

Chapter Nine

Components of a “Model” Best Practices Curriculum

This chapter describes one vision of a curriculum that seeks to implement best practices for legal education. The purpose of including it is simply to present ideas for consideration, discussion, and debate. We do not intend to suggest that this is the only way to design an effective program of instruction.⁸¹⁸

We know there are components of many law schools’ existing programs of instruction that are consistent with our recommendations. We considered naming those schools and describing what they are doing in some detail. In the end, however, the Steering Committee decided against the proposal because we did not feel we had valid selection criteria, and we did not want to unintentionally offend people at law schools we overlooked that might have equally good or superior programs than the ones we included. Compiling and sharing descriptions of innovative programs is a worthy project for someone to undertake.

The vision of legal education described in this chapter is consistent with that of the authors of the Carnegie Foundation’s report on legal education. We envision a curriculum with three parts that interact with and influence each other.

Those elements are first, the teaching of legal doctrine and analysis, which provides the basis for professional growth; second, introduction to the several facets of practice included under the rubric of lawyering, leading to acting with responsibility for clients; and third, a theoretical and practical emphasis upon inculcation of the identity, values, and dispositions consonant with the fundamental purposes of the legal profession.⁸¹⁹

We particularly like the description of best practices for developing students’ professional identity and values contained in the Carnegie Foundation’s report.

[I]t is possible to imagine a continuum of teaching and learning experiences concerned with the apprenticeship of professional identity. At one end of the continuum would be courses in legal ethics, in particular those directly oriented to the “law of lawyering” that students must master in order to pass the bar examination. A bit further along would fall other academic courses, including those of the first year, into which issues concerning the substantive ends of law, the identity and role of lawyers, and questions of equity and purpose are combined with the more formal, technical issues of legal reasoning. Approaches of this sort are often called the “pervasive method” of teaching ethics. Further along the continuum we encounter courses that directly explore the identity and roles of lawyers, the difficulties of adhering to larger purposes amid the press of practice, and the way professional ideals become manifest in legal careers. Further still fall lawyering courses that

⁸¹⁸ For a somewhat different vision of a problem-solving curriculum that is consistent with best practices, see Menkel-Meadow, *supra* note 45.

⁸¹⁹ SULLIVAN ET AL., *supra* note 7, at 250.

bring questions of both competence and responsibility to clients and to the legal system into play. Finally, at the continuum's other end, we find externships and clinical courses in which direct experience of practice with clients becomes the focus.⁸²⁰

Whether a school chooses to pursue this vision of legal education or a different one, it should plan its program of instruction deliberately to achieve its mission and produce its desired educational outcomes. A variety of approaches should be expected, even among schools with similar missions and goals. Regardless of the particular mission of a school, however, best practices considerations require that there be a vision driven by goals and a coherent program of instruction designed to implement that vision.

A. The First Year Program of Instruction.

The first year should provide the building blocks for the progressive acquisition of knowledge, skills, and values in the upper class curriculum and in law practice. The program of instruction should continue the current practice of emphasizing the development of analytical skills (how to think like a lawyer), research and writing skills, and basic legal knowledge.⁸²¹ The goals of the first year should also include beginning the process of helping students develop their legal problem-solving expertise, self efficacy, and self-reflection and lifelong learning skills.⁸²² First year students should be introduced to jurisprudence, the history and values of the legal profession and professions in general, notable figures in the law, the roles of lawyers, the ways in which legal problems arise and are resolved in our society and other societies, and challenges facing the legal profession such as commercialization, accountability, and access to justice.⁸²³ This instruction should occur in the classrooms and co-curricular programs.

First year students should be given an overview of the program of instruction and how it is designed to prepare them for practice by progressively building their knowledge, skills, and values toward competence.⁸²⁴ All teachers should explain their educational objectives and their methods of instruction.⁸²⁵

The Socratic dialogue and casebook method should be used sparingly.⁸²⁶ Context-based instruction, especially discussion of problems should be the prevalent method of instruction.⁸²⁷ While habits of objective legal analysis should be taught, students should also be taught when and how justice, morality, and good sense should control the outcomes of legal problems.⁸²⁸

All teachers should create and maintain healthy learning environments.⁸²⁹ Teachers should coordinate reading and project assignments to ensure that student

⁸²⁰ *Id.* at 180-81.

⁸²¹ See Chapter Two, §§ E & F.

⁸²² See Chapter One, § B. 4. a.; Chapter Two, § F; Chapter Four, § C. 11.

⁸²³ See Chapter One, §§ B. 4. a & b (1); Chapter Two, §§ F. 3, 4, & 6.

⁸²⁴ See Chapter Two, §§ A, C, E, & F; Chapter Three.

⁸²⁵ See Chapter Two, §§ A & B; Chapter Four, §§ B & F. 2.

⁸²⁶ See Chapter Four, § F.

⁸²⁷ See Chapter Four, § G.

⁸²⁸ See Chapter One, § B. 4. b. (3); Chapter Two, § F. 6.

⁸²⁹ See Chapter Four, § C.

workloads are manageable and not overly stressful.⁸³⁰ The school should encourage and aid students in nurturing the quality of their lives and help them experience self-esteem, relatedness to others, autonomy, and authenticity.⁸³¹ The administration, faculty, and staff should model professional behavior.⁸³²

Simulations should be incorporated into every course to strengthen students' understanding of legal concepts and to give them opportunities to assume professional roles.⁸³³ Some simulations can be conducted during class time, while others may be conducted outside of class. Ideally, the simulations should be video recorded and students should receive feedback,⁸³⁴ but the method, extent, and even the existence of feedback will depend on the educational goals of the simulations and the resources of the school. All simulations conducted outside of class should be debriefed at the beginning of the next class meeting.⁸³⁵

Participation in study groups should be required or strongly suggested, and students should be assigned group projects, some to take place during class meetings and others outside of class. Students should be trained how to work in collaborative groups and be closely supervised to ensure these experiences reflect aspects of law practice collaboration and build their collaborative skills.⁸³⁶

Students should also receive instruction in how to be expert self-regulated learners so they develop the skills of controlling their learning process; managing their workload, time, and stress; self-monitoring their learning process while it is in progress; and reflecting on their learning afterward, thereby continuously improving themselves as learners.⁸³⁷ Students should be required to maintain reflective journals in at least one course.⁸³⁸

Academic responsibility should be taken seriously by everyone at the school, and students should be expected to conduct themselves as professionals from the moment they enter law school guided by a student code of professionalism. A similar code of professionalism should apply to faculty and staff.

Students should have contact with practicing lawyers and judges from orientation throughout their first year in law school.⁸³⁹ This can occur through a variety of methods, including preceptorships or other forms of mentoring arrangements, inviting practitioners to be guest speakers in classes or at events open to all students, and requiring students to participate in "field trips" which at a minimum should include observations of actual appellate court arguments.⁸⁴⁰ Students should write reflective journals about their experiences and observations during field trips, which ideally would be reviewed by an instructor.⁸⁴¹

⁸³⁰ See Chapter One, § B. 4. c; Chapter Four, §§ C. 1 & 4.

⁸³¹ See Chapter Two, § F. 6. e.

⁸³² See Chapter Three, § D; Chapter Four, § C. 12.

⁸³³ See Chapter Four, § G; Chapter Five, §§ A. 1. & 2. b. and B. 1. & 2. a.

⁸³⁴ See Chapter Four, § C. 10; Chapter Five, § A. 2. e.

⁸³⁵ See Chapter Five, § B. 2. e.

⁸³⁶ See Chapter Four, § C. 6.

⁸³⁷ See Chapter Four, § C. 11; Chapter Five, § A. 1.

⁸³⁸ See Chapter Four, § C. 11.

⁸³⁹ See Chapter Four, § H.

⁸⁴⁰ See Chapter Four, §§ G & H.

⁸⁴¹ See Chapter Four, § C. 11.

Multiple methods of assessing student learning should be used throughout law school.⁸⁴² All assessments should be criteria-referenced.⁸⁴³ Mandatory or suggested grade curves should not be used.⁸⁴⁴ Formative assessments should begin early and continue throughout each semester.⁸⁴⁵ Intermittent summative assessments should be conducted, leading up to final exams.⁸⁴⁶ Every summative assessment should also be a formative assessment.⁸⁴⁷ This means that students should receive feedback on all academic work during law school. For example, final exams should be returned to students with notations indicating strengths and deficiencies, along with model answers and scoring keys. Students should be encouraged to seek clarification of feedback they do not understand.

Students who encounter difficulty with summative or formative assessments should receive assistance from the faculty and, when appropriate, from academic support personnel. At the end of the first semester, the only grades should be pass or fail, with perhaps an honors designation for truly outstanding achievement. Alternatively, schools should articulate grades in terms of levels of proficiency reflecting characteristics of student performance, for example, limited proficiency, basic competence, intermediate competence, and advanced proficiency.⁸⁴⁸ Every student should begin compiling a portfolio that will be expanded throughout law school.⁸⁴⁹

A law school should not allow a student to stay enrolled beyond the first semester unless the student demonstrates the intellectual skills expected of a first semester student or the school has reason to believe that, with academic support, the student will achieve an acceptable level of proficiency by the end of the second semester.

The intellectual skills to be demonstrated are those that constitute the ability to “think like a lawyer.” This includes the ability to understand the holdings of appellate cases, to distinguish among appellate cases, and to apply legal doctrine to a set of facts and predict what a court would decide. More generally, “thinking like a lawyer” involves broader problem-solving skills, including the grounding of analysis in facts, the comprehensive spotting of relevant issues and concerns, the search for governing rules, principles, or standards by which to make decisions, the weighing of competing policy considerations in light of their consequences, the value placed on consistency and deference to past decisions, the utility of reasoning by analogy, the importance of reasoned justification, and the need to reach a conclusion and make a decision even if not perfect.⁸⁵⁰

These are core abilities that are essential to continued learning in law school and the practice of law. If a student cannot demonstrate these abilities by the end of the first semester, it would likely be a waste of the student’s time and money to continue in law school.

⁸⁴² See Chapter Seven, § C. 6.

⁸⁴³ See Chapter Seven, § C. 3.

⁸⁴⁴ See Chapter Seven, § C. 3.

⁸⁴⁵ See Chapter Seven, § A. 8.

⁸⁴⁶ See Chapter Seven, § A. 9.

⁸⁴⁷ See Chapter Seven, § A. 10.

⁸⁴⁸ See Chapter Seven, § C. 4.

⁸⁴⁹ See Chapter Seven, § C. 11.

⁸⁵⁰ See Chapter Two, §§ E & F. 2.

B. The Second Year Program of Instruction.

The second year should continue helping students develop legal problem-solving expertise, self efficacy, and self-reflection and lifelong learning skills.⁸⁵¹ Whereas the first year focuses on legal analysis, the second should focus on fact analysis. The school should continue providing instruction about core legal knowledge, including knowledge that is essential to all lawyers and foundational information that students will need to pursue specialized interests or tracks in the third year.⁸⁵² Schools should consider developing courses that provide an overview of various related subject areas that give students an acquaintance with multiple subjects rather than a more in depth understanding of one subject.⁸⁵³ This will enable students to acquire a general understanding of a wider range of subjects, any of which they could learn in more depth if needed in practice.

Emphasis in the second year should be placed on helping students develop their knowledge and understanding about professional skills and values, including sensitivity to client-centered practice.⁸⁵⁴ Basic introductory courses in professional skills, especially transactional and pretrial skills, should be offered to all students during both semesters. Instruction in legal writing, drafting, and research should continue. Pre- or co-requisite courses might include professional responsibility, evidence, remedies, and civil procedure.

Casebooks should be abandoned altogether and replaced with treatises and problems.⁸⁵⁵ More sophisticated, complex, and challenging problems and simulations should be used in all courses.⁸⁵⁶ Co-curricular and extra-curricular programs, including competitions and the pro bono program, should be coordinated with curricular offerings.

Externship courses or required observation programs should be organized to give students opportunities to observe and reflect on law practice.⁸⁵⁷ The primary educational goal of such experiences should be to develop students' understanding of professional values and commitment to those values, including seeking justice, fostering respect for the rule of law, and dealing sensitively and effectively with diverse clients and colleagues.⁸⁵⁸ In furtherance of these objectives, a school might select externships with public interest lawyers and lawyers who handle pro bono cases to give students role models of lawyers who take seriously the profession's obligation to provide access to justice.⁸⁵⁹ Another option is to place students at agencies that provide services to under-represented segments of society or perhaps in disciplinary counsels' offices. Schools with sufficient resources should offer students opportunities to enroll in in-house clinics that provide legal services to under-represented members of our society, either as second chairs to third year students or as lead counsel on cases they are qualified to handle.

⁸⁵¹ See Chapter Two, § F; Chapter Three, § B.

⁸⁵² See Chapter Two, §§ F. 3 & 4.

⁸⁵³ See Chapter Two, §§ F. 3 & 4.

⁸⁵⁴ See Chapter Two, §§ F. 5 & 6; Chapter Four, § G.

⁸⁵⁵ See Chapter Two, §§ F. 3 & 4.

⁸⁵⁶ See Chapter Three, § B.

⁸⁵⁷ See Chapter Four, § G. 3.

⁸⁵⁸ See Chapter Two, § F. 6; Chapter Three, § D; Chapter Four, § G. 3; Chapter Five, §

D. 2. a.

⁸⁵⁹ See Chapter Two, § F. 6; Chapter Three, § D; Chapter Four, § G. 3.

Students should be required to write reflective journals or papers in all experiential education courses.⁸⁶⁰ Assessment practices should continue as in the first year.

C. The Third Year Program of Instruction.⁸⁶¹

The emphasis in the third year should be to continue helping students develop their problem-solving expertise and cultivate “practical wisdom.”⁸⁶² The school should give special attention to helping students refine their self-reflection and lifelong learning skills.⁸⁶³ Rather than having discrete subject specific courses, multiple subjects should be taught in integrated contexts.⁸⁶⁴ Most courses could be organized as simulated law firms in which students work individually and in groups to resolve legal problems.⁸⁶⁵ For example, one course might be organized as a general practice firm, while others might be organized, for example as a corporate firm, a family law firm, a criminal defense firm, or prosecutor’s office. The specific subjects should reflect the most probable settings in which the school’s students are likely to enter practice. Practicing or retired lawyers should be recruited to assist in these courses.

Students should be required to participate in externship courses or in-house clinics in which students represent clients or participate in the work of lawyers and judges, not just observe it.⁸⁶⁶ Care should be taken to ensure that the externships and in-house clinics have clear, achievable educational objectives that cannot be adequately replicated in the simulated law firm courses or other courses.⁸⁶⁷ One option is to continue giving students opportunities to participate in the public interest practice settings such as those described in the second year curriculum. Another option would be to give students opportunities to work in the types of legal settings in which they are most likely to find themselves in their first years of practice.

Students should be required to write reflective journals or papers in all experiential education courses.⁸⁶⁸

Assessments during the third year should not only measure what students are learning in each course, they should also evaluate the overall competencies of students to help students understand the degree to which they are ready for their first day in law practice.⁸⁶⁹ Students who are significantly deficient in the knowledge, skills, or values required to practice law effectively and responsibly should be counseled about these deficiencies and assisted in developing plans to remedy the problems. If a student is able to graduate without remedying significant deficiencies, the law school should inform relevant bar admissions authorities about the student’s deficiencies.

⁸⁶⁰ See Chapter Four, § F. 11.

⁸⁶¹ In schools that have part-time programs, the recommendations in this section might constitute the third and fourth years of instruction.

⁸⁶² See Chapter Two, § E; Chapter Four, § G. 3.

⁸⁶³ See Chapter Two, § F. 1. & 2. a; Chapter Four, § C. 11.

⁸⁶⁴ See Chapter Three, § C.

⁸⁶⁵ See Chapter Four, § C. 6.

⁸⁶⁶ See Chapter Four, § G. 3.

⁸⁶⁷ See Chapter Five, §§ A. 2. b, C. 2. a, & D. 2. a.

⁸⁶⁸ See Chapter Four, § C. 11.

⁸⁶⁹ See Chapter Five, §§ A. 2. b & C. 2. a; Chapter Seven, § C. 4.

Third year students should have access to affordable programs to prepare them for the bar examination, perhaps offered by the school as part of the third year curriculum for credit. Law schools should at least help students understand what they are expected to know to succeed on bar examinations and help them locate relevant treatises on bar exam subjects.⁸⁷⁰

⁸⁷⁰ See Chapter One, § B. 1.

