than the last, views us as a merely vocational school, the connection between the desire for the degree and the desire to understand the law grows more and more attenuated. These are not, perhaps, the happiest thoughts a law professor might endure, but most of us think them at some time or other, and today seems to be my day.

CARTER, *supra* note 176, at 12.

261. See James Lindgren & Allison Nagelberg, *Are Scholars Better Teachers?*, 73 CHI.-KENT L. REV. 823, 827–29 (1998); Deborah Jones Merritt, *Research and Teaching on Law Faculties: An Empirical Exploration*, 73 CHI.-KENT L. REV. 765, 807 (1998); Fred R. Shapiro, *They Published, Not Perished, But Were They Good Teachers?*, 73 CHI.-KENT L. REV. 835, 839 (1998).

262. Professors' salaries are a reflection of their scholarship achievements and not their teaching achievements:

[S]cholarship has become the most important factor in the determination of tenure, promotion, and other measures of advancement. The primary role of scholarship as a professional priority of law teachers was confirmed by the report of the AALS Special Committee on Tenure and Tenuring Process. The empirical data generated by the Committee revealed that “(f)ew schools' statements (on criteria for tenure) proclaim officially the primacy of scholarship in awarding tenure; but there are indicia in many of the statements that this is true.”

Trail & Underwood, *supra* note 70, at 213 (citations omitted). See also Marin Roger Scordato, *The Dualist Model of Legal Teaching and Scholarship*, 40 AM. U. L. REV. 367, 375–76 (1990).

263. Trail & Underwood, *supra* note 70, at 213.

264. *Id.*

265. See Anderson, *supra* note 144, at 134 (describing why law classrooms today do not meet student needs or expectations).

professors have little or no experience in the practice of law.²⁶⁶ They are so far removed from legal practice that their teachings are theoretical and impractical.²⁶⁷

The usual requirements for teaching law school are “superior academic grades from top rank law schools, law review experience, prestigious judicial clerkships, scholarly publications, and having most of the current faculty believe you will fit in.”²⁶⁸ Consequently, many professors begin teaching the law without instruction in conducting a class, presenting materials, developing learning objectives, or assessing student learning.²⁶⁹ Because law school professors have limited knowledge of learning theory, they teach without regard to the effectiveness of the method.²⁷⁰ Without an

266. See Juergens, *supra* note 140, at 412–413 (describing teachers in the traditional classroom as having credentials that may be limited to “an excellent academic record at an ‘elite’ law school, law review, clerkship for an appellate judge, perhaps a few years at a big law firm, but relatively little first-hand knowledge of dealing with clients, transactions, the courtroom, real-life conflict and problem solving.”).

267. Edwards, *supra* note 182, at 568–70 (stating that while professors do have students evaluate their courses, they fail to take the recommendations from practicing attorneys); Harry T. Edwards, *A New Vision for the Legal Profession*, 72 N.Y.U. L. REV. 567, 571 (1997) (commenting that many young lawyers find that the “rat race” of a large firm is undesirable, so they seek out teaching after only a couple of years of practice; these teachers have little knowledge of the legal practice and have a negative view of law practice). See also Timothy W. Floyd, *Legal Education and the Vision Thing*, 31 GA. L. REV. 853, 856–58 (stating that law school curricula focuses too much on legal doctrine rather than on the roles of attorneys in society, in part since most law professors were not in the practice very long).

268. Randall, *Increasing Retention*, *supra* note 17, at 208. See Borthwick & Schau, *supra* note 17, at 206 tbl.7 (showing that almost sixty percent of the law faculty hired in 1980s had served on law review); Oko, *supra* note 17, at 206.

269. “While kindergarten teachers and grade school teachers and high school teachers are all required to study how to teach before beginning as teachers, law school teachers have no such prerequisites.” William Quigley, *supra* note 54, at 463. See generally Susan J. Becker, *Advice for the New Law Professor: A View from the Trenches*, 42 J. LEGAL EDUC. 432 (1992); Douglas K. Newell, *Ten Survival Suggestions for Rookie Law Teachers*, 33 J. LEGAL EDUC. 693 (1983); Kent D. Syverud, *Taking Students Seriously: A Guide for New Law Teachers*, 43 J. LEGAL EDUC. 247 (1993); Douglas J. Whaley, *Teaching Law: Advice for the New Professor*, 43 OHIO ST. L.J. 125 (1982).

270. See Robin A. Boyle & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 ALB. L. REV. 213, 218 (1998) (concluding that professors who teach using only one method disregard the fact that there will be a portion of students who cannot learn by such method); James Jay Brown, *Forgoing an Analytical Mind: The Law School Classroom Experience*, 29 STETSON L. REV. 1135, 1151–52 (2000) (professors often fill several roles in the classroom); Talbot D’Alemberte, *Talbot D’Alemberte on Legal Education*, 76 A.B.A. J. 52, 53 (1990) (suggesting that there are professors at universities who teach Drama, English, and Math are more suited and capable to teach the law than the professors in the law

understanding of why and how students learn, they are unable to help students perform and learn effectively.²⁷¹ Many faculty members do understand the limits of teaching with the case method and welcome educational experimentation in their classroom.²⁷² Traditional scholars, however, resist sacrificing theoretical instruction to practical training because they believe that the practical aspects of legal practice should be left to clerkships and opportunities outside of law school.²⁷³ Some professors prefer the Socratic and case methods, and find little incentive to incorporate new teaching techniques.²⁷⁴ Novice professors may not feel comfortable revealing their ignorance of alternative teaching methods.²⁷⁵

schools); Floyd, *supra* note 267, at 855 (noting that the pedagogy of law schools does not effectively accomplish what law schools set out to accomplish); David D. Garner, *The Continuing Vitality of the Case Method in the Twenty-First Century*, 2000 B.Y.U. EDUC. & L. J. 307, 343 (regarding meeting pedagogical goals, much if not everything rests on whether or not a professor can stimulate the student's excitement for the subject to make them want to learn); Randall, *Reply*, *supra* note 220, at 121–23 (describing the shortcomings of a non-pedagogically sound legal education); Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 364 (2001) (pressuring professors to conform their teaching to one style restricts the exploration of finding a way that all of the students will benefit from); William Quigley, *supra* note 54, at 463 (describing clinical education as a method of teaching).

271. Brown, *supra* note 270, at 1153 (observing that professors and students have conflicting roles in the classroom; professors wish to convey theoretical meaning while students are simply searching for information and tools to help them pass the exam); Randall, *Reply*, *supra* note 220, at 121–23 (describing the shortcomings of a non-pedagogically sound legal education); Michael Hunter Schwartz, *Teaching Law Students to be Self-regulated Learners*, 2003 MICH. ST. DCL L. REV. 447, 451 [hereinafter Schwartz, *Teaching Law Students*] (professors fail to identify learning objectives and fail to take into consideration how different students learn).

272. Juergens, *supra* note 140, at 419. Cf., e.g., MACCRATE REPORT, *supra* note 5, at 243 (“Other skills [than legal analysis and reasoning] and values described in the Statement require more versatile and extensive instruction than can be accomplished solely through the analysis of appellate cases.”).

273. See generally Givelber et al., *supra* note 35 (refuting the traditional notion that law students do not learn much from work experiences unless closely controlled); William H. Simon, *Judicial Clerkships and Elite Professional Culture*, 36 J. LEGAL EDUC. 129 (1986) (explaining why clerkships are overvalued and critiquing the goals most students assert in explaining why they want clerkships).

274. Steven Friedland, *How We Teach: A Survey of Teaching Techniques In American Law Schools*, 20 SEATTLE U. L. REV. 1, 41 (1996).

275. See Edwards, *supra* note 182, at 568–69 (outlining problems in legal education, including refusal to look at what is effective education); Kevin H. Smith, “X-File” Law School Pedagogy: *Keeping the Truth Out There*, 30 LOY. U. CHI. L.J. 27, 27 (1998).

Numerous rationales exist for the tenure system. Academic freedom guarantees professors' security²⁷⁶ and a certain amount of autonomy with regard to teaching and research.²⁷⁷ Incumbent academics may need the security of tenure to hire the best people if universities are to thrive.²⁷⁸ If professors thought they were vulnerable to replacement by more highly skilled newcomers they might hire less skilled junior faculty to protect themselves.²⁷⁹ If the incumbents are secure in their positions, they are free to recommend the best candidates available for hire.²⁸⁰ In addition to protecting academic freedom, tenure rewards the faculty for foregoing the higher salaries earned by professionals outside academia.²⁸¹

In spite of its benefits, the tenure system does not encourage change because it offers professional security, regardless of whether change is overdue or implemented.²⁸² Many skeptics question the benefits of tenure to students in a system where tenured professors are often viewed as untouchables with unquestioned job security.²⁸³

Autonomy should not be absolute; the legal education system must find a way to achieve autonomy without losing accountability.²⁸⁴ The Cramton Report noted that faculty autonomy "stands in the way of any significant institutional effort to

276. Mark L. Adams, *The Quest for Tenure: Job Security and Academic Freedom*, 56 CATH. U. L. REV. 67, 67 (2006).

277. Contrary to common notions of academic freedom, from a historical perspective, academic freedom is based "in professional autonomy and collegial self-governance," rather than free speech. Thomas L. Haskell, *Justifying the Rights of Academic in the Era of "Power/Knowledge,"* in THE FUTURE OF ACADEMIC FREEDOM 43, 54 (Louis Menand ed., 1996); J. Peter Byrne, *Academic Freedom: A "Special Concern of the First Amendment,"* 99 YALE L.J. 251, 262, 265-67 (1989).

278. Antony W. Dnes & Jonathan S. Seaton, *The Reform of Academic Tenure in the United Kingdom*, 18 INT'L REV. L. & ECON. 491, 492 (1998).

279. *Id.*

280. *Id.*

281. Robert C. Cloud, *Evaluating and Revising Tenure in Higher Education: Implications for Practitioners*, 128 WEST'S ED. LAW REP. 931, 931 (1998); Constance Hawke, *Tenure's Tenacity in Higher Education*, 120 WEST'S ED. LAW REP. 621, 621 (1997); Ira P. Robbins, *Exploring the Concept of Post-Tenure Review in Law Schools*, 9 STAN. L. & POL'Y REV. 387, 389 (1998).

282. "If you can't gain admission to heaven, the next best thing is probably being a law college professor with tenure. It's virtually impossible to lose the job and you certainly won't perish if, as is likely the case, you don't publish." James Warren, Maurice Possey & Joseph Tybor, *Not to Publish is Not to Perish*, CHICAGO TRIB., Dec. 11, 1985, at 1.

283. Cloud, *supra* note 281, at 933.

284. See *id.* at 937-37 (listing ways to revise tenure).

provide greater coherence and structure to the three-year course of study—particularly in the area of skills training.”²⁸⁵

System-wide change is not likely to occur until an innovative proposal is made that is consistent with the values and traditions of the existing faculty environment and participants feel that they are getting something personally valuable in return.²⁸⁶ When innovation is perceived as coming from external intervention or outside influence, there may be an attitude of suspicion and hostility to overcome.²⁸⁷ This tendency can be diffused through internal initiative and efforts to garner institution-wide participation.²⁸⁸

F. *Ineffective Use of Technology*

During the 1990s, the “technology bandwagon” rolled into law schools.²⁸⁹ Students now enter law school with significant computer and Internet proficiency.

Computers are not just a practical tool for students. They act as “a lifeline to their peer group.”²⁹⁰ Students who use technology during law school will be more prepared to work with technology as it applies to practice. Law schools promote the use of technology by adding personnel and infrastructure that support technology in the classroom, and by accommodating laptop use.²⁹¹ The concern with integrating technology into the education setting is that it may interfere with teaching rather than enhance it. The use of PowerPoint slides and laptops within the traditional classroom could hinder interactions between students and teacher and may create a passive-learning environment.²⁹²

285. Solomon, *supra* note 256, at 37.

286. *Id.* at 35; Edwards, *supra* note 182, 568–69.

287. Solomon, *supra* note 256, at 36.

288. *Id.*; Edwards, *supra* note 182, at 568–71.

289. Maria Perez Crist, *Technology in the LRW Curriculum—High Tech, Low Tech, or No Tech*, 5 LEGAL WRITING 93, 93 (1999).

290. Susan Keith & Michelle E. Martin, *Cyber-Bullying: Creating a Culture of Respect in a Cyber World*, RECLAIMING CHILDREN & YOUTH, Winter 2005, at 224, 226.

291. In fact, many schools tout technology as a major factor why a prospective student should choose that particular school. See generally Paul L. Caron & Rafael Gely, *Taking Back the Law School Classroom: Using Technology to Foster Active Learning*, 54 J. LEGAL EDUC. 551 (2004).

292. Douglas Leslie, *How Not to Teach Contracts, and Any Other Course: PowerPoint, Laptops, and the Case File Method*, 44 ST. LOUIS U. L.J. 1289, 1304–06 (2000).

Professors complain that students use their laptops to play solitaire, surf the Internet, instant message, or play games with other students. Some professors have taken measures into their own hands to eliminate the distraction²⁹³ by walking around the classroom during the lecture or disconnecting the wireless transmitter.²⁹⁴

Some law professors do not allow any electronic devices in their regular classrooms. To avoid cheating, others ban cell phones, cameras, calculators, laptop computers, and iPods during examination sessions. One law professor stated that her students have no questions about her classroom setting or final exam protocol—no electronic devices are allowed.²⁹⁵ “I was quite aware that between cell phones and cameras and iPods there can be cheating, and I just don’t want there to be any question,” she said.²⁹⁶ “If they’re sitting there with buds in their ears, how do I know if they’re listening to music or a recitation of what’s in the U.S. Constitution?”²⁹⁷ Some schools and instructors apply the old-fashioned examination rule: “Just bring your pencil,” that is all you will need.²⁹⁸

Many law schools now use computer-based educational testing software to prevent cheating on examinations. For example, Securexam²⁹⁹ locks the student’s computer into a Microsoft Word timed-exam session, blocks students’ access to the Internet and/or only a modified version of Internet Explorer during the exam, and

293. Caron & Gely, *supra* note 291, at 557; Robert M. Lloyd, *Hard Law Firms and Soft Law Schools*, 83 N.C. L. REV. 667, 684 (2005) (“When you see 25 percent of the screens playing solitaire, besides its being distracting, you feel like a sucker for paying attention.”); Ian Ayres, *Lectures vs. Laptops*, N.Y. TIMES, Mar. 20, 2001, at A25 (arguing that laptops are tempting to students and are not simply high-tech versions of daydreaming, doodling, crossword puzzles, and other distractions that have existed since the days of Dean Langdell). See John Schwartz, *Professors Vie with Web for Class’s Attention*, N.Y. TIMES, Jan. 2, 2003, at A1.

294. The professor climbed a ladder to disconnect the transmitter in his classroom. Caron & Gely, *supra* note 291, at 557; Schwartz, *supra* note 293, at A1. See Stephen D. Sowle & Richard Warner, *Electronic Classroom*, in TECHNIQUES FOR TEACHING LAW 156-60 (Gerald F. Hess & Steven Friedland eds., 1999); Gerald F. Hess, *Improving Teaching and Learning in Law School: Faculty Development Research, Principles, and Programs*, 12 WIDENER L. REV. 443 (2006).

295. Mary Jane Smetanka, *Professors Make it Hard for High-Tech Cheaters*, STAR TRIB. (Minneapolis), May 2, 2007 (quoting Jane Kirtley, the Silha Professor of Media Ethics and Law at the University of Minnesota).

296. *Id.*

297. *Id.*

298. *Id.*

299. Securexam, <http://www.softwaresecure.com> (last visited Dec. 1, 2007).

allows instructors to build, decrypt, and grade student exams. Securexam assures faculty that their students are not on the Internet or instant messaging during the examination.³⁰⁰

As students and professors become increasingly technically sophisticated, distance learning is a more viable option for legal education. Schools remain resistant to the idea of distance learning, however, because of a fear that students will not learn effectively or that it could take longer to develop a distance learning class than a traditional one.³⁰¹ A concern exists that greater incorporation of technology will require technology specialists and will increase the need for collaboration between teaching faculty and technology experts,³⁰² a concern that is aggravated by faculty cultures that support a high level of individual autonomy.³⁰³

The ABA standards reflect resistance to technology-based education by limiting the amount of distance learning that can be completed by the student.³⁰⁴ “Nevertheless, one of the American Bar Association’s (ABA) responsibilities as an accrediting institution is ‘to improve the quality of legal education in the United States.’”³⁰⁵ Logically, this mission should include evaluation of new educational technologies and delivery systems.³⁰⁶

G. Cost

A legal education should be affordable for anyone qualified to be a lawyer. In 2003, the annual amount borrowed by law students was \$2.55 billion.³⁰⁷ From 1995 to 2005 public law school in-state tuition rose 58 percent (from \$5,530 to \$13,145), public out-state tuition rose 49 percent (from \$11,683 to \$22,897) and private law school tuition rose 42 percent (from \$16,798 to \$28,900).³⁰⁸ The

300. Securexam, <http://www.softwaresecure.com/comp.htm> (last visited Dec. 1, 2007).

301. Charlene L. Smith, *Distance Education: A Value-Added Model*, 12 ALB. L.J. SCI. & TECH. 177, 184–85 (2001).

302. Peter W. Martin, *Out-of-the-Box Dialogs - Information Technology and U.S. Legal Education: Opportunities, Challenges, and Threats*, 52 J. LEGAL EDUC. 506, 514 (2002).

303. *Id.*

304. 2006–2007 ABA STANDARDS, *supra* note 106.

305. Helen Leskovic, *Distance Learning In Legal Education: Implications Of Frame Relay Videoconferencing*, 8 ALB. L.J. SCI. & TECH. 305, 308 (1998).

306. *Id.*

307. *See generally* Hines, Part 1, *supra* note 187, at 1–2.

308. AM. BAR ASS’N, LAW SCHOOL TUITION AVERAGE AND MEDIAN (2005),

average tuition at a public law school in 2006-2007 is more than \$13,000 for residents and more than \$26,000 for non-residents, while the average private law school tuition is more than \$29,000.³⁰⁹ An increase of 134 percent between 1992 and 2002 for public in-state tuition was realized.³¹⁰ During that same time period, the cost of tuition at public law schools for out-of-state students rose 100 percent and private law school tuition rose 76 percent.³¹¹ These figures suggest the makings of an economic debt crisis for new graduate. The average debt of law school graduates has doubled in the last five years.³¹² In 2006, the average loan debt for a private law school graduate was \$76,763, while a public law school graduate's debt was \$48,910.³¹³ The maximum amount law students can borrow annually in federal Stafford loans is \$18,500, and Congress has not raised that figure since 1993.³¹⁴ Law school tuition rates increase at about 8 percent per year, more than twice the general inflation rate.³¹⁵ At this rate, the average cost of a private law school education will exceed \$180,000 by 2015!³¹⁶ If tuition increases were consistent with the Consumer Price Index rates, private law school tuition could be kept under \$96,000.³¹⁷

www.abanet.org/legaled/statistics/charts/stats%20-%205.pdf [hereinafter ABA, LAW SCHOOL TUITION] (last visited Dec. 3, 2007).

309. *Id.*

310. AM. BAR ASS'N, AMERICAN BAR ASSOCIATION FACT SHEET: STAFFORD LOAN PROGRAM INCREASE (2003), <http://www.abanet.org/legalservices/downloads/lrap/abafactsheetstaffordlimits.pdf> (last visited Nov. 24, 2007).

311. AM. BAR ASS'N, MEETING THE CHALLENGE OF LAW STUDENT DEBT: LOAN REPAYMENT ASSISTANCE PROGRAMS (LRAPs), <http://www.abanet.org/legalservices/downloads/lrap/finallawschoollrapbrochure.pdf> (last visited Nov. 24, 2007).

312. *See id.*

313. Leigh Jones, *Salaries Rise, So Does the Debt, Pay Hikes Dwarfed by Law School Bills*, NAT'L L.J. (Jan. 30, 2006).

314. ABA, LAW SCHOOL TUITION, *supra* note 308.

315. *See id.*; FinAid, Saving for College, Tuition Inflation, www.finaid.org/savings/tuition-inflation.phtml (last visited Dec. 1, 2007). FinAid was established in the fall of 1994 as a public service. This award-winning site has grown into the most comprehensive annotated collection of information about student financial aid on the web.

316. The average private school tuition in 2001-2002 was \$22,961. ABA, LAW SCHOOL TUITION, *supra* note 308. An eight percent increase per year projects to average tuitions of \$53,537 in 2012-2013, \$57,820 in 2013-2014, and \$62,445 in 2014-2015, yielding a total cost of \$173,802 for the class of 2015. *Id.*

317. *See U.S. Bureau of Labor Statistics, Consumer Price Index*, <ftp://ftp.bls.gov/pub/special.requests/cpi/cpiat.txt>. (last visited Dec. 1, 2007). 2.35% is the average rate for the years 2001-2004. *Id.* Applying that rate to figures in note 316, results in tuitions of \$31,173 in 2012-2013, \$31,905 in 2013-

Many graduates cannot afford to work in the public sector because the salaries are too low to cover their debts.³¹⁸ They are forced to take jobs that will help repay an average of \$85,000 in educational debt (\$91,000 if undergraduate school loans are included).³¹⁹ “In 2003 . . . the median debt load for graduates of public law schools was roughly \$45,000, while the median debt for private law school graduates was nearly \$69,000.”³²⁰ “When law graduates are forced to forego public service legal careers because of educational debt, everybody loses – individual lawyers, public service employees, the legal profession, and society.”³²¹

Equal Justice Works’ survey of the class of 2002³²² revealed that “[l]aw school debt prevented 66% of student respondents from considering a public interest job or government job . . . [and] 68% of public interest employers reported difficulty recruiting the attorneys they need.”³²³ According to the National Student Loan Survey from government-backed lender Nellie Mae, there are “a growing number of graduates for whom student loans have both opened and closed doors. Almost 1 in 5 college and professional

2014, and \$32,655 in 2014–2015, for a total of \$95,733 for the class of 2015.

318. Sixty-eight percent of public sector employers report problems with recruitment and sixty-two percent of public sector employers report problems with retention. ABA COMM’N ON LOAN REPAYMENT & FORGIVENESS, LIFTING THE BURDEN: LAW STUDENT DEBT AS A BARRIER TO PUBLIC SERVICE 55, *available at* <http://www.abanet.org/legalservices/downloads/lrap/lrapfinalreport.pdf>. From 1991 to 2001, starting salaries in public-interest law grew by thirty-seven percent, from \$25,000 to \$35,000. Adelle Waldman, *In Debt from Day One*, CHRISTIAN SCI. MONITOR, Mar. 9, 2004, at 11. Meanwhile, tuition increased by seventy-six percent. *Id.* See also ABA COMM’N ON LOAN REPAYMENT & FORGIVENESS, *supra*, at 10 (listing the median starting salary for private practice in 2002 as \$90,000, compared with \$36,000 for public interest). Private practice salaries have risen faster than public sector salaries, keeping pace with inflation, and, in some areas, increases in tuition. *Id.*

319. See Howard S. Erlanger et al., *Law Student Idealism and Job Choice: Some New Data on an Old Question*, 30 L. & SOC’Y REV. 851 (1996) (noting in a study of law students that only thirteen percent of those who expressed an interest in public law before entering law school actually took such jobs after graduation); Claudia MacLachlan, *Doing Well vs. Doing Good: Students are Increasingly Tempted to Forgo Public Service for Law Firm Salaries*, LEGAL TIMES, Sept. 4, 2000, at 50 (stating that median law school debt currently hovers around \$80,000 per student).

320. Hines, Part 1, *supra* note 187, at 5.

321. ABA COMM’N ON LOAN REPAYMENT & FORGIVENESS, *supra* note 318, at 30.

322. EQUAL JUST. WORKS, NALP, & THE P’SHP FOR PUB. SERV., FROM PAPER CHASE TO MONEY CHASE: LAW SCHOOL DEBT DIVERTS ROAD TO PUBLIC SERVICE 6 (2002), *available at* <http://www.equaljusticeworks.org/files/lrapsurvey.pdf>.

323. *Id.*

school graduates says he has changed his career plans because of student debt.”³²⁴

One might assume that the big firms are the primary lure since they offer the most lucrative starting salaries. In reality, the prestigious big firms only extend highly paid opportunities to a tiny percentage of academically excellent law school graduates,³²⁵ many of whom were awarded substantial scholarships and acquired little to no educational debt. The law students with the most debt compete for jobs in small to medium sized firms,³²⁶ where the debt-to-income ratios make loan repayments equivalent to home mortgages.³²⁷ The students who take government or other public interest placements make an average of \$35,000 per year.³²⁸ When that income is compared to \$85,000 in debt,³²⁹ the financial impact is substantial.³³⁰

Concern about excessive debt has prompted a number of law schools to establish their own loan repayment assistance programs (LRAP). Unfortunately, these programs add to the cost of providing a legal education³³¹ and benefit only a small segment of eligible law school graduates.³³² LRAPs are also offered by the

324. Waldman, *supra* note 318.

325. See John M. Conley, *How Bad is it Out There?: Teaching and Learning About the State of the Legal Profession in North Carolina*, 82 N.C. L. REV. 1943, 1987 (2004).

326. See James P. Ogloff, et al., *More Than “Learning to Think Like a Lawyer:” The Empirical Research on Legal Education*, 34 CREIGHTON L. REV. 73, 241 (2000).

327. “Many law students graduate from law school with crushing debt burdens, with many owing \$80,000 or more in law school loans. For law graduates following a standard ten-year repayment schedule, this may result in payments of more than \$900 per month.” ABA COMM’N ON LOAN REPAYMENT & FORGIVENESS, *supra* note 318, at 59.

328. *Id.* (listing the median entry-level public-service law salary as \$35,000).

329. See MacLachlan, *supra* note 319 (listing \$80,000 per student median law school debt); AM. BAR ASS’N, AMERICAN BAR ASSOCIATION FACT SHEET: THE INCOME-CONTINGENT REPAYMENT OPTION OF THE WILLIAM D. FORD FEDERAL DIRECT LENDING PROGRAM 1 (2003), <http://abanet.org/legalservices/downloads/lrap/abafactsheetcroption.pdf> [hereinafter ABA FACT SHEET].

330. If a student takes a public service job, making \$37,000 per year, and has the typical \$80,000 in loans, the nearly \$1,000 monthly payment is approximately one-third of monthly income. See ABA COMM’N ON LOAN REPAYMENT & FORGIVENESS, *supra* note 318, at 59.

331. Hines, Part 2, *supra* note 16, at 5.

332. HEATHER WELLS JARVIS, EQUAL JUSTICE WORKS, FINANCING THE FUTURE: RESPONSES TO THE RISING DEBT OF LAW STUDENTS 6–7, 21 (2d ed. 2006), available at <http://www.equaljusticeworks.org/files/financing-the-future2006.pdf> (out of one hundred that report they have LRAPs, only eighteen report funding more than twenty students in 2004–2005, and only twenty-seven report funding more than ten students in the same period).

federal government, state bar associations, and employers and, while the emergence of LRAPs is encouraging, the number of programs has not risen significantly since 2001.³³³ In 2002, fifty-six law schools had LRAPs in place and only six state bars had LRAP programs.³³⁴ By 2006, LRAPs were in place at one hundred schools and through seventeen states, and nine more states were currently developing such programs.³³⁵ A typical state-sponsored LRAP provides income-contingent repayment options available to any student who borrows federal money for school. The loan payment is a percentage of the graduate's income, not to exceed a certain salary,³³⁶ and any debt remaining after twenty-five years of repayment is forgiven.³³⁷ However, participants can be penalized for marital status or receipt of child support.³³⁸ In addition, the twenty-five-year repayment period is discouragingly long.³³⁹ The ABA has established a Commission on Loan Repayment and Forgiveness,³⁴⁰ which is lobbying for changes that would eliminate the marriage penalty and reduce the repayment period to fifteen years.³⁴¹

The final report published by the ABA's Commission of Loan Repayment and Forgiveness lists four recommendations for law schools:

- Law schools should offer a wide range of options, including LRAPs, fellowships, and public service

333. *Id.* at 6–7.

334. EQUAL JUST. WORKS, NALP, & THE P'SHIP FOR PUB. SERV., *supra* note 322, at 35.

335. *See* JARVIS, *supra* note 332, at 21–23.

336. *See id.* at 13–14. Payments are sometimes calculated using a percentage of the *household* income, so two-income earning households are penalized (i.e. husband has large salary and no school debt, wife has large debt load and lower salary, so wife does not qualify for income-contingent repayment). *See id.*

337. *See* ABA FACT SHEET, *supra* note 329, at 1.

338. *See* JARVIS, *supra* note 332, at 13 (calculation of income can vary depending on a myriad of sources including spousal salaries, dependents, size of law school debt, undergraduate debt, residence in high-cost living areas, and the graduate's assets).

339. *See* A.B.A. AMERICAN BAR ASSOCIATION FACT SHEET, *supra* note 329, at 1 (concluding that few graduates use federal LRAP plans primarily because of an unwillingness to commit to a 25-year loan).

340. ABA COMM'N ON LOAN REPAYMENT & FORGIVENESS, *supra* note 318, at 9. The commission began as a two year project in 2001 to analyze three different types of LRAPs: federal, state, and law school. *Id.*

341. *Id.* at 38–39.

scholarships, for students wishing to pursue a career in public service.

- Law schools need to prioritize LRAPs.
- Law schools should provide more financial advising, encompassing the time period prior to enrollment, during attendance, and following graduation.
- Law schools should work closely with state bar associations to support LRAP programs.³⁴²

H. Conclusion

Although the roadblocks to innovation and reform of the legal education system are serious and long-standing, they can be overcome with cooperation, planning, and the use of modern education tools.³⁴³ Momentum for change is building within the legal education system and within the profession.³⁴⁴

IV. RESEARCH AND RECOMMENDATIONS

Shortly after the ABA began to regulate legal education and bar acceptance, a number of studies were initiated to analyze the legal education system.³⁴⁵ The studies examined the effectiveness of legal training, determined lawyers' preparedness for legal

342. *Id.* at 12–13.

343. *See infra* Parts V–VII.

344. "I propose that we focus even more of our joint efforts in the coming year on examining changes that affect legal education and assessing, even considering modifications in, our roles as professors and law schools in response to those changes." Nancy H. Rogers, *President's Message: Reassessing Our Roles in Light of Change*, ASS'N OF AM. LAW SCH. NEWS, Feb. 2007, at 2, available at <http://aals.org/documents/newsletterfebruary2007.pdf>.

345. *See* Carole Silver, *Winners and Losers in the Globalization of Legal Services: Situating the Market for Foreign Lawyers*, 45 VA.J. INT'L L. 897, 899–900 (2005).

The ABA Section of Legal Education and Admission to the Bar regulates U.S. law schools through an approval process that is linked, in most U.S. jurisdictions, to bar admission. Graduation from an ABA approved law school is the common standard qualifying graduates to sit for a bar examination. As a regulator, the ABA is demanding; at the same time, many of its rules are ambiguous, requiring law school administrators to guess at the parameters of permitted activity.

Id. *See also* SUNDERLAND, *supra* note 98, at 140–47 (discussing the ABA's legal education and bar admission projects).

practice upon graduation from law school, and identified where lawyers were actually receiving much of their training.³⁴⁶ The studies recommended solutions, but they have mostly been ignored.³⁴⁷

A. *The Reed Report*³⁴⁸

On February 7, 1913, the Committee on Legal Education³⁴⁹ requested that the Carnegie Foundation for the Advancement of Teaching review legal education in the United States.³⁵⁰ In 1921, the foundation funded a study called the Reed Report,³⁵¹ which identified three components necessary to prepare students for the practice of law: general education, theoretical knowledge of the law, and practical skills training.³⁵² The emphasis on legal analysis through the case method of teaching fulfilled only one of the three components by providing students with a theoretical knowledge of the law.³⁵³ To satisfy the requirement of a general education component, the Reed Report called for at least two years of pre-law college training—a proposal the ABA promoted beginning in 1921.³⁵⁴ This recommendation was widely implemented, and by

346. David A. Binder & Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 CLINICAL L. REV. 191, 206 (2003) (discussing research conducted by David A. Binder during 2000–2001, which “consisted of a survey of 407 lawyers [where] sixty percent of these lawyers reported that they received no practice or rehearsal training before taking their first deposition [and] half reported never having reviewed with a more senior litigator a transcript of a deposition that they had taken.”). See Sonsteng & Camarotto, *supra* note 5 (discussing training and job satisfaction of Minnesota lawyers). See also MACCRATE REPORT, *supra* note 5 (outlining conference sponsored by ABA on legal education); CRAMTON REPORT, *supra* note 5; REED REPORT, *supra* note 5.

347. Cf. Edmund B. Spaeth, Jr. et al., *Teaching Legal Ethics: Exploring the Continuum*, 58 LAW & CONTEMP. PROBS. 153 (1996); Costonis, *supra* note 139.

348. REED REPORT, *supra* note 5.

349. Members of the Committee were Henry Wade Rogers, Lawrence Maxwell, Selden P. Spencer, Roscoe Pound, and W. Draper Lewis. The Committee did not have the funds or the time needed for the comprehensive investigation and, impressed with the investigation of the Carnegie Foundation into the conditions of Medical Education, the Committee was most anxious to have a similar investigation done. REED REPORT, *supra* note 5, at xv-xvii.

350. Trail & Underwood, *supra* note 70, at 209.

351. Barry et al., *supra* note 124, at 7 (naming the report after its non-lawyer author, Alfred Z. Reed).

352. *Id.* See also REED REPORT, *supra* note 5, at 276.

353. Barry et al., *supra* note 124, at 7.

354. REED REPORT, *supra* note 5. At that time, not a single state required a university-based law school degree as a prerequisite for admission to the bar. Proprietary law schools were still prevalent, and apprenticeships provided the basic

1936, thirty-two states required at least two years of college education before being admitted to law school.³⁵⁵ Reed's recommendation regarding practical skills training was not vigorously pursued.³⁵⁶

*B. The Cramton Report*³⁵⁷

In 1979, the ABA commissioned a committee to examine the status of legal education and provide recommendations for change. The committee was led by Roger Cramton.³⁵⁸ Known as the

legal training for many entering the legal profession. "Promote" means to contribute to the progress or growth of; further. THE AM. HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1403 (4th ed. 2004).

355. Sunderland, *supra* note 98, at 147.

356. Barry et al., *supra* note 124, at 7–8.

357. ABA, LEGAL EDUC. & ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS (1979).

358. At the time of the report, Roger Cramton was the dean of Cornell University's Law School and, at one time, president of the AALS. Cornell Univ. Law Sch., Biographical Sketch of Robert C. Cramton, (2006), http://ww3.lawschool.cornell.edu/faculty/faculty_cvs/Cramton.pdf. He received his A.B. degree *magna cum laude* from Harvard University in 1950 and was elected to Phi Beta Kappa. *Id.* He received his law degree from the University of Chicago Law School in 1955, where he served on the Law Review and was elected to the Order of the Coif. *Id.* Cramton was appointed in 1957 and served an Assistant Professor at the University of Chicago Law School until 1961. *Id.* From 1961–1970 he was a member of the faculty of the University of Michigan Law School. *Id.* He was appointed Dean of the Cornell Law School on July 1, 1973, and served in this capacity until June 30, 1980. *Id.* Members of the Task Force and Cramton Report were: Dean Roger C. Cramton, Chairman, Cornell Law School; President Willard L. Boyd, Council Member, ABA Section of Legal Education and Admissions to the Bar; Robert F. Hanley, Esq., Former Chairman, ABA Section of Litigation; Honorable A. Leon Higginbotham, Jr., United States Circuit Judge, U.S. Court of Appeals for the Third Circuit; Honorable Shirley M. Hufstедler, United States Circuit Judge, U.S. Court of Appeals for the Ninth Circuit; Dean Joseph R. Julin, University of Florida College of Law and Former Chairman, ABA Section of Legal Education and Admissions to the Bar; Maximilian W. Kempner, Esq. Former Chairman, ABA Section of Legal Education and Admissions to the Bar; Dean Robert B. McKay, Aspen Institute, Council Member, ABA Section of Legal Education and Admissions to the Bar; R.W. Nahstoll, Esq.; Chairman, Accreditation Committee, ABA Section of Legal Education and Admissions to the Bar; Honorable Alvin B. Rubin, United States Circuit Judge, U.S. Court of Appeals for the Fifth Circuit; Professor Samuel D. Thurman, Chairman, ABA Section of Legal Education and Admissions to the Bar, University of Utah College of Law, Sharp Whitmore, Esq., Section Delegate, ABA Section of Legal Education and Admissions to the Bar; Merrill R. Bradford, Esq., Board of Governors Liaison; Professor Peter W. Martin, Reporter, Cornell Law School; Dean James P. White, Consultant on Legal Education to the ABA, Indiana University; and Frederick R. Franklin, Esq., Staff Director, ABA Section of Legal Education and Admissions to

Cramton Report, this report recognized that diversity and experimentation, as opposed to mandated uniformity, offer the most likely path to more effective law school education.³⁵⁹ It outlined twenty-eight recommendations designed to improve the quality of law school training for the profession³⁶⁰ and listed certain

the Bar. CRAMTON REPORT, *supra* note 5, at vii. Persons presenting information or views to the Task Force were: Chief Justice Warren E. Burger, Bert H. Early, Esq.; Robert Evans, Esq.; Ronald Foulis, Esq.; Joel Henning, Esq.; Felice Levine, Ph.D.; and Lawrence Newman, Esq. *Id.*

359. See Cramton Report, *supra* note 5, at 3.

360. The Cramton Report Recommendations were designed to improve the quality of law school training for the profession. The twenty-eight recommendations were:

1. In admitting students, law schools should consider a full range of the qualities and skills important to professional competence.
2. Law schools facing declining applications should not yield to admit those students who do not have the potential to become competent lawyers.
3. Law schools should provide instruction in those fundamental skills critical to lawyer competence.
4. Law schools and law teachers should utilize small classes as opportunities for individualized instruction.
5. Law schools should encourage more cooperative law student work.
6. Law schools and teachers should develop and use more comprehensive methods of measuring student performance rather than the typical end-of-the-term examination.
7. Law schools should seek to achieve greater coherence in their curriculum, even if it results in the loss of some teacher autonomy.
8. Law schools should experiment with schedules that provide opportunity for periods of intensive instruction in fundamental lawyer skills.
9. Law schools should make more extensive instructional use of experienced and able lawyers and judges.
10. Student-faculty ratios need to be improved.
11. Law schools should place substantial emphasis on potential and performance as a teacher.
12. Law schools and law faculty members should give more attention to what courts, lawmakers, and lawyers do, how they do it, how the relevant skills are learned, how legal services can better be performed, and how the legal system in operation can be improved.

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13. The ABA's accreditation and re-inspection process now requires a self-study in which the faculty addresses the goals of the school and the methods of achieving them.
 14. The ABA and its affiliated organizations should provide or obtain funds to support research on aspects of lawyer competence and development of better materials and methods for law school instruction in fundamental lawyer skills.
 15. The Council of the ABA Section of Legal Education and Admissions to the Bar should continue to maintain a hospitable attitude toward experiments in legal education directed at improving lawyer competency.
 16. The ABA should increase its financial support of teaching projects such as those developed by the National Institute for Trial Advocacy.
 17. The ABA Section of Litigation, either alone or in combination with other trial advocacy groups, should lend sponsorship and support to an annual law school national competition in trial advocacy.
 18. It should not be a prerequisite to taking a bar examination that the applicant has completed specific courses in law school.
 19. Bar admission authorities should avoid requirements that restrict opportunities of law schools to restructure the academic calendar, to provide greater emphasis on clinical experience or skills training, and the like.
 20. In recruiting and hiring law graduates, members of the bar and other legal employers should give appropriate weight to capacity and performance in lawyer skills other than the analytical skills primarily measured by traditional examinations.
 21. Members of the legal profession have an obligation to support the education of future lawyers.
 22. Law firms and other employers should support legal education by contributing the time of lawyers who are asked to participate in an educational program.
 23. The organized bar should articulate and espouse the obligation of lawyers and legal employers to assist and to support legal education.
 24. The federal government should continue to expand programs of financial assistance to law students.
 25. The federal government should also support the development of innovative teaching methods designed to improve lawyer competence.
 26. Support of law school programs under Title XI should be expanded and the limitation on clinics removed.

fundamental skills that all lawyers should have.³⁶¹ These skills included: analyzing legal problems, performing legal research, collecting and sorting facts, writing effectively, communicating orally with effectiveness in a variety of settings, performing important tasks that require both communication and interpersonal skills (e.g., interviewing, counseling, negotiation), and organizing and managing legal work.³⁶²

The report concluded that law schools should train students in these fundamental skills underemphasized by traditional legal education. For instance, schools should work toward shaping attitudes, values, and work habits critical to a lawyer's ability to translate knowledge and relevant skills into adequate professional experience. Law schools should also provide integrated learning experiences that focus on particular fields of lawyer practice.³⁶³ Despite the report's findings, only the addition of clinical programs marked a notable change in law school curriculum.³⁶⁴

C. *The MacCrate Report*³⁶⁵

Dissatisfied with law schools' preparation of graduates for the actual practice of law, in 1989, the ABA established a task force to examine a perceived gap between legal education and law practice.³⁶⁶ The task force, led by Robert MacCrate,³⁶⁷ published

27. The Legal Services Corporation should assume the financial support of the services rendered eligible clients by law school clinical programs in which service is a by-product of a sound educational experience.

28. States should not limit their support of legal education to the financing of state schools.

Id. at 3–7.

361. *Id.* at 9–10.

362. *Id.*

363. *Id.* at 17–18.

364. See generally Christopher T. Cunniffe, *The Case for the Alternative Third-Year Program*, 61 ALB. L. REV. 85, 115 (1997) ("While externships have been wholly rejected by the legal education establishment, significant resources have been devoted to revamping the law schools to enhance their clinical education programs"); Romantz, *supra* note 41, at 134–35 (despite Cramton Report's findings, law schools have done little to implement legal writing courses into curriculum in decades since report).

365. See MACCRATE REPORT, *supra* note 5.

366. *Id.* at xi, 4; see also John S. Elson, *The Regulation of Legal Education: The Potential for Implementing the MacCrate Report's Recommendations for Curricular Reform*, 1 CLINICAL L. REV. 363, 370 (1994) (concluding that the challenge facing law schools is preparing students for legal practice).

367. Robert MacCrate is a New York lawyer who served as Counsel to New York

the MacCrate Report in 1992.³⁶⁸ The report found that while law schools appeared to be committed to practice skills instruction,³⁶⁹ they needed to affirm their commitment to train students to practice effectively.³⁷⁰ The report listed ten skill groups in which students should be proficient by the time they complete law school:³⁷¹

- Problem solving.
- Legal analysis and reasoning.
- Legal research.

Governor Nelson D. Rockefeller and as Special Counsel to the Department of the Army for its investigation of the My Lai Massacre. See Gary Pallassino, *Top Legal Scholar Praises Applied Learning Program for Instilling Skills and Values*, SYRACUSE U. MAG., Fall 1999, at 5, available at <http://sumagazine.syr.edu/fall99/uplace/uplacepg5.html>. In the late 1980s MacCrate served as president of both the New York State Bar Association the ABA. *Id.* MacCrate later chaired the ABA Task Force on Law Schools and the Profession. *Id.* The Task Force's Report, widely known as the MacCrate Report, was issued in July 1992, and is widely viewed as the template for modern legal education in the United States. *Id.* MacCrate was a partner and vice chairman of Sullivan & Cromwell, L.L.P. *Id.* Although retired from active practice, MacCrate continues to serve on many boards and is active as a Senior Counsel of Sullivan & Cromwell. *Id.* Other members of the MacCrate Report were Professor Peter W. Martin, Vice Chairperson; Associate Dean Peter A. Winograd, Vice Chairperson; Professor J. Michael Norwood, Reporter; Cory M. Amron; Professor Anthony G. Amsterdam; Honorable Dennis W. Archer; Professor Curtis J. Berger; Talbot D'Alemberte; Dean Joseph D. Harbaugh; Professor Richard G. Huber; Dean Maximilian W. Kempner; Dean John R. Kramer; Dean Robert B. McKay; Honorable Robert R. Merhige, Jr.; John O. Mudd; Dean Susan Westerberg Prager; Norman Redlich; Harold L. Rock; Honorable Alvin B. Rubin; Dean Albert M. Sacks; Professor Roy T. Stuckey; Michael Traynor; Honorable Sol Wachtler; Honorable Rosalie E. Wahl; Dean Marilyn Yarbrough; Dean Betsy Levin, AALS Liaison; Professor Thomas D. Morgan, AALS Liaison; Bryant G. Garth, ABA Foundation Liaison; Joanne Martin, ABA Foundation Liaison; Professor Bruce A. Green, Task Force Consultant; Professor Randy Hertz, Task Force Consultant; Richard Diebold Lee, Task Force Consultant; Professor Marjorie A. McDiarmid, Task Force Consultant; Dean James P. White, Special Consultant; Kathleen S. Grove, Special Consultant; Frederick R. Franklin, Staff Director; and Rachel Patrick, Staff Director. MACCRATE REPORT, *supra* note 5, at v–vi.

368. Engler, *supra* note 136, at 113.

369. See MACCRATE REPORT, *supra* note 5, at 6.

370. See *id.* (providing recommendations for enhancing professional development during the law school years); see also Susan Skiles, *Many Recent Grads Say Law School Doesn't Teach Right Stuff*, CHICAGO DAILY L. BULL., Aug. 9, 1991, at 2 (stating that law school may be leaving law students unprepared for practice upon graduation).

371. See generally MACCRATE REPORT, *supra* note 5.

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- Factual investigation.
- Communication.
- Counseling.
- Negotiation.
- Litigation and alternative dispute resolution procedures.
- Organization and management of legal work.
- Recognizing and resolving ethical dilemmas.³⁷²

While most of the MacCrate skills are client-interaction based, the ABA does not mandate that law schools require students to take clinical courses or courses that simulate the practice of law. The MacCrate Report recommends that all licensing authorities consider examining bar applicants in practice skills. Such a change in bar exams could help encourage even the most reluctant faculty to orient more teaching toward practice.³⁷³ Although most schools have acknowledged the validity of the MacCrate Report, and many have integrated skills courses into their curriculum to some degree, legal education still looks much the same as it did prior to 1992.³⁷⁴ While an increase in the number of clinical courses offered has occurred,³⁷⁵ few attempts to truly restructure the curriculum have been realized.³⁷⁶

372. *Id.* at 138–40.

373. *See* Riebe, *supra* note 233, at 288–89.

374. *See* Engler, *supra* note 136, at 141.

375. *See id.* at 112–13.

376. *See* Schwartz, *Teaching Law Students*, *supra* note 271, at 468; Costonis, *supra* note 139, at 194.

D. *Three Surveys: Zemans and Rosenblum, 1975–1976;*³⁷⁷ *Garth and Martin, 1991–1992;*³⁷⁸ *Minnesota Survey, 1997–1998 and 1999–2001*³⁷⁹

Frances Kahn Zemans³⁸⁰ and Victor G. Rosenblum³⁸¹ conducted a 1975–1976 study on the legal profession, which was published in 1981 for the American Bar Foundation.³⁸² Zemans and Rosenblum’s survey asked lawyers about the importance of selected skills, knowledge of the practice of law,³⁸³ and contribution of law schools in preparing graduates in those skills and knowledge.³⁸⁴ Fifteen years later, Bryant G. Garth³⁸⁵ and Joanne Martin³⁸⁶ conducted a series of four surveys of Chicago lawyers³⁸⁷ all admitted

377. FRANCES KAHN ZEMANS & VICTOR G. ROSENBLUM, *THE MAKING OF A PUBLIC PROFESSION* (1981).

378. Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469 (1993).

379. Sonsteng & Camarotto, *supra* note 5.

380. Frances Zemans was former Executive Director of American Judicature Society and received his B.S. from the University of Michigan and his Ph.D. from Northwestern University.

381. Victor Rosenblum, who died in March of 2007, was the Nathaniel L. Nathanson Professor of Law at Northwestern University College of Law. He received his A.B. and LL.B at Columbia University, and his Ph.D. from the University of California at Berkeley.

382. See ZEMANS & ROSENBLUM, *supra* note 377.

383. See *id.* at 123–28. The earlier 1975–1976 Zemans and Rosenblum study surveyed several aspects of “importance” of lawyering skills that were similar to both the survey of Minnesota lawyers and the 1991–1992 Garth and Martin survey, including the following areas: ability to understand and interpret opinions, regulations, and statutes; drafting legal documents; knowledge of substantive law; legal research; fact gathering; effective oral expression; letter writing; instilling others’ confidence in you; negotiating; and knowledge of procedural law. *Id.* at 125 tbl.6.1. See also Garth & Martin, *supra* note 378, at 473 tbl.1.

384. See ZEMANS & ROSENBLUM, *supra* note 377, at 135–50.

385. Bryant G. Garth was the Director of American Bar Foundation and Dean and Professor of Law at Indiana University School of Law in Bloomington. He received his B.A. from Yale University, his J.D. from Stanford University School of Law, and a Ph.D. from European University Institute (Florence). He is currently the Dean and Professor of Law at Southwestern Law School.

386. Joanne Martin is a Senior Research Fellow at the American Bar Foundation in Chicago, Illinois. She previously served as Assistant Director.

387. See Garth & Martin, *supra* note 378, at 471–72. The Garth and Martin study consisted of four surveys and sample groups. The first survey, which was conducted by telephone, targeted hiring partners in all firms in Chicago that had a minimum of five partners. *Id.* The second survey was of practicing lawyers in Chicago who had been admitted to the bar between 1986 and 1991, the “young Chicago lawyers.” *Id.* A random sample of 1500 attorneys were mailed surveys and over fifty percent responded. The final two surveys were outside of the large urban context in Missouri. These two surveys were similar to the survey conducted of the “young Chicago lawyers.” *Id.*

to the bar between 1986 and 1991.³⁸⁸ Garth and Martin compared their survey with the results of the earlier Zemans and Rosenblum study to measure changes that occurred.³⁸⁹ The “young Chicago lawyers” survey³⁹⁰ repeated portions of the Zemans and Rosenblum study.³⁹¹ In 1997–1998 and 2000–2001 surveys of Minnesota lawyers, John Sonsteng and David Camarotto³⁹² compared their results with the earlier studies.

The three surveys studied seventeen skills areas:

- Ability to diagnose and plan solutions for legal problems.
- Ability in legal analysis and reasoning.
- Knowledge of substantive law.
- Knowledge of procedural law.
- Library legal research.
- Computer legal research.
- Factual gathering.
- Oral communication.
- Written communication.
- Counseling.
- Instilling others’ confidence in you.
- Ability to obtain and keep clients.
- Negotiation.

388. *Id.*

389. *Id.* at 493–98.

390. *Id.* at 473 tbl.1.

391. *Compare id. with ZEMANS & ROSENBLUM, supra* note 377, at 125 tbl.6.1.

392. David Camarotto received his J.D. from William Mitchell College of Law in 2000 and his undergraduate degree from Saint John’s University.

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- Litigation.
- Organization and management of legal work.
- Sensitivity to professional and ethical concerns.
- Drafting legal documents.

A comparison of the three surveys' results demonstrates changes in the perceived importance of legal practice skill areas over three decades and a growing perception of importance in nearly all of the legal practice skills.

Table 1. Legal Skills: Changes in Perceptions of Importance Over Time³⁹³

Legal Practice Skill	Zemans-Rosenblum 1975–1976 ³⁹⁴	Garth-Martin 1986–1991 ³⁹⁵	Minnesota Lawyers 1999 ³⁹⁶
	Percentage Perceiving Importance		
Ability to diagnose and plan for legal problems	*	81.5	97.9
Ability in legal analysis and legal reasoning	86.6	90.9	97.5
Written communication	*	96.3	97.2
Oral communication	87.4	97.6	96.8
Instilling others' confidence in you	88.6	90.5	92.0
Negotiation	78.9	73.4	90.0
Sensitivity to professional and ethical concerns	*	68.9	86.4
Fact gathering	93.0	71.6	85.9
Drafting legal documents	74.2	84.9	85.8
Organization and management of legal work	*	75.4	85.0
Counseling	*	62.0	82.6
Ability to obtain and keep clients	*	54.0	80.2
Knowledge of procedural law	62.9	67.8	79.6
Knowledge of the substantive law	90.1	83.0	79.1
Computer legal research	*	34.9	76.6
Library legal research	80.6	59.8	69.1
Understanding and conducting litigation	*	62.2	69.0

393. Sonsteng & Camarotto, *supra* note 5, at 345 tbl.3.394. See ZEMANS & ROSENBLUM, *supra* note 377, at 125 tbl.6.1.395. See Garth & Martin, *supra* note 378, at 473 tbl.1.396. Sonsteng & Camarotto, *supra* note 5, at 345 tbl.3.

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**Represents a legal skill that was not specifically surveyed by the 1975–1976 Zemans-Rosenblum study.*

The surveys demonstrate that, over time, lawyers perceive themselves to be better prepared in nearly all legal practice areas.³⁹⁷ The Minnesota survey also indicated that a significant majority of respondents could have learned these skills in law school.³⁹⁸

397. See *infra* Table 3.

398. See *supra* Table 1.

Table 2. Legal Skills: Changes in Perceptions of Preparedness Over Time³⁹⁹

Legal Practice Skill	Zemans-Rosenblum 1975–1976	Garth-Martin 1986–1991	Minnesota Lawyers 1999	Skill can be learned in law school, Minnesota Lawyers 1999 ⁴⁰⁰
	Percentage Perceiving Preparation			
Ability to diagnose and plan for legal problems	*	33.0	54.9	90.5
Ability in legal analysis and legal reasoning	77.0	71.0	85.0	97.7
Drafting legal documents	11.0	18.0	33.2	94.1
Knowledge of the substantive law	79.0	81.0	61.9	95.3
Library legal research	75.0	83.0	83.7	100
Computer legal research	*	66.0	76.0	99.7
Fact gathering	16.0	10.0	37.5	78.7
Oral communication	15.0	6.0	69.3	85.6
Written communication	*	27.0	81.1	95.0
Counseling	*	10.0	28.6	70.0
Instilling others' confidence in you	4.0	—	37.7	35.0
Negotiation	2.0	9.0	29.9	85.2
Knowledge of procedural law	50.0	53.0	49.0	97.5
Understanding and conducting litigation	*	11.0	25.7	81.3

399. Sonsteng & Camarotto, *supra* note 5, at 348 tbl.4; Garth & Martin, *supra* note 378, at 481 tbl.5.

400. Sonsteng & Camarotto, *supra* note 5, at 337 tbl.1.

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Legal Practice Skill	Zemans-Rosenblum 1975–1976	Garth-Martin 1986–1991	Minnesota Lawyers 1999	Skill can be learned in law school, Minnesota Lawyers 1999 ⁴⁰⁰
	Percentage Perceiving Preparation			
Organization and management of legal work	*	4.0	20.5	58.7
Ability to obtain and keep clients	*	2.0	13.2	32.7
Sensitivity to professional and ethical concerns	*	74.0	68.2	95.9

**Represents a legal skill that was not specifically surveyed by the 1975–1976 Zemans-Rosenblum study.*

The Minnesota Survey identified skills perceived as most important, and demonstrated that lawyers did not feel well prepared in some of those skills upon graduating from law school.⁴⁰¹

401. See *infra* Table 3.

Table 3⁴⁰²

		IMPORTANCE	
		Most Important	Least Important
PREPAREDNESS	Well-prepared	<ul style="list-style-type: none"> • Ability in legal analysis and legal reasoning • Written communication • Sensitivity to professional and ethical concerns • Oral communication 	<ul style="list-style-type: none"> • Library legal research • Knowledge of substantive law
	Not Well-Prepared	<ul style="list-style-type: none"> • Ability to diagnose and plan solutions for legal problems • Instilling others' confidence in you • Negotiation • Fact gathering • Drafting legal documents • Counseling • Ability to obtain and keep clients • Knowledge of procedural law • Organization and management of legal work 	<ul style="list-style-type: none"> • Understanding and conducting litigation • Computer legal research

E. Sources of Legal Practice Skill Training

In the Minnesota survey, lawyers were asked to identify the three most significant sources for their training in each of the seventeen legal practice skills. Generally, the law school curriculum was credited as a significant source of training in eight of the seventeen legal practice skills.⁴⁰³ Respondents believed that non-law school sources were a significant source of their training for all legal practice areas,⁴⁰⁴ even though most believed that law schools were capable of teaching all seventeen skills.⁴⁰⁵

402. Sonsteng & Camarotto, *supra* note 5, at 340 fig.1.

403. *See id.* at 336.

404. *See infra* Table 4. The four primary non-law school sources Minnesota lawyers credited with being significant to their training included: (1) the attorney's own experience; (2) law-related work experience while in law school;

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Table 4. Legal Practice Skills: Identified Source of Legal Skill of Minnesota Lawyers⁴⁰⁶

	Library Legal Research	Knowledge of the Substantive Law	Ability in Legal Analysis and Legal Reasoning	Sensitivity to Professional Ethical Concerns	Computer Legal Research	Knowledge of Procedural Law	Written Communication	Ability to Diagnose and Plan for Legal Problems	Understanding and Conducting Litigation	Drafting Legal Documents	Oral Communication	Negotiation	Fact Gathering	Counseling	Organization and Management of Legal Work	Instilling Others' Confidence in You	Ability to Obtain and Keep Clients
Percentage Identifying Source of Skills																	
Law School Training																	
Legal curricula	93.7	91.8	88.2	84.5	84.4	82.5	65.8	51.2	39.8	39.4	36.9	26.3	25.9	17.2	11.1	7.8	6.1
Legal practice simulation	8.5	5.3	14.5	4.1	6.6	8.6	9.8	20.2	18.6	18.5	17.3	15.7	12.9	13.2	7.4	4.3	3.2
Law school clinics	1.2	2.9	3.8	1.1	0.8	4.2	3.3	8.5	4.9	5.4	4.9	4.9	8.8	10	5.3	6.1	3.9

(3) advice from other attorneys; and (4) observation of other lawyers. Sonsteng & Camarotto, *supra* note 5, at 352.

405. See Sonsteng & Camarotto, *supra* note 5, at 336.

406. See *id.* at 353–69 tbl.6.

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	Library Legal Research	Knowledge of the Substantive Law	Ability in Legal Analysis and Legal Reasoning	Sensitivity to Professional Ethical Concerns	Computer Legal Research	Knowledge of Procedural Law	Written Communication	Ability to Diagnose and Plan for Legal Problems	Understanding and Conducting Litigation	Drafting Legal Documents	Oral Communication	Negotiation	Fact Gathering	Counseling	Organization and Management of Legal Work	Instilling Others' Confidence in You	Ability to Obtain and Keep Clients
	Percentage Identifying Source of Skills																
Law review	16.5	4.6	9.4	0.6	15.3	1.2	14.6	1	0.5	4	1.2	0.8	2	0.8	0.7	2	0.4
Moot court/competitions	15.4	7.3	17.6	1.4	10.8	5.5	17.2	9.8	6.1	19.5	25.6	4.5	5.3	3.9	2	2.7	
Non-Law School Training																	
Own experience	34.4	35.1	36.3	39	40.4	36.6	56.9	52.2	38.1	41	69.7	65.5	63	63.1	63.1	80.4	60.3
Law-related work experience	52.1	51.5	54	24.7	43.6	44.9	42.9	53.5	44.2	59.8	30.4	24.5	44.6	28.5	38	25.3	20.4
Advice from other lawyers	7.6	21.9	20.5	31	5.9	25.6	19	34.3	37.3	36.3	14.8	28.5	30.8	31.6	41.2	27.4	50.9

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	Library Legal Research	Knowledge of the Substantive Law	Ability in Legal Analysis and Legal Reasoning	Sensitivity to Professional Ethical Concerns	Computer Legal Research	Knowledge of Procedural Law	Written Communication	Ability to Diagnose and Plan for Legal Problems	Understanding and Conducting Litigation	Drafting Legal Documents	Oral Communication	Negotiation	Fact Gathering	Counseling	Organization and Management of Legal Work	Instilling Others' Confidence in You	Ability to Obtain and Keep Clients
	Percentage Identifying Source of Skills																
Observe other lawyers	2.6	8.9	19.5	25	2.7	18	20.4	34.8	43.7	29.9	32.7	47.6	34.7	46.6	46.1	40.1	55.7
CLE courses	2.1	38.3	7	24	6	14.2	3.6	10.3	10	15.6	2.4	9.6	4.4	3.6	4.6	2.3	3.2
Advice from non-lawyers	2.8	0.5	0.5	0.9	3	1.2	1.6	1.6	0.7	1.3	3.8	1.9	2.9	3.3	3	5.2	4.5
Observe non-lawyers	0.7	0.5	0.3	1.6	0.8	0.6	1.3	1.7	0.7	0.6	3.4	7.1	3.3	6.3	2.2	6.5	4.1
Training at other school	1.3	0.8	2.5	1.1	0.8	0.6	11.1	1.2	0.9	0.5	8.6	3.2	1.6	2.6	1	2.8	0.9
Training by vendors	5.5	0.7			26.8	0.7	0.2		0.3	0.3	0.2	0.5		0.4	1	0.4	0.7
Other	2.3	3.3	1.7	1.7	2.2	3	2	2	1.6	3.7	1.7	2.2	2.1	1.8	2.7	2	1.7

*F. The Importance and Source of Management Skills as a Necessary Complement to Lawyering Skills*⁴⁰⁷

In addition to analyzing essential lawyering skills, the Minnesota survey addressed the importance of management skills and measured how prepared lawyers felt in those skills upon graduation. The following nine management skills were included in the survey:

- Fee arrangements, pricing, billing.
- Human resources, hiring, support staff.
- Capitalization, investment.
- Project and time management, efficiency.
- Planning, resource allocation, budgeting.
- Marketing, client development.
- Technology, computers, communications.
- Governance, decision-making, long-range strategic planning.
- Interpersonal communications, staff relations.

The majority of respondents did not feel well prepared in any of these management skills upon graduation even though they believed these skills could be learned in law school.

407. *Id.* at 391.

Table 5. Management Skills:⁴⁰⁸
Importance, Preparedness and Ability to Learn in Law School

Management Skills	Percentage Perceiving		
	Importance	Preparedness	The skill can be learned in law school
Project and time management, efficiency	91.9	31.9	77.3
Interpersonal communications, staff relations	91.6	42.1	51.9
Technology, computers, communications	81.9	50.3	94.0
Marketing, client development	69.7	7.9	67.7
Governance, decision-making, long-range strategic planning	61.9	13.3	57.5
Planning, resource allocation, budgeting	61.2	12.8	64.6
Fee arrangements, pricing, billing	59.2	6.3	73.0
Human resources, hiring, support staff	57.8	10.2	49.0
Capitalization, investment	29.9	3.1	53.7

In the Minnesota survey, respondents were asked to identify where they acquired management skills prior to graduating from law school.⁴⁰⁹ The general law school curriculum provided significant training in technology, computers, and communications. In the other management skills areas, the

408. *Id.* at 393 tbl.9.

409. *See infra* Table 6. *See generally* THE LAWYER'S HANDBOOK: HOW TO EFFECTIVELY, EFFICIENTLY AND PROFITABLY MANAGE YOUR LAW FIRM (Austin G. Anderson et al. eds., 3d ed. 1992) (providing additional information on the relevant management skills).

general curriculum provided no significant training. Respondents instead credited such training to their own experience, law-related work experience, observation of other lawyers, and advice from other lawyers. Just as it was in the nineteenth century, the most substantial practical training modern lawyers receive takes place outside the law school.

Table 6. Management Skills⁴¹⁰

	Technology, Computers, Communications	Project and Time Management, Efficiency	Planning, Resource Allocation, Budgeting	Interpersonal Communications, Staff Relations	Fee Arrangements, Pricing, Billing	Governance, Decision-Making, Long-Range Strategic Planning	Marketing, Client Development	Capitalization, Investment	Human Resources, Hiring, Support Staff
	Percentage Identifying Source of Skill								
	Law School Training								
Law school curriculum	49.8	16.9	6.3	4.3	4.3	3.9	2	1.2	0.6
Legal practice simulations	3.8	4.5	2.1	1.5	3.9	0.8	0.8	0.9	
Law school clinics	2.3	2.6	1.7	4.0	1.2	0.9	1	0.7	1.1
Law review	4.5	3.1	1.4	2.8	0.4	1.4	0.4		
Moot court/competitions	2.7	2.4	1.1	1.5	0.3	0.4	0.4		0.3

410. Sonsteng & Camarotto, *supra* note 5, at 395–403 tbl.10.

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	Technology, Computers, Communications	Project and Time Management, Efficiency	Planning, Resource Allocation, Budgeting	Interpersonal Communications, Staff Relations	Fee Arrangements, Pricing, Billing	Governance, Decision-Making, Long-Range Strategic Planning	Marketing, Client Development	Capitalization, Investment	Human Resources, Hiring, Support Staff
	Percentage Identifying Source of Skill								
Non-Law School Training									
Own experience	69.3	78.5	72.7	86.8	55.1	69.3	62	64.7	74.7
Law related work experience	28.1	30.5	18.8	22	29	14.2	15.9	12	20.3
Advice from other lawyers	11.4	36.7	42.5	27.6	61.5	43.1	58.8	41.9	37.9
Observe other lawyers	12.1	37.4	37.3	39.2	52.1	40.7	57.6	33.2	42.4
CLE courses	7.8	4.7	2.8	2	5.2	1.8	5.1	2.5	2.4
Advice from non-lawyers	12	4.2	9.6	11.8	4.3	11.9	11.9	17.1	15.3
Observe non-lawyers	4.2	4.2	7.3	11.7	2.8	8.3	7.6	6.2	9.3
Training at other school	6.8	4	3.8	5.5	0.7	4.5	3.7	4.7	4.6
Training by vendors	24.5	1.3	1.9	0.4	1.1	1.2	1.1	1.8	0.8
Other	1.8	1	1.5	1.7	1.6	2.3	1.1	1.3	2

G. *Binder and Bergman Survey 2003*⁴¹¹

In 2003, David A. Binder⁴¹² and Paul Bergman⁴¹³ conducted research and advocated a new approach to law school clinics. The research they conducted consisted of a survey of 407 lawyers. Findings showed that “60% of these lawyers reported that they received no practice or rehearsal training before taking their first deposition. Moreover, half reported never having reviewed with a more senior litigator a transcript of a deposition that they had taken.”⁴¹⁴ They noted that skill-centered clinical courses, rather than the traditional case centered approach, promoted the transfer of skills for carrying out such important lawyering tasks as interviewing, counseling, negotiating, and advocacy.⁴¹⁵ In a skill-based methodology, “clinicians organize classroom and live client work primarily around the skills students need rather than around specific types of legal cases.”⁴¹⁶ This approach is not inconsistent with the prior social justice emphasis of clinics, but is similar to the way medical schools provide practical training through case rounds.⁴¹⁷ Medical schools have increased the amount of training time devoted to clinical skills, typically embedding clinical skills training in the entire medical school curriculum, and they have substantially increased their reliance on simulations to provide skills training.⁴¹⁸ Binder and Bergman suggest that when students have increased opportunity to practice those necessary lawyering skills in a systematic way and in different contexts, with frequent feedback and the recurring prospect for self-assessment, they will be better prepared for practice.⁴¹⁹

411. Binder & Bergman, *supra* note 346.

412. Professor of Law at the University of California, Los Angeles. He obtained his undergraduate degree from UCLA and his LL.B. from Stanford. Professor Binder has taught at UCLA since 1970 and is recipient of both the University’s Distinguished Teaching Award and the School of Law’s Rutter Award for Excellence in Teaching. Additionally, he has published pioneering clinical scholarship, including several books.

413. Professor of Law at the University of California, Los Angeles. He obtained his undergraduate degree from UCLA and his J.D. from Boalt Hall School of Law. He has been on the UCLA faculty since 1970 and joined Professor Binder in pioneering UCLA’s Clinical Program in the early 1970s.

414. Binder & Bergman, *supra* note 346, at 206–07.

415. *Id.* at 207, 219.

416. *Id.* at 207.

417. *Id.*

418. *Id.* at 208.

419. *Id.* at 219.

*H. Sheldon and Krieger Research 2007*⁴²⁰

Kennon Sheldon⁴²¹ and Lawrence Krieger⁴²² conducted a longitudinal research study of two different law schools and their students. The two law schools selected are located in different regions of the country and have different educational goals.⁴²³ Law School 1 (LS1) hires faculty based on scholarly production and reputation in order to increase rankings, and Law School 2 (LS2) hires faculty with emphasis on law practice and public service.⁴²⁴ LS2 offers a larger number of practice skills courses and professional development courses.⁴²⁵ The study found that LS2 students had a higher level of autonomy and engagement whereas LS1 students felt higher levels of stress and less career motivation.⁴²⁶ Sheldon and Krieger's research emphasizes that skills training courses have a positive influence on the individual's ability as a lawyer, including competence, dealing with stress, and personal well-being.

*I. Report of the Carnegie Foundation for the Advancement of Teaching*⁴²⁷

The Carnegie Foundation for the Advancement of Teaching examined the way law schools develop legal understanding and professional identity in its February 2007 report entitled *Educating Lawyers*. The report⁴²⁸ made five key observations of legal education in the United States and Canada. First, law school provides rapid socialization in the standards of legal thinking. Second, law schools rely heavily on one way of teaching to accomplish the socialization process, primarily through the case-dialogue method. Third, the case-dialogue method of teaching has valuable strengths but also

420. Kennon Sheldon & Lawrence Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883 (2007).

421. Professor of Psychological Sciences at the University of Missouri, Columbia. He received his Ph.D. from the University of California at Davis and his undergraduate degree from Duke University.

422. Clinical Professor and Director of Clinical Externship Programs, Florida State University School of Law. He received his J.D. from the University of Florida and an undergraduate degree from Princeton University.

423. Sheldon & Krieger, *supra* note 420.

424. *Id.*

425. *Id.*

426. *Id.*

427. SULLIVAN ET AL., *supra* note 4.

428. *Id.* at 185-191.

unintended consequences. Fourth, the assessment of student learning remains underdeveloped. Fifth, legal education approaches improvement incrementally, not comprehensively.

Additionally, *Educating Lawyers* discusses seven recommendations. Law schools should: (1) offer an integrated three-part curriculum: teaching of legal doctrine and analysis, introduction to the several facets of practice, and exploration and assumption of the identity consonant with the fundamental purposes of the legal profession; (2) join lawyering professionalism and legal analysis from the start; (3) make better use of the second and third years of law school; (4) support faculty to work across the curriculum; (5) design the program so that students and faculty weave together disparate kinds of knowledge and skill; (6) recognize a common purpose; and (7) work together within and across institutions.

J. Conclusion

A substantial majority of surveyed lawyers believe essential practice and management skills could be learned in law school.⁴²⁹ However, the most significant sources of training in these skill areas are:

- The lawyer's own experience.
- Law related work while in law school.
- Advice from other lawyers.
- Observations of other lawyers.⁴³⁰

Law schools successfully train students in eight of seventeen key legal practice skill areas, but students must seek other sources of training in the remaining nine legal practice skill areas and in all the legal management skill areas. As with the apprentice systems of early legal education, the most substantial practical training a modern lawyer receives is outside the formal legal education system. A century of studies confirms that the formal legal

429. See *supra* Tables 3 & 5.

430. See *supra* Tables 4 & 6.

education process does not live up to its promise to train students to practice law.

V. LEARNING THEORY, INSTRUCTION, CURRICULUM DESIGN, AND ASSESSMENT⁴³¹

The field of cognitive science—the study of how people learn—began with Ivan Pavlov’s classical conditioning research in the late 1800s.⁴³² Carl Jung⁴³³ introduced the theory of psychological types. David Kolb⁴³⁴ described four types of learners and a four-phase learning cycle⁴³⁵ by developing the work of Jung, Kurt Lewin,⁴³⁶ and John Dewey.⁴³⁷ Educational theorist Malcolm

431. The authors wish to thank the following individuals for their expert advice on the content and structure of Part V: Linda Distad, Associate Dean of Education at the College of St. Catherine, and Lori Maxfield, Undergraduate and Graduate Education Program Director at the College of St. Catherine.

432. Ivan Pavlov was born in a small village in central Russia. The work that made him a household name in psychology actually began as a study in digestion. In 1904, he won the Nobel Prize in physiology/medicine for his research on digestion. PBS, *A Science Odyssey: People and Discoveries*, <http://www.pbs.org/wgbh/aso/databank/entries/bhpavl.html> (last visited Mar. 19, 2007).

433. Jung was a protégé of Sigmund Freud and worked with him closely from 1907 to 1912. They experienced an intellectual falling-out when Freud refused to abandon his theory on the sexual basis of neuroses. DEIRDRE BLACK, JUNG 227-28 (2003). Jung later founded analytic psychology, an alternative to Freud’s psychoanalysis. Jung advanced the concepts of the introvert and extravert personality, archetypes, and the collective unconscious (the pool of human experience passed from generation to generation). He formulated new psychotherapeutic techniques designed to reacquaint the person with his unique ‘myth’ or place in the collective unconscious, as expressed in dream and imagination. *Id.* at 5-6.

434. Kolb received his undergraduate degree from Knox College in 1961, his M.A. from Harvard in 1964, and his Ph.D. from Harvard in 1967. Along with Roger Fry, he created his famous experiential learning model out of four elements: concrete experience, observation and reflection, the formation of abstract concepts, and testing in new situations. *David A. Kolb on Experiential Learning*, <http://www.infed.org/biblio/b-explrn.htm> (last visited Nov. 24, 2007).

435. See *supra* Part V.

436. Kurt Lewin was a renowned American social psychologist, known for his field theory of behavior, which states that human behavior is based upon a person’s psychological environment. KURT LEWIN, THE COMPLETE SOCIAL SCIENTIST: A KURT LEWIN READER 11 (Martin Gold ed., Am. Psychol. Ass’n 1999).

437. John Dewey was an American philosopher, psychologist, and educational reformer, whose thoughts and ideas have been greatly influential in the United States and around the world. He is recognized as one of the founders of the philosophical school of Pragmatism. He is also known as the father of functional psychology and was a leading representative of the progressive movement in U.S. education during the first half of the 20th century. LARRY A. HICKMAN, JOHN DEWEY’S PRAGMATIC TECHNOLOGY 1-16 (1992).

Knowles became known as the “Father of Adult Learning” for his work on the concept of andragogy.⁴³⁸ Theorists and educators agree that no single method exists by which students learn best.⁴³⁹ A variety of teaching methods will yield the best result for students. Students are individuals with different learning styles that affect the way they receive and process information.⁴⁴⁰ It is important for professional education programs to acknowledge and accommodate multiple learning styles.⁴⁴¹ A system catering to one type of learner can limit a profession by allowing only a small percentage of students who happen to excel best under the predominant learning method to enter the job market successfully.⁴⁴²

Traditional law school instruction focuses almost exclusively on the lecture-based method of teaching and a timed-essay format of testing. Only a small segment of students are able to achieve high academic success within this system. Often discouraged from entering the profession is a segment of students who may be better suited to certain aspects of lawyering, such as client interaction, trial advocacy, mediation, and negotiation, skills that remain untapped and academically unrecognized at many law schools.⁴⁴³ “The teachers are the trees, and they can and should bend when

438. Knowles popularized the concept of “andragogy,” although he was not the first to use the term. <http://www.infed.org/lifelonglearning/b-andra.htm>. Andragogy, meaning learners teaching each other, is used in contrast to pedagogy, meaning teachers dictating information to students. See generally MALCOLM KNOWLES, *THE ADULT LEARNER: A NEGLECTED SPECIES* (3d ed. 1984).

439. See Friedland, *supra* note 274, at 44.

440. Richard Felder, *Matters of Style*, AM. SOC’Y FOR ENG’G EDUC. PRISM, Dec. 1996, at 18–23.

441. *Id.*

442. See Richard M. Felder & Linda K. Silverman, *Learning and Teaching Styles in Engineering Education*, 78(7) ENG’G EDUC. 674, 680 (1988). The authors note that “[h]ow much a given student learns in a class is governed in part by that student’s native ability and prior preparation but also by the compatibility of his or her learning style and the instructor’s teaching style. Mismatches exist between common learning styles of engineering students and traditional teaching styles of engineering professors. In consequence, students become bored and inattentive in class, do poorly on tests, get discouraged about the courses, the curriculum, and themselves, and in some cases change to other curricula or drop out of school. . . . Most seriously, society loses potentially excellent engineers.” *Id.* at 674.

443. Raleigh Hannah Levine, *Of Learning Civil Procedure, Practicing Civil Practice, and Studying a Civil Action: A Low-Cost Proposal to Introduce First-Year Law Students to the Neglected Macerate Skills*, 31 SETON HALL L. REV. 479, 488 (2000).

that will benefit their students . . . to connect with students who would not be reached by the professor's natural style."⁴⁴⁴

Educational theorist Malcolm Knowles was a pioneer in the study of adult learning.⁴⁴⁵ Knowles disagreed with the traditional view of learners as being dependent on teachers and having little or no influence on the shape and direction of their learning.⁴⁴⁶ He articulated five characteristics of adult learners.⁴⁴⁷ First, he suggested that adults see themselves as self-directing human beings who are not dependent on an instructor's will. A democratic teaching model could be effective in a law school setting because the teacher "is no longer the oracle who speaks from the platform of authority [pedagogy], but rather the guide, the pointer-out who also participates in learning in proportion to the vitality and relevance of his facts and experiences [andragogy]."⁴⁴⁸ Second, adults respond well when they are allowed significant involvement in the design of course material and experiences, and will be

444. Ronald Benton Brown, *I am a Tree, I can Bend: Adapting Your Communication Style to Better Suit Your Students' Needs*, THE LAW TEACHER (Gonz. Univ. Inst. for L. Sch. Teaching), Fall 2006, at 13 (book review).

445. Stephen Lieb, *Principles of Adult Learning*, VISION (Fall 1991) at 1, available at <http://honolulu.hawaii.edu/intranet/committees/FacDevCom/guidebk/teachtip/adults-2.htm>.

446. *Id.*

447. Knowles articulated four characteristics of adult learners that are different from the assumptions about child learners on which traditional pedagogy is premised. A fifth was added later. They are:

1. Self-concept: *As a person matures his self concept moves from one of being a dependent personality toward one of being a self-directed human being.*
2. Experience: *As a person matures he accumulates a growing reservoir of experience that becomes an increasing resource for learning.*
3. Readiness to learn: *As a person matures his readiness to learn becomes oriented increasingly to the developmental tasks of his social roles*
4. Orientation to learning: *As a person matures his time perspective changes from one of postponed application of knowledge to immediacy of application, and accordingly his orientation toward learning shifts from one of subject-centeredness to one of problem centeredness.*
5. Motivation to learn: *As a person matures the motivation to learn is internal.*

M. S. KNOWLES ET AL., ANDRAGOGY IN ACTION: APPLYING MODERN PRINCIPLES OF ADULT EDUCATION 12 (1984).

448. Fran Quigley, *supra* note 144, at 46-47 (quoting 1920's adult learning theory pioneer Eduard C. Lindeman).

committed to an activity in direct proportion to their participation in, or influence on, its planning.⁴⁴⁹ Third, when adults recognize a relationship between the subject of study and their developmental tasks they will be much more motivated to learn. Fourth, adults acquire knowledge more easily if they can apply it immediately.⁴⁵⁰ Fifth, as adults mature, the motivation to learn is internal.⁴⁵¹

American education has long been criticized for not keeping up with developments in learning theory.⁴⁵² In 2000, the National Research Council (NRC)⁴⁵³ published *How People Learn: Brain, Mind, Experience, and School*⁴⁵⁴ produced by the Committee on Developments in the Science of Learning. The report explored the link between research on the science of learning and actual practice in the classroom. The report focused on elementary and secondary schools, but its findings are applicable to the legal education setting as well.⁴⁵⁵

In the report, the National Research Council argues “‘effectively designed learning environments’ must be ‘learner centered,’ ‘knowledge centered,’ and ‘assessment centered.’”⁴⁵⁶ In the assembly line education model, students are raw materials being processed by teachers into a product.⁴⁵⁷ However, cognitive science has advanced and it is clear that each student comes to an educational environment with a will to learn, combined with pre-existing knowledge, beliefs, and experiences.⁴⁵⁸ The factory model was a one-size-fits-all approach; we now know that education is a

449. Fran Quigley, *supra* note 144, at 65.

450. *Id.* at 46-47.

451. KNOWLES ET AL., *supra* note 447, at 12.

452. Claudia Wallis & Sonja Steptoe, *How to Bring Our Schools Out of the 20th Century*, TIME MAG., Dec. 18, 2006, at 52, available at <http://www.time.com/time/magazine/article/0,9171,1568480,00.html>.

453. The National Research Council has become the principal operating agency of both the National Academy of Sciences and the National Academy of Engineering in providing services to the government, the public and the scientific and engineering communities. The Research Council is administered jointly by both Academies and the Institute of Medicine through the National Research Council Governing Board. The National Academies, The National Research Council, available at <http://www.nas.edu/nrc/>.

454. JOHN D. BRANSFORD ET AL., *HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE AND SCHOOL* (2000).

455. Douglas R. Haddock, *Collaborative Examinations: A Way to Help Students Learn*, 54 J. LEGAL EDUC. 533, 544 (2004).

456. *Id.* at 546.

457. BRANSFORD ET AL., *supra* note 454, at 132.

458. *Id.* at 10.

much more amorphous process than the assembly line metaphor describes.⁴⁵⁹

Learner-centered education focuses on the pre-existing knowledge, skills, beliefs, and experiences students bring to the classroom.⁴⁶⁰ Teachers in learner-centered environments engage students to discover their pre-existing knowledge and use that information to initiate discussions of the students' differences in the context of education. A challenge for law professors is to create this kind of environment within the highly competitive law school classroom. Students who attend a class with pre-existing knowledge of course material (e.g., a former mortgage broker in a real estate transactions class) are perceived by fellow students as being at a competitive advantage. Learner-centered education must account for this and utilize techniques that allow the student to share knowledge without regard for the assessment structure of the course.⁴⁶¹

Knowledge-centered classrooms emphasize the importance of establishing a baseline of knowledge before moving on to complex problem solving.⁴⁶² The importance of a strong substantive and theoretical foundation cannot be overlooked. The teacher must ascertain what the students do and do not know before the teacher can determine what must be taught. Law professors must strike a balance among requiring students to learn information, understand theory, and apply general concepts to real-life problems.

Assessment-centered environments continuously provide opportunities for students to identify what they do and do not know and opportunities to achieve greater understanding.⁴⁶³ Teachers in assessment-centered classrooms provide feedback throughout the course, particularly at the conclusion of each concept. This method recognizes that both students and teachers need feedback. Students need teachers to suggest areas for improvement and teachers need the same. This is a significant challenge for law school professors because law school courses are seldom designed to offer continuous assessment opportunities.

459. "The model of the [student] as an empty vessel to be filled with knowledge provided by the teacher must be replaced." *Id.* at 19.

460. *Id.* at 133.

461. *Id.* at 133-35.

462. *Id.* at 136-39.

463. *Id.* at 139-40.

Most courses are one semester and culminate in a single written exam in which the student is expected to convey all that was learned. However, by the time the student receives feedback the student has moved on to the next semester and the opportunity to improve has passed.

Law professors using assessment-centered methods must also account for the pervasive competitiveness of the law school environment. In order to discover what the student does not know the student must make a mistake. The competition in law school is often felt so strongly that students are afraid to ask questions in class for fear of being perceived by their teachers and peers as having a lack of knowledge.⁴⁶⁴ Law professors who truly subscribe to andragogy and their role as a guide along the learning process will experience more success in an environment in which the overall search for understanding trumps an individual's concerns for the ramifications of imperfection.

An optimal learning environment must be learner-centered, knowledge-centered, and assessment-centered. The combination will differ based on the course material, the professor, and the students. No single method works for everyone and no single combination works for all classrooms. Traditional law classes benefit students who prefer lectures and individual assignments rather than those who achieve best through active class involvement and cooperative learning.⁴⁶⁵ To address the learning needs of a full spectrum of learning styles, a professor should make use of sketches, plots, schematics, diagrams, and physical demonstrations for visual learners, as well as oral explanations of readings and collaborative dialogue for verbal learners.⁴⁶⁶ A law school professor can create opportunities for active student participation that will benefit students who learn best by trial-and-error or working with others. A professor may offer a mixture of sequential steps for learners who prefer linear, orderly learning, in small, incremental steps and global lesson plans for students who are "holistic" and "learn in large leaps."⁴⁶⁷ The goal of a revitalized legal education system is not to replace traditional teaching practices, but to augment the existing system with a combination of

464. *Id.* at 147.

465. Felder & Silverman, *supra* note 442, at 676; BRANSFORD ET AL., *supra* note 454, at 10.

466. Felder, *supra* note 440, at 18.

467. *Id.* at 20.

teaching techniques, which meets the needs of a broader segment of students.

Applying the NRC report's findings to law school reform will help address some of the common critiques of the current system. According to the report, cognitive science research has revealed three areas in need of change. First, students need to exhibit a true understanding of their learning rather than reciting facts.⁴⁶⁸ For example, it is not sufficient for a student to read a mathematical problem, apply a formula, and come up with an answer. Students perform better when they understand why the formula works. Once that understanding is achieved students will be more successful at applying the knowledge in other contexts.⁴⁶⁹ Knowledge and understanding are more than a disconnected string of memorized facts.⁴⁷⁰

A second area in need of reform is the failure to recognize students' pre-existing knowledge. It must be accounted for and incorporated into the learning process.⁴⁷¹ The perception of students as blank slates influenced entirely by the formal education process is false.⁴⁷² Individual knowledge, skills, and beliefs can significantly affect how a student remembers, organizes, and interprets the curriculum.⁴⁷³

Law school admissions and the legal employment process have embraced diversity. However, filling lecture halls with people of different ethnicities, socio-economic backgrounds and life experiences, without doing more to explore those differences, does little to impact the learning process.⁴⁷⁴ Professors must actively engage students so that differences beyond appearance can be discovered and shared. Students in small groups may demonstrate subject mastery to peers, to create an encouraging and empowering environment.⁴⁷⁵ A cooperative learning environment embraces diversity by recognizing differences such as prior education,

468. BRANSFORD ET AL., *supra* note 454, at 8–9.

469. *Id.* at 9.

470. *Id.*

471. *Id.* at 10.

472. *Id.*

473. Richard L. Roe, *Valuing Student Speech: The Work of the Schools as Conceptual Development*, 79 CAL. L. REV. 1269, 1294-95 (1991).

474. Randall, *Increasing Retention*, *supra* note 17, at 207–08.

475. *Id.* at 204.

experience, background, learning style, race, and gender, which are relevant to a student's education.⁴⁷⁶

A third finding revealed that students must engage in active learning.⁴⁷⁷ This finding is consistent with the idea of experiential learning, or learning-by-doing, which theorists agree is highly preferable to passive absorption of concepts.⁴⁷⁸ A process called metacognition provides students opportunities to understand how they learn.⁴⁷⁹ The process improves the ability to predict performance and monitor progress toward full understanding of a principle.⁴⁸⁰ Methods that provide students opportunities for self-assessment and improvement are effective because the students are given tools that empower them to take control of the learning process.

Simulation-based courses effectively allow learning to take place in a context that gives critical meaning to the subject matter. When students learn through the performance of actual lawyering tasks, they are able to encode learning in distinctive, active, and multiple ways.⁴⁸¹

For example, if a student learns an ethical principle in the context of reading a case and discussing the principle in class, that limited context will make it more difficult for the student to transfer that learning later [I]f the student learns doctrine in the context in which she will likely be called on to use the doctrine . . . the doctrine will be more readily useable.⁴⁸²

Gerald F. Hess⁴⁸³ suggests that an effective legal environment

476. *Id.* at 222.

477. BRANSFORD ET AL., *supra* note 454, at 12.

478. Fran Quigley, *supra* note 144, at 48–51.

479. BRANSFORD ET AL., *supra* note 454, at 12.

480. See Leah M. Christensen, *The Psychology Behind Case Briefing: A Powerful Cognitive Schema*, 29 CAMPBELL L. REV. 5, 20 (2006); Robin A. Boyle, *Law Students with Attention Deficit Disorder: How to Reach Them, How to Teach Them*, 39 J. MARSHALL L. REV. 349, 375 (2006).

481. Paul S. Ferber, *Adult Learning Theory and Simulations—Designing Simulations to Educate Lawyers*, 9 CLINICAL L. REV. 417, 434 (2002).

482. *Id.*

483. Gerald Hess is a Professor of Law at Gonzaga University. He obtained his undergraduate and law degrees from the University of Wisconsin. *Id.* Professor Hess has taught at Gonzaga University School of Law since 1988. *Id.* Professor Hess founded the Institute for Law School Teaching in 1991, and was its director until 2004. *Id.* Professor Hess has served as a co-editor of *The Law Teacher*, as a member of the Advisory Committee for the *Journal of Legal Education*, and as an inaugural member of the editorial board of the *Canadian Legal Education Annual Review*. *Id.* Before attending law school, Professor Hess taught children in grades

consists of eight components, “[R]espect, expectation, support, collaboration, inclusion, engagement, delight, and feedback.”⁴⁸⁴ “The more elements present, the more likely the environment will be conducive to learning.”⁴⁸⁵ In a respectful environment, teachers and students “participate in a dialogue, explore ideas, and solve problems creatively.”⁴⁸⁶ Students must be willing to confront challenging tasks with no intimidation or humiliation, which may cause withdrawal from participation and learning.⁴⁸⁷ Collaboration is accomplished through the creation of cooperative learning environments, including cooperation among students and teachers in course design, delivery, and evaluation.⁴⁸⁸

The benefits of cooperative learning are well documented.⁴⁸⁹ “Research on adult learners has revealed that cooperative learning⁴⁹⁰—learning that takes place when peers share experiences and insights—is not only the most common type of adult learning, it is perhaps the most effective style.”⁴⁹¹ “Cooperative Learning produces higher achievement, reduces student attrition, increases critical thinking, betters attitudes toward subject matter, increases social support, improves social adjustment, and increases appreciation for diversity.”⁴⁹² In a cooperative learning environment, students interact while the teacher, acting as a “Guide on the Side,” makes decisions, develops the lessons, monitors and intervenes, evaluates, and processes.⁴⁹³

Cooperative learning classrooms incorporate movable seating which allows rooms to be easily arranged to accommodate a variety of learning configurations.⁴⁹⁴ When a classroom setting is

2, 4, and 5. *Id.*

484. Hess, *Heads and Hearts*, *supra* note 159, at 76.

485. *Id.* at 87.

486. *Id.*

487. *Id.*

488. *Id.* at 94, 96-97.

489. Randall, *Increasing Retention*, *supra* note 17, at 204.

490. “Cooperative Learning is a structured, systematic instructional strategy in which small groups work together toward a common goal. . . . Considerable research shows that Cooperative Learning produces higher achievement, reduces student attrition, increases critical thinking, betters attitudes toward subject matter, increases social support, improves social adjustment, and increases appreciation for diversity.” *Id.* at 203-04.

491. Fran Quigley, *supra* note 144, at 57.

492. Randall, *Increasing Retention*, *supra* note 17, at 204.

493. *Id.* at 266; Alison King, *From Sage on the Stage to Guide on the Side*, 41 C. TEACHING 30, 30-35 (1993).

494. Randall, *Increasing Retention*, *supra* note 17, at 251.

conducive to small group work and student interaction, students are able to assist each other, exchange resources, process information more effectively, provide each other feedback, challenge each other's conclusions to promote higher-quality decision-making, and strive for and achieve mutual goals.⁴⁹⁵

A cooperative learning environment can improve student participation, preparation for class, and skill development.⁴⁹⁶ This method requires more sustained effort than the traditional classroom because it offers no safe haven for students hoping to dodge participation.⁴⁹⁷ "Cooperative learning teaches students . . . to negotiate their differences and mediate each other's conflict."⁴⁹⁸ Successful educators agree that high expectations for all students, perhaps higher than they would credit themselves with being able to achieve, can have a dramatic impact on their performance.⁴⁹⁹ "Teachers who expect a student to succeed act in ways that make success more likely. Students who expect themselves to succeed work harder, ask more questions, and learn more than students who do not expect success."⁵⁰⁰ Teachers also need to clearly communicate their expectations to the students, and when possible, demonstrate their expectations through concrete examples of past student work they find exemplary.⁵⁰¹

"Elements of a supportive environment include teachers' attitudes, student-faculty contact, and role-model and mentor relationships."⁵⁰² A supportive environment enhances students' learning, willingness to take risks, and their openness to offering and considering a variety of perspectives.⁵⁰³ Law professors fond of the traditional teaching style do not have to do away with it

495. *Id.* at 242-43.

496. *Id.*

497. *Id.*

498. *Id.* at 271; see also June Cicero, *Piercing the Socratic Veil: Adding an Active Learning Alternative in Legal Education*, 15 WM. MITCHELL L. REV. 1011, 1020-23 (1989) (describing a legal practicum course that provides students an alternative to the Langdellian method and involves them in a Cooperative Learning experience).

499. See Joshua S. Smith & Ellen C. Wertlieb, *Do First-Year College Students' Expectations Align with their First-Year Experiences?*, 42 NASPAJ. 153, 155 (2005).

500. Hess, *Heads and Hearts*, *supra* note 159, at 91.

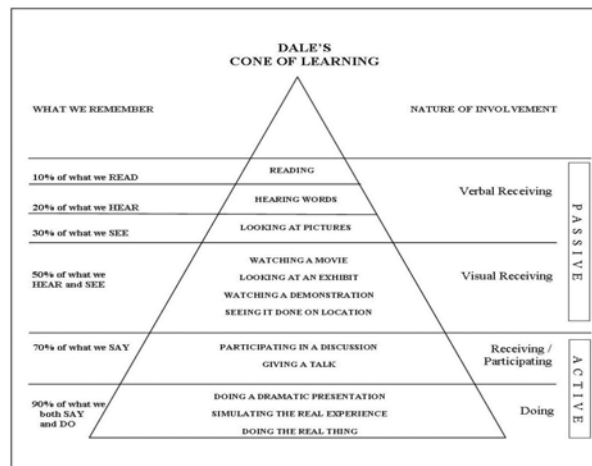
501. *Id.*

502. *Id.* at 92.

503. *Id.*

altogether, but they can, for instance, try to make the Socratic method less intimidating and more dignified for students.⁵⁰⁴

In 1946, educationist Edgar Dale⁵⁰⁵ developed a learning theory known as the “Cone of Experience.”⁵⁰⁶ In the Cone of Experience, the base of the cone represents the learner as a participant in actual or simulated experience and the top of the cone represents the learner as a mere observer of symbols that represent an event (e.g., reading words on a page). Dale theorized that learners retain more information by what they do, and his model supports the theory. “[L]earning by doing” or “experiential learning” is the most effective method because it involves direct and purposeful learning experiences designed to represent real-life situations.⁵⁰⁷ As depicted by the Cone,⁵⁰⁸ the least effective methods of instruction include reading text and listening to lectures.⁵⁰⁹



504. *Id.*

505. Born in 1900 in Benson, Minnesota, Edgar Dale spent his entire life as an educator and education theorist. He received his B.A. and M.A. from the University of North Dakota, and his Ph.D. from the University of Chicago. He was a teacher and superintendent in North Dakota and Illinois before becoming an education professor at Ohio State University, a position he held for over forty years. He died in 1985 after publishing several influential papers and studies on education, his most famous being the Cone of Experience. www.ittheory.com/dale.htm (last visited Nov. 25, 2007).

506. EDGAR DALE, AUDIO-VISUAL METHODS IN TEACHING 108 (3d ed. 1969). Note: in the literature and references to Edgar Dale and his work, the terms “Cone of Experience” and “Cone of Learning” are used interchangeably.

507. *Id.*

508. *Id.* (chart revised and recreated by Linda Thorstad).

509. *Id.*

Learning is not a spectator sport. Students do not learn much just by sitting in class listening to teachers, memorizing pre-packaged assignments, and spitting out answers. They must talk about what they are learning, write about it, relate it to past experiences and apply it to their daily lives. They must make what they learn part of themselves.⁵¹⁰

In addition to illustrating the effectiveness of various methods of instruction, the Cone of Experience can be used to gauge a student's retention. As one begins to utilize methods found at or near the base of the cone, more learning takes place and more information is retained. People learn best with perceptual learning styles because perceptual learning styles are sensory based and "[t]he more sensory channels possible in interacting with a resource, the better chance that many students can learn from it."⁵¹¹ Dale's Cone of Learning strongly supports action-learning techniques such as simulations and role-plays, which can result in up to ninety percent retention.⁵¹²

Law students benefit from the self-direction of experiential learning and the opportunity to connect substantive course material to skills that will be valuable to future practice.⁵¹³ When students learn how to learn from experience, they continue to learn from experience throughout their careers.⁵¹⁴ Life-long learning is important because "[t]hree years of legal education barely scratches the surface of what lawyers must learn to be competent professionals."⁵¹⁵

A random sample of the required curriculum of sixty law schools⁵¹⁶ indicates that forty-nine or more require coursework in contracts, torts, criminal law, civil procedure, property, legal

510. Arthur W. Chickering & Zelda F. Gamson, *Seven Principles for Good Practice*, 39 AM. ASS'N FOR HIGHER EDUC. BULL., March 1987, available at <http://honolulu.hawaii.edu/intranet/committees/FacDevCom/guidebk/teachtip/7princip.htm>.

511. DALE, *supra* note 506, at 108; JEROME BRUNER, *TOWARD A THEORY OF INSTRUCTION* 49 (1966).

512. DALE, *supra* note 506, at 108.

513. Professors Ellen Dannin and William Kramer, along with intern project coordinator Peter Zschiesche, discuss this in terms of their creation of a labor law student internship program with a local union. Ellen Dannin et al., *Creating Labor-Law School Connections*, 48 J. LEGAL EDUC. 187, 189 (1998).

514. Ferber, *supra* note 481, at 428.

515. *Id.* at 429.

516. Survey Schools, *supra* note 3 (listing the randomly chosen surveyed law schools).

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writing and research, and constitutional law; thirty-eight require professional responsibility.⁵¹⁷ The required course work remains

517. All the surveyed law schools listed their required curriculum as information for incoming and prospective students. Some classes were combined with classes of a different title, but had the same basic concept (e.g., Professional Responsibility and Ethics).

Course Title	Number of Schools (October 2006)
Contracts	60
Torts	59
Criminal Law	59
Civil Procedure	58
Property	53
Legal Writing & Research	51
Constitutional Law	49
Professional Responsibility/Ethics	38
Upper-class writing requirement	26
Legal Profession	15
Evidence	8
Lawyering	6
Criminal Procedure	6
Moot Court	5
Appellate Advocacy	5
Introduction to Advocacy	4
Business Associations	4
Legislation	3
Legal Practice Skills	3
Federal Taxation	3
Legal Methods	2
Foundations of the Regulatory State	2
Estates and Trusts	2
Elements of the Law	2
Transnational Law	1
Structures of the Constitution	1
Statutory Interpretation	1
Public Interest Seminar	1
Perspectives on the Law	1
Perspectives on Legal Thought	1
Legal Process & Institutions of Law Making	1
Legal Decision Making	1
Legal Analysis	1
Law in a Global Context	1
Jurisprudence	1
Introduction to Law & Legal Reasoning	1
Consumer Protection	1
Communication and Legal Reasoning	1
Commercial Law: Secured Transactions	1

much the same as in Langdell's time, "The first-year structure introduced by Langdell, Harvard College Class of 1850—which is still in place at almost every law school—includes contracts, torts, civil procedure, criminal law, and property."⁵¹⁸

Simulations provide direct and purposeful experiences. They provide a way for students to achieve a wide variety of learning goals.⁵¹⁹ Simulations can model a system in a manner that is consistent with reality.⁵²⁰ Many law schools have responded to the recommendations of the MacCrate Report by offering simulation-based courses to teach skills such as interviewing, counseling, negotiating, and trial advocacy.⁵²¹ Some law schools have also taught simulated subject-based courses.⁵²² By incorporating experiential learning into the core curriculum, rather than just as an elective for a small subset of students, the divide among "skills," "theory," or "substance" courses can be eliminated.⁵²³

The need for clinical learning in law school has been recognized for decades. In the 1933 University of Chicago Law Review, John Bradway⁵²⁴ set five goals for clinical instruction:

[F]irst, bridge the gap between the theory of law school and the practice of the profession; second, synthesize the various bodies of substantive law and procedural law learned by the student; third, an introduction into the human element of the study and practice of law; fourth,

American Public Law Process	1
Administrative Law	1

518. Paras D. Bhayani, *Another Feather in Kagan's Cap*, THE HARV. CRIMSON, Oct. 10, 2006, available at <http://www.thecrimson.com/article.aspx?ref=514824>.

519. Ferber, *supra* note 481, at 417.

520. See Kurt Squire, *Video Games in Education*, SIMSCHOOL, <http://simschoolresources.edreform.net/download/278/IJIS.doc> (last visited Nov. 26, 2007).

521. See Ferber, *supra* note 481, at 417 (stating that in response to criticism, law schools have developed and offered simulated courses).

522. *Id.*; see Philip G. Schrag, *The Serpent Strikes: Simulation Courses in a Large First-Year Course*, 39 J. LEGAL EDUC. 555, 558-59 (1989); see Robert MacCrate, *Yesterday, Today, and Tomorrow: Building the Continuum of Legal Education and Professional Development*, New York Law School Clinical Research Institute Research Paper Series No. 03/04-1 (Sept. 2003).

523. See James E. Moliterno, *An Analysis of Ethics Teaching in Law Schools: Replacing Lost Benefits of the Apprenticeship System in the Academic Atmosphere*, 60 U. CIN. L. REV. 83, 134 (1991).

524. John Bradway is the Director of the Duke Legal Aid Clinic and one of the most prolific of the early scholars of clinical legal education. William Quigley, *supra* note 54, at 468.

an introduction into unwritten lessons of advocacy in the practice of law; and fifth, teaching the student to think of legal matters and issues from the beginning of their development, rather than the end as appellate opinions.”⁵²⁵

In 1992, the AALS Committee on the Future of the In-House Clinic identified nine goals of clinical education:⁵²⁶

- Developing modes of planning and analysis for dealing with unstructured situations as opposed to the “pre-digested world of the appellate case.”⁵²⁷
- Providing professional skills instruction in such necessary areas as interviewing, counseling, and fact investigation.⁵²⁸
- “Teaching means of learning from experience.”⁵²⁹
- Instructing students in professional responsibility by giving them firsthand exposure to the actual mores of the profession.⁵³⁰
- Exposing students to the demands and methods of acting in the role of lawyer.⁵³¹
- “Providing opportunities for collaborative learning.”⁵³²
- “Imparting the obligation for service to indigent clients, information about how to engage in such representation, and knowledge concerning the impact of the legal system on poor people.”⁵³³
- “Providing the opportunity for examining the impact

525. *Id.*

526. Robert Dinerstein, *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 511 (1992).

527. *Id.* at 512.

528. *Id.* at 512-13.

529. *Id.* at 513.

530. *Id.* at 513-14.

531. *Id.* at 514-15.

532. *Id.* at 515

533. *Id.*

of doctrine in real life and providing a laboratory in which students and faculty study particular areas of the law.”⁵³⁴

- “Critiquing the capacities and limitations of lawyers and the legal system.”⁵³⁵

Aside from serving the poor, each of the goals is capable of being achieved through a simulation-based course.⁵³⁶ Simulations, externships, and live-client clinics add value to a student’s learning experience and, although it may be educationally and economically difficult,⁵³⁷ these teaching techniques should be incorporated into the law school curriculum.

Revitalizing legal education’s stale and inadequate assessment practice is just as important as modifying the courses and the way they are taught. Professors who provide frequent assessment and feedback teach more effectively. Frequent assessment opportunities allow both student and professor to gauge the level and pace of learning.⁵³⁸ Students are able to understand the professor’s expectations and adjust accordingly.⁵³⁹ The use of multiple assessment formats, including written assignments, written exams, and oral exams, provides an accurate indication of a student’s ability and knowledge.⁵⁴⁰ Additionally, law students may practice responding to unexpected questions, which is an important lawyering skill.⁵⁴¹ “[O]nly a small minority of students perform extremely well on both oral and written exams . . . [And] only a small minority of students perform very poorly on both oral and written exams.”⁵⁴² By using multiple assessment techniques, all

534. *Id.* at 515–16.

535. *Id.* at 516–17.

536. *Id.*

537. *Cf.* Ron M. Aizen, *Four Ways to Better 1L Assessments*, 54 DUKE L.J. 765, 776 (2004) (discussing current 1L assessments by one end-of-year exam as a poor way of testing performance).

538. *Id.* at 780.

539. *Id.*

540. *See* Burman, *supra* note 199, at 131, 138; *see also* John M. Burman, *Out-of-Class Assignments as a Method of Teaching and Evaluating Law Students*, 42 J. LEGAL EDUC. 447 (1992) (discussing out-of-class assignments as a means of assessing student abilities as compared to the prevailing method of a comprehensive final examination).

541. *See* Burman, *supra* note 199, at 134 (discussing oral examinations as a means of assessing student abilities).

542. *Id.* at 138.

students, no matter their level of agility in writing or speaking, have an opportunity to be assessed in a format in which they can be successful.

Reflective teaching and learning are essential to education. To be effective and grow as a teacher or student, an individual must reflect on the experience.⁵⁴³ David Kolb of Case Western University provided a great deal of insight into the way we learn.⁵⁴⁴ Kolb produced a model of experiential learning (i.e., learning by experience) in a practical, or practically based, environment.⁵⁴⁵ He concluded that learning and development are made easier when the process is integrated.⁵⁴⁶

Kolb describes a four phase learning cycle which includes: first, experience that involves learning by doing and being involved; second, reflective observation and thinking about the experience while analyzing the new information and making sense of it; third, coming to a conclusion, new idea, or concept based on the first two phases; and fourth, application of the new experience, information, and concepts in fresh situations, which results in active experimentation.⁵⁴⁷

The learning cycle suggests that even advanced practice-based forms of teaching and learning are not in themselves sufficient. Merely doing something is not enough, reflecting on the doing and testing out the reflection must follow for learning to be effective. "Reflection is an important human activity in which people recapture their experience, think about it, mull it over, and evaluate it. It is this working with experience that is important in learning."⁵⁴⁸ Reflection can be in the form of a log, diary, portfolio, journal, or even a video diary. As one commentator stated:

The act of reflecting is one which causes us to make sense of what we've learned, why we learned it, and how that particular increment of learning took place. Moreover, reflection is about

543. KAREN HINETT, DEVELOPING REFLECTIVE PRACTICE IN LEGAL EDUCATION 51 (2002), <http://www.ukcle.ac.uk/resources/reflection/drp.pdf>.

544. Curtis Kelly & David Kolb, The Theory of Experiential Learning & ESL (1997), <http://iteslj.org/Articles/Kelly-Experiential/>.

545. *Id.*

546. *Id.*

547. *Id.*

548. DAVID BOUD, ET AL., REFLECTION: TURNING EXPERIENCE INTO LEARNING 19 (David Boud et al. eds., 1985).

linking one increment of learning to the wider perspective of learning—heading towards seeing the bigger picture.⁵⁴⁹

Feedback for reflection is created through a dialogue between students and teachers and students and their peers.⁵⁵⁰ To reflect on their learning, “[S]tudents need to be encouraged to make sense of new knowledge in relation to their existing understanding.”⁵⁵¹

Reflective practitioners are adult learners who engage in a professional activity, and reflect on their strengths, weaknesses, and areas for development.⁵⁵² Students also should be encouraged to use situations, tutorials, or placements to reflect on what they have learned.⁵⁵³

Journal writing is an important option for assessing the level of a student’s learning, particularly in the clinical setting. In a journal, students can conduct a formal self-evaluation, which the instructor can then critique. “Journal writing is a highly-valued tool for reflection in a variety of adult educational contexts because journals have been shown to facilitate adults in the process of organizing their thoughts”⁵⁵⁴ and formal self-evaluation can spur reflection. A journal allows students to move through the cycle of experiential learning by themselves and is a good way for the instructor to gain an understanding of a student’s thinking.⁵⁵⁵

Over the past twenty years, the United Kingdom’s Higher Education guidelines have encouraged students to use portfolios and records of achievement as a means to “monitor, build and reflect upon their personal development.”⁵⁵⁶ Personal development planning (PDP)⁵⁵⁷ and portfolios provide a more complete picture of the capabilities of an individual.

549. PHIL RACE, EVIDENCING REFLECTION: PUTTING THE “W” INTO REFLECTION (2006) (U.K.), <http://escalate.ac.uk/resources/reflection/02.html>.

550. HINETT, *supra* note 543, at 2.

551. *Id.*

552. *Id.* at 5–6.

553. *Id.* at 6.

554. Fran Quigley, *supra* note 144, at 59.

555. Ferber, *supra* note 481, at 459–60.

556. Quality Assurance Agency for Higher Education, Guidelines for HE Progress Files 9 (2001), available at http://www.qaa.ac.uk/academic_infrastructure/progressFiles/guidelines/progfile2001.pdf.

557. *Id.* The term “Personal Development Planning” (PDP) was first introduced following the National Committee of Inquiry into Higher Education Report (the Dearing Report) in 1997 in the United Kingdom. In the intervening years it has gained a definition, agreed upon policy intentions and implementation dates. See also Center for Recording Achievement, <http://www.recordingachievement.org/> (last visited Dec. 1, 2007) (discussing the U.K.’s

Usually consisting of three parts (a checklist of skills or competences achieved, evidence of achievement and a reflective piece on how the skill has been developed) PDP offers more information than a certificate and engages students in a process of thinking about their learning. Portfolios can be used both for certification purposes and as an additional form of evidence to employers and educational institutions. A typical example of personal development planning is the portfolio of professional development used to assess the competence of a new lecturer in programmes such as a diploma in higher education or certificate in education.⁵⁵⁸

The United Kingdom's Quality Assurance Agency has defined personal development planning as, "[a] structured and supported process undertaken by an individual to reflect upon their own learning, performance and/or achievement and to plan for their personal, educational and career development."⁵⁵⁹ Further:

It is intended that PDP will help students: become more effective, independent and confident self-directed learners, understand how they are learning and relate their learning to a wider context, improve their general skills for study and career management, articulate their personal goals and evaluate progress towards their achievement, [and] encourage a positive attitude to learning throughout life.⁵⁶⁰

Assessment involves more than testing. It includes reinforcement and feedback, which can include praise, constructive criticism, and any other verbal or written critique that enables students to understand their mastery of a particular topic or learning objective.⁵⁶¹ Learning theorists agree that adult students need specific feedback in order to stay motivated. Too often law schools use negative reinforcement that is useful only in changing bad behavior rather than providing positive

national PDP based process).

558. HINETT, *supra* note 543, at 30–31.

559. *Id.* at 31.

560. *Id.*; Progress Files for Higher Education, Policy Statement on a Progress File for Higher Education, <http://www.qaa.ac.uk/academicinfrastructure/progressFiles/archive/policystatement/default.asp#pdp> (last visited Dec. 1, 2007).

561. Kristin B. Gerdy, *Teacher, Coach, Cheerleader, and Judge: Promoting Learning Through Learner-Centered Assessment*, 94 LAW LIBR. J. 59, 66 (2002); BRANSFORD ET AL., *supra* note 454, at 139–41.

reinforcement.⁵⁶² In fact, law schools traditionally give very little reinforcement at all.⁵⁶³ Grades typically come once a semester, little to no feedback from professors is given after a class has ended, and grades and feedback come too late for the student to improve.⁵⁶⁴ A better system utilizes instructors who use positive reinforcement on a regular basis and early in the learning process to help students retain what they have learned.⁵⁶⁵

Frequent feedback provides an opportunity to help students understand how well they are solving a problem or performing a particular task, and how to make their problem-solving or learning process more effective. When students participate in experiential learning followed by debriefing, they learn how to learn from experience, essentially developing a learning process that they can apply to lifelong professional development.⁵⁶⁶ In a simulation setting, students can practice reflection-in-action, which “is a process of thinking about what we are doing while we are doing it and still affect the task result.”⁵⁶⁷ As students develop this ability, the debriefing process plays an important role.⁵⁶⁸

Students improve their skills through ongoing practice and feedback. Students actively construct, discover, transform, develop, and extend their own knowledge and skills, while teachers are also given an opportunity to regularly monitor and examine the effectiveness of their teaching methods on a particular topic.⁵⁶⁹ Because research demonstrates that adult learners thrive in a democratic learning environment, implementation of this two-way street of evaluation is essential. Professor Richard Henry Seamon suggests using exam conferences in which each student meets individually with a professor following an assessment opportunity:⁵⁷⁰

Exam conferences can benefit professors in ways that mirror the potential benefits to students. . . . [E]xam

562. Robert P. Schuwerk, *The Law Professor as Fiduciary: What Duties Do We Owe to Our Students*, 45 S. TEX. L. REV. 753, 785 n.70 (2004); Patrick Wiseman, “*When You Come to a Fork in the Road, Take it*,” and Other Sage Advice for First-time Law School Exam Takers, 22 GA. ST. U. L. REV. 653, 664 (2006).

563. Schuwerk, *supra* note 562, at 785 n.70; Wiseman, *supra* note 562, at 664.

564. Aizen, *supra* note 537, at 777.

565. Lieb, *supra* note 445.

566. Ferber, *supra* note 481, at 435.

567. *Id.* at 436.

568. *Id.* at 436–37.

569. See generally Randall, *Increasing Retention*, *supra* note 17, at 260.

570. Richard Henry Seamon, *Lightening and Enlightening Exam Conferences*, 56 J. LEGAL EDUC. 122, 122 (2006).

conferences can help students learn the material better, perform better on law school exams, and learn the value, and reap the emotional benefits, of receiving due process. Similarly, exam conferences can help professors teach the material better, perform the exam composition and grading processes better, and learn the value and reap the emotional benefits of giving due process to individual students.⁵⁷¹

Numerous ways exist to increase the frequency of evaluation and feedback opportunities so that students can pinpoint their strengths or weaknesses and re-focus their studies accordingly. Professors can require students to write short, ungraded essays throughout the semester, initiate group and class discussion regarding assigned problems, require peer review of student work, or collect journals or self-critiques such as those mentioned above. In order to be most useful to the student, feedback must be given in a timely fashion.⁵⁷² Feedback delivered too early can be confusing and feedback given too late can slow a learner's motivation.⁵⁷³

Alternative grading systems not only provide increased accuracy in student assessment but also help "reduce stress for first-year students and increase motivation for upper-level students."⁵⁷⁴ One commonly suggested method for improving the grading system is the implementation of grade-adjustment procedures. While those procedures may be useful in predicting academic performance for overall populations of students, they are not likely to gain widespread use because of their statistical complexity.⁵⁷⁵ A more commonly acceptable alternative is to standardize grading means and deviations in the interest of uniformity. In a uniform system, the average grade is approximately the same for all courses.⁵⁷⁶ Professor Jeffrey Stake⁵⁷⁷ supports equalizing standard

571. *Id.* at 129.

572. *See* Anderson, *supra* note 144, at 135.

573. *See id.*

574. Hess, *Heads and Hearts*, *supra* note 159, at 79.

575. *See* Wangerin, *supra* note 203, at 110.

576. Stake, *supra* note 203, at 602.

577. Jeffrey Evans Stake is a Professor of Law at Indiana University and a Louis F. Niezer Faculty Fellow. Professor Stake is the President of SEAL, the Society for Evolutionary Analysis in Law, and a co-founder of the Midwest Law and Economics Association. Professor Stake's interdisciplinary research focuses primarily on property law and family law, but has been extended to topics ranging from the First Amendment and divorce law to law school grading and rankings.

deviations across courses so that teachers spread their grades to the same degree in all classes. Without such standardization, a minute variation in spread from one professor to the next can result in very different GPAs for identical overall point performance in the same substantive courses, as well as identical grades for meaningfully different performance.⁵⁷⁸

Teachers who give wider spreads have a greater effect on student GPAs and their students are more likely to receive honors (or dishonors) as a result.⁵⁷⁹ It would be naïve to assume that students do not take such information into account. Students often choose courses because a teacher offers a wider spread where more As are to be had, or because a teacher offers little variation in grades and awards a greater percentage of average scores.⁵⁸⁰

Increased uniformity will not cure the grading system of its inaccuracies. However, uniformity will often increase accuracy⁵⁸¹—a goal to which every legal education system should aspire.

As long as we care only about groups of people—groups of students, for example—then it is perfectly appropriate to use the correlation kind of analysis. This is so because correlation analysis is extremely good at providing information about groups. But as soon as we are interested in individuals, correlation analysis fails.⁵⁸²

Effective grading takes into account achievements made throughout a course, recognizes class participation, provides feedback, and encourages collaborative work. The attitude of the law school classroom changes from one of sink or swim to a working together approach where “everyone can improve and achieve. . . . [N]o one needs to fail and the potential exists for everyone to excel.”⁵⁸³

578. Stake, *supra* note 203, at 588–89.

579. *Id.* at 593.

580. *Id.*

581. *Id.* at 617.

582. Wangerin, *supra* note 203, at 110.

583. Randall, *Increasing Retention*, *supra* note 17, at 262.

VI. WHAT OTHERS ARE DOING⁵⁸⁴A. *Introduction*

Although a system-wide reform of legal education requires open minds and innovative thinking, it does not require entirely new ideas, tools, or techniques. Effective teaching and learning techniques are already in practice among various professions and can be easily adapted to the law school setting. Fresh concepts and groundbreaking technological advances provide opportunities to improve legal education.

American architect Frank Lloyd Wright believed consistency was only of value if coupled with new technology:

Wright had a restless urge to keep inventing new styles lest he start repeating his own too often. . . . Wright's love of new technologies was matched by a desire to use old technologies in new ways. . . . [and he was] willing to modify his buildings even when they were under construction. . . . No building seemed permanent to Wright, because none could reflect for more than an instant . . . in his mind.⁵⁸⁵

Like Wright, legal education reformer Christopher Langdell had an ability to envision new ideas and persuade others to join him on a path toward change.

B. *Technology*

Technological advances have significantly changed education on a global scale.

Traditional law firm libraries have largely been replaced by virtual libraries supported by gigantic and ever evolving digital databases. Classroom teaching of law has been augmented by numerous electronic innovations, instruction in research methods has changed dramatically, and the ease of communication between

584. Part VI provides some examples of innovative teaching. It is not intended to be a complete list.

585. PBS, *Frank Lloyd Wright — Legacy*, <http://www.pbs.org/flw/legacy/index.html> (last visited Dec. 1, 2007) (quoting William Cronon, *Inconstant Unity: The Passion of Frank Lloyd Wright*, in FRANK LLOYD WRIGHT, ARCHITECT (1994)).

students and teachers has created a new type of 24/7 learning partnership outside the classroom.⁵⁸⁶

Considering the impact of technology on legal education in the last twenty-five years, "it staggers the imagination to contemplate where we will be in 2030, if this revolution in digital technology continues at the current pace."⁵⁸⁷

Laptop-friendly classrooms and wireless law school campuses are now an expectation. Following this trend, law schools could eventually be transformed into a dual physical-and-virtual environment where hundreds of students view lectures and multimedia presentations over the Internet at their own pace and in time increments that are conducive to a variety of lifestyles. Virtual classes will not replace on-campus learning, but can be used to supplement classes taught in a more traditional format. Advancements in technology can help decrease legal education costs while increasing access to legal education and options for students.⁵⁸⁸

Some video classrooms extend beyond video conferencing into actual digital communities where participants can cooperate, share, and learn across any distance.⁵⁸⁹ Teachers on a digital network engage students in activities that allow them to interact with classmates at different sites and partner with other participants to practice new skills.⁵⁹⁰ Students review each others' work and receive individual assistance through the use of a document camera or email.⁵⁹¹

For educators, doing digital communities requires letting go of a few notions. It means making technology our friend, it means considering new paradigms of educational thought, it means recognizing that learning is often cooperative, that learners and teachers are part of the community, and that top-down teaching is often not the most effective teaching method.⁵⁹²

Technology has found its way into most modern classrooms as innovation continues to change its form and function. An

586. Hines, Part 2, *supra* note 16, at 3.

587. *Id.*

588. Johnson, *supra* note 37, at 85.

589. Robert E. Morgan, *Technology as Art: The Emerging "Digital Communities,"* <http://www.creativeteachingsite.com/teach10.htm> (last visited Nov. 25, 2007).

590. *See id.*

591. *See id.*

592. Morgan, *supra* note 589.

elementary school science class in Houston, Texas provides handheld computers to every student, allowing them to access software that uses light and heat probes to understand the seasonal patterns and relationships between the sun and the earth.⁵⁹³ Virtual fieldtrips make it possible for students to get a physics lesson from a teacher at the COSI Toledo Museum.⁵⁹⁴ Also, OneWorld Classrooms allows elementary school students to travel electronically to the Brazil, China, or Africa, to explore a region's cultures and environment and work with their overseas peers.⁵⁹⁵

Higher education can respond to increased use of technology in the business world by incorporating the use of the Internet in teaching.⁵⁹⁶ Some legal education institutions rely on technology as a foundation for teaching. Concord Law School,⁵⁹⁷ West Coast Law School,⁵⁹⁸ and the University of Phoenix⁵⁹⁹ have on-line degree

593. Success Stories Database Tool: Northline Elementary School, http://solutions.palm.com/regac/success_stories/SuccessStoryDetails.jsp?storyId=201 (last visited Dec. 1, 2007).

594. COSI Toledo—Interactive Distance Learning, http://www.cositoledo.org/programs/p_idl.htm (last visited Dec. 1, 2007).

595. OneWorld Classrooms — Building Bridges of Learning between the Classrooms of the World, <http://www.oneworldclassrooms.org/> (last visited Dec. 1, 2007).

596. See Cheol H. Oh, *Higher Education in the Twenty-First Century: Information Communication Technology and the New University: A View on eLearning*, 585 ANNALS AM. ACAD. POL. & SOC. SCI. 134 (2003) (outlining how institutions of higher education can utilize the Internet in their teachings; specifically how distance learning can be combined with traditional classroom teaching); see also Helen Leskovac, *Distance Learning in Legal Education: Implications of Frame Relay Videoconferencing*, 8 ALB. L.J. SCI. & TECH. 305 (1998) (arguing that distance learning via videoconferencing has legitimated itself because the corporate world uses it extensively and effectively); Arthur Levine, *The Soul of a New University*, N.Y. TIMES, Mar. 13, 2000, at A21 (arguing that higher education in general must respond to the increasing use of technology in the business world by incorporating it into education, or risk losing legitimacy as a whole).

597. Concord Law School is owned and operated by Kaplan Educational Centers. Concord Law School, <http://www.concordlawschool.edu/> (last visited Dec. 1, 2007). Since opening in the fall of 1998, Concord has pioneered the delivery of high quality legal education on the Internet. *Id.* Concord Law School is the first institution to offer a Juris Doctorate degree earned wholly on-line via state-of-the-art technology. *Id.* More than 1,500 students are currently enrolled in the program. *Id.*

598. West Coast School of Law differs from other traditional law schools in that they require no classroom attendance. West Coast School of Law, <http://www.westcsll.com/> (last visited Dec. 1, 2007). All courses of study are of a self-study nature by correspondence. *Id.* However, students use the same course books that are used at traditional residence law schools throughout the country. *Id.*

599. The University of Phoenix provides its students with two different options

programs that allow students to earn a degree over the Internet.⁶⁰⁰ The Center for Computer-Assisted Legal Instruction (CALI) is a non-profit consortium of law schools that provides legal education resources over the Internet. CALI started a legal education technology project that helps instructors record their lectures digitally and post them on the Internet so that students can review their notes or catch up on missed classes electronically.⁶⁰¹ Podcasts allow students to download lectures as MP3 files, making iPods a popular education tool.⁶⁰² At the University of Iowa, medical students use iPods to watch video tutorials on medical procedures.⁶⁰³

Video games offer several characteristics of effective educational programs. "Given the pervasive influence of video games on American culture, many educators have taken an interest in what the effects these games have on players, and how some of the motivating aspects of video games might be harnessed to facilitate learning."⁶⁰⁴ Game players control their actions, pursue their own goals, challenge themselves to the optimal extent of their abilities, and receive feedback on their performance.⁶⁰⁵

[E]ducators could use video games as a model for improving learning environments, by providing clear goals, challenging students, allowing for collaboration,

of on-line learning: 1) Pursue an education entirely via the internet though the On-line Campus, or 2) Pursue an education in a combination approach—attending portions of their classes on-line and in a traditional classroom environment through the local campuses. About the University of Phoenix, http://www.phoenix.edu/about_us/about_university_of_phoenix/about_university_of_phoenix.aspx (last visited Nov. 26, 2007).

600. ABA accreditation standards are loosening to embrace such programs. See 2007–2008 ABA STANDARDS, *supra* note 132.

Distance Education . . . (d) A law school shall not grant a student more than four credit hours in any term, nor more than a total of 12 credit hours, toward the J.D. degree for courses qualifying under this Standard.

(e) No student shall enroll in courses qualifying for credit under this Standard until that student has completed instruction equivalent to 28 credit hours toward the J.D. degree. (f) No credit otherwise may be given toward the J.D. degree for any distance education course.

Id. at Standard 306(d)–(f).

601. Austin Groothuis, *What Did Your Professor Say?*, STUDENT LAW. MAG., Nov. 2006, at 17.

602. *Id.*; see also Ken Fuson, *iPods Now Double as Study Aids*, USA TODAY, Mar. 15, 2006, at 4D.

603. Fuson, *supra* note 602, at 4D.

604. Squire, *supra* note 520, at 2.

605. *Id.* at 2–3; see also Mihaly Csikszentmihalyi, & Reed Larson, *Intrinsic Rewards in School Crime*, 24 CRIME & DELINQ. 323, 333–34 (1978).

using criterion based assessments, giving students more control over the learning process, and incorporating novelty into the environment. . . . [E]ducational approaches such as problem-based learning environments, case based reasoning, learning through participation in communities of practice (i.e. apprenticeships), or inquiry-based learning all place learners in active roles, pursuing goals meaningful to them. Advances in assessment, such as peer-based assessment or performance-based assessment provide learners multiple sources of feedback based on their performance in authentic contexts.⁶⁰⁶

Three University of Wisconsin-Madison professors are among the top researchers in the area of learning-through-game-playing, and noted several advantages of games over traditional teaching tools.⁶⁰⁷ Video games allow players to step into new personas and explore alternatives so they can try to solve problems they have not mastered, receive immediate feedback on the consequences, and try again. The ability to explore immediately makes games more engaging than textbooks or lectures because it allows students to perform before reaching a level of competency. Since games keep things “pleasantly frustrating,” players are motivated to improve their performance.⁶⁰⁸ “Contemporary developments in gaming, particularly interactive stories, digital authoring tools, and collaborative worlds, suggest powerful new opportunities for educational media.”⁶⁰⁹

Gaming can be an especially effective educational tool for adult learners. The biggest user of games as training tools is the United States Army, which uses video games as an alternative to mock combats. They gauge hand-eye coordination and simulate combat in flight or on the ground.⁶¹⁰ Games have been developed

606. Squire, *supra* note 520, at 4 (noting the work of R.F. Bowman, who gave “educators a theoretical framework for understanding the underlying mechanisms of video games, and a starting place for designing more engaging learning environments”).

607. Jason Stitt & Les Chappell, *Games that Make Leaders: Top Researchers on the Rise of Play in Business and Education*, Jan. 20, 2005, <http://wistechnology.com/printarticle.php?id=1504> (last visited Nov. 25, 2007).

608. *Id.*

609. Squire, *supra* note 520, at 2.

610. *Id.* at 4.

to train firefighters and health care workers on how to react in relevant situations.⁶¹¹

Both video and board law games are increasing in popularity as they further the approach of learning by doing.⁶¹² *Blind Justice* is a board game which uses actual cases. Players acting as a lawyer or juror draw cards and, based on the directions, must convince the other players to find in their favor.⁶¹³ *Verdict II* is a board game “designed to teach eight basic grounds on which a witness statement might be inadmissible.”⁶¹⁴

Law video games, such as *Murder One* and *Drug Bust*, are intended to introduce the player to the criminal courts. These games may be helpful when used in an introductory course.⁶¹⁵ In *Murder One*, the player must present a case to a grand jury for an indictment. If the indictment is handed down, the player establishes a witness list and defends evidence against various pretrial motions made by the defense attorney.⁶¹⁶ There are also a series of *Objection* games that simulate a trial, where the player responds to various evidentiary objections by the opposing attorney.⁶¹⁷ In the game *In the First Degree*, the player assumes the role of a prosecutor who interviews witnesses and decides which evidence to present.⁶¹⁸

Simulations offer several advantages over traditional teaching tools.⁶¹⁹ Simulations can bridge the gap between theory and practice by using real-world events that may otherwise take years to unfold.⁶²⁰ Simulations permit controlled experimentation.⁶²¹

611. Stitt & Chappell, *supra* note 607.

612. “If you tell me, I will listen. If you show me, I will see. But if you let me experience, I will learn,” Lao-Tse, a fifth century B.C. philosopher. “Although Lao-Tse did not intend to address the reform of contemporary legal education, his insight confirms [that] . . . learning-by-doing is the best way to develop and hone legal skills.” David M. Arfin & David J. Simon, *Desktop Legal Training Is “Virtually” Here*, <http://www2.cali.org/conference/1996/arfin.html> (last visited Nov. 25, 2007).

613. Robin Widdison et al., *Computer Simulation in Legal Education*, 5 INT’L J.L. & INFO. TECH. 279, 295–96 (1997).

614. *Id.* at 296.

615. John McClusky, *Review of Two CD-ROM’s: Murder One and Drug Bust*, 3(5) J. CRIME JUST. & POPULAR CULTURE 127, 127–28 (1995).

616. *Id.*; Widdison et al., *supra* note 613, at 297.

617. Widdison et al., *supra* note 613, at 297–98.

618. *Id.* at 297.

619. *Id.* at 288–89.

620. *Id.*

621. *Id.* at 288.

Computer simulations allow for modeling of highly complex situations⁶²² and they can adjust to the ability and skill of each individual player. The benefit of exposure to complex concepts through learning by doing is important.⁶²³

Critics of simulated teaching tools point to some disadvantages. For instance, simulations incorporate hidden assumptions that may not entirely reflect reality and student players realize that the exercise is not authentic.⁶²⁴ Additional critiques include cost, the logical path computer programs must follow, and possible detractor from social interaction and social skill building.

C. Innovative Curriculum

An ABA report on curriculum changes between 1992 and 2002 notes a growth in courses emphasizing skills such as factual investigation, interviewing, counseling, negotiation, mediation, and litigation.⁶²⁵ Harvard Law School reviewed its curriculum and plans to prepare graduates for the modern legal world by integrating a more practical, problem-solving approach into its traditional legal education. Harvard offers classes in such areas as finance, marketing, management, and creative and innovative thinking.⁶²⁶ Stanford Law School announced a new model for legal education that it calls the “3D” JD.⁶²⁷ The three-dimensional degree program combines the study of other disciplines with team-oriented problem solving techniques and expanded clinical training to better enable students to represent clients and litigate cases before they graduate.⁶²⁸

In some United States’ law schools, students earn a degree through programs modeled after the profession’s early apprenticeship approach. California is one of seven states⁶²⁹ that

622. *Id.* at 290.

623. *Id.* at 290-92.

624. *Id.* at 289.

625. Hines, Part 2, *supra* note 16, at 2.

626. Pfeiffer, *supra* note 37, at D1.

627. Stanford Law School, A “3D” JD: Stanford Law School Announces New Model for Legal Education, Nov. 28, 2006, <http://www.law.stanford.edu/news/pr/47/A%20%E2%80%9C3D%E2%80%9D%20JD%3A%20Stanford%20Law%20School%20Announces%20New%20Model%20for%20Legal%20Education/> (last visited Dec. 3, 2007).

628. *Id.*

629. States that permit law office study are California, Maine, New York, Vermont, Virginia, Washington and Wyoming. G. Jeffrey MacDonald, *The Self-Made Lawyer*, CHRISTIAN SCIENCE MONITOR, June 3, 2003, at 13. See Josh Ard,

allow prospective lawyers to obtain a legal education by serving in apprenticeships without attending law school.⁶³⁰ Most states have eliminated such programs due to pressure from the ABA, which maintains that “[n]either private study, correspondence study or law office training, or age or experience should be substituted for law-school education.”⁶³¹ Delaware, while not one of the states that awards a legal degree solely from an apprentice-based program,⁶³² requires bar applicants to “perform an aggregated full-time service of at least five months in a law office, as a judicial law clerk, or working for various federal, state, or legal services agencies prior to their admission to the state bar.”⁶³³ During this mandatory apprenticeship, applicants “must complete a list of thirty tasks, including attending trials and hearings in various courts and drafting various legal documents.”⁶³⁴

Syracuse University College of Law offers a General Counsel Transition course and upon completion students earn a Corporate Counsel Certificate.⁶³⁵ “General Counsel teaches decision-making, problem-solving, management of issues, common sense, investigation, and case management. Students handle a multitude of problems in such areas as contracts, intellectual property, mergers, personnel relations, and litigation management.”⁶³⁶ Student participants are expected to play the role of an in-house lawyer by behaving and dressing like the newest addition to a corporate law department. The course is taught by a team

Crossing the Bar - The Column of the Legal Education Committee - Serving over the Net: Legal Education over the Internet, 79 MICH. B. J. 1050 (discussing how on-line education may reduce cost of law school and open doors to segments of population traditionally left out).

630. MacDonald, *supra* note 629, at 13; Fred Alvarez, *Apprentices Take Law Into Their Own Hands*, L.A. TIMES, Oct. 10, 2004, at 1.

631. MacDonald, *supra* note 629, at 13.

632. While several jurisdictions have required “apprenticeships” or other placement/externships activities as an admission requirement in the past, now only two states, Vermont and Delaware, continue these requirements which are generally completed while in law school. See MACCRATE REPORT, *supra* note 5, at 238 n.3, 287–88; VT. R. B. ADMIS. § 6(i)(1) (2006); DEL. SUP. CT. R. 52(8) (2002).

633. Andrea A. Curcio, *A Better Bar: Why and How the Existing Bar Exam Should Change*, 81 NEB. L. REV. 363, 402 (2002). See also DEL. SUP. CT. R. 52(8) (2002).

634. Curcio, *supra* note 633, at 402. See also DEL. SUP. CT. R., *supra* 632, at 52(8).

635. Christian C. Day, *Teaching Students How to Become In-House Counsel*, 51 J. LEGAL EDUC. 503, 503–04 (2001).

636. *Id.* at 504.

composed of full-time law school faculty, business practitioners, and guest speakers.⁶³⁷

The faculty at the University of Detroit-Mercy developed a transition course in Property.⁶³⁸ The course begins with drafting a residential lease for a landlord.

When a dispute arises, students must draft a memorandum interpreting the lease under Michigan law and subsequently revise any lease provisions to prevent future disputes. The course then moves to an examination of the theory of property ownership through private communities, including the social and political implications. Students are required to understand the process of developing a condominium complex, including drafting and reviewing the necessary documents in accordance with the Michigan Condominium Act and other Michigan legislation. The course culminates with an examination of theories of liability regarding a potential hazardous waste problem on the condominium property. In addition to the interdisciplinary content and the skills components, students are required to consider major ethical dilemmas that arise in the course of these developments.⁶³⁹

For more than twenty years students at William Mitchell College of Law in St. Paul, Minnesota, have had the opportunity to take part in a complex simulation-based course called Legal Practicum. This course engages students in simulated learning experiences and exercises.⁶⁴⁰ It has defined lesson cycles, clearly stated and measurable oral and written objectives, planning guides to assist the students, clearly defined assessment criteria, multiple learning resources, frequent opportunities for assessment, feedback, critique, and student-faculty conferences.⁶⁴¹

637. *Id.*

638. Pamela Lysaght et al., *Integrating Theory with Practice at University of Detroit Mercy*, 77 MICH. B.J. 684, 687 (1998).

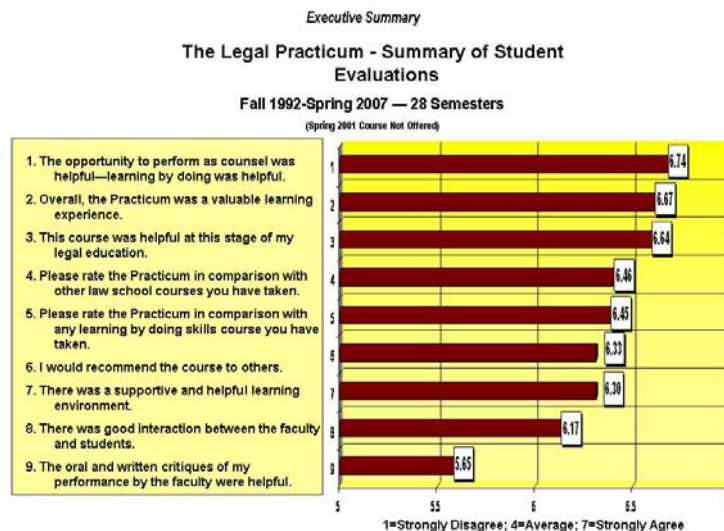
639. *Id.*

640. Deborah A. Schmedemann & Christina L. Kunz, *A Decade of Developments in Performance-Based Legal Education*, 21 WM. MITCHELL L. REV. 673, 674 (1996); John Sonsteng et al., *Learning by Doing: Preparing Law Students for the Practice of Law*, 21 WM. MITCHELL L. REV. 111, 116–17 (1995).

641. Sonsteng et al., *supra* note 640, at 116–17. For an example of the assessment techniques and learning goals of a Practicum exercise, see Appendix A: Three-Step Teaching System, available at <http://www.wmitchell.edu/faculty/Sonsteng/documents/Appendix-A.pdf>.

Students taking Legal Practicum practice law in two-person law firms under faculty supervision.⁶⁴² Simulated cases, problems, and clients are presented to each law firm during the semester.⁶⁴³ Student lawyers must handle a variety of integrated substantive and procedural law exercises in numerous areas.⁶⁴⁴ Each student law firm is involved in proceedings that include a jury trial, oral arguments, motion arguments, mediation, arbitration, negotiations, and settlement conferences.⁶⁴⁵ Students interview clients, investigate facts, conduct depositions, prepare pleadings and motions, draft documents, and prepare research memos and briefs.⁶⁴⁶

Legal Practicum has undergone a thorough bi-annual evaluation process since its inception in the mid-1980s. Student evaluations demonstrate the course's effectiveness.⁶⁴⁷



642. Sonsteng et al., *supra* note 640, at 116–17.

643. *Id.* at 117; J. P. Ogilvy & Karen Czapanskiy, *Part Three: Synopses of Articles, Essays, Books and Book Chapters*, 12 CLINIC. L. REV. 101, 370 (2005).

644. Sonsteng et al., *supra* note 640, at 116–17; Ogilvy & Czapanskiy, *supra* note 643, at 370.

645. Sonsteng et al., *supra* note 640, at 116–17. For an example of a Practicum exercise, see Appendix E: A Practice Exercise: Disciplinary Hearing, *available at* <http://www.wmitchell.edu/faculty/Sonsteng/documents/Appendix-E.pdf>.

646. Sonsteng et al., *supra* note 640, at 116–17; Ogilvy & Czapanskiy, *supra* note 643, at 370.

647. Sonsteng et al., *supra* note 640, at 123–26.

Students who took Legal Practicum identified legal practice simulations as a significant source of their legal practice and management skills training.⁶⁴⁸

Northeastern University School of Law has a unique approach to training its law students, which it calls Cooperative Legal Education.⁶⁴⁹ The approach is based on the premise “that legal training gained through supervised work experiences that are integrated with academic course work produces attorneys exceptionally well prepared to practice law.”⁶⁵⁰ Students at Northeastern University School of Law:

[C]omplete a traditional first year of academic study and then, for the remaining two years, alternate every three months between working full time as legal interns and attending classes on a full-time basis. The successful completion of four cooperative work quarters is a graduation requirement for all Northeastern law students.

. . . [A]pproximately 200 students are employed each quarter in a variety of legal practices, including private firms (all sizes), legal services, public defender associations, judicial clerkships, . . . government agencies, corporate legal departments, unions and special interest advocacy organizations. . . . [S]tudents are assigned substantive legal work under the direct supervision of a [judge or] member of the bar [M]ore than 700 employers in over 30 states actively participate in the program

. . . [O]n average, 40 percent of [the student participants] accept post-graduate employment with one of their former co-op employers.”⁶⁵¹

The College of William and Mary’s Marshall-Wythe School of Law expanded its skills-based curriculum by offering a course in law office management. The course includes classes in human resources, systems (e.g., time and billing, document retention), litigation management, and financial management.⁶⁵² The

648. Sonsteng & Camarotto, *supra* note 5, at 350 tbl. 5, 351–52.

649. NUSL Co-op: Overview, <http://www.slw.neu.edu/coop/overview.html> (last visited Dec. 1, 2007).

650. *Id.*

651. NUSL Co-op: International Law Opportunities, <http://www.slw.neu.edu/coop/> (last visited Dec. 1, 2007).

652. See William and Mary School of Law Web Page, <http://www.wm.edu/law/academicprograms/> (last visited Dec. 1, 2007).

Association of Legal Administrators is a proponent of such programs and has recommended a curriculum for developing legal business skills.⁶⁵³ The categories of skill development it identifies include general business skills, understanding the firm's operations and procedures (including firm economics), client relations, client-development skills, management of one's own work, management and supervision of others' work, and being an effective member of a team.⁶⁵⁴

The City University of New York (CUNY) Law School, which opened in 1983, defines its mission as training law students for public interest and public service. "The basic premise of the Law School's program is that theory cannot be separated from practice, abstract knowledge of doctrine from practical skill, and understanding the professional role from professional experience."⁶⁵⁵ CUNY's curriculum integrates practical experience, professional responsibility, and lawyering skills with doctrinal study at every level. CUNY

teach[es] lawyering and practice skills through all three years of law school: first-year students acquire clinical experience through simulation exercises conducted in a required year-long Lawyering Seminar; second-year students take an advanced one-semester Lawyering Seminar in a public interest law area of their choice; and third-year students earn 12-16 credits in either a field placement program or a live-client clinic.⁶⁵⁶

At New York University Law School the lawyering curriculum serves as a way to encourage students to consider what is learned in doctrinal courses and how to apply it to situations in practice.⁶⁵⁷

653. "A Business Skills Curriculum for Law Firm Associates' was designed and written by Stephen R. Chitwood [], Anita F. Gottlieb [], and Evelyn Gaye Mara [] and developed by the Center for Law Practice Strategy and Management at The George Washington University. The curriculum is based upon 58 skills identified by law firm partners, associates and executive directors in a study done by the Center in 1999." Krufka, *supra* note 194.

654. *Id.* Marci M. Krufka is a consultant with Altman Weil Inc., a legal management consultancy headquartered in Newtown Square, Pa. Much of the information in the article arose from a research project that she performed on business-of-law training programs.

655. CUNY School of Law, Academic Programs and Resources: Academic Philosophy, http://www.law.cuny.edu/app/apr/academic_philosophy.jsp (last visited Dec. 1, 2007).

656. *Id.*; SULLIVAN ET AL., *supra* note 4, at 35-37.

657. Lawyering Program, <http://www.law.nyu.edu/lawyeringprogram/home/mission.htm> (last visited Dec. 1, 2007).

Faculty interacts closely with students either as supervising attorneys or in more traditional classes.⁶⁵⁸ The goal of the program is to build the foundation for “a lifetime of professional self-reflection and improvement.”⁶⁵⁹ The school believes that experience allows students to learn the fundamentals of legal reasoning.⁶⁶⁰

The Institute for Law School Teaching at Gonzaga University School of Law was established in 1991.⁶⁶¹ The Institute focuses on effective teaching and learning in law school by holding teaching conferences and workshops, publishing articles, including a semi-annual periodical, and has on-line resources for teachers.⁶⁶²

Family law is a challenging legal area with frequent change and thus has posed a problem for law school curriculums. Lawyers teaching and practicing family law realize that the family law curriculum in law schools does not reflect the changes happening in practice. Efforts to modernize have been isolated and unsystematic.⁶⁶³ “Most of the books used to teach family law emphasize litigated appellate cases, virtually to the exclusion of everything else.”⁶⁶⁴ Practicing lawyers note that while new lawyers are able to struggle and learn quickly, the quality of their preparation and initial representation of clients in family court suffers due to a lack of training in key aspects of the practice.⁶⁶⁵ “The Family Law Education Reform Project (FLER) was created to systematically address the gap between the teaching and practice of family law. FLER is a unique undertaking in legal education—the first critical interdisciplinary outside look at the family law curriculum.”⁶⁶⁶ FLER’s long-term goal is to create a set of interdisciplinary teaching modules designed to help “professors integrate new topics, issues, and skills training into their family law

658. Lawyering Program, <http://www.law.nyu.edu/lawyeringprogram/curriculum/curriculum.htm> (last visited Dec. 1, 2007).

659. SULLIVAN ET AL., *supra* note 4, at 39.

660. *Id.* at 42.

661. Institute for Law School Teaching: Gonzaga University School of Law, <http://www.law.gonzaga.edu/About+Gonzaga+Law/Institute%20for%20Law%20School%20Teaching/default.asp> (last visited Dec. 1, 2007).

662. *Id.*

663. Andrew Schepard & Peter Salem, *Foreword to the Special Issue on the Family Law Education Reform Project*, 44 FAM. CT. REV. 513, 513 (2006).

664. Mary E. O’Connell & J. Herbie DiFonzo, *The Family Law Education Reform Project Final Report*, 44 FAM. CT. REV. 524, 527 (2006).

665. *Id.* at 524.

666. Schepard & Salem, *supra* note 663, at 513.

courses.”⁶⁶⁷ The modules will “specifically identify learning objectives and suggest training strategies.”⁶⁶⁸

D. International Innovation

The Canadian legal education system closely reflects the areas of competency outlined in the MacCrate Report.⁶⁶⁹ In most provinces, law students are required to graduate from law school and then participate in a six- to twelve-month period of apprenticeship referred to as “articling.”⁶⁷⁰ This period is followed by completion of a six-week to six-month teaching term where students are given practical skills training and assessment on a much wider variety of skills than bar examinations administered in the United States.⁶⁷¹ A major goal of the training is to present students with the kind of day-to-day problems lawyers face, such as how to manage a law practice and how to confront ethical issues.⁶⁷² Canadian law students are exposed to theory as well as supervised practical experience.⁶⁷³ Well before they graduate, students have an opportunity to learn how to apply both substantive and procedural law, and have likely dealt with issues such as project management, calendaring, risk avoidance, billing, and accounting.⁶⁷⁴ Critics of the system cite it has added expense for schools, added time for students, and no guarantee of consistency exists among the various apprenticeships.⁶⁷⁵ None of these criticisms is surprising or much different than what was said about America’s early apprenticeship system.

Post-graduate legal training programs in the United Kingdom follow a three-year undergraduate education in law and place great emphasis on practice. Students choose their practice area while they are still in school and follow one of two paths: solicitor or

667. O’Connell & DiFonzo, *supra* note 664, at 526.

668. *Id.*

669. Alexander J. Black, *Canadian Lawyer Mobility and Law Society Conflict of Interest*, 18 FORDHAM INT’L L. J. 118, 123–24 (1994); Curcio, *supra* note 633, at 399; Kristin Booth Glen, *Thinking out of the Bar Exam Box: A Proposal to “MacCrate” Entry to the Profession*, 23 PACE L. REV. 343, 443 (2003).

670. Curcio, *supra* note 633, at 399; Glen, *supra* note 669, at 443; *see also* Black, *supra* note 669, at 124.

671. Curcio, *supra* note 633 at 399; Glen, *supra* note 669, at 443.

672. Curcio, *supra* note 633, at 400.

673. *Id.*; Glen, *supra* note 669, at 443.

674. Curcio, *supra* note 633, at 400.

675. *Id.* at 400–01.

barrister.⁶⁷⁶ Solicitors are comparable to transactional lawyers in the United States while barristers are comparable to litigators. The education includes several phases of study: academic, vocational, and an apprenticeship referred to as “serving articles.”⁶⁷⁷ In Britain, “the academic stage is merely the initial phase of legal education, whereas in the United States, the academic stage is legal education in its entirety.”⁶⁷⁸

After completing vocational training, solicitors must serve articles with a solicitor who has been practicing for at least five years.⁶⁷⁹ This apprenticeship phase lasts two to four years.⁶⁸⁰ When finished serving, articles solicitors are not permitted to establish a solo practice or to enter into partnerships without permission from the Law Society.⁶⁸¹

Barristers follow a similar path. They must take an intensive one-year vocational course at the Inns of Court Law School, with a concentration on litigation.⁶⁸² When they have completed their vocational training and passed the bar exam they begin a one-year pupillage, which is the apprenticeship.⁶⁸³ As with solicitors, barristers’ pupil masters must have at least five years of experience.⁶⁸⁴

A 2003 paper on higher education reform was presented to English Parliament by the Secretary of State for Education and Skills. It included recommendations to address what the United States refers to as the “publish or perish” academic mentality. The

676. Clark D. Cunningham, *Legal Education After Law School: Lessons from Scotland and England*, 33 FORDHAM URB. L.J. 193, 197–206 (2005); Klein, *supra* note 89, at 610.

677. Klein, *supra* note 89, at 612.

678. *Id.* at 610.

679. *Id.* at 612.

680. *Id.*

681. *Id.*

682. *Id.* at 613.

683. *Id.* at 614–15.

684. *Id.* at 615.

Inns of Court are private, unincorporated associations that exclusively confer the rank or degree of a barrister. Once prospective barristers join an Inn, they must take an intensive one-year vocational course at the Inns of Court Law School which concentrates on litigation. Students focus on learning the rules of evidence, drafting pleadings, and perfecting their oral advocacy skills. The Bar does not allow universities to teach this phase of a barrister’s education because ideally, this phase should be taught by seasoned barristers who can provide students with an abundance of insight, knowledge, and experience.

Id. at 613–14.

paper recommended a cultural shift in which excellence in developing learning would be recognized and rewarded.⁶⁸⁵ The plan includes a “Rewarding and Developing Staff in Higher Education” initiative that would encourage institutions to take positive steps to “create and retain a flexible, motivated and continually improving cadre of teachers and other staff who support learning.”⁶⁸⁶ Universities implementing such change would raise the status, recognition, and rewards for the learning and teaching role of staff to a level equal to that of research. For example, participating schools would increase pay for teachers who teach well. The paper states:

[I]t is right that those who teach outstandingly well should be rewarded. Their excellence should also be celebrated and made visible, which will both help students make choices and help drive cultural change in the value attached to good teaching in higher education.

More needs to be done to highlight and reward truly outstanding individual teachers as role models for the rest of the profession.⁶⁸⁷

The paper proposed that additional funding be released to institutions that demonstrate a commitment to rewarding their best teaching staff⁶⁸⁸ and that excellent teaching departments be designated as Centres of Excellence. The Centres of Excellence, identified through a peer review process, would be given additional funding for a period of years, “to reward academics and to fund extra staff to help promote and spread their good pedagogical practice . . . [t]heir status will help to raise the profile of excellent teaching, as well as helping them to attract students.”⁶⁸⁹

The paper offers the following key points and proposals:⁶⁹⁰

- Funding will be rebalanced so that new resources come into the sector not only through research and student numbers, but through strength in teaching.

685. DEP’T FOR EDUC. & SKILLS, THE FUTURE OF HIGHER EDUCATION 51 (Jan. 2003).

686. *Id.* at 51.

687. *Id.* at 53.

688. *Id.*

689. *Id.* at 54.

690. *Id.*

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- Student choice will increasingly work to drive up quality, supported by much better information. A comprehensive survey of student views, as well as published external examiners' reports and other information about teaching standards, will be pulled together in an easy-to-use Guide to Universities, overseen by the National Union of Students.
- To underpin reform, improvements in teaching quality will be supported in all institutions. Additional money for pay will be conditional on higher education institutions having human resource strategies that explicitly value teaching and reward and promote good teachers.
- New national professional standards for teaching in higher education will be established as the basis of accredited training for all staff, and all new teaching staff will receive accredited training by 2006.
- The external examining system will be strengthened by improved training and induction that includes a national program for external examiners by 2004–2005.
- Teaching excellence will be celebrated and rewarded. We are consulting on the establishment of a single national body—a teaching quality academy—which could be established by 2004 to develop and promote best practice in teaching.
- Centres of Excellence in teaching will be established to reward good teaching at departmental level and to promote best practice, with each Centre getting £500,000 a year for five years and the chance to bid for capital funding.
- The National Teaching Fellowships Scheme will be increased in size to offer substantial rewards to twice as many outstanding teachers as at present.

- University title will be made dependent on teaching degree awarding powers—from 2004–2005 it will no longer be necessary to have research degree awarding powers to become a university.

In Scotland, law students must fulfill requirements similar to those of their English counterparts. Scottish law students who pursue a law degree as their first degree after completing secondary school take a skills-focused three-year course in subjects required for competent practitioners.⁶⁹¹ After taking one year of basic substantive courses, “participants obtain a restricted practicing certificate that enables them to practice in the courts under certain conditions.”⁶⁹² During this period students learn practical skills by what is known as the “spiral method.”⁶⁹³ In the spiral method, information is presented to students in a “tell-show-do-review” model.⁶⁹⁴ A skill is explained and demonstrated to students by experienced teacher-tutors. Students are then given an opportunity to simulate the skill and review their performance with teacher-tutors.⁶⁹⁵ “The spiral metaphor is a useful way of envisaging the curriculum because it allows for any number of passes through the material at more sophisticated levels of understanding.”⁶⁹⁶

The spiral teaching method is used to integrate multiple areas of substantive law, along with practical skills in order to give students the most realistic practice scenarios possible.

The spiral curriculum is a significant departure from many current professional legal curricula, based on academic structures, towards that of problem-based learning (“PBL”). In this respect, it is quite different from an undergraduate education curriculum. In its early years, for example, the LLB traditionally teaches each subject in a series of what are effectively watertight containers, and there tends to be little cross-curricular integration between subjects or cross-curricular skills assessment such as those that distinguish a PBL curriculum.⁶⁹⁷

691. Paul Mahrag, *Professional Legal Education in Scotland*, 20 GA. ST. U. L. REV. 947, 949 (2004).

692. *Id.* at 954.

693. *Id.* at 960.

694. *Id.* at 957.

695. *Id.*

696. *Id.* at 960.

697. *Id.* at 961.

The Scottish spiral method allows students “the opportunity to practice skills and knowledge in safe settings and to move beyond the novice stage of legal practice.”⁶⁹⁸

E. Non-Legal Disciplines

Non-legal disciplines such as medicine and architecture have long mandated a period of practice prior to professional licensure. Professor Richard K. Neumann, Jr. from Hofstra Law School compares the practice aspect of legal education to that of other professional institutions this way:

One of the distinguishing features of a medical school is its teaching hospital or teaching hospitals. We’ve come to accept that as a normal part of a medical education. The heart of an architect’s education is working in a design studio. . . .

In fact, two things will strike you as a legal educator when you hear what happens in these fields. One is the tremendous amount of student work in skills training that these two settings require. You can’t graduate, you can’t get a degree, in those fields without doing that work. Conversely, in legal education, a graduating student may have taken eighty-five to ninety credit hours and it is possible, it commonly happens, that that student will have earned only three to five hours of that total amount in a skills course.⁶⁹⁹

Chief Justice Warren Burger thought legal education should operate analogous to medical school clinical programs which utilize hospitals as adjunct classrooms where students end up spending eighty percent of their time working alongside practicing doctors.⁷⁰⁰ Virtually all states require that graduates from medical school successfully complete a postgraduate program lasting three to seven years.⁷⁰¹ These mandatory programs not only place the student with real patients under the daily supervision of practicing

698. *Id.* at 962.

699. Richard K. Neumann, Jr., *Models from Other Disciplines: What Can We Learn From Them?*, 1 J. ASS’N LEGAL WRITING DIRS. 165, 165 (2002).

700. Dominick R. Vetri, *Educating the Lawyer: Clinical Experience as an Integral Part of Legal Education*, 50 OR. L. REV. 57, 60 n.8 (1970) (quoting Chief Justice Warren Burger, Address before the ABA Convention Prayer Breakfast (Aug. 10, 1969)).

701. Jayne W. Barnard & Mark Greenspan, *Incremental Bar Admission: Lessons from the Medical Profession*, 53 J. LEGAL EDUC. 340, 341 (2002).

physicians, but they include annual “in-service” exams geared toward a particular branch of medicine and progressively more demanding responsibilities with each passing year.⁷⁰² After the postgraduate program is completed students must take a comprehensive examination in their field(s) of specialty and become board certified to practice without supervision.⁷⁰³ Proponents of this approach to licensure and certification point to numerous advantages it has over the bar examination model:

- It permits identification at an early stage of . . . candidates who are unlikely to achieve licensure, thus limiting their financial and emotional exposure.
- It provides a means of assessment over time, rather than just a single snapshot of a candidate’s . . . learning.
- It provides a vehicle by which candidates may demonstrate in a meaningful way not only their paper-and-pencil knowledge but also their ability to manage that knowledge in a clinical setting.
- It provides a means of assessing both evolving technique and the development of judgment.
- It permits identification of that small subset of individuals whose cognitive skills may be excellent, but whose people skills are unsuited to the practice of medicine.
- Its results are accepted across all fifty states.⁷⁰⁴

Like students of medicine, students enrolled in architecture programs are required to enter the studio and design before being accredited. Architecture accreditation standards are striking in two ways.⁷⁰⁵ First, the primary focus is on what students are actually

702. *Id.*

703. *Id.*

704. *Id.*

705. Richard K. Neumann, Jr., *Donald Schon, The Reflective Practitioner, and the Comparative Failures of Legal Education*, 6 CLINICAL L. REV. 401, 424 (2000).

learning. The standards contain a list of core competencies that graduates should have, which correspond closely to the Statement of Skills and Values in the MacCrate Report.⁷⁰⁶ Second, the architecture standards instruct accreditation inspection teams to conduct site visits in order to assess student work. The inspection team visits the design studio, examines students' projects, and talks with students about their work. The schools must demonstrate both that they are teaching the material covered in the core competencies and that students can produce good work in the design studio.⁷⁰⁷ After obtaining a degree, architects cannot be licensed without participating in an extensive internship and passing a multifaceted Architectural Registration Exam.⁷⁰⁸

F. Interdisciplinary Teaching

Today's law professors come from many disciplines. Twenty-five years ago, it would have been uncommon for a law school to recruit academic faculty trained in non-legal disciplines.⁷⁰⁹ With internationalization of the curriculum and expansion into areas such as business management, the environment, health care, intellectual property, immigration, national security, and international affairs, students benefit from professors with a variety of backgrounds.⁷¹⁰ The trend is attractive to students at universities offering combined degrees in law and related professions and to universities promoting interdisciplinary collaboration.⁷¹¹

G. Raising The Bar

A teacher's expectations and approach to teaching can have just as much impact on education reform as changes made to curriculum, process, and procedure. Law teachers can learn from a Los Angeles, California, fifth-grade teacher, Rafe Esquith, who has been nationally recognized for expecting excellence of all students in his classroom, and for creating an environment in which all students are capable of achieving.⁷¹² Esquith is unique in

706. *Id.* at 424–25; MACCRATE REPORT, *supra* note 5, at 203–04, 331.

707. Neumann, *supra* note 705, at 425.

708. Curcio, *supra* note 633, at 403–04.

709. Dinerstein, *supra* note 526, at 511.

710. *Id.*

711. Munneke, *supra* note 41, at 126, 146, 152.

712. Esquith teaches at Hobart Elementary School in Los Angeles. He is the product of the Los Angeles public schools and a graduate of UCLA. His many

that he expects high achievement from some of the most underprivileged students in the country, and as a result, they have learned to believe in themselves. Instead of lowering the bar, he raises it, empowering his students with the confidence required to reach new heights in learning. Esquith's students consistently score in the top five to ten percent nationally in standardized tests, read far above their grade level, tackle algebra, stage Shakespeare, and go on to colleges such as Harvard, Princeton, and Stanford.⁷¹³

Minnesota's 2007 Teacher of the Year provides another example of how a change in attitude and approach to teaching can improve student performance. Michael Smart, a high school teacher of the Japanese language, was recognized by Education Minnesota for his "use of nearly every available means to keep students engaged and involved including interactive cable TV, videos, computers, the Internet, role playing and games to personalize learning."⁷¹⁴ In accepting the award, Smart said, "... classes went much better when I stopped focusing on becoming the best teacher I could be and started focusing on helping my students become the best students they could be."⁷¹⁵

The Task Force on Teaching and Career Development at Harvard University issued a report to the faculty of Arts and Sciences entitled *A Compact to Enhance Teaching and Learning at Harvard*. The January 2007 report prepared by nine distinguished members of the faculty, from nine disciplines within the Arts and Sciences departments of Harvard proposed five goals and made recommendations.

- Foster Stronger Collegial Engagement and Responsibility for Effective Teaching and Learning
- Support Pedagogical Creativity and Remove Impediments to Experimentation

honors and awards include the 1992 Disney National Outstanding Teacher of the Year Award, a Sigma Beta Delta Fellowship from Johns Hopkins University, Parents Magazine's As You Grow Award, Oprah Winfrey's Use Your Life Award, and an MBE from Queen Elizabeth. Louise Chu & Heather Goyette, *Rafe Esquith, Alumnus and Teacher*, UCLA MAG., Feb. 1, 2003, available at <http://spotlight.ucla.edu/alumni/rafe-esquith/>.

713. See generally RAFE ESQUITH, THERE ARE NO SHORTCUTS (2004).

714. Tim Harlow, *No kidding. Minnesota's Teacher of the Year is Michael Smart, and His Subject is Japanese*, STAR TRIB. (Minneapolis), May 6, 2007.

715. *Id.*

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- Regularly Account for and Assess All Important Aspects of Teaching, Advising, and Efforts at Pedagogical Improvement.
- Reward Good Teaching and Contributions to Pedagogical Improvement at All Career Levels
- Make the Enhanced FAS Commitment to Excellent Teaching and Enrichment of Student Learning Visible within and beyond Harvard⁷¹⁶

The report concluded with a call to action:

- As a community of learning and discovery with outstanding faculty and students, Harvard University strives for excellence in education as well as research across all fields and disciplines. Educational excellence demands sustained commitments from faculty, administrators, staff, and students. The following values and principles inform our individual efforts and institutional practices.⁷¹⁷
- Each member of the Harvard faculty contributes to teaching as part of the advancement of scholarship.
- Cutting-edge research and excellent teaching invigorate one another at Harvard.
- Harvard aims to foster and reward all aspects of good teaching and aspires to support sustained efforts at pedagogical improvement.
- Education is a shared responsibility, requiring collective purpose and cooperation as well as individual faculty effort.

716. ANDREW A. BIEWENER ET AL., A COMPACT TO ENHANCE TEACHING AND LEARNING AT HARVARD 5 (2007), *available at* http://www.fas.harvard.edu/home/news_and_events/releases/taskforce_01242007.pdf.

717. *Id.* at 61.

- A university that values education encourages experimentation and efforts to improve student learning by teachers at every career stage—and this is an area where Harvard can improve and move to the forefront.
- Enhancing the career value of teaching higher education requires changes in academic professions and across many universities and colleges—changes that Harvard’s faculty, graduate students, and administrators can all help to realize.⁷¹⁸

H. Tenure Reform

Tenure reform is occurring in both public and private institutions. The American Association of University Professors (AAUP) first brought tenure to American higher education in 1925,⁷¹⁹ and would like to maintain it.⁷²⁰ However, several states and institutions have taken steps to limit or eliminate the tenure system.⁷²¹ Critics of tenure argue that it increases overall costs, decreases flexibility, disenfranchises the paying consumer of education, increases dependence on unaccountable insiders, and makes it difficult to remove incompetent or unnecessary professors.⁷²² The University of Minnesota Law School made clear that its tenured faculty are no longer untouchable, and a private law school in Florida replaced tenure entirely with five-year continuing contracts.⁷²³ Many institutions, however, are interested in preserving tenure on some level and seek a way to achieve both autonomy and accountability.

718. *Id.* at 61–63.

719. Walter P. Metzger, *Academic Tenure in America: A Historical Essay*, in COMM’N ON ACADEMIC TENURE IN HIGHER EDUC., FACULTY TENURE 93, 151–52 (1973); Adams, *supra* note 276, at 73.

720. Cloud, *supra* note 281, at 931; Robbins, *supra* note 281, at 387–88.

721. Hawke, *supra* note 281, at 624.

722. Robert W. McGee & Walter E. Block, *Academic Tenure: An Economic Critique*, 14 HARV. J.L. & PUB. POL’Y 545, 546 (1991).

723. Robbins, *supra* note 281, at 387; Chris Klein, *Tenure is no Longer Untouchable at the University of Minnesota*, NAT’L L.J., Feb. 3, 1997, at A20.

The practice of post-tenure review is also being debated.⁷²⁴ Those in favor of post-tenure review say the benefits outweigh any possible expense incurred, substantially improve performance, reinvigorate faculty, and make more efficient use of resources.⁷²⁵ The universities of Colorado, Wisconsin, and Hawaii are among those that have practiced post-tenure review, and the State of Virginia mandates it for all state colleges and universities.⁷²⁶ Most evaluation systems are designed to foster faculty professional development rather than criticism or competition.⁷²⁷ Many universities adopting post-tenure review have either implemented “a ‘period’ approach or a ‘triggered’ model.”⁷²⁸ Systems may also incorporate reward plans for exemplary performance.⁷²⁹ In its 2002 report, the American Federation of Teachers remained undecided on the future outcome of post-tenure review—it may be benign, duplicative, or an improvement measure. The Federation concluded that local unions would know best what stance they should take on their own campuses.⁷³⁰

Critics of post-tenure review say the process is redundant and trivializes the initial grant of tenure which already tested the merits of faculty accomplishments.⁷³¹ Some faculty say that “[i]t encourages professors to ‘bulk up their record’ with ‘quickly researched activities’ rather than to research and write major works with considered deliberation.”⁷³² Others feel the tenure advising committees “abridge the person’s academic freedom” of choosing their own research direction.⁷³³ However, most professors view

724. Robbins, *supra* note 281, at 388 (stating “[t]he system of tenure, often regarded by the public as a tool for protecting the ‘idle and inert,’ has emerged as a focal point for criticism”).

725. *Id.* at 390.

726. *Id.* at 391–92.

727. *Id.*

728. The period system reviews tenured professors at regular intervals—three to seven years—as well as annual merit reviews. The trigger system comes into play only when a faculty member receives a number of substandard annual reviews. Both models require a faculty member to complete a development or improvement plan that is designed together with a department chair or personnel committee. Gabriela Montell, *The Fallout from Post-Tenure Review*, CHRON. HIGHER EDUC., Oct. 17, 2002, available at <http://chronicle.com/jobs/2002/10/2002101701c.htm>.

729. Robbins, *supra* note 281, at 395.

730. *Id.*

731. *Id.* at 390.

732. Montell, *supra* note 728.

733. *Id.*

post-tenure review “as an unavoidable new reality of academic life.”⁷³⁴ The AAUP proposes alternatives to post-tenure review, such as periodic salary reviews, peer review of grants and publications, student evaluations of teaching performance, and departmental review programs.⁷³⁵

The United Kingdom’s Education Reform Act of 1988 triggered a softening of tenure at United Kingdom universities. The Act enables universities to incorporate internal statutes that allow dismissal for redundancy⁷³⁶ or for good cause,⁷³⁷ and it allows dismissed staff to appeal.⁷³⁸ Assessments conducted in the years since the Act show that softening tenure has not hindered the improvement of academic performance or negatively impacted the quality of research.⁷³⁹

It is important for a new legal education system to allow each law school to tailor its tenure system to its own academic culture and set of objectives. What works best at one institution may not work best at another institution. Ultimately, new candidates for

734. *Id.*

735. Robbins, *supra* note 281, at 388, 397.

736.

Redundancy in the Act refers to cases where a university wishes to lose whole departments, or where it no longer requires work of a particular kind The Act softens tenure in the United Kingdom in relation to redundancy because previously, unless a whole university closed, redundancy would have been difficult to establish. Universities effectively had no option but to buy out incumbents, presumably at the expected difference between their academic remuneration and their earnings in their next best occupation. After passage of the Act, universities would only need to pay statutory redundancy pay based on a fraction of historical earnings, which is normally regarded as a rather low level of compensation. It is probably now much cheaper, at least in principle, for universities to create redundancies if they can meet the criteria specified in the Act.

Dnes & Seaton, *supra* note 278, 496–97.

737.

[D]ismissal for ‘good cause’ must be related to conduct, capabilities, or the qualifications required for the type of work for which the academic was employed. Dismissal for unacceptable conduct was always a part of the internal statutes of universities (often under the rubric ‘dismissal for gross moral turpitude’) and generally required excesses of behavior such as habitually teaching while intoxicated. . . . ‘Capabilities’ relate to the skill, health, aptitude, and physical or mental quality required to carry out the academic work. ‘Qualifications’ refer to the degree, diploma, or other relevant qualification required for a post.

Id. at 497.

738. *Id.* at 496.

739. *Id.* at 507.

professorship are free to limit their applications to the institutions that fit their individual preferences. Existing tenure contracts will undoubtedly be respected and new methods phased in gradually.⁷⁴⁰

A LEGAL EDUCATION RENAISSANCE⁷⁴¹

VII. THE PLAN

A. Introduction

It is time for a legal education renaissance. This proposed model provides a plan, goals, and a process to get legal education from its present state to where it should be.⁷⁴² The model addresses the criticisms of the current system, uses available tools, keeps what works well while discarding what does not, is flexible enough to incorporate new and creative ideas, recognizes the needs of a diverse adult learning population, is cost effective, and lives up to its promise to train lawyers for the practice of law.

The impetus and leadership for systemic legal education reform come from a variety of sources. Legal education constituents—the ABA, the AALS, deans, administrators, law school boards of directors, law faculty, students, educators, reformers, staff, alumni, and legal practitioners⁷⁴³—must determine how to improve the current system. The relationships among law school

740. Cloud, *supra* note 281, at 935 (stating “[i]n addition to property rights under the Fourteenth Amendment, tenured faculty enjoy contractual protection based on Article I, Section 10 of the Constitution . . . formal evaluations of tenure must consider the potential impact on institutional liability, organizational climate, and institutional effectiveness.”).

741. THE AM. HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1476 (4th ed. 2004) (defining renaissance as “rebirth . . . from old French *renaistre* to be born again”).

742. See 2006–2007 ABA STANDARDS, *supra* note 106, at Standards 201–03; *cf.*

Alice to the Cheshire Cat upon reaching a fork in the road:

Alice: “Would you tell me, please, which way I ought to go from here?”

The Cat: “That depends a good deal on where you want to get to.”

Alice: “I don’t much care where. . . .”

The Cat: “Then it doesn’t much matter which way you go.”

Alice: “. . . so long as I get *somewhere*.”

Lewis Carroll, ALICE’S ADVENTURES IN WONDERLAND AND THROUGH THE LOOKING-GLASS, 73 (Barnes & Noble Classics ed. 2004) (1865) (commenting on the need for change).

743. See 2006–2007 ABA STANDARDS, *supra* note 106, at Standards 205–08.

constituents are far more complex than they were when Christopher Columbus Langdell, largely on his own, mandated change at Harvard University Law School. Strong leadership, cooperation, recognition of the need for change, and a buy-in from all the relevant constituents is necessary to overcome embedded practices and more than a century of tradition.⁷⁴⁴

The ABA standards and AALS bylaws and regulations are broad and permit flexibility.⁷⁴⁵ The ABA recognizes that institution-wide cooperation is necessary to implement change within a law school, and reflects this in its requirement that the financial resources, organization, and administration of a law school be used to provide a “sound program of legal education to accomplish its mission.”⁷⁴⁶ The governing board of a law school has the authority to establish general policies consistent with the ABA standards.⁷⁴⁷ The dean’s duties are defined generally.⁷⁴⁸ Each institution may determine the allocation of authority between the dean and the faculty.⁷⁴⁹ Together, the dean and faculty shall formulate, administer, and retain control over the law school’s educational program.⁷⁵⁰ Alumni, students, and others may be involved as participants and advisors.⁷⁵¹ Each ABA-accredited law school shall have a mission statement and must conduct a self-study that describes its goals, evaluates them, and develops a plan for carrying them out.⁷⁵²

The ability and enthusiasm of law school faculty to initiate and implement significant change is limited by many factors, including tenure, a desire for individual autonomy, academic freedom, the inevitable variety of opinions and interests concerning the school’s mission and use of resources, and the complex relationship among faculty, deans, and the governing board. It is the combination of rules, history, culture, and relationships that make it difficult, if not

744. “I’m all for progress. It’s change I don’t like.” quote attributed to Samuel L. Clemens (Mark Twain). Mike Hugos, *How to Become a Change Agent*, CIO, Oct. 2005, http://www.cio.com/article/13091/How_to_Become_a_Change_Agent.

745. 2006–2007 ABA STANDARDS, *supra* note 106, at Standard 201.

746. The Association of American Law Schools (AALS), *Bylaws and Executive Committee Regulations Pertaining to the Requirements of Membership* (August 2005), <http://web.library.uiuc.edu/ahx/aals/default.asp>.

747. *See* 2006–2007 ABA STANDARDS, *supra* note 106, at Standard 205(a).

748. *See id.* at Standard 206.

749. *See id.* at Standards 205(b), 207.

750. *See id.* at Standards 205(b), 207, 208.

751. *See id.* at Standard 208.

752. *See id.* at Standards 202, 203.

impossible, for a single constituent to substantially alter how a law school functions.

The primary responsibility for leadership lies with the deans,⁷⁵³ just as it did in Langdell's time. The role of the law school dean has become more complex, but it is through the dean's strong leadership and the collaborative support of other actors within the system that change can occur.

The ABA standards permit a restructuring of the current system, more flexibility, more teaching, and more effective use of resources and faculty. Tenure track and long-term contract faculty are identical for purposes of accreditation and the calculation of student-faculty ratios.⁷⁵⁴

The standards governing course of study and academic calendar⁷⁵⁵ do not limit flexibility and creative scheduling. The standards encourage creative programs and curriculum, are flexible enough to accommodate change,⁷⁵⁶ and are continually being revised and updated.⁷⁵⁷

753. See *id.* at Standard 206.

754. See *id.* at Standards 401–05.

755. See *id.* at Standard 304.

756. See *id.* at Standards 301–03, 305, 306.

757. See generally 2006–2007 ABA STANDARDS, *supra* note 106. Every year the ABA alters their Standards to reflect change. For instance, between 2005 and 2006, the ABA changed Chapter 2 significantly adding standards and rewording others. The ABA Standards have changed as a result of technology and recommendations. In 2005, the ABA Standards were amended to more specifically address the form of job security required under Standard 405(c). Memorandum from John A. Serbert, Consultant on Legal Educ., & J. Martin Burke, Chair, Standards Review Comm. to Deans of ABA–Approved Law Schools and Leaders of Other Organizations Interested in ABA Standards (Dec. 10, 2004), available at <http://www.abanet.org/legaled/standards/standardsdocuments/chapter4proposedchanges.doc>. Standard 405(c) requires that clinical law faculty be afforded a form of job security reasonably similar to tenure. *Id.* For instance, the ABA changed Standards 302 and 305 in 2004 to explain in detail what law schools must provide as well as clarify what constitutes study outside the classroom. Memorandum from John A. Serbert, Consultant on Legal Educ. to Deans of ABA–Approved Law Schools and Leaders of Other Organizations Interested in ABA Standards (Aug. 23, 2004), available at <http://www.abanet.org/legaled/standards/standardsdocuments/memor302and305standards.pdf>. Also, previous ABA Standards do not embrace technology, where the 2006–2007 Standards embrace technology in the classroom and do not expressly prohibit distance education. See 2006–2007 ABA STANDARDS, *supra* note 106, at Standard 704. See also Kenneth D. Chestek, *MacCrate (In)Action: The Case for Enhancing the Upper-Level Writing Requirement in Law Schools*, 78 U. Colo. L. Rev. 115 (2007) (discussing amendments to the ABA Standards).

Most law schools are in a position to implement an improved education system:

- Existing courses and teaching methods can be modified to function within a new system.
- Advanced courses are in place.
- Many law faculties are using innovative teaching methods with sophisticated educational objectives.
- Significant experiments in new education methods are taking place.
- Many faculties understand and are implementing experiential learning methods.
- Legal research, writing, and lawyering skills classes successfully employ a faculty supervisory system with adjunct teachers.
- The tenured faculty-adjunct model has been used successfully.
- Real client clinic systems are established.
- Efficient systems are in place for supervised out-placements and independent study programs.
- Technology is readily available.
- Excellent library facilities are in place.
- Significant research has been conducted concerning education systems.
- The research productivity of the faculty is clearly established and provides a solid base.
- Physical facilities are adequate and space exists for multiple tutorial/small group teaching.

- Innovative education models are universally successful and available.
- The concept of adult learning theory is widely accepted.
- Learning theory is impacting both practical and theoretical teaching techniques.

*B. Something Old, Something Borrowed, Something New*⁷⁵⁸

This simple plan⁷⁵⁹ maintains what is working, borrows from other systems and disciplines, and creates an innovative legal education system. In a book analyzing an alternative paradigm to conventional marketing, Alex Wipperfurth describes what he calls “brand hijacking,” a concept that contrasts with traditional marketing techniques.⁷⁶⁰ Proponents of change in any institution or industry can identify with Wipperfurth’s advice to modern marketers:

Following the book’s advice will require some untraditional, even counter-intuitive, steps You must be willing to let the marketplace take over. You must be confident enough to stop clamoring for control and learn to be spontaneous. You must be bold enough to accept a certain degree of uncertainty⁷⁶¹

758. The Rhyme: Something Old, Something New, Something Borrowed, Something Blue and a Silver Sixpence in her Shoe, originated in Victorian times. “Something Old” signifies that the Couple’s friends will stay with them. In one version of the tradition, the “Something Old” was an old garter which was given to the bride by a happily married woman so that the new bride would also enjoy a happy marriage. “Something New” looks to the future for health, happiness, success and optimism. “Something Borrowed” is an opportunity for the bride’s family to give her something as a token of their love (it must be returned to ensure good luck). The borrowed item also reminds the bride that she can depend on her friends and family. “Something Blue” is thought lucky because blue represents fidelity and constancy. A sixpence was placed in the shoe to bring the couple wealth in their married life.

759. Without a plan, the road to excellence will provide only stream-of-consciousness results based on spontaneous individual trips. See JACK KEROUAC, *ON THE ROAD* (Viking Press 1957).

760. ALEX WIPPERFURTH, *BRAND HIJACK: MARKETING WITHOUT MARKETING* 6 (Penguin Group 2005).

761. *Id.* at 7.

The MacCrate Report and other studies identified the knowledge and skills competent lawyers need in practice. Research shows how and where law students learn and develop skills, what law schools are doing well, and where schools need to improve. Enough information exists to teach law students how to be competent lawyers. If law schools do not take a proactive position on legal education reform, then outside forces and the needs of the profession will eventually cause the system to change.⁷⁶² While it is interesting to consider making systemic change in one bold move, it is not a realistic approach. Even in earlier times, change occurred slowly.⁷⁶³

1. *A Seventeen-Year Plan*

The seventeen-year plan provides an illustrative timeline for achieving a legal education renaissance. It anticipates considerable discussion and debate and involves all the legal education constituents.

Year One—Informal Discussion. In the first year, the leaders initiate a series of discussions to respond to the “buzz,”⁷⁶⁴ concerning reform and innovation and covering the following areas: curriculum, student life, teaching, faculty, management, staff, facility, and financial considerations. This is a year of informal discussion among the constituents of a law school: faculty, staff, alumni, students, administration, the board of directors, the ABA, AALS, educators, business leaders, education reformers, and

762. See Sara Rimer, *Harvard Task Force Calls for New Focus on Teaching and Not Just Research*, N.Y. TIMES, May 10, 2007, at A20 (noting that “. . . the federal government and state accrediting agencies, as well as students and parents, press universities nationwide to provide more accountability for how well their faculties are teaching.”) The New York Times article went on to quote Harvard University’s Interim President Derek Bok as saying, “If we don’t do it ourselves, they’re going to make us do it their way.” *Id.* See also Charles R. Irish, *Reflections of an Observer: The International Conference on Legal Education Reform*, 24 WIS. INT’L L.J. 5, 14 (2006); Southerland, *supra* note 41, at 65.

763. See Munneke, *supra* note 41, at 123 (stating “[w]hile society and the practice of law have undergone radical changes, legal education has changed little in the past one hundred years.”). See also Moliterno, *supra* note 41, at 92; Romantz, *supra* note 41, at 125 (stating “[y]et despite these successes, two decades after the realists first attempted to deconstruct Langdellian formalism, nearly all American law schools had adopted, in some fashion, the case method.”); Southerland, *supra* note 41, at 65.

764. See BIEWENER ET AL., *supra* note 716, at 5.

the bench and bar. The process is time-consuming, yet necessary to developing a consensus.

Year Two—Formal Meetings. In the second year, leaders organize groups of constituents to begin formal discussions. Assistance is available to facilitate these discussions.⁷⁶⁵ The formal meetings focus on specific areas of reform, identify improvements that should be made, and identify the elements to be retained. The meetings focus on developing a consensus. At the end of this process, if the constituents decide that the institution should not initiate change, the process ends. If the constituents do not come to any consensus, the process may continue. If a consensus is reached that the school should move forward with reform, the leaders can appoint a design team with members from each constituency⁷⁶⁶ to develop a detailed educational model.

Years Three and Four—The Design Phase. In years three and four, the team considers what courses should be taught, how students should be taught, what practice experience opportunities should be provided, how educational experiences should be organized, how teaching and learning objectives should be defined and evaluated, how the reforms will be initiated, and the most effective use of resources.

The design team starts with no preconceptions so that it may develop an ideal plan without hindrance from existing practices, financial restraints, faculty resources, and other limitations.⁷⁶⁷ The

765. Resource Corps was established in 1996 by the Association of American Law Schools and then-AALS President, Judith Wegner, to assist schools in developing the capacity for collegial deliberation and decision-making. Resource Corps, http://www.aals.org/resources_resourcecorps.php (last visited Oct. 30, 2007). Twenty respected and experienced legal members received special training in effective group processes and use of collaborative problem-solving techniques to address issues commonly confronting law schools. *Id.*

766. A design team incorporates members of different backgrounds and expertise, creating a diverse group of ideas and thoughts leading to creative, efficient and unique decisions. A task force (design team) prepared the article, *A Compact to Enhance Teaching and Learning at Harvard*. BIEWENER ET AL., *supra* note 716, at 5. The design team model was used by the Consortium for Innovative Legal Education (California Western School of Law, South Texas College of Law, New England School of Law, and William Mitchell College of Law) from 1999 to 2004 to examine curriculum and innovative teaching. *Id.* The design team concept is also used in the construction industry. See generally Carl J. Circo, *Contract Theory and Contract Practice: Allocating Design Responsibility in the Construction Industry*, 58 FLA. L. REV. 561, 564 (2006) (noting that in construction projects a team comprised of contractors, manufacturers and other consultants will work together to create specialty designs).

767. The design team must not have administrative or financial limitations

team prepares an ideal plan and refines the plan in accordance with available resources. The plan includes curriculum, students, teaching, faculty, management, staff, the facility, and financial considerations. The plan serves as the basis for discussion and debate among the constituents during year five.

Year Five—The Debate. For the second time, leaders organize formal groups of constituents to discuss the model plan. At the end of year five, these groups prepare written reports to the design team critiquing the design team's model and providing suggestions.

Year Six—Revisions and Adoption of Plan. In year six, the design team, in consultation with the administration, the board of directors and the constituents, prepares the final plan for the institution's adoption at the end of year six.

Years Seven through Seventeen—Implementation and Revisions. The curriculum and new faculty structure are phased in over ten years so that first-year classes begin in year seven under the new plan, and by year seventeen the entire educational plan is fully operational.⁷⁶⁸ The plan will be continually revised, evaluated, and improved.

The design team concept used in the development of a new legal education system remains an ongoing part of the education system. The design team develops monitoring and evaluation systems to assure the law school's learning objectives are met and faculty is performing consistently with the school's mission. The design team concept provides flexibility and assures that the curriculum and education delivery system can respond to the changes in legal practice and the needs of the students.

2. Curriculum

A new legal education model may be divided into three modules, assuming students will have the necessary pre-law school

because that would hamper the necessary creativity and positive decisions.

768. A revised curriculum and new teaching methods require substantially more faculty to provide continued faculty/student interaction, small group face-to-face teaching, and individualized assessment and feedback. The faculty can be tenure-track faculty or long-term contract teachers/tutors. A restructuring may begin at any time. If a law school restructures its faculty and implements the plan in a short period of time, an initial rise in cost due to the substantial addition of teaching faculty will result. See *infra* Part VII. This change can occur at any time. To avoid the cost increase, faculty restructuring as well as curriculum reform can be phased in.

training: Module I: The Fundamentals, Module II: Substance and Fundamental Legal Practice Skills, and Module III: Transition from Student to Lawyer.

3. *Pre-law School Education*

The ABA expects new law students to bring the following basic knowledge, skills, and values to the first year of law school:

Knowledge: a broad understanding of history, particularly American history and its various factors; a fundamental understanding of political thought and theory, and of the contemporary American political system; a basic understanding of ethical theory and theories of justice; a grounding in economics, particularly elementary micro-economic theory, and an understanding of the interaction between economic theory and public policy; some basic mathematical and financial skills, such as an understanding of basic pre-calculus mathematics and an ability to analyze financial data; a basic understanding of human behavior and social interaction; and an understanding of diverse cultures within and beyond the United States, international institutions and issues, and increasing interdependence of the nations and communities within our world.

Skills and Values: analytic and problem-solving skills; critical reading abilities, writing skills, oral communications and listening skills, general research skills, task organization and management skills, and public service and promotion of justice.⁷⁶⁹

Admission standards and pre-admission assessment should be designed to ensure that the ABA's assumption that incoming students have basic competencies is correct. The possession of this knowledge and skill is an important foundation to both law school and legal practice experience. Each student should be tested before or upon entering law school to determine the student's level of competence. Law schools should determine whether the information acquired through the LSAT⁷⁷⁰ needs to be augmented

769. Preparing for Law School, <http://www.abanet.org/legaled/prelaw/prep.html> (last visited Oct. 30, 2007).

770. "The LSAT is designed to measure skills that are considered essential for success in law school. These skills include: reading and comprehension of complex texts with accuracy and insight; management and organization of information and ability to draw reasonable inferences; ability to reason critically;

to reflect the knowledge, skills, and values presumed to be necessary by the ABA.⁷⁷¹ If the applicant does not demonstrate the required level of competence, the applicant should successfully complete remedial courses before being admitted.

4. *The Law School Experience*

The new law school model contains three modules of differing duration. Each module builds on the skills learned in the previous module. Students must reach an established level of competency in each module before being permitted to advance.

Each of the three modules and all of the courses within a particular module have clearly-stated objectives; provide assessment, feedback, and reinforcement; provide a positive learning environment; incorporate active classrooms; address multiple learning styles; and include lesson cycles. The overreaching goal is that all graduates attain an established level of competency before being admitted to the practice of law.

5. *Module I: The Fundamentals*

Module I consists of one semester covering fourteen weeks, with students taking fourteen credits of Basic Concepts, Legal Research, and Writing.⁷⁷² By the end of this basic training period the student should⁷⁷³

- understand basic concepts and terminology;
- understand the legal system;
- learn to write clearly and succinctly;

and analysis and evaluation of reasoning and arguments of others.” LSAC Support Center: FAQ – LSAT, <http://www.lsac.org/LSAC.asp?url=/lsac/faqs-and-support-lsat.asp#1> (last visited Dec. 1, 2007).

771. Phoebe A. Haddon & Deborah W. Post, *Misuse and Abuse of the LSAT: Making the Case for Alternative Evaluative Efforts and a Redefinition of Merit*, 80 ST. JOHN’S L. REV. 41, 97 (2006); Eulius Simien, *The Law School Admission Test as a Barrier to Almost Twenty Years of Affirmative Action*, 12 T. MARSHALL L. REV. 359, 384 (1987) (stating that *Defunis v. Odegard*, 416 U.S. 312 (1974), contains an admission from Rutgers University that “the LSAT has not been validated as a criterion reasonably related to legal job performance.”).

772. All curricular changes can be made within the current accreditation requirements.

773. 2007–2008 ABA STANDARDS, *supra* note 132, at Standards 301-03.

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- learn to read, understand, and apply judicial opinions, statutes, and regulations;
- master effective note taking in class;
- develop effective study techniques;
- learn how to understand and brief a case;
- understand legal research and the sources of law;
- know how to navigate and use a law library and technology in legal research;
- understand the demands of the legal profession;
- acquire basic legal reasoning skills;
- understand basic problem solving methods;
- understand basic ethical theory and theories of justice;
- understand basic problem solving methods;
- understand basic ethical theory and theories of justice;
- know how to solve legal problems and analyze client-based issues;
- comprehend the legislative process;
- know how to balance work and study with a healthy lifestyle;
- be motivated and energized to study law;
- have the opportunity to explore an area of interest in depth.

The focus of Module I is fundamental knowledge and skill building rather than in-depth study of substantive materials. A student must demonstrate an understanding of these basic concepts before advancing to Module II, which focuses on substantive law such as property, torts, and legal practical skills.

6. *Module II: Substance and Fundamental Legal Practice Skills*

Module II consists of three semesters covering forty-two weeks, with students taking forty-two credits of Substantive Courses and Fundamental Legal Practice Skills. It focuses on required substantive courses and fundamental legal practice skills. It also provides an opportunity for in-depth exploration of complex legal areas along with ethical, social, and political issues. Students build on their understanding of the fundamentals from Module I and learn to problem solve by applying theory to real and simulated legal problems. Substantive courses include,⁷⁷⁴ but are not limited

774. Survey Schools, *supra* note 3 (listing the surveyed law schools). The following courses are based upon universally required subjects offered by law schools. The law schools were selected from a broad range of geographical locations. An additional emphasis was placed on subjects and graduation requirements.

Course Title (Sixty School Survey - October 2006)	# of Schools
Contracts	60
Torts	59
Criminal Law	59
Civil Procedure	58
Property	53
Legal Writing & Research	51
Constitutional Law	49
Professional responsibility/Ethics	38
Upperclass writing requirement	26
Legal Profession	15
Evidence	8
Lawyering	6
Criminal Procedure	6
Moot court	5
Appellate Advocacy	5
Introduction to Advocacy	4
Business Associations	4
Legislation	3
Legal Practice Skills	3
Federal Taxation	3

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to: Contacts, Civil Procedure, Torts, Property, Constitutional Law, and Criminal Law.

Fundamental legal practice skills⁷⁷⁵ include, but are not limited to:

- the ability to diagnose and plan for legal problems;
- the ability in legal analysis and legal reasoning;
- drafting legal documents;
- knowledge of substantive law;
- library legal research;

Legal Methods	2
Foundations of The Regulatory State	2
Estates and Trusts	2
Elements of the Law	2
Transnational Law	1
Structures of the Constitution	1
Statutory Interpretation	1
Public Interest Seminar	1
Perspectives on the law	1
Perspectives on legal Thought	1
Legal Process & Institutions of Law Making	1
Legal Decision Making	1
Legal Analysis	1
Law in a Global Context	1
Jurisprudence	1
Introduction to Law & Legal Reasoning	1
Consumer Protection	1
Communication and Legal Reasoning	1
Commercial Law: Secured Transactions	1
American Public Law Process	1
Administrative Law	1

775. See *infra* Tables 2 & 6; see also Sonsteng & Camarotto, *supra* note 5; MACCRATE REPORT, *supra* note 5; CRAMTON REPORT, *supra* note 5; Binder & Bergman, *supra* note 346, at 206.

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- computer legal research;
- fact gathering;
- oral communication;
- written communication;
- counseling;
- instilling others' confidence in the attorney;
- negotiation;
- knowledge of procedural law;
- understanding and conducting litigation;
- organization and management of legal work;
- the ability to obtain and keep clients; and
- sensitivity to professional and ethical concerns.

Students who have mastered Module II will be prepared to learn in Module III.

7. Module III: Transition from Student to Lawyer

Module III consists of two semesters covering twenty-eight weeks, with students taking twenty-eight credits of Transition Courses.⁷⁷⁶ It adds substantial value to the Module I and Module II

⁷⁷⁶ The term "transition courses" is used in this paper instead of the terms "keystone" and "capstone" because both of those terms have defined institutional meaning that may indicate a determined end period to education. The term "transition courses," however, indicates a life-long transition from less to more experience, less to more skill, and less to more knowledge. The terms "capstone" and "keystone" can be found in nearly every college catalog and curriculum. Capstone is defined as (1) the top stone of a structure or wall, and (2) the crowning achievement or final stroke; the culmination or acme. THE AM. HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 277 (4th ed. 2004). Keystone is defined as "(1) The central wedge-shaped stone of an arch that locks its parts

experience by requiring students to be responsible professionals, address complex and real-world challenges, and produce substantial, concrete manifestations of their learning. Module III provides the finishing touch to the law school experience. It serves both as the culmination of law school learning and as a transition to a lifetime of self-directed learning. It continues the learning cycle process of reinforcement, feedback, analysis, and self-evaluation that students have mastered through Modules I and II.

Transition courses incorporated into the curriculum provide a coherent, coordinated, and advanced level of learning that closely resembles the actual practice of law.⁷⁷⁷ In transition courses:

Students will develop an expertise as a result of a systematic and progressively sophisticated study of a discrete area of practice, and what better opportunity for the development of the fundamental skill of “thinking like a lawyer”! Substance and method can be taught and learned in a thoroughly harmonious and complimentary fashion.⁷⁷⁸

Numerous examples exist of transition courses being offered throughout United States law school curricula; however, law schools have not made them a part of the required curriculum.⁷⁷⁹ Limitless possibilities exist in how transition courses can be designed. Transition courses can cover a wide range of topics and law-related problems and can take many forms, including seminars, workshops, clinics, and simulations. Each school has the flexibility to tailor transition courses to the needs of its student body and a particular school community.

While transition courses offer versatility, they have several common features. Transition courses build on previous learning, require students to be responsible for their learning, and encourage reflection on legal ethics, professionalism, and what they learned. The subject matter, organization, content and, methods of transition courses reflect real-world framing, and

together, also called *headstone*, and (2) the central supporting element of a whole.” *Id.*

777. Jeffrey E. Lewis, “Advanced” *Legal Education in the Twenty-First Century: A Prediction of Change*, 31 U. TOL. L. REV. 655, 658 (2000) (arguing that truly “advanced” legal study, which is normally confined to L.L.M. programs, should be encouraged during the third year of law school).

778. *Id.* at 658–59.

779. See Byron D. Cooper, *The Integration of Theory, Doctrine, and Practice in Legal Education*, 1 J. ASS’N LEGAL WRITING DIRS. 51, 54–55 (2002).

integration of doctrine, skills, theory and different areas of law. They can cover legal and related non-legal disciplines (e.g., medicine, psychology, engineering, etc.), domestic and international law, advanced legal research, law practice management skills, advanced writing, teamwork, leadership, and discovery. Transition courses are rigorous and require students to produce manifestations of their learning, including written briefs, contracts, papers, or a videotaped trial or negotiation. They provide repeated opportunities, reinforcement, assessment, and feedback.

Unlike less advanced courses of study, transition courses require a student to commit substantial time to a course and may be offered for a greater number of credits. Students learn to handle complex matters that are crucial for the transition to practice. Students learn to synthesize the fundamental knowledge gained in Module I with the substantive law mastered in Module II. Students address problems for which they have some, but not all doctrinal background, and work in teams to draw on their collective interests and areas of expertise.⁷⁸⁰

C. Learning

Legal education renaissance requires a new education protocol including various teaching methods, education tools, and resources directed toward student success and development. This new system recognizes and responds to the criticisms of both distance learning and the traditional classroom experience.⁷⁸¹

780. Many of the ideas for this section are based on the work done by the Curriculum Committee of William Mitchell College of Law. Its members include Professor Denise Roy, Professor Dan Kleinberger (ex officio as Vice Dean for Academic Programs), Mary Ann Archer (Interim Director for Information Resources), Professor Jim Hogg, Professor Peter Knapp, Melissa Manderschied (student), Kate O'Connor (student), Nancy Onkka (former ex officio as Assistant Dean for Career Development), Professor Russ Pannier, and Professor Nancy Ver Steegh.

781. See Robert Oliphant, John Sonsteng & Linda Thorstad, *Appendix A: Three-Step Teaching System*, Consortium for Innovative Legal Education 2004, <http://www.wmitchell.edu/faculty/Sonsteng/documents/Appendix-A.pdf>; Robert Oliphant, John Sonsteng & Linda Thorstad, *Appendix B: Three-Step Teaching System Sample Schedule for Intensive Residential Practicum (Civil Procedure)*, Consortium for Innovative Legal Education 2004, <http://www.wmitchell.edu/faculty/Sonsteng/documents/Appendix-B.pdf>; John O. Sonsteng & Heidi Harvey, *Appendix C: A System and Method for Teaching*, (2005), <http://www.wmitchell.edu/faculty/Sonsteng/documents/Appendix-C.pdf>.

Every aspect of the curriculum clearly articulates learning objectives with activities designed to measure success of instruction and student learning. Assessments are frequent and performance is continually monitored. Learning objectives, measurable activities, and frequent assessment and feedback provide opportunities to practice, identify areas for improvement, and reinforce learning.

Most students are not able to learn in a large-group format, but until recently, that format was the best method to provide uniform coverage.⁷⁸² The Socratic/casebook method, in spite of its proven weaknesses, was the only way to have dialogue between teachers and students. However, modified lecture formats can inspire and assist in developing a sense of community.⁷⁸³ Discussions and Socratic dialogue⁷⁸⁴ can be used in small group settings with experienced teachers. Classroom sessions can be relevant, vital, and engage all students.

The new law school model will not change existing resident or credit requirements, but powerful technology tools will provide information to the learner more effectively than casebooks and Socratic dialogue. Technology will not replace the classroom, but will enhance the learning experience.

Distance learning has occurred since the first students were sent home to study. The new learning and teaching protocol recognizes that well designed and implemented distance learning experiences are effective for most students. New distance learning tools create valuable learning opportunities outside face-to-face classroom sessions.

Effective teaching is directed toward clearly stated and achievable educational objectives. Once objectives are determined, the focus shifts to system design. The education system has two components, what is taught and how it is taught. Teaching and learning protocols requiring consistent and uniform understanding

782. See Thomas L. Shaffer, *Annals of Pedagogy: David Hoffman's Law School Lectures, 1822-33*, 32 J. LEGAL EDUC. 127, 132-34 (1982).

783. See Robin A. Boyle, *Bringing Learning-Style Instructional Strategies to Law Schools: You Be the Judge!*, PRACTICAL APPROACHES TO USING LEARNING STYLES IN HIGHER EDUCATION 155, 165 (Rita Dunn & Shirley A. Griggs eds., 2000) (concluding "that straight lecture, the case method, and the Socratic method are not effective instructional strategies for significant percentages" of her legal writing students due to the diversity of learning-style preferences among them); Jennifer Jolly-Ryan, *Disabilities to Exceptional Abilities: Law Students with Disabilities, Non-traditional Learners, and the Law Teacher as a Learner*, 6 NEV. L.J. 116, 146 (2005).

784. See Jolly-Ryan, *supra* note 783, at 146.

of a subject have uniform coverage and consistent teaching methods. To ensure students are taught and assessed consistently, faculty should not have free rein in the design, teaching, and coverage of all courses. Faculty will be expected to teach to a template. Within the framework of a template, however, faculty will be encouraged to be creative, and to discuss controversial ideas.⁷⁸⁵

Little consistency exists when teachers design courses without institutional accountability in the form of a control system, and courses under the same title often are completely different in substance. A law school can only guarantee that its educational objectives will be met through a quality control system, regulating what courses are taught, how they are taught, and what teaching is conducted as part of an institutional team effort. As a result, students will receive a consistent learning experience reflecting the institution's education objectives.

The new teaching and learning protocols must be designed to make the best use of faculty resources. Just as a vast spectrum of student strengths, interests, and learning styles exist, a wide range and scope of faculty strengths and preferences exist. Faculty members should be utilized according to their ability and interest. Some are good at research and writing, others are excellent lecturers. There are masters of technology, those who work well with large groups, and others who work best with small groups, individual coaching, and counseling.

Adult learning theory and all available teaching tools and techniques must be applied in this new education model where students' individual learning styles are identified, teaching methods and techniques adjust to context, and teaching is tailored to the student.⁷⁸⁶

785. Eric L. Muller, *A New Law Teacher's Guide to Choosing a Casebook*, 45 J. LEGAL EDUC. 557, 564–65 (1995) (recommending that law teachers think beforehand about controversial issues raised by their casebook).

786. The Myers-Briggs Type Indicator (MBTI) is a validated, reliable inventory that assesses a person's personality type.

The [MBTI] is a self-report instrument that helps to identify an individual's strengths and personality preferences. It specifically focuses on how an individual prefers to behave. It consists of 100 questions and requires an individual to choose between descriptive terms or phrases. From these answers the individual is divided into sixteen personality traits according to four dimensions: extroverted or introverted, sensing or intuitive, thinking or feeling, perceiving or judging. Currently the Myers-

1. *Learning Objectives*

Each institution, course, and module must incorporate general

Briggs indicator is given to up to 2.5 million people each year and is used by eighty-nine of the companies in the Fortune 100.

Maureen E. Mulvihill, *Karraker v. Rent-A-Center: Testing the Limits of the ADA, Personality Tests, and Employer Preemployment Screening*, 37 LOY. U. CHI. L.J. 865, 877 n.96 (2006) (citations omitted); Vernellia R. Randall, *The Myers-Briggs Type Indicator, First Year Law Students and Performance*, 26 CUMB. L. REV. 63, 76 (1995). Meredith Belbin and his research team based at Henley Management College, England, studied the behavior of managers from all over the world. They gave the participants a set of psychometric tests and put them into teams of varying composition in the guise of a complex management exercise. Their different personality traits, intellectual styles and behaviors were assessed during the exercise. As time progressed, different clusters of behavior were identified as underlying the success of the teams. These were named "Team Roles," these are:

Action-oriented roles	Shaper, Implementer, and Completer Finisher
People-oriented roles	Coordinator, Teamworker, and Resource Investigator
Cerebral roles	Plant, Monitor Evaluator, and Specialist

BELBIN: Home to Belbin Team Roles, <http://www.belbin.com/history.htm> (last visited Oct. 30, 2007). The value of Belbin team-role theory lies in enabling an individual or team to benefit from self-knowledge and adjust according to the demands being made by the external situation. *Id.* Howard Gardner's Multiple Intelligence Theory was first published in 1983 and was quickly established as a classical model by which to understand and teach many aspects of human intelligence, learning style, personality and behavior in education and industry. A user would take an intelligence test about whether or not statements describe the user and then it calculates the personality of the test taker. The results are split up into the seven multiple intelligences below:

Intelligence type	Capability and perception
Linguistic	Words and language
Logical-Mathematical	Logic and numbers
Musical	Music, sound, rhythm
Bodily-Kinesthetic	Body movement control
Spatial-Visual	Images and spaces
Interpersonal	Other people's feelings
Intrapersonal	Self-awareness

Howard Gardner's theory of multiple intelligences has not been readily accepted within academic psychology. However, it has been embraced by a range of educational theorists and, significantly, applied by teachers and policymakers to the problems of schooling." M. K. Smith, *Howard Gardner and Multiple Intelligences*, THE ENCYCLOPEDIA OF INFORMAL EDUCATION (2002), available at <http://www.infed.org/thinkers/gardner.htm>.

and specific learning objectives that provide students an opportunity to demonstrate a predetermined competency level. Clear objectives and directions enable students to demonstrate their understanding at the conclusion of specific learning activities.⁷⁸⁷

Course designers, as members of the law school's design team, must determine learning objectives and the manner in which the school will evaluate academic competence. Learning objectives must be based on the mission of the institution. If the institution's mission is to train students to be able to practice law competently upon leaving law school, the learning objectives will be different than if the mission is to train students to think like law professors or take bluebook exams.

Learning objectives must be specific and described in measurable terms. Learning objectives may be achieved in a variety of ways. For example, students may be required to do the following:

- Write a memorandum that provides an analysis based on the facts and legal research. The memorandum demonstrates the student's level of understanding of the theory of a case, the elements necessary for a party to prevail, an understanding of the weaknesses and strengths of the party's case, and an understanding of appropriate remedies.
- Provide short answers to a series of questions or complete a multiple choice assessment.
- Meet individually with a faculty member or field questions through an individual Socratic dialogue in a defense of a thesis or paper.
- Demonstrate ability to spot issues in a case, communicate basic legal principles and theories, or articulate the legal framework of a case.

787. Jay Feinman & Marc Feldman, *Pedagogy & Politics*, 73 GEO. L.J. 875, 907 (1985); Sonsteng et al., *supra* note 640, at 116–17.

- Write sophisticated answers in a time-based examination, or answer complex multiple choice or short answer questions.

By recognizing the full potential and purpose of assessment and by enforcing guidelines for consistency in assessment methods and grading, an effective education system moves from one that views students through a narrow lens to one that displays an assessment of the whole student and a multitude of lawyering skills.⁷⁸⁸ The goal of assessment should be evaluating student learning in more than one way, more than one time per semester in order to provide a more accurate measurement of skill and ability for students, teachers and potential employers. Multiple assessment formats allow students to develop and understand where they need to improve. Better performance heightens a student's motivation to learn. More frequent assessment provides professors an opportunity to adjust their curriculum and teaching techniques according to particular student needs. Multiple testing formats provide employers with a qualified class rank that signifies particular areas of strength for each graduate.

2. *Reflective Learning*⁷⁸⁹

Reflective learning is an essential component of any successful teaching protocol. Any learning experience is composed of the actual events which take place, along with the learner's observations and reflections about what occurred. Writing reflections will help bring clarity to this process. In addition to participating in class and performing at assessments, each student will be required to submit personal reflective evaluations at least two times during a course. The reflective evaluations give students a platform for communicating what they learned and how it might be applied to their careers. Students use different formats and styles which best represent their thoughts about the course and their experience.

A Mid-Course Learning Evaluation provides an opportunity for students and teachers to:

788. Jacline R. Evered, "Arming the Graduate for Professional Battle: No Place for the Weak Skilled" *Teaching and Assessing a Course to Develop Multi-Functioning Lawyers*, 43 *BRANDEIS L.J.* 325, 342-43 (2005).

789. Hinett, *supra* note 543; RACE, *supra* note 549.

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- set personal learning goals and monitor the extent to which they are achieved;
- note factors that affect a student's learning goals; and
- evaluate personal attitudes, values, knowledge and skills in relation to the substance of the course.

A Final Reflective Evaluation is intended to:

- guide the student through a thoughtful analysis of overall learning;
- provide an appropriate critique of the learning experience;
- provide the teacher with insight into the effectiveness of the course; and
- assist the design team and faculty in further development of the course.

A Reflective Evaluation includes such topics as:

- whether the learning objectives were achieved;
- how successfully the student articulated measurable goals;
- how the course affected knowledge of the substance or practice skill sets;
- how the course affected personal objectives;
- how the student might have approached the study differently;
- how the course can be improved;
- the strengths of the course;

- the weaknesses of the course; and
- the effectiveness of the teaching and learning strategies.

3. *Three-Step Teaching System*⁷⁹⁰

In the new teaching and learning system every course incorporates three-step cycles of learning that include:

- an initial learning step that takes place before the in-class experience;
- a face-to-face session with faculty and other students; and
- learning that continues beyond the face-to-face sessions.

Each step involves faculty/student interaction as faculty is continually engaged in supervising students' study. Each course is divided into sections with learning objectives that permit the students to achieve learning success. Each section is conducted under the three-step learning system. The cycle occurs each time a new lesson or skill is introduced. Step one, Faculty Supervised Study (FSS-I), is pre-classroom work. The Intensive Residential Practicum (IRP) is the second step and involves face-to-face classroom interaction. The third step is the post-classroom work, Faculty Supervised Study II (FSS-II). The steps are intended to guide students and faculty through every course and learning experience at every stage of the law school education. The three-step system does not replace the classroom or teachers, rather it makes them better.

a. *Faculty Supervised Studies I*

When designing FSS-I for a course, the education design team must ask the following questions:

⁷⁹⁰. See Oliphant, Sonsteng & Thorstad, *supra* note 781 (*Appendix A & Appendix B*) (showing sample class schedules for the three-step system).

- What are the learning objectives?
- What information will the students have coming into the course?
- What preparations are required?
- What are the sources of the information to be taught?
- What type of interaction will occur between the faculty and the student during this training block?
- What is the length of each Faculty Supervised Study?
- How much time should the student be permitted to prepare?
- How can the students' knowledge be ascertained?

Students obtain their information from a variety of sources including books, casebooks, hornbooks, black letter law training materials, webcasts, and prepared teaching materials delivered on-line or by CDs and DVDs.⁷⁹¹ Students can receive the same information in FSS-I that was previously provided through class lectures in the traditional law school format. Before students had access to technology, the classroom was the only place where a large group of students could be provided the same information. While studies show this method was ineffective, it was the only way to assure that a teacher's lesson was communicated, even if it was not always understood.

In each course, FSS-I will occur as many times as necessary to cover the substantive knowledge and skill sets. Because in-class lectures are no longer the only teaching and learning option, the face-to-face or IRP can be used to serve a higher purpose and enhance learning. Students can be expected to come to the IRP with an understanding of the necessary knowledge and skills.

791. See Oliphant, Sonsteng & Thorstad, *supra* note 781 (showing example of how to use DVDs, CDs, or online training to provide information or assist learning materials previously provided in the class lectures and discussions as part of a three-part teaching method).

To assure that a student has achieved the learning objectives set out for each FSS-I, the student must demonstrate basic competence. Before moving on to an IRP, students must demonstrate a minimum standard of learning. Students may demonstrate the basic competencies and meet the minimum standards of learning through a variety of assessment and feedback formats including short papers, essays, multiple choice questions, and oral examinations. The assessment and feedback system provides methods for all types of learners to demonstrate competency. Some students will be immediately successful. For those who are not able to demonstrate a minimum standard of learning on their first attempt, ongoing assessment opportunities are available. The system recognizes the success of early achievers by allowing only a “pass” result for repeat testers. This system maintains a degree of fairness for students by rewarding and encouraging those who demonstrate competence during the first assessment opportunity.⁷⁹²

The system also assures that every student will attain a minimum level of competence before moving on to the next phase of learning. The student will not pass the course if, despite multiple opportunities for assessment, a minimum level of competence is not demonstrated. This model gives students an early measure of their ability without creating a false sense of failure for those who cannot achieve immediate success in every area of learning through a single mode of assessment. It also ensures that students will only move to advanced stages of learning after they have demonstrated a degree of knowledge and skill acceptable to the institution and the profession.

The content, the learning objectives, and the length of the FSS-I can vary. Interaction between the student and faculty can take place in person, over the telephone, by e-mail, the Internet, or

⁷⁹². For example, if the minimum level of competence at a particular stage of an FSS-I is seventy percent and the student achieves a level of sixty percent, the student will be able to retake the examination or a similar examination until the student reaches or exceeds the minimum level of competence of seventy percent. This student will eventually receive a “pass” of seventy percent for this FSS-I. If a student tested at more than the minimum competency requirement during the first assessment, the student is given an assessment reflecting the level of achievement.

through any other communication device. There can also be chats among groups of students in informal interaction.⁷⁹³

b. The Intensive Residential Practicums

The IRP is the core component of the new teaching system. It takes place after a basic level of learning has been demonstrated in an FSS-I and involves face-to-face interactions between students and faculty. Because the students have demonstrated a required level of competence, the face-to-face sessions operate on a high level. The IRP addresses skill sets and learning objectives in an intense, immersion-style format. Students are challenged to analyze a hypothetical legal problem entitled "Practicum Exercise" and use legal doctrine and legal theory to resolve it. Ethical issues and issues related to responsible representation of clients are incorporated and students are asked to draw on individual experiences to weave various perspectives into class discussions.

Ideally, the IRP should meet for at least three hours to provide sufficient time for intensive and thorough discussion and debate, and to eliminate wasted time currently experienced during the beginning and end of shorter class periods. Instead of requiring students to sit through a traditional law classroom format, the IRP combines several teaching methods, including short lectures, small group discussions, debate, focus groups, reporting to large groups, synthesis, and analysis.⁷⁹⁴ The professor may give short lectures on certain aspects of the material to add sophisticated insight and help focus student learning. Students break into small groups for collaborative learning⁷⁹⁵ and work through hypothetical Practicum Exercises. Within each group there is a student leader who leads the group through the problems, a recorder who takes notes of group answers, and a reporter who reports the answers to the

793. This interaction will require increased faculty involvement in teaching. See *supra* Part VII.

794. See Oliphant, Sonsteng & Thorstad, *supra* note 781 and accompanying text (*Appendix A & Appendix B*).

795. Collaborative learning involves: cooperation, teamwork, and civic responsibility (that is, listening to others in a meaningful way). Core to collaborative learning are several assumptions, including the ideas of shared authority and the notion that "knowledge is socially constructed, not received." Ultimately, collaborative learning rests on the fundamental principle that "through peer interaction, what individuals learn is more and qualitatively different than what they would learn on their own." Clifford S. Zimmerman, "Thinking Beyond My Own Interpretation:" *Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 ARIZ. ST. L.J. 957, 996 (1999).

larger class on behalf of the small group. Students rotate among the positions so that all students have an opportunity to develop a variety of leadership and communication skills. At each IRP break-out group session, a faculty member is present to keep the group on track and focused. The faculty member assists the group members if they become stuck on a problem. The faculty member also keeps track of time and directs the group to move through the assigned discussion problems.

The IRP incorporates several breakout sessions during a class session⁷⁹⁶ with each breakout session focusing on a different aspect of the assigned material. In addition, experts in particular fields may conduct tutorials. The tutorials may be presented live, by streaming video over the Internet, and through other technology. Expert tutorials are interactive, allowing students to submit questions using available technology. The IRP model allows students to engage in a self-directed exchange of ideas and to learn from one another under the supervision of experienced faculty.

IRPs can be used in any substantive area such as torts, contracts, and civil procedure, as well as for skills training in areas such as trials, depositions, arbitrations, negotiations, mediations, and oral arguments. IRPs may be of any length, depending on the learning objectives determined by the teacher. The IRPs may be as short as a few hours with small group discussions, debate, analysis, reporting, and feedback, or in blocks of time lasting a week or more where students focus on broader skill sets. The mini-classes (three hours) may address a narrow range of skill sets, while a more detailed and complex exercise takes longer.

c. Faculty Supervised Study II

The FSS-II is the study and assessment phase to which students move after completing the IRP. The FSS-II provides students a comprehensive assessment opportunity that is based on the learning objectives of the course. Just as in the FFS-I, students may have more than one attempt to successfully complete the assessment opportunity. The students must combine the knowledge and skills they learned in the IRP, with the theory they learned in the FSS-I.

⁷⁹⁶. See Oliphant, Sonsteng & Thorstad, *supra* note 781 and accompanying text (*Appendix B*).

In advance of the FSS-II, at the end of an IRP session, students may be assigned a practicum-style problem on which they must write a memo, prepare answers to questions, or discuss solutions with a teacher. These problems are based on the subject matter of the IRP and draw upon what was discussed in the breakout sessions.

D. The Faculty

A teaching and learning system that delivers an education that enables students to competently practice law requires a substantial increase in the time currently devoted to teaching. In order to increase the resources devoted to teaching without raising the already substantial cost of legal education, the composition and structure of the faculty must change. One way to change the faculty is to change the rules for tenure: require less scholarship, less governance, less public service, and substantially more teaching.

Changing the faculty organizational structure is a better solution. Instead of changing the rules, at least three ways exist to provide additional faculty resources within the rules:

- Add a large number of long-term contract faculty. The existing tenure-track remains as-is and additional teaching faculty conduct the IRPs and most of the FSS sessions. The drawback is that without a substantial endowment, tuition-supported law schools could not afford the additional expense.
- For 1000 students with forty tenure-track faculty, hire approximately one hundred additional adjunct faculty, each teaching about ten hours a week. This supervised adjunct teaching faculty conduct all FSS sessions and IRPs, and advise students. The 1000 hours of work at \$70 per hour costs the law school \$70,000, without the cost of benefits. Several drawbacks exist to this approach. The adjunct teachers do not count toward student/faculty ratios under current ABA standards. While this approach is economical and the adjunct faculty may be excellent teachers, they will not be devoting their full skill and attention to the students and teaching, they will not be accessible on campus,

and it will be difficult to provide them with assistance, support, direction, and supervision.

- Phase out half of the tenure-track faculty over time, replacing them with a long-term contract teaching faculty.⁷⁹⁷ The amount of time dedicated to teaching is tripled. This change can occur within the current ABA standards.⁷⁹⁸ Although the number of people writing and conducting scholarly research may be fewer and the number of publications reduced,⁷⁹⁹ the significant benefit to student learning outweighs the reduction in academic scholarship.

Under the third alternative, changes in faculty can be made gradually, for example, over ten years time. Ultimately, the percentage of tenured faculty can be reduced (through retirement, etc.) by one-half, and replaced by faculty with long-term contracts. Each tenured faculty is replaced by two contract faculty members. Under a system in which 40 tenure-track faculty teach a student body of 1000, there is a 25:1 student-faculty ratio. With 1000 students, 20 tenured faculty, and 40 long-term contract faculty, the student-faculty ratio is less than 17:1—better than the ABA’s recommended 20:1 student-faculty ratio.⁸⁰⁰

797. Long-term contract faculty are accomplished and esteemed practicing lawyers or judges who for a set period of time (e.g., five years) are hired by the law school and devote their entire time to teaching students, essentially taking a sabbatical from their jobs. Many law schools embrace contract faculty members by employing them in skill courses, clinics and writing courses. Other educational institutions, including the University of Wisconsin-Green Bay, use a practicing teacher as an instructor who uses their real world experience as an instructional tool in the classroom. These “teachers in residence” are hired for a period of two years.

798. See ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, STANDARD 403(C) (2007–2008), *supra* note 757 (stating a law school shall employ full-time faculty as well as include “experienced practicing lawyers and judges as teaching resources to enrich the educational program”); see *id.* at STANDARD 402(b) (a faculty member is considered full-time if that person’s primary professional employment is with the law school).

799. Little harm will be done by reducing the number of law review articles by fifty percent. If just twenty minutes were spent reading law articles, one would have to spend more than eight hours a day for over twenty-seven weeks to read the more than 4000 articles published in 2005. See *supra* note 19 and accompanying text.

800. See ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, STANDARD 402, *supra* note 757.

If forty tenured faculty carry an eight-credit hour teaching load they collectively achieve 320 credit hours of teaching.⁸⁰¹ Under the new structure, long-term contract faculty teach twenty hours a week, spend ten hours a week on class preparation and research, and ten hours on student contact. With a structure designed to combine both tenured and contract teaching resources, forty contract faculty each teach twenty hours per week, while twenty tenure track faculty each teach eight hours per week. Collectively, this system achieves 960 credit hours of teaching each semester. This proposal is not original. It is “something borrowed” from the United Kingdom educational system and is a teaching structure that currently exists at many United States universities.⁸⁰²

In a combined teaching system, the tenure-track faculty are divided into two departments, Research and Writing and Education and Teaching. The Research and Writing Department consists of traditional tenure-track faculty who engage in scholarly research publication, conduct advanced seminars, lecture as needed, and participate in the preparation of advanced teaching materials. The Education and Teaching Department consists of a small group of tenure-track faculty who are responsible for oversight and quality control, and serve as directors of the education modules. They also act as a design team developing curriculum, courses, and assessment and feedback systems. The contract teachers focus on teaching, Faculty Supervised Study, the IRPs, student contact, research and writing related to teaching, and on assisting the design team. The flexible nature of such a structure allows a school to cultivate diverse faculty talent, expertise and interest, and allows tenured faculty to contribute to one or both departments. Under this system tenured faculty have governance responsibility as it exists under ABA and AALS standards, and contract teachers have governance responsibility related to teaching.⁸⁰³ The administrative structure, shown in the diagram below, supports a learning

801. See *id.* at STANDARD 404 (describing proper teaching load as the “fair share of course offerings,” but it is common to have a twelve-credit teaching load, or six hours per semester). See Ariens, *supra* note 108, at 353. This is achieved by multiplying the number of faculty and the number of credit hours taught, resulting in 240 hours for a school with forty faculty.

802. See generally Roger D. Batchelor, Book Note, 27 J.L. & EDUC. 305, 307 (1998) (reviewing D.J. Farrington, *THE LAW OF HIGHER EDUCATION* (1998)).

803. Since Contract Teachers focus on teaching, they would have the decision making authority for teaching, but, under the ABA and AALS standards, the Tenured Teachers would have the traditional decision-making powers. See ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, STANDARDS 402–05, *supra* note 757.

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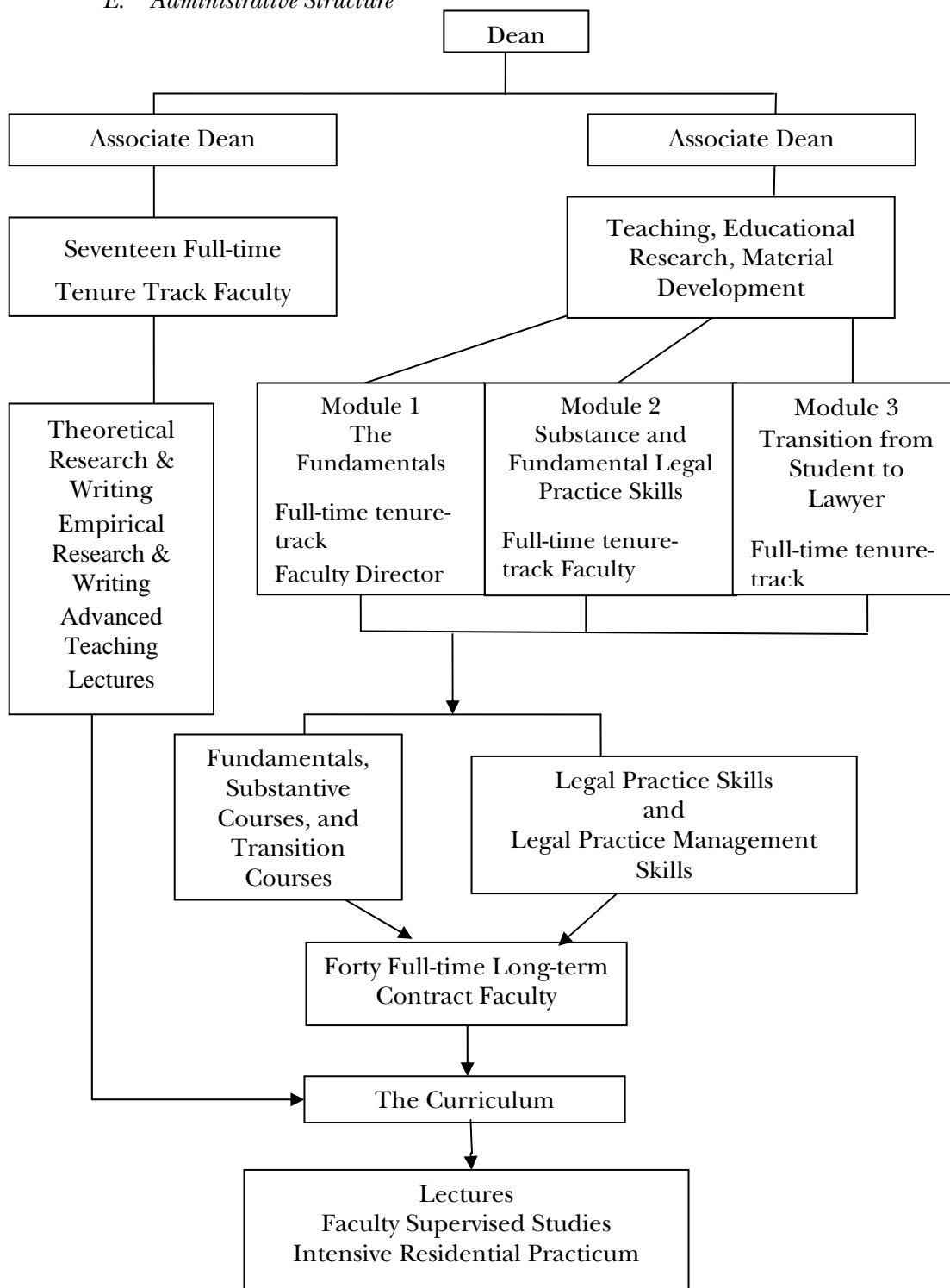
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environment that fits within realistic cost constraints while providing direction and established lines of authority.

Education institutions must determine the appropriate role of faculty, while taking into account the impact of cost on individual students, the established educational objectives, the necessary balance between the faculty's role in education and scholarship,⁸⁰⁴ and the extent to which a particular faculty structure requires students to find crucial training outside the law school.

804. Academic freedom means “not merely liberty from restraints on thought, expression, and association in the academy, but also the idea that universities and schools should have the freedom to make decisions about how and what to teach.” Bd. of Regents of Univ. of Wis. Sys. v. Southworth, 529 U.S. 217, 237 (2000) (Souter, J., concurring). *See also* Crowley v. McKinney, 400 F.3d 965, 969 (7th Cir. 2005) (holding that academic freedom “includes the interest of educational institutions, public as well as private, in controlling their own destiny and thus in freedom from intrusive judicial [and governmental] regulation”).

E. Administrative Structure

F. *The System's Costs*

A restructured faculty system costs the same or less than the existing system and triples the time devoted to teaching.⁸⁰⁵ A fifty percent reduction of tenure-track faculty releases sufficient funds to hire approximately two long-term contract teachers for every tenure-track faculty replaced. Long-term contract teachers are hired on a step-and-grade system organized to maintain salary and budget control. Salaries tied to a relevant external measure, such as assistant county attorney salaries, maintain a competitive salary structure.⁸⁰⁶

The faculty structure assigns long-term contract faculty to a step-and-grade system and compensates long-term contract faculty according to ability and achievement. The step-and-grade system includes Assistant Lecturer, Associate Lecturer, Lecturer, Senior Lecturer, Assistant Teacher, Associate Teacher, Teacher, Senior Teacher, and Master Teacher.

1. *Faculty Cost Comparison*⁸⁰⁷

The Current System:

Detail

Assume a traditional law school currently paying forty full-time faculty at \$139,026/year⁸⁰⁸ each

Total cost to pay full-time faculty salaries = \$5,562,480

805. Major universities recognize that students must receive the high quality of education they pay for. Columbia's provost, Alan Brinkley, said, "[i]f we're going to ask some undergraduates to pay as much as \$47,000 a year to come to these elite universities, then we have an obligation to make sure they get a great education." Rimer, *supra* note 762.

806. The salary of the long-term faculty can be determined by taking into account years of experience, education and performance appraisals. For an example of a county attorney's salary structure, see the 2007 Assistant Hennepin County Attorney salary structure at <http://www.mcaa-mn.org/docs/2007/Entire2007SalarySurvey.pdf> (last visited Nov. 4, 2007). See also Iowa County Attorneys Association, *2006-2007 Salary Survey*, 2006, <http://www.iowa-icaa.com/Salary%20Surveys/SalarySurvey%202006%202007.pdf> (last visited Nov. 4, 2007).

807. The example comparison is based only on salaries and does not include benefits.

808. Average of nation-wide full-time tenured law professor salaries. Salary.com, *Professor of Law - Higher Ed.*, <http://swz.salary.com> (search "Search By Keyword" for "Professor - Law - Higher Ed"; then follow the link) (last visited Nov. 4, 2007).

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*Each faculty member delivers sixteen credit hours per year (eight per semester)*⁸⁰⁹

Average class size = Twenty-four⁸¹⁰

Total number of credit hours delivered to students per year = 640

The cost of faculty salaries is \$5,562,480 to deliver 640 credits of education yearly

Faculty salary cost per credit = \$8,691.38

Summary

\$5,562,480 faculty salaries for forty tenure faculty

640 credit hours taught annually

\$8,691.38 cost for each credit taught

The New System:

Detail

Twenty full-time faculty at \$139,026/year each

Total cost to pay full-time faculty salaries = \$2,780,520

Each full-time faculty member delivers sixteen credit hours per year

Total number of credit hours delivered by full-time faculty = 320

Forty long-term contract faculty paid at an average of \$62,500 (median salary)

Total cost to pay long-term contract faculty salaries = \$2,500,000

Each long-term contract faculty member delivers forty credit hours per year (twenty per semester)

Total number of credit hours delivered by long-term contract faculty = 1600⁸¹¹

809. Ariens, *supra* note 108, at 353 (stating that a number of law schools have reduced teaching loads to nine credits a year); Kent D. Syverud, *The Dynamic Market for Law Faculty in the United States*, 51 J. LEGAL EDUC. 423, 423 (2001).

810. Sonsteng & Camarotto, *supra* note 5, at 448 n. 93.

811. This assumes the long-term faculty teach only a two semester year. If the long-term contract faculty actually teach three fourteen-week semesters and are provided a four-week vacation, the amount of credit hours taught would increase and the cost per credit decrease.

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Annual faculty salary cost of \$5,280,520 to deliver 1920 credits of education yearly

Faculty salary cost per credit = \$2,750.27

Summary

\$2,780,520 faculty salary for twenty tenure faculty

\$2,506,000 faculty salary for forty long-term contract faculty

1920 credit hours taught annually

\$2,750.27 cost for each credit taught

Conclusion: New proposal delivers 1280 more hours of education each year at less cost.

G. Conclusion

This proposal for a legal education renaissance is not a panacea. It is a plan designed to stimulate discussion. The new model cannot be implemented as if no system was in place. A new model can fit within existing rules and institutional frameworks. Thus, criticize it; tear it apart; find its flaws; discover its weaknesses; build on it; add ideas; exchange, discuss, and share!⁸¹² Embrace

812. The free exchange of ideas that build upon each other necessary for a renaissance can be achieved by applying to legal education what Apache applied to computing. However, where Apache is a self-organizing, collaborative community, we can realize the legal education renaissance through a combination of the Apache approach and the Open Source Model where “everyone contributes . . . intellectual capital for free . . .” THOMAS L. FRIEDMAN, *THE WORLD IS FLAT: A BRIEF HISTORY OF THE TWENTY-FIRST CENTURY* 82–90, 96, 103 (1st ed. 2005); other sources for Apache see *id.* at 87–89. The Apache Group was initially formed in 1995 to develop, support, and maintain the HTTPD web server, which since 1996 has been the most popular server on the Internet. Free On-line Dictionary of Computing, Apache, <http://foldoc.org/index.cgi?query=apache> (last visited Nov. 4, 2007). Apache was formed primarily to provide a foundation for open, collaborative software development projects by supplying hardware, communication, and business infrastructure and create an independent legal entity. Apache was not started by a single developer (standard among software development), but started as a diverse group of people that shared common interests and got to know each other by exchanging information, fixes and suggestions. Membership to the Apache group was determined when the group felt that the person had earned the merit to be part of the development community. The Apache Group granted direct access to the code repository. This allowed Apache to grow and develop software more efficiently. Apache called the basic principle “meritocracy,” which is commonly defined as leadership selected on the basis of intellectual criteria, rather than factors such as class, gender, ethnic group, or wealth. Apache did not have a problem with the process, which actually went very well without creating friction because Apache group newcomers were

education reform. Use the best of the traditional, borrow from others, combine methods, innovate, experiment, and create a flexible responsive system that meets the needs of students, the profession, and clients. Do not expect perfection. Add, subtract, and revise along the way. Make nothing so permanent as to smother creativity and innovation.

Legal education has experienced two phases.⁸¹³ The first phase began before the formation of law schools and lasted until the 1870s. The second phase began in the late nineteenth century with law schools and Langdell and continues today. In spite of criticisms and attempts at reform, the legal education system remains similar to that of Langdell's time.⁸¹⁴

The third phase is the Legal Education Renaissance. It will permit the legal education system to finally do what it promises to do—educate lawyers to practice law. The goal is not to design an elite law school, but to provide a superb education to all law students by engaging and preparing them to work with complex and difficult legal, moral, and business issues that they will face in their careers. Students, clients, lawyers, and society, expect, pay for, and deserve people who are trained to be competent in the practice of law when they leave law school. The promise of successful and relevant legal education can, and should be, met.

seen as volunteers that wanted to help, rather than programmers that wanted to steal a position or code, and that there was no conservative resource at stake (e.g., money, energy, time). The software that was developed within Apache belongs to Apache and the members. The members own the code and the future of the group. Roy T. Fielding & Gail E. Kaiser, *The Apache HTTP Server Project*, IEEE INTERNET COMPUTING, 1(4), July–Aug. 1997, at 88–90; The Apache Software Foundation, How it works, available at <http://www.apache.org/foundation/how-it-works.html> (last visited Nov. 4, 2007).

813. Alfred Z. Reed, in the 1921 Carnegie Foundation Report (Reed Report), divided the historical and political influences on the development of the American legal education system into four periods:

1. Prior to Jacksonian Democracy
2. Democracy plus *Laissez-faire*
3. Creative Period, 1865–1890
4. Modern Period of Imitation and Standardization.

REED REPORT, *supra* note 5.

814. Dow, *supra* note 48, at 588.