

REDISCOVERING THE LAWYER SCHOOL: CURRICULUM REFORM IN WISCONSIN

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I. INTRODUCTION

It would not be quite accurate to say that legal education in the United States has come full circle.¹ But it has indeed returned to some of its original methods and objectives while simultaneously expanding and adapting in new ways to respond to an increasingly complex world. The journey has reflected changing theories about the nature of law itself, and a constant, if evolving, tension between legal education as a scholarly academic enterprise in its own right and as a professional school devoted to the practical task of preparing lawyers to practice law.

In its early years, legal education in the United States focused primarily on training lawyers for practice. As legal education in the United States has become more formalized and entrenched as an academic enterprise in the university, it has also become increasingly theoretical and doctrinal. In turn, over time, the legal profession has increasingly voiced concern that law schools are failing to prepare law students to practice law. Criticism focuses on both the heavy emphasis on doctrine and theory, to the exclusion of practice, and the pedagogical methods of American law schools, particularly the traditional emphasis on the case method and the Socratic method. In 1933, Jerome Frank lamented the narrow focus of American legal education and the drift from the study of law in its full richness as a profession. Answering his own now-famous query posed in the title of his essay, *Why Not a Clinical Lawyer-School?*,² Frank concluded:

Whether it be painting, writing, or practicing law, the best kind of education in an art is usually through apprentice training under the supervision of men, some of whom have themselves

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¹ However, it has been suggested. See Jan Stiglitz et al., *The Hurricane Meets the Paper Chase: Innocence Projects New Emerging Role in Clinical Legal Education*, 38 CAL. W. L. REV. 413, 416 (2002) ("The method of legal education in the United States has come full circle.").

² Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933).

become skilled in the actual practice of the art. That was once accepted wisdom in American legal education. It needs to be rediscovered.³

While many curricular and pedagogical issues are currently percolating through the American legal educational system, one of the most prominent and enduring is the effort, responsive to Frank's query, to broaden and deepen legal education to include more than just doctrine and case analysis skills. In places like the University of Wisconsin Law School, where I teach, reform is under way, both through evolutionary forces and strategic design, to expand the academic experience to include a fuller understanding of law as a profession and of law in a larger context, to join practice and theory, and to prepare graduates to more ably perform as attorneys upon graduation.

This essay briefly traces some of the history of legal education in the United States, examining events that shaped the modern American law school and the forces that, in turn, provide the impetus for change. The essay then examines how those forces apply at one law school in particular, the University of Wisconsin Law School, and the curriculum reform ideas that those pressures are engendering at that law school.

II. FROM PRACTICE TO THEORY AND BACK: THE PATH TO MODERN CURRICULUM REFORM

A. ORIGINS OF THE MODERN AMERICAN CURRICULUM

From America's inception through the period of the Civil War, legal education was largely practice-oriented; not based on academic study at a university, it consisted almost exclusively of apprenticeships with a practicing lawyer.⁴ These apprenticeships, however, tended to be exploitative; the lawyers rarely did much teaching, and students essentially performed menial and clerical tasks in service of a master, while "reading the law" from the lawyer's collection of legal treatises.⁵ But the learning was, to

³ *Id.* at 923 (footnote omitted).

⁴ Stephen M. Feldman, *The Transformation of an Academic Discipline: Law Professors in the Past and Future (or Toy Story Too)*, 54 J. LEGAL EDUC. 471, 473 (2004); Stiglitz et al., *supra* note 1, at 416; Frank, *supra*, note 2, at 909.

⁵ David S. Romantz, *The Truth About Cats and Dogs: Legal Writing Courses and the Law School Curriculum*, 52 U. KAN. L. REV. 105, 109 (2003). The apprentice

some degree at least, experiential and steeped in daily observation of what lawyers and courts were doing.⁶

The first law schools formed in the late eighteenth century. For the most part, these were private, non-degree-conferring schools centered in the offices of lawyers and judges who offered particularly successful apprenticeships.⁷ These early law schools were, as Jerome Frank put it, “merely the apprentice system on a group basis.”⁸ During the latter part of the eighteenth and early part of the nineteenth century, a few colleges attempted to create law schools. These colleges attempted either to incorporate existing proprietary law schools or to develop their own, but few succeeded.⁹ By the late 1800s, few American law schools remained.¹⁰

Instruction at these early law schools consisted of lectures delivered by practicing lawyers and judges, who often merely read their notes verbatim to their assembled students.¹¹ The law was black-letter, and the learning was by rote. Legal texts were treatises, textbooks that offered generalities about the substantive law. Indeed, many of the textbooks—treatises by Blackstone, Kent, and Story, for example—began as lectures.¹² Increasingly, the focus on lectures and treatises on the substantive law began to open a “rift . . . between theory and practice.”¹³

The modern American law school began to emerge in the 1870s when Christopher Columbus Langdell became dean of the Harvard Law School. In the postbellum era, American universities were influenced by European scholarship that emphasized

experiences were also uneven and narrow, and generally inadequate as an exclusive method of legal training. George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162, 163 (1974).

⁶ Suzanne Valdez Carey, *An Essay on the Evolution of Clinical Legal Education and Its Impact on Student Trial Practice*, 51 U. KAN. L. REV. 509, 510 (2003); Frank, *supra* note 2, at 909.

⁷ Feldman, *supra* note 4, at 473; Romantz, *supra* note 5, at 109.

⁸ Frank, *supra* note 2, at 909.

⁹ Romantz, *supra* note 5, at 110.

¹⁰ Stiglitz et al., *supra* note 1, at 416.

¹¹ Feldman, *supra* note 4, at 473.

¹² Eric Mills Holmes, *Education for Competent Lawyering – Case Method in a Functional Context*, 76 COLUM. L. REV. 535, 543 (1976).

¹³ Frank, *supra* note 2, at 909.

the “scientific method” and the pursuit of objective or universal truths.¹⁴ Seeking a place in the new universities, law schools, led by Langdell, recognized that they would have to conform to this new model of a university discipline. In sum, legal scholarship and education had to become “scientific.” As Langdell put it, “[I]f law be not a science, a university will best consult its own dignity in declining to teach it. If it be not a science, it is a species of handicraft, and may best be learned by serving an apprenticeship to one who practices it.”¹⁵

Under the scientific approach to law, Langdellians sought to discover objective legal truths, believing that through inductive reasoning they could distill from the cases axiomatic legal principles that could then govern all possible legal disputes.¹⁶ Langdell’s approach emphasized research utilizing original sources and primary documents, usually appellate decisions. Through careful analysis of appellate opinions, legal scientists could discover principles, classify and organize doctrine, and develop a structure that would make sense out of a complex world, much as Darwin had arranged and classified species.¹⁷ To Langdellians, the common law was a perfectly rational system of principles and rules, independent of other aspects of society. The rules of law absolutely and rationally resolved all legal disputes, without consideration of the social consequences. Langdell was, indeed, resistant to empiricism, believing that the science of law confined studies to books and cases and required no inquiry into the outside world or other disciplines.¹⁸ To the legal scientist, the law

¹⁴ See Laura I. Appleman, *The Rise of the Modern American Law School: How Professionalization, German Scholarship, and Legal Reform Shaped Our System of Legal Education*, 39 NEW ENG. L. REV. 251, 274 (2005); Feldman, *supra* note 4, at 475.

¹⁵ WILLIAM R. JOHNSON, *SCHOOLED LAWYERS: A STUDY IN THE CLASH OF PROFESSIONAL CULTURES* 103 (1978) (quoting C.C. Langdell, Address before the Harvard Law School Association (Nov. 6, 1886), in *A RECORD OF THE COMMEMORATION, NOVEMBER FIFTH TO EIGHTH, 1886, ON THE TWO HUNDRED AND FIFTIETH ANNIVERSARY OF THE FOUNDING OF HARVARD COLLEGE* 97-98 (University Press, 1887)). Langdell, of course, was not the first to consider law a science; the law has been considered a science “since the time of the Ancients.” Holmes, *supra* note 12, at 546 (quoting Roscoe Pound, *Jurisprudence, in HISTORY AND PROSPECTS OF THE SOCIAL SCIENCES* ch. 9 (Harry Elmer Barnes ed., 1925)).

¹⁶ Feldman, *supra* note 4, at 475.

¹⁷ See Appleman, *supra* note 14, at 285; Feldman, *supra* note 4, at 476-77.

¹⁸ See Appleman, *supra* note 14, at 290; Feldman, *supra* note 4, at 478.

library was the laboratory.¹⁹ The legal scholar's job was to "discover and articulate high-level principles, to deduce more specific rules, and to criticize judicial decisions that had failed to follow this abstract doctrine."²⁰

Through the scientific approach to law, law schools sought to move from trade-school status to attain standing as true professional schools and legitimate members of the scholarly academy. As one observer has put it, Langdell's new scientific methodology permitted law schools, finally, to

secure a legitimacy within the university. Law schools shed their status as trade schools or adjuncts to the liberal arts and assumed a cloak of academic respectability. The notion that legal education consisted of craft-training, in which the private practitioner or judge transmitted skills to the novice, had been overcome.²¹

Langdell emphasized that, "[w]hat qualifies a person . . . to teach law is not experience in the work of a lawyer's office, not experience in dealing with law, not experience in the trial or argument of a case—not experience, in short, in using law, but experience in learning law."²² These conflicts, between the practical and the theoretical, and between the desire of law faculty for legitimacy as scholars rather than mere trade school masters, have marked the course of subsequent American legal education.

The more enduring aspect of Langdell's legacy, however, was not his philosophy of law, but his method of teaching law. Langdell sought to break not only from the apprenticeship model, but also from the tradition of teaching by lecture and reliance on textbooks and treatises. As a corollary to Langdell's notion of law as science—that law is best understood by inductive reasoning from primary sources (appellate decisions)—Langdell

¹⁹ See Frank, *supra* note 2, at 907 ("Langdell unequivocally stated as the fundamental tenet of his system of teaching 'that all the available materials . . . are contained in printed books.' The printed opinions of judges are, he maintained, the *exclusive* repositories of the wisdom which law students must acquire to make them lawyers.").

²⁰ Feldman, *supra* note 4, at 476-77.

²¹ Holmes, *supra* note 12, at 543-44 (footnote omitted); see also Grossman, *supra* note 5, at 164.

²² Langdell, *supra* note 15, at 86.

introduced the “case method” of legal instruction.²³ Just as Langdellian scholars turned to the study of appellate decisions to understand law, they taught by guiding students through the analysis of original source materials—again, appellate opinions.²⁴ Through a process of Socratic questioning, law professors helped students discover or recognize the legal principles within those opinions.²⁵ The case method was viewed as the most efficient and rigorous pedagogical method for learning the science of law.²⁶

B. THE GENESIS OF REFORM

Langdell’s notion of law as a science did not survive the realism movement of the 1920s and 1930s.²⁷ In a new age of empiricism, realists debunked Langdell’s abstract formalism, noting that formal rules of law play only a small part in the process of deciding disputes and organizing behavior, and that appellate opinions provide only a “censored exposition” of a judge’s asserted reasons for deciding a case in a given way.²⁸ Langdell’s legal science did not survive the realization that law is “contextual, not universal, and dependent on a host of social, political, and cultural factors.”²⁹

Langdell’s method of teaching law, however, did survive. The case method, implemented through a Socratic dialogue, has undergone substantial revision since its inception, but it remains the dominant pedagogical methodology in American law schools today.³⁰ Ironically, while the theoretical underpinning of the method—the scientific approach to law—has been dismissed, the

²³ Feldman, *supra* note 4, at 476; Grossman, *supra* note 5, at 163.

²⁴ Feldman, *supra* note 4, at 476.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Carey, *supra* note 6, at 511; Grossman, *supra* note 5, at 166-67.

²⁸ See Frank, *supra* note 2, at 911. As Professor Feldman has put it, “[t]he realist critique of Langdellian legal science stressed that the Langdellians’ so-called axiomatic principles and logically deduced rules were often no more than ‘transcendental nonsense’ – concepts with no basis in reality.” Feldman, *supra* note 4, at 483-84.

²⁹ Romantz, *supra* note 5, at 105.

³⁰ John O. Mudd, *Academic Change in Law Schools*, 29 GONZ. L. REV. 29, 39-40 (1993-94).

case method has remained the hallmark of American legal education.³¹ Calvin Woodward's observation almost forty years ago remains almost as true today:

Langdell's first-year is our first-year; his method—briefing cases, analyzing holdings, socratic probing—is our method. In other words, legal education remains in form a kind of Procrustean bed in which all learning for lawyers is forced to lie. I think I know why Langdell and his colleagues made it so. Frankly, I do not know why we do, unless it is pure inertia. . . . I conclude that though we have more or less thoroughly rejected the philosophy of the case method, like Maitland's forms of action, it still rules us from the grave.³²

No doubt the case method has persisted in part because of sheer inertia. The method survives also because it has value as an analytical and pedagogical tool, even when divorced from Langdell's notion of law as science. As a response to the previous instructional methodology that relied upon lectures, textbooks, and rote memorization of legal principles, the case method offered significant pedagogical advancements. The case method, when combined with some form of Socratic dialogue, is designed to engage students as active learners, to help them think critically about the law, analyze legal principles, trace the development of legal doctrine, critique judicial decision making, and (through questions using hypotheticals) apply legal principles to myriad fact scenarios.³³ The method, therefore, is designed to teach at least some of what it takes to "think like a lawyer."³⁴

But over-reliance on the case method—at least as practiced in American law schools—unduly limits legal education. For

³¹ Calvin Woodward, *The Limits of Legal Realism: An Historical Approach*, 54 VA. L. REV. 689, 727-28 (1968).

³² Mudd, *supra* note 30, at 40 (citing Woodward, *supra* note 31, at 727-28).

³³ See, e.g., Paul Brest, *The Responsibility of Law Schools: Educating Lawyers as Counselors and Problem Solvers*, 58 LAW & CONTEMP. PROBS. 5, 7 (1995) (noting that "[the case] method of active learning turned out to be a superb way of inculcating the analytic skills and the skepticism about easy answers that are requisite to competency in any career in the law."); see also Grossman, *supra* note 5, at 165.

³⁴ Romantz, *supra* note 5, at 119.

years, even defenders of the case method have pointed out the narrowing effects of the almost exclusive reliance on the method.³⁵ While the method does a fair job of teaching case-analysis skills, its focus on doctrine and analysis of judicial opinions fails to develop the full range of intellectual capacities and skills required of a lawyer. As Eric Mills Holmes has observed, while the case method can teach

a basic capacity for legal reasoning, . . . it develops only a few of the intellectual capacities which a lawyer ought to possess. Although it can be used with admirable effectiveness in the first-year, the endless succession of cases throughout three years of legal education can be a narrowing experience which dulls student response to broader issues and perspectives. The case method of teaching can therefore be said to sharpen a student's mind by narrowing it."³⁶

To some extent, the limitations of the case method, as practiced in American law schools, arise from the fact that the "cases" that are studied are not really cases at all, but merely the end-product of a case—the *post hoc* rationalizations of judges—almost always appellate judges—for the decisions they reach. But lawyers do not just analyze judicial decisions. Lawyers solve problems, and they work with raw materials much more complex and variable than judicial opinions. As Jerome Frank put it, "There are a multitude of factors which induce a jury to return a verdict, or a judge to enter a decree. Of those numerous factors, but few are set forth in judicial opinions."³⁷ Anthony Amsterdam has explained that legal education in America continues to be "too narrow because it [has] failed to develop in students ways of

³⁵ See *id.* at 120-21.

³⁶ Holmes, *supra* note 12, at 539. The case-Socratic method has also been criticized for its detrimental psychological effects on some students, and because large class sizes mean that for most students the learning is not truly active, but vicarious, as most students quietly observe other students engage in dialogue with the teacher. See Mitu Gulati et al., *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235, 238 (2001); Grossman, *supra* note 5, at 166; Mudd, *supra* note 30, at 39 n.31 (citing Andrew S. Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 93 (1968)).

³⁷ Frank, *supra* note 2, at 910.

thinking within and about the role of lawyers—methods of critical analysis, planning, and decision-making. . . .”³⁸ The case method also artificially limits legal analysis to static situations with fixed facts. Lawyers in practice must be capable of solving problems in a real world where facts are typically more important than the law, where facts are anything but fixed, and where the law plays out in ways never envisioned by policy- and law-makers.

C. THE GROWING NEED FOR RELEVANCE

As law schools entrenched their position as scholarly enterprises in universities, primarily by devotion to doctrinal study through the case-Socratic method, criticisms emerged from both academics and the practicing bar that law schools were not doing a good job at training law students to practice law. In the 1930s, Jerome Frank harshly criticized the Langdellian case method and called for clinical training in law schools to expose students to the myriad skills and realities of practicing law.³⁹ Similarly, in the 1930s, John Broadway, Director of the Duke Legal Aid Clinic, called for more clinical instruction designed to

(1) bridge the gap between theory and practice; (2) ‘synthesize’ substantive law with procedural law; (3) introduce and integrate the client and other personalities into the ‘study and practice of law’; (4) expose students to advocacy; and (5) teach students to analyze a problem from the beginning, rather than in the end. . . .⁴⁰

In 1948, Karl Llewellyn complained that law schools and law teachers had

fallen into a general practice of seeing the vital lines of organization of a course . . . as consisting rather of ‘subject matter’ than of the skills of the lawyer; as consisting of bodies of rules of law to be extracted, arranged, and

³⁸ Anthony G. Amsterdam, *Clinical Legal Education – A 21st Century Perspective*, 34 J. LEGAL EDUC. 612, 612 (1984); see also Roy T. Stuckey, *Preparing Students to Practice Law: A Global Problem in Need of Global Solutions*, 43 S. TEX. L. REV. 649, 651-53 (2002).

³⁹ See generally Frank, *supra* note 2.

⁴⁰ Carey, *supra* note 6, at 514 (citing John S. Bradway, *Some Distinctive Features of a Legal Aid Clinic Course*, 1 U. CHI. L. REV. 469, 469-72 (1933)).

learned rather than as a body of principles (or even rules) of the legal crafts which have to be studied both in theory and in practice in order to develop an adequate craftsmanship.⁴¹

Dean John O. Mudd of the University of Montana Law School more recently has echoed the observation that the current curricular map drawn along substantive boundaries (torts, contracts, property, etc.) is different from that encountered in law practice: the landscape of law practice “is not populated with cases and doctrine, but with clients and their problems. The lines between the fields of law are blurred or missing altogether.”⁴² Dean Mudd has concluded that “[t]he most significant challenge facing contemporary legal education is the expansion of traditional programs to include more training in practical skills and an exposure to new areas, not, however, at the expense of legal education’s traditional strengths.”⁴³

Practitioners and judges have added their voices to the call for more practical training. In the 1950s, Arch M. Cantrall, a leading practicing lawyer, endorsed more exposure in law school to both theoretical and practical training, including “instruction

⁴¹ Karl N. Llewellyn, *The Current Crisis in Legal Education*, 1 J. LEGAL EDUC. 211, 212 (1948). Others have also noted that the over-emphasis on doctrine has resulted in law schools organized around substantive areas of law, like torts and contracts, rather than underlying theory and skills of application. See, e.g., Robert Keeton, *Teaching and Testing for Competence in Law Schools*, 40 MD. L. REV. 203, 210 (1981).

⁴² John O. Mudd, *Beyond Rationalism: Performance-Referenced Legal Education*, 36 J. LEGAL EDUC. 189, 197 (1986).

⁴³ John O. Mudd, *Thinking Critically About “Thinking Like a Lawyer”*, 33 J. LEGAL EDUC. 704, 704 (1983); see also Alex Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Growing Disjunction Between Legal Education and the Legal Profession*, 64 S. CAL. L. REV. 1231 (1991); Keeton, *supra* note 41, at 214-15 (arguing that law schools must broaden and diversify the curriculum to include more study of theoretical foundations and practical applications of the law (including skills), in addition to doctrine); Michael Meltsner, *Healing the Breach: Harmonizing Legal Practice and Education*, 11 VT. L. REV. 377 (1986); Frank Michelman, *The Parts and the Whole: Non-Euclidian Curricular Geometry*, 32 J. LEGAL EDUC. 352, 352 (“[T]he curriculum is excessively committed to doctrinal learning as differentiated on the one hand from theoretical learning and on the other hand from practical learning.”); John O. Mudd & John W. LaTrielle, *Professional Competence: A Study of New Lawyers*, 49 MONT. L. REV. 11 (1988); Barbara Woodhouse, *Mad Midwifery: Bringing Theory, Doctrine, and Practice to Life*, 91 MICH. L. REV. 1977 (1993).

on practice and client development, law office management, and practical legal ethics.”⁴⁴ In 1969, U.S. Supreme Court Chief Justice Warren Burger opined that “[t]he shortcomings of today’s law graduate lies not in a decent knowledge of law but that he has little, if any, training in dealing with facts or people—the stuff of which cases are really made.”⁴⁵ In 1992, federal appeals court judge Harry T. Edwards complained in the *Michigan Law Review* about “the growing disjunction between legal education and the legal profession,” stemming from the failure of law schools to “train[] ethical practitioners and produc[e] scholarship that judges, legislators, and practitioners can use.”⁴⁶ As Stephen Feldman has observed recently, “Today a growing gulf stretches between legal scholarship and the practice of lawyers and judges, who regularly lament the inadequacy of legal scholarship and decry its uselessness for their work.”⁴⁷

The American Bar Association has repeatedly—and increasingly—emphasized the need for more law school training in the skills and values necessary to practice law. In a series of reports over several decades, culminating with what became known as the MacCrate Report in 1992, the ABA sought to address the lack of competence among graduating lawyers.⁴⁸ While acknowledging that law schools cannot be expected in three years of schooling to convert even able law students into fully competent

⁴⁴ Carey, *supra* note 6, at 514 (citing Arch M. Cantrall, *Law Schools and the Layman: Is Legal Education Doing Its Job?*, 38 A.B.A. J. 907 (1952); Grossman, *supra* note 5, at 170).

⁴⁵ Chief Justice Warren Burger, U.S. Supreme Court, Address at the ABA Convention Prayer Breakfast (Aug. 10, 1969), *quoted in* Dominick R. Vetri, *Educating the Lawyer: Clinical Experience as Integral Part of Legal Education*, 50 OR. L. REV. 51, 59-60 (1970).

⁴⁶ Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 34 (1992).

⁴⁷ Feldman, *supra* note 4, at 487.

⁴⁸ In 1921 the ABA published “The Reed Report,” more formally known as *Training for the Public Profession of the Law*. ALFRED Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW (1921). In 1979, the ABA published the “Cramton Report,” named after Roger G. Cramton, Chairman of the Task Force that published the Report. That report’s formal title was *Report and Recommendations on the Task Force on Lawyer Competency: The Role of Law Schools*. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, REPORT AND RECOMMENDATIONS ON THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF LAW SCHOOLS (1979). The “MacCrate Report,” named after Robert MacCrate, Chairman of the Task Force that produced that report, was formally

and skilled lawyers, the Report noted that surveys reveal that lawyers believe their law school education was inadequate and increasingly irrelevant to their needs as practicing lawyers.⁴⁹ The MacCrate Report recommended that each law school undertake a study to determine which skills and values are currently taught in the curriculum and develop a program of instruction in skills and values.⁵⁰ The MacCrate Report created a storm of discussion about legal education, and it particularly energized the growing community of clinical teachers and proponents of clinical legal education.⁵¹

The call to relevance in legal education has not been without controversy. A number of law school deans immediately reacted to the MacCrate Report with sharp criticism, ostensibly focused primarily on the cost of its recommendations.⁵² Robert MacCrate responded by querying

how a law school . . . c[ould] derive 86 percent of its income from student tuition, send its graduates as a result out into practice with huge personal debt, and not be willing to assign equal priority in the law school, along with developing the law, to preparing its students to participate effectively in the legal profession.⁵³

known as *Legal Education and Professional Development – An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*. SECTION ON LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereinafter MACCRATE REPORT].

⁴⁹ MACCRATE REPORT, *supra* note 48, at 6.

⁵⁰ *Id.* at 331 (Recommendation #8).

⁵¹ For a summary of the ABA reports, symposia, and scholarly articles directly responding to the MacCrate Report in the years immediately following its publication, see Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109, 116-17 nn.33-37 (2001).

⁵² *Id.* at 117-18.

⁵³ *Id.* at 118 (quoting Robert MacCrate, *Preparing Lawyers to Participate Effectively in the Legal Profession*, 44 J. LEGAL EDUC. 89, 92 (1994)).

D. THE EMERGENCE OF SKILLS AND VALUES, AND PROBLEM-ORIENTED, EXPERIENTIAL LEARNING

Despite the controversy, even before the MacCrate Report—and with increasing rapidity since—American law schools have added skills and values components to the curriculum. Legal research and writing is an established part of the required curriculum at every American law school, and law schools offer an array of simulation-based trial advocacy classes and lawyering skills programs.⁵⁴ Clinical courses, in which law students learn by working on real cases solving problems for real clients under clinical faculty or other attorney supervision and instruction,⁵⁵ began to emerge in earnest in the 1960s and 1970s.⁵⁶ Since then, clinical programs have grown and have moved into the mainstream of law school curricula.⁵⁷ Indeed, despite its call for even more attention to skills and values, the MacCrate Report itself concluded that, “[u]nquestionably, the most significant development in legal education in the post-World War II era has been the growth of the skills-training curriculum.”⁵⁸ Scholars have identified the clinical legal education movement as one of only three movements in legal education in the last half-century that have entered the mainstream of legal education (the other two

⁵⁴ The University of Wisconsin Law School, for example, has had a lawyering skills program since 1949. The program strives to teach law students some of the essential skills needed for practicing law in a variety of contexts. The course, organized and run by clinical faculty, utilizes guest instructors who are all practicing attorneys in various fields of specialty, who volunteer one week at a time to teach and run students through simulation exercises related to their area of expertise. Univ. of Wis. Law Sch., Lawyering Skills Course, <http://www.law.wisc.edu/lawskills/gp/courses.htm>. (last visited Feb. 13, 2006).

⁵⁵ Some clinical programs involve externships, which are placements in legal offices outside the law school, usually accompanied by some accompanying oversight or instruction within the law school. Others involve in-house clinics, in which law school clinical faculty run the programs, directly supervising the students in their case work, often accompanied by classroom or group discussion components. Univ. of Wis. Law Sch., Clinical Education & Skills Training, <http://www.law.wisc.edu/clinics/clinicaleducationskillstraining.htm> (last visited Feb. 13, 2006).

⁵⁶ For a history of the clinical legal education movement, see William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Profession: A View from the First Floor*, 28 AKRON L. REV. 463, 465-71 (1995).

⁵⁷ Carey, *supra* note 6, at 528.

⁵⁸ MACCRATE REPORT, *supra* note 48, at 7.

being legal realism and the proliferation of courses in the second and third years of law school).⁵⁹

To say that clinical legal education or skills and values education have entered the mainstream of legal education is not, however, to say that they receive the attention, status, and resources they need. That was, after all, the point of the MacCrate Report in 1992, and of much of the scholarship decrying the continuing gap between law schools and the practice of law. In 1993, following the MacCrate Report, the ABA amended its law school accreditation standards to state explicitly that law schools have a responsibility to maintain an educational program designed to prepare graduates to participate effectively in the legal profession.⁶⁰ In 1996, the ABA strengthened the standards related to clinical legal education and skills and values programs.⁶¹ Under the new standards, law schools are required, among other things, to provide full-time clinical teachers the opportunity to earn tenure or similar job security; provide clinical faculty the opportunity to participate in governance reasonably similar (but not necessary identical) to other faculty; provide full-time legal writing directors and teachers adequate compensation to attract and retrain competent teachers; offer all students opportunities for instruction in professional skills; and offer live-client practice experience for credit through clinics or externships.⁶² Thus, while the ABA Standards now require law schools to give more attention to clinical and skills-based training, they do not require parity with other law school programs or faculty, and expressly provide that, while schools must “offer live-client or other real-life experiences,” they “need not offer this experience to all students.”⁶³

⁵⁹ Mudd, *supra* note 30, at 30 n.3 (citing Murray L. Schwartz, *Economics in Legal Education*, 33 J. LEGAL EDUC. 365 (1983); John C. Weistart, *The Law School Curriculum: The Process of Reform*, 1987 DUKE L.J. 317).

⁶⁰ See ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standard 301 (2005), available at <http://www.abanet.org/legaled/standards/2005-2006standardsbook.pdf>. [hereinafter ABA STANDARDS].

⁶¹ *Id.* (Standard 302).

⁶² *Id.*; see also Stuckey, *supra* note 38, at 145.

⁶³ ABA STANDARDS, *supra* note 60 (Standard 302(b)); Stuckey, *supra* note 38, at 146-47.

Hence, clinical and skills-based programs have entered the mainstream only in the sense that they are now deemed essential parts of a law school's curriculum; no law school would or could contemplate attempting to eliminate its skills, legal research and writing, or clinical programs. But at most law schools, such programs are still not fully equal partners: at most schools clinical experiences are not required for graduation;⁶⁴ clinical faculty and legal writing faculty are usually not afforded tenure track, salary parity with traditional faculty, or, at many schools, full participatory rights in faculty governance; and clinical or experiential teaching methodologies are not well integrated into the mainstream doctrinal curriculum. Significant gains have been made in status, job security, faculty governance rights, and pay for clinical faculty, but the gap between clinical faculty and traditional faculty remains.⁶⁵

Clinical education and skills education in general, remain secondary priorities at most law schools. In part, this does reflect cost factors; the low student-teacher ratios required for the individual attention offered by these programs make this a sometimes expensive mode of educating law students. More fundamentally, however, the lower status of these programs reflects tradition and the ongoing concern by law faculty about their place as scholars in a modern university. Skills training and anything that smacks of preparation for practice still conjures fear of the trade school. Having worked so hard to secure a place in the academy, law faculties are reluctant to risk losing it.

⁶⁴ A 2002 ABA study found that skills and simulation opportunities in law schools had increased in the decade since the MacCrate Report, but that still only twenty-nine percent of law schools required some form of skills, clinical or simulation course for graduation. See ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, A SURVEY OF LAW SCHOOL CURRICULA 1992-2002 6 [hereinafter ABA SURVEY OF CURRICULA]. Indeed, not all law schools even offer clinical opportunities – in 2002, 83.5 percent of law schools reported regularly offering in-house live clinical opportunities. *Id.* at 7.

⁶⁵ At the University of Wisconsin Law School, for example, clinical faculty now carry the title of “Clinical Professor,” “Clinical Associate Professor,” or “Clinical Assistant Professor;” have established criteria for promotion through those titles; have made significant gains in salary; serve on faculty committees and have limited voting rights at faculty meetings; and have extended “rolling horizon” employment contracts that offer considerable job security – all new developments within the last ten to fifteen years. But differences remain between clinical and other faculty in terms of salary, tenure eligibility, research support, and (per University rules that are binding on the Law School) voting rights.

In today's law schools, the apparent dichotomy between professional and scholarly purposes has developed into what has been called "a massive case of intellectual schizophrenia."⁶⁶ As Professor Holmes suggests:

The fact that law teachers achieved academic respectability only with great difficulty may account for the fear among modern legal educators of skills-training, for their zealous desire to avoid any semblance of a vocational trade school, and for their belief in the case method as the only legitimate tool for training law students.⁶⁷

More recently, Professor Feldman has explained,

Because [law professors traditionally] thought of themselves as lawyers (and because they often received higher salaries than their university colleagues), law professors were never completely accepted or comfortable in the universities, though they also were never fully accepted as legal practitioners (because, after all, they were not the same as other lawyers).⁶⁸

But the fear of skills training misunderstands the value of experiential and practice-oriented education. Anthony Amsterdam has taught that the criticism that law schools have failed to teach students the skills necessary to practice law is valid to some extent, but "conceal[s] a deeper, more important one."⁶⁹ Law schools, he says, are too narrow because they have failed to teach "methods of critical analysis, planning, and decision-making which are not themselves practical skills but rather the conceptual foundations for practical skills and for much else, just as case reading and doctrinal analysis are foundations for practical skills and for much else."⁷⁰ Amsterdam explains that traditional law school pedagogy—based on the case method—teaches three kinds of analytic thinking believed essential to lawyering: case reading and interpretation; doctrinal analysis and application;

⁶⁶ Mudd, *supra* note 30, at 49 (quoting ROGER STEVENS, LAW SCHOOL 264 (1983)).

⁶⁷ Holmes, *supra* note 12, at 544.

⁶⁸ Feldman, *supra* note 4, at 479.

⁶⁹ Amsterdam, *supra* note 38, at 612.

⁷⁰ *Id.*

and logical conceptualization.⁷¹ Without attention to other modes of learning, however—particularly practice-oriented clinical experiences—law schools fail to teach other equally important kinds of reasoning. For example, traditional pedagogy fails to teach what Amsterdam calls “ends-means thinking,” or problem-solving—“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.”⁷² Likewise, traditional pedagogy fails to teach “hypothesis formulation and testing in information acquisition,” and “[d]ecisionmaking in situations where options involve differing and often uncertain degrees of risks and promises of different sorts.”⁷³ These skills, according to Amsterdam, are “no less conceptual or academically rigorous than case reading and doctrinal analysis.”⁷⁴

Similarly, after surveying various summaries of the competencies required of attorneys, Dean Mudd has rejected the trade school critique. He argues,

Referencing the academic program to lawyer performance does not imply the slightest narrowing of legal education to a form of technical training. On the contrary, it demands a broadening which few law schools could presently achieve. The challenge of moving law schools toward performance-referenced legal education is not that teaching for performance is beneath their academic dignity as members of the university community, but that it is terribly demanding precisely because it is so rich in both conceptual and practical elements.⁷⁵

Expanding legal education beyond case and doctrinal analysis thus represents a move toward a more, not less, rigorous and demanding approach to the study of law.

⁷¹ *Id.* at 613.

⁷² *Id.* at 614.

⁷³ *Id.*

⁷⁴ *Id.* at 615. Robert Keeton has made a similar point. See Keeton, *supra* note 41, at 211-12.

⁷⁵ Mudd, *supra* note 42, at 200 (footnotes omitted).

Moreover, by failing to expose law students in a reflective way to the full range of analytical skills actually required by lawyers, traditional law school pedagogy fails to give students “systematic training in effective techniques for learning law from the experience of practicing law.”⁷⁶ In this way, law schools fail to equip students to learn from experience in practice after graduation. On the other hand, “[i]ncreased interest in clinical education has tended, however, to focus increased attention on the importance of learning how to learn and the importance of developing and nurturing good habits of learning.”⁷⁷ As Walter Dickey, Associate Dean of Academic Affairs at the University of Wisconsin Law School, likes to say, clinical legal education has prepared graduates who are “poised to learn.”

Nor is it an adequate response to suggest that the role of law schools is to teach law students the fundamentals of doctrine and legal analysis, and that training in other skills and values can be obtained on the job, at a later time. It is an essential aspect of a professional school that it must teach “what it truly means to bring doctrinal and theoretical knowledge, analytical method, investigation, communication, and persuasion to the actual treatment of complex and refractory problems in a manner meeting professional standards of craft and care.”⁷⁸ No one would suggest that a medical school could prepare medical students for neurosurgery by theoretical and academic study of neurology alone, without allowing students to apply that knowledge in clinical training. Not only would students lack the necessary physical skills, they would also lack the full understanding of the structure of the brain and the mechanics of the surgery that can be obtained only by experiencing actual surgery. Nor should law students be expected to enter the world of practice without having ever learned to apply doctrine or theory to solving real-world problems.

⁷⁶ Amsterdam, *supra* note 38, at 613.

⁷⁷ Keeton, *supra* note 41, at 215; *see also* Quigley, *supra* note 56, at 474 (“Clinical education, at its essence, is a process of learning how to learn from experience.” (citing Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284 (1981))).

⁷⁸ Michelman, *supra* note 43, at 354.

Moreover, on-the-job training cannot adequately substitute for a comprehensive law school program covering the range of competencies required for practice. The experience of learning on-the-job is too uneven—too dependent on the quirks of practice in any particular office and on the variable skills and values of any particular mentor or supervisor. Too often, and increasingly, in practice, good skills and values are compromised by crushing case loads, busy schedules, the pressures of the adversary system, and the demands of making money. Law schools offer an opportunity for teaching best practices free of these pressures, for paying attention to learning theory and the needs of students, and for encouraging reflection about the learning experience. Hence, the answer is not just to return to the old apprentice system:⁷⁹

[I]nstruction in skills, along with legal education more generally, should be more systematic than the vagaries of any set of clients' interests and concerns are likely to present to an apprentice, more reflective than instruction is likely to be in competition with the demands of a busy law office, and richer in variety of both content and perspective than a single mentor or law firm would be likely to offer.⁸⁰

Law schools cannot defer to the practicing bar to provide the full educational experience that students need.

A greater commitment to teaching this broader spectrum of legal competencies in our law schools does require realigning priorities. But it is possible to make room in the curriculum for more problem-solving and skills-based learning opportunities, even if it means some reduction in substantive or doctrinal courses. It is neither possible nor necessary to teach students all the doctrine they may need upon graduation. Unavoidably, most lawyers learn the vast majority of their substantive legal knowledge after law school, while solving problems in practice.⁸¹ Once students obtain a foundation in law and case analysis skills in law

⁷⁹ Jerome Frank was very clear, in his early call for a "clinical lawyer-school," that this did "not mean that we should return to the old system in its old form, that we want mere apprentice-trained lawyers or law schools which are merely 'expanded law offices.'" Frank, *supra* note 2, at 913.

⁸⁰ Keeton, *supra* note 41, at 221-22.

⁸¹ Stuckey has put it this way:

school, they are much more capable of learning additional substantive law after law school than they are of learning the other complex skills and theories that form the competencies of a practicing lawyer.⁸² Once law students learn to interpret cases and analyze doctrine in the first few semesters of law school, they have no trouble doing the same in any new field of doctrine they may encounter. There is no need to keep repeating the process through three full years of law school.⁸³ The need for “coverage” of substantive law cannot be the reason for failing to provide experience-based training in law school.

Moreover, clinical education is not just about practice skills; it does not neglect doctrine or substantive law. Rather, clinical experiences can deepen students’ understanding of doctrine in ways that pure classroom experiences cannot. We all know from experience that we often do not fully understand—or retain—complex theoretical information unless and until we try to use that information. Fundamental principles of learning theory confirm that, “when cognitive studies are accompanied by active engagement in their application to concrete problems, a likely result is fuller comprehension, better retention, and more apt recall of the cognitive material.”⁸⁴ Clinical experiences, especially when timed to correspond with substantive classroom study, can enrich and deepen students’ understanding of doctrine.

Clinical experiences also help students to understand the law in context, to see the bigger implications of the law, and to critically evaluate legal institutions and the way they affect clients and social problems. Similarly, clinical experiences—because they inevitably expose students to ethical dilemmas—have been identified as one of the most effective ways for students to learn

There is simply too much law for any one person to aspire to master, and lawyers do not master any area of the law until they practice law for a period of time. Thus, law schools will do no harm to their graduates if they reduce their overemphasis on substantive law and provide more instruction in other subjects during law school.

Stuckey, *supra* note 38, at 662.

⁸² On-the-job training, or even books, lectures, and independent study, can do an effective job of teaching substantive law or doctrine, once students have the basics. See Llewellyn, *supra* note 41, at 215; Amsterdam, *supra* note 38, at 615.

⁸³ See Amsterdam, *supra* note 38, at 615; Holmes, *supra* note 12, at 539.

⁸⁴ Michelman, *supra* note 43, at 353-54; see also Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321 (1982).

about professional ethics.⁸⁵ Moreover, because clinical programs typically involve representing the indigent or disadvantaged, and allow students to experience through their clients the effects of social injustice and disadvantage, they have a unique capacity for engaging students in informed reflection about the values of the profession, the need for improving access to legal services and providing pro bono work, and of the role of law as a tool for reform and social justice.⁸⁶

Likewise, legal research and writing programs, properly conceived, are not just about rudimentary skills. Legal research and writing programs, although now well established as necessary fixtures in the law school curriculum, have been generally underappreciated and seen as a necessary evil—"remedial, anti-intellectual, and practical."⁸⁷ An article about the Wisconsin legal writing program in the late 1950s characterized the program as "the stepchild of the curriculum, unwanted, starved, and neglected."⁸⁸ The program Wisconsin experimented with at the time, designed to provide instruction in writing, research, and analysis at a low cost, relied upon third-year law students as instructors.⁸⁹

David Romantz argues that legal writing programs have been undervalued in this way for four reasons. First, they do not incorporate Langdell's inductive case method. Second, they first appeared in the curriculum after legal realists called for a more practical orientation to legal education, and thus were classified

⁸⁵ See, e.g., Jane Harris Aiken, *Striving to Teach "Justice, Fairness, and Morality"*, 4 CLINICAL L. REV. 1 (1997-98); George Critchlow, *Professional Responsibility, Student Practice, and the Clinical Teacher's Duty to Intervene*, 26 GONZ. L. REV. 415, 429 (1990-91); Grossman, *supra* note 5, at 172; James E. Moliterno, *An Analysis of Ethics Teaching in Law Schools: Replacing Lost Benefits of the Apprenticeship System in the Academic Atmosphere*, 60 U. CIN. L. REV. 83, 115 (1991).

⁸⁶ For a discussion of these issues, see Aiken, *supra* note 85; Robert D. Dinerstein, *Clinical Scholarship and the Justice Mission*, 40 CLEV. ST. L. REV. 469, 469 (1992); Stephen Wizner, *Beyond Skills Training*, 7 CLINICAL L. REV. 327 (2001); Frank Askin, *A Law School Where Students Don't Just Learn the Law; They Help Make the Law*, 51 RUTGERS L. REV. 855 (1999).

⁸⁷ Romantz, *supra* note 5, at 130.

⁸⁸ Stewart Macaulay & Henry G. Manne, *A Low-Cost Legal Writing Program – The Wisconsin Experience*, 11 J. LEGAL EDUC. 387, 389 (1959).

⁸⁹ *Id.* The program at Wisconsin has made considerable strides since then, but still is not adequately integrated into the Law School's academic program. See *infra* notes 117-18 and accompanying text.

as skills courses. Third, they (out of necessity) must address fundamental grammar and composition inadequacies, and thus are considered remedial. Fourth, they are expensive, because they are more labor intensive than large doctrinal classes.⁹⁰

Romantz argues persuasively, however, that legal writing courses can and should do much more than serve remedial needs, and that in fact they complement very well the intellectual aims of doctrinal courses. He observes that traditional case method courses employ an inductive methodology, requiring students to survey a variety of pre-selected cases and from them to “induce general doctrine-specific legal principles.”⁹¹ Legal writing courses, by contrast (more like the problem-oriented tasks of practicing attorneys), employ a “deductive pedagogy” that begins with general principles and requires students to use those principles to solve specific problems.⁹² Romantz concludes that, “[w]hile the academic models differ, both the deductive approach and the inductive approach aim to train students to think critically about the law and to solve legal problems.”⁹³ Legal writing courses help students hone their reasoning and analysis skills. Legal writing students learn “how to apply the law, learned in their doctrinal courses, toward the resolution of a legal problem, while at the same time deepening their understanding and use of doctrine.”⁹⁴

Other reasons also support the move toward making room in the academic program for alternatives to doctrinal case-method courses. Overemphasis in the curriculum on the traditional case analysis method in doctrinal courses throughout law school—and the general lack of sequencing in law school curricula—helps explain the well-recognized malaise that tends to infect law students after their first and second years in law school. Several studies—and nearly universal anecdotal evidence—reveal that, at most law schools, students disengage in significant

⁹⁰ Romantz, *supra* note 5, at 133.

⁹¹ *Id.* at 137.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 139.

ways by the third year.⁹⁵ Third-year students at many law schools attend only around 60 percent of their large classes.⁹⁶ Among those who do attend class, few are engaged; they study far less than first-year students, are far less well prepared, and participate in class infrequently.⁹⁷ Large percentages of third-year students (43 percent) report that the third year of law school is largely superfluous, and the proportion who believes that law school teaching is too theoretical and unconcerned with real-life practice increases from the first-year (18 percent) to the third year (43 percent).⁹⁸ A majority (63 percent) report either that the third-year is largely superfluous, or that law school is too theoretical, or both.⁹⁹

These data suggest strongly that the traditional, case-method doctrinal course cannot hold the interest of law students for three years. As Mitu Gulati, Richard Sander, and Robert Sockloskie have explained:

These patterns suggest that third-year law students have a hunger for applying what they have learned in law school to client problem-solving. This fits well with their critique of law school as too theoretical and disconnected from the real-world practice of law. . . . They seem to have a definite agenda that links career goals to serving clients and working on real-world problems, and they dismiss the third year of law school because it does not seem very relevant to that agenda.¹⁰⁰

An obvious solution is more and better-integrated opportunities for students to learn by serving clients and solving real-world problems. Given these considerations, the time is rapidly approaching to consider a more prominent place for clinical education in law schools. Indeed, some of the most prestigious law

⁹⁵ See Gulati et al., *supra* note 36; see also Michelman, *supra* note 43, at 354 (noting that a recent American Bar Foundation Study found that “as the three years [of law school] wear on student excitement, engagement, and satisfaction wear off.”).

⁹⁶ Gulati et al., *supra* note 36, at 244.

⁹⁷ *Id.* at 244-45.

⁹⁸ *Id.* at 246.

⁹⁹ *Id.* Interestingly, a recent assessment of Wisconsin’s graduates indicated that they view the first-year program as the least satisfying. See *infra* note 133 and accompanying text.

¹⁰⁰ Gulati et al., *supra* note 36, at 259.

schools in the United States are now contemplating a clinical experience requirement for graduation.¹⁰¹

While clinical offerings are an obvious and essential part of this solution, they are not the only way to make law schools more responsive to the needs of students and the profession. Simulation skills programs can fill part of the need. And doctrinal courses can adopt new methodologies that expand the opportunities for students to learn the broader range of problem-solving skills. Many legal educators are trying to do just that, by adopting the “problem method.”

The problem method entails shifting to a problem-based or problem-centered curriculum.¹⁰² Under that method, law students are presented not with the end-product of a case—the appellate decision—but a complex factual problem which the students must analyze, sifting through the facts, analyzing the law, and developing a strategy for solving the legal problem or problems presented.¹⁰³ Students are not given the “answer” to the problem—the court’s resolution of the case—but the problem itself, and are required to solve that problem, just as a lawyer in practice would do.

Under the problem method, the presenting problem is more than the typical hypothetical used as part of the case method’s

¹⁰¹ Stanford Law School recently brought Professor Larry Marshall from Northwestern University School of Law to become Stanford’s Director of Clinical Education. Stanford now proclaims that, as part of Marshall’s assignment to “make Stanford Law School’s growing clinical programs the best in the United States, . . . Marshall would like Stanford to be the first top university in the nation to require hands-on training for all its future lawyers.” Theresa Johnston, *Taking Clinical Education to the Next Level*, STAN. LAW., Spring 2005, at 14, 15.

¹⁰² Stuckey, *supra* note 38, at 676. The problem method builds on the notion, expressed, for example, by Karl Llewellyn:

[I]t is not the judicial decision which is the essence of the “case”; it is instead the concrete *problem-raising situation* – so that, as I see it, any introduction of the so-called “problem method” into law teaching is really but an expansion of the essential merits of *case-teaching*, an expansion obscured only by a current mis-emphasis upon the idea of a “case” as being at best the official report of a judicially decided case.

Llewellyn, *supra* note 41, at 217.

¹⁰³ See Cynthia G. Hawkins-León, *The Socratic Method-Problem Method Dichotomy: The Debate Over Teaching Method Continues*, 1998 B.Y.U. EDUC. & L.J. 1, 9; Myron Moskowitz, *Beyond the Case Method: It’s Time To Teach with Problems*, 42 J. LEGAL EDUC. 241, 250 (1992).

Socratic dialogue. Hypotheticals are short, usually raise only one issue, and are sprung on students in class with little time for thinking and analysis. In contrast, a problem is complex, usually involves several issues (sometimes crossing doctrinal boundaries), and is presented to students to think about and analyze before class.¹⁰⁴ The issues presented implicate several cases and statutes, and the problem can be framed in the context of litigation, negotiations, drafting, or planning. Students are typically assigned roles, such as advocate, judge, counselor, planner, or legislator.¹⁰⁵

The problem then becomes the focus of class discussion: “The assigned cases, statutes, and other materials become tools for helping to solve the problem. A Socratic discussion of the cases—the essence of Langdell’s case method—still occurs, because the students must understand the cases in order to analyze the problem. But the students must do much more.”¹⁰⁶ Thus, students become actively engaged in their learning—both in and outside of class—and are taught a fuller range of competencies required of a lawyer—from traditional case analysis and doctrine to the range of analytical abilities required for problem solving.

The problem method is widely used at the graduate level in business and medical schools.¹⁰⁷ Ironically, in business and medical schools, the “problem method” is called the “case method.” It is not, however, the Langdellian case method. More like the law school problem method, the business school method entails work on elaborate problems (“cases”) created by faculty specifically for teaching purposes.¹⁰⁸ The problems typically involve crises or opportunities facing a business, which require a plan of action. At the Harvard Business School, faculty spend considerable effort designing sophisticated problems, or cases—usually ten to fifteen pages in length, with another five to six pages of

¹⁰⁴ Moskowitz, *supra* note 103, at 246.

¹⁰⁵ *Id.* at 250.

¹⁰⁶ *Id.* at 250-51.

¹⁰⁷ *Id.* at 247; Gulati et al., *supra* note 36, at 264.

¹⁰⁸ Moskowitz, *supra* note 103, at 247.

exhibits or charts—and even market those cases to other business schools. Students work on the problems in groups to prepare a recommended course of action complete with supporting analysis.

III. THE WISCONSIN EXPERIENCE WITH CURRICULUM REFORM

A. THE FOUNDATION: LAW IN ACTION

To some degree, the gulf between law school and practice has not been as wide at the University of Wisconsin Law School as at many other American law schools. Wisconsin has a long and proud tradition of focusing its scholarship and teaching on “law in action,” the concept that “in order to truly understand the law, you need not only to know the ‘law on the books,’ but also to look beyond the statutes and cases and study how the law plays out in practice.”¹⁰⁹ As Dean Kenneth Davis has written, “‘Law in Action’ reminds us that no matter how interesting or elegant the theory or idea, we always need to ask, ‘Why should this matter to people in the real world?’”¹¹⁰ The emphasis on “law in action” is also strengthened at Wisconsin by the school’s early (and very anti-Langdellian) “appreciation of the value of other social sciences in understanding how law works and by the ‘Wisconsin Idea’—the commitment to service embodied in the slogan that ‘the boundaries of the University are the boundaries of the state.’”¹¹¹

Wisconsin’s commitment to law in action has been reflected not only in the teaching and scholarship of traditional faculty, but also in an early commitment to experiential learning through

¹⁰⁹ Univ. of Wis. Law Sch., Law in Action: The Dean’s View, www.law.wisc.edu/Davislawinactionessay.htm (last visited Feb. 14, 2006).

¹¹⁰ *Id.*

¹¹¹ *Id.*; see also Paul D. Carrington & Erika King, *Law and the Wisconsin Idea*, 47 J. LEGAL EDUC. 297 (1997); John E. Conway, *The Law School: Service to the State and Nation*, 1968 WIS. L. REV. 345; Willard Hurst, *Changing Responsibilities of the Law School: 1868-1968*, 1968 WIS. L. REV. 336. Indeed, even in the early days of the Law School, “[t]he Wisconsin Idea required university faculty committed to public service and empirical work” Carrington & King, *supra*, at 316. And as early as 1907, law faculty embraced interdisciplinary work, collaborating with the political science and economics faculty, and by 1915 mixing law classes with history, economics, political science, and philosophy classes. *Id.* at 324.

clinical programs and a skills curriculum. For a time, beginning in 1930, selected second- and third-year law students were offered an opportunity under a law-school-administered Legal Aid Society program to provide legal services for the poor under the supervision of practicing Madison lawyers.¹¹² In the 1960s, Professor Frank Remington began taking law students into the prisons to observe the law in action. Quickly, those early ventures into the prisons turned into clinical experiences in which law students, under attorney supervision, provided legal services on a wide array of issues to prison inmates.

That initial program, the Legal Assistance to Institutionalized Persons (LAIP) Project, evolved into a full-time summer clinical immersion experience offered to 50 students each summer at the end of their first year of law school, with part-time opportunities during the academic year.¹¹³ Eventually moving under the umbrella of what became the Frank J. Remington Center, LAIP was joined by other prison-based clinical offerings, including an appellate advocacy clinic, a family law project, a restorative justice project, an innocence project, and externship programs that place students in prosecutors' and public defenders' offices. Non-prison-based clinics, including a consumer rights clinic, a neighborhood law center that provides legal services in a low-income community, and a family court assistance project, were organized as an Economic Justice Institute and joined the Remington Center.¹¹⁴ At the same time, other clinical offerings—both in-house clinics and externships—developed independently of the Remington Center, including a trial-level misdemeanor criminal defense clinic, a patient advocacy clinic, a judicial internship program, a labor law externship, a Department of Justice externship, and a health law externship, among others.¹¹⁵

¹¹² W. Scott Van Alstyne, Jr., *The University of Wisconsin Law School 1868-1968: An Outline History*, 1968 WIS. L. REV. 321, 331-32.

¹¹³ UNIV. OF WIS. LAW SCH., THE FRANK J. REMINGTON CENTER 3 (undated informational booklet).

¹¹⁴ *Id.* Today, the Remington Center provides full-time internships for over 100 law students each summer, and affords another 100 students a similar, though less intensive, experience during the academic year. *Id.*

¹¹⁵ For a summary and list of the University of Wisconsin Law School's various clinical offerings, see Univ. of Wis., Clinical Education & Skills Training, <http://>

Since 1949, the Law School has also offered what was originally known as the General Practice Course, now called the Lawyering Skills Program. That program describes itself as “a skills training center in the Law School” that “offers courses that teach core lawyering skills in a learning-by-doing class format.”¹¹⁶ Utilizing simulations, the program offers opportunities to practice such fundamental lawyering skills as negotiation, oral advocacy, communication, interviewing and counseling, drafting, and problem solving.

The Law School also offers an extensive Communication and Advocacy Program, which includes the first-year legal research and writing curriculum, as well as a series of advanced courses available to second and third year students.¹¹⁷ In the last two years, this program has undergone significant redesign as the Law School has attempted to respond to the demand for improved training in communication and advocacy skills. The program has been redesigned to present writing problems based on the subject matter being studied simultaneously in the first-year doctrinal courses.¹¹⁸ The writing problems include case files with memos, letters, motions, affidavits, leases, and other documents a lawyer or judge might find in her file—some relevant and some red herrings. Students are also provided relevant cases and statutes, and are then asked to address a problem that a judge or lawyer must solve. The program is an example of education through the problem method. But it is at present only marginally integrated into the remaining curriculum, as few faculty outside the writing program participate, and the program runs parallel to, rather than as a part of, other law school courses. Fuller integration is still a goal for the Communication and Advocacy Program at Wisconsin.

www.law.wisc.edu/clinics/clinicaleducationskillstraining.htm (last visited Feb. 12, 2006).

¹¹⁶ Univ. of Wis. Law Sch., Lawyering Skills Program: Learning By Doing, <http://www.law.wisc.edu/lawskills> (last visited Feb. 14, 2006).

¹¹⁷ See Univ. of Wis. Law Sch., Communication and Advocacy Program, <http://www.law.wisc.edu/current/communicationsandadvocacyprogram.htm>.

¹¹⁸ This summary is based on an interview with Susan Steingass, Director of the Communication and Advocacy Program at the University of Wisconsin Law School, Sep. 2, 2005.

B. THE NEED FOR REFORM IN WISCONSIN

Despite these opportunities for experiential learning, the calls for greater relevance to practice have also resonated at Wisconsin. In 1903, the Wisconsin Law School adopted the case method almost exclusively,¹¹⁹ although it did experiment for a while, beginning in 1916, with a six-month apprenticeship requirement for all enrolled law students.¹²⁰ Having embraced Langdell's case method, the classroom experience has likely not been all that different at Wisconsin than elsewhere. For example, although there are certainly differences in first-year programs from school to school, Wisconsin's first-year program, for the most part, is any other law school's program, with a required curriculum of doctrinal courses covering torts, contracts, property, criminal law, civil procedure, and legal research and writing.¹²¹ While scholarship and teaching at Wisconsin have long emphasized the law in action, that emphasis has addressed largely, although not exclusively, the policy and sociological implications, more than the practice aspects, of law and legal institutions. As important as the policy and sociological perspective is—and it is very important—it does not fully respond to the demand for bridging the gap between legal education and practice.

Accordingly, in 1996, the State Bar of Wisconsin's Commission on Legal Education issued a report concluding that "the goal of legal education in Wisconsin should be not only to teach substantive law, but also to foster the acquisition of a relevant and universal set of skills and values."¹²² Expressly incorporating the findings of the MacCrate Report, the Commission concluded that "lawyers must and can be taught a common set of professional skills and values," and that legal education is "a continuum that begins in law school (or before) and continues throughout a

¹¹⁹ Carrington & King, *supra* note 111, at 312; Van Alstyne, *supra* note 112, at 326.

¹²⁰ Carrington & King, *supra* note 111, at 322; Van Alstyne, *supra* note 112, at 328. The Lawyering Skills Program was created in 1949 in part as an alternative to the internship requirement.

¹²¹ See ABA SURVEY OF CURRICULA, *supra* note 64, at 25.

¹²² STATE BAR OF WIS., COMMISSION ON LEGAL EDUCATION, FINAL REPORT AND RECOMMENDATIONS 3 (1996).

lawyer's career."¹²³ To bridge the "education-practice discontinuity," the Commission called on Wisconsin's law schools to employ "early and consistent experiential learning," that is, "learning by doing and by reflecting on experience."¹²⁴ The Commission rejected the "two-tiered concept of legal education where 'content' is 'covered' at the start of school and performance is left to 'later.'"¹²⁵ Rather, the Commission concluded that "the curriculum of law school must be designed with a conscious awareness of how substance and performance coalesce in what students need to *be able to do* when they graduate."¹²⁶

As a first step, the Commission identified what it believed to be the skills and values that graduating law students need to enter the profession. The Commission adopted ten skills and four values identified by the MacCrate Report, and added four additional values. The skills include: problem solving; legal analysis and reasoning; legal research; factual investigation; communication; counseling; negotiation; litigation and alternative dispute resolution procedures; organization and management of legal work; and recognizing and resolving ethical dilemmas.¹²⁷ The values include: provision of competent representation; striving to promote justice, fairness, and morality; striving to improve the profession; professional self-development; judgment; professionalism; civility; and conservation of the resources of the justice system.¹²⁸

In 2000, the Wisconsin Law School responded by surveying legal employers and recent graduates to assess what they believed to be the most important skills graduates should bring from law school.¹²⁹ "Assessment 2000" found that most important to employers and graduates were legal reasoning and written and oral communication skills, and found that employers and

¹²³ *Id.*

¹²⁴ *Id.* at 4.

¹²⁵ *Id.* at 28.

¹²⁶ *Id.*

¹²⁷ *Id.* at 17.

¹²⁸ *Id.* at 17-23.

¹²⁹ UNIV. OF WIS. LAW SCH., ASSESSMENT 2000 SUMMARY REPORT (Fall 2000) [hereinafter ASSESSMENT 2000]. Elsewhere, others have attempted to assess and catalogue the skills and values required of law school graduates as they enter the profession, including assessment of those areas where law students currently are

graduates expect law schools to teach these skills.¹³⁰ Sixty-one percent of graduates indicated that there is too much emphasis on theory and not enough on the practical application of the law, and both employers and graduates identified practical skills and experiences, and writing, as the main areas requiring more resources at the Wisconsin Law School.¹³¹ Accordingly, “Assessment 2000” recommended that the Law School “should try to integrate the theoretical and practical at all levels of the curriculum.”¹³²

Interestingly, despite the prevailing sense that law students at Wisconsin, as elsewhere, increasingly disengage after the first and second years, Wisconsin graduates reported that they were least satisfied with the first-year curriculum; their reported satisfaction actually increased with each subsequent year.¹³³ To some extent, that dissatisfaction might reflect the intensity and rigidity of the required first-year curriculum, which allows no electives in the first semester, and only one in the second;¹³⁴ it is built around the very traditional doctrinal study of core subjects. It also might in part reflect general dissatisfaction with the first-year legal research and writing program, a program that, as discussed above, has undergone significant redesign since that survey was administered. But it also might reflect the fact that, outside the relatively few credits of simulation-based exercises in the legal writing program, the first-year curriculum offers very little opportunity for problem-oriented or practice-based learning, while the second and third years at Wisconsin offer substantial opportunities in those areas.

and are not adequately prepared upon graduation. *See, e.g.,* Mudd & LaTrielle, *supra* note 43, at 17-25.

¹³⁰ ASSESSMENT 2000, *supra* note 129, at 4.

¹³¹ *Id.* at 8, 9.

¹³² *Id.* at 4, 8.

¹³³ *Id.* at 8.

¹³⁴ The “elective” offered in the second semester comes from a limited set of options. Students may choose one of the following courses: Civil Procedure II, Constitutional Law I, Contracts II, or Legal Process. *See* Univ. of Wis. Law Sch., First-Year Program and Beyond, <http://www.law.wisc.edu/prospective/firstyear.htm>.

C. MOVING TOWARD REFORM

In October 2003, when the faculty approved the Wisconsin Law School's new Strategic Plan, the Law School committed itself to confronting some of these curricular challenges. The Strategic Plan identifies the Law School's mission as: "Teaching, legal scholarship, and public service inspired by our distinctive law-in-action approach and our commitment to justice."¹³⁵ The first of the goals identified in the Plan is to: "Equip our students with the skills, knowledge and values essential to professional excellence and leadership."¹³⁶ Among its seven strategic priorities, the Plan commits the Law School to "re-imagine the curriculum."¹³⁷

The Strategic Plan's articulation of this priority expressly responds to the need for bridging the gap between theory and practice, and for new pedagogical approaches that draw on cooperative, experiential learning methods. The Plan acknowledges that employers expect our graduates to enter the workplace with both "excellent analytical and communication skills" and the "judgment and maturity to assume responsibility."¹³⁸ Expressing a commitment "to preparing our graduates for the practice of law and for political leadership, public service, and community participation," the Plan expressly promises that the Law School will, among other things:

¹³⁵ UNIV. OF WIS. LAW SCH., STRATEGIC PLAN 2 (Fall 2003) [hereinafter STRATEGIC PLAN].

¹³⁶ *Id.* The other goals are:

- Create a diverse, collaborative, and supportive learning community
- Attract, support, and retain a renowned faculty, whose insights and scholarship expand our knowledge of the law and how it affects society
- Embody the Wisconsin Idea by connecting our scholarship with our service to the profession, the government, and our global society

Id.

¹³⁷ *Id.* at 3. The other six strategic priorities include:

- Ensure an Outstanding Student Experience
- Foster a Culture of Participation and Shared Enterprise
- Anticipate Emerging Areas of Law Practice and Legal Scholarship
- Embrace the Opportunities of Globalization
- Build on Our Scholarly Traditions to Create Knowledge for a Changing World
- Advance the Wisconsin Idea

Id.

¹³⁸ *Id.* at 6.

- Emphasize oral and written communication skills throughout the curriculum
- Integrate theoretical and practical teaching by building on our excellent clinical, skills-training, and other hands-on learning experiences
- Foster greater collaboration with adjunct faculty to enhance their teaching experiences and enrich the curriculum¹³⁹
- Expand experiences in which students learn from one another, work in groups, and develop cooperative skills and a teamwork approach
- Promote innovative teaching methods
- Revisit the distribution of credits and teaching load to better use our resources¹⁴⁰

To implement the Plan, an ad hoc group of faculty and staff has convened to develop concrete curriculum reform plans. Not surprisingly, ideas are as diverse as the interests of individual faculty members. An initial brainstorming session generated ideas that break down generally into the following categories:

1. *Redesign the first-year curriculum.* Ideas include expanding the legal research and writing program, perhaps extending it beyond the first two semesters; reorganizing the small section program¹⁴¹ into a legal process course that combines civics, legal method, legal history and jurisprudence, and a research and writing and simulation or clinical component; reducing some of the credits required in some of the substantive courses, particularly property and criminal procedure;¹⁴² and reshaping the

¹³⁹ Adjunct faculty members are typically practicing attorneys who, in addition to their practice, teach one or more courses at the Law School each year.

¹⁴⁰ STRATEGIC PLAN, *supra* note 135, at 6.

¹⁴¹ Wisconsin is one of a diminishing number of American law schools that use a small group program in the first-year outside the legal research and writing program. ABA SURVEY OF CURRICULA, *supra* note 64, at 28. Under this program, each student has one substantive course that meets as a small group of students, and these students are also assigned together to the remainder of their larger classes as well. The program is designed to enhance socialization and provide a foundation for shared learning and collaboration.

¹⁴² Wisconsin's five credits for Property exceed the norm in the United States, and Wisconsin is in the minority of American law schools that requires Criminal Procedure in the first-year curriculum. *Id.* at 25-26.

first-year curriculum to center around excellent teaching rather than core subjects.

2. *Reexamine course requirements and offerings.* Ideas include changing the list of required courses (which could mean more, fewer, or just different courses); providing structured sequencing to upper level courses; increasing the number of four (as opposed to three) credit courses, to deepen the study of the subject matter while enabling faculty to teach fewer courses; creating alternate-model courses, such as guest-lecture series or short, minimal credit offerings on topics needed by practitioners; creating separate tracks for students who intend to practice law and those who do not; and increasing our multi-disciplinary offerings through cross-listings in government, political science, economics, sociology, and business.
3. *Enhance skills, clinical programs, and legal research and writing offerings.* Beyond those already listed above, ideas include integrating lawyering skills, through simulations or clinical opportunities, into the substantive curriculum throughout all three years of law school; requiring clinical or practical experiences for graduation; devoting the third year to clinical and practical learning experiences; or expanding the writing and oral communication offerings and requirements.
4. *Address teaching issues.* Ideas include expanding the process for peer review of teaching; creating incentives for good teaching and innovation in teaching (which could include a heavier emphasis on the problem method, among other possibilities); providing more resources for adjunct professors; and creating ways to give students more feedback.
5. *Redesign the course and semester structure.* Ideas include moving to a block schedule, in which students take a smaller number of courses for a short period of time; reducing the faculty teaching load to correspond to trends at other law schools; or creating more flexibility in the time and credits allocated to courses in the traditional semester.

As this list suggests, there is, as of yet, nothing close to a consensus as to where to begin with reforms, or what changes ought to be made. While many of the ideas deserve attention, several possibilities stand out as particularly responsive to the commitments made in the Law School's Strategic Plan and to the recognized need to better prepare our graduates for professional excellence.

The first-year curriculum appears to be a good place to begin serious reform at Wisconsin. Wisconsin graduates have identified it as the least satisfying year of their law school experience. The Law School's Strategic Plan expressly makes it a priority to emphasize oral and written communication skills *throughout* the curriculum, and to more generally integrate theoretical and practical teaching by building on clinical and other hands-on learning experiences.¹⁴³ Yet the first-year curriculum—the year that initially shapes law students' attitudes about law and legal education—is the most traditional, doctrinal, case-method-based portion of the law school experience at Wisconsin, with the fewest opportunities for problem solving and real world experience. And faculty members have identified it through initial brainstorming about curriculum reform as a prime target for attention.

Indeed, student representatives on the ad hoc curriculum reform committee focused on the first-year curriculum, presenting two alternative versions of their “dream” first year. Interestingly, both of the proposed curricula include a heavy dose of experiential learning from the very beginning of law school. Under one version, the first semester includes: (1) a two-credit course on “Legal Research and Writing”; (2) a five-credit, “Seminar: Law-in-Action,” envisioned as a lawyering skills course serving as an introduction to legal concepts;¹⁴⁴ (3) a five-credit course, “Civil Procedure in Practice,” envisioned not as a case-method course, but a practice course “where students engage in role

¹⁴³ STRATEGIC PLAN, *supra* note 135, at 6.

¹⁴⁴ The student's full description of the proposed “Law-in-Action” seminar is: “A[n] introductory program on legal concepts envisioned as a Lawyering Skills course. Group projects, client-interviewing, mock transactions. Emphasis on student self-reflection and understanding of the social context(s) in which lawyering occurs. Basic information about juries, the adversarial system, haves/have-nots, and other topics relevant to law-in-action. Also, field trips.” Brian Larson, University of Wisconsin Law School Curriculum Reform Committee, Brian's Dream First-Year Curriculum (Apr. 8, 2005) (unpublished material, on file with author).

playing and mock exercises”;¹⁴⁵ and (4) a two-credit course, “Clinical Legal Research,” which would give students experience working for clients while honing legal research skills.¹⁴⁶ In this “dream” curriculum, the second semester of the first-year looks considerably more traditional, including courses in Legal Research and Writing, Contracts, Torts, Criminal Law, and an elective.

The second version of the dream first-year curriculum would start with a two-week introductory “legal methods” course, designed to provide “basic legal ideas” so that the substantive courses could begin with confidence that students all have this foundation. Legal research and writing would also begin in this introductory period, and continue throughout the first year. After the introductory course, students would then be broken into teams of five students, and “would meet a ‘trained client’—much like medical schools used ‘trained patients.’” The trained client would present a problem; embedded within that problem would be “the legal issues that were going to be addressed in the substantive courses.” Legal research and writing would then be structured around the writing problems needed to address the trained client’s legal needs. A series of such trained clients would present throughout the semester, again synchronized to the material covered in substantive courses. Under this plan, all first-year classes would be small (no more than thirty students),

¹⁴⁵ The student’s full description of the proposed “Civil Procedure in Practice” course is:

Not a case-method course, rather a practice course where students engage in role playing and mock exercises. Emphasis on the Rules of Civil Procedure and the basic precepts of textual interpretation. Classroom activities designed to wed students’ understanding of the Rules, as a text, to their awareness of the rules as a living system—shaped by the social context(s) in which the Rules are applied, and brought to life by the people who apply them.

Id.

¹⁴⁶ The students’ full description of the proposed “Clinical Research” course is:

Tailored to give students experience working for clients while honing legal research skills. In the classroom, students learn research methodology; they are introduced to statutes, regulations, and cases. Meanwhile, groups of first-year students are assigned to work on a case being handled by a 3L clinical students. First-year students will get a chance to meet the client and see their research put into practice by the other students.

Id.

necessitating “fewer course offerings and larger classes in later years.” According to the students, under this plan it does not particularly matter “what the substantive classes are,” but there would be fewer of them, and more legal research and writing credits. This plan, therefore, would employ a highly coordinated and developed “problem method” designed to integrate substantive and skills in the curriculum.

Reforming the first-year curriculum, however, is not easy. As has been said, “Of all the hallowed traditions within legal education, the first-year core curriculum seems the hardest to reform.”¹⁴⁷ Hence, anything approximating these reforms would be dramatic. But reform can be accomplished.

A number of law schools have attempted to deal with the “first-year problem” by adding lawyering programs, simulations, the problem method, skills training, and clinical experiences.¹⁴⁸ Particularly notable, in the late 1980s the University of Montana School of Law broadened its academic program to include both more instruction in legal theory and more practical experience than it had previously offered.¹⁴⁹ Beginning in the first year, students are divided into groups of six, called “law firms,” are assigned an upper-class student as “junior partner,” and work as a group on a series of practical, problem-based projects.¹⁵⁰ Deliberate efforts are made in years two and three to continue integrating theory and practice, both through projects in doctrinal courses and a requirement that every student, except those on law review, must complete a clinical course before graduating.¹⁵¹

Significant reform also has been accomplished recently at Case Western Reserve School of Law, through the *CaseArc* Integrated Lawyering Skills Program. In that program, students begin law school with an intensive orientation that focuses on professionalism, client interviewing, briefing cases, law school classes, and the American Legal System, and students are given

¹⁴⁷ Engler, *supra* note 51, at 157.

¹⁴⁸ See *id.* at 156. Schools that have accomplished such reforms include Missouri, New England, Maryland, and Northeastern. *Id.*

¹⁴⁹ Mudd & LaTrielle, *supra* note 43, at 27.

¹⁵⁰ *Id.* at 28.

¹⁵¹ *Id.*

an opportunity to observe a simulated criminal trial and simulated appellate argument.¹⁵² Students are then broken down into teams of seventy-five students, legal writing groups of twenty-five, and finally, “law firms” of about a dozen to work on various lawyering skills and problems. The CaseArc Integrated Lawyering Skills Program then continues for all six semesters of law school, and the skills components are directly linked to specific substantive courses each semester.

At Wisconsin, some faculty members are experimenting with alternative teaching methodologies, including the problem method, in both first-year and advanced level substantive courses. At the same time, some are contemplating experimentation with an experience-based first-year civil procedure course that might use practice-oriented case exercises to teach not only civil procedure, but also, in the process, torts and contracts (thereby replacing separate courses in such subjects).

Whether Wisconsin chooses reforms of this type or not, focus on the first-year curriculum makes sense at Wisconsin for additional reasons, as well. Given that Wisconsin requires more courses, and more credits for some courses, in the first-year than do other law schools (more than may be pedagogically necessary or sound), there should be room to trim the traditional courses to make room for education in other skills, through other methodologies. Moreover, while the first-year small group program serves important socializing and educational goals, most law schools have abandoned it in the first-year, except in legal research and writing courses. While any course is improved by smaller class size, there is no unique pedagogical need or reason for assigning students to small groups in any particular first-semester substantive course. There is good reason, however, to assign students to small groups—or “law firms” in the Montana or Case Western model—for legal writing, skills-based, problem-oriented, and experiential learning programs that can only be accomplished in a low student-teacher ratio setting. Faculty brainstorming has generated ideas to create such a comprehensive small-group-based program that cuts across skills and doctrinal boundaries.

¹⁵² Case W. Reserve Univ. Sch. of Law, CaseArc Integrated Lawyering Skills Program (undated brochure).

IV. CONCLUSION

Wherever Wisconsin chooses to begin, the list of ideas for reform offers plenty of options for more fully integrating theory and practice, and for meeting the other evolving needs of students, faculty, and legal employers. Whether by evolution or design, by small increments or dramatic leaps, change is likely, and, as always, necessary. At this moment in the life of the Wisconsin Law School, in part because of the emphasis in the Strategic Plan for rethinking the curriculum, the possibility exists for meaningful reform.

Regardless of the specific reforms that may emerge, legal education at Wisconsin is likely to continue rediscovering some of its roots in experiential learning. If the Law School remains faithful to its Strategic Plan, it will increasingly move toward ensuring that its graduates leave with the knowledge, skills, and values to be effective professionals. In short, the Law School will continue to move toward the becoming a true lawyer-school, with a secure and valued place within the University.

