

2013

Beyond Langdell: Innovation in Legal Education

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Recommended Citation

Beverly P. Jennison, *Beyond Langdell: Innovation in Legal Education*, 62 Cath. U. L. Rev. 643 (2013).
Available at: <http://scholarship.law.edu/lawreview/vol62/iss3/2>

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Beyond Langdell: Innovation in Legal Education

Cover Page Footnote

Clinical Associate Professor, The Catholic University of America, Columbus School of Law, Washington, D.C.
I would like to thank Dean Veryl Miles, former Dean of The Catholic University of America, Columbus School of Law, for providing a generous summer research and writing stipend that supported this work.

BEYOND LANGDELL: INNOVATING IN LEGAL EDUCATION

Beverly Petersen Jennison⁺

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*All forms of professional education share the goal of readying students for accomplished and responsible practice in service to others.*¹

Since the publication of the *Carnegie Report*² and *Best Practices Report*,³ two major narratives on the current state of legal education in 2007, law schools have struggled to improve the state of legal education in order to make graduating students more “practice ready” as they emerge from the cloak of

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1. Molly M. Cooke et al., *American Medical Education 100 Years After the Flexner Report*, 355 NEW ENG. J. MED. 1339, 1340–41 (2006).

2. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PRACTICE OF LAW (2007) [hereinafter CARNEGIE REPORT].

3. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007) [hereinafter BEST PRACTICES].

academia.⁴ Despite countless faculty meetings and numerous curriculum committee sessions, law schools have failed to “fix” the legal education “problem.”⁵ The problem still exists, and legal educators throughout the United States continue to posit various ways to make law students practice ready.⁶

Some have looked to medical schools as a model for legal education. Medical schools, after all, graduate practice-ready doctors who can hit the proverbial ground running, or, at least, can do a basic patient assessment upon graduation.⁷ The medical school model consists of numerous opportunities to observe and work with real patients, thus allowing medical students the ability to internalize their knowledge and apply it in a clinical setting. Given a comparable situation—a law student “plopped” into the middle of a client conference with little guidance in advance—many law school graduates are unable to do the same.

4. See, e.g., Veryl Victoria Miles, *Practice-Ready: A Law School Perspective on Bar Certification*, BAR EXAMINER, Aug. 2009, at 17–18. Dean Veryl Victoria Miles, former Dean of The Catholic University of America, Columbus School of Law, wrote in August of 2009 that:

[t]he certification of lawyer competency is a joint collaboration between the nation’s law schools and bar examiners. From the perspective of the law schools, we must be able to certify that our graduates are knowledgeable about the law; are able to practice the law competently; and understand the ethical, moral, and social responsibilities required of all who assume the duties and privileges that come with admission to the bar. While all of the many different practice competencies required of lawyers may be difficult for bar examiners to test in a matter of two or three days, law schools are able to assure that their graduates have acquired the competencies necessary for law practice by offering a balanced and comprehensive academic program that integrates doctrinal and theoretical aspects of law with experiential learning and law practice opportunities.

Id. Dean Miles’s point is that law schools can certify mere compliance with the character and fitness requirements of bar admission, as well as the completion of academic requirement necessary for graduation. However, this begs the question: What exactly are we saying about our students? Are they ready for practice? Can they actually meet with a client and fulfill that client’s needs? These are major issues in legal education today, as examined *infra*, and may well be tied to the declining application and admissions numbers currently being experienced by most American law schools. If law schools cannot convince students of the relevance and value of their legal educations, then they may well decide not to attend law school. However, if they are going to attend law school, we need to be sure that we are creating value and relevance in the manner and the types of things in which we instruct within the legal academy.

5. See Margaret Martin Barry, *Practice Ready: Are We There Yet?*, 32 B.C. J. L. & SOC. JUST. 247, 247 (2012) (recognizing there is a debate over legal education’s role in preparing students for practice).

6. See Jennifer S. Bard, “*Practicing Medicine and Studying Law*”: *How Medical Schools Used to Have the Same Problems We Do and What We Can Learn from Their Efforts to Solve Them*, 10 SEATTLE J. SOC. JUST. 135, 204 (2011) (arguing that one way to increase law students’ practice skills is through the use of adjunct professors); see also Barry, *supra* note 5, at 251 (observing that some law schools offer clinical and experiential classes).

7. See Bard, *supra* note 6, at 176 (explaining that medical schools give students opportunities to develop practical skills before they see their first patient).

Others suggest that the business school model also provides a workable methodology for the instruction of law students. This model relies upon the use of actual business case studies, allowing students to adjust their thinking parameters based on the case studies with which they work.⁸ The beauty of the case method is that much of the work is done in groups, thus suggesting that the power of “group think” accelerates the learning process and results in graduating students who are more practice ready than law students.⁹

Policy school is another educational model that has not been extensively discussed in literature regarding professional higher education. Although policy schools have existed in American education for some time, they evolved from a more academically focused political science curriculum to an approach more akin to a practitioner of policy.¹⁰ As this approach to policy study evolved, its educational underpinnings changed as well. Today’s policy schools, like medical and business schools, want their students to emerge practice ready.¹¹ Again, this model requires that students work collaboratively in groups, which does not seem to be something that contemporary American legal education does well.

The rub seems to be finding an appropriate balance within the law school setting between respect for the traditions of legal education and movement toward more hands-on training for students. The goal most now agree on is that “[t]he mark of professional expertise is the ability to both act and think well in uncertain situations.”¹²

This Article posits the theory that, in addition to externships and clinical experience, which are now commonplace in most, if not all, legal educational settings, a practice component, which will develop “professional expertise,” sought throughout the *Carnegie Report* and elsewhere, should be included in students’ legal education from the outset.¹³ In other words, law students

8. *The HBS Case Method*, HARV. BUS. SCH., <http://www.hbs.edu/mba/academic-experience/pages/the-hbs-case-method.aspx> (last visited Feb. 27, 2013).

9. See Geoffrey B. Shields, *Legal Pedagogy: What Can We Learn from Business Schools?*, 39 U. TOL. L. REV. 369, 372 (2008) (noting how team projects prepare students for practice). Law students are taught to operate in exactly the opposite way within the law school setting. From day one and the plagiarism lecture, they are told not to work with others. See *id.* at 369 (noting law school’s solitary nature).

10. *Teaching*, HARV. KENNEDY SCH., <http://www.hks.harvard.edu/degrees/teaching-courses/teaching> (last visited Feb. 27, 2013) (stating that the Harvard Kennedy School of Government seeks to produce “doers,” who will apply their skills and knowledge to better the public good).

11. In fact, at the Harvard Kennedy School, arguably the leading policy school in America, students work with case studies throughout their professional educational experience. *Id.* This repeated immersion into practice-oriented situations cannot go unnoticed by the legal academy as it looks to other professional schools for models of successful educational practices.

12. CARNEGIE REPORT, *supra* note 2, at 9.

13. See BEST PRACTICES, *supra* note 3, at 130 (arguing that the “ultimate objective” for law students should be “the development of professional expertise”); see also CARNEGIE REPORT,

should be immersed into the world of practice by the end of their first year of law school. Part I outlines the historical foundations of the current legal education structure in the United States, spearheaded by Christopher Columbus Langdell in the nineteenth century. Part II discusses other settings in which practice skills are taught—medical school, business school, and policy school. In Part III, this Article highlights some of the newer innovations currently used in legal education to advance the efforts toward practice expertise. Finally, Part IV demonstrates that a careful combination and reframing of the techniques utilized in other settings—some currently utilized in law schools—can result in practice experiences that actually teach students to think like a lawyer and to become practice ready by the time that they emerge from the law school cocoon.

I. A BRIEF HISTORICAL OVERVIEW OF THE LANGDELL APPROACH

[A] case method classroom provides a beginning point for deciding. These classrooms have been described as places in which the tension of uncertainty is elevated. These are places in which no single, correct answers are being sought; where discussions are left, suspended, without closure; where students leave class with unanswered questions; where the frustration of not knowing for sure is allowed to ferment.

*This is contrasted with other types of classrooms in which knowing for sure makes learners and teachers feel safe . . .*¹⁴

Christopher Columbus Langdell introduced the methodology currently known as the “case method” to Harvard Law School in 1870, largely shaping modern legal education.¹⁵ When serving as dean of Harvard Law, Langdell used the case method to teach his course on contracts.¹⁶ For many years, the case method of teaching law, which generated much controversy when it first emerged,¹⁷ existed primarily at Harvard Law School.¹⁸ By the First World War, however, approximately forty percent of American law schools adopted

supra note 2, at 9 (finding that legal education should facilitate a student’s capacity to practice law).

14. SELMA WASSERMANN, INTRODUCTION TO CASE METHOD TEACHING: A GUIDE TO THE GALAXY 18 (1994) (explaining the spread of teaching via the case method beyond business school, medical school, and law school to education schools).

15. Bruce A. Kimball, *The Proliferation of Case Method Teaching in American Law Schools: Mr. Langdell’s Emblematic “Abomination,” 1890–1915*, 46 HIST. OF EDUC. Q. 192, 192 (2006).

16. *Id.* at 193.

17. *Id.* at 192 (noting that there was skepticism as to whether law schools, and professional schools in general, would continue to use case-method teaching).

18. *Id.* (“During the . . . years between 1890 and 1915, a national controversy ensued as to whether case method teaching—and the concomitant meritocratic reforms—would predominate in legal education, and, ultimately, professional education in the United States.”).

Langdell's case method.¹⁹ Additionally, several schools had partially adopted the Langdellian methodology for teaching law, and eventually, many of the remaining law schools converted to the method a decade or so later.²⁰

Under Langdell's original methodology, students were instructed to read cases before class and to come to class having prepared the facts, the decision, and the basis for the decision in each case. In class, the assigned cases were compared and discussed, and the law emerging from the decisions was synthesized. These nuggets of law could then be evaluated in light of treatises and texts, and, in this way, the students would be able to learn the law in a more individual and investigative manner.²¹

The case method of teaching was not confined to law schools during this time period. Academics in other disciplines, including business and medicine, were debating the same issues as to which method of instruction—lecture, textbook, or case method—was the most effective in teaching and preparing students for practice in their designated disciplines.²² This is the classic practice versus theory controversy, with those subscribing to the more traditional academic approach favoring more traditional methods of teaching,²³ and those favoring skills-based experiential learning preferring some version of the case method.²⁴ Thus, as the clash of the academic titans proceeded throughout academia, the use of the case method in professional education emerged as one of the great controversies in American higher education during the latter decades of the nineteenth and the early decades of the twentieth centuries.²⁵

II. CONTEMPORARY MODELS OF PROFESSIONAL SCHOOL INSTRUCTION

A. *The Medical School Model*

[M]odern medicine, like all scientific teaching, is characterized by activity. The student no longer merely watches, listens, memorizes: he does An education in medicine . . . involves both learning

19. *Id.* (stating that case method was “confined to Harvard” for two decades).

20. *Id.* There were a variety of reasons why some schools were slow to adopt case-method teaching. These reasons ranged from ideological differences with the method to simple economics. *Id.* at 193. Some of the smaller, proprietary law schools simply did not find this methodology to be as efficient in preparing their students, especially part-time students, for the practice of law. *Id.*

21. *See id.* at 194 (quoting a student's description of the Langdell method).

22. *See id.* at 197–200 (discussing the use of case method in medical and business schools).

23. *Id.* at 224–25 (noting that Yale vehemently rejected the case method and sought to train “society's leaders” through its more traditional approach).

24. *Id.* at 212–15 (advancing four rationales for the adoption of the case method).

25. *See id.* at 195–97.

*and learning how; the student cannot effectively know, unless he knows how.*²⁶

Just as the *Carnegie Report* on legal education turned the principles of educating lawyers upside-down,²⁷ a century-old assessment of professional education, also from the Carnegie Foundation, caused upheaval in medical education.²⁸ That report, written by Abraham Flexner, changed the basics of American medical education.²⁹ Flexner's vision of medical education, published in 1910, embraced formal analytic reasoning in the sciences, coupled with clinical education in teaching hospitals.³⁰ Under Flexner's view, fledgling doctors would practice clinical skills under the guidance of a clinical instructor in order to attain some skill in the craft, before actually leaving academia to practice medicine in the world.³¹

This type of education is frequently characterized by the oft-quoted motto of "see one, do one, teach one."³² The theory behind this type of learning is that one learns best when one observes, does, and then demonstrates the skill learned to another. As the authors of one review of this educational philosophy have noted:

[T]he American medical education system is thought to be one of the most successful in the world because of its emphasis on experiential learning, critical thinking, and the integration of theory, skills, and

26. ABRAHAM FLEXNER, *MEDICAL EDUCATION IN THE UNITED STATES AND CANADA: A REPORT TO THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING* 53 (1910).

27. See *CARNEGIE REPORT*, *supra* note 2, at 13–14 (emphasizing the great need for legal practice skills within the law school curriculum).

28. Cooke et al., *supra* note 1, at 1339 (discussing Flexner's report to the Carnegie Foundation on medical education reform).

29. *Id.* at 1339–40.

30. *Id.* ("To Flexner, research was not an end in its own right; it was important because it led to better patient care and teaching."). Flexner's favored medical school educational system was two years concentrating on learning the scientific background necessary to become a physician, followed by another two years spent in clinical evaluation. *Id.* at 1339. Obviously, using this four-year medical school plan offers additional time to those educating medical students, whereas a traditional full-time law school program lasts only three years.

31. *Id.* at 1339–40. In Flexner's own words, "[t]he student is to collect and evaluate facts. The facts are locked up in the patient. To the patient, therefore, he must go." FLEXNER, *supra* note 26, at 92.

32. See Christine N. Coughlin et al., *See One, Do One, Teach One: Dissecting the Use of Medical Education's Signature Pedagogy in the Law School Curriculum*, 26 GA. ST. U. L. REV. 361, 362 (2010) (discussing the effects "see one, do one, teach one" would have on legal education, such as providing students context). This practice of seeing, doing, and teaching, as used in medical training, is obviously not utilized in current legal education. The bulk of coursework in the modern American law school centers on reading appellate legal decisions and discerning similarities and differences among the holdings in each of the assigned cases. Even within the skills courses in law school, perhaps the "see one, do one" part of this motto is fulfilled, but generally speaking, the "teach one" is totally ignored in legal education.

values that are learned, in part, by seeing, doing, and teaching within the appropriate structured educational setting.³³

Against this backdrop, the system of modern American medical education was born. Medical education today in the United States generally consists of two years of standard classes in the sciences and professional skills courses. After that, medical students engage in two years of clinical rotations.³⁴ After medical school, students usually participate in a multi-year residency that provides additional training. During that time, residents typically gain experience and then work with newer residents and interns in order to help them learn through the same process.³⁵

Today's modern medical education system has moved from the strict Langdellian case-method approach to a newer methodology of education focused on problem-based learning.³⁶ Contemporary American medical schools are utilizing a related, yet reformed, version of what law schools attempt to do in casebooks—using examples to learn how to do something that the medical professional will have to do in practice. Problem-based learning in American medical education has several components, including small group discussions of particular medical problems, faculty facilitators that guide the

33. *Id.* at 365 (footnote omitted) (citing Steven Lubet, *Like a Surgeon*, 88 CORNELL L. REV. 1178, 1180–81 (2003)). Christopher Columbus Langdell was engaged in the reformation of legal education at Harvard at a time when medical education reform was occurring, and Harvard was one of the schools changing its medical education at the time. *See id.* at 366 (noting Langdell's desire to move modern education away from "reading and lecture").

34. Bard, *supra* note 6, at 173 (noting that medical school provides skills training through a variety of methods). As one observer has stated bluntly,

[i]f law schools really want to change the way they train young lawyers, they would look to medical schools. The latter require clinical 'rotations' in the last two years of a student's education and then demand at least one more year of training after graduation. *By the time your doctor is licensed, he has examined hundreds of patients.*

Cameron Stracher, *Meet the Clients*, WALL ST. J., Jan. 26, 2007, at W11 (emphasis added).

35. *See* Coughlin et al., *supra* note 32, at 364–66. "The core goal of medical education is to hone students' inductive and deductive analytical skills so they can internalize both the theory of the illness and the skills that will allow them to identify and treat illness." *Id.* at 365 (footnote omitted) (citing KENNETH M. LUDMERER, *LEARNING TO HEAL: THE DEVELOPMENT OF AMERICAN MEDICAL EDUCATION* 280 (The Johns Hopkins Univ. Press 1996) (1985)). Medical students normally serve as a medical resident after graduation, which consists of a clinical training program to continue medical education and to prepare for potential independent practice in a particular medical specialty. Laura Lin & Bryan A. Liang, *Reforming Residency: Modernizing Resident Education and Training to Promote Quality and Safety in Healthcare*, 38 J. HEALTH L. 203, 204 (2005).

36. *Contra* Seth Freeman, *Bridging the Gaps: How Cross-Disciplinary Training with MBAs Can Improve Transactional Education, Prepare Students for Private Practice, and Enhance University Life*, 13 FORDHAM J. CORP. & FIN. L. 89, 92 (2008) (comparing law students to "competitive scholars" rather than attorneys because the law school curriculum is not focused on training for practice).

discussions surrounding the resolution of the problems, and student-driven examination of the problems at hand.³⁷

A problem-based medical school curriculum is expected to do three things: (1) educate the student at least as well as in a traditional curriculum; (2) train the student to apply that learned knowledge to patient care; and (3) train the student to be a lifelong learner.³⁸ The system for problem-based learning is composed of five parts. First, it consists of a problem or case, either real or fictional, which is typically linked to the curricular topic of the week.³⁹ The second part of the process is something known as the “small-group tutorial session.”⁴⁰ These small-group sessions consist of students and faculty members who learn about the assigned problem.⁴¹ The third part of problem-based learning is “student-directed learning.”⁴² The fourth part is what is known as “dependence-upon-tutorial learning.”⁴³ Finally, the fifth part of this type of learning is reciprocal student-faculty evaluations.⁴⁴ Students are evaluated through testing within the medical school program and by the U.S. Medical Licensing Examination series before admission to clinical training.⁴⁵

37. Robert S. Donner et al., *Problem-based Learning in American Medical Education: An Overview*, 81 BULL. MED. LIBR. ASSOC. 294, 294–96 (1993). The article describes problem-based learning within the medical school setting as “one of the most significant changes in American medical education since the Flexner report instigated global university affiliation.” *Id.* at 294. Many schools utilize this type of case-study approach but still employ a limited number of well-chosen lectures. *Id.* at 295.

38. *Id.* at 295 (“Through the process itself, the student gains the ability not only to recite biomedical information but also to use it in solving problems. Indeed, the very means by which learning is accomplished is the solving of biomedical problems.”). Thus, students utilize the knowledge they learn in a way that not only reinforces that knowledge, but also allows application of the knowledge to a real-life situation. By contrast, a law student merely learns how to “read” a case and “think about” a case as a lawyer would, but for the most part, does not have the opportunity to actually *practice* the application of that knowledge in a real-life setting. *See supra* note 32 and accompanying text.

39. Donner et al., *supra* note 37, at 296 (citing an example of using lung cancer during material covering growth disorders).

40. *Id.* (stating that small groups are central in the problem-based learning methodology).

41. *Id.* The faculty members in these small groups are not meant to be lecturers or directors of the activity, but merely to be “overseers” or facilitators of the day’s activities. *Id.*

42. *Id.* In essence, the students generate the issues for discussion in each small group session, as well as the priority that each issue will be given in the discussions. *Id.* There is, however, a set of learning objectives to be discussed in each learning module, which the students can use as a checklist for each of their small-group sessions. *Id.*

43. *Id.* Thus, the small group lessons or meetings are the cornerstone of this type of learning. In addition to these small group tutorials, lectures are used by a number of schools to supplement the tutorial sessions. *Id.*

44. *Id.* at 296–97.

45. *Id.* at 297. In an article discussing the results of the U.S. Medical Licensing Examination Step 1 and 2 examinations for students enrolled in both problem-based and traditional lecture-based curricula over a period of seven years, the authors state that no significant differences in the exam results existed over the seven years. Cam Enarson & Liza Cariaga-Lo, *Influence of Curriculum Type on Student Performance in the United States Medical*

Faculty members, also known in this system as tutors, are also evaluated by the students.⁴⁶

To be clear, this problem-based type of learning has not permeated all medical schools in the United States at present, but some variation of it has affected the type of learning and teaching that is utilized currently in medical education.⁴⁷ Nevertheless, the model of two years of more traditional learning through classes and lectures, followed by two years of clinical education in medicine, which existed even when Flexner reported to the Carnegie Foundation in 1910, seems to provide a more balanced type of education than today's legal education model.⁴⁸

B. The Business School Model

*[T]raining in business offers a substitute for the old trial-and-error method. Its purpose is to enable the student to profit through the study of the experience of hundreds and thousands of business men, firms, and organizations, and thus to learn what principles of organization, management, finance, and accounting have proven most effective.*⁴⁹

Training in the American business school takes many forms, but the most instructive form for educators in the legal field is, once again, the case

Licensing Examination Step 1 and Step 2 Exams: Problem Based Learning vs. Lecture-Based Curriculum, 35 MED. EDUC. 1050, 1050 (2001). The authors maintain that the results illustrate that the standardized test performance of students enrolled in either type of curriculum—the newer problem-based curriculum or the more traditional lecture-based curriculum—is comparable. *Id.* at 1054.

46. Donner et al., *supra* note 37, at 297.

47. *Id.* at 295 (noting that, although only four schools have a pure problem-based curriculum, most schools integrate problem-based methodology in some manner).

48. BEST PRACTICES, *supra* note 3, at 20 (acknowledging one limitation in the legal education model that affects the ability of law schools to provide the more balanced form of professional training prevalent in medical schools); *see also* Bard, *supra* note 6, at 161, 178–79 n.128. Even proponents of the problem-based learning system in medical education realize that this methodology is fraught with issues, including economic issues related to the required numbers of “tutors” or faculty. Donner et al., *supra* note 37, at 297. This will resonate with the legal academy as well. Bard, *supra* note 6, at 181. However, “[t]he greatest barrier to . . . [problem-based learning] may be political . . . [because it] necessitates a radical change in faculty and administrative attitudes. . . . [Additionally it will necessitate that] curricular matters must assume a more important status.” Donner et al., *supra* note 37, at 297. I fear that instituting such a huge change in attitude in the legal academy is *the* major barrier within legal education, just as it is a major barrier in other types of professional education.

49. Ralph E. Heilman, *Can Business Be Taught?*, 5 J. BUS. U. CHI. 8, 8 (1932). Even in the 1930s, academics were thinking about how best to educate students in “commerce” or business. *Id.* Dean Heilman of Northwestern University School of Commerce wrote a short essay arguing that the best way to teach business is through the case method. *Id.*

method.⁵⁰ This is not the Langdellian case method, but, like medical school, is more of a problem-solving approach to learning. According to Harvard Business School (HBS), students entering the school are introduced to a novel type of teaching and learning, which is foreign to them—the case method.⁵¹ The business school case method presents students with real-life problems, used to identify issues that could occur within the operation of a business.⁵² As the decision makers, students review the cases to determine the causes of the problem and enumerate various methodologies to find a solution.⁵³ This is not a solitary venture; rather, students meet in small learning teams to discuss the case study.⁵⁴ In class, students, with the guidance of their professors, discuss the issues of the case, the possible alternative solutions to the problems raised, and determine possible actions in light of the business entity's objectives and desired outcomes.⁵⁵ Finally, students take written case-based examinations that require analyzing the case in response to one or multiple questions in a persuasive format for an expert reader.⁵⁶ The basic premise of this approach is that, rather than simply listening to a lecture about various options, students hone both communication and leadership skills.⁵⁷

50. Celeste M. Hammond, *Borrowing from the B Schools: The Legal Case Study as Course Materials for Transaction Oriented Elective Courses: A Response to the Challenges of the MacCrata Report and the Carnegie Foundation for Advancement of Teaching Report on Legal Education*, 11 *TRANSACTIONS: TENN. J. BUS. L.* 9, 13 (2009).

The advantage of using case studies is that it redefines the traditional educational dynamic in which the professor dispenses knowledge and students passively receive.

The case method creates a classroom in which students succeed not by simply absorbing facts and theories, but also by exercising the skills of leadership and team work in the face of real problems.

Id. Professor Hammond advocates for the adaptation of legal education to reflect more of business schools' case-study method rather than the traditional Socratic method. *Id.* at 9–10.

51. WILLIAM ELLET, *THE CASE STUDY HANDBOOK: HOW TO READ, DISCUSS, AND WRITE PERSUASIVELY ABOUT CASES I* (2007).

52. *The HBS Case Method*, *supra* note 8.

53. *Id.*

54. *Id.*

55. *Id.* Note that some commentators have observed that medical school does this type of education better—giving students direct supervision, yet also allowing them freedom to “learn while minimizing the chance that they might hurt patients.” Nitin Nohria, *What Business Schools Can Learn from the Medical Profession*, *HARV. BUS. REV.*, <http://hbr.org/2012/01/what-business-schools-can-learn-from-the-medical-profession/ar/pr> (last visited Feb. 27, 2013). In his article, Dean Nohria commented that the medical students' clinical experience “is an ideal example of how professional schools address the ‘knowing-doing gap.’” *Id.* Nohria further opines that although HBS students make their way through approximately 400 cases in two years, such case studies are limited in contrast to the experiences of medical school residents who face real-life health problems. *Id.*

56. ELLET, *supra* note 51, at 1.

57. See *Case Method*, *DARDEN SCH. BUS., UNIV. VA.*, <http://www.darden.virginia.edu/web/MBA/Academics/Case-Method/Home/> (last visited Mar. 1, 2013). The University of Virginia Darden School of Business describes the process of case-study learning as enabling students to “learn to persuade and inspire others, to reconcile differing viewpoints and to

In contrast to the legal academy, where student work is of a solitary nature, the elite American business schools stress team projects.⁵⁸ This team-based approach is based partially in research. For example, one reported study stated that cooperative learning, such as that taking place in a team-based approach, “lead[s] to higher level[s] of retention and ability to manipulate information as compared to the individual and individual competitive models generally used in law schools.”⁵⁹ This is in contrast to the prior educational experience of most students, which was typically lecture-based.⁶⁰

In fact, HBS has a Center for Teaching and Learning that provides extensive information about the case method employed by the school.⁶¹ HBS states that the case method is used to form leaders through experiencing real-life challenges—i.e., the cases used in the case method—that “confront[] . . . students with a rich web of consequences—and a demand for a prompt, responsible plan of action.”⁶² Describing the case method as intrinsic to the original vision of HBS, the Center’s documents reveal that case-method study enables students to not only assume responsibility for their own learning, but also enables them to practice (and presumably perfect, to

prioritize objectives and capitalize on opportunities.” *Id.* At Darden, students study over 500 real life business cases in a two-year curriculum. *Id.* Some have urged that business schools go even further—integrating not just the case-study methodology into business school education, but also integrating experiential learning. Patricia R. McCarthy & Henry M. McCarthy, *When Case Studies Are Not Enough: Integrating Experiential Learning into Business Curricula*, 81 J. EDUC. BUS. 201, 201 (2006). The authors note that case studies do not replace experiential learning’s direct and personal nature. *Id.* Experiential education is actually something that law schools understand, through their clinical programs. Barry, *supra* note 5, at 247. However, not all students participate in experiential education within the law school experience, nor are such experiences offered in every legal discipline.

58. Shields, *supra* note 9, at 372.

59. *Id.* (footnote omitted) (citing Mary Beth Stanne et al., *Does Competition Enhance or Inhibit Motor Performance: A Meta-Analysis*, 125 PSYCHOL. BULL. 133, 134 (1999)) (stressing the importance of group learning based on practical experience in the real world). Dean Shields also advocates that law schools “borrow” other techniques employed in business education. *Id.* at 373. In addition to group projects, Shields believes that students emerging from law school need basic competence in areas such as management, economics, statistics, and organizational psychology. *Id.*

60. ELLET, *supra* note 51, at 3. In contrast to team or group-based activities, Ellet states, “[a] lecture is an efficient way for an expert to deliver content to many individuals at once. In combination with textbooks, which are lectures in print, this learning model can deliver volumes of content in a short time . . . [and] is good at transferring information.” *Id.* However, many have strongly criticized the lecture model in favor of more innovative learning through peer instruction or interactive learning. See Craig Lambert, *Twilight of the Lecture*, HARV. MAG., Mar.–Apr. 2012, at 23–27.

61. This center is known as the C. Roland Christensen Center for Teaching and Learning. See *Teaching a Class*, HARV. KENNEDY SCH., <http://www.hks.harvard.edu/degrees/teaching-courses/teaching/slate/teaching-a-class> (last visited Mar. 1, 2013).

62. *The Case Method at HBS*, HARV. BUS. SCH., <http://www.hbs.edu/teaching/inside-hbs/> (last visited Mar. 1, 2013) (describing how the problem-solving teaching method helps students develop keen judgment and leadership skills).

some extent) the leadership fundamentals they will need to succeed in their future profession.⁶³ As a result of its success, more than eighty percent of the classes at HBS are built around the case method.⁶⁴

C. The Policy School Model

*[A policy school] is a professional school; we are training students who will for the most part not embark on academic careers. As a result, both our courses and our students are different from the courses one encounters in a typical graduate school department [Therefore] . . . most courses emphasize prescription, in the sense of finding ways to solve problems rather than simply describing them [S]tudents [are expected] to analyze a problem and then come up with a recommendation, if not for solving it then at least for a process by which to address it constructively*⁶⁵

When I was in college in the 1970s, most people who wished to pursue a career in government or public policy generally sought an M.A. in Politics or Political Science. Today, however, the best and brightest students desiring to enter the world of politics or government attend policy school. Arguably, the top among these elite institutions is the Harvard Kennedy School (HKS).⁶⁶

63. *Id.* (noting that the problem method is adaptable and can evolve with the “ever-changing business climates”).

64. *Id.* “From its inception a century ago, the School established two important pedagogical principles. First, it would use cases as teaching vehicles and not rely on lectures and readings. Second, it would engage the students in the learning process by getting them to teach themselves and each other.” *Id.* The focus is the same today, although the C. Roland Christensen Center for Teaching and Learning website also notes that lectures, simulations, field work, and other types of teaching methodologies are also utilized. *Case Method in Practice*, HARV. BUS. SCH., <http://www.hbs.edu/teaching/case-method-in-practice/> (last visited Mar. 1, 2013). As noted on the C. Roland Christensen Center for Teaching and Learning website, case-method teaching is “‘the art of managing uncertainty’—a process in which the instructor serves as ‘planner, host, moderator, devil’s advocate, fellow-student, and judge,’ all in search of solutions to real-world problems and challenges.” *Id.*

65. *Teaching*, HARV. KENNEDY SCH., <http://www.hks.harvard.edu/degrees/teaching-courses/teaching> (last visited Mar. 1, 2013) (describing the approach to teaching and learning at the Harvard Kennedy School).

66. Harvard Kennedy School is named after former President John F. Kennedy and has been in existence since 1937. However, its name and focus changed in the 1960s and 1970s, and today, “its core mission [is] making government work better and advancing the public interest.” *A Different Kind of School*, HARV. KENNEDY SCH., <http://special.hks.harvard.edu/75/history/history-features/a-different-kind-of-school> (last visited Mar. 1, 2013). That core mission has come to fruition. Further information about the Harvard Kennedy School is available at <http://www.hks.harvard.edu>.

HKS's policy degree, now known as an M.P.P.,⁶⁷ is pursued over a two-year time period. Like its business school counterpart, HKS thrives on case-method instruction.⁶⁸ In fact, HKS's instructional website admonishes its instructors that "[t]he best discussions are those that focus more on the students' learning than on your teaching; having a clear learning objective for the session will help to focus discussion."⁶⁹ Additionally, the website includes an extended discussion and references for teachers about how to utilize the case method.⁷⁰ A cursory review of the HKS website demonstrates that, like HBS, HKS spends a considerable amount of time and resources in creating cases that can be used as part of case-method teaching.⁷¹ The cases used at HKS are meant to "draw evocative stories from the outside world into the classroom . . . [in order to] allow[] for the active use of the range of skills that a seasoned professional might bring to the job."⁷² In fact, the website references over 2,000 cases for utilization by the faculty at HKS.⁷³ Thus, the day-to-day education at this particular policy school attempts to place students in real-life situations to better prepare them for their eventual employment as policy analysts and policymakers.⁷⁴

67. M.P.P. stands for Master's in Public Policy, a degree that was not even in existence a generation ago. For instance, the University of Michigan's Public Policy School originated out of masters programs in Municipal and Public Administration, and was officially established in 1995. See *Ford School Facts*, GERALD L. FORD SCH. PUB. POL'Y, <http://www.fordschool.umich.edu/facts/> (last visited Mar. 1, 2013).

68. See *Teaching a Class*, *supra* note 61.

69. *Id.* (describing the HKS teaching method, including important dynamics to incorporate into the classroom environment, making lectures interactive, focusing classroom discussions, and managing diversity).

70. *Id.*

71. See *supra* note 64 and accompanying text. Moreover, these efforts are not static, but actually reflect the types of practice in which students will be engaged. For example, the case program at HKS has produced not only paper-based cases for use in study, but also computer-based teaching cases that utilize text, graphics, and video. David Eddy Spicer & Howard Husock, *New Media for an Old Method: Producing and Using Hypermedia Case Studies at the Kennedy School of Government*, 19 J. POL'Y ANALYSIS & MGMT. 473, 473 (2000) (analyzing technology's role in improving education and how it is utilized at HKS).

72. Spicer & Husock, *supra* note 71, at 475 ("[C]ases provide the backdrop against which learners and teachers, through case discussions, strive to bring together a catalytic mix of appropriate formal knowledge drawn from various fields . . . with the kind of practical knowledge that stems from experience and familiarity with specific situations." (citation omitted)).

73. *About the Case Program*, HARV. KENNEDY SCH., http://www.case.hks.harvard.edu/content/About_the_Case_Program.html (last visited Mar. 1, 2013). These case studies are also available for purchase by others to use. See *How to Order*, HARV. KENNEDY SCH., http://www.case.hks.harvard.edu/content/how_to_order.html (last visited Mar. 1, 2013). Additionally, the HKS teaching website reveals much evidence of efforts at HKS to instruct professors how to create and use cases, in an effort to create real-life situations that can help students better learn how to manage real-life issues. See *supra* note 71 and accompanying text.

74. Spicer & Husock, *supra* note 71, at 475 ("The case narrative acts as a prism, breaking the singular focus on a particular problem into a complex spectrum on interrelated problems and issues that convey through the power of a compelling narrative the complexity of action in the

To further that effort, near the end of the first academic year, students are thrown into an analysis exercise, known as the “Spring Exercise,” which utilizes and stretches the knowledge learned through the first-year coursework. The Spring Exercise consists of “a two week long simulation offering students an intense challenge of intellectual integration and practical application spanning the disciplines represented in the MPP core.”⁷⁵ In order to “set the scene,” HKS has expert presentations, lectures, forums, and panels that provide background information on the year’s chosen topic.⁷⁶ Students also receive notebooks that outline background reading materials, statistics, and other relevant materials for use throughout the exercise.⁷⁷ During the first week of the Spring Exercise, students individually create a policy memorandum on one aspect of that year’s policy problem. During the second week, students work in groups to create a professional group presentation that is the culmination of the two-week experience.⁷⁸ The presentation consists of a “detailed, data-backed briefing for a senior decision-maker in a simulated but realistic policy process.”⁷⁹ Thus, the Spring Exercise affords students a practical

real world.”). This compelling portrait of the case method in the policy school context does not reflect the use of the case method in today’s law schools. Law schools do not necessarily connect cases taught through the Socratic method with their real-life application.

75. *Spring Exercise*, HARV. KENNEDY SCH., <http://www.hks.harvard.edu/degrees/masters/mpp/curriculum/spring-exercise> (last visited Mar. 1, 2013).

76. *Id.* (“Past Spring Exercise topics have included: . . . Social Security Reform[,] . . . Global Warming[,] . . . AIDS in Africa[,] . . . Rebuilding Afghanistan[,] . . . Covering the Uninsured[,] . . . [and] Bracing for Avian Flu.”).

77. This is no small volume of material. I witnessed firsthand this process because my daughter received her M.P.P. from HKS in Spring 2011, and the notebook containing the material still resides at my residence. In Spring 2010, the Spring Exercise problem at HKS concerned China, and the reading materials to prepare for the two-week exercise comprised almost 1,200 pages, containing over 150 pages of background material; over 75 pages on the environment and China; over 200 pages on labor standards in China; over 200 pages of material on ethical issues that would arise in the course of the Spring Exercise, including articles on human rights, global justice, environmental justice, and U.S. foreign policy initiatives and ethics; two hundred pages on politics and polling; over 150 pages on foreign policy and affairs; 50 pages on management and negotiation; and about 150 pages on currency, the world markets, and China’s influence on each. The basis of the Spring Exercise assignment was that the United States and China had formed something called the “Strategic and Economic Dialogue,” which was supposed to be an ongoing series of meetings and exchanges regarding challenges and opportunities that both the countries face. See *U.S.-China Strategic and Economic Dialogue*, U.S. DEP’T TREAS., <http://www.treasury.gov/initiatives/pages/china.aspx> (last updated July 20, 2012). The scenario set up for the students was that the next group of meetings was going to take place shortly, and former Secretary of State Hillary Clinton had asked her staff to prepare a series of policy briefs outlining the issues that might be addressed at the next session. The entire Spring Exercise for that year centered on this scenario, and students participated in this exercise for about two weeks, full time, before their final examinations for the spring semester of the academic year.

78. See *supra* note 75 and accompanying text.

79. *Spring Exercise*, *supra* note 75.

experience in which students “apply[] core tools and concepts in a setting and at a pace approximating professional reality.”⁸⁰

During the second year of studies at HKS, students have another opportunity to engage in real-world practice in something known as the Policy Analysis Exercise (PAE).⁸¹ The PAE, viewed as the capstone of the HKS M.P.P. curriculum, is a professional written product examining “an existing public or nonprofit sector policy or management issue presented by a real-life client organization.”⁸² Students locate real-life clients who have actual policy problems on which the students then base their PAEs. Utilizing knowledge gained from the entire two-year curriculum, students analyze their particular client’s issue and present a professional policy analysis and suggested course of action to solve the client’s problem.⁸³

Thus, in the modern policy school, students are learning through academic coursework, but are also experiencing day-to-day decision-making by use of the case method in their classes, as well as by participating in policy analysis programs at the end of each year of their educational experience. This begs the question: Why can’t law schools replicate the same sort of a practice-oriented process? This seems to address many critics who say that law schools only prepare students to “think like a lawyer” but not how to perform and interact with clients in the ways and to the extent that an actual lawyer would.⁸⁴

III. LEGAL EDUCATION IN THE TWENTY-FIRST CENTURY

A. *The Carnegie Report and Best Practices Report: A cursory Review of the Current State of Law School Education*

Many authors have written previously about both the *Carnegie Report* and the *Best Practices Report*, delving into the intricacies of each of those documents and prognosticating about their impact upon legal education today.⁸⁵ This Article will not, therefore, extensively review these materials,

80. *Id.* As the HKS website states, this exercise thereby “serves as a capstone to the first-year core and a bridge to . . . subsequent professional work.” *Id.* Most notably, this exercise provides a way to bring together the various academic concepts learned throughout the first year of coursework for the M.P.P degree, and enables students not only to re-learn and use information learned through their first-year courses, but also to see how those concepts apply in the real world of policymaking.

81. *Policy Analysis Exercise (PAE)*, HARV. KENNEDY SCH., <http://www.hks.harvard.edu/degrees/oca/students-alumni/connect/pae> (last visited Mar. 1, 2013).

82. *Id.*

83. *Id.*

84. BEST PRACTICES, *supra* note 3, at 67–70.

85. See, e.g., Laurie Barron, *Learning How to Learn: Carnegie’s Third Apprenticeship*, 18 CLINICAL L. REV. 103 (2011); Lisa T. McElroy et al., *The Carnegie Report and Legal Writing: Does the Report Go Far Enough?*, 17 LEGAL WRITING: J. LEGAL WRITING INST. 279 (2011); Ira P. Robbins, *Best Practices on “Best Practices”: Legal Education and Beyond*, 16 CLINICAL L.

which have been thoroughly considered on multiple stages, but will instead focus on some of the major ideas that connect with what other professional schools have done that perhaps we are missing in legal education.

The first thing to note is that, as this Article goes to press, it has been five years since the publication of the *Carnegie Report* and *Best Practices Report*. This alone speaks volumes about the pace of curricular change in legal education and does not bode well for any innovation away from Langdell's original plan.⁸⁶ But the world is changing, and with it, the practice of law. Unfortunately, other forces are upon us that may well require drastic changes to legal education before it is rendered irrelevant.

1. *The Carnegie Report*

The Carnegie Foundation for the Advancement of Teaching based its report on the experiences of a research team over two academic semesters that visited sixteen public and private, geographically diverse law schools in the United States and Canada.⁸⁷ The report praised the ability of law schools to impart the ability to think like a lawyer—the peg upon which the legal academy hangs its hat.⁸⁸ More strikingly, however, the report stated generally that law schools do not provide effective support for developing ethical and practice skills.⁸⁹

The *Carnegie Report* concluded that there must be three basic elements to legal education: (1) the learning of legal analysis and analytical thinking; (2) an introduction to practice and practice skills; and (3) the development of a professional identity, also referred to as professionalism or ethics.⁹⁰ The

REV. 269 (2009); Mark Yates, *The Carnegie Effect: Elevating Practical Training over Liberal Education in Curricular Reform*, 17 LEGAL WRITING: J. LEGAL WRITING INST. 233 (2011).

86. Some people argue that Langdell's method is beneficial because it transitions students from undergraduate teaching to law school and, though widely criticized, the method still "remains the best means for teaching students to analyze effectively, think independently and express themselves verbally." 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, 450 (1996). Arguing that the Langdellian method of instruction has "always been a means of teaching students 'how to think,'" Professor Stropus cautions against dismissing the methodology just because it has been criticized. *Id.* at 480. In fact, she instead urges that Langdell's methods and others coexist peacefully in order to create a coherent law school experience for students. *Id.* at 482–83.

87. *Carnegie Examines the Education of Lawyers and Calls for Change*, CARNEGIE FOUND. ADVANCEMENT TEACHING (Jan. 2007), <http://www.carnegiefoundation.org/print/6293> [hereinafter *Carnegie Calls for Change*].

88. *Id.*

89. *Id.*

90. CARNEGIE REPORT, *supra* note 2, at 13–14. The *Carnegie Report* states that legal education needs to be "an integration of student learning of theoretical and practical legal knowledge and professional identity." *Id.* at 13. In order to effectuate that, however, the authors of the report state that "communication and mutual learning must first occur among the faculty who teach in the several areas of the legal curriculum . . . [so that] faculty . . . [in the various areas] communicate with, learn from, and contribute to each other's purposes." *Id.* Thus, the

authors of the report describe these three pillars of legal education as the glue that binds together theoretical and practical legal knowledge in a coherent, sensible, and successful way.⁹¹

Insofar as legal analysis is concerned, the authors of the *Carnegie Report* pay homage to Langdell's teaching, which showed that legal analysis can be taught in classroom settings.⁹² To the authors of the *Carnegie Report*, legal analysis is "the categorizing and grasping of particular [legal] matters in terms of general principles and doctrines."⁹³ This sounds similar to the current American legal education system. Based on Langdell's case method, students learn analysis and legal doctrine through reading and discussing cases that have been decided by appellate courts. As a result of its study, the Carnegie Foundation research team believes that, on the whole, legal education institutions are doing a proper job with this aspect of legal training.⁹⁴

The *Carnegie Report* notes, however, that legal analysis is best understood by students when it is tied to legal practice, which must be coupled with "book learning" in order for students and teachers alike to appreciate the value of the practice experience.⁹⁵ Thus, the report acknowledges that students must learn theory within the confines of law school but that, ultimately, "the 'bottom line' of their efforts will not be what they know but what they can do."⁹⁶ To this end, the report delves into contemporary learning theory and actually discusses the concept of apprenticeships during law school as a way to provide practice experience and a basis for developing professional identity.⁹⁷ This is not meant as a requirement, per se, of modern legal education, but rather as a way for students to learn and understand what they need to be able to do in practice. As the authors opine, the Socratic method only goes so far.⁹⁸

authors maintain that only in the face of such mutual respect, learning, communication, and cooperation will the sweeping changes necessary in legal education succeed.

91. See *Carnegie Calls for Change*, *supra* note 87. The authors go on to state, "we propose an integration of student learning of theoretical and practical legal knowledge and professional identity." CARNEGIE REPORT, *supra* note 2, at 13 (emphasis added).

92. CARNEGIE REPORT, *supra* note 2, at 14 (noting that practical skills may need to be learned in different settings).

93. *Id.* (finding that a successful grasp of legal analysis is required before practice).

94. *Id.* at 13 (noting that both theoretical learning and practical learning have their place in legal education).

95. See *id.* at 13–14 (drawing the correlation between learning the law in the classroom with its practical application in experiential environments).

96. *Id.* at 23.

97. *Id.* at 26–28. Although the *Carnegie Report* does discuss apprenticeships, use of that terminology in the legal profession could awaken—or exacerbate—the always-underlying tension about whether learning the law should be an academic exercise or a series of apprenticeships, as in the pre-Langdellian past.

98. The report states, "[t]he case-dialogue method drills students, over and over, in first abstracting from natural contexts, then operating on the facts so abstracted, according to specified rules and procedures; they then draw conclusions based on that reasoning." *Id.* at 187.

However, the case method, as utilized within the legal academy today, has serious flaws. For example, this methodology does not allow students to connect “conclusions with the rich complexity of actual situations that involve full-dimensional people, let alone the job of thinking through the social consequences or ethical aspects of the conclusions.”⁹⁹ From the perspective of the *Carnegie Report*, students are not required to connect the dots in a real way, with real clients, and with real situations.¹⁰⁰ This prevents students from fully immersing themselves in the practical experience and gaining the practical knowledge critical to their development as lawyers; moreover, this prevents them from fully developing a professional identity, because they have not yet faced an ethical or professional dilemma as part of their legal education. Consequently, students come to believe that legal theory—not practical skills or ethical know-how—is the most important aspect of law school.¹⁰¹

2. Best Practices Report

Similarly, the *Best Practices Report*, also known as the *Stuckey Report*, reiterates that law schools in America today need to improve from an educational perspective. The *Best Practices Report* more clearly attacks the endemic system of legal education and highlights its flaws. Included in these flaws is that curriculum development in many institutions is not grounded in reasoned, logical decision-making based on what students should know to be successful.¹⁰² In its twelve-step program for reform of legal education, the report charges law schools to take conscious steps toward change. These include goal setting; organization of the instructional program around knowledge, skills, and values;¹⁰³ delivering instruction by utilizing best

99. *Id.* (charging that such issues receive a secondary focus behind the legal framework of a case).

100. As the *Carnegie Report* states, [t]he task of professional education is to facilitate novices’ growth into similar capacities to act with competence, moving toward expertise.” *Id.* at 9. The report continues:

[t]he contribution of the new epistemology of practice has been to direct the attention of researchers and educators toward grasping better the forms and spirit of expert practice, on the one hand, and, on the other, bringing novices into these practices while motivating their growth into becoming full participants in the profession.

Id.

101. Because students do not often consider the social or ethical aspects of cases discussed in class, they come to believe that these things are not only outside the scope of their legal education, but possibly outside of the scope of their lives as lawyers. *See id.* at 191.

102. Stuckey and the other authors criticize the continued dichotomy in the legal academy between theory and practice. BEST PRACTICES, *supra* note 3, at 97. Moreover, Stuckey notes that this continued “perception that context-based learning is useful for teaching ‘practical skills’ but not substantive law or theoretical reasoning associated with ‘thinking like a lawyer,’” is simply not true. *Id.* at 98.

103. AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF

educational practices; assessment of student learning; and reflection on the program's success.¹⁰⁴

The authors of the *Best Practices Report* emphasize many of the same general outcomes as the *Carnegie Report*, most notably that students need to be practice ready when they graduate from law school.¹⁰⁵ In contrast to the legal world at the end of the nineteenth century, which was “a world composed of legal doctrines with lines drawn between property, contracts, torts, and other ‘fields’ of law,”¹⁰⁶ students today face a messy world of clients and their problems that do not always break out quite so neatly into the artificial divides that legal education administrators use to determine course selection. The *Best Practices Report*, like the *Carnegie Report*, emphasizes that what we are doing badly, we are doing *very* badly.¹⁰⁷ Especially in the first year of instruction, for the most part, students are not provided with any context within which to make sense of their law school endeavor.¹⁰⁸ Thus, “[s]tudents [who] generally receive little systematic grounding in the roles and responsibilities of lawyers, the interrelation between cases and statutes or doctrinal areas, and the broader intellectual and social context in which law operates” become confused and disoriented, and likewise may devalue or discount the importance of these things in the practice of law.¹⁰⁹

To combat this, the *Best Practices Report* urges schools to set goals for their curriculum.¹¹⁰ Most importantly, schools need to accept their responsibility to prepare students to enter the practice of law.¹¹¹ Students need to be prepared to become practicing lawyers—not academics, not appellate judges, not law

THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 124–25 (1992) [hereinafter MACCRATE REPORT]. The *MacCrate Report* urged law schools to determine what knowledge, skills, and values it wished to impart on students, and also identified the fundamental skills and values that a good lawyer should be “familiar [with] before assuming ultimate responsibility for a client.” *Id.* at 125.

104. BEST PRACTICES, *supra* note 3, at 8–9. It seems no coincidence that the report even has a twelve-step program. Like addiction counseling, perhaps legal education reform needs a more reflective bend in order to move forward.

105. *Id.* at 16 (stating that “one of the basic obligations of a law school is to prepare its students for the practice of law”).

106. *Id.* at 19.

107. *Best Practices* notes that “[t]he potential value of the Socratic dialogue and case method is diminished . . . because we use it in large classroom settings, over rely on it in the first year, continue using it long after students ‘get it,’ and sometimes harm students by abusing the method.” *Id.* at 134.

108. *Id.* at 22–23 (arguing that this method “skews” students’ perspective and notion of a lawyers’ role).

109. *Id.* at 22.

110. *Id.* at 39.

111. *Id.* (“[T]he institution [must] actually be committed to doing the best job it can to prepare its graduates to practice law effectively and responsibly in the contexts they are likely to encounter as new lawyers.”).

clerks—but real, live, breathing, and practicing attorneys.¹¹² This is a different goal from what most law schools seem to pursue today,¹¹³ but it will allow legal education to improve and to endure through the trials and tribulations of today's changing economic and social climate.¹¹⁴

B. Current Law School Innovations that Provide Promise

[I]n fact the case method did not turn out better lawyers. Interaction with a Socratic teacher helped to sharpen students' minds. They learned to think on their feet, to express themselves, and to read cases – skills that a practicing lawyer needs and that the lecture/textbook method had done nothing to enhance. In addition, while the prior method taught students the rules of law, the case method gave them a deeper understanding of the rules But if these benefits are only by-products of a method that was not primarily designed to improve lawyering skills, and if . . . our main

112. *Id.* at 18 (characterizing law schools as trade schools).

113. William D. Henderson & Rachel Zahorsky, *The Pedigree Problem: Are Law School Ties Choking the Profession?*, A.B.A. J., July 2012, at 36, 39. Unfortunately, the elephant in the room in all higher education seems to be the rankings of schools, especially as all law schools currently face diminishing applicant pools. In fact,

[t]here is a limited market for high-quality legal education defined outside the parameters set by the current rankings. . . . Few law schools and faculty are willing to differentiate themselves based on their teaching techniques rather than their academic scholarship, particularly when school rank depends on the constant churn of law review articles – no matter how esoteric or irrelevant the topic.

Id.

114. Everyone reading this will be aware of the many articles published in the *Wall Street Journal* and other sources, railing against not only the methodology of instruction employed in legal education today but also the enormous debt that the path to a J.D. creates. Thus, change is not really an option for legal education at this point in time. In many ways, this may be the last, albeit slow, gasp of a desperate institution if meaningful educational changes are not made. Students are voting with their feet and not applying to law schools—except for the very top law schools—in the huge numbers of just a few years ago. Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 50 J. LEGAL EDUC. 598, 610–11 (2010) (stating that a drop in applicants is, in part, due to the substantial debt incurred by attending law school). What this will mean for the future of law schools in the United States, or whether it will occasion further changes in legal education, remains to be seen. As one commentator has said, however, schools that limit their cost while making their students more competitive will be more successful. *Id.*

Legal educators, also, need to find the magic formula. As one commentator stated, in supporting the concept of legal-practice mastery as the key to a successful law school education,

[l]egal practice mastery is a mixture of a science and art. Further, the artistry component is the most crucial element for solving real world problems, and it can only be obtained through an iterative process of experience and reflection. Unfortunately, we law professors are prone to reject, or at least discount, this formulation because it undermines the perceived gravitas of our academic learning and accomplishments.

William D. Henderson, *The Inferiority Complex of Law Schools*, NAT'L JURIST, Mar. 2012, at 4–5, available at http://www.law.indiana.edu/instruction/wihender/inferiority_mar12.pdf.

*purpose today is to turn out good lawyers—we should take another look at the case method. It might be time to go back to the drawing board.*¹¹⁵

Even before the publication of the *Carnegie Report* and *Best Practices Report*, many commentators suggested ways to reform legal education. The overwhelming commentary pre-*Carnegie* and pre-*Best Practices* revolved around the use of the case method.¹¹⁶ Is it too scientific in format? Is it too removed from the practice of law itself? Is there a better way?¹¹⁷ Thus, the hue and cry of adding problem-solving to the legal curriculum as a methodology of learning not only the law, but also how to use the law like a professional lawyer, became a major idea bandied about in the legal education community.¹¹⁸

When Elena Kagan became dean of Harvard Law School in 2003, she appointed a curriculum committee to study the school's curriculum to consider what curricular reforms should be instituted.¹¹⁹ The committee concluded that the school needed to help law students move toward a more practice-oriented, problem-solving approach to the study of law, starting in the first year of law school.¹²⁰ Subsequently, Harvard Law approved sweeping changes to all three

115. Myron Moskowitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 J. LEGAL EDUC. 241, 244 (1992). Moskowitz comments that the case method was designed “to enable teacher and students to examine a case as the raw material of a new science, the science of law.” *Id.* at 241. He says that even though the case method did help to “enhance[e]” useful skills in law practice, it was a mere “by-product” of the methodology. *Id.* Because today's legal education is supposed to train lawyers, Moskowitz says, it is time to adopt the problem method of teaching that is “designed especially to train professionals . . . [and] has everything the case method has to offer, and more.” *Id.*

116. See, e.g., Keith A. Findley, *Rediscovering the Lawyer School: Curriculum Reform in Wisconsin*, 24 WIS. INT'L L.J. 295, 329 (2000) (discussing the University of Wisconsin Law School's over-reliance on the case method for first-year courses); Myron Moskowitz, *From Case Method to Problem Method: The Evolution of a Teacher*, 48 ST. LOUIS U. L.J. 1205, 1205–06 (2004) (reflecting on experience teaching the case method); Stephen J. Shapiro, *Teaching First-Year Civil Procedure and Other Introductory Courses by the Problem Method*, 34 CREIGHTON L. REV. 245, 245 (2000) (outlining the use of the case method to teach Civil Procedure).

117. So, for example, Professor Myron Moskowitz notes that the case method only gives students an approach “to emulate.” Moskowitz, *supra* note 115, at 241. Moskowitz's 1992 article in the *Journal of Legal Education* provides a blueprint for use of both the case method and problem solving within the legal academy. See generally *id.* It also addresses the problem-solving methodology's major criticisms, such as that “the problem method swallows up the case method” or that the problem-solving method is only useful in smaller classes. See *id.* at 258, 261.

118. Professor Moskowitz elaborates on his efforts in using the problem-solving methods in another article in which he describes his own transition from use of the case method to use of the problem-solving method of teaching law. Moskowitz, *supra* note 116, at 1206.

119. BEST PRACTICES, *supra* note 3, at 286 n.879.

120. *Id.* at 286.

years of its legal education.¹²¹ These changes were meant to address the deficiencies noted in both the *Carnegie Report* and *Best Practices Report*, and to move the process of educating lawyers further along the continuum towards more practice experience.¹²²

One of Harvard's major changes in its curriculum involved instituting a first-year problem-solving workshop.¹²³ This is a required course for all first-year students at Harvard Law, and is taught during the winter session between the first and second semesters. At this point, students have had one semester of traditional doctrinal learning, punctuated by the new workshop that takes place before commencement of the second semester of traditional doctrinal learning.

The mandatory problem-solving workshop was first introduced into the Harvard Law curriculum during the 2010 winter session. It was designed by two Harvard Law professors, Professor Todd Rakoff and Professor Joseph Singer.¹²⁴ The purpose of the Problem-Solving Workshop is to place students in a realistic attorney setting. The course takes place over the three-week winter session, during which students have experiences dealing with about

121. *Id.* Changes to the second and third year added coursework to the first-year curriculum, including the addition of a problem-solving workshop detailed above. *Id.* In the second and third years, the pattern of instruction was changed to make way for expanded clinical work, internships, and study abroad opportunities. *Id.*

122. In addition to the problem-solving workshop, all first-year students are now required to take a course in statutory interpretation and one in international law. *Faculty Unanimously Overhauls First-Year Curriculum*, RECORD (Oct. 12, 2006, 12:00 AM), <http://www.hlrecord.org/?p=10323>. The statutory course introduces students to the legislative process, the administrative process, and statutory interpretation. *Id.* The international law requirement is satisfied by one of three courses, including public international law, international economic law, or comparative law. *Id.*

123. The course description of the Problem-Solving Workshop states that the course "bridges the gap between academic study and practical lawyering." *Problem Solving Workshop*, HARV. LAW SCH., <http://www.law.harvard.edu/academics/registrar/winter-term/problem-solving-workshop.html> (last updated Dec. 21, 2009). As the course description states, the class provides students with a situation where they confront client problems in a way similar to the way practitioners do, from the start of a case and before all of the facts and options are chosen. *Id.* Thus, students, according to the course description, learn to combine doctrinal knowledge with practical judgment in solving client problems. *Id.* The description continues as follows:

A key aspect of the Workshop . . . is the expectation that students work collaboratively and submit group work product. Classroom activities and assignments vary, keeping students on their toes and actively engaged in the task at hand. The required work product takes the form of the kind of memos, analyses, and advice written by practicing attorneys daily. The deadlines are often tight, as they usually are for lawyers seeking to respond with immediacy to particular client problems. Through the expertise of the instructors, the collaborative exercises with peers, and exposure to some of the day-to-day elements of lawyering, students in the Workshop learn about the law in a new and exciting way.

Id.

124. Elaine McArdle, *Inside the Classroom: Beyond the Case Method*, HARV. LAW BULL. (Summer 2010), <http://www.law.harvard.edu/news/bulletin/2010/summer/classroom.php>.

seven different “clients,” who are derived from a series of problems authored by Rakoff, Singer, and others involved in the program, with some based on real cases that have been litigated.¹²⁵

The Problem-Solving Workshop is engineered to be a free-standing course that does not compete with any other courses in the first-year Harvard Law curriculum. Although the course does rely, at least in part, on the doctrinal learning that has taken place during the first semester of law school, it also stretches the students beyond that initial exposure to doctrine and gives them the “feel” of what it means to be a practicing lawyer. Problems run the gamut from the ordinary—a case about a landlord-tenant dispute—to the extraordinary—a problem about a medical device and a failed deal concerning that particular medical device.¹²⁶

The course is taught in large sections, just like regular doctrinal classes at Harvard Law, but that is where the similarity ends. During the course, students work in small teams to gather facts, help clients articulate their goals, examine relevant law, and try to guide the clients to an appropriate resolution, which may or may not be litigation.¹²⁷ Students are encouraged to brainstorm and to discuss strategy throughout the entire client-centered problem-solving process.¹²⁸ This teamwork, in and of itself, is revolutionary in the legal academy, which usually stresses individual efforts in mastering doctrinal materials.¹²⁹

125. *See id.* Just like their counterparts at HBS, the Harvard Law problems are available for purchase and download. The promotional materials state that “Harvard Law Case Studies immerse students in client-lawyer relationships and allow them to confront client problems in the way practicing lawyers do—hands on and from the very beginning.” *The Case Studies*, HARV. LAW SCH., <http://casestudies.law.harvard.edu/> (last visited Mar. 1, 2013).

126. McArdle, *supra* note 124. Some problems require a litigated solution, while others call for a mediated or negotiated settlement. *Id.* The point of the problem sets is not so much how they are resolved for the client, or even if they would lead to litigation—it is that students begin to really think like actual lawyers, meaning that they consider alternative choices and the consequences of decisions they make.

127. *Id.*

128. *Id.*

129. This individual emphasis is in contrast, however, to the way that “real” lawyering works—lawyers often work collaboratively with others, and so the exclusive use of the case method, which stresses individual preparation only, fails to prepare students adequately for a team approach to working with clients. Why is this important? Reflecting on another fault of contemporary legal education, that of the way that first-year curriculum is sequenced and taught, Professor Rakoff stated it well a number of years ago when he observed the following about the first year of law school:

What is the pedagogical task of the first year of law school? The traditional response is that the first year of law school “teaches you to think like a lawyer.” Students come to law school, now as always, with only a vague idea of what the law is, in substance, in form, or in process. What they learn first about the law assumes primacy, in part simply because it is first, and in part because they meet it while in the state of psychological mobilization characteristic of first-year students. A student’s image of what legal thinking is and ought to be is forever shaped by this initial experience

Just as the Problem-Solving Workshop emphasizes teamwork among students, it also encourages—or more appropriately, requires—a team approach to working with students. During the course, those teaching in the program work closely on the progress of the course, raising issues, solving concerns, and generally preparing for class breakouts as a group.¹³⁰ Rakoff, Singer, others from the Harvard Law faculty, and practitioners staff the course. A particularly worthwhile part of the program is the culminating exercise in which students and their teams travel to various Boston-area law offices to present their final projects to attorneys who then provide live critique for the students.¹³¹

Although the Harvard Law Problem-Solving Workshop is probably the most dramatic example of change occurring in the legal academy, other schools have pursued more daring paths than the original Langdellian method might have foreshadowed.¹³² Georgetown University Law Center has instituted a one-week course entitled “Law in a Global Context.” This intensive program aims to integrate a transnational legal perspective into the first-year curriculum at the onset of the second semester.¹³³ Like the Harvard Problem-Solving Workshop, students utilize problem-based learning during the course,¹³⁴ but unlike the Harvard workshop, which employs a series of problems, students only examine one complex problem.¹³⁵ Indiana University Maurer School of

. . . The problem is that lawyers and law professors no longer “think like lawyers” the same way they did many decades ago, when the pattern of the existing curriculum was created.

Todd D. Rakoff, *The Harvard First-Year Experiment*, 29 J. LEGAL EDUC. 491, 491 (1989).

130. *Id.* at 492–97 (emphasizing the collaborative nature of Harvard’s Problem-Solving Workshop).

131. *Id.* Thus, students are not only exposed to the problem-solving skills learned in the workshop, but also receive feedback from practicing attorneys, as well as build a connection with some practitioners who might someday mentor or even hire the students they meet.

132. See *Curriculum Design and Reform*, INST. LAW TEACHING & LEARNING, <http://www.lawteaching.org/curriculum/index.php> (last visited Mar. 1, 2013) (summarizing reforms to the American legal education system).

133. *Week One: Law in a Global Context*, GEORGETOWN LAW, <http://www.law.georgetown.edu/academics/academic-programs/jd-program/specialized-programs/week-one-law-in-a-global-context.cfm>.

134. *Id.*

135. *Id.* The Georgetown Week One program utilizes a closed packet of materials to introduce students to basic concepts needed in order to progress through the week’s work. The course takes about twenty hours, with some of those sessions presented as large group lectures, as well as smaller break-out sessions. *Id.* Like the Harvard workshop, students must work with co-counsel. *Id.* Students work on different problems, however, depending on their section schedules during the previous and the following semesters. Examples of problems include: “[t]errorism/[e]xtradition/[a]bduction,” “[i]nternet [d]efamation,” and “[c]ontracts, [c]onflicts of [l]aw and [d]ispute [r]esolution.” *Id.* From its own material, Georgetown describes the course, which is graded pass/fail (just like the Harvard workshop), as a required, one-credit course for first-year students in which more than a third of the full time faculty participates during its presentation. *Id.*

Law has expanded its course offerings to include project management, as well as a course on so-called emotional intelligences.¹³⁶ Washington & Lee Law School has converted its entire third year of studies into an extended clinic-type experience, using case-based simulations taught by practitioners.¹³⁷ Other law schools have also “beefed up” their courses in negotiation, counseling, and fact investigation.¹³⁸ And, of course, many law schools have increased their clinical offerings to extend opportunities so that students can have a “real life” experience.¹³⁹ Despite these changes, it remains to be seen whether there have been enough changes and innovation in legal education to take legal education where it needs to go. Currently, the answer appears to be a resounding “no.”

IV. MOVING FORWARD: EXTENDING INNOVATION BEYOND LANGDELLIAN PRINCIPLES

Because there are no atheists in foxholes, many of us involved in lawyer professional development are now becoming believers.

This time we pray real change will happen, that amidst the rubble of rescinded offers, deferrals and layoffs, law schools and law firms will collaborate to improve not only the law school curriculum, but also the way law firms address professional development, mentoring, feedback, customized career tracks, and even work-life effectiveness.¹⁴⁰

We face a crossroads today in legal education. As legal education’s model from the past, the Langdellian system emphasizes the use of cases and the traditional Socratic method. This methodology also includes a traditional end-of-semester examination where students are asked to apply the knowledge that they acquired during the semester to solve hypothetical questions that are

136. Patrick G. Lee, *Law Schools Get Practical*, WALL ST. J., July 11, 2011, at B5.

137. *Id.*

138. *Id.*

139. One of the most interesting developments in the past decade has been the opening of the University of California at Irvine Law School. Headed by noted scholar and legal educator Ervin Chemerinsky, the school, which opened in 2009, has won provisional approval by the American Bar Association. *Accreditation*, SCH. LAW, UNIV. CAL. IRVINE, <http://www.law.uci.edu/accreditation.html> (last visited Mar. 1, 2013). Chemerinsky’s goal at the new law school is to “include an interdisciplinary curriculum and a mandatory semester in one of the planned eight law clinics.” Rachel M. Zahorsky, *Irvine by Erwin—Can a Top Legal Academic Create a Law School That is Both Innovative and Elite?*, A.B.A. J., Aug. 2009, at 46, 48. Additionally, Chemerinsky’s concept provides that each law student at the school will have a practicing attorney to serve as a mentor. *Id.* at 49.

140. Scott Westfahl, *Response: Time to Collaborate on Lawyer Development*, 59 J. LEGAL EDUC. 645, 645 (2010). Not mentioned, but implied, in this statement is that law schools, also, need to address these same things.

based on semi-realistic situations in which actual clients and real-live attorneys might find themselves.¹⁴¹

However, the Langdellian case method has not had the same effect on legal education that it had on other professional school education systems. Despite other professional schools—medical schools, business schools, and policy schools—utilizing what they deem the “case method,” their “case method” runs far afield of the Langdellian model used in contemporary American legal education. The “case method” utilized in the other professional schools is more of a problem-solving method, and, although the schools differ in their methodology and inclusion of live clients, the situations in which students find themselves more closely mirror what they will actually do while practicing their given professions.¹⁴² In fact, the methodologies employed in those disciplines to find the solutions to problems are very different from those employed in legal education. If one believes, as I do, that those methods are more effective than what legal education currently employs, then we are left with one fundamental question: Where have we gone wrong and what can we do to “fix” it?

A. ABA Standards for Accreditation: Present and Future

Any suggestions for change to American legal education necessarily must consider the current and proposed standards for accreditation for law schools promulgated by the American Bar Association (ABA) to ensure a school remains accredited. Of particular interest are the current and proposed versions of Standard 302, especially proposed Standard 302(a). The current Standard 302, which deals with curriculum, requires “substantial instruction” in various areas, including substantive law, analysis and reasoning, legal research, problem solving, oral communication, legal writing, and other professional skills.¹⁴³ Within this standard, law schools are able to create, monitor, and change their individual curricula, so long as such changes keep curricula in compliance with the standard. In fact, law schools are exhorted by the ABA to periodically review their curriculum “to ensure that it prepares the school’s graduates to participate effectively and responsibly in the legal profession.”¹⁴⁴

In thinking about legal education versus other professional education programs, two things stand out after reviewing this standard. First, although

141. See Nancy B. Rapoport, *Is “Thinking Like a Lawyer” Really What We Want to Teach?*, 1 J. ASS’N LEGAL WRITING DIRECTORS 91, 95–96 (2002).

142. CARNEGIE REPORT, *supra* note 2, at 23 (drawing attention to the importance of considering the “pedagogies of the professions” in recrafting our approach to reforming legal education).

143. AM. BAR ASS’N, STANDARDS FOR ACCREDITATION FOR LAW SCHOOLS, ch. 3, Standard 302(a)–(b) (2012), available at http://www.americanbar.org/content/dam/aba/migrated/legaled/standards/20072008StandardsWebContent/Chapter_3.authcheckdam.pdf.

144. *Id.* at Interpretation 302-8.

the standard itself requires that law schools provide for substantial instruction in “problem solving,” pursuant to Standard 302(a)(2), this is not reflected at all in the interpretations, which follow the rule.¹⁴⁵ One must assume that this is something that is merely institutionalized in some way, but never verbalized in the curricular discussions that are held at law schools. Second, although current Standard 302(b) requires law schools to provide “substantial opportunities” for client contact, the interpretations following the rule quickly note that live-client or real-life experiences can be offered to students in either a clinical or a field placement, but that law schools “need not offer these experiences to every student.”¹⁴⁶

The proposed Standard 302 has a broader outlook on legal education.¹⁴⁷ It is controversial not only because it requires that each law school develop a specific set of learning outcomes, but also because it emphasizes professional skills, knowledge, and values.¹⁴⁸ Moreover, the emphasis in proposed Standard 302(b) is clearly “competency as an entry-level practitioner”¹⁴⁹ in various areas in which an entry-level practitioner should be competent.¹⁵⁰ The

145. *Id.* at Standard 302(a)(2).

146. *Id.* at Interpretation 302-5. Moreover, Interpretation 302-5 continues that “a law school [need not] . . . accommodate every student requesting enrollment in any particular live-client or other real-life practice experience.” *Id.* The problem with this statement is that it was inserted in the comments in order to allow law schools freedom to create their own programs of instruction. However, it also provides somewhat of an excuse for those programs that wish to limit exposure to clinical or live-client placements because of costs, staffing, or other reasons.

147. AM. BAR ASS’N, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR STANDARDS REVIEW COMMITTEE, PROPOSED STANDARD 302 [hereinafter PROPOSED STANDARD 302], available at http://www.americanbar.org/content/dam/aba/migrated/legaled/standards/20072008StandardsWebContent/Chapter_3.authcheckdam.pdf.

148. This sounds like a flashback to the *MacCrate Report*, with its emphasis on knowledge, skills, and values. See *supra* note 103 and accompanying text. However, for all of the controversy, some commentators have noted that law schools might not be as poorly prepared as they anticipate for the imminent changes in the ABA standards. See, e.g., Brenda D. Gibson, *Law Schools are Better Prepared than Anticipated for the Proposed ABA Standards 302-305*, A.B.A. SYLLABUS, Winter 2011–12, at 3–4.

149. PROPOSED STANDARD 302, *supra* note 147.

150. The proposed standard 302 states in relevant part as follows:

- (a) A law school shall identify, define, and disseminate each of the learning outcomes it seeks for its graduating students and for its program of legal education.
- (b) The learning outcomes shall include competency as an entry-level practitioner in the following areas:
 - (1) knowledge and understanding of substantive law, legal theory and procedure;
 - (2) the professional skills of:
 - (i) legal analysis and reasoning, critical thinking, legal research, problem solving, written and oral communication in a legal context; and
 - (ii) the exercise of professional judgment consistent with the values of the legal profession and professional duties to society, including recognizing and resolving ethical and other professional dilemmas.
 - (3) a depth in and breadth of other professional skills sufficient for effective, responsible and ethical participation in the legal profession;

proposed standard arguably shows that the ABA is moving toward not only an outcome-oriented approach to assessment in legal education, but also a basic competency in practice for newly graduated lawyers. Despite the controversy surrounding the proposed standards, this basic approach seems to be well founded, especially in light of other models of professional education. If law schools cannot educate and produce competent attorneys, then we have no place educating them at all. Despite the prevailing long-held view in this country that the law is an intellectual discipline—and it is an intellectual discipline to a large degree—the idea that we need to graduate students who can function as practicing attorneys clearly deserves a place at the table. Perhaps this review and revision of the ABA proposed standards will put this idea at the head of the table, where it belongs.¹⁵¹

B. Beyond Langdell: Some Proposals for Change in Legal Education

After examining professional school models, as well as the innovative approaches that have been implemented in some law schools around the country, it appears that the best training for professionals must consist of several components: (1) knowledge of basic information in the field; (2) ability to work with constituents, whether they are patients, clients, or the like, and to make informed decisions about their issues or problems; (3) experience and ability to make appropriate decisions as to actions that can be taken on the constituent's behalf; and (4) ability to discern moral or ethical issues in the student's professional field. So, in which of these components are law students currently being instructed and gaining experience, and which of them needs supplementation in contemporary American legal education?

At the basic level, the current first-year instructional model seems to be working, at least to some degree. The courses that are generally taught roughly correspond to those that are tested on most bar examinations around the country.¹⁵² Thus, American law students are provided with the knowledge of

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- (4) knowledge, understanding and appreciation of the following values:
 - (i) ethical responsibilities . . . ;
 - (ii) the legal profession's values of justice, fairness, candor, honesty, integrity, professionalism, respect for diversity and respect for the rule of law; and
 - (iii) responsibility to ensure that adequate legal services are provided to those who cannot afford to pay . . . ;
 - (5) any other learning outcomes the school identifies as necessary or important to meet the needs of its students and to accomplish the school's mission and goals.

Id.

151. Beverly Petersen Jennison, *Saving the LRW Professor: Using Rubrics in the Teaching of Legal Writing to Assist in Grading Writing Assignments by Section and Provide More Effective Assessment in Less Time*, 80 UMKC L. REV. 353, 357 (2011) (“[G]iven the current legal job market and the sea change occurring in legal employment it behooves law schools to adjust their thinking not just because of the probable accreditation standards change, but in spite of it.”).

152. Of course, as noted above, more and more schools are also offering electives to first-year students on topics that are not covered by state bars. Moreover, this is a chicken and egg problem—if the curriculum at American law schools is changed, then the bar examinations

basic building blocks equivalent to other types of professional education. The question becomes, however, whether legal education is providing instruction that will actually benefit practitioners or if the legal curriculum merely provides intellectual instruction to help law students “think like a lawyer.” As for students being able to work with clients and make informed decisions on their clients’ problems, as well as recognizing and solving ethical and moral problems, we appear to be doing a poor job, or potentially, failing miserably.

With respect to the knowledge aspect of legal education, many would probably argue that the Socratic Method, consistent with the original Langdellian model, is the gold standard of legal education. But, could models from other schools be applied to legal education? The answer is a resounding “yes.” Rather than strictly pursuing the Socratic technique and the Langdellian case method, legal professors should broaden their teaching techniques to persistently and repeatedly drive students to utilize the knowledge that they gain through reading cases and statutes. Examples of this exist. The business school model, as well as the public policy model, both retreat from the use of lectures or solitary consideration of issues by students to models including collaboration, discussion, and the professor acting as facilitator rather than as lecturer or Socrates reincarnated.

Moreover, the ability to work and make informed decisions with respect to a constituent’s problems, as well as the ability to discern ethical and moral issues, would be solved by a different emphasis in the way legal educators teach in the legal academy. A good model for this is the Harvard Problem-Solving course model, where students, in the middle of their first years, take a few weeks off to consider a plethora of different client scenarios and determine how to resolve them. Another method is to increase the number of clinical offerings in law schools, and to increase the number of students who participate in them.¹⁵³ But this does not go nearly far enough. Unfortunately, it is simply an anecdotal solution, while the vast majority of American law schools continue without meaningful and substantial change.

What law schools can and must do, and what the proposed ABA Standard 302 seems to advocate, is to create a continuity of experiences over the three years that will provide law students with the kind of exposure and experience that students in other professional disciplines already receive. A blueprint for such a change to legal education could take many forms, but here is one

will likely be changed in response to those shifts. However, no one can predict how closely tied curricular and bar changes will be.

153. Barry, *supra* note 5, at 247 (discussing clinical education as a necessary component to graduating practice-ready lawyers). Professor Barry advocates refocusing the third year of law school so that it includes two practice experiences—consisting of externships, live-client clinics, or hybrids of the two. *Id.* at 272. However, Professor Barry recognizes that this will significantly affect how law schools allocate their resources. *Id.* She continues by stating that “[i]f the third year of study set in practice becomes a reality, law schools must set clear goals for clinical education . . . [and, therefore, the third year] needs to be a carefully conceived culmination of the knowledge and skills gleaned throughout the law school experience.” *Id.* at 276.

possible approach: a change in teaching styles, the addition of problem-solving workshops, and the addition of clinical or live-client experiences.

During every course in law school that is not an internship, an externship, or a clinical experience, instructors should change their teaching styles to reflect the evolution of Langdell's original theory. Yes, the "case method" as originally conceived and practiced has enabled generations of students to "think like a lawyer," but it has stifled them in learning how to act and respond like a lawyer to real client situations. So legal educators first need to move toward the techniques utilized in the medical, business, and policy schools. These models incorporate a broader perspective on case studies and problem-solving techniques, and also encourage collaborative learning. Such a shift in teaching technique will also enable students to recognize and solve ethical and moral issues that will arise during their years as practicing attorneys.

Additionally, at some point in the first year, students should be exposed to an active problem-solving experience. This could take the form of the Harvard course, which allows students a brief exposure to a number of client issues and an opportunity to solve them. Another technique would be to place a similar problem-solving workshop at the end of the first year so that students would have had a broader exposure to more law over the course of two semesters, and turn it into a two-week workshop that revolves around one problem.¹⁵⁴ If law schools would build this type of an exercise into their calendars, and demand that it become an "all hands on deck" type of experience, students and faculty alike would participate in a culminating exercise that would pull together elements of the different types of law to which they have been exposed during their first year of courses.¹⁵⁵ In order to ensure that students are given enough exposure to this type of exercise, it might even be advantageous to have a similar exercise at the end of the second year of law school. The problems could be more complicated, or the second-year students could work on the same problem as the first-year students, provided that problems were rotated on a three-year cycle so as not to have repetition during any student's three years of law school.

Finally, students must have a live-client experience, just like medical and policy school students already have. There is simply no reason why schools cannot provide enough of these experiences to have at least one, or preferably

154. See *supra* notes 75–80 and accompanying text (discussing HKS's Spring Exercise).

155. Should a law school undertake such an experiment, it would seem that a number of different areas of law could be put into play with some creative thinking. For example, if a school would "theme" its problem-solving activity around a topic like elder law, that could bring in property, contracts, and other first-year studies, as well as some topics that do not always get covered in law school, such as powers of attorney, health care representative selection, the impact of federal entitlement programs such as Medicare and Medicaid, and a whole host of other issues that could very well be relevant not only to the students' future lives but also to their future clients.

more, live-client experience for each of their students.¹⁵⁶ These experiences could be in live-client clinics, or in externship opportunities with clients in an area of interest to the student as a potential practice area.¹⁵⁷ This may require some creative staffing in the law schools, or even some reallocation of space. It will also require more dedication by professors and staff to find and maintain relationships with outside sources of placement, and to monitor student experiences at those outplacements.

This triumvirate of changes to modern American legal education—instructional innovation, problem-solving innovation, and experiential education innovation—could transform the landscape of the legal academy. Among those teaching in American law schools today, there are few who do not acknowledge that something has to change, and there are many who acknowledge that things need to change in a big way.¹⁵⁸ These three major steps could revolutionize legal education, and return it to par with education in other professional disciplines where students graduate ready to practice in their professions.

V. CONCLUSION

*Why are we so fixated on the “thinking” process rather than the “doing” process? No one expects a doctor to “think like a doctor” when she leaves medical school. We expect her to be a doctor.*¹⁵⁹

Legal education is in the midst of a sea change. Because students no longer have the luxury of escaping to law school while hoping that they will eventually become lawyers, be trained on the job, make a lot of money, and retire all of their law school debt, schools are also being forced to re-examine every facet of their institutions. The students who attend medical, business, and policy schools are receiving real-life instruction and real-life experience in their chosen professions. So, too, law students need and deserve the same type

156. Barry, *supra* note 5, at 272 (discussing the issue of *when* to provide experiential learning, and concluding that the student’s third year is most advantageous).

157. As noted in the *Carnegie Report*, there is real value in these live-client experiences, not just from a practice standpoint, but from a professionalism perspective. CARNEGIE REPORT, *supra* note 2, at 192. Using the medical school education model as an illustration, the *Carnegie Report* states that in working with actual patients, “[s]tudents grapple with real issues of patient autonomy, inter-cultural communication, responsibility for public health, and the challenge of maintaining compassion in the press of a fast-paced medical environment. *When they confront these and related issues, professionalism becomes tangible and visible to them.*” *Id.* (emphasis added).

158. Kathryn M. Stanchio, *Step Away from the Case Book: A Call for Balance and Integration in Law School Pedagogy*, 43 HARV. C.R.-C.L. L. REV. 611, 612 (2008) (“[L]aw school pedagogy [should] project a model of law practice that both accurately reflects what lawyers do and that opens students’ minds to a vision of lawyering as a creative endeavor that involves critical, outside-the-box thinking . . .”).

159. Rapoport, *supra* note 141, at 92.

of instruction. From the very start of their legal careers, students should expect—and demand—that their instructors do more. Their instructors, in turn, should provide something more than simply Langdell’s case method and Socratic teaching of their particular subjects, which requires students to incorporate the legal ideas in cases and statutes into their own psyche. Instead, instructors should engage students in the learning of the law, utilizing active learning techniques, and, even as soon as the first year, students should expect at minimum a substantial simulated practice experience. During their second and third years, students should demand additional simulated, as well as live-client, practice opportunities, so that they can emerge from the law school experience feeling confident in their ability to work with clients and solve their problems. In the end, such changes to legal education will be a very good thing, not only for the students and the entire legal profession, but for all of the clients the legal profession serves.