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BLENDING DOCTRINE, PRACTICE, AND PURPOSE IN LEGAL EDUCATION:

THE CASE FOR AN INTEGRATED PEDAGOGY

A thesis submitted in partial fulfillment of the requirements for the degree of Master of
Arts in English, Writing and Rhetoric at Virginia Commonwealth University

By

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Acknowledgement

I wish to acknowledge with gratitude my advisor, Dr. David Coogan. I also wish to express heartfelt thanks to my husband Bob and to our sons Scotty and Brody for their many gestures of encouragement and support.

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Abstract

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By Debra M. Schneider, Master of Arts in English, Writing and Rhetoric

A thesis submitted in partial fulfillment of the requirements for the degree of Master of Arts in English, Writing and Rhetoric at Virginia Commonwealth University.

Virginia Commonwealth University, 2008

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Traditional legal education is sorely imbalanced. A law student receives rigorous training in legal doctrine and analytical skills—he learns to “think like a lawyer”—but is left with little training in practical skills or his ethical role in society. Moreover, law schools rely almost exclusively on the ineffectual pedagogy of the case-dialogue, or “Socratic,” method. Several factors explain this entrenched imbalance, most notably the academy’s top-down power structure and its budget constraints.

Increasingly, however, the marketplace is demanding practice-ready lawyers who have strong training not only in doctrine but in practical skills and ethics. Law schools, responding to this market pressure, are beginning to implement pedagogies that foster this balanced legal training. Toward this end, I advocate implementing into law school curricula three specific, workable pedagogies: using group learning models, using writing as a learning tool, and using assessment as a formative and ongoing component of the learning process.

(Note: This document was created in Microsoft Office Word 2003.)

CHAPTER 1 Introduction

“[Lawyers] must come to understand thoroughly so they can act competently, and they must act competently in order to serve responsibly.”

-William Sullivan, 2007

A few law schools are finally recognizing that students can get much more out of their legal education, and can contribute more fully to society as practicing legal professionals, when the law school curriculum trains them in each of the three components of being a lawyer: doctrine, practice, and purpose. By contrast, most schools remain entrenched in the traditional system of legal education that so emphasizes the first component, doctrine, that the other two components, practice and purpose, get little attention pedagogically. “Doctrine” means specialized expert knowledge of the law, “practice” means the skills of being a competent lawyer in the real-world, and “purpose” means the identity, values and role of lawyers as moral agents in society. The result of the imbalanced traditional curriculum is that law schools graduate strong thinkers but weak doers who often have only a diffuse sense of their identities and societal responsibilities as lawyers.

To address this curricular imbalance, Stanford and Harvard, among other trendsetting schools, are implementing broad changes in their curricula to “push legal education towards the real world” (Caraveli 3). They are reorienting their teaching

away from the traditional doctrinal focus and toward an integrated focus on doctrine, practice and purpose. They are achieving this integrated pedagogy by way of implementing certain teaching techniques found to be effective in other realms such as in undergraduate schools. These teaching techniques include, among others, using writing as a learning tool, exposing students to clinical or simulated practice, using cooperative and collaborative learning models, fostering mentorship, and offering extensive “on the job” feedback and assessment.

I argue in this paper that an integrated pedagogy is good and necessary for legal education because it enriches students’ learning experience and better prepares students to contribute to the profession as competent, honorable lawyers. In Chapter II (the first chapter after the introduction), I explain and define the trend toward integration and cite, as examples of the trend, innovations at Stanford and Harvard law schools where revamped curricula address doctrine, practice, and purpose in balanced fashion. Next I compare “the new way” (an integrated pedagogy) with “the old way” (the traditional Socratic-style, doctrine-heavy pedagogy). I discuss three significant shortcomings of the traditional pedagogy by way of arguing for the new, better approach of an integrated model. These shortcomings include (a) the over-dominance of case-dialogue method and the overemphasis of “think like a lawyer” as a pedagogical aim, (b) the impotence of practical and ethical training in the current law school curriculum, and (c) the ineffectiveness of the current grading system as an enhancement to learning. I show how the new integrated model that I am advocating counterbalances these deficiencies in traditional law school pedagogy.

In Chapter III, I look at the factors that have caused the trend to gain traction now as opposed to, say, two decades ago when I was in law school myself. I explore societal factors such as market forces, demographics, and the information age as it relates to legal education. I also explore impediments to curricular innovation, the most significant of which is the entrenched top-down power structure in law schools. I argue that this power structure constitutes a narcissistic circuit within legal education that ignores the end users of legal services, that is, clients themselves.

In Chapter IV, I examine—from both a practical and theoretical perspective—three specific teaching techniques useful in an integrated pedagogy. In particular, I urge law schools to incorporate techniques of collaborative and cooperative learning, techniques that offer pedagogical benefits to the students and that work well in an integrated model. Second, I urge law schools to not merely teach law students how to write but rather to use writing as a medium for instruction. Finally, I urge law schools to use grading not merely as an end-of-semester device for ranking and culling students but as an instructional tool throughout the student's learning process. I show the theoretical underpinnings of each of these techniques and also show how they can be used to advance a student's training in the three key areas of doctrine, practice, and purpose.

CHAPTER 2 Law Schools Should Use an Integrated Pedagogy

The New Way: Integrated Training in Doctrine, Practice, and Purpose

Legal education has remained entrenched for over 150 years in a single pedagogy, a Socratic-style instruction with a heavily theoretical or doctrinal focus. The pedagogy has significant shortcomings—as we shall see later in the paper—including a lack of focus on practical skills and a neglect of the larger moral and ethical obligations of lawyers in society. A movement is rumbling now in the hallways of law schools around the country to enhance the age-old, doctrine-heavy pedagogy to incorporate training in practical skills and ethics. The intent of the movement is not to do away with doctrinal training or traditional pedagogy but to balance it with training in the neglected realms of a lawyer's professional education: practice and purpose.

My central claim here is that this movement toward an integrated legal pedagogy is good and necessary because it enriches students' learning and better prepares students to be competent and honorable legal professionals. I specifically endorse three pedagogies drawn from composition theory that, according to research, have been effective in undergraduate schools: cooperative and collaborative learning, using writing as an instrument for instruction, and making assessment a formative component of learning.

My target audience is legal educators who are steeped in the traditional model and who may be ignorant of current learning theory. These educators are surprisingly large in

number. I want to show them the benefits of these alternative pedagogies and demonstrate how stretching the traditional model can enrich students' learning and produce more "whole" and competent lawyers. I argue that even though the concept of an integrated pedagogy is gaining some ground in legal academia, pushed forward mainly by market pressures, progress is slowed by an endemic elitism in the traditional legal academy. The biggest challenge to integrating doctrine, practice, and purpose into legal education is, in my view, upending this entrenched power structure.

"Doctrine" refers to the expert knowledge of the substance of the law, its rules and procedures. Doctrinal courses, or "substantive" courses as they are sometimes called, are those that pertain to the subject matter and analysis of law, such as torts, contracts, constitutional law, criminal law and procedure, evidence, and the like (Grant 384). Traditionally, a law student receives rigorous training in legal doctrine and analytical skills required for zealous advocacy. Legal educators call this process "learning to think like a lawyer." By all accounts, the phrase "think like a lawyer" summarizes in four plain words the central and consuming aim of legal education. Doctrinal training constitutes nearly the entire thrust of legal education, dominating the curriculum throughout all three years of law school.

"Practice," in the narrowest sense, refers to the "how-to" of real lawyering. Practice-oriented courses, sometimes called "skills-based" courses, "clinical" training or "lawyering skills," typically teach a collection of core competencies: research, legal writing, advocacy, fact finding, client counseling, and negotiation. Most commonly, a law student will take one required "lawyering skills" course in his first year that covers all

these competencies. Some schools extend the lawyering skills training into the second year, but even in that case, the bulk of a student's studies are doctrinal in nature. These lawyering skills courses—a required but undervalued component of most law school curricula—emphasize what some would call “mechanical ability” and others call “the nuts and bolts” of lawyering (384). “Practice,” in this narrow sense that refers to technical ability, thus contrasts markedly with “doctrine” whose focus is theoretical knowledge of legal principles and adroitness in abstract legal analysis.

“Practice” does not *only* refer to technical ability—the how-to of lawyering—such as how to file a brief with the court or how to arrange for a court reporter at a deposition. I argue in this paper that “practice” has a deeper and broader connotation as a forum for students to work out who they will be as lawyers. Through role play, writing exercises, peer reviews, mentoring and grading strategies used in skills-based classes, students can practice blending their own discourse with the lawyerly discourse they are learning. In the simulated environment of the classroom or moot courtroom, a student can develop her own true voice as a lawyer.

“Practice” is sorely undervalued in traditional law school pedagogy. Though practical courses are a mandatory component of most law school curricula, they characteristically constitute a narrow slice of the curricular pie, receive little administrative support, and are viewed with skepticism or outright disdain by doctrinal faculty. As noted above, most law schools require but one practical course in the student's first year, and a minority of schools add one additional practical course in the second year. The practical courses typically carry a two-hour course credit as opposed to a three-hour credit for each

doctrinal class. Moreover, the courses tend to be piecemeal additions to, rather than synergistically integrated components of, the doctrinal curriculum.

“Purpose” refers to lawyers’ roles in society as “officially sanctioned participants in making the legal system work—officers of the court” (Sullivan 126). The lawyer’s purpose is larger than merely being an advocate for his client’s interests; she is charged with responsibility for ministering to “the quality of justice” in society (126). Scholar William Sullivan notes that the American Bar Association, in its report of the Professionalism Committee on Legal Education and Admissions to the Bar, summarizes well this important component of a lawyer’s work:

A professional lawyer is an expert in law pursuing a learned art in service to clients and in the spirit of public service; and engaging in these pursuits as part of a common calling to promote justice and public good. (126)

Lawyers bear public and private responsibility as officers of the court and creators of enforceable agreements between and among people and businesses. Writer and scholar Marc Galanter has called these agreements “artificial trust”—the “enforceable agreements and contracts that formalize social relationships and seem increasingly necessary to hold together a turbulent and litigious society” (qtd. in Sullivan 1). Society has entered a contract with lawyers, just as it has with other professions. The contract is multilayered and mutually beneficial. Society agrees to grant a monopoly to lawyers in the realms of practicing law, setting bar admission standards and disciplining members of the bar. In exchange, society expects lawyers to perform these duties with a view toward public welfare.

This responsibility and orientation toward the public good set off professionals as members of a distinct type of occupation, one directly pledged to ideals of service to their clients and the public as a whole. (21)

This obligation to serve the public good, however, conflicts with another significant role of the lawyer, that of zealous advocate. On the one hand, the lawyer is given responsibility as an officer of the court or a social regulator who sees to the proper functioning of legal institutions, political systems, and enforceable agreements. In this vein the lawyer is considered, and called upon to be, a moral agent in society. On the other hand the lawyer acts as a partisan advocate, using his knowledge of the law, analytical powers, tactics, guile, cleverness, and facility with words to champion his client's interest in a legal contest.

Shakespeare wrote of lawyers' clever tactical facility when he made Hamlet say to the gravedigger, "Why may not this be the skull of a lawyer? / Where now be his quiddities, his quillets/ His cases, his tenures and his tricks?" (qtd. in Gopen 333). A "quiddity" is "a trifling point;" a "quillet" is a quibble (333). Lawyers stereotypically have both these commodities in rich supply, and these qualities are often seen as valuable tactical tools. For instance, a client who has fallen on misfortune hopes his lawyer has these skills well in hand, or at least in a measure that exceeds the other fellow's lawyer. As zealous advocates, lawyers remain the "last resource" of these clients whose options have dwindled to a desperate few (333). Writer Urban Lavery said it well:

When the wisdom of common men fails them and disaster is at hand, . . . when the human derelict is finally tossed upon the rocks by the stormy seas of life, then the lawyer is sent for and his 'quiddities' and his 'quillets' are more than welcome; then the myriad complexities of human frailty, and the baffling chicanery of men, test out all 'his cases, his tenures, and his tricks.' (277)

In the vein of fervent advocate, the lawyer is seen as a skilled (and sometimes unctuous or slippery) legal technician. The lawyer's ability to confuse others with his clever use of language—his skill in sophistry—is due to his “training and the work he is called upon to do” (277). Thus the two roles of the lawyer—that of partisan advocate and moral agent—are frequently in tension (Sullivan 82, 84).

The “purpose” component of a lawyer's professional life—his moral and ethical obligation to society as an officer of the court—is woefully shortchanged in traditional law school teaching. Indeed, the traditional model of legal education requires, in the words of one scholar, “a temporary moral lobotomy” on the part of students (Sullivan 78). Lawyers are taught to hone their thinking skills in specialized, morally-neutral ways. The great jurist Karl Llewellyn, in a now-famous speech to incoming law students, said

The first year...aims, in the old phrase, to get you to “thinking like a lawyer.” The hardest job of the first year is to lop off your common sense, to knock your ethics into temporary anesthesia. Your view of social policy, your sense of justice—to knock these out of you along with woozy thinking, along with ideas all fuzzed along their edges. You are to acquire ability to think precisely, to analyze coldly, to work within a body of materials that is given, to see, and see only, and manipulate the machinery of the law. (qtd. in Sullivan 78)

For example, lawyers are taught to define a “fact” as a nugget of information that can be used by one side or the other to advance or refute a legal claim. Lawyers put the narrative of the legal dispute into a framework of legal rules and procedure. They are trained to view a legal problem impersonally and analytically, setting aside their ethical bearings (Sullivan 52). This attitude being one of the explicit aims of first year training, the

traditional legal pedagogy is highly successful at accomplishing this task. Speaking about inculcating first year students in the technique of “thinking like a lawyer,” Llewellyn said

...it is almost an impossible task to achieve the [lawyerly, analytical] technique without sacrificing some humanity first. Hence, as rapidly as we may, we shall first cut under all the attributes of *homo*, though the *sapiens* we shall then duly endeavor to develop will, we hope, regain the *homo*. (qtd. in Sullivan 78)

“*We hope*” to regain the students’ humanity, says Llewellyn, but I claim here that the task of reweaving students’ unraveled humanity is important enough not to be left to mere “hope.” A law student’s training should address his ethical sensibilities and show him how his ethical character bears on his role as a moral agent in society. The integrated pedagogies I am advocating here, including group learning, using writing as a learning tool, and giving frequent and meaningful feedback during the learning process, provide a means for the student to blend his ethical and analytical sensibilities into one coherent voice.

Law students, then, get heavy training in doctrine, very little training in practical skills of real-world lawyering, and nearly no training in the legal professional’s purpose in society as a moral agent:

...[T]he task of connecting [legal] conclusions with the rich complexity of actual situations that involve fully dimensional people, let alone the job of thinking through the social consequences or ethical aspects of the conclusions, remains outside the [traditional law school pedagogy]. (Sullivan 187)

Thus, of the three realms of a lawyer’s professional life—doctrine, practice, and purpose—new lawyers today are robust in doctrinal knowledge and analytical skills but sadly impotent as practitioners and servers of the public good. Legal education’s emphasis on

“thinking like a lawyer” is so predominant that there is little curricular room left to teach students how to perform like a lawyer in the real world (122).

This trend in legal education toward an integrated pedagogy deserves the attention of not just the legal guild but of society at large, because society relies heavily on lawyers to organize its business, governmental, political, and civic affairs (1). The United States leads the world in the number of lawyers per capita. More than one million lawyers were in practice in the United States in 2007, exceeding the number of medical doctors per capita. In the past three decades, the legal profession has grown at a threefold rate compared to other professions. The American Bar Association currently accredits 193 law schools which, in 2004, enrolled a total of over 148,000 students (Sullivan 1, 3).

Our pedagogical microscope is pointed toward law schools, rather than toward the practicing bar, because law school is *the* portal for lawyers entering the profession. Nearly without exception, law school represents the only doorway into the profession; one cannot be admitted to the bar without the J.D. degree in hand. In addition to the J.D. degree, admission requirements include successful completion of an extensive bar exam administered by the American Bar Association. Law schools offer a Juris Doctor (J.D.) degree after three years of full-time study or four years of part-time study. Legal training via the medium of law school is “the single experience that virtually all legal professionals share. It forms minds and shapes identities” (Sullivan 2). Law school is where beginners gain knowledge and judgment imparted by experts; learn the values and expectations of the profession; see and experience the profession’s best and brightest exemplars as teachers; and adopt the habits and practices of the discourse community of lawyers. Lawyers learn

how to be lawyers by going to law school; thus law school marks the seminal transformation of neophyte student to novice practitioner to fully functioning legal professional in thought, word, and deed (2).

Legal educators are the target audience for an appeal to change the law school curriculum because, on a practical level, they constitute the decision-makers in a law school. On a more conceptual level, legal educators are the shapers of young lawyers' minds and professional identities. Teachers are experts whose aim is to bring a novice student toward expertise. The act of teaching is itself an exercise in revealing the teacher's expertise, making it explicit so that the student can see it, interpret it, and imitate it with self-conscious attention and practice.

Teaching makes visible the invisible processes of thinking. By representing in a public way the content and movement of thought, teaching makes it possible for students to enter the ways of thought represented by the teacher. (Sullivan 19)

Teachers show by their gestures, actions, and words the mechanisms and interplay of their expert knowledge and judgment.

Theorists call this public display of expert thought "scaffolds for learning," a phrase which conveys the idea of a shared conceptual structure between teachers and students that enables them to "collaborate in developing knowledge and skill." The method of introducing this shared conceptual framework—the pedagogy the teacher selects—thus influences the way the teacher and student relate to one another in the environment of learning. Pedagogy influences the very process of a teacher's effort to convey his expert understanding to the student and to build the student's skills of deepening his understanding over time through critical analysis (Sullivan 19).

We have established here that under the traditional model of legal education, a law student receives rigorous training in legal doctrine and analytical skills—he learns to “think like a lawyer”—but is left with little training in practical skills or ethics. In other words, the traditional legal pedagogy emphasizes theory over practice, cognitive over ethical development, *knowing* the law over *being* a lawyer. The legal academy is thus significantly imbalanced, shortchanging two of the three components of a lawyer’s professional responsibility. The good news, however, is that law schools are beginning to change, to implement pedagogies that integrate teaching in doctrine, practice, and purpose. In the next section we look at two schools’ exciting innovations toward balanced legal training.

Examples of Integration: Innovations at Stanford and Harvard

Innovators at Stanford and Harvard law schools, building on recent research into legal education, assert that their students should have broader and richer opportunities to learn real-world lawyering skills. Toward that end, both schools are implementing changes to weave practice-oriented programs fully into their curricula as a central component of each school’s pedagogical mission (Caraveli 3). Says Larry Kramer, dean of the prestigious Stanford law school: “Every other profession except law already requires a serious clinical experience before giving someone license to practice” (qtd. in Caraveli 3). He and others cite medical education as an example. Stanford’s new “clinical rotation” program, to begin in 2009, has students enrolled only in a clinical program—no doctrinal courses—for one full quarter of the year. The aim is to provide the student “a much more

intensive experience, including a better professional ethics component and a deeper research and writing component” (Caraveli 4).

The new program pushes the legal curriculum towards the real world. To underscore the point, Stanford law school turns the hallowed phrase “think like a lawyer” on its head; In Stanford’s view, students should learn to “think like a client.” Notes Kramer, learning to “think like a client” involves expanding clinical education and experiential learning. Stanford envisions having clinical programs serve as “living laboratories for exposing students to situations and challenges that allow them to learn what it takes to solve a client’s problem” (Caraveli 2). Real-life law practice requires lawyers to work collaboratively and cooperatively, to converse about the law, to read and critique each other’s written work, to negotiate differences of view and to resolve legal disputes. Lawyers in practice must collaborate and converse not only with their colleagues but with their target audience—judges, clients or legislators (DeJarnatt 489). To learn and practice these skills, Stanford law students are given opportunity to represent clients and litigate cases before they graduate. Students are also afforded a deeper and a more involved research and writing experience involving real-life problems (Caraveli 4).

Harvard Law is implementing similar changes (Glater 1). For both schools, transformative innovations are based on sound, current learning theory and include such techniques as interdisciplinary studying, collaborative teaching, problem solving, intensive clinical training, mentoring, and giving regular and specific feedback to students. Another innovation: the schools explicitly state learning objectives for the students, a practice that

is endorsed by current learning theory but that departs markedly from traditional law school teaching (Caraveli 1, 3).

These changes involve more than just reprinting the course catalogue—they represent fundamental shifts in the value system of legal education. The existing value system of law school rewards scholarship and competition for high rank. By contrast, the innovations at Stanford law school, for one, are “nurtured by a value system that prizes and rewards service” (Caraveli 3). The value system shift is more fundamental than even that, however. The tectonic shift, in my view, is in legal education moving away from its top-down power structure and intellectual elitism toward service-oriented egalitarianism.

Elitism is rooted in the history of legal education. Says scholar William Sullivan, if today’s model of legal education were a person, his mother would be apprenticeship and his father would be the modern research university (Sullivan 4). Over time the father’s academic genes, if you will, have dominated. In the days before the advent of the research university, lawyers learned their craft at the elbow of a seasoned practitioner (Romantz 109). This was the apprenticeship model, which held sway until the late 1800’s.

During this era, however, a shift in philosophy was a bloom in academic circles around the world. Emphasis was turning from practitioner-driven, apprenticeship-style teaching to institutional teaching by academic intellectuals and bona fide scholars. This shift was fashioned after the influential German university model staffed by intellectual heavyweights and driven by a new scientifically-based understanding of what it meant to “know” something, how one comes to a state of knowing, and how knowing can influence progress. The new pedagogy emphasized “objective, quantitative measurement...

[which]... put a premium on formal knowledge, abstracted from context.” This scientific bent of institutional learning, and the shift away from apprenticeship-style learning, enormously impacted legal education, which at that time was in its infancy (Sullivan 4, 5).

Enter Christopher Columbus Langdell, a scholar and “brilliant neurotic” at Harvard who revolutionized legal education (Romantz 112, 121). Consistent with the trend toward scientifically based institutional learning, Langdell characterized law as a science that could be discovered through objective analysis of data (Sullivan 5; Grant 375). His method emphasized acquiring formal knowledge from a “cool stance of detached criticism” (Sullivan 5). This, of course, was entirely consistent with the climate of academic study at the time; apprenticeship-style learning was being eclipsed by scholarly, institutional learning, and Langdell’s new philosophy was right in step with the trend.

Langdell, in summary, introduced two key changes into legal education. Philosophically, he ushered in a scientific bent of “discovering” the law through case analysis. Pedagogically, he introduced a teaching technique styled after the Socratic method. Both of these changes took root, spread widely, and have remained the dominant philosophy and pedagogy in legal education for well over 100 years (Randall 205). Langdell’s approach has come to be known as the “case-dialogue method” or alternatively “the Socratic method.” One scholar has gone so far as to claim that learning by the case-dialogue approach is “one experience that unites almost all lawyers...Practically everyone is taught legal education in the same way, by reading cases and being questioned about them via the Socratic method” (Goldberg 1). Another study revealed that virtually every

modern law school uses the case-dialogue method in some measure, some exclusively so (Romantz 126).

We shall examine the case-dialogue pedagogy—its characteristics, benefits and shortcomings—later in the paper; For now the point is that a deep, historically bound tension exists in legal education between apprenticeship and academic learning. Because of this tension, a wide division has existed throughout the history of legal education between doctrinal and practical courses. The division persists even today (Romantz 139). The reasons are many, and a full exploration of the theory-practice division in academia is outside the scope of this paper. In summary, though, several themes emerge. For one thing, lawyering skills courses, being technically-based rather than theory-based, are seen as intellectually sophomoric (135). Law schools mightily resist being characterized as “trade schools” and they view skills-based courses as carrying a “trade-school” taint (Grant 384). Skills courses have their roots in the lowbrow apprenticeship system, whereas doctrinal courses have their roots in the highbrow research university model. Turning back to the analogy of the legal academy as a person, we can say that for legal education, his mother’s kinfolk (the progeny of apprenticeship) are simple doers, practitioners, mere *artisans*, while his father’s people (the progeny of academic learning) are learned scholars, lofty thinkers, true intellectual *artists*. Since legal education has long favored its intellectual over its practical heritage, elitism has become entrenched in traditional law school culture.

Contrarily, the integrated pedagogies—imbuing the legal curriculum with cooperative learning, mentoring, and real-world training—foster an atmosphere of

egalitarianism. The innovative programs at Stanford and Harvard stimulate law schools to embrace skills training, something they have been sorely reluctant to do. While teachers in both the theoretical and practical camps have the aim of training novice lawyers, they conceptualize the aim differently (Feinman and Feldman 876). The goal of doctrinal legal education is to enable the student to “think like a lawyer,” but the goal of practice-oriented legal education is to enable the student actually to perform the duties of a capable novice lawyer (Feinman and Feldman 880, 881, 891; Zimmerman 969). The innovative pedagogies are meant to take the intellectual mystery out of learning the law, making the learning process explicit and conscious for the students. Rather than playing a game of intellectual “hide the ball” as in the traditional system, law professors under the new model give over “the ball” willingly to every student, exhibiting egalitarianism in the classroom.

It must be admitted, however, that Stanford and Harvard can afford to trend toward egalitarianism because they are already at the top of the heap of elitist schools. They have elitism and prestige to spare. Stanford law school Dean Larry Kramer: “We can take chances at Stanford. We do not have to fear about keeping up with the Joneses. We have the opportunity to be innovative without the risk of losing anything” (qtd. in Caraveli 4). For lower-tier schools, pushing toward egalitarianism—bucking the system, as it were—is likely to be a tougher challenge because their margin of prestige is narrower; even a small loss of prestige could significantly bruise their standing in law school rankings.

Some lesser-known schools, however, view their middling rankings as license to take curricular risks, reasoning that innovations will distinguish them favorably from the pack. CUNY and University of New Mexico, for example, have implemented strong

clinical programs as signature components of their curricula. Some scholars go so far as to say that venerable institutions such as Stanford and Harvard seem to be following the example set by these less prestigious schools (Glater 1). In my view it makes sense that changes toward innovation are initiated either at schools that have the least to lose (top-tier schools such as Stanford and Harvard) or the most to gain (lower-tier schools such as CUNY and University of New Mexico). If a few schools that are ranked across the prestige spectrum are motivated to modernize, perhaps their motivation toward change will initiate a contagion of innovation at other schools. For purposes of my claims here, it matters less who is doing the trailblazing than what kind of trail is being blazed.

The programs at Stanford and Harvard challenge the elitist model on a theoretical level as well as a logistical one, in that their programs are built on the claim that the substance-skills divide itself represents a false dichotomy. Substance and skills—or more broadly, theory and practice—are intertwined. Legal writing scholar Lisa Eichhorn writes:

The skills of legal analysis are taught in every law school class, and every class uses some form of substantive law as its basis. Students in a legal writing course are writing *about* something, and students in doctrinal courses are *doing* something with the substantive law. (qtd. in Grant 385)

One cannot deeply and fully learn doctrine without some practical application of it to a fact narrative. Conversely, one cannot fully or deeply learn practical competencies without a firm grounding in doctrine. The substance-skills divorce should never have happened, according to the view of Stanford and Harvard—the two concepts should be rejoined in an integrated curriculum.

We have explored in this section two exciting examples of integrated programs at the prestigious Stanford and Harvard law schools. These programs can serve as a model for other law schools seeking to blend training in doctrine, practice and purpose. We have seen that the changes will not be pro forma but will challenge fundamental values entrenched in legal education. To implement change successfully, legal educators must have a clear understanding of the nature of the entrenched system, its pedagogical limitations and benefits, and must examine closely the specific teaching techniques at work in the new model. Toward that understanding we look in the next section at the traditional pedagogy, its characteristics and shortcomings.

The Old Way: Traditional Legal Pedagogy and Its Limitations

Law schools across the country traditionally follow a fairly standard curriculum: the first year of law school includes “core courses” such as contracts, torts, constitutional law, criminal law, property and civil procedure. These are called doctrinal courses because they involve learning the theory and substance of the law. First-year students also typically take one mandatory lawyering skills course, usually called “Legal Research and Writing” or “Research Writing and Advocacy,” whose gist is an introduction to methods of legal research and the rudiments of legal writing. Lawyering skills classes make up only a tiny portion of the overall first year curriculum, typically comprising only two- to four-credit hours out of a total of about 30 credit hours. Theoretical classes make up the rest (Sullivan 3).

In the second and third years of law school students can take a variety of electives, usually doctrinal courses in specialized fields such as tax, labor and employment law, family law, corporate law and the like. There is usually also some fairly limited opportunity for gaining practical experience through legal clinics, moot court competitions or participation in law journal (3). A few schools offer upper level writing courses in seminars or additional lawyering skills classes. However, throughout all three years of the law school curriculum, course offerings are predominantly doctrinal, with comparatively few practical courses available to students.

We have noted that, among the practice-oriented course offerings, most law schools have a mandatory first-year lawyering skills course. These lawyering skills courses are typically structured as follows: Law students pretend to be lawyers in various role-play situations mimicking real life practice (usually litigation as opposed to transactional practice). In the first segment, students pose as novice lawyers in a litigation firm who have been asked by a senior partner to research and report on a legal problem with which the senior partner is himself unfamiliar. The student receives a summary of the problem and perhaps some supporting documents of the type a real lawyer would encounter, such as witness statements, documentary evidence and the like. The student sets about to identify the legal issues presented by the problem, glean relevant facts, research applicable law and write an opinion paper—called a “memorandum of law”—showing how the law resolves the dispute. The student’s audience is the senior partner. The memorandum is an “objective” or “predictive” piece of writing, meaning that it attempts to report rather than persuade. Put differently, the writer’s purpose is to communicate to a senior lawyer the

writer's professional opinion as to how the dispute will be resolved and the rationale for the resolution (Stanchi 15).

After mastering objective or predictive writing, students move on to learn persuasive writing in the second segment of the course, usually set in an appellate court role-play context. The main objective is to practice and learn advocacy, which usually involves writing persuasive briefs and presenting oral argument before a mock appellate court. A "brief" is simply a document written by a lawyer designed to convince a court or judge to rule in a certain way in a given case. The writer's purpose is to convince. The target audience is the judge or court.

Law schools across the country also follow a standard pedagogy: Nearly without exception, law schools employ a teaching approach called the "Socratic method" or "the case-dialogue method" which consists of a series of questions posed by the professor to individual, randomly-selected students. Students are asked to analyze excerpted appellate court opinions drawn from real cases. The method places nearly total responsibility on the student himself to discern legal principles embedded in the case law. Though the teacher does pose questions to the student, the process of discovering the *point* of the lesson is left to the student. Guideposts, in the form of learning objectives, are kept hidden. Legal reasoning is paramount. Rote memorization of doctrine gets a student nowhere (Romantz 117). This case-dialogue method predominates in first-year classes so much so that in many schools it is virtually the only teaching method used. The method is also used in upper level courses but typically with less predominance and intensity.

This traditional teaching model—a doctrine-heavy curriculum taught using the case-dialogue method—has significant shortcomings. In particular, the case-dialogue method overemphasizes doctrinal training; practical training is weak and undervalued; and the grading system conflicts with current learning theory. I discuss each of these below.

The Case-Dialogue Method Overemphasizes Doctrinal Training

The case-dialogue method, which emblazons how to “think like a lawyer” into the minds of students, over-weights doctrinal teaching and neglects instruction in practice and purpose. First, a closer look at the case-dialogue method and its characteristics: the method was dramatized in *The Paper Chase*, a now-famous novel, film, and television show, featuring the harsh Professor Kingsfield who inflicted Socratic-style questioning upon his hapless students with particularly sadistic relish. In less dramatic terms, Carnegie Foundation scholar William Sullivan summarizes the method well:

Each day, several times a day, seventy to eighty law students gather in a lecture theater, where a professor stands at the center of the class, closely questioning students chosen at random about a legal case assigned for analysis. The instructor demands answers: What are the facts of the case? What are the legal points at issue? How has the court reasoned in justifying its decision? What underlying principles or legal doctrines are involved? How might changing the pattern of facts have altered the judgment? What analogies can be drawn between this and other cases? (2)

The classroom reverberates with tension. The students must do more than simply memorize case names or dates or recite black-letter rules of law. Rather, the students face intense questions that probe the depth and breadth of their analytical abilities. They must answer the professor’s questions spontaneously and publicly, often groping about for what

they think is the “right” answer to display that mysterious thing called lawyerly thinking. All this takes place in an atmosphere of fierce competition with their fellow students. Sometimes the case-dialogue method seems to degenerate into an exercise of humiliation for students and ego inflation for professors, all without a clear pedagogical point (2).

The case-dialogue method of instruction has remained entrenched for over 150 years (8). I experienced it myself some 23 years ago when I was in law school at Emory University from 1982 to 1985. I remember vividly sitting in a huge lecture hall with 75 or so of my classmates. All eyes were riveted on the Professor—I am remembering now one Professor Fyr (pronounced “fear”), aptly named. He had a snow-white spray of hair styled in a comb-over, and small, effete hands. He pursed his lips into a thin purple line and when his lips parted in just a certain way and he drew in a breath, the muscles under my shoulder blades seized, for I knew that he was about to call on someone.

I had Professor Fyr for an entire semester of Civil Procedure in my first year of law school. Class met for three hours per week, for a total of 14 weeks—that amounted to 42 hours of class time. During that time I was called on only once. The question Professor Fyr posed to me, as I recall, was about a case involving an arcane and difficult concept called “collateral estoppel,” the notion that a matter which has already been litigated between parties or their privies and brought to final judgment cannot be re-litigated by them in another identical action. The idea sounds simple enough but in real courtrooms it is not. The difficulty arises in determining if the new issue is indeed the same “matter” as was litigated previously, or if the parties (or representatives of the parties) are deemed to

be the same as in the prior case. Sometimes the facts are complex and ambiguous, as was true in the case we were addressing that day in Professor Fyr's class.

I remember this: The only part of Professor Fyr's question that I heard clearly was my name. I recall the feeling of blood rushing to my cheeks. I flubbed. Stammered. Turned pages in my casebook. In an instant, he pointed to another student—Ethan Cohn, a brilliant student from Harvard undergrad—and posed the same question to him. I had lost my chance. That brief moment turned out to be the extent of Professor Fyr's interaction with me as his student until, months later in a crowded and eerily silent lecture hall, he wordlessly handed me the final exam.

Whatever shortcomings the Socratic-style pedagogy has, the shortcomings are compounded by the fact that the pedagogy is omnipresent in the first year of legal training. Even small shortcomings accumulate to large effect by reason of frequency of exposure. Critics note that in the case of Socratic style teaching the drawbacks are substantial, so the accumulated negative effect is staggering. Recognizing this, University of Texas law professor Brian Leiter has gone so far as to call the Socratic method “the scandal of American legal education.” Admitting that he is himself a “recovering” practitioner of the Socratic method, he writes: “There is no evidence—as in ‘none’—that the Socratic method is an effective teaching tool. And there is so much evidence that it is a recipe for total confusion” (Goldberg 2).

Leiter's comment is an exaggeration, to be sure, but the drawbacks of the case-dialogue method are legion. Among the drawbacks: The method uses only the narrow, doctrinally-focused material of excerpted appellate opinions; offers no explicit learning

objectives and little if any corrective instruction; targets only a single student at a time; is entirely teacher-centered; favors only the already-strong auditory student; and is often aggressive and combative. We will explore here each of these shortcomings in some detail and will note how integrated pedagogies such as those implemented at Stanford and Harvard counterbalance these shortcomings.

Appellate opinions are weak teaching tools that mainly emphasize doctrinal learning. The case-dialogue method fails to teach problem solving skills, instead presenting the student only with an already-solved problem (an appellate opinion). First, the method overlooks skills such as research, advocacy, statutory interpretation, client counseling, legal writing, negotiation, and the lawyer's service to society as an officer of the court (Romantz 124). Second, facts in an already-resolved case are static, but the facts in an ongoing case are ambiguous, discoverable, and critical to legal problem-solving (125). Under the case-dialogue method the organic relationship between facts and law becomes obscured. Students get no practice in recognizing the slippery nature of facts in a legal dispute because in appellate opinions the facts have already been discovered, winnowed, weighted, put in order, litigated and set out in a cogent, neat narrative by the jurist who authored the opinion. In contrast, a pedagogy combining doctrinal teaching with clinical and ethical teaching, as I am advocating here, presents students with simulations of real-world problems so that the facts and law are, by the nature of the messy real-life nature of the problem, organically melded.

The case-dialogue method fails to engage students in an analysis of jurisdictional limits—controlling versus persuasive authority—and thus gives a misimpression of a

“national” jurisdiction (129). In appellate opinions, jurisdictional issues have already been resolved. (This would not be true, of course, if jurisdiction were a disputed issue in the case.) Accordingly, in most instances, the issue of governing precedent is relatively straightforward. Not so in the real world. A real-life simulation prompts students to sort out which court can claim proper jurisdiction and why—issues that can often be tricky and can even be, in some instances, determinative of the outcome of the case.

The case-dialogue method gives a student little context for incorporating morals or ethics into his analysis. Instead, the method challenges the student to become nimble at creating morally-neutral arguments pro or con for virtually any position. Socratic inquisition generates diffuse classroom discussion that produces a “bewildering variety of arguments about precedent and policy” without offering any explicit system for organizing the variety within the larger framework of societal norms (Feinman and Feldman 887). In this way students learn, at the extreme, a meta-message that morally-based notions of right or wrong are misplaced in legal analysis—every position can be supported by adroit argument.

Contrast this morally-neutral approach with the collaborative learning and mentoring models such as those employed in Stanford’s new program, where students claim a place in a simulated society of lawyers, conferring with peers, colleagues and mentors. The group learning method, as we shall see, stimulates students to think of themselves and the legal problem on which they are working as embedded in community. This gives them a context for considering and discussing the ethics of the problem, its moral components and the justice of their proposed solutions. The mentor (professor)

stimulates their thinking in this regard by explicitly posing morally ambiguous real-world scenarios and by questioning the students on the ethical implications of their arguments.

As a teaching technique the Socratic-style method is a blunt and clumsy instrument. It offers no explicit learning objectives and little corrective instruction (Randall 202). There is only a fuzzy message, if any at all, about what the student is expected to learn (Feinman and Feldman 881). While advocates of the case-dialogue method say that it inspires students to “think like lawyers,” the specific competencies that comprise lawyerly thinking remain largely unstated (Sullivan 116, 126). Students are left to figure out on their own that lawyerly thinking is the aim, and left to grope about for what that really means (Feinman and Feldman 881). If the student fumbles an answer, or is off the mark, or gets the wrong idea from a case, the teacher rarely corrects his misstep or examines with him how he came to misunderstand. Not so with the intensive mentoring and feedback models in the new integrated pedagogies, where the student has explicit learning goals and much give-and-take with his mentor throughout the learning process.

Socratic questioning engages only a few students during a given class period—those targeted by the professor’s inquiry—while leaving other students passively to absorb the exchange. Robin A. Boyle, a professor of legal writing at St. John’s University and director of its Academic Support Program, summarizes it well: “Because the Socratic method engages one student at a time in questioning, it allows the rest of the class to tune out” (Goldberg 1). The group learning approach, by definition, reverses this singularity of instruction.

Moreover, the Socratic method is heavily teacher-centered, featuring the professor as the “sage on the stage” (Randall 251). Indeed, the method is even named for the teacher (Socrates) and not his most famous student (Plato). Robert Reich, former Secretary of Labor and now a professor of public policy at Berkeley, has noted that the Socratic method has “morphed beyond recognition” into theatre of arrogance featuring the professor as its star (Goldberg 2). Typically even the lecture hall is fashioned like a theatre with a large semi-circle of student seats positioned around the center point of the professor’s podium.

Reich writes: “This is a woefully impoverished understanding of the Socratic method, for cold-calling bears no resemblance to Socrates’ pedagogical activities in the Dialogues” (Goldberg 1). Another scholar, University of Texas professor Brian Leiter, notes with irony that the Socratic method is rarely used in philosophy classes. To explain why, Leiter points to the Dialogues of Plato. Plato, after all, was a philosopher himself and Socrates’ pet student, yet even he bristled at Socratic-style questioning. Notes Leiter: “You can hear [Socrates’] interlocutors getting exasperated and threatening to punch him out. [Socratic questioning] is a kind of annoying way to communicate” (1). Needless to say, collaborative learning models strive for the opposite effect. Notes Reich: The better approach is to have the professor act as a “facilitator and seeker of the truth rather than an authority figure who has all the answers” (3). This, indeed, is exactly the philosophy of group learning models. Moreover, the model where the professor acts as “facilitator and seeker of the truth” mimics the role of a real-world attorney engaging with her client, thus reinforcing the student lawyer’s practical acumen.

According to legal scholar Paul Teich, the Socratic-style method fails to account for “individualized learning styles and capacities” (qtd. in Romantz 125). Instead, the method tends to favor the outspoken student; Law professors admit that they are surprised when the top grade-earner turns out to be “some silent, barely known soul” from the class (Feinman and Feldman, 881). The method favors the student who excels at “metacognition,” according to St. John’s law professor Robin Boyle (Goldberg 2). As Boyle defines it, “metacognition” means having an awareness of how one learns even in the process of actually learning. It is present in students who “learn efficiently and feel a measure of control over the learning process” (2).

Since the Socratic method is almost entirely oral, it favors auditory learners and verbal students. Legal writing scholar Susan DeJarnatt, writing about the shortcomings of Socratic pedagogy, points out that students are often drawn to law school because they are skilled at speaking or debating. However, she writes that law school “is a pseudo-oral environment” (506). A particularly verbal student may feel confident at first because most of his classes involve only oral skills (responding to the professor’s Socratic questioning) and virtually no written skills. But his confidence is illusory, because

...evaluation and success in nearly all classes depends on the student’s writing. Indeed, the traditional [Socratic-style] pedagogy assumes at its core that students will, without instruction, make the transition from oral analysis to written analysis. (506)

The key phrase there is “without instruction;” Socratic-style pedagogy offers no guidance to a student in transforming oral prowess into writing skill. Since the integrated pedagogies enable students to attack legal problems from various modes—in groups, with

a mentor, in simulations, orally and in writing—the methods embrace a wider variety of learning styles.

Finally, the Socratic method can be combative, harsh and demeaning to students. Socratic inquisition fosters unhealthy competition among students; is sometimes verbally brutal, dehumanizing and sadistic; and contributes mightily to students' psychological stress (Zimmerman 968; Romantz 126). Sad but true: Socratic-style questioning can sometimes be used “as a tool for humiliating or embarrassing students” (Goldberg 3). By contrast, the integrated pedagogies, particularly the methods that emphasize mastery of skills and criterion-based assessment, neutralize the competitive air of the classroom. Further, the group learning models foster mutual work fueled by a spirit of collaboration and cooperation.

Despite its shortcomings, the case-dialogue method does have some advantages. Among its strengths: it succeeds in teaching “higher-order skills of fact analysis and legal reasoning” and shifts the burden of analysis from teacher to student, thus inspiring students proactively to “think like lawyers” (Romantz 116, 126; Goldberg 1). According to William Sullivan, a senior scholar at the Carnegie Foundation and author of an extensive report on legal education published in 2007, the case-dialogue method is remarkably effective at imparting lawyerly habits of reasoning (3). Even though law students, particularly today, come from many different walks of life, they become by the end of their first year quite muscular in legal analysis (2, 3). The transformation is nothing short of dramatic.

Seen in this way, the Socratic pedagogy is effective at introducing students to the “normal discourse” of lawyers. Scholar Kenneth Bruffee defines “normal discourse” this way:

Normal discourse...applies to conversation within a community of knowledgeable peers. A community of knowledgeable peers is a group of people who accept, and whose work is guided by, the same paradigms and the same code of values and assumptions... [where]... everyone agrees on the ‘set of conventions about what counts as a relevant contribution, what counts as a question, what counts as having a good argument for that answer or a good criticism of it. (642, 643)

Under this definition, Socratic-style teaching does help students learn the vocabulary of lawyers and their habits of lawyerly thinking. Indeed the very mechanism of Socratic questioning exemplifies, for the students, the type of query defined by the professor as a legitimate lawyerly inquiry. Through the verbal dueling of Socratic teaching, the student discovers what the teacher measures as a “relevant contribution” to lawyerly analysis, and what counts in a seasoned lawyer’s view as a sound argument or a cogent rebuttal. True enough, but this alone does not meet the student’s need for inclusion in the lawyerly community, as shown by the theories of writing scholar David Bartholomae.

Bartholomae writes of a “specialized discourse community” that differs in some material respects from Bruffee’s normal discourse community. “Normal discourse” in Bruffee’s parlance represents a broader, looser community—one with lower entrance hurdles—than Bartholomae’s “specialized discourse community.” Each professional field has its own “normal discourse,” notes Bruffee, but he nevertheless lumps together as representing one normal discourse “most academic, professional and business

communities” (643). In his view, then, a “normal discourse” community is rather diffuse and large, representing a segment of what he terms “the unending conversation of mankind” (638).

Bartholomae, on the other hand, describes a more defined and specialized discourse community—such as the community of lawyers, in our example—into which the student seeks entrance. Bartholomae’s notion envisions a privileged group of language-users who stand “inside the circle” of power and who speak a stylized language with its own “commonplaces, set phrases rituals and gestures, habits of mind, tricks of persuasion, obligatory conclusions and necessary connections” that determine the boundary of “what might be said”—what is appropriate and authoritative to say—in that community (630, 634). Under Bartholomae’s framework, law students “must imagine for themselves the privilege of being ‘insiders’—that is, the privilege of being inside an established and powerful discourse and of being granted a special right to speak” (631). Achieving inclusion is a difficult task. It involves imitation and repetition, to be sure, but also must finally involve the student’s “invention and discovery,” that is, the student’s internal formation as a rightful, authoritative speaker inside the power circle (632).

I argue that the Socratic-style method does *not* help a student enter the privileged discourse community of lawyers that Bartholomae’s theory envisions. For one thing, the Socratic-style method gives little opportunity for the student to engage even in the first stages of inclusion, imitation and parody, because the method targets only one student at a time and then usually only for brief exchanges. Recall my own (not atypical) experience with Professor Fyr where the extent of my opportunity to practice approximating

specialized lawyerly discourse lasted approximately fifteen seconds out of a total of 42 hours of class time.

For another thing, the power structure of law school—where the “sage on the stage” professor holds all the knowledge and parses it out haltingly amid fiercely competitive classmates—hardly invites “invention and discovery” from students. So, while the Socratic-style method, by reason of its question-answer format and focus on analytical thinking, may help introduce students to “normal discourse” of an academic (as opposed to a non-academic) community, the method does not, in my view, fully bring students inside the specialized discourse community of lawyers because it is simply too blunt an instrument. While students may learn what the professor means by “think like a lawyer,” the students themselves get little opportunity to practice this skill or adopt it as their own.

If the dominant Socratic-style method fails to bring students fully inside the circle of lawyerly discourse, how *do* students eventually become insiders? Some of their richest training in lawyerly discourse comes, while in school, in the form of practical courses such as legal writing and advocacy, though I argue that even this training is less robust and comprehensive than it should be. In these courses students role-play as lawyers handling a case, so they get to rehearse lawyerly talk, lawyerly behavior, and lawyerly writing in a community of other novices, supervised by a seasoned professor. The students get to “walk the walk,” so to speak, following in the steps of experts while getting feedback along the way. This much is good. The bad part, as we shall see in more detail below, is that practical courses are too few in number, too disconnected from the doctrinal program, and

too weak in content to fully inculcate students into the legal discourse community (Sullivan 189).

If law schools take a small part of the responsibility of inculcating students into lawyerly discourse, employers take the lion's share. Under the traditional model where practical skills courses are an add-on to an already full curriculum, employers end up bearing the burden of training new law school graduates how to really *be* lawyers. Employers typically accomplish this via a version of apprenticeship, where new lawyers "shadow" a senior attorney for some period of time to learn the rhythm, language, etiquette, wisdom, judgment and professional carriage of a practicing lawyer. In the traditional model of legal education, then, the majority of the young lawyer's introduction to the community of legal professionals—to the language and habits of practicing lawyers—comes in the form of this on-the-job training.

The Socratic-style method has other minor advantages that are worth noting here. The method mimics the tense environment of a courtroom and replicates in the teacher-student relationship the vast power differential of the judge-litigant relationship (Goldberg 3). In this way, then, the Socratic-style method helps the student to practice handling himself before a real judge in a real courtroom. Also, real-life courtroom arguments are usually quick affairs. The advocate has only a moment to impress the judge with a pithy, substantive, well-reasoned argument. Similarly, the quick back-and-forth rhythm of Socratic teaching exhibits this rhythm of speedy analysis and speedy assessment. If the student does not give an immediate, sound and confident answer to the professor's

question, the professor typically moves on to another student or another point; the student has lost his chance. In this fashion the method reinforces real-life oral advocacy skills.

In summary, then, the shortcomings of case-dialogue pedagogy outweigh its benefits. The integrated pedagogies I am advocating here—implementing group learning models and using writing and assessment as learning tools—specifically counterbalance these shortcomings of the Socratic-style method while not diminishing its benefits.

Now we address the second major limitation of traditional law school pedagogy, the point that practical training is thin and undernourished in comparison with robust doctrinal training.

Practical Training is Weak and Undervalued

The two basic skills that lawyers use, the fundamental building blocks of law, are research and writing (Silecchia 249). Words are the basic tools of lawyering and the fundamental instruments of a lawyer's craft (Parker 562). No legal task can be accomplished without words. Though agility with oral and written language is just one of the many skills required of a practicing lawyer, it ranks as the most important; this is why lawyering skills courses (such as they are) heavily stress writing and advocacy. Despite the importance of language, however, lawyers have historically been little trained in its use.

Historically, lawyering skills classes crept into legal curricula to partially compensate for the demise of the old apprenticeship system. As apprenticeships gave way to the academy as the main venue of legal education, a threat loomed that new-trained

lawyers would emerge with no practical skills (Silecchia 247). Lawyering skills courses of varying types arose to address the deficiency by offering much needed instruction in real-life lawyering in simulated practice settings (248; Romantz 129). These early courses principally included legal writing, research and advocacy skills. Because research and writing were seen as the most fundamental legal skills, these courses came to be known simply as “Legal Research and Writing” (“LRW”) (Silecchia 249). Other skills courses emerged later, such as supervised clinical practice opportunities, seminars in negotiation and workshops in alternative dispute resolution. But “Legal Research and Writing” was the seminal practice-oriented course in legal education.

In the first such course, which appeared in 1938 at the University of Chicago, students were taught “the methodology of legal problem-solving and the formal, complete and succinct expression of that analysis in writing” (Romantz 139; Grant 376). Students were presented with a fact scenario within a certain jurisdiction. They identified legal issues, analyzed the significance of the facts, found controlling or persuasive precedent within jurisdictional boundaries, applied the law to the facts, drew conclusions and presented their analysis in cogent written form (Romantz 129).

Soon other law schools adopted similar legal research and writing programs. By 1947 the American Bar Association (ABA) recognized legal writing as a legitimate law school subject (130). In 1970, the ABA affirmed the importance of research and writing courses in a legal curriculum. However, the ABA standards were rather toothless: the only accreditation standard relating to legal writing required merely that law school curricula include “one rigorous writing experience” (Parker 562, 563; Romantz 134). This

so-called “rigorous” writing experience typically occurred in a first-year class but could occur in an upper level seminar. This tepid standard reflected the view, according to one scholar, that writing is a discrete and rather unimportant skill that can be learned by rote, in a hurry (Parker 562).

Nevertheless, the 1970 ABA standard, weak as it was, did coincide with tremendous growth in legal writing programs throughout the country. The 1980’s saw revolutionary changes—an explosion of legal writing courses, burgeoning scholarship on legal writing pedagogy, and increased status and remuneration for legal writing instructors (Grant 376). Yet goals of skills-based instruction (including legal writing) were still less than ambitious. In the words of one scholar, the goals were simply to “assist students in developing a minimal proficiency in legal research and writing, appellate advocacy, legal drafting, client counseling, conciliation, negotiation, fact marshalling, and pretrial and trial practice” (Grant 377 at note 54). The point is that, despite the mushrooming interest in legal writing and skills-based courses, standards remained low—merely bringing students to a level of “minimal proficiency” was deemed sufficient.

After conducting a wholesale review of legal education in 1996, the ABA restated—but, interestingly, did not significantly toughen—its accreditation standards for legal writing programs:

The law school shall offer to all of its students...an educational program designed to provide that its graduates possess basic competence in legal analysis and reasoning, oral communication, legal research, problem-solving and written communication. (Parker 563; Grant 372)

The new standard of achieving “basic competence” was hardly more rigorous than the old standard of achieving “minimal proficiency.” Noting this with dismay, legal writing professor Susan Brody wrote that “basic competence” could be accomplished with as little as one upper-level writing course offering little feedback and a single end-of-term grade. She advocated a more rigorous standard: “the teaching of oral and written communication skills on a regular and systematic basis throughout the curriculum” (qtd. in Parker, note 3, 603).

Most law schools today do require “systematic and regular” writing instruction, at least in some measure. In 2007, schools required an average of about two credit hours per year devoted to mandatory legal research and writing courses, for each of the three years of school (Association of Legal Writing Directors, Legal Writing Institute, 2007 Survey 7). This average has held relatively steady over the past three years—since 2004, the first year of the survey, the number of required credit hours devoted to legal research and writing in the first year of school averaged about two per semester. For the few schools that required writing courses in the second and third years of law school, the average credit awarded for these upper level courses was also about two hours per semester (7).

As a consequence of their humble heritage in apprenticeships, legal research and writing courses have long held second-rate status in the academy. Indeed, the view of legal writing instructors as second-class citizens is pervasive. One professor, summarizing the prevailing view, sniffed:

...no intelligent J.D. with academic aspirations really wants to teach a subject like [legal research and writing] that is beneath the dignity of a law professor and, if

anyone does initially want to teach [it], she will soon wish to abandon the field to teach something ‘really interesting.’ (qtd. in Grant 373)

It is interesting but not surprising that the quoted professor referred to the typical legal writing instructor as “she.” Most legal writing instructors are, in fact, women (Association of Legal Writing Directors, Legal Writing Institute, 2007 Survey Results 5). Another scholar made the same point about legal writing instructors’ low status: “Serious faculty do not teach skills courses, nor do they respect those who do” (Fine 225). Legal writing instructors have been described as “lowly mechanics” positioned “at the edge of the academic faculty” (225, 227). Legal skills courses garner “institutionalized contempt” and are the “pariahs” of law school curriculum (225). Teaching legal writing is seen as an “unsavory” job only undertaken by “an incompetent or borderline crackpot” (Grant 393). Law skills courses are viewed as anti-intellectual, peripheral and remedial (Romantz 132).

Because of the low status of skills courses, a wide prestige gap exists between doctrinal and lawyering-skills professors. Professors who teach doctrinal courses resist teaching lawyering skills courses for fear of damaging their esteem within the academy. Willard Pedrick, law professor at Arizona State University, goes so far as to claim that, as a matter of policy, doctrinal faculty should not be deployed to teach law skills courses. He warns that using doctrinal faculty to teach law skills would erode these professors’ “positive self image” by relegating them to the menial and fallow “donkey work” of teaching basic grammar and composition. The “positive self image” to which he refers derives from, in his words,

The vision of the law teacher before a relatively large class teaching in some version of the Socratic method, a la Professor Kingsfield, having an accompanying

function of legal research (commonly in the law library) and spending many hours in writing for consequent publication in the law journals. (414)

Because teaching legal writing is, in Pedrick's view, a substandard assignment that serves merely as a "distraction" to serious scholarship, it "represents a real threat to success in achieving genuine legitimacy as a law teacher" (414).

Responding to Pedrick's claims, scholars N. William Hines and William A. Reppy, Jr. suggest that Pedrick was acting as a provocateur, speaking with extreme emphasis for the point of effect while using his "customary wit" (Pedrick 415). This may be true. However, Pedrick's central claim that writing instructors occupy the lowest rung of the academy's prestige ladder is born out in many concrete ways. Legal writing instructors' salary, job security and sphere of influence are, in comparison with doctrinal faculty, in the gutter. Regarding salary, for example, one study in 2003 reported that full-time legal writing faculty on average earned \$30,000 less per year than doctrinal faculty (Grant 381). Regarding job security: Most schools, in hiring full-time legal writing faculty, opt for renewable contracts that lack the benefit of tenure. Usually the term of renewal is short—one to two years—and the number of renewals allowed for any one instructor is capped. Sometimes an instructor is allowed to renew indefinitely as long as she remains off of the tenure track. Renewable contracts are generally undesirable, however, because they fail to afford "full collegial respect" toward legal writing faculty and they do not normally include full faculty voting rights (379). Moreover, the renewable contracts offer no protection for teachers whose political or pedagogical positions differ from those of the administration and other faculty (Levine 533; Grant, 379, 392).

Even legal writing instructors who are on permanent contract are not typically on a tenure track. This is a significant disadvantage to them because tenured status is the prize—the “epitome of achievement”—of an academic career (Grant 380). Tenure represents the ticket into the professional and academic guild and signals acceptance by, and parity with, other law school professors. On a practical and economic level, tenure also represents job security and, usually, higher pay.

The baseborn status of legal writing professionals is also reflected in the low-prestige titles they hold within the legal academy. Few are called “professor,” the most prestigious title in academia. Most are called “legal writing instructor” or “legal writing teacher” (Fine 225). Some are called “Mr. or Ms. So-and-So” or even by their first names. Some do not even rank as “faculty” but rather are included within the marginalized category of law school “staff.” Office space—if indeed the legal writing instructors have any office space at all—may be “shared offices or cubicles in hidden corners of the library or basement” (Grant 392). Some law school catalogs, distributed to prospective students to promote the school, omit mention of legal writing instructors entirely or fail to mention their educational achievements or academic contributions (392).

Legal writing instructors share another mark of diminished status: a widespread weakness in scholarship. Productivity in research and scholarship is extremely valued in the academy, often being determinative of professional and academic status (Fine 227, 228; Grant 380; Sullivan 7). One would think that legal writing instructors’ skill in research and writing would render them as prolific writers themselves, but no. Ironically, professional research and scholarship are out of reach for many legal writing professors

because their heavy workloads preclude these pursuits (Fine 229). Legal writing professors simply do not have time or energy to pursue scholarship given their course loads and high number of hours spent per student in teaching, conferencing, and grading. In addition, law schools rarely encourage or support publication efforts by legal writing instructors by giving them grants, providing research assistants, or temporarily reducing their workloads (Grant 380). Thus, legal writing professors pay a high price for their career choice—they effectively preclude themselves from being able to engage in the most valued pursuit in the legal academy, scholarship and publication. In turn, their lack of scholarship and publications serves to entrench them further in second-tier status (Fine 227).

Some scholars claim that the low academic rank of legal writing is due in part to its lack of single, cogent, consistent pedagogy (Sullivan 109). It is true that writing pedagogy is in flux in law schools; scholars Margolis and DeJarnatt point out that for some time legal writing professors have been searching for an overarching, defining theory of teaching legal writing. Since legal writing is a relatively new area of legal education representing a departure from the predominant doctrinal focus, the field is still finding its way. They note that, though some law schools incorporated writing instruction as early as the 1950's, most schools did not offer separate legal writing courses until the 1980's (94, 95). The field is still in its infancy, particularly in comparison with legal education generally. Margolis and DeJarnatt say it plainly: "Because we...have not been at this very long, we are still figuring out the best way to teach our subject" (95).

How would zeroing in on one pedagogical approach serve legal writing professionals? For one thing, adopting a single theory would align with the prevailing doctrinal law school culture of adhering to a single, dominant pedagogy. Put differently, the point is that in the same measure that doctrinal professors are wed to the Socratic method, legal writing professors seek a stable pedagogical partner. Another motive for seeking a single pedagogy is to refute the claim of anti-intellectualism of practical skills. Legal writing professionals reason that if writing courses are grounded in cogent theory, as are the “substantive” courses, the prestige of legal writing as an intellectually sound discipline will grow.

In general, legal writing pedagogies have generally tracked, but lagged behind, writing theories developed by composition and rhetoric scholars. Legal writing programs began under a product-focused model, also known as the current-traditional model (Duranko 719). This model focuses solely on the text itself, the end product of the writer’s effort, with attention to its grammatical, mechanical, and technical correctness (DeJarnatt 493). The professor stands as the final authority in measuring the propriety of the text’s grammar, style, form, and the legitimacy of the text content (Connors and Lunsford 396, 397). In the current-traditional model, teachers also have in mind an “Ideal Text” that is grammatically and substantively proper, against which they measure students’ papers. The Ideal Text is insinuated to the student through teacher’s corrections (Knoblauch and Brannon 119, 120). Knoblauch and Brannon describe the typical focus of writing teachers as

... the propriety of discourse extending from its technical features to its formal appearances and even to its intellectual content as *a display of approved ideas* in conventional relationships to each other. (119, emphasis added)

Applying this model, legal writing teachers typically give students a sample of a particular legal document—a brief, let’s say—and an accompanying set of facts presenting a legal problem. After identifying and researching the legal issue, the students write their own briefs, copying the style and form of the sample brief. The teacher does not engage with the students in their process of analysis but rather assumes that the thinking process is complete before the writing begins (Duranko 721). The teacher then examines the student’s final product for error-free prose and clarity (Margolis 98). Interestingly, this product-focused teaching method undergirds doctrinal classes, where a student is evaluated based on one end-of-semester final exam paper, written without input from the professor and assessed by the professor for formal, technical, stylistic and substantive correctness (Rideout and Ramsfield 42). In legal writing classes, the product approach is less dominant but remnants of it still remain (Margolis 99).

Legal writing theory has been slow to move fully away from the product-focused model because legal writing tends to be heavily rule-bound, thus inviting a formulaic, “cookbook” approach to composition. For example, first-year legal writing courses are full of organizational formulae about constructing “proper” writing, from case briefing “rules” to a paragraphing roadmap for legal writing called “IRAC” (Issue, Rule, Application, and Conclusion) (DeJarnatt 502). In addition to these unofficial “rules,” court-imposed rules abound. For example, Rule 28 of the Federal Rules of Appellate Procedure—a rule with a

total of 31 parts and sub-parts—sets forth requirements for the content of an appellate brief. The corresponding Federal Rule of Appellate Procedure 32 (containing a total of 38 parts and sub-parts) governs the format of appellate briefs all the way down to the font style. DeJarnatt notes that legal writing formulae are “dangerously seductive:”

It is easy to forget to emphasize the importance of writing as a process of making meaning, that the dialogue of analysis exists to construct meaning of the law for the reader, and that the text and the reader both exist within an environment that affects how the reader makes meaning of, and reacts to, the text. Organizational formulas and guides are just techniques, tools like grammar and spelling that allow effective communication of meaning. (502, 503)

DeJarnatt’s remarks pointed out the limitations of the product-focused approach and portended later developments in legal writing theory, including the process-oriented approach and, later, social constructivism.

In the 1980’s the process-oriented approach followed the product approach as the prevailing pedagogy in legal writing departments. Influenced by composition and rhetoric theory, legal writing programs shifted toward a “writer-based” approach in which emphasis centered on the writer’s internal processes—his methods and mental schema during the writing task (Stanchi 12; Margolis 98). In its earliest incarnation, the process approach took the form of an expressivist model, that is, the view that writing unlocks the writer’s inner voice. Champions of the expressivist view include scholars Donald Murray and Peter Elbow. They believe that the writer’s individual truths are meant to emerge through writing (Murray 81). In Elbow’s words, “the students are individuals who must explore the writing process in their own way...to find their own way to their own truth” (82). Theorist Linda Flower calls this the “think-it, say-it” approach, in that it promotes a free-

flowing, unreflective process whereby the writer's inner thoughts, as they come, saturate the page. She describes this type of prose "as a verbal expression written by a writer to himself and for himself" (19). However, Flower critiques this "think-it, say-it" approach as being largely ineffectual in communicating to the reader. She advocates instead for a more reader-based prose (19).

As applied in legal writing classrooms, the expressivist view does have its place. DeJarnatt points out that although legal writing is not usually considered a proper forum for a student to express his inner voice, the truth is that the typical law student has had little experience in *any* forum with finding his own voice, or his intention and "selfness" as a writer (DeJarnatt 505). She concludes that

students with little writing experience need some opportunity to learn their intent through writing. Certainly the pedagogical techniques developed by expressivists, including free-writing, can be enormously useful to students who are uncomfortable with using writing to generate ideas and to work out the analysis of issues. (506)

In its later incarnations, the writer-based approach took the form of a cognitivist model, that is, a view of writing that focuses on the intellectual processes of the writer. Cognitive process theorists concentrate on the individual writer's expressive or intellectual process. Writing scholar Patricia Bizell labels cognitive-process theorists "inner-directed" thinkers because they tend to focus on the cognitive, internal processes of the writer himself, prior to any social influence (388). "Voice" tends to be the prevailing metaphor among process theorists—among both expressivists and cognitivists—who view writing primarily in terms of the writer's intent. Process theorists claim that the writer finds her "voice"—the fullest expression of her intent—through a recursive writing process that

moves through intertwined and overlapping stages of prewriting, writing and rewriting (Murray 80; DeJarnatt 500).

As applied in the law school classrooms, the process view influenced legal writing instructors to focus on “what writers do as they write” and to try to identify “the steps writers take as they move from idea to finished text” (DeJarnatt 501). Writing came to be seen not merely as a text product but as a “cognitive problem of the writer’s mind” (501). Under this model, legal writing professors intervene in the writing process, engage with students in the process of analysis and composition, and give substantial feedback on students’ drafts through written critiques, comments, and individual conferences (Margolis 99).

This shift in emphasis had broad implications, not to be underestimated. Calling the process approach a “pedagogical revolution,” Margolis and DeJarnatt gushed “we now recognize that we are teaching students to write, not merely correcting the writing mistakes they have already made” (99). As compared with the product approach, the new process-focused model shifted emphasis from professor-as-evaluator to student-as-author (Duranko 721). With the new approach, focus also shifted from conformity with an Ideal Text to the success with which the writer communicated his intended message to his audience (722). Moreover, the new approach no longer viewed writing as separate from thinking but viewed these two processes as synergistic and interconnected.

Writing *is* thinking: This epistemic view of writing is subsumed in the process approach. The epistemic view says that writing is “more than communicating knowledge but a way of generating knowledge” (Stanchi 12). The writer’s aim is not to tell

knowledge, but to produce it through the “discovery and invention” that necessarily occur as we write (Fajans and Falk 174). Scholar George Gopen writes,

The writing process is not to be separated from the thinking process; it *is* a thinking process. That concept, commonplace enough in English departments nowadays, has not reached the majority of our lawyers. (343)

As an example of the epistemic view of writing, consider the lawyer who reframes her arguments in a case after her first attempt to write a brief revealed a collision of legal ideas, or the lawyer who discovers a loophole in contract provisions while drafting what he aims to be airtight terms. The writing process itself generates ideas, revelations, and new meanings that thinking by itself could not spawn.

Process theory maintains a strong place in legal writing pedagogy. The primary advantage of process theory is that, for students steeped in the traditional writing-as-product model, the notion that their writing is a recursive, fruitful path through stages of making meaning can be exhilarating, liberating, and motivating for them (DeJarnatt 507). Process theory usually affirms a student’s own experience of writing and gives her confidence that getting to the end product involves many stages, many drafts and trials, that all contribute to deepening her analysis.

The most recent theory to emerge in legal writing pedagogy is the social-constructivist view, so called because it incorporates an awareness of the writer’s surroundings, his community, and the external forces that influence his writing process (Stanchi 13). Social constructivists locate writing within a social context, exploring the interplay between the writer’s external and internal worlds as they influence and inform his writing. In Bizell’s terminology, social constructivists are “outer-directed theorists” who

focus on “the social processes whereby language-learning and thinking capacities are shaped and used in particular communities” (388).

Social constructivists took the process model, which focused on a writer’s internal schema, and broadened it to include the writer’s social network, that is, the community within which he sought to write and the people he sought to address. Social constructivists noted that these communities and the people within them had a specific and often unique relationship with language that helped inform and define their group. Bartholomae, one of the seminal thinkers among social constructivists, called these language-using groups “discourse communities” and, as we have seen, made claims about how newcomers to a discourse community acculturate themselves to the language of the privileged group in order to become true community “insiders” (629).

Bartholomae noted that student writers new to an academic discourse achieve acculturation with varying degrees of success. In his hierarchy of writers, Bartholomae places at the lowest level a writer who “establish[es] his authority by simply stating his own presence within the field of a subject.” At the next level are writers who “establish their authority by mimicking the rhythm and texture, the ‘sound’ of academic prose, without there being any recognizable interpretive or academic project underway” (646).

The most skilled of student writers

establish their authority as *writers*; they claim their authority by placing themselves both within and against a discourse, or within and against competing discourses, and working self-consciously to claim an interpretive project of their own, one that grants them privilege to speak. (646)

These skilled students write from a critical, rather than an imitative, stance (633; Bizell 403).

Like Bartholomae, legal writing scholars DeJarnatt and Parker have observed these same gradations of success in students' attempts to join legal discourse. Novice legal writers at the imitative stage, notes Parker, clumsily attempt to claim a presence within legal discourse. Typically their writing exhibits problems in both technique and substance (568). Technically, the novice's papers show poor organization, inexact or inapposite word choice, blundered citation form, and an overall sense of being "garbled"—that the writer herself did not understand fully what she was saying (568). Substantively, the text consists almost entirely of summary or descriptive passages and is bereft of analysis (568). As DeJarnatt put it, quoting her colleagues Fajans and Falk,

The papers of ... [these]... writers who are new to a discourse community will tend to be overly concrete; they will restate the language and organization of the assignment; summarize instead of analyze or synthesize the material; say explicitly what is ordinarily left unsaid; imitate the most obvious stylistic features of the new field; and 'replicate the author's act of discovery—giving a narrative of the writer's thinking' instead of providing the analysis resulting from that thinking. (514-515)

Consistent with Bartholomae's theory, Parker notes that these communicative problems, especially the substantive weaknesses, result from the students' underlying discomfort with habits of lawyerly thinking (568). As an illustration of the point, Parker says that if law students are asked to report what they had for breakfast, they can do so with concision and accuracy. Similarly, if asked to summarize a court opinion, they can do that ably as well. But ask them to reconcile two apparently conflicting court opinions,

derive a legal principle, and apply the new principle to a set of facts, and the students are largely incompetent (569).

To think like a lawyer, a law student must learn to identify relationships among ideas on multiple levels of abstraction and use this information to solve problems. To construct proof of a legal conclusion, the student must build new mental structures to house the new ideas and then organize them in relation to each other. To present that argument to a reader, the student must be able to articulate each step along the path of logic by which she reached the conclusion. (570-571)

Parker's words restate the point that Bartholomae makes, that newcomers to a discourse community must push themselves along a competency continuum, building new vocabulary and new ways of thinking, as they move toward acculturation in the new discourse.

Thus in the social constructivist view, language is the means through which acculturation happens. Writing gives students a forum for this imitative process, one that engages them cognitively so that what initially is mimicry becomes formative for them. The newcomer becomes socialized to the new discourse first through "trying on" the specialized language in attempts successively more brave and deep, until he finally succeeds in organically melding his own voice with that of the community insiders (629).

Bartholomae writes

What our beginning students need to learn is to extend themselves, by successive approximations, into the commonplaces, set phrases, rituals and gestures, habits of mind, tricks of persuasion, obligatory conclusions and necessary connections that determine the 'what might be said' and constitute knowledge within... our academic community. (634)

Legal writing scholars have embraced this social constructivist view, claiming that writing courses offer a unique opportunity in legal curricula for students to acculturate to

the language and habits of lawyers. DeJarnatt, for one, says that much of the fundamental task of legal research and writing is to empower students as authoritative speakers in the legal discourse that is new to them, and thus to enable them to become members of both the academic and practice legal communities (493). Law professor Lorne Sossin expressed the point similarly, saying that legal writing programs should be aimed toward teaching students “about the nuts and bolts of legal writing *and* about the uses of legal language” (888). Writes Sossin of technical writing skills such as grammar and form: “I argue that the state of teaching legal writing and research in our law schools is disturbing but not because inadequate skills are being taught; rather, my concern is that adequate skills are the only thing being taught” (887).

Sossin’s view of the communal context of writing, that writing is located in within social relationships, echoes the theories of Bartholomae. Building on Bartholomae’s theories, Sossin argues that more than simply imparting a series of technical skills, legal writing courses ought to have both a descriptive and a normative component (888). Legal writing courses ought not to merely focus on teaching students how to write, though writing well is indeed an essential lawyering skill. Rather, legal writing courses ought to be broadened to include the pedagogical aim of acculturating students to the specialized language of legal discourse, so as to empower students not just to “sound like” lawyers but to truly be competent, communicative, authoritative lawyers in the real world. This pedagogical shift in emphasis is dramatic: Legal writing courses become no longer about mere “writing instruction,” that is, how to write, but become focused on writing as a means

of instruction and, more broadly, a means through which a student learns how to *be* a lawyer.

Like Sossin, I argue that legal research and writing ought to be, deeply and philosophically, a course about the nature of legal language in contexts broader than law school classrooms or even courtrooms. Legal language is about “what lawyers do, who lawyers are, and how this shapes legal discourse” amid the larger context of society (889). We ought to use writing as a means to help students clarify their convictions about justice, rights, oppression and truth, and help them see the social context of legal issues (894). In other words, legal writing classes can and should teach beyond skills to impart the richness and power of how legal language influences, and is influenced by, society. Again, Sossin:

All legal communication takes place within a dense web of social and structural relationships which legal writing necessarily reflects (and reproduces). To teach that how lawyers use language is technical and apolitical, that the same ‘rules’ apply whether in a poverty clinic or a Wall Street firm, with the wealthy and indigent client, in my view, presents a dangerous and misleading vision of the real world. (887)

Sossin’s words ring true for me. As a greenhorn lawyer in a tony firm in Atlanta, Georgia, I encountered painfully the lesson that the rules of lawyerly discourse that apply on Wall Street do not apply in a poverty clinic in the inner city. I took on a pro bono case through the Legal Aid Society. My client, an African American woman and one of the city’s working poor, came for legal help because, as she explained it, she bought a car “over time” and had made all her payments but now the car company refused to turn over the vehicle to her. She handed me her stack of wrinkled papers documenting her purchase. Looking over the papers I saw immediately that she had in fact leased the car; it said so

plainly in the body of the contract that she signed. I tried to explain this to her but somehow could not get the idea across. She did not understand what I was saying. Increasingly frustrated, she said over and over that she had been “cheated.”

I knew that her only recourse legally was to contest the validity of the contract, a slim chance at best. My thoughts ratcheted nimbly through contract doctrine—“Offer and acceptance, meeting of the minds, rescission, usury, capacity of the parties...” *Capacity of the parties*. Thinking that she might have a claim based on incapacity to contract, that perhaps she might not have been able to read the contract, I said to her as gently as I could, “Is reading an issue for you?” Her eyes darkened with anger. I had deeply offended her. She got up from the table, took her papers from my hand and walked out.

I knew contract doctrine, yes. I could “think like a lawyer.” But I discovered that while contract doctrine was very useful in mahogany-paneled courtrooms, it was less so around a metal desk in a linoleum-floored legal aid office in the inner city. What I did not know—had not learned as a new lawyer—was how to bring my doctrinal knowledge into interface with a real person who came from a different slice of the world than I did. I had not learned how to *communicate* doctrine within a “dense web of social and structural relationships”—in short, I had not learned how to talk to, or talk with, a worried, frustrated, uneducated woman who felt in her bones (though without legal basis) that she had been cheated, nor had I learned to even anticipate the messy complications of bringing legal doctrine into real life.

Some might say that the skill of communicating doctrine in a real world setting to an uneducated client is outside the scope of what law schools are meant to teach. I

disagree. Communication of legal doctrine in the context of complex, imbalanced and mucked-up social relationships is, in my view, at the very heart of “practice.” Moreover, protecting the rights of the disenfranchised is fundamental to the lawyer’s role in society as an officially sanctioned officer of the court and as a vital participant in making the legal system work. Having the skills to reach through social barriers to communicate effectively with a client is central to a lawyer’s responsibility to minister to “the quality of justice” in society.

DeJarnatt notes that social constructivist theory, of all the writing theories, has the most resonance for legal writing pedagogy (506). She explains that for a student to become part of the legal discourse community he must become comfortable conversing with other lawyers, and with the lawyer’s target audience of clients and judges, to fully adopt the vocabulary, syntax and rich language of the law (509). Highlighting the need for what she calls “law talk” as practice for the real world, she quotes Bruffee:

Our task [as writing teachers] must involve engaging students in conversation among themselves at as many points in both the writing and reading process as possible, and that we should contrive to ensure that students’ conversation about what they read and write is similar in as many ways as possible to the way we would like them eventually to read and write. The way they talk with each other determines the way they will think and the way they will write. (509)

This kind of conversation about the law as a way of inculcating students to legal discourse contrasts with the type of talk that takes place under a Socratic-style teaching model. While this “law talk” may at first seem to resemble the talk that occurs in a Socratic-style classroom, it is different and more effectual than Socratic dialogue in several important respects. First, the talk that happens in a legal writing class is intimately

connected with writing itself. Students and professors converse about the writing and the ideas expressed in the writing—critiquing, assessing, defending, and revising the writing as informed by the conversation. This exactly replicates the way lawyers converse in real-life practice. By contrast, the brief dialogue that occurs in a Socratic classroom is divorced from, and thus uninformed by, any writing process (509).

There is another difference as well. As compared with Socratic dialogue, the conversation that occurs in writing classrooms is more collaborative in nature. The teacher is more apt to behave as a facilitator or coach who is working *with* the student and prompting him to answer a problem. Contrarily, the Socratic pedagogy reveals an entrenched hierarchy where the professor already has the answers. “The hierarchy is clear—one person has the power, the authority, and control; the other is the supplicant, the worker, the evaluated” (DeJarnatt 509). The student knows the professor already has the answers and knows further that the professor himself constitutes the writer’s sole “audience.” It becomes difficult, given this entrenched hierarchical system, for the student writer to imagine a real-life audience for his writing, an audience that is uninformed and reliant upon his analysis. Accordingly, the Socratic pedagogy, to use Bruffee’s terms, teaches a student to talk to someone (the professor) who already knows what he should be saying and is evaluating his skill in saying it. This method of talk is *dissimilar* to the way we want lawyers eventually to write and talk in the real world, and in this way Socratic talk is less effective than the more collaborative talk that occurs in the social constructivist model.

There is another twist to social constructivist theory relevant here, promulgated by scholar Nancy Welch. As we have seen in the writings of Sossin and Bartholomae, writing can be a means for students to imitate and eventually adopt the language of a specialized discourse community—in our case, law. In that process writing becomes a doorway *in* to the privileged language and habits of reasoning peculiar to those in the inner circle. By writing, a student tries on the foreign-sounding voice of the privileged insiders, eventually adopting it as his own. Scholar Nancy Welch tilts this view, however, toward a new perspective, taking the stance that writing can also be a doorway *out* of the privileged discourse toward the writer's own interpretive and creative haven.

A writer needs this secure haven, she says, in order to find her own voice amid the many “off-stage” voices swirling around in her head, voices from other discourses in other realms of her life such as her family life, workplace, or social relationships (81). Welch argues that, as teachers, we need to step away from the product-focused model of an Ideal Text to engage the writer herself in her own creative and interpretive process. In the secure haven the writer has space to work out her own way of being in, being with and at the same time being separate from, the discourse. Welch strives to

...imagine a writing pedagogy that, rather than seeking to orient students toward a particular thesis or way of writing, rather than seeking to dis-orient students from established beliefs and habits of writing, desires instead to provide a space for the possibility of *creative exile*. (79)

Welch, on the one hand, and Bartholomae and Sossin on the other, then, both share the goal of acculturating writers into specialized discourse communities but they frame the process somewhat differently. Bartholomae views writing as a means for the writer to

approximate and eventually adopt a foreign discourse. Welch, by contrast, views writing as a safe place for the writer to balance herself against and with the discourse, to equilibrate within it.

The integrated pedagogy I advocate here invokes more of Welch's view. I urge greater emphasis than currently exists in legal curricula on practical skills and on the ethical and moral role of lawyers in society. Following the theories of Sossin and DeJarnatt, I urge law schools to use writing as a means to allow students to work out who they will be as lawyers, to explore how their future role as lawyers is informed by, and relates to, who they are now and who they have been in the other realms of their lives. I agree with Welch that writing can serve as a valuable creative and interpretive exile from the discourse, providing just enough room for the student to claim herself while still reaching toward the discourse.

Scholar Joseph Harris posits yet another view of the discourse community. He points out that the "inside-outside" phenomenon of Bartholomae's model is a false dichotomy. Harris claims that many students feel at once part of the academic community and removed from it (19). He advocates for a more nuanced model: In contrast to Bartholomae's binary formula, in which a student is either "in" or "out" of the power circle, Harris sees the academic community as one of many overlapping, interconnected discourse groups in which a student can simultaneously participate. He writes: "The task facing our students... is not to leave one community in order to enter another but to *reposition* themselves in relation to several continuous and conflicting discourses" (19). Teachers, he argues, should not attempt to initiate students into "The Discourse" as if into

an exclusive club, but should encourage students “to reflect critically” on those many discourse groups in which they already participate. He wants to point students toward “a polyphony—an awareness of and pleasure in the various competing discourses that make up their own” (19).

As applied here, Harris’s point is that law students approach legal discourse not with their pockets empty but with their pockets full of life experience, full of a history of interactions with other discourse communities in other realms. Law students are adults who have already successfully completed high school and at least four years of college. Some of them have other graduate degrees or long career experience prior to attending law school. Many have mortgages to pay and families to support. They come to law school already possessing fully formed identities as citizens, college graduates, and sometimes as professionals in other fields. They are steeped in many “discourse communities”— even academic ones—before they even step through the law school door. Harris’s model of overlapping discourse communities reflects this truth. Bringing law students into the legal discourse community is not a wholesale conversion from “outside” to “inside” a defined circle. Rather, the process of acculturation is a nuanced blending of who the student has been with who he is to become.

Harris’s view resides on the same spectrum as Welch’s in that both scholars, as their views are applied here, envision the legal discourse community from the perspective of the life the law student has already led. Harris describes this reservoir of life experience as “overlapping discourses” while Welch describes it as “other off-stage voices.” Despite their difference in terminology, both seek to honor the *person* of the student by allowing

him space and time and permission to blend his whole self into the legal discourse. I endorse this perspective as consistent with the aim of legal education to train lawyers as whole, integrated selves sturdily intact in doctrine, practice, and purpose.

In this section we have seen that in the traditional model of legal education, practical training—particularly legal writing—is weak and undervalued. By all accounts, legal writing holds a secure spot on the bottom rung of the academic prestige ladder. The low academic rank of legal writing may be due in part to its lack of single, cogent, consistent pedagogy. The pedagogy of legal writing has tracked that of undergraduate English departments, whose changes have been fueled by composition and rhetoric scholars. Legal writing pedagogy has moved from product- to process- to social constructivist- theories. The social-constructivist approach is currently gaining credence, and is the approach I advocate here. In particular, I endorse the framework of Welch and Harris of seeing writing as a safe place—in Welch’s terms, a place of creative exile—where students bring their whole selves into the enterprise of becoming competent professionals in legal doctrine, practice, and ethics.

In the next section we examine the traditional grading system in legal education, a system designed primarily to rank and cull students. While the ranking and sorting functions of grades do play an important role in the academy, the near-exclusive focus on these functions counts as a significant shortcoming of legal education. As we shall see, the primary deficit of the current grading system is that it ignores the value of assessment as a learning tool.

The Grading System Conflicts with Current Learning Theory

Law schools follow a standard grading philosophy and method. The most important characteristic of the standard grading system is that, at virtually every law school in the country, grades are used as a device for ranking students in order from best to worst and, if need be, eliminating students from the class roster. In the words of scholar William Sullivan, grades are not used as formative tools for learning but are used instead as summative tools to sort, rank, and cull (168).

In a doctrinal law school course, a student's entire grade is typically determined by a one-shot written examination at semester's end (Sullivan 162). This end-of-semester essay exam holds a privileged, almost iconic, place in legal education (164). The exam consists of a hypothetical problem—usually a lengthy factual narrative that conceals one or more legal issues and contains quite a few misleading wrinkles that look like relevant legal problems but are not—and the student's job is to identify the legal issues, discern the relevant facts, apply statutory or case law, and analyze the problem(s) from both pro and con perspectives. Each exam typically lasts three to four hours. The student writes his analytical essay in a "bluebook," on the front of which he writes his student number (not his name). The convention of the student number is meant to ensure anonymity but it also reinforces the cold, objective and impersonal nature of the entire examination enterprise.

This end-of-semester exam is the only assessment the student typically receives. Interim assessment is virtually non-existent (Feinman and Feldman 921). The exam bears little resemblance to any situation a real-world practicing lawyer might face—there is virtually no situation in a lawyer's practice when she will be called upon to write an

analysis of a new legal problem presented in narrative form under a three-hour time deadline without benefit of research materials or collaboration. What is worse, the skills that are taught in the legal classroom are not the skills that are tested: While classroom discussion enhances oral analytical skills, students are tested on their written analytical skills. During the semester, students are typically given no formal opportunity to practice these writing skills (Randall 202). The student gets a number or letter grade on the exam, usually with no substantive or constructive feedback. The grade comes to the student at the close of the semester, when any opportunity to correct his errors or show advancement in his learning has been foreclosed. To paraphrase Sullivan, “navigational assistance” (in the form of meaningful feedback) comes to the student only after the voyage is over (164, 165). Grades are norm-referenced (i.e. based on a curve) rather than criterion-referenced (i.e. based on mastery of specific learning objectives), and the entire enterprise of assessment is, as we have noted, summative rather than formative (168, 203).

The pressure to earn good grades is exceedingly high, and the consequences of grades are heavy indeed. Prestigious placements in judicial clerkships and on law review are almost entirely grade-based. Grades are *the* mechanism that separates luminous students from dull, and employers do take note. Employers depend on class rank to evaluate applicants. Top ranking firms offering the highest salaries typically hire only students from the top 10 to 15 percent of the class at the most prestigious schools. At middle- and lower-tier schools, these prestigious firms only look to the top 1 to 2 percent of the class. Students believe, not unreasonably, that the trajectory of their entire careers depends on their grade-based class rank. From the very first days of law school, students

absorb this fact: Grades, and only grades, determine who wins and who loses in this high-stakes game.

The grading system impacts not only the rank of students but the rank of law schools themselves. A law school's standing relative to other schools depends in part on employment placement rates of its students. Student's success with securing prestigious employment depends largely on their grades. The existing grading system is thus entrenched in each of the two groups that rely on them—law schools and employers. The reliance is mutual and synergistic, perpetuating a cycle of maintaining the grading status quo.

Grading concerns touch every aspect of law school education. All parties—faculty, students, and even outside observers like accrediting agencies and students' future employers—are highly invested in grades. Indeed, a teacher's approach to grading may be viewed as “the most significant aspect of the course, [and]...the grading method and its results [may come] to characterize the whole enterprise” (Feinman and Feldman 918). In such an environment, a departure from the prevailing grading system presents intense resistance, prompting faculty grumbling and student cries of “grading unfairness” (918, 919). However, these claims of grading unfairness may overlook the underlying theory of grading and the relationship of grades to learning.

Grading can serve any of three purposes: criticism, evaluation and ranking. Criticism occurs when a knowledgeable mentor reviews a student's work and assesses its strengths and weaknesses. The mentor analyzes the student's work product—whether a

research memo, brief, or oral argument—and enumerates its good and bad points, its correct and incorrect components, and ways the work could be improved (918).

Criticism is the most important grading function for learning (Romantz 144). For criticism to be an effective learning tool, however, the following things must occur: The teacher must define the learning objectives and the standard by which learning success will be measured. After the student has performed the task set out in the learning objectives, the teacher must assess the student's performance and give specific feedback on the extent to which the performance met the standard. All of this must be accomplished in time for the student to get another try to correct his deficiencies and advance in his learning (144; Feinman and Feldman 919).

This method of assessment is similar to that used in mastery learning, a teaching technique that envisions “achievable, widespread excellence” and competency in basic skills. As with critical grading, mastery learning involves defining the learning objectives, evaluating the student while he is learning, crafting alternative or remedial lessons to address the student's deficiencies, giving him another try at success, and then performing a final assessment. As a simple example of mastery learning, envision the Red Cross's CPR training. There, the learning objective is explicit: to be competent in administering cardiopulmonary resuscitation in an emergency. The training is broken down into discrete units. The student learns and practices. Interim tests determine progress. If the test shows deficiencies, the teacher offers remedial training and/or brings in new resources. A final examination determines competency. If the student accomplishes the technique of administering CPR as set forth in the course, he receives an A no matter how the other

students in the class perform. Indeed, the course is counted as a success when every student *does* get an A.

While mastery learning is ideal for teaching CPR or other discrete skills, some would argue that it is less applicable in law schools. For one thing, the precepts of legal training are largely abstract and theoretical. It may be difficult for a doctrinal law professor, unlike the CPR instructor, to articulate *precisely* what he wants his students to learn because the very concepts he is teaching defy tidy compartmentalization. Feinman and Feldman, however, would disagree. They write:

Explicit teaching in particular and mastery in general are not limited to basic legal skills or doctrines. With sufficient energy and thought by teachers in defining their subject matter, these principles can be applied throughout the law school curriculum; even “theoretical” courses such as jurisprudence and legal history are as susceptible to mastery learning as case briefing and contract formation doctrine. (898)

To prove their point, Feinman and Feldman crafted and implemented a controversial course called “Contorts”—a combination of contract and tort law—that used principles of mastery learning. Their innovation created something of a stir in legal educational circles because their teaching methods, as they noted, “challenged the validity of every element of traditional legal education” (902). A deep analysis of the successes and failures of the Contorts experiment is outside the scope of our discussion here because the point I am making is simply that principles of mastery learning, while perhaps not transferable course-by-course in legal education, can be used more broadly to enhance and supplement the current Socratic pedagogy.

We must note another limitation of mastery learning theory as applied to legal education. True mastery learning requires unbounded time. In the CPR example, students who fail to achieve mastery may take the course again and again, as many times as needed to accomplish the learning objectives. Obviously, that luxury of unlimited time is not available in law schools. The schools count on students quickly learning and advancing to the next level. If a student cannot so advance, he is culled from the group—thus we are back to the important culling and ranking function of law school grades.

Despite these limitations—that the mastery learning approach may be too simplistic or require too much time—I argue that the benefits of mastery learning warrant our effort to apply the approach more broadly in legal education. The key benefit of mastery learning in the legal academy is that, during the mastery learning process, the student develops self-reflection about his own learning (900). In other words, while he is mastering content he also becomes aware of how he is learning. This awareness of how one is learning and having that awareness occur simultaneously with the process of mastering the underlying subject matter—that is, the skill of “learning to learn”—is called “metacognition” (Sullivan 181).

Autonomous, self-conscious learning skill—metacognition—is essential for real-world lawyering. A practicing lawyer cannot know everything, of course. Her legal education will necessarily continue long past law school graduation, spanning her entire career. She will always have room to burnish her skills in analyzing law, assessing facts and interacting with people. Situations will frequently arise in which her knowledge is insufficient. Thus she must be equipped with skills of self-learning. This means that she

must be able to recognize when her current skill and knowledge is inadequate and to understand “how to learn what needs to be learned.” The mastery model demystifies the learning process. Learning becomes explicit and student-centered, thus fostering the skills of autonomous, self-conscious learning that will serve the student throughout her law career (894).

I argue that another key benefit of critical grading and mastery learning is that students are not stratified based on ability. As Feinman and Feldman note, mastery learning makes no assumptions that intelligence or talent is distributed in a bell-shaped curve (896, 924). They write:

The educational system, from the earliest grades to the law schools, is a process of continually finer sorting of students by natural ability; the function of the system is the selection of talent, rather than the development of talent across the board... Mastery learning moves away from the idea of providing students equality of educational opportunity so that their natural talents will result in naturally stratified outcomes and instead suggests that schools can achieve substantial equality of educational outcomes. (897)

Again we may debate the practical truth of Feinman and Feldman’s claims, but I argue that the theoretical truth they offer has merit: law schools focus too much on stratifying students based on a perceived bell-shaped distribution of natural talent, and focus too little on *developing* students’ talent. Thus, consistent with the aim of developing (rather than ranking) student talent, grades in mastery learning are criterion-based markers of competency (897). Under either a critical grading system or a mastery learning system, every student who successfully accomplishes the specific learning objectives (as explicitly as they may be defined) and demonstrates her mastery of them (within the time parameters of the law school course) will get an “A.”

This grading philosophy directly contradicts the typical law school grading system in which grades are based on a curve. The assumptions underlying curved grading are several. First, those who champion curved grading support the idea that identifying the “best and brightest” students serves an important societal aim, that of funneling these stellar students into the esteemed roles of professor, scholar or jurist (Sullivan 168). These defenders of curved grading also note that early ousting of the poor-performing students helps maintain the overall quality of legal education. Culling the “bad” students saves the school’s resources and short-circuits what would have been a demoralizing exercise in frustration for the poor student. As we have noted, another key assumption supporting curved grading is that students are naturally distributed along a continuum of ability. Little can be done to raise the performance of these less-able students, so the thinking goes. These assumptions, deeply embedded in law school culture, serve as formidable impediments to grading innovations (Sullivan 168).

Law schools fall woefully short in using criticism, the best learning tool (919). As we have seen, law professors typically do not explicitly state any learning objectives. Students are given only vague messages about what it is they are supposed to learn (Randall 202). Assessment is virtually non-existent. The skills that are taught do not correspond to the skills that are tested. In the Socratic Method, students learn mostly oral analytical skills, but students are tested on their written analytical skills. There is no formal opportunity to practice the skills they have supposedly learned. There are no interim evaluations of student progress. The student’s entire grade is determined by an end-of-semester written exam. The student gets a number or letter grade, usually with no

substantive or constructive feedback. The grade comes at the close of the semester, when any opportunity to correct his errors or show advancement in his learning has passed (202). Thus, criticism—the most effective grading function for learning—is abjectly lacking in legal education.

The second function of grading, evaluation, “is the process of measuring a student’s work against a standard” (Feinman and Feldman 919). In law school, that standard is the “Ideal Text” that a particular professor envisions in answer to his examination question. This concept of an Ideal Text is borrowed from the composition theories of Knoblauch and Brannon (119). Professors measure students against this standard, placing the most successful few students in the “A” range and ranking the rest in descending order from there, based on a bell curve. Students are thus measured against the individual professor’s analytical abilities, and against each other’s abilities by reason of the curved scores.

A more sensible system, in my view, is to measure students’ abilities against an objective standard of competency exhibited by a capable lawyer. One scholar, Lisa McElroy, has put this idea into practice with what she terms an “Attorney Mastery Scale.” The scale includes numbers 1 through 10, with each number corresponding to a degree of proficiency according to “how a supervising attorney would likely evaluate [the work product] if it were submitted by a junior attorney” (1). A score of 10 would be awarded to a paper that is “perfect: needs no revision” while a score of one would be awarded to a paper that “evidences extremely poor effort, poor understanding of the concepts, or both; is

very seriously lacking in research, analytical or writing skills, or any combination of these; and needs [significant] revision and reworking” (1).

From a theoretical perspective, this Attorney Mastery scale differs from the professor’s Ideal Text model in several ways, even though both scales envision measuring a student’s work against some professional standard. First, the Attorney Mastery scale measures the student’s work against the competencies of a *practicing attorney*, as opposed to the competencies of a law professor. These competencies, it must be said, are often different. The practicing attorney typically has more skills in on-the-ground lawyering work while the professor often has stronger academic experience with comparatively little practical experience. Second, the Attorney Mastery scale approximates an objective standard while the Ideal Text can veer toward a subjective standard. The difference between objective and subjective standards is an important distinction in law. For example, a breach of the constitutional provisions of the Establishment Clause of the First Amendment is measured in part under a standard of the objective reasonable observer, not under the standard of the subjective reaction of the particular plaintiff. Thus, using an objective standard acquaints students with this fundamental notion of objective measurement, a notion that surfaces frequently in substantive law.

McElroy notes that the mastery scale has the benefit of quelling competition among students because students view themselves not as being as compared one against the other, but as being measured against the professional competency of a real lawyer. As they move up the scale throughout their learning process, they feel a sense of pride and

accomplishment and also experience a burgeoning, motivating image of themselves as competent, practicing attorneys.

As with criticism, law schools do poorly in evaluation. In the traditional model, little useful information is given to the student to help him see how he meets, or does not meet, the standard of professional competency. As we have seen, the principle grading device is the final exam, which is mainly used for ranking one student against another, sorting students by ability and culling the low-scoring students from the class roster (Sullivan 162). Professors tend to grade these one-shot only exams against a subjective Ideal Text standard which represents the view of one academic lawyer (himself) as to what constitutes competency. Of course, the professor's standard need not be solely self-referential. He may include in his assessment a more objectively-based measurement of attorney competency. My point, however, is that the Attorney Mastery scale, by reason of its structure and reference to practical skills, arguably builds in more objectivity than does the Ideal Text standard. The Attorney Mastery scale, which I argue is the more effective and informative system, measures student competency against an objective standard of ability exhibited by a practicing lawyer.

The third function of grading, and the one that rules the day in legal education, is ranking. Ranking is the hierarchical ordering of student performance on a scale from best to worst. In law schools, rank is king. As we have seen, proponents of ranking say that it identifies the top- and bottom-tier strata of students early on in the law school experience, thus streamlining the sorting process. While this may be true, and may well serve an important function for law schools and employers alike, the sorting-and-culling function of

grading does not enhance *learning*. In other words, the objective of student learning—which, after all, is purportedly the foremost aim of the legal academy—is overlooked when grades are used only as a device for determining student rank. Unlike critical and evaluative assessment models that directly enhance a student’s learning, the grading-for-rank model has no educational function whatsoever (920). According to Feinman and Feldman,

[r]anking has only two purposes in legal education: to legitimate the educational, professional and social hierarchies in which we all are enmeshed and to assign students their places in those hierarchies, especially as to employment opportunities...Grades that are the product of a learning system with a defective critical process and a limited scope of evaluation do not truly assess the student’s promise as a lawyer (921).

Ranking imbues learning with corrosive competitive pressure (Inglehart 202). The already-competitive atmosphere of law school is dramatically intensified by the practice of grading first-year examinations on the curve. First the ranking system uses inter-student competition as a primary motivation for excellence, rather than the motivations of, say, fostering the joy of learning or enhancing the student’s desire to master his craft to serve clients responsibly. Second, the assessment system is set up so that, by deliberate plan, all cannot excel. This creates a problem of declining student interest, effort and morale after the first decisive cut is made at the end of the first year (163).

In summary, in the traditional model grades are not used as formative teaching tools to foster learning; rather, the purpose of law school grades is summative—to sort, select and rank students. Rank does serve an important function, particularly in the real-

world marketplace where employers seek some measure of evaluating a student's prowess, but to use grades *only* for this purpose ignores the value of assessment as a learning tool.

In this Chapter, I have argued that law schools should use an integrated pedagogy to enhance the age-old, doctrine-heavy Socratic method. The notion of an integrated pedagogy is gaining momentum in the legal academy, as exemplified by the curricular innovations at Harvard and Stanford that incorporate training in doctrine, practice, and purpose. I argue that by balancing the traditional doctrine-heavy curriculum with more extensive training in a lawyer's practical skills and ethical responsibilities, law schools can counterbalance some of the key shortcomings of traditional legal pedagogy. The key pedagogical shortcomings to be surmounted, in my view, include (a) the nearly exclusive use of the Socratic method, a largely ineffectual pedagogy that overemphasizes doctrinal learning, (b) the relative impotence of practical and ethical training in comparison with theoretical training, and (c) the use of grading as a device to rank and cull students rather than as an important and fruitful instrument of learning.

In the next Chapter, I examine the reasons for the current trend toward more balanced legal training. In particular, I explore market demands, demographics and the information age as important stimuli for the current trend. I also look at the entrenched elitism of legal education and show how notions of egalitarianism put pressure on this elitist culture. In the last section of Chapter III, I examine impediments to integration.

CHAPTER 3 Integrated Training in Doctrine Practice and Purpose Why Now

Market Demands, Demographics, and the Information Age

Market pressures constitute the primary force motivating curricular innovation in legal education. Today's consumers of legal services demand more from attorneys than they did in the past. Stanford's innovations to its curriculum, for example, were prompted by "the new demands on modern lawyers, which are fundamentally different from those present when the law school curriculum was formed" (Caraveli 1). Notes Harvard Law Dean Elena Kagan, "When you haven't changed your curriculum in 150 years, at some point you look around;" the glance reveals quickly that the traditional curriculum is, in Kagan's words, "embarrassingly disconnected" from the types of problems lawyers will be called upon to solve in the real world (qtd. in Glater 1).

Clients want attorneys who not only can apply legal doctrine but who can see extra-legal components of a problem, envision practical ramifications, and create cost-effective, creative and workable solutions. Stanford's innovations stand as an example of the point: Stanford's curricular changes arose out of an external need—employers' demand for law graduates who not only had doctrinal competency but who could solve client's real-world problems. To examine in detail what the marketplace really needed in terms of problem-solving lawyers, Stanford examined its "customers"—that is, its

alumni, students and legal employers—to identify the main areas of lawyers’ deficiency. Insufficiency of practical training ranked first (Caraveli 1). Says Stanford Law School Dean Larry Kramer: “I cannot tell you how many people I have spoken to ...who have said to me something like the following: The problem with lawyers is all they ever do is [to] tell me ten reasons I can’t do what I want. I need lawyers who, after they’ve done that, can help me find a legal way to get it done” (Caraveli 1). The “how to get it done” piece often involves the lawyer applying knowledge of domains outside law, such as accounting or corporate finance (Chilla 23). Applying extra-legal knowledge is thus one skill keenly demanded in the marketplace.

While marketplace pressures demand well trained and practice-ready lawyers, law schools and employers do battle over whose job it is to teach practical skills. Tension between law schools and employers on this point is longstanding and persistent. As early as 1918, the question was being debated whether deficiencies in the practical skills of a recent Harvard law graduate could indeed be remedied “by a few days experience” on the job (Grant 390). Harkening to the history of legal education as a highbrow departure from apprenticeships, legal educators think that employers, under an apprenticeship model, should bear the heaviest part of the burden of training new lawyers in practical skills. Conversely, employers pressure law schools to bear the responsibility for graduating practice-ready lawyers. Responding to this pressure, law schools have added lawyering skills classes but, as we have seen, these classes almost without exception are under-funded, taught by second-class untenured instructors, and are viewed with skepticism by doctrinal faculty.

Employers are pressuring law schools to take on more practical training because the “apprenticeship” model is an expensive undertaking for law firms. Clients balk at paying two attorneys to do the job of one. Since the firm cannot pass the cost onto the client, the firm itself has to absorb the cost of the young lawyer’s training. Firms are becoming less willing to foot the bill. Employers want practice-ready lawyers who have all the skills they need in the real world of lawyering: the market demands now that neophyte lawyers, in addition to having doctrinal understanding, possess skills in research, writing, negotiation and client counseling as well as know the basics of extra-legal domains such as international business, corporate finance and tax (Chilla 23).

Demographics are another key factor in explaining the current trend toward integrated pedagogies. In the old days law students were mostly white men. Today the demographics of law students have changed dramatically. Of law students today, 47.5 percent are women and 22.3 percent are non-white (Sullivan 3). Thus the student population is more diverse, representing a broader swath of our culture. The push toward equal opportunity for minorities and women has opened law school’s doors to a more diverse population of students and also a greater number of students. Many more students today than in years past are older, some coming to law school from other professional careers (Sullivan 3). This pushes law schools to address a wider variety of students’ needs and to accommodate different learning styles.

The information age, a revolution in the way we receive and transmit information, has had a profound influence on legal education. Students are consumers of legal education, the customers that law schools are trying to attract. In the

information age, students have greater access to comparative information among schools, so they can be choosier about where they put their tuition dollars. Thus, law schools are competing for consumers who are educated about their choices, and that stiffer competition has pushed schools to be more market-driven. Consequently, law schools are pushing themselves to sell to potential students under the slogan “training law students for real-life careers,” because this is what students—the consumers of legal education—want (Glater 1).

The information age has widened a cultural gap in this generation between faculty and students. There exists today a cultural gap between faculty and students that, I would argue, far exceeds that of other generations. Many law students today grew up in the information age. Contrarily, most decision-makers currently in law school administration—professors, deans, trustees, and the like—grew up before the advent of the information age. The significance of this is vast.

First, the information age ushered in a widespread egalitarianism. Information is available to everyone who has access to a computer, instantly, with a point-and-click. In contrast, law schools are accustomed to holding information at the top, in the hands of a select few. Professors in the traditional law school hierarchy are positioned to prize holding knowledge and controlling its dissemination (DeJarnatt 509). Professors act as “sages on the stage,” the holders of information, the keepers of “the key to the city,” so to speak (Randall 205). This shows an embedded elitism in legal education. But students are used to a model where information—“the key to the city”—is accessible with a simple point-and-click. A pedestrian example is Google, a computer search

engine that is so widely used its name has become a verb: “Don’t know something? Google it.” This relatively unencumbered access to information has fostered among students an egalitarian perspective. Accordingly, students place less value than do their professors on holding and controlling information. Law school’s elitist top-down model of disseminating information conflicts with the egalitarian “bottom up” model of the internet age.

Second, the faculty and students in today’s times approach learning very differently. Scholar Michael Hunter Schwartz theorizes that professors (most of whom now are baby boomers) came from an era of “just in case” learning, a model where one amasses information and knowledge in hopes of using it later on. This model emphasizes doctrinal learning, the accumulation of knowledge. Schwartz says that in contrast, students today tend to be “just in time” learners who rely on the internet’s quick relay of information to give them the knowledge they need when they need it. At the very least, says Schwartz, these learners want to know the relevance of something before they commit to learn it. These “just in time” learners, in comparison with their Baby Boomer superiors, place a lower value on storing doctrinal knowledge (Goldberg 2). When they need to know *about* something they can look it up instantly; that has been their cultural reality. If they need to know how to *do* something, however, that is less internet-accessible. They need to be taught. The cultural divide here, then, is that the faculty prioritizes doctrinal knowledge while the student prioritizes practical knowledge. The tension has put additional pressure on law schools to incorporate practical training.

In summary, the forces that have combined to prompt curricular change in legal education are several. Marketplace demands rank highest on the list of factors contributing to curricular change. Educators are beginning to realize that the 150-year old traditional curriculum is “embarrassingly disconnected” from marketplace demands (Glater 1). Employers want attorneys who can solve real-world problems. Employers are pushing the responsibility of practical training toward educators, and educators are responding to this market pressure. Demographic shifts in student population also nudge law schools toward curricular change, to meet the needs of a more diverse population of students.

Additionally, the information age has influenced the learning styles of students and their sophistication as consumers of legal education. The advent of the information age has brought a perspective of egalitarianism that stands in conflict with law schools’ traditional “top-down” model of information sharing. The new integrated pedagogies, as we shall see, address marketplace demands, apply to many learning styles represented by a diverse student body, and comport with an egalitarian “bottom-up” model of sharing knowledge.

Impediments to Integration

Even though there is a push today toward modernizing legal pedagogy, several impediments slow the process. Chief among these impediments is the entrenched top-heavy power structure of legal education, a long-standing model that proves mightily

resistant to change. Practical concerns such as budget constraints also hamstring innovations.

In traditional legal education, power is centralized at the top. As we have noted, professors—that is, those at the top of the academic food chain in law schools—are comfortably suited to holding power. The power they hold comes in the form of doctrinal knowledge, certainly, but also in the form of a proprietary hoarding of legal language. Scholar George Gopen, a lawyer and Director of the Writing Program at Duke, explains: Most people would say that the hallmark of legal writing is its impenetrability. The average person simply cannot understand it. This impenetrability carries a sense of power:

There is a glory, it seems, in the mystery of a language that can be deciphered only by initiates of the secret society; there is a great sense of power and an even greater actuality of power in controlling a language that in turn controls the most pressing affairs of the individuals and communities; and there is a monopolistic safety in being able to manipulate a language which because it was part of the creation of legal problems must be a part of their solution as well (334).

Gopen points out that lawyers are members of a club, one of the largest in American society, and one that distinguishes itself on the basis of its language. Example: legal language frequently uses “doubles” in phrases—“cease and desist” is a familiar example—and these repetitive phrases come to acquire a quasi-religious significance among lawyers and the lay public. Though some judge somewhere may find fine differences of meaning between “cease” and “desist,” differences that he may declare legally significant, this is not the primary reason for the doubling. Rather, the words, paired together in this fashion, have simply become a hallowed legal phrase,

familiar and comforting to lawyers because its incantation sets them off from all non-lawyers. Again, Gopen: “Lawyers...derive a sense of comfort and identity from the language that marks them as a tribe unto themselves” (339). Lawyers as a group, then, hoard power by their use of specialized language, and professors are no exception.

The notion of professionals having a specialized language that unites them and excludes others also surfaces, as we have seen, in the theories of writing scholar David Bartholomae. In his now-famous article from 1985 titled “Inventing the University,” Bartholomae wrote about this disparity of language in academic classrooms and the tensions raised by the disparity. Bartholomae claimed that teachers possess peculiar and specialized ways “of knowing, selecting, evaluating, reporting, concluding and arguing that define the discourse of the [academic] community” (623). Students, he asserted, do not possess these specializations, so they must appropriate them by mimicking the language of the academic discourse community (624). He likened the academic discourse community to a power circle in which teachers stand within, and students stand without, the circle (631). In this framework the teacher is the assessor of the skill, the holder of knowledge, the expert. Teachers and students stand in polarity to each other by reason of their habits of language.

This very disparity exists in law school classrooms. Professors have powerful, specialized legal language on their tongues and in their minds, and the students do not. To bridge this language gap, and thus to advance toward becoming part of the legal discourse community, students must appropriate for themselves this “special vocabulary, a special system of presentation, and an interpretive scheme” that

comprises lawyerly language (626). The student's task is to establish a place to stand in the academic community by, at the outset, appropriating for himself the academic way of speaking (625).

Both Gopen and Bartholomae, then, recognize that the specialized language of the "club" carries a profound power; that in the academy professors claim access to the specialized language and students do not; and that there results from this a power circle with a defined "inside" and "outside." Bartholomae goes on to address the power disparity by examining ways that students appropriate the specialized language. Gopen, on the other hand, cites the power differential as something precious and valuable to those in power—lawyers, in his context—and notes lawyers' reluctance to relinquish that power.

The point I am making here parallels Gopen's: In the top-down power structure entrenched in law school culture, professors are reluctant to share the power they claim by reason of their doctrinal knowledge and specialized language. In traditional pedagogy professors, rather than sharing their knowledge freely, wield their knowledge against students in a game of intellectual "keep-away." In Gopen's terms, professors employ the "handgun principle of power," that is, "if you have power, sooner or later you will use it just to demonstrate that you have it" (342). The entrenched law school power structure, in which professors hold proprietary control over legal language, thus stands as an impediment to curricular innovation.

Tradition, which is itself an outgrowth of power hoarding, rules the day. The current model of teaching law—professors controlling information through Socratic-

style inquisition with a heavily doctrinal focus—are so firmly entrenched in legal education that legal educators are loathe to consider another way. Scholars Feinman and Feldman put it bluntly: “Most legal educators are anti-intellectual about the area of their primary professional concern: the content and method of legal education” (875). Professors exhibit an ingrained reluctance to reflect on the *what, why and how* of their teaching—*what* they teach, meaning the balance of doctrinal and practical skills; *why* they are teaching, meaning the learning objectives they assert for their students; and *how* they teach, meaning the methodology they choose (875, 882).

Professors seem not to mind that the dominant Socratic-style pedagogy is largely ineffective. Under this traditional pedagogy, many students never quite catch on and some utterly fail to grasp what they are supposed to be learning. Ironically, law school culture has come to accept this widespread mediocrity and even to see it as inevitable. Commenting on this sorry state of affairs, one legal scholar succinctly said this: “Typically, law teachers are satisfied if a few students excel, some fail, and the rest muddle through” (881, 896). Some law professors blame this widespread failure on the students when in fact they ought to blame the ineffectiveness of their outdated teaching methods. Feinman and Feldman write:

We conclude that we must cease blaming the victim and accept responsibility for our students’ inadequate learning as a product of our inadequate teaching. To improve the situation, we have to be more explicit about what we are trying to teach, develop alternative approaches to teach it more effectively, and provide constructive evaluation so that students can become aware of *how* they learn as well as *what* they learn (882, emphasis in original).

Pedagogical inertia, then, is an impediment to curricular change.

Another impediment to innovation: money. A bottom-line advantage of traditional pedagogy is that it is inexpensive to administer (Grant 386). It is cost efficient in that the school can teach a large number of students at once—say 100 or more to a class, assembled in a large lecture hall—with relatively little cash outlay. By contrast, alternative pedagogies used in lawyering skills classes usually entail a student-teacher ratio of 20 (or fewer) to one. Obviously, the cost per student in skills-based courses represents a dramatic increase from the large-class format in doctrinal classes, where Socratic pedagogy is entrenched (386).

The cost efficiencies of the traditional pedagogy also leave professors time for scholarship. Given that productivity in scholarship and research is “the coin of the realm” in academia, it is no surprise that professors are loathe to stray from this time-efficient teaching method (Sullivan 7).

We have seen here that the top-down power structure of traditional legal education stands as the main roadblock to innovation. Power rests in the hands of professors, not in the hands of students. In this context “power” means holding doctrinal knowledge and controlling its dissemination. It also means having a proprietary grip on legal language, the language of power. Tradition is another impediment to change. For 150 years, professors have taught law using doctrine-heavy Socratic-style pedagogy; it will take quite a shove to nudge them from this well-worn groove. Finally, we come to money. The cost-efficiencies of the current system weigh against curricular change.

In Chapter IV, I advocate the inclusion of three particular pedagogies into legal curricula: using group learning, using writing as a medium for instruction, and using grading as a learning tool. I claim that these pedagogies specifically counterbalance the drawbacks of traditional legal pedagogy while not diminishing its benefits. In the first section of Chapter IV, I argue that group learning advances the goal of tripartite legal training—that is, training in doctrine, practice, and purpose—in several ways. It deepens students’ understanding of doctrine because, through collaboration and cooperation, students test and reinforce their knowledge through conversation and debate. The practical skills developed in group learning, including negotiation, compromise, mediation, cooperation, and collaboration, mimic the skills used by real-world lawyers. Finally, group learning places students in community, thus broadening their experience as participants in a larger cooperative group aimed toward ministering to justice. Group learning reinforces students’ sense of themselves as moral agents in society.

In the second section of Chapter IV, I advocate using writing as a pedagogical tool on the theory, borne out by research, that writing itself is a medium for learning. In addition to deepening students’ substantive understanding of the law, writing provides a forum for students to work out who they will be as lawyers in all three areas of professional life—doctrine, practice, and purpose. Significantly, writing helps a student to solidify his sense of identity and purpose as a lawyer and to blend his whole self—the person he has been in all realms of his life—into the knowledgeable, competent, and honorable lawyer he is now becoming.

In the last section of Chapter IV, I propose supplanting (or at the very least, supplementing) the current grading system in legal education with a better, more effective system of assessment. The model I propose, which has proven effectiveness for enhancing learning, has three components: stating explicit learning objectives, using criterion-based grading rather than norm-based or curved grading, and providing students ongoing feedback throughout the learning process. To be sure, there are obstacles to implementing these new grading methods into the legal academy. I note these obstacles and argue that, even if a complete revamping of the current grading system is out of reach, legal education would be vastly improved by even moderate revisions in its grading practices.

CHAPTER 4 An Integrated Model Group Learning Using Writing and Assessment

I advocate introducing widely into legal curricula these three specific, workable and effective pedagogies: using cooperative and collaborative learning models, known collectively as group learning; using writing as a learning tool, and using assessment as a formative tool throughout the student's learning process. These pedagogies are three of many workable teaching strategies. I advocate these in particular because they are already in place in the realms of legal writing and law review, and thus have achieved some foothold, albeit narrow, in the academy. I also advocate them because they are supported by current learning theory and have wide usability in many settings and with many learning styles. Finally I propose these pedagogies because they are advanced in the innovative programs of trendsetters Stanford and Harvard and thus have already gained some traction in the prestigious stratosphere of the legal academy.

Note that I am advocating an integrative strategy with these pedagogies, not an additive strategy. Put differently, I propose that these teaching methods be incorporated into doctrinal classes in a way that is more than just an add-on to the existing Socratic pedagogy. To borrow the words of William Sullivan, the curricular changes I advocate here "must be understood in holistic rather than atomistic terms" (191). So, I envision

that these new teaching methods will be woven into, and used in accord with, the case-dialogue method.

Using Group Learning Models

I advocate bringing group learning models, already in use in legal writing courses, into the doctrinal classroom. Group learning, also called collaborative and cooperative learning, involves students working in small groups learning together and from each other, while the teacher stands as an advisor and guide (Randall 207). The teacher identifies a problem or learning task and then organizes the students to address it collectively. Group learning includes peer tutoring, peer criticism and classroom group work (Bruffee, p. 637). The teacher's role changes from "sage on the stage" to "guide on the side" (Randall 207).

Both collaborative and cooperative methods are structured learning environments that promote joint effort and student interaction (213). They share the principle that students can learn from each other. In contrast to the pervasive competitiveness among students that is characteristic of traditional doctrinal classes, group learning seeks to harness, develop, encourage and fully use the powerful tool of positive peer influence (Zimmerman 987; Bruffee 638). Toward this end, collaborative and cooperative learning involves more than putting students in small groups or seating them at a table side-by-side to talk with one another. Group learning is an intentional pedagogy that requires these six components: (1) a well-designed learning task; (2) meaningful, positive interdependence within the group; (3) accountability of group

members to one another; (4) support from the teacher as the “guide on the side;” (5) social skills on the part of the members; and (6) frequent reflection and assessment of the group’s process and progress (Randall 204).

Despite these shared foundations, collaborative and cooperative learning groups have different structures. In general, a collaborative group works together to produce a single group-created product that is at least partially group-graded, and all or partially group-written. Collaborative work places group success over individual achievement. In contrast, a cooperative group works together but each group member is responsible for his own work product that is graded individually (Zimmerman 961, 987). Here is a handy way to remember the difference: Look at the two o’s in “cooperative” and imagine them to be two islands side-by-side, signifying that each person stands on his own island—i.e. produces his own work—but works alongside another.

The idea of collaborative learning germinated as early as the 18th century, when Scottish logician and philosopher George Jardine sought a teaching method that would engage all students and break down class barriers between them. He developed a teaching model that incorporated collaboration, cooperation and varied interaction among students. To implement the method, he developed sequenced assignments and used peer reviews. Much of 20th century theoretical analysis of collaborative and cooperative teaching models draws upon Jardine’s work (988).

The idea of group learning grew further in the 1960’s based upon the research of biologist M. L. J. Abercrombie, who at the time was studying British medical education (Bruffee 637). Her research began when she was observing a group of medical

students, supervised by a teaching physician, crowded around a hospital bed to diagnose a patient. In the ordinary course of things, the teaching physician would have assigned each student individually to examine the patient and render a diagnosis. But this time Abercrombie, in a flash of genius, instructed the whole group to examine the patient together, discuss the case as a group and come up with a consensus diagnosis. She determined that students learning diagnosis in this way acquired better medical judgment, and acquired it more efficiently, than individuals working alone (637).

Group learning is built on the premise, borne out by research, that “communication and interaction are essential to, and the essence of, learning” (Zimmerman 988). Learning is a social phenomenon (Evensen 347). This idea is embedded in fields as diverse as cognitive psychology, social psychology, and humanist and feminist pedagogy (Inglehart 189). Kenneth Bruffee said it well:

To the extent that thought is internalized conversation, then, any effort to understand how we think requires us to understand the nature of community life that generates and maintains conversation. (640)

As applied to legal education, the benefits of group learning can be significant. First, because group learning is student-centered, it engages students actively (Inglehart, 188). It breaks apart the traditional “banking model” of education where the focus is on “the transmission and retrieval of information, and students are the recipients of what their teachers have determined they need to learn” (Zimmerman 976). Small-group participation also reduces student attrition, especially for minority students (Randall 204, 219).

According to legal educators who have studied group learning and applied it in their classrooms, collaborative learning fosters mastery. The groups focus the student's attention on the material and on his own process of absorption. This heightened attention stimulates learning. Some research has shown that, like the medical students in Abercrombie's experiment, group learners build better judgment, achieve higher analytical ability, and gain greater substantive understanding (Inglehart 188). Students in groups generate more ideas, take more intellectual risk, and develop greater agility in transferring knowledge from one arena to another (Randall 219).

Group learning closes the distance between professors and their students because it puts professors into closer contact with students. This closure, of course, threatens the existing power advantage held by professors and thus may be resisted by them. However, fashioning legal education as a "joint venture" between students, classmates and teachers—employing a collaborative model, in other words—does have benefits for professors and the school. Group learning enhances the school's professional environment, motivates students to try harder and fosters students' personal accountability (Pedrick 420, 423). If the law teacher really knows a student, he can comment more thoroughly on the student's attributes and growth potential. Thus, for middling students, the relationship with a law professor may be the best avenue for a job recommendation (422, 423). Furthermore, if law graduates feel successful in their skills and personally connected to the teacher and to the school, this generates alumni goodwill—a benefit that schools appreciate as a boost to their future financial viability (Pedrick 422).

Interestingly, law schools all over the country demonstrate that they endorse collaborative and cooperative teaching methods, but they regularly employ these methods with only a select few students: those chosen for law review. Once on law review, the student receives intensive writing training and apprenticeship much the same as that employed in legal writing classes: one-on-one coaching by a teacher/mentor, peer reviews, thorough collaboration and cooperative learning experiences, regular and substantive feedback throughout the iterative writing process.

Law review, however, captures only the tiniest fraction of students. At the law school I attended, for example, only 16 students were permitted to participate in law review out of a class of nearly 300. By reason of their experience in law review and by their resulting acquired and cultivated prowess as legal writers, these law review participants are the very students who later become judges and future law professors themselves.

Another benefit of group learning, not to be discounted, is this: Group learning eases student stress (Randall 242; Inglehart 188). Law school is notoriously anxiety-producing for students. Collaborative models can improve students' attitudes toward learning and help them to be less fear-driven. According to some studies, collaborative learning models increased students' self-esteem, psychological health, psychosocial adjustment and positive feelings about the law school experience (Inglehart 188). Says Zimmerman: "The group environment provides students with both support and inspiration" (1000). As applied to law school, this is no small advance in a culture virtually defined by fierce competition.

Despite these benefits of group learning, critics cite numerous drawbacks. First, group learning carries a stigma of being remedial in nature (Bruffee 637; Millich 1127).

After all, group learning programs in undergraduate school arose from

...the nearly desperate response of harried colleges to meet a pressing educational need...students [who] were poorly prepared academically...or who [had] difficulty adapting to the traditional or 'normal' conventions of the college classroom. (Bruffee 637)

In its earliest forms, group learning was intended to help disenfranchised and under-prepared students (Zimmerman 988). Even some legal scholars today characterize group learning methods as tools best used to remediate struggling students (Randall 223). In the view of these critics, legal writing courses, if offered at all, should merely serve to repeat the junior-high level "basics of writing" that the student missed (Rideout 42; Grant 387).

Second, group learning contravenes the prevailing law school culture and thus may be perceived as an unwelcome change (Willhauer 514). Professors tend to accept new pedagogies reluctantly, and group learning methods are no exception (Feinman and Feldman 875, 926). Though group learning models have long been in wide use in liberal arts, medicine and business, law schools only began to adopt group pedagogies within about the past twenty years (Zimmerman 991, 992; Feinman and Feldman 875). Even then, group pedagogies emerged initially in "second-tier" skills-based classes (Inglehart 187). While the Socratic method has generally held its firm grip among doctrinal professors, evidenced by a recent study reporting that of 383 professors surveyed, 370 employed Socratic-style teaching in first-year classes, some forward-

thinking professors have been open to new approaches, including group learning (Friedland 28). A 1996 study presents encouraging evidence of this open-mindedness: 29 percent of faculty reported using non-traditional teaching methods “very often,” 56 percent said “sometimes” and 15 percent said “rarely” (Randall 212).

Third, group learning can be uncomfortably challenging for students because it contradicts what they expect and provokes them to learn actively, not passively. Students can be bewildered by the challenge of actually *participating* in learning. For example, one of my students last semester in Lawyering Skills IV seemed stuck in the traditional “sage on the stage” model. On the second day of class during a small group discussion, I asked him what he thought about a proposed statement of the legal issue at hand. He seemed flummoxed. After a moment he shrugged and said sheepishly, “I don’t know. *You’re* the lawyer.”

Fourth, some worry about freeloading group members riding on the intellectual backs of other more studious members (Zimmerman 1013). When group learning models are applied to written work—for example, a group of students collaboratively writing a brief—this offends notions of individualism in authorship and intellectual property rights (Zimmerman 971, 978, 979). Notions of individualism are dearly cherished in the academy, even surfacing explicitly in many school honor codes (Willhauer 513, 514).

Group learning advances the goal of tripartite legal training—that is, training in doctrine, practice, and purpose—in several ways. Regarding practical training, group learning mimics the way lawyers solve problems in the real world. Collaborative and

cooperative legal education allows students to practice the skills they will need as real-world lawyers: conferring with other lawyers such as associates or partners, brainstorming, planning strategy, negotiating, and resolving conflict (Willhauer 516). If tensions arise—as often they do in this intense, personal learning environment—students learn essential negotiation and mediation skills in working through the conflict (Zimmerman 1001). The group atmosphere allows students to share knowledge, help one another, hear different opinions, and learn how others write and think—all of which replicates the atmosphere of law practice (1000; Bruffee 638).

Regarding ethical and moral training—that is, training in the lawyer’s purpose—group learning places the student squarely in community. The learning group parallels the societal group of which he will be a member, and to which he will be accountable, as a practicing lawyer. By collaborating with his peers in solving a legal problem, he develops skill as a participant in a system larger than the dyad of self-and-client. In this way he practices being an actor in the large machinery of a justice-driven legal system.

On balance, the benefits of group learning seem to outweigh its drawbacks. Group learning models—namely, collaborative and cooperative methods—are effective pedagogies because they build on the social connections that are the foundations of learning. Group learning complements the traditional Socratic-style method and at the very least deserves a place at the table in legal education. Group learning advances the goal of tripartite legal training—that is, training in doctrine, practice, and purpose. Accordingly, collaborative and cooperative learning can be powerful pedagogies with a long reach of effectiveness.

In addition to group learning, another beneficial pedagogy that I advocate here is using writing as an instrument of instruction. I analyze this pedagogy in the next section.

Using Writing as a Learning Tool

There are two ways of looking at teaching writing in law school. The first and most pervasive view is that writing is a discrete skill to be taught separate from doctrine. This view undergirds most legal writing programs. The second view, and the view that I advance here, is that writing itself is a mode of learning and a tool of instruction that can and should be used in doctrinal classes.

Incorporating writing assignments into doctrinal classes enhances a student's understanding of the doctrinal material and demonstrates tangibly for him how doctrine applies in practice. Using writing as a vehicle for learning achieves several aims simultaneously: it deepens a student's understanding of doctrine, it strengthens his practical skills in legal writing, and it provides a forum for him to try on lawyerly language and thinking habits. Sullivan said it well:

The pedagogies of legal writing instruction bring together content knowledge and practical skill in very close interaction. Writing makes language observable. Writing instruction—more accurately, the use of writing as a means of instruction—allows the communication process to be stopped for a while to enable students to observe and analyze the discourse being developed. (110)

Several misplaced assumptions about writing interfere with law schools' embrace of this writing-as-learning pedagogy. First, schools think that students learned (or should have learned) to write in college. The assumption is that the students'

undergraduate exposure to writing was sufficient and thus a writing course in law school is superfluous, except perhaps as a remedial course designed to give academic support to marginal students (Grant 387, 388; Rideout and Ramsfield 42). The fallacy here, of course, is that many students did *not* learn as undergraduates all they should have, or all they needed to, about writing. In many secondary and tertiary schools, course offerings on composition have deteriorated (Rideout and Ramsfield 41, 42). Many colleges, for example, are cutting back, or eliminating altogether, basic composition courses. Thus many students—not just students at the margin—enter law school as either incompetent or barely competent writers.

Second, schools think that employers should be in charge of practical training. The thinking goes that “law firms will teach students what they need to know”—there is no need for law schools to duplicate that effort (Grant 389). As we have seen above, this view carries the unstated message that teaching legal writing is “anti-intellectual,” something better addressed in an apprenticeship or “trade-school” setting, but the view also has implications for the way law schools view writing (Rideout and Ramsfield 47). The wrongheaded assumption underlying this “employers should do it” view is that legal writing is nothing more than product-oriented drafting (Grant 389).

Third, schools take the position that good writing is a talent that cannot be taught, so they should not try (Rideout and Ramsfield 43). (Interestingly, this view contradicts the perspective, described below, that there is nothing particularly special about legal writing as compared with other forms of professional writing; law schools argue both sides of the issue.) In this view—that writing is a God-given talent that

cannot be imparted or much tinkered with—writing is seen as a mysterious, spiritually-derived attribute that defies explanation; writing is something the student either has or does not have—the writing gift cannot be taught or learned (Grant 389). This view, of course, flatly ignores the vast body of literature and scholarship on writing pedagogy that shows the effectiveness of efforts to teach writing (Grant 391).

Another assumption, perhaps wrongly held, is that being a competent college-level writer translates effortlessly into being a competent legal writer. There is debate about this. Some scholars say that “writing is writing”—there is nothing special about legal writing, it is just plain good writing that happens to be in a legal context (Rideout and Ramsfield 41, 42). The same rhetorical problems that face lawyers also face writers in other professions, though the combination of those rhetorical needs may have certain distinguishing stripes (Gopen 334).

Other scholars claim that legal writing constitutes a special species all its own. They assert that legal writing involves particularized ways of thinking, a specialized vocabulary, and discursive choices informed by the culture and history of law. However, when these scholars try to describe what is unique about legal writing, their words, in my view, seem to cross-walk to any professional field. Examples:

Rideout and Ramsfield:

Law relies on a new understanding of rhetoric, schemata, ethics, and language....The analytical and linguistic complexities call for a specialized pedagogy that includes, but travels well beyond, grammar... Legal writing is English for a Specific Purpose. (43, 44)

Parker: To think like a lawyer, a law student must

...learn to identify relationships among ideas on multiple levels of abstraction... use this information to solve problems...build new mental structures to house the new ideas... organize [the ideas] in relation to each other... [and] articulate each step along the path of logic. (570, 571)

Grant: Legal writing involves

...persuasively arguing for a particular interpretation of authoritative text; recounting and explaining written authorities; and justifying a specific resolution of a given situation. (371)

George Gopen may come closest to describing what is particular about legal writing. He points out that legal language is unique in that it must aim for specificity and generality at the same time. He first notes that lawyers need to be able to communicate with clarity of expression even when (or perhaps especially when) their thoughts are complex. True enough, but this comment could also apply to many other professional fields. However, Gopen goes on:

Lawyers need particularly to be able to write with both precision and anti-precision: for some documents they have to nail down particulars in order to avoid vagueness and ambiguity, while for others they will have to keep the letter free in order to protect the plasticity of the spirit in the advent of unforeseen circumstances. (335)

I would carry Gopen's point further to assert that these two aims of writing—precision and anti-precision—often show up in the same document. As an example, consider an agreement governing custody of a young child whose parents are divorcing. For the welfare of the child the lawyer drafting the document must be exceedingly precise in defining parental rights and responsibilities regarding the child's living arrangements, health care, education, recreation, and so on. But the child, presumably, will live a long time. Many circumstances will likely change in the life of the parents

and the child herself. The lawyer wants the document to have “legs,” that is, to have longevity and durability despite life’s vicissitudes. The lawyer’s challenge: how to draft the document to allow for specificity in the here-and-now but elasticity in the face of changing circumstances.

The upshot here, it seems to me, is that legal writing presents the same rhetorical problems as any other professional writing, with perhaps a few challenging wrinkles of its own. Those wrinkles, however, do not distinguish legal writing categorically from other types of writing. Accordingly, theories drawn from composition and rhetoric scholars that have been applied in English classrooms apply equally well to legal writing.

Now for an analysis of using writing as a learning tool: My central point is that writing provides law students with a forum for working out who they will be as lawyers in all the three areas of their professionalism—doctrine, practice, and purpose.

First, I claim that writing deepens doctrinal and substantive understanding because the process of writing materially advances learning of any type. Scholar Janet Emig noted that writing constitutes a unique mode of learning because it engages all three of the main cognitive functions (Emig 10). The three cognitive processes are enactive (learning by doing), iconic (learning by depicting an image) and symbolic (learning by restating in words.) These functions loosely correspond to learning by using the hand, eye and brain (10).

Critics took aim at Emig for her oversimplifications, however. Cheryl Geisler, in particular, argued that while writing is a good tool for “learning extant knowledge,” it is

a poor tool for “making new knowledge” (Geisler 101). She acknowledged, though, that students’ primary job is to learn extant knowledge (102). Thus writing, she would agree, is a powerful and useful tool for students in their learning process. In the main, learning theorists support the idea that the act of writing does prompt deep levels of associative thinking that are essential to learning.

Because of these multi-sourced origins, writing is—from the point of view of the writer—the weightiest and most permanent in comparison with the other language modes of speaking and reading. Unlike speaking or reading, writing includes an opportunity to revise (Knoblauch and Brannon 131). The opportunity to revise gives the written word more heft because the reader assumes that the written word conveys exactly the meaning the writer intended; if it did not convey his exact meaning the writer would have revised his words to correspond with his intention.

These attributes of writing—its origins in the three cognitive functions and its permanence on the page as representative of the writer’s true intentions—show that writing constitutes formative learning. In writing, all crevices of the writer’s imagination engage, his intention emerges as a vision of meaning, his muscles fire to put pen to paper, and then he reflects on the black-and-white words on the page—*is this what I meant to say?*—knowing that if he leaves the words intact the answer will be *yes, this is what I meant*. Writing *is* learning; words on the page are learning’s distillate.

Writing theorists Knoblauch and Brannon reached a similar conclusion but on different grounds. They asserted that writing promotes learning because it leads us to make connections.

Writing enables new knowledge because it involves precisely that active effort to state relationships which is at the heart of learning. Composing always entails the search for connections; its nature is to compel the writer to undertake that search. (467-468)

Writing is a way of creating meaning, not just a means of transcription. This is true in law, where analysis is all-important and word-based communication is foundational and pervasive. Cogently summarizing the point, Rideout and Ramsfield note:

[There are] crucial links between writing and legal analysis. Without practice, law students will not understand how analysis drives linguistic choices, how choosing the right form may be an integral part of strategy, how avoiding litigation may rely on making the correct lexical connection between legal ideas. (43)

Students need to learn legal writing and to practice it to understand the “crucial interplay” between writing and lawyerly thinking (43; Grant 389).

Bizell goes so far as to say that words and language are *the* vehicles through which we can know something (395). She writes that “knowledge is what language makes of experience...Language not only names ideas but develops and evaluates them...” (395, 396) In other words the task of writing compels the writer to think critically about conflicting points and to organize them into some framework, in order to make sense of them. The very act of choosing words forces the writer to consider connections and relationships between and among concepts. The finer the distinctions among words, the more exact his meaning becomes. As applied to the doctrinal legal classroom, using writing exercises will deepen the student’s understanding of the substantive material because, as we have seen, writing prompts learning.

Writing enhances practical skills; this is rather obvious. Writing is an essential lawyering skill. Lawyers as a group write a limited variety of documents for a narrow

audience. The types of documents include memoranda to be put into the file or given to collaborators on the case; letters to clients or opponents; contracts of varying scope and purpose; and persuasive documents such as briefs. The typical audience includes law office colleagues, clients, judges and court personnel, opposing counsel and parties, and sometimes administrators, legislators or politicians (Gopen 359). These are the very types of documents students will write in their doctrinal classes as writing exercises. The more practice one gets at writing the more fluent one becomes. Using writing assignments in doctrinal classes will strengthen real-world practical skills in drafting all types of documents, from legal memoranda to persuasive briefs to contracts.

Finally, writing helps a student form a sense of his identity and purpose as a lawyer. Using writing as a learning tool in doctrinal classes will inculcate the student into the discourse community of lawyers because the writing exercise will intensely engage the student with legal language.

Before a writer can have a sense of his group identity—in our context, his purpose as a lawyer—he must have a secure sense of his self identity; writing serves this function. Writing can enable a writer to define himself, to access his own truth, so say Murray and Elbow, as we have seen above (Murray 80; Elbow 6). Writing also helps a writer locate himself within a discourse community, as Bartholomae and Sossin assert, and also helps him define himself within the extra-legal discourse communities he inhabits, as Welch and Harris assert. The writer sees himself in the context of others, of what others have said or might have said on the topic about which he himself is writing. Accordingly, a law student writes not just this assignment for this legal writing

teacher, but writes in the larger context of the culture and history of the law and within the framework of legal language that supplies its own agendas and curricula (630). Thus, writing defines the writer's place within the social, historical, cultural and political community. For law students, the act of writing grounds them in the culture, history, and professional community of the law.

In summary, I argue in this section that writing itself is a mode of learning and a tool of instruction that can and should be used in doctrinal classes. Incorporating writing assignments into doctrinal classes enhances a student's understanding of the doctrinal material and demonstrates tangibly for him how doctrine applies in practice. There is nothing much unique about legal writing; it presents the same rhetorical problems as any other professional writing, with perhaps a few minor distinguishing challenges. Despite these minor quirks, however, legal writing can be analyzed using writing theories drawn from composition and rhetoric scholars. According to these theories, writing provides law students with a forum for working out who they will be as lawyers in all the three areas of their professionalism—doctrine, practice and purpose.

In addition to using writing as a learning tool, law schools should use grading as a learning tool as well. Rather than use grading merely as an end-of-semester indicator of student rank, as is the case currently in the legal academy, law schools should reconceptualize grading as an instrument to enhance learning. In the next section I argue for using grades as tools of assessment designed to deepen the student's learning.

Using Assessment as a Learning Tool

We have seen above that law schools are culturally locked into a system of assessment that is, by the measure of current learning theory, woefully ineffective. In particular, the shortcomings of the system are these: The student's entire grade is determined by a one-shot written examination at semester's end. This exam is the only assessment the student typically receives. Students complain, rightly so, that they are given little opportunity to practice the skills that will actually be tested; that feedback along the learning continuum is virtually non-existent; that the high-stakes, winner-take-all exam fosters intense anxiety and corrosive competition among students; and that there seems to be little relationship between hard work and high exam scores.

Moreover, the format of assessment—that is, the exam itself and how it is administered—fails to replicate any situation a real-world practicing lawyer might face and is indeed “profoundly at variance with what lawyers do on the job” (166). The skills that are taught in the legal classroom are not the skills that are tested: While classroom discussion enhances oral analytical skills, students are tested on their written analytical skills. The student gets a number or letter grade on the exam, often scored to decimal-point specificity. The grade comes to the student at the close of the semester, when any opportunity to correct his errors or show advancement in his learning has been foreclosed. Law school grades are norm-referenced, that is, based on a bell shaped curve, rather than being tied to mastery of specific learning objectives. Finally, in perhaps the most profound disconnect between the legal academy's grading system and

learning theory, the entire enterprise of assessment is, as we have noted, summative rather than formative (168, 203).

This grading method, entrenched as it is in legal education, has long been the subject of criticism. As early as 1924, scholars wrote of the ineffectiveness of the system. One critic said

The spectacle of a student trying to record an adequate sampling of his gains from a [semester-long] course ...that he can produce in three hours under the conditions and circumstances of college examination week, and the correlative spectacle of the ...professor passing judgment on that student on the sole basis of the product of those three hours of writing, seem, on a priori grounds alone, quite incompatible with current ideals of educational measurement and administration. (Wood 226)

Emphasizing the same point, former president of the American Bar Association Talbot D'Alemberte asked rhetorically, "Is there any education theorist who would endorse a program that has students take a class for a full semester or a full year and get a single examination at the end?...People who conduct that kind of educational program are not trying to educate" (D'Alemberte 52).

I advance here the claim that a formative assessment model should supplant, or at least supplement, the current grading system in legal education. Specifically, I advocate three reforms: stating explicit learning objectives, using criterion-based grading (rather than norm-based or curved grading), and providing students ongoing assessment feedback throughout the learning process. In real classrooms, these three assessment methodologies work together. Research shows virtually unanimously that these assessment methodologies powerfully improve learning (171).

Regarding explicit learning objectives, under the traditional model of legal education, students are not privy to the professor's teaching aims. Appallingly, even the professor himself is often ignorant of what *specifically* he is trying to teach (Feinman and Feldman 881). Making learning goals explicit requires the professor to be clear about the what, why and how of his teaching plan. Throughout a course syllabus the professor should provide clear, cogent directions for *what* the student is supposed to learn, *why* the material is important to learn in the larger context of the law, and *how* the student is supposed to learn it. For instance, in a unit on writing a research memo in the Appellate Advocacy course I am teaching at the University of Richmond school of law, students are instructed to engage collaboratively with one another in a brain-storming session. Before they engage in the exercise, I explain to them the format of the teaching sessions (the *how*); the students' specific roles, duties and goals during the session (the *what*); and the purpose and learning objectives of the teaching sessions (the *why*).

Of course, I acknowledge that this approach is rather reductionistic. It may not always be possible for a professor to articulate specific learning goals, and it is certainly true that many valuable learning experiences cannot be summarized in neat phrases. There is benefit to the student, some would say, in the very process of groping about for ill-defined and diffuse intellectual gems, and finding them all on his own. Also, even where the professor does enumerate specific learning goals, the concrete list itself may have the effect of limiting the student's learning experience because the student may hold himself to the list and neglect to think expansively. And what of the truth that professors can learn from their students? With a more loosely defined learning

enterprise, as is represented by traditional legal pedagogy, the student and professor can engage in a mutually expansive search for knowledge. Put differently, the assumption underlying the view that learning goals ought to be made explicit is that the professor does indeed know what is to be learned. Many times he does not know, and it can even be argued that he *should* not know. Sometimes the richest learning emerges when neither the teacher nor the student has a roadmap in hand.

While all of this may be true in theory, I argue that in practice it is not so true. In real law school classrooms, busy professors beset with the pressures of publishing and scholarship continue to rely on the Socratic method not because it fosters a mystical, mutually exploratory intellectual engagement with students but because, *for the professors*, it is time efficient and travel-tested. Socratic-style teaching is the way of tradition: “If it was good enough for me as a student,” so a professor might say, “it is good enough for students today.”

My argument is this: “Good enough” is not a sufficiently high standard for legal pedagogy. Even if the Socratic method is “good enough”—an assertion with which I heartily disagree—students are owed more than this. Under the present system, because of the dominance of the Socratic method, learning objectives are not articulated at all. I argue that, to the extent possible, law professors should provide students with clearly articulated learning goals. Explicit learning guideposts help the student foster, during the process of his learning, an awareness of his method of learning—the skill of metacognition. The law student who has learning objectives in hand can approach his legal studies with more confidence and vigor, and with less of the malignant student-to-

student competitiveness typical of the legal academy. Explicit objectives demystify learning, foster lifelong skills of autonomous learning, and provide students with a motivating sense of mastery.

Moreover, from the perspective of professors, crafting explicit learning objectives forces a deeper analysis of their own effectiveness as teachers. Indeed, the technique of giving explicit learning objectives “requires that the teacher be... systematic about what is to be learned and assert more control over how it is to be learned” (Feinman and Feldman 897). Having cogent learning goals ready at the semester’s beginning will help the professor at semester’s end when he faces exam grading. Moreover, the explicit objectives offer the professor himself a template for measuring his success during the semester. In this way, by referring to the learning goals, the professor holds himself accountable to his students.

Regarding criterion-based grading, I advocate this method because it fairly rewards students for mastery of lawyering competencies. If everyone demonstrates mastery of a skill or concept, everyone earns a good grade. This system also comports with an egalitarian model of learning, which I cite as a trend in legal education. Contrarily, as we have seen, grading on a bell-shaped curve simply serves to rank students in comparison with each other and not in comparison with an objective standard of competency.

Finally, I advocate ongoing assessments of students during the learning process. The key principle at work here is error-and-trial: The professor reviews the student’s attempt at mastering a concept or skill and spots some errors. The professor then gives

the student specific, constructive feedback about those errors and allows the student another trial at mastery. In other words, the professor reviews the students' completed attempt at learning and points out deficiencies in time for the student to correct the deficiencies before the next assessment.

These assessment methods have obvious applicability to learning doctrine and practical skills, but their applicability to the ethical and moral components of lawyering is less clear. Critics resist the idea that it is possible and viable to accurately assess a person's disposition toward ethical behavior; on some level it even seems invasive and presumptuous to try. Moreover, Sullivan notes that many faculty and students are "deeply skeptical of, if not outright hostile to, the notion of teaching values or moral character" (177). Sullivan thus advocates for a different perspective. Rather than assessing a student's disposition toward moral behavior, he says, we should ask what pedagogies will best help the student develop skills of evaluating for himself the ethically ambiguous situations he is likely to face in the real world (177). The best approach here, in my view, is in simulated role-play situations in which the student can practice figuring out for himself an ethically sound and defensible stance in a given situation.

In summary, I propose supplementing the current grading system in legal education with three specific approaches to assessment. These reforms include stating explicit learning objectives wherever possible, using criterion-based grading (rather than norm-based or curved grading); and providing students ongoing substantive assessment and feedback throughout the learning process. The three assessment

methodologies work in concert with each other and have broad applicability to doctrinal and practical courses. Their applicability to ethical courses is less straightforward, but can be used effectively in role-play simulations to enhance and reinforce student's sensitivity to their ethical responsibility as lawyers.

CHAPTER 5 Conclusion

Under the traditional model of legal education, a law student receives rigorous training in legal doctrine and analytical skills—he learns to “think like a lawyer”—but is left with little training in practical skills or ethics. In other words, the traditional legal pedagogy emphasizes theoretical and cognitive development over practical and ethical development, thus prioritizing *knowing* the law over *being* a lawyer. Pedagogically, legal education follows the near-exclusive model of the case-dialogue method, also known as the Socratic method, and has done so for over a century. The legal academy is, in short, significantly imbalanced in that it neglects two of the three components of a lawyer’s professional responsibility and, in addition, limits its pedagogy to the largely ineffectual Socratic method.

In an encouraging trend, law schools are beginning to change, to implement pedagogies that integrate teaching in doctrine, practice and purpose. Two exciting examples of integrated programs are occurring at the prestigious Stanford and Harvard law schools. These programs serve as a model for other law schools seeking to provide students with more balanced professional training. Consistent with this trend, I advocate in this paper implementing into law school curricula three specific, workable pedagogies: using group learning models, using writing as a learning tool, and using assessment as a formative and ongoing component of the learning process. I propose an additive approach

where the current Socratic-style method is supplemented, but not wholly replaced, by these new pedagogies.

These integrated pedagogies counterbalance shortcomings in traditional legal pedagogy. In particular, group learning advances the goal of tripartite legal training—that is, training in doctrine, practice, and purpose—by (a) mimicking real-world lawyering skills of debate, negotiation, collaboration, cooperation, and compromise, and (b) placing students in community, thus broadening their experience as participants in a larger cooperative group aimed toward ministering to justice.

I advocate using writing as a pedagogical tool because, in addition to deepening students' substantive understanding of the law, writing provides a forum for students to work out who they will *be* as lawyers. Specifically, writing helps a student to solidify his sense of identity and purpose as a lawyer and to blend his whole self—all the parts of his being—into a knowledgeable, competent, and honorable lawyer.

Finally, I propose introducing into legal education a better, more effective system of assessment than that currently in use. The model I propose, which has been shown to be effective for enhancing learning, has three components: stating explicit learning objectives, using criterion-based grading (rather than norm-based or curved grading); and providing students ongoing feedback throughout the learning process. Though these assessment approaches themselves have limitations, they offer much to the current system of grading that focuses almost exclusively on ranking and sorting students.

Of course, academia is a slow-moving beast. Change happens, if at all, in the smallest increments. In the legal academy, numerous factors impede change. The top-

down power structure of traditional legal education stands as the main roadblock to innovation. Tradition and budget constraints are other formidable impediments.

Despite these formidable impediments to change, however, I am encouraged by the innovations at Stanford and Harvard, among other schools, and by the renewed interest among legal educators in producing more well-rounded legal practitioners. I began this paper with a quote from education scholar William Sullivan, in which he said that lawyers “must come to understand thoroughly so they can act competently, and they must act competently in order to serve responsibly” (23). The quote illustrates that the three components of a lawyer’s professional life—cognitive understanding of doctrine, competency in practicing law, and devotion to his larger purpose as a moral agent in society—are entwined. By implementing into legal education the innovative pedagogies I advocate here, legal educators will be better able to equip law students to blend these three parts of professionalism into a coherent whole.

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