Education for the Practice of Law: The Times They Are A-Changin’

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TABLE OF CONTENTS

I. Overview ............................................. 650
II. Catalysts for Reform .................................. 650
   A. Calls for Reform Before CLEPR ................... 651
   B. Calls for Reform from CLEPR to MacCrate ........ 652
   C. Calls for Reform Today from MacCrate, the
      Profession, the Public, and Students ............ 655
III. Impediments to Reform .............................. 663
IV. The Future of Education for the Practice of Law ...... 666
   A. Problem-Solving Skill as the Core Objective of Legal
      Education ........................................ 669
   B. Curricular Implications ............................ 671
      1. Methodology ................................... 671
      2. Sequencing and Structure ...................... 672
      3. Teaching About Doctrine ....................... 675
      4. Teaching About Skills and Values ............ 675
      5. The Core Skills and Values Curriculum ........ 676
      6. Beyond the Core Skills and Values Curriculum . 678
V. Conclusion ............................................ 681

Come gather round people wherever you roam
And admit that the waters around you have grown
And accept it that soon you'll be drenched to the bone.
If your time to you is worth savin'
Then you better start swimmin' or you'll sink like a stone,
For the times they are a-changin'!!

It is unlikely that Bob Dylan was thinking of legal education when
he wrote these lyrics, but it is possible. While living in New York City
in the mid-60s he may have become aware of the Ford Foundation's

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interest in improving the delivery of legal services to poor people. Perhaps he noticed when the Ford Foundation formed and funded the Council on Legal Education for Professional Responsibility (CLEPR) in 1968. If so, he certainly watched as CLEPR's president, Bill Pincus, began offering Ford's money to law schools as seed money for establishing in-house clinical programs in which law students would provide legal services to poor people under the supervision of members of the faculty and, thereby, improve their professional skills and their understanding of professional responsibility. He may even have observed these seeds beginning to germinate.

I think Mr. Dylan would be impressed by the direct results of CLEPR's work and other innovations which were inspired, in part, by it during the ensuing three decades. However, he, like many others, would be disappointed by the failure of CLEPR or any other stimulus to bring fundamental reform to legal education.

His song may be an even more appropriate anthem for legal education in the late 1990s than it was for legal education in the late 1960s. The coming years offer the best opportunity in more than 100 years of American legal education to make fundamental reform in the teaching of law.

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2. William Pincus, The President's Report, in Clinical Education for Law Students 21, 27 (1980). CLEPR evolved from two predecessor organizations. The Council of Legal Clinics was established by the National Legal Aid and Defender Association in 1958 with an $800,000 grant from the Ford Foundation to be used over a period of seven years to promote clinical programs which would connect legal education and legal aid providers. Id. at 22-23. It wanted direct exposure for law students to the miseries that overwhelmed others and lay behind the legal situations of people against whom the law seems to operate. Id. at 25. However, the Council on Legal Clinics had little success. It encountered a "contrary attitude" in the law schools. "Law schools just weren't ready to send students out of the classroom." Id. at 24. Those schools that established work programs in legal aid offices used internship and observer programs that did not involve students in the direct provision of legal services to clients. Id. at 25.

The Ford Foundation renewed the Council's funding for five more years with a $950,000 grant in 1965. Id. at 26. Operation of the Council was transferred to the Association of American Law Schools (AALS). Id. "While willing to be associated generally with the tides of change, the AALS was not quite willing to sponsor legal clinics in the classical sense in the law school curriculum—at least not to the extent of operating under such a title." Id. at 27. Thus, the name of the Council of Legal Clinics was changed to the Council on Education in Professional Responsibility (COEPR). Id. at 26-27. When an opportunity for obtaining more adequate funding arose, a proposal was made to the Ford Foundation in 1967 resulting in the creation and funding of the Council of Legal Education for Professional Responsibility (CLEPR) in the spring of 1968. Id. at 27. Six million dollars was provided for an initial five-year period with a promise of support for another five-year period. Id.; Robert Stevens, Law School: Legal Education in America from the 1850s to the 1980s, 241 (1983). William Pincus left the Ford Foundation staff to become president of CLEPR. Pincus, supra at 27.

3. Between 1968 and 1980, CLEPR distributed approximately $10 million in grants to law schools for the purpose of establishing in-house clinics in which students represented indigent clients under the supervision of full-time members of the faculty.
years for law schools to make fundamental changes in the education of lawyers. The law school curriculum will be transformed and it will provide well-rounded, effective education for the practice of law. Or will it?

I. OVERVIEW

This Article has two themes. The first is that the MacCrate Report and unprecedented pressures from the legal profession, the public, and students have brought legal education to the brink of the first significant curricular reforms in 100 years. This Article describes the transition from apprenticeships to law schools as the primary training ground for new lawyers, and traces the futile calls for reform from that time to the present. The possibility of reforming legal education today depends on whether law schools will embrace their responsibility to educate students for the practice of law and whether they will marshal their resources toward that goal. The MacCrate Report and recent changes in the ABA Accreditation Standards assure that law schools will consider these possibilities. There may be sufficient catalysts for reform to produce basic changes in the education of law students. This section of the Article closes with a description of the two main impediments to reform: resistance from law teachers and the effect of the bar examination on the curriculum.

The second theme is that teaching students to be competent problem-solvers should be the primary goal of legal education because problem-solving is the core function of lawyers. Adopting this goal will allow reform to occur because it explains how theory, doctrine, skills, and values can be blended into the curriculum. A brief description of problem-solving skills from a cognitive science perspective is provided, and the possibility of structuring the curriculum in reference to decision-theory models is discussed. This section concludes by describing some curricular implications of this thesis.

II. CATALYSTS FOR REFORM

Come senators, congressmen
Please heed the call
Don't stand in the doorway
Don't block up the hall.
For he that gets hurt
Will be he who is stalled
There's a battle
Outside and it's ragin'
It'll soon shake your windows and rattle your walls
For the times they are a-changin'.

4. DYLAN, supra note 1.
It is a bit of a stretch to compare what is happening in legal education to a battle, but it is not a wholly inappropriate analogy. Robert Stevens describes the debates over the law school curriculum in the 1960s, 70s, and 80s as "forms of internecine warfare between the 'practitioners' and the scholars."5 Practitioners and law teachers were arguing over the content of the law school curriculum even before Christopher Langdell introduced the case method at Harvard in the 1890s and showed law schools how to teach doctrinal analysis to large numbers of law students at the least possible expense.6

A. Calls for Reform Before CLEPR

The evolution of the modern law school was initiated by a crisis in the standards of the legal profession in the mid-1800s which resulted in a loss of confidence in the competence of lawyers among the public and within the profession.7 Lawyers endorsed law schools as an acceptable place to learn law and they supported the imposition of higher standards for bar admissions, including the bar examination, in part because they believed these changes would improve the ability of lawyers to represent clients and would restore public confidence in the legal profession.8

Concern for improving the competence of new lawyers was the principal reason for creating the American Bar Association in 1878.9 Calls from the ABA to reform legal education began shortly thereafter. In 1892, the ABA's Standing Committee on Legal Education and Admissions to the Bar recommended that law schools adopt a new "Practical Course of Study" to facilitate legal education's responsibility to prepare the apprentice lawyer for his job as a lawyer. The Committee

5. STEVENS, supra note 2, at 277.
6. See generally, STEVENS, supra note 2.
7. See generally id. at 3-34. "Professional standards in 1860 had been largely non-existent. In that year, a specific period of law study, as a necessary qualification for admission to the bar, was required in only nine out of thirty-nine jurisdictions, and even law study had come to be thought of as less an apprenticeship and more a clerkship. The bar examination, although required in all states but Indiana and New Hampshire, was everywhere oral and normally casual." Id. at 25.
8. Id. The expectation was that law schools would supplement, not replace, apprenticeships.

No one at that time was suggesting that all three years of training should be spent in law school. The leadership of the bar was fighting for something much more fundamental: a generalized requirement of apprenticeship, part of which might be "served" in law school, and an effective bar examination. As a substitute for part of the apprenticeship, law school made good sense to most sections of the legal community. Id. at 25. "[L]aw schools were seen as an extended form of office practice. . . ." Id. at 26.
9. Id. at 27. The ABA's accreditation standards were eventually promulgated to serve that objective: To assure qualifications for entry into the profession. SUSAN BOYD, THE ABA'S FIRST SECTION: ASSURING A QUALIFIED BAR 21-27 (1993).
favored a method of study directed at the development of basic lawyering skills. It recommended that students should “learn the abstract framework first, then learn how the courts apply it.”

The legal profession’s criticism of law schools and its calls for reform have continued since then. From the 1940s to the 1960s there were cyclical changes in the law school curriculum in response to growing disenchantment with the case method as the exclusive method of instruction. The law school curriculum was described as a “mere aggregate or conglomerate of independently developed units.” However, no fundamental changes to legal education resulted from the curricular experiments of this period. Instead, “[t]he changes produced, if anything, greater fragmentation.”

B. Calls for Reform from CLEPR to MacCrate

Pressures for reform became stronger in the 1960s and some changes followed. Building on a small base of clinical programs which appeared in legal education as early as the 1920s, the Council on Legal Education for Professional Responsibility (CLEPR) succeeded in persuading law schools to provide in-house clinical courses for credit on a large scale. Within a few years of CLEPR’s formation in 1968 almost half of the law schools in the country had some kind of clinical legal studies program, normally with a close relationship with a legal service office. The expansion of clinical education continued to grow during CLEPR’s existence and afterwards as federal funding for clinical education became available around the time that CLEPR’s funding ended and it went out of existence.

There are several reasons for CLEPR’s success. The Ford Foundation’s money was one reason, but the most important reason was timing. In 1968, the year of CLEPR’s creation, the Chairman of the AALS Curriculum Committee argued that

Fundamental changes must be made soon. It is not only that law students over the country are reaching the point of open revolt, but also that law faculties themselves, particularly the younger members, share with the student

10. Boyd, supra note 9, at 6. In 1983, the Committee became the Section of Legal Education and Admissions to the Bar. Id. at 11.
11. Stevens, supra note 2, at 172-216.
12. Id. at 211.
13. Id. (quoting Alfred Z. Reed, Present-Day Law Schools in the United States and Canada, 252 (1928)).
14. Id.
15. Id. at 212.
16. Id. at 215-16.
17. Id. at 216.
18. Between 1970 and 1979, the number of clinical programs grew from 169 to 294. Id. at 241.
19. Id.
the view that legal education is too rigid, too uniform, too narrow, too repetitious and too long.20

Law schools came to realize by the 1960s that there were important skills other than those inculcated by the case method, and discussions about curricular reform were increasingly centered on expanding the base of legal skills instruction.21 Clinical education offered a way to expand instruction in professional skills without disrupting the rest of the curriculum.

The major impetus for clinical education, however, came from student pressure. The mid-to-late 1960s was the era of civil rights activism, Vietnam, the escalation of the women's movement, and “radical” activism in general.22 Law students' attitudes were affected by these events and civil rights and poverty law were becoming popular topics of the day. Many students claimed a greater interest in serving the underprivileged and in restructuring society.23 CLEPR's offer to fund clinical programs in which students would be exposed to the plights of disenfranchised members of society and provide legal services to them was an irresistible offer to law schools.

The introduction of clinical education into the law school curriculum was the most important and lasting result of the law schools' renewed interest in expanding the scope of professional skills instruction.24 However, neither it, nor other innovations to follow (such as the use of simulations as a method for teaching skills and the growth of field placement programs) produced any fundamental change in the basic program of instruction. “The basic professional purpose of the law school remained untouched, at the very moment the potential for conflict with the profession seemed greatest.”25

The calls for reform intensified in the 1970s. Chief Justice Warren Burger repeatedly raised concerns about the quality of advocacy in the federal courts and he called on law schools to do better.26 The Clare Committee was created by the Second Circuit Court of Appeals to develop minimum educational requirements for lawyers appearing before the courts of that circuit.27 It drafted proposed rules to require lawyers to study specific subjects in law schools, including trial advocacy.28 The federal districts within the circuit refused to accept these

20. Id. at 233 (quoting Charles J. Meyers, Annual Meeting, Ass'n Am. L. Sch. Proc. pt. 1, § 2, at 7-8 (1968)).
21. Id. at 212.
22. Id. at 232.
23. Id. at 234.
24. Id. at 215.
25. Id. at 277.
26. Id. at 238.
27. Boyda, supra note 9, at 115.
rules in the face of strong protests from legal educators. In 1976, the Devitt Committee was appointed by the state chief justices in response to a resolution of the Judicial Conference of the United States. Its charge was to consider standards for admission to practice in the federal courts. In 1981, fourteen federal districts were poised to adopt the Devitt Committee's recommendation to require an examination in certain "practice" courses.

The activism of the federal judiciary and threats of curriculum regulation by state supreme courts corresponded with the publication of reports prepared by two groups of judges, lawyers, and law teachers. In 1979, the Task Force on Lawyer Competency of the ABA Section on Legal Education and Admissions to the Bar (Cramton Task Force) concluded that "there are substantial opportunities for improvement in the quality of legal education." It recommended that "[l]aw schools should provide instruction in those fundamental skills critical to lawyer competence. In addition to being able to analyze legal problems and do legal research, a competent lawyer must be able effectively to write, communicate orally, gather facts, interview, counsel, and negotiate." In 1980, the Special Committee for a Study of Legal Education of the American Bar Association (Foulis Committee) issued a report concluding in part "that the skills training recommendations of the Cramton Task Force be supported and implemented . . . ."

These reports successfully deflected the judiciary's inclination to meddle with the law school curriculum, but they did not produce any real reforms. In 1980, the Council of the ABA Section of Legal Education and Admissions to the Bar responded to the Cramton Report by voting to require all accredited law schools to offer instruction in professional skills. However, the AALS complained that its autonomy was threatened and the ABA backed off.

29. Id.
30. BOYD, supra note 9, at 115.
31. STEVENS, supra note 2, at 240.
32. The Supreme Courts of Indiana and South Carolina did adopt rules for admission to practice which, inter alia, required applicants to take certain courses in law schools. Id. at 239-40.
34. Id. at 3.
35. SPECIAL COMM. FOR A STUDY OF LEGAL EDUC., AM. BAR ASS'N, LAW SCHOOLS AND PROFESSIONAL EDUCATION, III (1980).
36. The language approved by the Council was to require all schools to "offer training in professional skills, including trial and appellate advocacy, counseling, negotiation and drafting." STEVENS, supra note 2, at 240 n.88.
37. Id. at 240. A compromise version of Accreditation Standard 302(a)(iii) was adopted. Id. at 240, n.89. It provided, until it was replaced in August 1996, that
Frustration with the curriculum continued, even among law professors. A law school professor wrote in 1982:

1. Law school education does not, by and large, train students either to practice law or to engage in serious legal scholarship. Rather, the law-school curriculum disenfranchises students intellectually and disables and incapacitates them professionally. The primary function of law schooling is to prepare and socialize students for entry into a very narrow range of career lines.

4. Curriculum is designed to serve the needs, cater to the interests and abilities, and legitimate the power of law teachers, not to train law students.38

More than ten years would pass before another group of lawyers, judges, and law teachers called for law schools to change their ways.

C. Calls for Reform Today from MacCrate, the Profession, the Public, and Students

In July, 1992, the Task Force on Law Schools and the Profession: Narrowing the Gap of the ABA Section of Legal Education and Admissions to the Bar (MacCrate Task Force), issued its report after three years of study.39 The Task Force was chaired by former ABA President Bob MacCrate. The MacCrate Report examined the profession for which lawyers must prepare, the skills and values which new lawyers should seek to acquire, and the educational continuum through which lawyers acquire their skills and values. The report recognized and complimented law schools for the progress which has been made in legal education since the Cramton and Foulis Reports were issued, but it concluded that law schools are still not doing enough to fulfill

"[t]he law school shall offer instruction in professional skills." Section of Legal Education and Admissions to the Bar, Am. Bar Ass'n, Standards for Approval of Law Schools and Interpretations, Standard 302(a)(iii)(1995). The Standard did not specify which skills had to be taught, it did not specify that professional skills instruction must be given to all students, and it did not even clearly state that law schools were required to provide such opportunities to all students. An Interpretation of Standard 302(a)(iii) was adopted with the Standard in 1981 and modified in 1988; it provides,

Such instruction need not be limited to any specific skill or list of skills. Each law school is encouraged to be creative in developing programs of instruction in skills related to the various responsibilities which lawyers are called upon to meet, utilizing the strengths and resources available to the law school. Thoughtful professional studies have urged that trial and appellate advocacy, alternative methods of dispute resolution, counseling, interviewing, negotiating, and drafting be included in such programs.

Id., Interpretation 2 of Standard 302(a)(iii).


their share of the responsibility for preparing students for their first professional jobs.40

The MacCrate Report had an immediate impact on the dialogue about legal education and it may lead to the first real reforms in legal education in over 100 years. Whether the MacCrate Report produces basic reform depends on whether law schools accept its designation of the central mission of legal education as preparing graduates for effective participation in the legal profession and whether law schools will marshal their resources to achieve this objective. The MacCrate Task Force recommended that the ABA amend two of its Accreditation Standards to facilitate these objectives.41

The ABA's position regarding the central mission of law schools was made clear when it amended Accreditation Standard 301(a) in August 1993, to require law schools to have educational programs which prepare their graduates "to participate effectively in the legal

40. The MacCrate Report does not single out law schools for criticism. It examines the entire continuum of education for the practice of law and makes recommendations for changes across the spectrum of events which help develop lawyering competency, including the bar examination and licensing process, continuing legal education after admission, mentoring in law firms, and self-development. Id.

41. Id. at 330-31 (discussing specifically recommendations 2 and 7). The ABA Accreditation Standards are important to law schools. Compliance with the Standards determines whether a law school is accredited by the ABA, and graduation from an ABA approved law school is a requirement for bar admission in most states.

The Section of Legal Education and Admissions to the Bar was responsible for giving initial consideration to the recommendations because the MacCrate Task Force was a task force of the Section created at the beginning of 1989 by Minnesota Supreme Court Justice Rosalie Wahl during her term as Chair of the Section (Justice Wahl also served on the MacCrate Task Force).

The Section, however, did not rush to support the recommendations of the MacCrate Report. Nina Appel, Dean of the law school at Loyola University in Chicago, became chair of the Section in August 1992, shortly after the MacCrate Report was submitted. She appointed Deans Joseph D. Harbaugh of the University of Richmond School of Law and John J. Costonis of Vanderbilt Law School "to serve as liaisons to the Council concerning the MacCrate Report." See ABA SECTION OF LEGAL EDUCATION AND ADMISSION TO THE BAR, AM. BAR ASS'N, REPORT TO THE HOUSE OF DELEGATES 2 (August, 1994)(copy on file with the author). However, the liaisons never produced any recommendations for Council action on the MacCrate Report.

It was not until its December 1993 meeting, a year and a half after receiving the MacCrate Report, that the Council directed James P. White, the Consultant on Legal Education to the ABA, to review the recommendations and suggest the appropriate Section Committees to which the Report might be referred. JAMES P. WHITE, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, (memorandum C9293-54)(1993)(copy on file with the author). It would not be until the Council's June 1994 meeting that the Council would discuss the recommendations of the Report, and then only under pressure from the ABA House of Delegates generated by the Illinois State Bar Association.
profession." The ABA House of Delegates approved the other key recommendation of the MacCrate Task Force when it adopted a revised version of Accreditation Standard 202 in August 1996, as part of a top to bottom recodification of the ABA Standards for Approval of Law Schools. Standard 202 requires each law school to prepare a self study, and the self study process must include the development of a mission statement. The school must evaluate the strengths and weaknesses of the school's program of legal education in light of its

42. "A law school shall maintain an educational program that is designed to qualify its graduates for admission to the bar and to prepare them to participate effectively in the legal profession." Am. Bar Ass'n, supra note 37, at Standard 301(a)(1995).

The recommendation to amend Standard 301(a) was brought to the House of Delegates by the Illinois State Bar Association, led by Tom Leahy, Esq., when it determined that the Section of Legal Education and Admissions to the Bar was not acting quickly enough to consider the recommendations of the MacCrate Report. Illinois State Bar Ass'n, Report to the House of Delegates, Report 10c (1993)(copy on file with author).

43. The ABA House of Delegates adopted another recommendation of the Illinois State Bar Association in 1994, and "directed" the Section of Legal Education and Admissions to the Bar to consider amending Standard 201(a) [now Standard 202] to provide that law schools be required in their self studies to evaluate their educational programs in light of Standard 301(a) and (c) and the Statement of Skills and Values contained in the MacCrate Report. American Bar Ass'n House of Delegates, Resolution 8A (1994)(copy on file with author). Resolution 8A also gave the ABA's approval to some of the recommendations of the MacCrate Task Force, and it invited the Section to report on its progress on the MacCrate Report at its August, 1994, meeting.

The Council discussed the recommendations of the MacCrate Report at its meeting in June, 1994, and it submitted the requested progress report to the House of Delegates. Section on Legal Educ. and Admissions to the Bar, Am. Bar Ass'n, Report to the House of Delegates (1994)(copy on file with the author). The Council did not recommend any changes in the Accreditation Standards at that time. However, it reported that the Section's Standards Review Committee was two years into a project to recodify all Accreditation Standards. It also reported that it was creating a commission to be chaired by retired Minnesota Supreme Court Justice Rosalie Wahl. The Commission's charge would include consideration of the impact of the MacCrate Report. Id. at 7. (The creation of the Wahl Commission was a preemptive action taken to head off threats that the ABA would establish its own commission to consider the MacCrate Report and to look into the accreditation standards and process.)

mission. The Standard contains a new provision which specifically requires the self study to address how the school's program of legal education conforms to the requirements of Accreditation Standards 301(a) and (b). Standard 301 prescribes the overall objectives of the law school curriculum. Subsection (a) requires schools to have educational programs designed to prepare graduates to participate effectively in the practice of law; and subsection (b) requires that the educational program be designed to prepare students to deal with both current and anticipated legal problems.44

Although Standard 202 does not require a law school to make any curricular changes, it does require a school to consider and declare in writing whether its curriculum is designed to educate its graduates for the practice of law.

The 1996 recodification of the ABA Standards for Approval of Law Schools includes other changes recommended by the MacCrate Task Force or inspired by its report. The ones which could have the most significant impact on the law school curriculum are the changes to Standards 301 and 202 noted above and the requirement in Standard 302 that law schools must offer all students adequate opportunities for instruction in professional skills.45

Thirty years from now, the MacCrate Report will be recognized as a remarkably important document in the history of legal education. There are many reasons why recommendations of the MacCrate Task Force might accomplish what generations of calls for reform have not,

   (a) The dean and faculty of a law school shall develop and periodically revise a written self study, which shall include a mission statement. The self study shall describe the program of legal education, evaluate the strengths and weaknesses of the program in light of the school's mission, set goals to improve the program, and identify the means to accomplish the law school's unrealized goals.
   (b) The self study shall address and describe how the law school's program of legal education conforms to the requirements of Standards 301(a) and (b).

45. "A law school shall offer to all students adequate opportunities for instruction in professional skills." Id., Standard 302(a)(4). The amendments to Standard 302 are consistent with the spirit of the MacCrate Report, but the specific recommendation for these changes came from the Wahl Commission. Wahl Report, supra note 43, at 22. The MacCrate Report recommended revisiting and clarifying the treatment of skills and values in the Accreditation Standards and the interaction of core subjects and professional skills, but it did not make a specific recommendation for change. MacCrate Report, supra note 39, at 330. The Wahl Commission's proposal did not include the word "adequate." The addition of "adequate" was recommended by the Section's Standards Review Committee because "adequate" was contained in Interpretation 2 of Standard 302(a)(iii) which would not be retained in the recodification.
but the most significant factor is timing, just as it was for CLEPR. Consideration of the recommendations of the MacCrate Task Force coincides with unprecedented calls for reform from students, the public, and the legal profession. The interests of each group provide powerful and unprecedented incentives for law schools to improve the preparation of lawyers for practice.

The legal profession is more eager than ever for law schools to produce graduates who are prepared for law practice. The legal profession has a special interest in the quality of new lawyers, and changes in the realities of law practice are producing additional pressures to reform legal education. The mentoring function, once served by older lawyers for new associates, no longer exists in many firms.\footnote{46} Higher starting salaries and other factors induce law firms to require productivity faster from new associates. Alumni report that legal education provides inadequate preparation for their first professional jobs.\footnote{47}

The ABA's response to the MacCrate Report demonstrates that law schools can no longer expect the legal profession to neglect its responsibility to regulate the preparation of law students for the practice of law.

Clients expect high quality legal services from all lawyers, new or experienced, and new lawyers continue to receive licenses which allow them to represent almost any client in any type of legal proceeding as soon as they are admitted to the bar. Thus, legal education directly and significantly affects the public's interests. In 1995, the ABA signed a consent decree with the U.S. Department of Justice settling allegations of antitrust violations. The consent decree and its ramifications were described by President Wallace D. Loh, in his inaugural address to the House of Delegates of the Association of American Law Schools in January, 1996:

If there was ever a wake-up call to the legal education establishment, it's the recent consent decree between the U.S. Department of Justice and the ABA. It marks the dawning of a new era of public accountability. It reflects a crisis of confidence in the ability of legal education, and of higher education generally, to regulate itself.

The complaint in the civil antitrust investigation charged that legal educators had "captured" the ABA accreditation process—a charge that echoes George Bernard Shaw's quip that "All professions are a conspiracy against the laity." The Justice Department determined that the accreditation process was used to inflate faculty salaries and ease faculty workloads, thereby escalating the costs of legal education. It also questioned whether certain accreditation standards (pertaining to sabbaticals, student-faculty ratios, facilities, resources, etc.) reflected greater attention to "guild concerns" than to educational quality.

Viewed against the backdrop of the changing world of higher education, the implications of the consent decree are potentially far-reaching. It could

\footnote{46. MacCrate Report, supra note 39, at 47.} \footnote{47. Id. at 5.}
spark significant innovations in how law schools operate. I know it's heresy to say this, but the broader lesson is that legal education is too important to be left solely to legal educators.

We need to be accountable not only to our own academic values and disciplinary priorities, but also to the needs of the students we teach and to the public that pays the bills—pays directly by appropriations, and pays indirectly by federally guaranteed loans. We have to start thinking of legal education in broader terms, preparing our students for a changing market and a changing profession.48

The U.S. Department of Education also protects the public's interest in legal education. Law schools are accredited by the American Bar Association. The Council of the ABA Section of Legal Education and Admissions to the Bar is recognized by the U.S. Department of Education as the accrediting agency for law schools. The Department reviews the Accreditation Standards to determine their validity; that is, their connection to the accrediting function and to the relationship between what is required of a law school and the production of graduates qualified to practice law as members of the legal profession.49

To maintain its recognition as the accrediting agency for law schools, the Council must comply with applicable regulations of the Department of Education. On July 1, 1994, new regulations governing recognition of accrediting agencies became effective, thereby implementing provisions added to the Higher Education Act (HEA) by the Higher Education Amendments of 1992, and the Higher Education Technical Amendments of 1993.50 The Council must demonstrate that its accreditation standards are sufficiently rigorous to ensure that the Council is a "reliable authority as to the quality of the education or training provided by the institutions or programs it accredits."51 It must also demonstrate that its standards effectively address the quality of the law schools it accredits in twelve specified areas, including curriculum.52

The regulations also require the Council to "maintain a systematic program of review designed to ensure that its criteria and standards are valid and reliable indicators of the quality of the education or training provided" by accredited law schools and are "relevant to the education or training needs of affected students."53

49. SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, REPORT TO THE HOUSE OF DELEGATES (1994)(copy on file with the author).
52. Id. §602.26(b)(1)(1995).
53. 34 C.F.R. §602.23(b)(5)(1995). "Validity" refers to whether the standards are derived from the objectives and purposes of the accreditation process, that is, does their enforcement improve the quality of legal education? "Reliability" involves the question of whether the enforcement of the standards will produce reasonably consistent results when applied to different law schools. William J. McLeod, Re-
The 1996 recodification of the Accreditation Standards was the culmination of the first phase of the Council's program to review the validity and reliability of the Standards. It is a continuing process. The Council has embarked on a new validity and reliability study of the Standards.54 The Council prepared a proposed validation plan which states that the Council will review the validity and reliability of the Accreditation Standards related to curriculum issues again in 1999-2000.55 It remains to be seen whether the Department of Education will determine at that time, or sooner, that the needs of law students require the ABA to make additional changes to its Accreditation Standards.

The most significant catalyst for reforming legal education may prove to be a more direct market force: competition for students. Law schools have always competed for students and prestige.56 All schools want to attract the best qualified students possible and there is competition for students among schools at each level. Some students choose a law school on the basis of its geographical location or affordability or because a family member or friend attended the school or recommends it. Most students, however, decide to attend the law school which they believe will lead to the best job upon graduation and which will prepare them to succeed in that job.

The declining job market for lawyers, especially in large firm corporate practice, has also spurred competition among law schools. Law graduates have recently encountered some difficult years in the employment market and prospective law students are more interested than ever in determining which schools offer the best chance of finding suitable employment upon graduation and also provide the best preparation for practice if they choose or are compelled to enter the profession in solo practice.

Competition for students entered a new era when the U.S. News and World Reports magazine began annually publishing rankings of all law schools, which now includes a ranking of the top ten clinical and trial practice programs. This happened just as the pool of potential applicants to law schools, after many years of steady growth, be-

55. Id. at 11.
56. For a fascinating discussion of the difference between "Superior Quality" and "Prestige" law schools and how a "prestige" image is acquired, see W. Scott Van Alstyne, JR., ET AL., THE GOALS AND MISSIONS OF LAW SCHOOLS (1990). The thesis of the book is that all law schools, including the prestige schools, should not pursue or follow the current prestige image because it is fundamentally based upon a curriculum structure inadequate to produce professional competence and does not, in any event, fulfill the public's needs for legal services. Id. at xii.
gan a steady decline which is projected to continue. The accuracy of the rankings of law schools by *U.S. News and World Reports* and other publications is questionable. The rankings are produced, in part, from the subjective opinions of lawyers, judges, and academics who do not have direct knowledge about the quality of most schools’ educational programs and who may not even know the reputations of more than a handful of schools. More significantly, the rankings are not based on any meaningful analysis of the quality of a school’s educational program. However, some students rely on these rankings in the absence of more reliable or useful information.

Prospective students have trouble making valid comparisons among law schools. It is difficult, if not impossible, for a prospective student to select a law school on the soundness of its educational program because information about law schools’ educational programs is not generally available in a format which allows objective comparisons.

The ABA is preparing to regulate the accuracy of information provided to prospective students by law schools, and it will make a wide range of information available in a format which will allow prospective students to form a better impression of each school’s mission and curriculum. Accreditation Standard 509 requires public disclosure of a number of categories of information about ABA accredited law schools, including curricular information. The Standard also re-

57. The Council of the ABA Section of Legal Education and Admissions to the Bar recognized the unfairness of ranking law schools by adopting Policy 20 on Rating of Law Schools:

No rating of law schools beyond the simple statement of their accreditation status is attempted or advocated by the official organizations in legal education. Qualities that make one kind of school good for one student may not be as important to another. The American Bar Association and its Section on Legal Education and Admissions to the Bar have issued disclaimers of any law school rating system. Prospective law students should consider a variety of factors in making their choice among law schools.


58. Standard 509. Basic Consumer Information.

The following categories of consumer information are considered basic:

- Admission data
- Tuition, fees, living costs, financial aid, and refunds
- Enrollment data and graduation rates
- Composition and number of faculty and administrators
- Curricular offerings
- Library resources
- Physical facilities
- Placement rates and bar passage data.

Interpretation 509-2.

To comply with its obligation to publish basic consumer information under the first sentence of this Standard, a law school may either provide the information to a publication designated by the Council or publish the information in its own publication. If the school chooses to meet
quires that any information provided by law schools to prospective students, including curricular information, be reported "in a fair and accurate manner reflecting actual practice." Standard 509 is expected to be fully implemented by the end of the 1996-97 academic year. These developments will allow prospective students to look beyond existing reputations and to make better informed career decisions.

Law schools' marketing efforts to attract students will inevitably increase. Law schools will also try to impress potential employers about the strengths of their curricula. A law school's reputation is not improved by attracting well-qualified students if it cannot also produce desirable employment opportunities for them. To win the battle for students and employers, a law school must be able to offer a product which is at least as good as its competitors' product. This, too, will have an impact on the curriculum.

Law schools that produce graduates who do not develop adequate professional skills and values will not serve the needs of their students, the legal profession, or the consuming public. It is reasonable to expect these groups to continue pressuring law schools to improve their product. It is reasonable to expect reform to result. After all, declining enrollment at Harvard was the impetus for hiring Christopher Langdell as Dean and for the reforms he institutionalized over 100 years ago.59

III. IMPEDIMENTS TO REFORM

Come mothers and fathers,
Throughout the land
And don't criticize
What you don't understand.
Your sons and your daughters
Are beyond your command
Your old road is
Rapidly agin'

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Please get out of the new one
If you can't lend a hand
For the times they are a-changin'.

Outside forces can move legal education only so far. Ultimately, the faculty of each law school will decide what education it will provide to its students.

If Bob Dylan was writing about legal education in the mid-60s, his concerns about impediments would have centered on traditional law teachers who liked the way things were and neither valued education for the practice of law nor understood what it was all about. Today, he would retain some concern about traditional teachers, but he would also worry about the willingness of professional skills teachers to support curricular reform.

Roger Cramton concludes, in an article published in 1982, that the most serious impediment to curriculum reform—he calls it "the real sticking point"—are members of law faculties.

Like other professional groups, we are jealous of our prerogatives, comfortable with the way things are, and are intensely conservative about matters central to our selfhood such as what and how we teach. Moreover, our special strengths and weaknesses are perpetuated by the hiring process, which tends to filter out people who do not have the same accomplishments and interests, have not attended the same schools and shared the same experiences. We are threatened by discussions of values, by personal involvement with students or clients, and we place these matters out of bounds for classroom discussion. We are tied to familiar teaching materials and methods and increasingly share the same national perspectives on how a teacher-scholar should spend his or her time.

Geoffrey C. Hazard, Jr., echoed these sentiments:

My essential thesis here is that the structure of the law school curriculum is a product of the law school faculty. This thesis, if correct, could explain why the law school curriculum has not changed very much over the years, despite repeated calls for reform. It also predicts that there will not be very much change in the future, or at least that change will continue to be very slow.

... [L]aw faculties are in a position effectively to block any but an aggressive and sustained movement of reform, and probably could dilute or suppress even a movement of great strength. This is particularly true of faculties that have tenure and an authoritative voice in law school governance. The law faculties at all accredited law schools have that status at least nominally, and

60. DYLAN, supra note 1.
61. It is becoming difficult to categorize law teachers as increasing numbers use multiple teaching methods and broaden the educational goals of their courses. For our purposes, it is useful to treat them as two groups. As used in this Article, "traditional law teachers" refers to those teachers who primarily teach legal analysis and doctrine using the case method; and "professional skills teachers" means those teachers who primarily teach professional skills and values through simulations and real life experiences.
almost all of them have it in fact as well. Hence, I suggested, in curriculum reform the faculty of the law schools were not so much the solution as the problem.63

I am more optimistic about the willingness of most law teachers to embrace curriculum reform. There has been a significant change in the attitudes of many traditional law teachers towards legal education during the past decade. The hostility which once met suggestions that law schools should pay more attention to teaching skills and values has not entirely vanished, but it is greatly diminished. Most law teachers have learned that, done properly, practice-related instruction is as intellectually rigorous as any other part of the curriculum. It is grounded in theory, and it builds on and reinforces many of the lessons taught in traditional law school courses.

Traditional law teachers in growing numbers are using problems and simulations to provide contextual learning experiences throughout the curriculum. The popularity of workshops which teach theory and doctrine hand in hand with practice-related issues is soaring. It has almost become the norm in the first year of law school to include an introduction to professionalism and the roles, skills, and values of lawyers. This is not the same world as the one in which Professors Cramton and Hazard made their comments. Although legal education remains fragmented and without clear direction, there is much more diversity and openness to new approaches in educating than at any time in modern history.

Although I am more optimistic than Cramton or Hazard, I am certain some law teachers will be reluctant to embrace change, especially when it directly affects their work. It will not just be traditional law teachers who resist change. Professional skills teachers, including those who teach in-house clinical courses, will also be challenged to reconsider how they should think and teach about law practice. The clinical movement is more than a quarter of a century old, and it too has institutionalized certain traditions and ways of thinking.

Another impediment to curricular reform is the bar examination. The bar examination is largely responsible for the law schools' overemphasis on doctrinal instruction. The MacCrate Report contains the following findings:

The traditional bar examination does nothing to encourage law schools to teach and law students to acquire many of the fundamental lawyering skills identified in the Statement of Skills and Values. If anything, the bar examination discourages the teaching and acquisition of many of those skills, such as problem-solving, factual investigation, counseling, and negotiation, which the traditional examination questions do not attempt to measure. For example, the examination influences law schools, in developing their curricula, to overemphasize courses in the substantive areas covered by the examination at

the expense of courses in the area of lawyering skills. The examination also influences law students, in electing from among those courses offered, to choose substantive law courses that are the subject of bar examination questions instead of courses designed to develop lawyering skills. Finally, the examination discourages law professors from integrating skills training into their substantive law courses.64

The National Conference of Bar Examiners has since developed and begun marketing a “Multistate Performance Test” to supplement the traditional bar exam. The first administration of the performance test is scheduled for February, 1997.65 However, there is, as yet, no movement to reduce significantly the number of substantive subjects tested on the bar examinations of the states. Until this happens, law schools will continue overemphasizing doctrinal courses and students will continue enrolling in them.

Although real change will not be easy to accomplish, legal education needs fundamental reform and the catalysts may be sufficiently powerful to overcome the impediments. The law school curriculum is broken. The challenge is how to fix it.

IV. THE FUTURE OF EDUCATION FOR THE PRACTICE OF LAW

Come writers and critics
Who prophesize with your pen
And keep your eyes wide
The chance won’t come again.
And don’t speak too soon
For the wheel’s still in spin
And there’s no tellin’ who
That it’s namin’
For the loser now
Will be later to win
For the times they are a-changin’.66

Prophesying the future of legal education is a harmless, sometimes entertaining, exercise. No one takes such predictions seriously and events beyond the control or vision of the prognosticators usually lead to somewhat different results than expected. If the predictions are wrong, no one suffers any negative consequences, save the egos of the writers.

The reality of lawyers’ lives is different. It is their business to predict the future and to control it. Clients arrive with real problems and lawyers help them choose among available options, explaining care-

64. MacCrate Report, supra note 39, at 278.
66. Dylan, supra note 1.
fully the probable results of each alternative. Once a course of action is selected by the client, the lawyer tries to produce a result which is at least as good for the client as the predicted outcome.

If the client's problem involves a dispute, the lawyer's successes as well as failures often have negative consequences for someone. This is the nature of dispute resolution. It produces losers and winners, and both sides of a dispute lose more frequently than both sides win. Even in transactional and other matters that do not involve disputes, clients and other people can be harmed by lawyers who fail to do their jobs properly. Money, property, and legal rights can be lost when lawyers make mistakes or incorrectly predict the future. The practice of law is a serious profession with grave responsibilities, but that's what being a lawyer is about. What law school is about is teaching lawyers how to predict the future and control it, that is, how to solve clients' problems. Unfortunately, this reality was obscured by the rhetoric of legal educators for many years.

Legal educators have denied their responsibility to educate students for the practice of law for over 100 years. Langdell's educational system emphasized "research skills and the ability to argue, classify, distinguish and analogize," skills which were of value to clerks and new associates in large law firms; but "the Harvard system neglected the skills training which would prepare a young man to try cases in court, to counsel clients, and to negotiate effectively with an adversary for a settlement, the kind of skills which the small town practitioners then required," and still do. The shift from an emphasis on practice-related instruction was a great departure from the kind of legal education provided by law schools before Langdell's time.

The claim that law schools are not responsible for educating students about law practice had some validity when Langdell arrived at Harvard. Law schools played a secondary role to apprenticeships in the education of new lawyers, and there was not as much need for them to teach professional skills and values. The Langdellian movement stressed that the goal of legal education in law schools was to teach students to think like lawyers. "Langdell's case method remained at the heart of the law school curriculum; and the ability to 'think like a lawyer' rather than the ability to articulate values, choices, and problems for the society remained at the center of professional ethos." This idea about the goal of legal education has been carried forward through the generations as the primary justification

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67. Reed, supra note 59, at 351.
68. Id. at 349.
69. Stevens, supra note 2, at 56.
70. William Johnson, Schooled Lawyers: A Study in the Clash of Professional Cultures, 179 (1978)(discussing the failure of the legal realist movement of the 1930s to reform legal education).
for law schools to avoid taking responsibility for teaching students to act like lawyers. This debate may have ended when the ABA modified Accreditation Standard 301(a) to require law schools to have curricula which prepare their graduates to participate effectively in the legal profession.

In truth, the case method does not teach students to think like lawyers. The study of appellate cases teaches students to think like appellate judges. Appellate cases provide a given set of facts. Lawyers' cases do not. Appellate cases are decided on the basis of legal doctrine and public policy. The solutions to clients' problems require consideration of a much broader range of factors.

The core purpose of legal education is to teach students how to think and act like lawyers and to teach them well enough that they will be minimally competent for their first professional jobs, supervised or unsupervised. There are, of course, other important goals of legal education. The goals of legal education are more specifically described in the Preamble to ABA Accreditation Standards which states

71. Tony Amsterdam more specifically points out that legal education traditionally teaches six or seven kinds of analytic reasoning to the exclusion of fifteen or twenty others. He describes three which are traditionally taught (case reading and interpretation, doctrinal analysis and application, logical conceptualization and criticism) and three which are not (ends-means thinking, hypothesis formulation and testing in information acquisition, decision making in situations where options involve differing and often uncertain degrees of risks and promises of different sorts). Tony Amsterdam, Clinical Legal Education - A 21st Century Perspective, 34 J. LEGAL EDUC. 612, 613-14 (1984).

72. The limitations of the case method have long been recognized.

The 1944 report of the AALS Curriculum Committee, written primarily by Karl Llewellyn, was apparently the first organized attempt to isolate legal skills and so to articulate the rationales underlying legal education. That report noted, first of all, that with the increasing complexity of the law the regular case course was no longer, except for the best students, an adequate vehicle for indirect conveyance of the basic legal skills—"current case-instruction is somehow failing to do the job of producing reliable professional competence on the by-product side in half or more of our end-product, our graduates."

Stevens, supra note 2, at 315. "In the casebook study of cases, the student is learning solutions of problems, not how to solve problems." Id. at 215, (quoting David F. Cathers, In Advocacy of the Problem Method, 43 COLUM L. REV. 449, 455 (1943).

The case method of study persists because it is less expensive than some alternatives and more exciting for students and teachers than others. Id. at 63.

73. John Holt-Harris, Jr., Chair of the New York State Board of Bar Examiners since 1986, and Chair of the National Conference of Bar Examiners from 1983-1984, believes the standard of minimal competence required of new lawyers should be "competence to practice law unsupervised," not simply minimal competence viz-d-viz members of the peer group taking the same examination. Ann Fisher, Examining Ourselves: Observations of a Bar Examiner. An Interview with John E. Holt-Harris, Jr., THE BAR EXAMINER, May 1996, at 4.
that law schools must provide an education program that ensures that its graduates:

1. understand their ethical responsibilities as representatives of clients, officers of the courts, and public citizens responsible for the quality and availability of justice;
2. receive basic education through a curriculum that develops:
   i. understanding of the theory, philosophy, role, and ramifications of the law and its institutions;
   ii. skills of legal analysis, reasoning, and problem solving; oral and written communication; legal research; and other fundamental skills necessary to participate effectively in the legal profession;
   iii. understanding of the basic principles of public and private law; and
3. understand the law as a public profession calling for performance of pro bono legal services.

Competent lawyering requires a combination of knowledge, skills, values, and experience.

The challenge is to develop a well-balanced curriculum that provides enough knowledge, skills, values, and experience for graduates to perform their first professional jobs competently and to continue to mature as responsible, effective lawyers in practice. However, law schools cannot design a program of instruction capable of producing minimally qualified lawyers until they find a universal educational philosophy which explains how theory, doctrine, and practice should be blended in the curriculum and which serves as the cornerstone for curricular planning. There is none today.

A. Problem-solving Skill as the Core Objective of Legal Education

My thesis is that the primary objective of law schools should be to teach students to be competent problem-solvers. A lawyer's core function is problem-solving. All the knowledge, skills, and values that students acquire in law schools are for this purpose. The skill of problem-solving is all there is to teach. Anything else law schools might teach is simply one of the tools lawyers use to resolve clients' problems: doctrine, theory, rules, performance skills, values, ethics, etc. Developing problem-solving skill is the end, the rest are the means to this end.

74. AM. BAR ASS'N, supra note 44, at Preamble.
75. "I certainly have no answers to the restructuring of legal education. There is no universal template that fits the different schools that make up the varied topography of American legal education." Loh, supra note 48, at 4. See also STEVENS, supra note 2, at 275 (observing that "[s]ociologically, it was intriguing that scholars on both the left and right sensed the need for some binding faith, conceptual or otherwise," and concluding at 279 that "law may well continue to be the only discipline that does not seem to claim a general theory.").
76. I am not the first to reach this conclusion. Stephen Nathanson makes the ends-means analogy in The Role of Problem-Solving in Legal Education, 39 J. LEGAL EDUC. 167, 182 (1989). He also agrees that problem-solving is "the essence of
If law schools can teach students to be competent problem-solvers, students will become competent lawyers. This reality will guide the transformation of the law school curriculum during the coming years; much as it has guided curricular reforms in other professional schools such as medicine, business, and social work.\textsuperscript{77}

What is the skill of problem-solving? I described it earlier as predicting the future and controlling it. Gary Blasi examined problem-solving from a cognitive science approach in a recent article.\textsuperscript{78} He explained that cognitive science rests on the premise that it is possible to understand how people process information and how they solve problems.\textsuperscript{79} Further,

\texttt{[Cognitive science conceives problem-solving as a process that entails a sequence of decisions and actions, no single one of which is likely to be determinant. A problem is defined broadly as any situation in which the current state of affairs varies from the desired state of affairs, when there is no obvious way to reach the desired state. In this paradigm, problem-solving entails the making of decisions at various critical junctures, each of which may constrain choices in the future. The focus is not on one or a few critical decisions, but on the entire sequence and pattern of decisions.\textsuperscript{80}]

In this cognitivist paradigm, problem-solving can be represented as a process of search, and a problem-solving method as a procedure for finding a solution.\textsuperscript{81}

Expertise in problem-solving is the ability to make the best individual decision about a specific issue, together with a superior ability to consider the “global” consequences of each decision as their consequences are carried forward through time and in interconnection with other decisions.\textsuperscript{82} Cognitive scientists have determined that novice problem-solvers do not use the same problem-solving methods as expert problem-solvers.\textsuperscript{83} Novice problem-solvers either try to evaluate what lawyers are supposed to do in their practice” and that “the development of problem-solving skill should be made the primary goal of legal education as a whole.” Id. at 168, 181. Myron Moskovitz describes problem-solving as “the single intellectual skill on which all law practice is based” in Beyond the Case Method: It’s Time to Teach With Problems, 42 J. LEGAL EDUC. 241, 245 (1992). Tony Amsterdam discusses the central importance of teaching problem-solving and “ends-means thinking” in Clinical Legal Education - A 21st Century Perspective, 34 J. LEGAL EDUC. 612, 613-14 (1984). Although the MacCrate Report does not specifically describe problem-solving as the core function of lawyers, it emphasizes the importance of teaching problem-solving and lists problem-solving first in its description of fundamental lawyering skills. MacCrate Report, supra note 39, at 138, 141.

\textsuperscript{77} Nathanson, supra note 76, at 180.
\textsuperscript{79} Id. at 332.
\textsuperscript{80} Id. at 331.
\textsuperscript{81} Id. at 333.
\textsuperscript{82} Id. at 331.
\textsuperscript{83} Id. at 335.
all possible ways to solve a problem, or they resort to heuristics (i.e., subgoaling) to make their evaluations more efficient. This is the same approach used by expert problem-solvers when they are in unfamiliar terrain. However, in their own areas of expertise, expert problem-solvers typically use much more direct methods. "They seemed not to engage in a guided search; rather they seemed to be able simply to 'recognize' in the problem a pattern of a certain kind and to 'retrieve' a solution from a stored repertoire of solutions to similar problems." Thus, an expert problem-solver is a person with a highly organized knowledge of subject matter relevant to the solution of the problem.

The problem-solving skill is a skill which all lawyers use throughout their careers irrespective of the nature of their practices. Legal education cannot produce graduates who are expert at all forms of legal problem-solving, but they can produce graduates who are competent problem-solvers (certainly more competent than most graduates today) and who understand how to continue improving their expertise after entering the legal profession.

B. Curricular Implications

A recognition that the primary purpose of legal education is to teach students to be competent problem-solvers does not necessarily require radical changes in teaching methods or the structure of the law school curriculum. Significant improvements in educational quality can be achieved with fairly modest changes. The following sections suggest some implications for methodology, curriculum sequencing and structure, doctrinal instruction, and instruction in skills and values.

1. Methodology

Repetition and learning in context are essential ingredients for becoming an expert problem-solver.

[A] person with an engaged, active stance and the perspective of a problem-solver inside the problem situation acquires an understanding quite different from that of a person with a passive stance and the perspective of an observer. It is not only that an engaged problem-solver learns more from both instruction and experience, but also that she learns something quite different.

This does not mean the case method should be jettisoned. The case method stands on firm ground in human cognition and learning, at

84. Id. at 334-35.
85. Id. at 335.
86. Id. at 335.
87. Id. at 359 (emphasis added).
least insofar as lawyering entails understanding doctrinal concepts and applying them by analogy to new situations. But if one conceives of lawyering as problem-solving in a much broader range of activities, more is required. In every other human endeavor, expertise in problem-solving is acquired by solving problems. There may be better and worse ways to learn to solve problems, but there appears to be no substitute for context. Legal education has completely internalized the lesson that in order to learn to solve problems of doctrinal analysis, one must actually engage in solving doctrinal problems. But the lesson has not been as universally extended to other areas of lawyering. We often teach civil procedure as if one can learn about making decisions in litigation by reading about how a few such decisions were made. This seems no more likely a possibility than we could learn how to solve doctrinal problems by reading The Paper Chase.

Although the case method will continue to play an important role in legal education, the law curriculum of the future will use a broader range of teaching methods to present students with contextual learning opportunities throughout all three years of law school. The problem method will be used more prevalently than the case method. Many law teachers are already making the transition from the case method to the problem method and this trend will continue. The problems will resemble those faced by lawyers and they will be presented as much as possible in the contexts in which lawyers encounter them. They will be concrete, complex, and unrefined. The students will deal with the problems in role. The students' performances in resolving the problem will be critically reviewed, and this review will focus on improving the students' problem-solving skills. The significant difference between the use of problems as a method of instruction now and in the future is that future law teachers will understand more clearly that the problem method is simply one of a variety of methodologies that can help students develop their problem-solving skills.

2. Sequencing and Structure

A curriculum with a problem-solving orientation will be organized differently from existing models, but the differences may not be extreme. Cognitive science suggests that students should be presented

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88. Id. at 386.
89. Id. at 386-87 (referring to John J. Osborn, Jr., The Paper Chase (1971)).
90. Robert Stevens discusses the merits of the problem method of instruction and concludes that the major reason it was not more widely used through the early 1980s was the lack of well-prepared problems or the existence of problem books. Stevens, supra note 2, at 215. Today, law teachers have developed an impressive array of problems and problem books, but more will be needed to build the curriculum of the future.
91. These characteristics of effective problems are adapted from Amsterdam, supra note 71, at 613-14.
92. See Blasi, supra note 78, at 328 n.33 (an in-depth discussion of the distinction between using the problem method and teaching problem-solving).
with whole legal problems from the beginning, perhaps even clients. The students' first efforts at legal problem-solving will be superficial and simplistic, but their work will acquire deepening levels of sophistication as they progress through a course of study which provides multiple problem-solving experiences.

These general perspectives are useful, but law schools need a curriculum framework that provides more specific ideas about sequencing and structure, while allowing maximum flexibility. There are many ways in which a problem-solving oriented curriculum might be structured. One possibility is to organize the curriculum in reference to the stages of problem-solving as described by decision-theorists. Cognitive scientists discount the value of structured decision-making models because they do not recognize or incorporate judgment and experience as important factors in decision-making, unlike cognitive science. However, the stages of the problem-solving process described by decision-theorists may be useful as frameworks for designing programs of instruction which would not neglect the importance of judgment and experience.

A typical decision-theorist description of the stages of the problem-solving process is: initial problem identification, problem analysis and redefinition, idea generation, idea evaluation and selection, acting on the decision, and evaluating the process and results. This fits our understanding of how professionals approach discrete problems, especially when faced with specific decisions. Lawyers process their clients' legal problems the same way doctors process their patients' medical problems. The process for resolving medical problems is familiar: examination, diagnosis, prescription, treatment, and follow-up. A parallel process for resolving legal problems can be described as information-gathering, analysis, planning, execution, and reflective evaluation. Since information-gathering, analysis, planning, execution, and reflective evaluation, are tasks performed by lawyers in vir-

93. Letter from Gary Blasi to Author (October 23, 1996)(on file with the author).
94. Blasi, supra note 78, at 330.
95. Using the stages of a decision-making model as a foundation for designing instruction is also suggested by Nathanson. See Nathanson, supra note 76, at 181.
97. This particular description is the author's own formulation for a paper in progress. Stephen Nathanson's adaptation of generic problem-solving theory to legal problems produced a five step description of the problem-solving process: problem and goal identification, fact investigation, legal issue identification and assessment, advice and decision making, planning and implementation. Nathanson, supra note 76, at 172. The MacCrate Report uses a slightly different description of the problem-solving process: identifying and diagnosing the problem, generating alternative solutions and strategies, developing a plan of action, implementing the plan, and keeping the planning process open to new ideas. MacCrate Report, supra note 39, at 138, 141-48. Neither Nathanson nor the MacCrate Report include reflective evaluation in their descriptions of the process,
but cognitive scientists stress its importance for developing problem-solving expertise. Blasi, supra note 78, at 360.


99. The virtues of the case method in the first year and its shortcomings after that are described in VAN ALSYNE, supra note 56, at 73-74.

100. MACCRATE REPORT, supra note 39, at 10.
the skills of lawyers in simulations focusing on interviewing, counseling, discovery, and litigation strategies.

In the third year, students would concentrate on polishing their execution skills. The casebook would rarely be used. Problems, simulations, and real life experiences would be the principal methods of instruction. Content would focus on specialized subjects and areas of practice. Skills instruction would focus on the execution stage of the problem-solving process, including tasks such as advising, drafting, negotiating, and litigating.

3. Teaching About Doctrine

Doctrinal courses will continue to provide students with an introduction to basic legal concepts such as those covered in first year and other basic courses today. Law schools already give students a broad-based understanding of legal theory and doctrine and they provide a critical perspective about legal systems and institutions. This knowledge is essential to becoming an effective solver of legal problems and law students will continue learning about theory and doctrine as part of their journeys toward becoming competent problem-solvers.

Doctrinal instruction beyond the core curriculum will become more focused, however, as law schools craft individualized and more appropriate mission statements and implement them. Law schools will eliminate many doctrinal courses in recognition of their redundancy, the rapid pace at which law becomes outdated, and the impossibility of teaching students all the law they may ever need in law practice (especially in view of the ability of lawyers to find the law they need when they need it through computerized legal research and other sources).101

4. Teaching About Skills and Values

Instruction about professional skills and values will vary from school to school for the same reasons that doctrinal coverage will vary. However, there will also be similarities among law schools.

The MacCrate Task Force found that professional skills programs have become increasingly sophisticated in content, in articulating the theoretical underpinnings of lawyering skills, and in teaching methodologies.102 However, it also found that relatively few students have exposure to the full range of professional skills offerings.103

101. Legal education's overemphasis on doctrine has been recognized for many years. Cf. Frank I. Michelman, The Parts and the Whole: Non-Euclidean Curriculum Geometry, 32 J. LEGAL EDUC. 352. "[T]he curriculum is excessively committed to doctrinal learning as differentiated on the one hand from theoretical learning and on the other from practical learning." Id.

102. MACCRATE REPORT, supra note 39, at 239.

103. Id. at 240.
responded to the MacCrate Report by amending Accreditation Standard 302(a) to require law schools to provide all students adequate instruction in professional skills. The Standard, however, does not define “adequate.” The adequacy of a law school's overall professional skills curriculum is determined in relation to the mission of the law school and the needs of its students. However, a core curriculum in professional skills and values will eventually emerge.

5. The Core Skills and Values Curriculum

The core skills and values curriculum will address one of the failings identified by the MacCrate Task Force by providing all students with some exposure to the full range of professional skills and values.

The content of introductory professional skills courses will be affected by the need to give more balanced attention to the various discrete skills lawyers use to solve problems. Legal analysis, research, and oral and written communication are fundamental lawyering skills.


(a) A law school shall offer to all students:
   (1) instruction in those subjects generally regarded as the core of the law school curriculum;
   (2) an educational program designed to provide its graduates with basic competence in legal analysis and reasoning, legal research, problem solving, and oral and written communication;
   (3) at least one rigorous writing experience; and
   (4) adequate instruction in professional skills;
(b) A law school shall require of all students in the J.D. program instruction in the history, goals, structure, duties, values, and responsibilities of the legal profession and its members, including instruction in the Model Rules of Professional Conduct of the American Bar Association. A law school should involve members of the bench and bar in this instruction.
(c) The educational program of a law school shall provide students with adequate opportunities for study in seminars or by directed research and in small classes.
(d) A law school shall offer live-client or other real-life practice experiences for credit. This might be accomplished through clinics or externships. A law school does not have to offer this experience to all students. A law school should encourage its students to participate in pro bono activities and provide opportunities for them to do so.
(e) A law school may offer a bar examination preparation course, but may not grant credit for the course or require it as a condition for graduation.

105. Interpretation 302-1 provides:

Instruction in professional skills need not be limited to any specific skill or list of skills. Each law school is encouraged to be creative in developing programs of instruction in professional skills related to the various responsibilities which lawyers are called upon to meet, using the strengths and resources available to the school. Trial and appellate advocacy, alternative methods of dispute resolution, counseling, interviewing, negotiating, problem solving, factual investigation, organization and management of legal work, and drafting are among the areas of instruction in professional skills that fulfill Standard 302(a)(iv).
and they will continue to be emphasized in the first year of the law school curriculum. Throughout the professional skills curriculum, law schools will increase their emphasis on teaching about the importance of information gathering, analysis, and planning before execution. Evaluations of performances will give increased attention to the performance of analysis and planning skills, not just to the performance of execution skills. Instruction about all discrete lawyering skills will include more coverage of the philosophical and theoretical underpinnings of skills and values before students are asked to perform lawyering tasks.

The logistics of providing all students with some exposure to the full range of professional skills and values presents challenges which most law schools have been unwilling to resolve. The difficulty is caused by the need to give students opportunities to practice the skills they are studying. The MacCrate Task Force determined that the effective teaching of skills and values ordinarily involves three components:

1) Development of concepts and theories underlying the skills and values being taught;
2) Opportunity for students to perform lawyering tasks with appropriate feedback;
3) Reflective evaluation of the students' performance by a qualified assessor.  

Most law schools offer introductory skills courses which meet the MacCrate criteria. These courses provide opportunities for students to assume the roles of lawyers and perform lawyering tasks in hypothetical case situations. Students learn in classroom meetings why and how to perform the tasks. They then practice performing the tasks between classes under the observation of a member of the faculty who provides feedback and reflective evaluation. This is labor intensive and enrollments in these courses are smaller than in most law school courses. It would require expenditures which most law schools are unwilling to make to provide opportunities for every student to participate in these courses.

One way in which law schools can respond to this challenge is by developing large enrollment classes for providing introductory level instruction about professional skills and values. At schools with limited resources, this would reduce the pressure to reallocate resources which are currently being used to support clinical programs and advanced simulation courses.

Large enrollment courses can provide instruction about professional skills and values and help students understand the concepts and theories which underlie them. They can even give students an opportunity to perform lawyering tasks with appropriate feedback by

relying on peer-evaluation and class discussions of out-of-class performances in simulated lawyering roles.\textsuperscript{107} Large enrollment skills courses will have difficulty, however, providing reflective evaluation of the students' performances by a qualified assessor, assuming this refers to a full-time or part-time member of the faculty with experience and training in providing reflective evaluation of lawyering performances.\textsuperscript{108}

Even with this shortcoming, large enrollment skills courses are an acceptable means for giving all students an opportunity to receive introductory instruction in professional skills and values. Although large enrollment courses may not be able to provide adequate evaluations of every performance by a student, an evaluation of what students are learning overall can be accomplished through journals, papers, and written examinations the same as in other courses. Another benefit of using peer evaluation to provide feedback is that this allows schools to offer students many more opportunities to practice discrete skills than they can offer if every performance must be observed by members of the faculty. Repetition is necessary to develop competence in discrete lawyering skills, and problem-solving expertise comes in part from experience. The more opportunities students are given to solve legal problems during law school, the further along they will be toward becoming expert problem-solvers in practice.

6. Beyond the Core Skills and Values Curriculum

As mentioned earlier, the adequacy of a law school's overall professional skills curriculum is determined in relation to the mission of the law school and the needs of its students. Thus, an adequate professional skills curriculum at one school may not be adequate at another.

\textsuperscript{107} Some will take issue with whether this is "appropriate" feedback. I agree that peer evaluation is not appropriate if the peers have not been trained to do it. However, training students to provide feedback about lawyering performances they observe will be one of the most beneficial skills they learn in law school. Tony Amsterdam wrote in 1984 as he considered legal education in the next century that "as clinical teaching methods began to move back from the third year of law school into the second and then the first, schools found that they could design upper-level courses in which more advanced students could assist in the instruction of less advanced students while simultaneously furthering their own education." Amsterdam, \textit{supra} note 71, at 618.

\textsuperscript{108} The MacCrate Report's use of the phrase "qualified assessor" is not accidental. Providing effective reflective evaluation of a lawyering performance involves skills which are not possessed by every lawyer, judge, or law professor. Training clinical teachers how to provide reflective evaluation was the focus of many of the initial AALS National Conferences on Clinical Legal Education, and it remains a frequent subject of clinical teachers' meetings and scholarship. The ABA requires law schools to provide part-time faculty with orientation and guidance. \textit{AM. BAR ASS'N}, \textit{supra} note 44, at Interpretation 403-1. This should include training part-time faculty how to provide reflective evaluation of lawyering performances.
The MacCrate Report recommends that law schools provide more opportunities for professional skills instruction to those students who expect to enter practice in relatively unsupervised practice settings.\textsuperscript{109} Although it is difficult to predict accurately what kinds of jobs specific students will find upon graduation, this recommendation has two implications. First, one would expect to find a more extensive professional skills curriculum at law schools whose graduates typically enter the general practice of law in solo or small firm settings. Second, one would expect schools to identify particular students for counseling into advanced skills courses and clinics by examining placement data and class standings.

Some advanced skills courses will focus on helping students become more adept in the use of particular skills, such as negotiation, by giving students instruction about those skills and opportunities to practice them in a variety of contexts. Other courses will concentrate on particular areas of law practice, such as criminal law, and allow students to practice the skills most often used by novice lawyers in those areas of practice. Such courses exist in law schools today, but there will be more of them in the future and they will be more thoughtfully integrated into the overall curriculum. For instance, they will often be offered as part of specialty tracks in combination with other courses related to the same areas of specialization. These tracks will reflect areas of practice commonly available to a school's graduates.\textsuperscript{110}

The logical culmination of a law student's instruction in problem-solving is to give the student responsibility for real clients' problems and allow the student to help resolve these problems under the supervision of a member of the faculty.\textsuperscript{111} This was CLEPR's objective. The economic reality, unfortunately, is that not all law schools have sufficient resources to provide in-house clinical opportunities for all students, and the ABA does not require them.\textsuperscript{112} However, law schools can provide all students opportunities to participate in field placement courses in which the students will work in lawyers' offices and judges'...

\textsuperscript{109} MacCrate Report, \textit{supra} note 39, at 330. Roger Cramton reached the same conclusion in 1982. "A sound introduction to the basic lawyer skills of application, such as counseling, interviewing, fact investigation, negotiation, and trial advocacy, is desirable in all law schools; but its necessity is most apparent in the local law schools that produce lawyers who are unlikely to receive good apprenticeship experiences and must learn on their own." Cramton, \textit{supra} note 62, at 325.

\textsuperscript{110} An argument that law schools should move increasingly toward producing specialists and the various types of specialists they should create is presented in Van Alsyn, \textit{supra} note 56, at 118-25.

\textsuperscript{111} Cognitive scientists have found that mentoring is an important component of a professional's journey toward becoming an expert problem solver. Blasi, \textit{supra} note 78, at 375.

\textsuperscript{112} Standard 302. Curriculum.
chambers to study how they resolve legal problems. In some field placement programs, students will also be given full or partial responsibility for clients' problems and allowed to represent clients under the supervision of practicing lawyers.

Law schools will continue to offer in-house clinical courses, even if they cannot offer every student an opportunity to participate in one.\textsuperscript{113} In-house clinics will play particularly important roles in connection with specialty tracks and for students who are expected to enter practice in unsupervised settings.

The goals of in-house clinics will be reexamined and will become more sharply focused as the clinics' place in the overall problem-solving curriculum is determined.\textsuperscript{114} Except at schools that are committed to providing direct legal services to the under-represented segments of their communities, in-house clinics will continue moving away from the legal services model encouraged by the Ford Foundation and CLEPR.\textsuperscript{115} Unlike their peers of the late 1960s, law students

\begin{itemize}
  \item [(d)] A law school shall offer live-client or other real-life practice experiences for credit. This might be accomplished through clinics or externships. A law school does not have to offer this experience to all students.
  \textsuperscript{AM. BAR ASS'N, supra note 44, at Standard 302.}
\end{itemize}


I will mention a couple of the values of in-house clinics that are less commonly described. One is the ability of an in-house clinic to produce a reasonably controlled environment for the collection of data and the study of theories about law practice. This function is intermittently used today, but the use of the clinic as a laboratory for the study of law practice will increase in the future. An even more important function is the role of in-house clinics in evaluating the success of a law school's overall program of instruction. Students who take on responsibility for a client's problem are required to demonstrate their competence as problem-solvers. The strengths and shortcomings of students' law school educations are apparent to law teachers who supervise students in an in-house clinic.


\textsuperscript{115} Note, however, that each law school is required by an Accreditation Standard adopted with the recodification in 1996 to "encourage its students to participate
are not primarily motivated by a desire to help the disenfranchised members of society. "Law students do not want to shake up the system; they want to make it in the system."116

Curriculum reform will not occur overnight. Such things take time and perseverance, even when the need is strong and the ultimate goals are clear. Not all law teachers see the need for reform, but perhaps enough do to make reform possible. Law teachers, lawyers, judges, and students should set clearer and more appropriate goals for law schools and begin striving to achieve them. It is time for those who care about the quality of education for the practice of law to use their problem-solving skills to create programs of legal education which better serve the needs of law students and the public.

V. CONCLUSION

The line it is drawn
The curse it is cast
The slow one now will
Later be fast.
As the present now
Will later be past
The order is rapidly fadin'
And the first one now
Will later be last
For the times they are a-changin'.117

If Bob Dylan was predicting that the top-ranked law schools of the mid-60's would become the bottom-ranked law schools of the future, he was mistaken (or his eye was on a farther horizon than mine). The pecking order of law schools is, in large part, a consequence of financial resources, and the bottom-ranked law schools cannot match the financial strength of the top-ranked law schools, now, or in the foreseeable future. On the other hand, if Mr. Dylan was thinking of changes in the relative prestige of law schools among which there is real competition for students and reputations, he may have been on the mark.

I did not mention financial resources in the section on impediments to change. Modest resources do not justify failing to design a program of instruction that has some chance of educating students for the practice of law. Law schools across the resource spectrum have succeeded in creating well-rounded curricula that pay significant attention to

117. DYLAN, supra note 1.
professional skills and values without sacrificing the quality of instruction in other core subjects. Schools with modest resources are simply less able to afford luxuries which do not support their central missions. Some reallocation of resources will be necessary before the educational programs of law schools are appropriately directed at teaching problem-solving throughout the three year curriculum. A school with more resources can offer a better educational program than one with less, but the threshold issue is goals, not resources.

In 1984, well before the MacCrate Report or the other forces that will reshape legal education became obvious, Tony Amsterdam explained where the resources to reform legal education will be found (and, presciently, when the reform movement would begin), as he described his vision of legal education in the year 2010:

But by the mid-nineties it was apparent that these resources [needed to expand problem-solving instruction] were insufficient. By that time, clinical methods—although still used only on a small scale—had gained sufficient exposure so that their values could be realistically assessed in comparison with the values of the law schools' traditional commitment of the overwhelming bulk of teaching resources to the multiplication of classroom courses in a wide variety of substantive subject matters. People began asking why do we need to teach case reading and doctrinal analysis to the same students twenty-nine times sub nom. torts, contracts, criminal law, admiralty, antitrust, civil rights, corporations, commercial law, conflict of laws, trusts, securities regulation, and so forth? Given the substantive proliferation, complexity, and fast-paced growth of modern law, it had been impossible to teach students the corpus juris, in any meaningful sense, long before the 1980's. At best, the law schools could convey to students a very small and rapidly outdated portion of all the substantive law there was, or even that one lawyer was likely to need.

Was it not therefore a wiser deployment of scarce teaching resources to devote some of them to giving students a broader range of legal analytic methods and skills, which would enable the students more effectively to acquire, understand, and use the substantive law, as they needed it, after they got out of law school? True scholarship—the critical examination of law as an intellectual discipline and of legal institutions as components of the social order—had to continue in the law schools, of course. Indeed, it had to be increased and intensified. But the vast mass of large-class doctrinal teaching had never involved true scholarship or pretended to. It was this vast mass that came to be perceived as seriously redundant when the question was asked why a modest portion of it should not be redeployed into clinical methods of teaching (and another modest portion, I might add, redeployed into true scholarly teaching).

The redeployment was very difficult to achieve politically because—again—it involved a large amount of remotivation of law teachers, and even a very small amount of retraining. But happily, from our twenty-first century perspective, we can now see that the gains were well worth the difficulties.118

Some schools are poised to leap ahead of their competitors by fashioning well-rounded curricula to give students the knowledge, skills, and values that will prepare them for careers in law and equip them to continue improving their problem-solving skills in law practice. There

118. Amsterdam, supra note 71, at 618.
are signs of such movement already. The shuffling of rankings and
prestige will accelerate as more students and employers begin looking
past the traditional reputations of law schools and begin inquiring
more carefully about competing schools' programs of legal education.
Wherever there is true competition for students and resources, change
is coming and opportunities for institutional advancement are there
for the taking.

Time will tell how many law school faculties will embrace their re-
sponsibility to develop effective programs of professional legal educa-
tion. Although fundamental reform of legal education is inevitable,
lar schools will not all react in the same way to the pressures for re-
form. Some faculties will initially adopt half-hearted measures with
disappointing results, and others will retreat for a while into the bas-
tions of academia, trying to preserve the status quo in a vain hope that
the calls for reform will pass. However, those schools which decide to
build programs of instruction that serve the needs of their students,
the legal profession, and the consuming public will grow and prosper.
As for the others . . .

Come gather round people wherever you roam
And admit that the waters around you have grown
And accept it that soon you'll be drenched to the bone.
If your time to you is worth savin' 
Then you better start swimmin' or you'll sink like a stone,
For the times they are a-changin'!119

119. DYLAN, supra note 1.