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BEYOND PRACTICAL SKILLS: NINE STEPS FOR IMPROVING LEGAL EDUCATION NOW

R. MICHAEL CASSIDY*

Abstract: It has been five years since the Carnegie Report Educating Lawyers called upon law schools to adopt an integrated approach to professional education that teaches practical skills and professionalism across the curriculum. Yet so far, very few schools have responded to this clarion call for wholesale curricular reform. Considering the inertial effect of traditional law school pedagogy and the institutional impediments to change, this delay is not surprising. A fully integrated approach to teaching professional skills (such as the medical school model) would require major resource reallocations, realignment of teaching responsibilities, redesign of courses, and changes to graduation requirements. While I fully support such comprehensive reform, the pragmatist in me knows that it will take years to accomplish. My goal in this essay is to offer a "self-help" remedy for faculty members and administrators interested in responding to the Carnegie Report's call for a greater emphasis on experiential education, but uninterested in waiting for the committee deliberations, reports, faculty votes, and tough resource trade-offs that lie ahead. We drag our heels at our own peril and to the serious disadvantage of our current students. What follows is a description of nine changes that individual faculty members and deans can make now to improve the professional education of law students. Although each initiative when viewed in isolation may seem modest, collectively they could have a huge impact on our programs.

"When You Come to a Fork in the Road, Take It!"

-Yogi Berra

Introduction

Legal education is at a crossroads. In a series of studies over the past two decades, reports commissioned by the American Bar Association (ABA) and the Carnegie Foundation for the Advancement of Teaching have concluded that our nation's law schools are failing to

^{* © 2012,} R. Michael Cassidy, Professor of Law, Boston College Law School. I am grateful to my colleagues Alexis Anderson, Frank Garcia, Ray Madoff, and Judy McMorrow for their helpful comments on an earlier draft and to my research assistant Kevin Smith (Boston College Law School, Class of 2013) for his very capable editing assistance.

1516

prepare graduates adequately for the practice of law.¹ Proposed reforms include providing more practical skills training for our students and adopting teaching practices that focus more effectively on simulated client experiences.²

The critics' focus has shifted from the dearth of practical skills training in the law school curriculum to the lack of *integrated* skills training. The ABA's *MacCrate Report* in 1992 enumerated ten fundamental skills required of every young lawyer and decried the lack of emphasis on practical skills at most law schools.³ Although the *MacCrate Report* may have helped fuel the expansion of clinical and externship offerings at many U.S. law schools, it did not bridge or even narrow the divide between experiential education and doctrinal law school courses.⁴ The more recent 2007 Carnegie Report, *Educating Lawyers*, favors a rethinking of legal education in a more integrated approach that crosses this doctrinal/clinical divide and that emphasizes practical skills and professional identity at all levels of the curriculum.⁵

Providing students with the analytical skills necessary to "think like lawyers" by teaching them to read and dissect appellate decisions may no longer be sufficient to meet the demands of the legal marketplace. In a provocative series of articles in the *New York Times*, columnist David Segal has criticized the structure, content, and price of legal education.⁶ "Law schools have long emphasized the theoretical over the useful, with

¹ See Am. Bar Ass'n, Legal Education and Professional Development—An Educational Continuum, Report of the Taskforce on Law Schools and the Profession: Narrowing the Gap 259–60 (1992) [hereinafter MacCrate Report]; William M. Sullivan et al., The Carnegie Found. For the Advancement of Teaching, Educating Lawyers: Preparation for the Profession of Law 12 (2007) [hereinafter Carnegie Report].

 $^{^2}$ MacCrate Report, supra note 1, at 259–60; Carnegie Report, supra note 1, at 12–14.

³ See MacCrate Report, supra note 1, at 135, 240, 259–60. The MacCrate Report recommended ten skills groups in which law students should be fluent before graduating: problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute resolution, organization and management of legal work, and recognizing and solving legal dilemmas. Id. at 135; John O. Sonsteng et al., A Legal Education Renaissance: A Practical Approach for the Twenty-First Century, 34 WM. MITCHELL. L. REV. 303, 369–70 (2007).

⁴ Sonsteng et al., *supra* note 3, at 370. At most U.S. law schools, participation in a clinic is still not required for graduation, and experiential learning is not well integrated into the mainstream doctrinal curriculum. Keith A. Findley, *Rediscovering the Lawyer School: Curriculum Reform in Wisconsin*, 24 Wis. Int'l L.J. 295, 309 (2006).

⁵ Carnegie Report, *supra* note 1, at 12–13.

⁶ See David Segal, The Price to Play Its Way, N.Y. TIMES, Dec. 18, 2011, at BU1; David Segal, What They Don't Teach Law Students: Lawyering, N.Y. TIMES, Nov. 20, 2011, at A1 [hereinafter Segal, What They Don't Teach].

Although all signals presently point toward preparing more "practice ready" lawyers, how exactly this will be accomplished remains to be seen. Calls for adopting the medical school model of integrating lecture courses with practice rotations, culminating with an apprenticeship on the model of a medical residency, is one of the most frequently cited alternatives. Yet pragmatists among us recognize that an integrated approach to curricular reform in legal education will occur slowly, if it occurs at all. Several other commentators—and the Carnegie Report itself—have noted the inertial effect of traditional law school pedagogy and the institutional impediments to meaningful change. Wholesale redesign of the curriculum will require additional study, commitment of financial and intellectual resources, and consensus building among faculty members with diverse perspectives and incentives.

This Essay suggests an interim approach. My objective is to offer a "self-help" remedy for faculty members and administrators interested in responding to the Carnegie Report's clarion call for greater emphasis on practical skills, but uninterested in waiting for the committee deliberations, reports, faculty votes, and tough resource trade-offs that lie ahead. We drag our heels at our own peril and to the serious disadvantage of our current students. What follows is a brief description of nine steps that individual faculty members and deans can take *now* to improve the professional education of our students. The first five propos-

⁷ Segal, What They Don't Teach, supra note 6.

⁸ Ann Marie Cavazos, Demands of the Marketplace Require Practical Skills: A Necessity for Emerging Practitioners, and Its Clinical Impact on Society – A Paradigm for Change, 37 J. Legis. 1, 6 (2011); see Segal, What They Don't Teach, supra note 6.

⁹ Cavazos, supra note 8, at 6–7; see Segal, What They Don't Teach, supra note 6.

¹⁰ See Roy Stuckey et al., Best Practices for Legal Education 251–53, 279–80 (2007); 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, 414–15 (2010)

¹¹ CARNEGIE REPORT, *supra* note 1, at 189–90 ("[E]fforts to improve legal education have been more piecemeal than comprehensive."); Nancy B. Rapoport, *Eating Our Cake and Having It, Too: Why Real Change Is So Difficult in Law Schools*, 81 Ind. L.J. 359, 366 (2006) ("But there's very little innovation at the core of legal education. We're still playing Christopher Columbus Langdell's song—not his song of innovation in legal education, but the monotonous refrain of education in the form of Socratic classes and case law.").

als are pedagogical improvements that individual faculty members can make in the courses they presently teach.¹² The next three steps are new courses and one co-curricular project that would significantly improve students' professional development.¹³ The final recommendation relates to the faculty appointment process.¹⁴ Although each initiative when viewed in isolation may seem modest, collectively they could have a huge impact on our students and our programs.

I. Collaboration

Traditional law school assignments—whether papers or examinations—are typically completed by students working alone. ¹⁵ Yet the practice of law, regardless of the setting, is much more commonly undertaken as a group activity. ¹⁶ "The image of Atticus Finch working single-handedly and tirelessly to solve his client's legal problems may have romantic appeal, but in real life the delivery of legal services is more likely handled by a team. "¹⁷ Lawyers work in tandem with other lawyers, paralegals, social workers, accountants, and expert witnesses, such as doctors, scientists, and engineers. ¹⁸ Therefore, law schools must do a better job of preparing lawyers to work collaboratively. Group projects and presentations should be routinely incorporated into course requirements, just as they are so commonly utilized in business schools. As Professor Gerry Hess has noted, working in a group increases a student's appreciation for diversity, decreases their sense of isolation, and helps them learn to mediate conflict. ¹⁹

It is especially important for law students to learn how to collaborate with non-lawyers. Client problems are rarely purely "legal" in nature.²⁰ The pursuit of a client's objectives or the resolution of their disputes often requires lawyers to work collaboratively with professionals from other disciplines.²¹ Law schools affiliated with universities are es-

¹² See infra notes 15–53 and accompanying text.

¹³ See infra notes 54–75 and accompanying text.

¹⁴ See infra notes 76-81 and accompanying text.

¹⁵ See Stuckey et al., supra note 10, at 236–38.

¹⁶ Gary A. Munneke, Everything You Need to Know (About Practicing Law) . . . You Learned in Law School, N.Y. St. B.A. J., May 2009, at 32, 34.

¹⁷ Id. at 32.

¹⁸ See Alexis Anderson, Lynn Barenberg & Paul R. Tremblay, Professional Ethics in Interdisciplinary Collaboratives: Zeal, Paternalism and Mandated Reporting, 13 CLINICAL L. Rev. 659, 662 (2007).

¹⁹ Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. Legal Educ. 75, 94–95 (2002).

²⁰ See Anderson et al., supra note 18, at 660.

²¹ See id. at 661.

pecially well situated to prepare their students in multi-disciplinary collaboration, by fashioning group projects in upper-level courses that are cross-listed with other graduate departments.²² For example, at Boston College we offer a course entitled "Advising the Business Planner," in which graduate business (MBA) students are required to develop a business plan for a new venture and law students are paired with them to serve as legal advisors to the fictional new company.²³ A similar collaborative model could be developed in many other courses; for example, in a Forensic Evidence course, law students could be paired with graduate nursing students to develop medico-legal protocols for the collection of evidence samples in criminal cases.

II. ORAL EXAMINATION

As the *MacCrate Report* recognized, effective communication skills are essential to the practice of law.²⁴ Yet law schools primarily teach, reinforce, and evaluate only one form of communication—*written*.²⁵ Outside of moot court and advocacy courses, oral expression is not heavily emphasized.²⁶ Whether lawyers are communicating in the courtroom, in the boardroom, or in individual meetings with current or prospective clients, their success depends on effective oral expression. Oral communication and listening skills are especially relevant to interviewing and counseling clients, a task performed by virtually all practicing attorneys.²⁷

²² Dean Christopher Edley has argued that one of the advantages of a law school affiliated with a great research university is that it has the tools and capacity to train multidisciplinary problem solvers. Christopher Edley, Jr., *Fiat Flux: Evolving Purposes and Ideals of the Great American Public Law School*, 100 CALIF. L. REV. 313, 326 (2012) ("[T]he Great Law School must forge strong alliances with other professions and disciplines within the university. The traditional silos of academic departments must be overcome to create a culture of collaboration.").

²³ Nathaniel Kenyon, *Course Enables Management, Law Students to Plan Ahead*, B.C. Chron. (Jan. 16, 2003), http://www.bc.edu/bc_org/rvp/pubaf/chronicle/v11/ja16/planner. html.

²⁴ MACCRATE REPORT, supra note 1, at 172–73.

²⁵ See Carnegie Report, supra note 1, at 109–11, 174–75.

²⁶ I do not consider in-class Socratic dialogue sufficient to prepare our graduates for the extensive oral presentations—formal and informal—that will define such a large part of their professional roles. For the reasons discussed in Part III, Socratic questioning often is designed to have a student identify and articulate a narrow legal concept or the holding of a single case; in the interests of time if not sensitivity, I suspect that few of us use class questioning to tie together multiple legal doctrines by reference to complex fact patterns. See infra notes 33–40 and accompanying text. Moreover, in its modern form, Socratic questioning does not tend to capture meaningful participation by 100 percent of class members because students so often are provided with the option to "pass."

²⁷ Sonsteng et al., *supra* note 3, at 347.

One vehicle for emphasizing oral communication across the law school curriculum is to incorporate oral presentations and/or examinations in smaller classes. Written essay examinations are not sufficiently accurate in predicting students' understanding of the material or their ability to apply what they have learned to new contexts.²⁸ The literature on teaching and evaluation suggests that multiple assessment formats provide students with a better opportunity to demonstrate their ability and knowledge and allow them to practice responding to unanticipated questions—which is an essential lawyering skill.²⁹ Many law school faculty already use oral evaluation techniques in seminars, whereby students are responsible for presenting draft research papers to classmates.³⁰ A similar objective could be accomplished in smaller lecture classes with enrollments of thirty or fewer students, and with final grades based on a mixture of oral and written examinations.³¹ With the commitment of fifteen hours of evaluation time (one-half hour interview per student),³² faculty members could both improve their assessment of learning outcomes and provide a valuable practice experience for their students.

III. WORKING THROUGH PROBLEMS

The *MacCrate Report* identified problem solving as one of the ten most important skills for attorneys.³³ "Lawyers solve problems, and they work with raw materials much more complex and variable than judicial opinions."³⁴ Yet traditional law school pedagogy based on the Langdellian case method teaches a very specific and particular type of analytical reasoning.³⁵ The case method presumes that lawyers, as social "scientists," can study appellate decisions to uncover legal principles, classify and organize these principles, and then develop a structure that will allow them to apply the doctrines to a more general set of facts in order to reach a solution to legal questions.³⁶ This process of conceptualiza-

²⁸ Id. at 346-47.

²⁹ Id. at 404–05.

³⁰ See Coughlin et al., supra note 10, at 411.

³¹ My friend and colleague Professor Frank Garcia devotes the last two class periods in one of his courses to graded "mini" oral examinations, where he questions each student for ten minutes. This method is less time intensive and more efficient than full oral examinations conducted in a faculty member's office.

³² This fifteen-hour estimate does not necessarily assume *additional* grading time, if the faculty member cuts back on the scope and duration of the written examination.

³³ MacCrate Report, *supra* note 1, at 135.

 $^{^{34}}$ Findley, *supra* note 4, at 302.

³⁵ Id. at 299-300, 302.

³⁶ Id. at 298.

tion and categorization—so heavily emphasized in law schools for the past 150 years—employs an inductive form of reasoning and teaches students to reason from specific examples (i.e., appellate decisions) to universal propositions. A problem-oriented approach to law teaching, by contrast, forces students to employ a more deductive reasoning strategy.³⁷ Rather than being presented with an end product of a case—the appellate decision—students are given the raw material of facts and are asked to identify objectives, strategies, and potential solutions.³⁸

It is important to distinguish a "problem" from a "hypothetical." The latter, ubiquitous in legal education, employs a very specific factual scenario to illustrate a single legal doctrine. For example, in an Evidence course a professor might provide the students with a short vignette to illustrate the excited utterance exception to the hearsay rule. The question students are asked to grapple with is whether an identified out-of-court statement meets the requirements of the particular exception. Answering the hypothetical still requires inductive reasoning—asking the students to apply a discernible legal principle to a set of facts. Problems, on the other hand, work in both directions, with multiple legal issues and compound facts. Problem solving is "the process by which one starts with a factual situation presenting a problem or an opportunity and figures out the ways in which the problem might be solved or the opportunity might be realized."³⁹

In many so-called "podium" courses, law students are first exposed to problems during the final examination. The classic "issue spotter"—where students are asked to study a set of facts, discern the possible legal issues, identify alternatives, and propose solutions—demands both deductive and inductive reasoning strategies. The irony here is that such exposure comes primarily at the end of the semester through an *evaluative* instrument rather than a *teaching* opportunity.⁴⁰ The students typically do not work through the problem with the instructor and with classmates to learn from their application of facts to law (rather than law to facts). This is easily fixed. Faculty members can present students with problems at the end of each section of the syllabus to help them process the material studied to date and review these problems with the

³⁷ See id. at 316.

³⁸ *Id.* at 318. *See* Sharon L. Beckman & Paul R. Tremblay, *Foreword: The Way to Carnegie*, 32 B.C. J.L. & Soc. Just. 215, 216 (2012) ("The case method misses a great deal of the *practice* of law by neglecting clients, the role of fact development and ambiguity, the importance of judgment and reflection, and the ethical underpinnings of serving others in a professional role.").

³⁹ Anthony G. Amsterdam, *Clinical Legal Education—A 21st-Century Perspective*, 34 J. Legal Educ. 612, 614 (1984).

⁴⁰ Sonsteng et al., *supra* note 3, at 346.

students either in class or in smaller study groups. For example, in a Criminal Law course covering homicide, students might be provided with a detailed police report and asked to place themselves in the shoes of the prosecutor to determine what charges to present to the grand jury (helping them distinguish between degrees of murder and manslaughter). In a Trusts and Estates course, students might be presented with an intake interview from new clients outlining a couple's assets and objectives and asked to make recommendations about ways to structure legal instruments that would accomplish the clients' financial and personal goals. Through these techniques, students can develop problem-solving skills throughout the semester.

IV. Exposure to Foreign Law

Our graduates increasingly will be practicing in a global environment. The social, political, economic, and legal consequences of globalization must be better understood and addressed in legal education. ⁴¹ As the interconnectedness between countries grows, an exclusive emphasis on domestic law inadequately prepares our graduates to counsel clients who will do business globally (such as through e-commerce, trade, international business transactions, investments, and banking). ⁴² Yet transactional lawyers are not the only attorneys who practice globally; all sorts of legal problems cut across national lines, including marriage and divorce, adoption, human rights, and the management of estates and international trusts. ⁴³

A greater exposure to foreign laws not only will prepare our graduates to practice in a global environment, but it will also equip them with a deeper understanding of the choices made by our own legal system. Many legal questions are simply unanswered by the express terms of a statute or the four corners of a judicial opinion. Lawyers need a more panoramic view of the law to argue from analogy for an extension or novel application of domestic law.⁴⁴ Cosmopolitan lawyers (and judges) simply have more colors on their palates from which to choose in fashioning creative solutions to modern legal problems.

⁴¹ See generally Anthony A. Tarr, Legal Education in a Global Context, 36 U. Tol. L. Rev. 199 (2004) (arguing that law schools should develop strong international and comparative law programs).

⁴² *See id*. at 200.

⁴³ See Winston P. Nagan & Danie Visser, The Global Challenge to Legal Education: Training Lawyers for a New Paradigm of Economic, Political and Legal-Cultural Expectations in the 21st Century, 11 ILSA J. INT'L & COMP. L. 9 passim (2004).

 $^{^{44}}$ See Lawrence v. Texas, 539 U.S. 558, 572–73 (2003) (looking to international law to interpret domestic constitutional protections).

Many U.S. casebooks in core subject areas are beginning to incorporate comparative perspectives.⁴⁵ Although it may be tempting to skip these casebook sections to save time, streamline our syllabi, and cut back on reading assignments, that is an unfortunate choice. I have witnessed firsthand how a Criminal Law course is enriched by a comparative discussion of how other countries define the crime of rape. Similarly, some Contracts professors may incorporate a discussion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) in their discussions of the law of sales.⁴⁶ These efforts should be continued and intensified across the curriculum.

V. EMPHASIS ON PRACTICAL JUDGMENT

Good judgment is perhaps the most important and highly valued character trait a lawyer can possess.⁴⁷ "Judgment" is the ability to deliberate well—to accurately assess a complex situation, to recognize and identify alternatives, and to select the course of conduct most likely to achieve the desired ends.⁴⁸ This is an iterative process—it requires sensitivity to the salient features of a factual situation, an appreciation of the multiplicity of concerns at stake, and an ability to perceive, evaluate, and assess the probability of various outcomes and obstacles.⁴⁹

Although some may argue that one cannot "teach" good judgment, that is only partially true.⁵⁰ We can all help *model* good judgment for our students. Judgment can be fostered by having students work closely with more experienced lawyers and watch what they do.⁵¹ Certainly the vehicles in the curriculum that are the most conducive to modeling judgment are clinics and externships, where students work closely with ex-

⁴⁵ Janet Koven Levit, Sanchez-Llamas v. Oregon: *The Glass Is Half Full*, 11 Lewis & Clark L. Rev. 29, 36 (2007).

⁴⁶ See Tarr, supra note 41, at 203.

⁴⁷ Daisy Hurst Floyd, *Pedagogy and Purpose: Teaching for Practical Wisdom*, 63 MERCER L. Rev. 943, 945 (2012) ("Wisdom is the distinctive value that a lawyer brings to a client.").

 $^{^{48}}$ See Daniel Mark Nelson, The Priority of Prudence: Virtue and Natural Law in Thomas Aquinas and the Implications for Modern Ethics 42–43 (1992).

⁴⁹ See David McGowan, Developing Judgment about Practicing Law 2–3 (2011); see also Lawrence B. Solum, A Tournament of Virtue, 32 Fla. St. U. L. Rev. 1365, 1385 (2005) (discussing the Aristotelian virtue of practical wisdom, or phronesis, in the context of judging, and defining this virtue as the "ability to perceive the salient features of particular situations" and to "size up a case and discern which aspects are legally important").

⁵⁰ McGowan, *supra* note 49, at 2–3; *see* Jeffrey M. Lipshaw, *The Venn Diagram of Business Lawyering Judgments: Toward a Theory of Practical Metadisciplinarity*, 41 SETON HALL L. REV. 1, 72–74 (2011) (discussing how business judgment for the corporate attorney can be defined and how it might be taught).

⁵¹ Aristotle believed that *phronesis* was achieved over time by seeking out wise mentors and observing how they operate. *See* ARISTOTLE, NICOMACHEAN ETHICS bk. VI, at 179–80 (Christopher Rowe trans., Oxford Univ. Press 2002) (c. 384 B.C.E.).

perienced faculty members or carefully selected practicing lawyers in solving live-client problems.⁵² But these are not the only places in law school where judgment can be emphasized and modeled.

Faculty should more regularly utilize practitioners in their podium courses to model practical judgment. For example, in a Civil Procedure course, a faculty member could invite to class a panel of distinguished practitioners involved in a recently settled mass tort action to discuss how the plaintiff class was structured and certified and what considerations went into negotiating an acceptable settlement. In a Mergers and Acquisitions course, a faculty member could invite to class counsel for two recently merged companies to discuss how the deal was structured and, in particular, what factual and financial considerations guided the companies' choice of legal alternatives. Certainly there are costs and complications associated with such panels—difficulties of planning and scheduling, trade-offs with respect to lost lecture time, and so forth. What I am suggesting, however, is that we all should be sensitive to the value of such experiences in training future professionals, and be willing to incorporate them in our teaching where feasible and appropriate.⁵³

VI. Professional Formation Retreats

A legal career—even the most stable and fulfilling—is peppered with difficult clients, bad bosses, long hours, and hard cases. Depression is four times more likely for lawyers than other professional groups in the United States.⁵⁴ One factor potentially contributing to this alarming statistic is that young lawyers are left to grapple with important issues of professional identity on their own, without any conceptual

⁵² See Phyllis Goldfarb, A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education, 75 Minn. L. Rev. 1599, 1692–94 (1991) ("If teaching doctrine is the aim of traditional education, then teaching 'doctrine in a vacuum' frustrates that aim. Legal rules and principles grow out of historical, social, cultural, and ethical contexts. For students to understand fundamentally and work creatively with rules and principles, they must appreciate the contexts from which these rules and principles emerged. Adopting the clinical and feminist emphasis on the development of context as a prelude to understanding would enrich the traditional classroom environment." (footnotes omitted)).

⁵³ See Floyd, supra note 47, at 956–57 (offering some creative ideas about how to incorporate pedagogy for practical wisdom into a first-year Civil Procedure course).

⁵⁴ Leslie Larkin Cooney, Walking the Legal Tightrope: Solutions for Achieving a Balanced Life in Law, 47 SAN DIEGO L. REV. 421, 442 (2010); see also Lawrence S. Krieger, The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness, 11 CLINICAL L. REV. 425, 427 (2005) (describing how lawyers, in addition to having the highest incidence of depression of any occupation, also suffer from high rates of emotional distress).

framework to guide them.⁵⁵ Our students deserve a reservoir of strength and self-awareness to help navigate the difficult times that lie ahead for them in the legal profession.

The Carnegie Report recommended three apprenticeships essential to the professional formation of lawyers: the intellectual or cognitive apprenticeship, the apprenticeship of practical skills, and the apprenticeship of identity and purpose.⁵⁶ With respect to the final apprenticeship, students need to explore the core commitments and values that underlie the legal profession.⁵⁷ Unfortunately, there is very little space within a hectic three-year course of study for a conversation about these meta-issues. Outside of the clinics, issues of professional identity and purpose seem to be paid lip service by speakers during orientation and commencement, and then largely ignored in between.⁵⁸

A weekend "professional formation" retreat might help fill this gap. Students, faculty, and select alumni would come together in an informal setting to discuss some of the core competencies and values underlying the role of lawyers in our society. At this retreat, students might be exposed to a wealth of literature on these important topics—Anthony Kronman, Reed Loder, David Luban, and Thomas Schaffer are scholars who come quickly to mind. Willing and empathic faculty and alumni would lead the discussion as facilitators. Key questions upon which students might be invited to reflect during the retreat would include: (1) what are the core values of the legal profession?; (2) what does it mean, morally and ethically, to be a lawyer?; (3) how should lawyers shoulder the mantles of power and authority in their professional lives?; and (4) what does it mean to "flourish" as a lawyer and how, if at all, is that different than flourishing as a person?⁵⁹

A two-day professionalism retreat may only scratch the surface of these important questions. But if we want the conversation to continue throughout practice, we must begin it during law school. My suspicion is that outside of the clinics, these discussions are happening infre-

⁵⁵ See Coughlin et al., supra note 10, at 369 n.47 (comparing medical school graduates' sense of professional identity to that of law school graduates).

⁵⁶ Carnegie Report, *supra* note 1, at 8, 27–28.

⁵⁷ See id. at 8, 13–14, 31; Beverly I. Moran, Disappearing Act: The Lack of Values Training in Legal Education—A Case for Cultural Competency, 38 S.U. L. Rev. 1, 16 (2010).

⁵⁸ See Stuckey et al., *supra* note 10, at 29, 170.

⁵⁹ Some but not all of these important questions lay at the heart of a vocational discernment retreat we offer at Boston College Law School twice per year. The "Sidebar" program is designed to help students examine what they want to do with their professional lives. Although the program itself is ecumenical, it is loosely based on St. Ignatius's Spiritual Exercises. The retreat's objectives are to help students discover their vocation in the law and to enable them to make personal and professional choices that are faithful to their values.

quently for most law students in the United States today. One approach to this deficit is to offer weekend professional identity retreats twice per year and to strongly encourage (if not require) participation by any law student who does not intend to enroll in a clinical or externship program.⁶⁰

VII. CAREER PATHS COURSE

The legal profession has become increasingly mobile. One of the key findings of the "After the JD" studies⁶¹ is that attorneys in the United States "change jobs more often today than they did in years past."⁶² Forty percent of today's law school graduates will change jobs within three years of graduation.⁶³ In the five-year period between 2003 and 2007, lawyers in the "After the JD II" study held *on average* two different jobs.⁶⁴ Perhaps more significantly, lawyers are switching jobs between and among practice settings: fifty-two percent of lawyers in the "After the JD II" study changed practice settings at least once by their seventh year after graduation.⁶⁵

How, if at all, should law schools respond to this sharp rise in lawyer mobility? First, we should help our students make thoughtful choices about their job decisions, so that they are less likely to be surprised or disappointed about the law practice environment in which they start their careers. For the top tiers of our classes, this may help them avoid the "tunnel vision" that so frequently causes some of our most successful law students reflexively to seek positions at large corporate law firms. ⁶⁶ For the bottom tiers of our classes, this might help students identify less commonly pursued career paths. In addition to helping all

⁶⁰ Segal, What They Don't Teach, supra note 6 ("The majority of law students [in the United States] still graduate without any clinical experience.").

⁶¹ Through a series of longitudinal studies of a nationally representative sample of law school (J.D.) graduates from the class of 2000, the American Bar Foundation and the National Association of Law Placement (NALP) have tracked career mobility for the first three years after graduation ("After the JD I") and in years four to seven after graduation ("After the JD II"). See NALP Found. For Law Career Research & Educ. & Am. Bar Found., After the JD: First Results of a National Study of Legal Careers 13 (2004) [hereinafter After the JD I], available at http://www.americanbarfoundation.org/uploads/cms/documents/ajd.pdf; Am. Bar Found. & NALP Found. For Law Career Research & Education, After the JD II: Second Results from a National Study of Legal Careers 12 (2009) [hereinafter After the JD II], available at http://law.du.edu/documents/directory/publications/sterling/AJD2.pdf.

⁶² After the JD II, *supra* note 61, at 54.

⁶⁸ See Cooney, supra note 54, at 438 (noting that forty percent of associates leave before their third year of law firm practice).

⁶⁴ After the JD II, *supra* note 61, at 54.

⁶⁵ Id. at 55, tbl.7.1.

⁶⁶ See Hess, supra note 19, at 78.

of our students think about their first job after law school, we should expose them to a broader conversation about career trajectories in the law, which will better equip them to assess professional opportunities as they arise throughout their careers. Each of these objectives can be accomplished by offering a "Career Paths" course (e.g., "Planning and Managing a Legal Career").⁶⁷

A "Career Paths" course can enable students to construct a framework for assessing their professional skills and values. These so-called "Career Paths" courses seem to be offered routinely in MBA programs, typically by a faculty member in a Business School's Organizational Behavior Department.⁶⁸ Yet such courses remain uncommon at law schools.⁶⁹ The goal of a careers course would be to have students engage in a self-assessment process that will help them clarify their professional interests, skills, and values.⁷⁰ After such a self-assessment, students would study the demographics of the legal profession, career options in different labor markets, and key competencies in various professional roles. They would also examine work-life balance issues in various sectors of the industry and the likelihood of being able to integrate successful careers in particular specialties with other personal and professional goals. The ultimate objective of the inquiry would be to help students create a professional development plan that will provide them with a framework for assessing career options. Such a framework not only will allow students to make better choices when considering career paths, but it also will help them make a more personal connec-

⁶⁷ Suffolk University Law School offers just such a career paths course. Course Descriptions, Law Practice Planning: Law as a Career and an Enterprise (Seminar), SUFFOLK UNIV. Law Sch., http://www.law.suffolk.edu/academic/jd/course.cfm?CourseID=222 (last visited Aug. 27, 2012). UCLA School of Law recently offered a career paths course targeted specifically to students intending to practice in the public interest field. Faculty, Richard Abel, UCLA Sch. of Law, http://law.ucla.edu/faculty/courses/Pages/richard-abel.aspx (last visited Aug. 27, 2012) (listing "Planning a Career in Public Interest Law" as a course offering).

⁶⁸ See, e.g., Brad Harrington, Syllabus, MB 830: Career Management and Work-Life Integration, (Fall 2007), http://workfamily.sas.upenn.edu/sites/workfamily.sas.upenn.edu/files/imported/syllabi/harrington.pdf (detailing Boston College Carroll School of Management Professor Brad Harrington's course for MBA students).

⁶⁹ Michael Serota, A Personal Constitution, 105 Nw. U. L. Rev. Colloquy 149, 150 (2010).

⁷⁰ There are possible variations on my proposed careers course. *See* Serota, *supra* note 69, at 150, 158–62 (recommending that law schools offer a course on "professional satisfaction," in which students would explore the intersection between their personal values and professional opportunities).

tion between their competencies, skills, and aspirations and the requirements needed to be successful in particular areas of practice.⁷¹

VIII. LAW PRACTICE MANAGEMENT COURSE

Employment patterns for lawyers entering the profession have changed dramatically in the past ten years. The percentage of recent graduates joining small firms (two to twenty-five lawyers) or starting their own law practices has increased over the past decade.⁷² The "Law Practice Management" course is an important vehicle for exposing students to some of the critical business issues they will confront in the practice of law.⁷³ Yet fewer than one-third of U.S. law schools appear to offer such a course in their curriculum.⁷⁴

The "business" of being a lawyer is not something that we should assume our students will be exposed to gradually in a large firm setting, with an extensive safety net of senior lawyers, accountants, public relations personnel, and human resources staff to support them as they learn. A rigorous Law Practice Management course would cover topics such as fee arrangements, billing, and collections; creating and maintaining systems for conflict-of-interest checks; business development and marketing; records retention and management; long-range strategic planning; and information systems technology for lawyers. Indeed, information technology is increasingly important in our profession, as both lawyers and their clients look for new and innovative ways to leverage technology to provide legal services in the most efficient manner possible.⁷⁵

⁷¹ See, e.g., Jennifer Gerarda Brown, Reform at the Micro Level: Planning for a Life in the Law, 43 Harv. C.R.-C.L. L. Rev. 645, 645–48, 650 (2008) (describing Quinnipiac Law School Professor Jennifer Brown's conception of such a careers course for law students).

⁷² Compare Class of 2011 National Summary Report, NALP (July 2012), http://www.nalp.org/uploads/NatlSummChart_Classof2011.pdf (finding that, of law school graduates entering firm practice after their graduation in 2011, 6.0 percent entered solo practice and 53.4 percent entered a small firm practice comprising two to twenty-five attorneys), with Trends in Law Firm Jobs-Classes of 1982–2001, NALP BULLETIN (Oct. 2002), http://www.nalp.org/2002octtrends (finding that, of law school graduates entering firm practice after their graduation in 2001, 2.8 percent entered solo practice and 40.2 percent entered a small firm practice comprising two to twenty-five attorneys).

⁷³ See Gary A. Munneke, *Managing a Law Practice: What You Need to Learn in Law School*, 30 PACE L. Rev. 1207, 1214–16 (2010) (providing a more complete description of potential content in a Law Practice Management course).

⁷⁴ See Debra Moss Curtis, Teaching Law Office Management: Why Law Students Need to Know the Business of Being a Lawyer, 71 Alb. L. Rev. 201, 206 (2008).

⁷⁵ See William D. Henderson, *Three Generations of U.S. Lawyers: Generalists, Specialists, Project Managers*, 70 Md. L. Rev. 373, 382–88 (2011). Professor William Henderson examines legal automation and process improvement as a tool for containing costs in the context of corporate representation. *Id.* It is certainly as important, if not more important, for our

Although a Law Practice Management course might be especially useful for third-year students intending to enter the profession in solo or small firm environments, it might also be extremely worthwhile for students intending to practice in medium to large firm settings. Students in the latter category would enter the profession with their eyes open to the business realities of law practice, would be prepared at an earlier stage of their careers to assume the mantle of leadership in their firms or departments, and would be more fully equipped with a "parachute" should they jump later to solo or small firm practice.

IX. ATTENTION TO THE APPOINTMENTS PROCESS

As modest as they may seem, the changes I propose above have enormous implications for the faculty appointments process. To realize fully the changes called for in the Carnegie Report, law schools must continue to broaden and deepen their clinical and externship offerings, make sure those programs are on sound financial footing, provide contracts and privileges to clinicians sufficient to attract and retain highly qualified faculty, and bridge the professional and cultural gaps that exist at many institutions between clinical and so-called "podium" faculty. Those complex issues are beyond the scope of this Essay. For But even in hiring podium professors, we need to be highly attentive to the implications of future curriculum reform on our hiring decisions.

Several studies have documented the alarming lack of practice experience possessed by faculty members entering the legal academy. A 1991 study reported that at the "top seven" law schools in the United States, only sixty-three percent of the faculty possessed prior practice experience.⁷⁷ For those having such experience, the average length of time spent in legal practice was 4.3 years.⁷⁸ Merely a decade later, another study suggested that the median practice experience of non-clinical and non-legal writing professors hired at top-tier law schools between 2000 and 2009 had declined to *one year*, excluding judicial

students to appreciate the potential capacity for technology to help improve access to justice for the lower and middle classes in our society.

⁷⁶ See generally Margaret Martin Barry et al., Clinical Education for This Millennium: The Third Wave, 7 CLINICAL L. REV. 1 (2000) (describing the history of clinical education); Peter A. Joy & Robert R. Kuehn, The Evolution of ABA Standards for Clinical Faculty, 75 Tenn. L. REV. 183 (2008) (detailing the history of the ABA's clinical faculty standard).

⁷⁷ Robert J. Borthwick & Jordan R. Schau, Note, Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors, 25 U. MICH. J.L. REFORM 191, 219 (1991).

clerkships.⁷⁹ If the goals of the Carnegie Report are to be realized, this trend needs to be reversed. Faculty with substantial practice experience have more real-life examples to draw from in fashioning problems and simulations for their students, are better positioned to serve as career mentors, and will be more capable of participating meaningfully in the formation of professional identity through retreats and co-curricular activities.⁸⁰ Certainly there are specific legal disciplines where practice experience is less critical than in others. For example, in searching for colleagues to teach legal history or jurisprudence there may be sound reasons to hire a J.D./Ph.D. whose practice experience is limited or nonexistent. But these should be the exceptions, not the norm.

A second focal point during the hiring process should be a candidate's interest in and capacity for innovation in the classroom. A candidate interviewing for a position to teach a podium course (e.g., Contracts or Family Law) typically is asked to explain how they would approach the course and what teaching methods they would employ.⁸¹ Too often, the answer provided by candidates to "the teaching question" is some version of "I would do what my favorite professor [X] did." When appointments candidates have not reflected on this question beyond choice of casebook and topics to be covered, that is a fairly strong indication that they do not rank teaching as a particularly high priority in their constellation of responsibilities as law professors and/or that they are unlikely to approach the role with novel ideas for improvement. We should recruit and hire only those candidates who possess the energy, excitement, and innovative spirit necessary to challenge the status quo and envision what truly is possible in legal education.

Of my nine proposals, this one surely will engender the most controversy. Hiring faculty members with more practice experience will for some conjure up images of legal academy as "trade school," a pejorative label that undoubtedly contributes to faculty divisiveness on the important subject of curriculum reform.⁸² By now, however, it should be be-

⁷⁹ Brent E. Newton, Preaching What They Don't Practice: Why Law Faculties' Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy, 62 S.C. L. Rev. 105, 129–30 (2010).

 $^{^{80}}$ See Moran, supra note 57, at 41–42 (describing how professors' uniform experiences limit faculty bodies' perspectives).

 $^{^{81}}$ Don Zillman et al., Uncloaking Law School Hiring: A Recruit's Guide to the AALS Faculty Recruitment Conference, 38 J. LEGAL EDUC. 345, 353 (1988).

⁸² See Lipshaw, supra note 50, at 34 & n.115; Segal, What They Don't Teach, supra note 6; see also Brian Leiter, David Segal's Hatchet Job on Law Schools . . ., Brian Leiter's Law School Reports, (Nov. 20, 2011, 5:14 PM), http://leiterlawschool.typepad.com/

yond peradventure that law schools are both graduate schools in the humanities *and* professional schools; faculty members have a responsibility both to contribute to the advancement of intellectual discourse about the law and to train their students as future practitioners. Just as it is fallacious to suggest that a faculty member should either engage students in close doctrinal analysis or teach them law practice skills (they should do both), it is equally fallacious to suggest that an emphasis on new pedagogical methods necessarily represents a devaluation of scholarship. Clearly we must hire faculty members who have both a capacity to engage in rigorous, insightful scholarship and a capacity to serve as innovators in the classroom.

Conclusion

It has been five years since the Carnegie Report *Educating Lawyers* called for an "integrated" approach to legal education that teaches professional skills and ethics across the curriculum.⁸³ Yet only two schools that I know of—Washington and Lee University School of Law and Vermont Law School—have undertaken what may arguably be considered an integrated approach to curriculum design.⁸⁴ The fact that the legal academy has been so slow to respond since 2007 is not surprising—a fully integrated approach to teaching professional skills (such as the medical school model) will require major resource reallocations, realignment of teaching responsibilities, redesign of courses, and a change to graduation requirements. Although I fully support such a comprehensive approach, the pragmatist in me knows that it will take years to accomplish.

My goal in this Essay has been to suggest some modest, interim reforms that are perfectly attainable in the short run and can be undertaken *now* to better prepare our graduates for the practice of law. Individual faculty members and administrators who support the ideals of the Carnegie Report should undertake these initiatives immediately, without waiting for the results of faculty studies and fundraising initiatives. None of these nine proposals require substantial new resources or major structural changes to the law school program.

leiter/2011/11/another-hatchet-job-on-law-schools.html (offering a provocative rejoinder to David Segal's article in the *New York Times*).

⁸³ CARNEGIE REPORT, supra note 2, at 12.

⁸⁴ See Margaret Martin Barry, *Practice Ready: Are We There Yet*?, 32 B.C. J.L. & Soc. Just. 247, 259–62, 270–72 (2012) (describing curricular reforms at Washington and Lee University School of Law, Vermont Law School, and other institutions). Professor Margaret Barry offers her own provocative suggestions for a model law school curriculum. *Id.* at 266–76.

Recommendations I to V are pedagogical approaches that can be undertaken by individual law school faculty members in the courses they presently teach. We are all in charge of our own classrooms and do not need to wait for permission to improve our pedagogical methods. Experimenting with new methodologies will not only improve the educational experience for our students, but it will also reinvigorate and reenergize us as teachers. Many of the teaching methods I have described above are already being used by some of the most effective law professors across the country.⁸⁵

Recommendation VI is a student services initiative that interested Deans for Students could undertake as a pilot project (with the support and participation of committed faculty and alumni) as a vehicle for exploring issues of professional identity in a casual, retreat-like setting. Recommendations VII and VIII are new courses that Academic Deans could enlist qualified adjuncts to teach beginning next year, modeled quite readily after courses already being taught at some law schools and many business schools across the country. Finally, Recommendation IX is a challenge to all of us, in exercising our individual votes in the appointments process, to remember the conclusions of the Carnegie Report and to exercise our fiduciary responsibilities in a fashion that maximizes our potential to make real progress toward those goals.

My proposals are not substitutes for a thoughtful, integrated approach to experiential education. I certainly hope they will not be used to placate reformers and avoid the very hard work that lies ahead. Yet considering that it may take decades to realize the full promise and potential of the Carnegie Report, none of us should be content to let the perfect be the enemy of the good. Our current students deserve our best efforts to make progress now toward improving the professional education of lawyers, even if it means proceeding in a piecemeal fashion.

⁸⁵ See Stuckey et al., supra note 10, at 275.