



**CURRENT LEGAL EDUCATION
REFORM MOVEMENT
OCTOBER 2009**

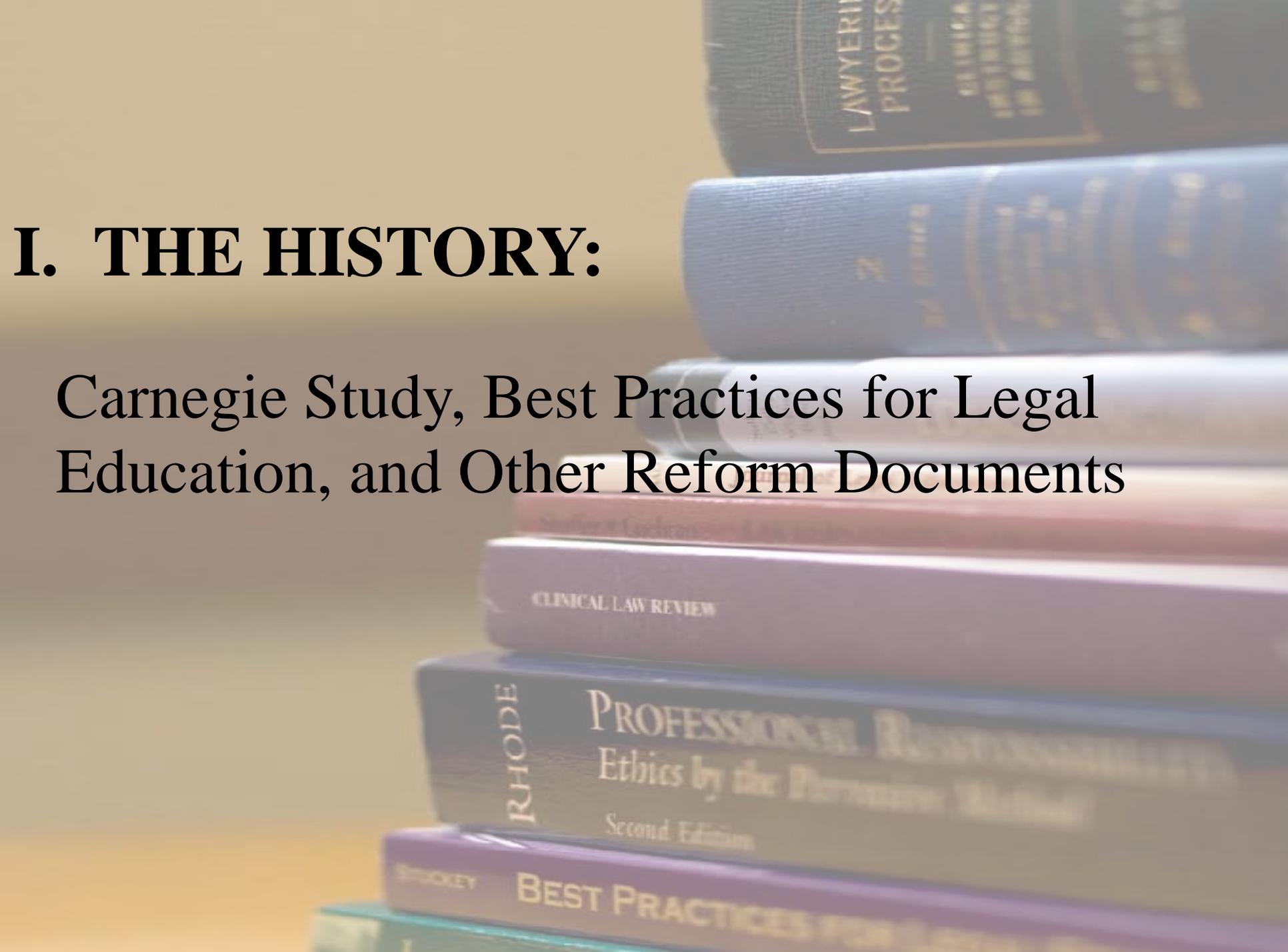
TODAY'S OBJECTIVES:

1. Overview of the academic critique of Legal Education & the “Bible.”



2. Describe what others are doing.

3. SNESL – where are you now? where do you want to be?



I. THE HISTORY:

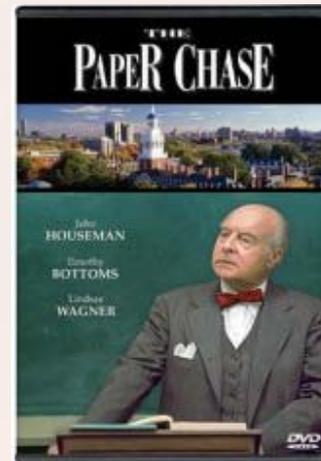
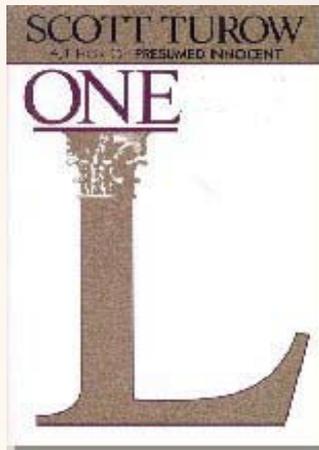
Carnegie Study, Best Practices for Legal Education, and Other Reform Documents

Legal Education Reform Movement

- Studied law school as an educational model
- 3 areas stood out as in need of reform
 - Curriculum
 - Teaching
 - Assessment / Evaluation

Law School Traditional Educational Model

- Case dialogue method
- Formal knowledge abstracted from context
- Cool stance from detached criticism



OUTDATED CONCEPTS OF LAW

- The New Deal & the Modern Administrative State was not even contemplated at the time of Langdell.
- Law = Common Law only.
- Judges were the only legitimate lawmakers.
- “Thinking Like a Lawyer” limited to ANALOGIC reasoning. Know how to compare cases.
- Even by 1914, Langdellian concepts were outdated.



OUTDATED CONCEPT OF THE LEARNING PROCESS

- We now know that humans learn in specific ways and that educational programs and processes can be geared to facilitate that learning.
- This is a modern idea not contemplated in 1860.
- Experts and “brainiacs” learn differently than most novice learners.



Results of Our Outdated 1860's Educational Model

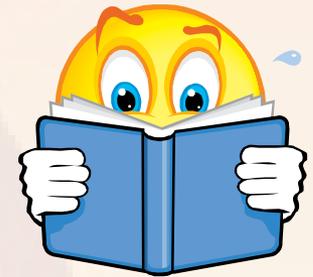
- **Traditional curriculum mainly provides law students with one experience**
- **Not a progressive developmental model**
- **Not psychologically motivating for novice learners**
- **Not designed interactively to engage the thinker in solving the problem.**

Student's Experience of Legal Education

1st year – Frightened to Death



2nd year – Worked to Death

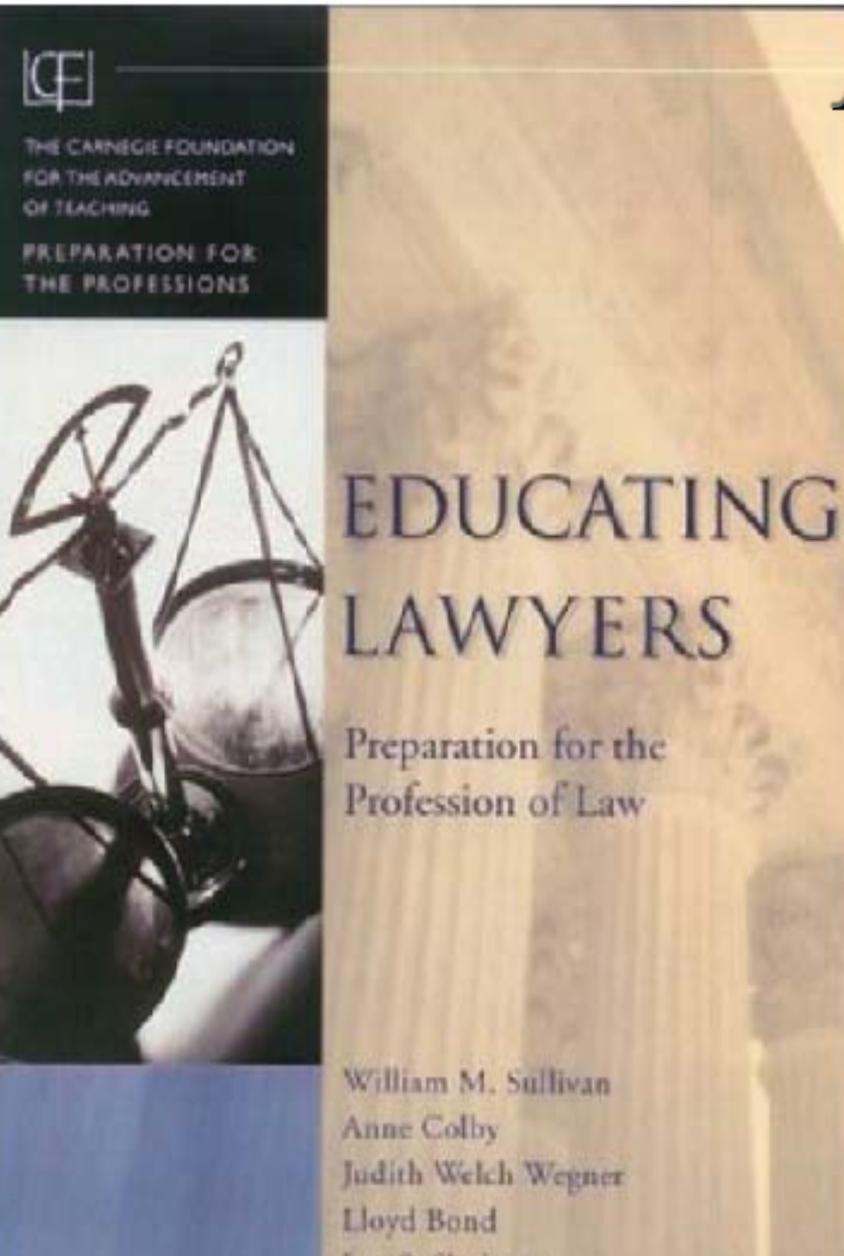


3rd year – Bored to Death



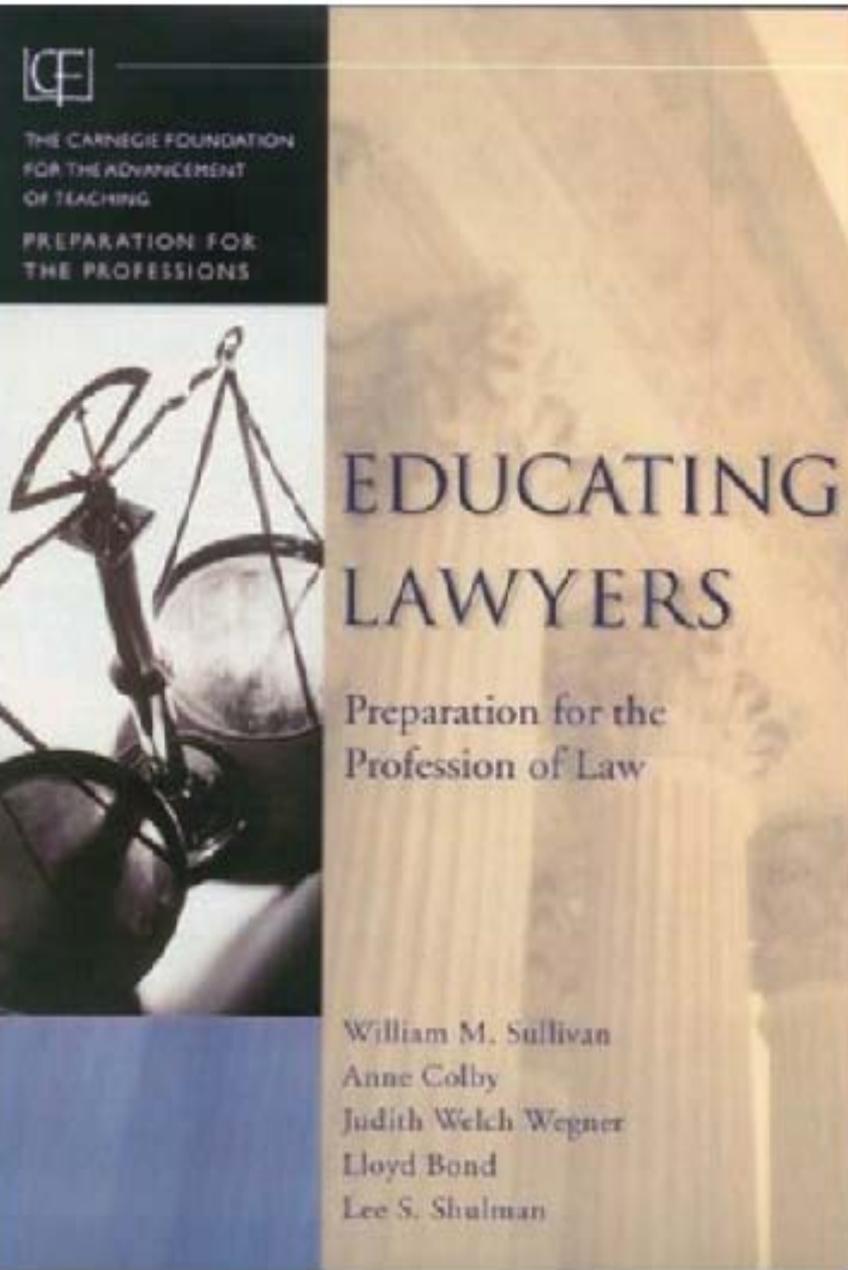
The Carnegie Study:

Educating Lawyers



- **Comparative Study: “Preparation for the Professions Program”**
 - Part of a comparative study of 5 “public” professions: clergy, physicians, nurses, engineers, and lawyers.
- **The Research Team:**
 - Law professor, former dean, psychologist, philosopher, Carnegie Foundation President, and Vice President, former Dean of Stanford Law, and psychological measurement and assessment specialist
- **Team Activities:**
 - Met law schools’ admission counsel, LSAT, LSAC visited 16 law schools, consulted with AALS, reviewed legal education literature.

The 3 Apprenticeships



The Signature Pedagogy of all professional fields: “ Teach Students how to **think, perform & conduct** themselves like **professionals.**”

- 1.) **THINK** – intellectual analysis, university teaching
- 2.) **PERFORM** – expert practice shared by competent practitioners. (Simulated Practice settings/ Case Studies / Actual Clinic Experience with Real Clients)
- 3.) **ETHICAL / SOCIAL** – introduce students to the purposes and attitudes that are guided by the values for which the professional community is responsible



THE CARNEGIE FOUNDATION
FOR THE ADVANCEMENT
OF TEACHING

PREPARATION FOR
THE PROFESSIONS



EDUCATING LAWYERS

Preparation for the
Profession of Law

William M. Sullivan
Anne Colby
Judith Welch Wegner
Lloyd Bond
Lee S. Shulman

➤ The “near exclusive” focus of law schools on systemic abstraction from actual social context has two major defects:

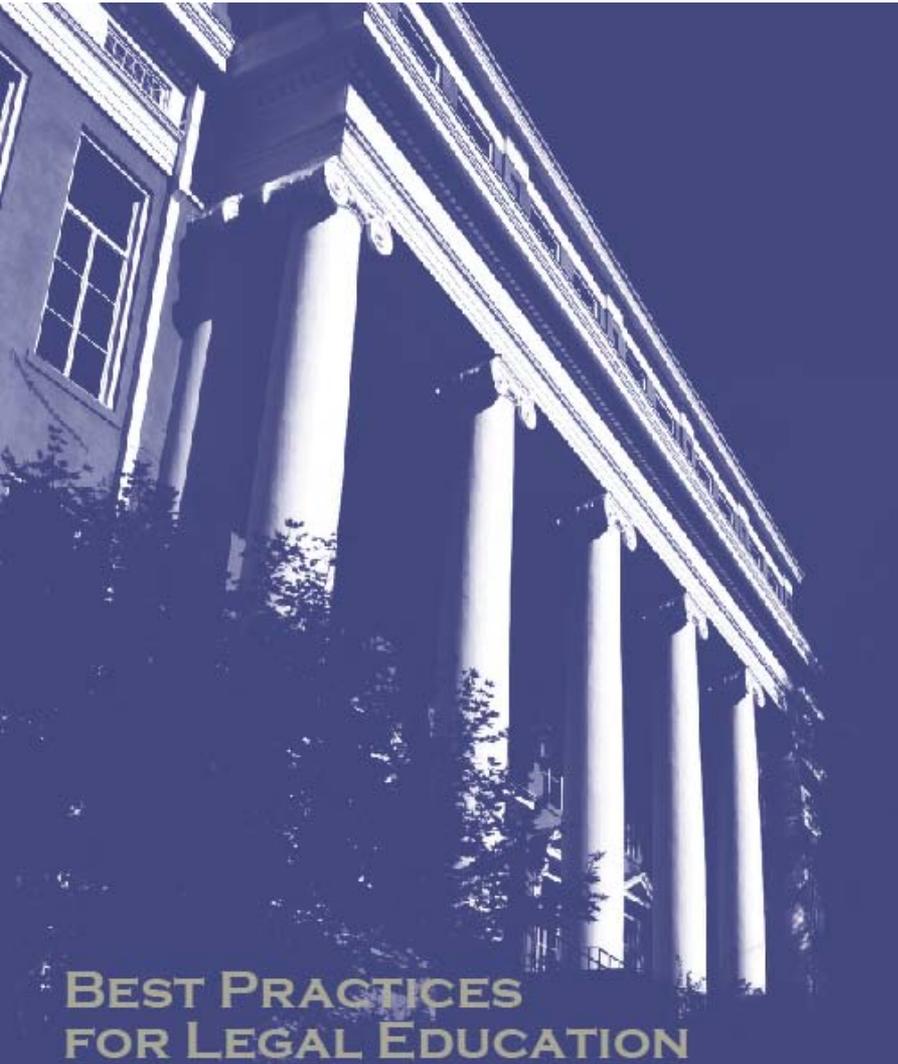
1.) Fails to teach “*students how to use legal thinking in **the complexity of actual law practice.***”

2.) Fails to complement the focus on skill in legal analysis with effective support for developing ***the ethical and social dimensions of the profession.***

BEST PRACTICES FOR LEGAL EDUCATION:

A VISION AND A ROADMAP

- **Set Goals**
- **Organize Program of Instruction**
- **Deliver Instruction**
- **Assess Student Learning**
- **Evaluate Success of Program of Instruction**



**BEST PRACTICES
FOR LEGAL EDUCATION**

A Vision and A Road Map

“BEST” VALUES

- **Writing & Problem Solving Across the Curriculum**
- **Prompt Feedback**
- **Formative & Multiple Assessments**
- **Integrated & Progressive Curriculum**
- **Experiential Lawyering**
- **Emphasis on Professional Identity & Purpose from Orientation to Graduation**

THE PILLARS OF BEST PRACTICES

1. Setting Goals
2. Organizing the Program of Instruction
3. Delivering Instruction
4. Assessing Student Learning
5. Evaluating the Success of the Program of Instruction

SETTING GOALS

- Demonstrate a **commitment** to preparing students for practice
- **Clearly articulate** their educational goals
- Shift from content-focused programs of instruction to **outcomes-focused** programs of instruction
- The primary goal should be to develop competence, that is, **the ability to resolve legal problems** effectively and responsibly
- Help students acquire the attributes of **effective, responsible lawyers** including self-reflection, lifelong learning skills, professional skills and professionalism

ORGANIZING THE PROGRAM OF INSTRUCTION

- Organize curriculums **progressively**
- **Integrate** the teaching of theory & doctrine
- Teach professionalism **pervasively** throughout all three years

DELIVERING INSTRUCTION

- Use **teaching methods** that most effectively and efficiently achieve desired educational objective
- Employ **context-based instruction**
- Employ best practices when using any instructional methodology
- Maintain **healthy teaching and learning environments**
- Enhance with **technology** and appropriate use of practicing **lawyers and judges**
- Have effective **teacher development programs** and establish learning centers

ASSESSING STUDENT LEARNING

- Include **criteria-referenced assessments**, **multiple** formative and summative assessments, and various methods of assessment

EVALUATING THE SUCCESS OF THE PROGRAM OF INSTRUCTION

- Law Schools should **regularly** evaluate their effectiveness and use best practices for conducting such evaluations

BOTTOM LINE: Help students acquire the attributes of effective responsible lawyers.

- Self reflection and life long learning
- Intellectual and analytical skills
- Core knowledge of the law
- Core understanding of the law
- Professional skills
- Professionalism

Choose Teaching Methods that Effectively and Efficiently Achieve Desired Outcomes

- Student-oriented, not faculty oriented
- Less “sage on the stage”
- More teaching where students take active responsibility for their learning
- Some construction (of a project) – not all deconstructing text or arguments.

Use Multiple Methods of Instruction and Reduce Reliance on the Socratic Dialogue and Case Method

- Multi-modal methods (see, e.g., pages 132-33)
- Limit Socratic method – vicarious, and avoid its use as a weapon

Employ Context-Based Education Throughout the Program of Instruction

- ◎ Improves transfer from the classroom to practice: students store in memory differently
- ◎ Learning Problem Solving
 - Repetitions
 - Experience consequences of choices
 - Inductive efforts to understand what works
 - Practice + informative feedback + reflection + self-assessment
 - Increase use of case histories and actual cases – beyond the clinics.

Employ Context-Based Education Throughout the Program of Instruction – Cont'

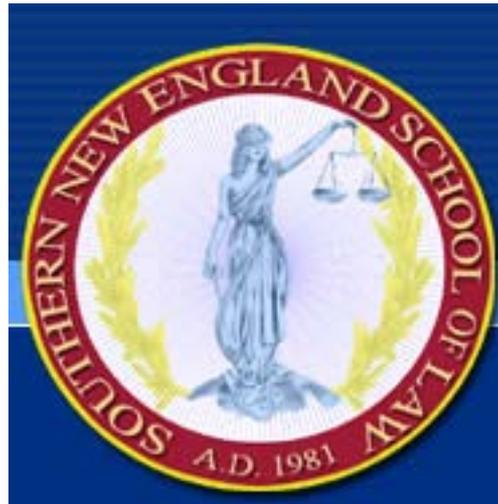
- ◎ Use to Teach Theory, Doctrine & Analytical Skills:
 - Hypotheticals are situated learning – problems and cases
 - Teach theory and analysis
- ◎ Use to Teach How to Produce Law-Related Documents
 - “Productive action”: idea + technique + performance
- ◎ Use to Teach How to Resolve Human Problems and Cultivate “Practical Wisdom”
 - Practice (praxis)
 - Interplay between testing theory, and deriving knowledge from experience
 - Dynamic of professional practice is essential – Fluency needed in both:
 - Engaged mode of narrative thinking & detached mode of analytical thinking
 - “Supervised Practice” is antidote for lethargy, & creates habits of the mind



CHAPTER 7: ASSESSING STUDENT LEARNING

- We SHOULD BE finding out if students have ***achieved*** learning outcomes of courses studied.
- Only real assessment US law schools use is ***Bar Exam***
- Not only to protect public from those few trainees “***not expected to overcome their deficiencies***” but to:
 - Foster learning
 - Inspire Confidence
 - Enhance Learners Ability to Self Monitor
 - Drive Institutional Self-Assess and curricular change

SNESL: Where are you now?





II. THE LEGAL ACADEMY'S RESPONSE TO REFORM PROPOSALS





The National Landscape

- Best Practices Blog
- LEARN – Carnegie Study continues
- Individual Law School Initiatives
- ABA Council on Legal Education Special Committee on Outcome Measures

<http://bestpracticeslegaled.albanylawblogs.org>

Best Practices for Legal Education - Windows Internet Explorer

http://bestpracticeslegaled.albanylawblogs.org/

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It's All Coming Together

Posted on **March 11, 2009** by Robert Dinerstein | [Edit](#)

Long-time Best Practices/Carnegie groupies or aficionados will note that one of other ongoing projects regarding legal education has been the research that Marjorie Shultz and Sheldon Zedeck of Berkeley have been conducting on what skills/qualities lawyers need. They presented an early version of their findings at an AALS annual meeting several years ago. Today (3-11-09), the NYT reported on their research. The article is available at

<http://www.nytimes.com/2009/03/11/education/11sat.html?em>

Shultz and Zedeck surveyed Berkeley alumni and others to identify what characteristics they looked for in a good lawyer. According to the article, "The survey produced a list of 26 characteristics, or 'effectiveness factors,' like the ability to write, manage stress, listen, research the law and solve problems." They then designed a

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Professor Mary Lynch - Editor

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Center for Excellence in Law Teaching (CELT)

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BEST PRACTICES FOR LEGAL EDUCATION

From the Best Practices for Legal Education Blog:

Collaborating with Other Departments in the University

Yesterday, October 13, 2009, 1:08:49

PM | Antoinette Sedillo Lopez

Communication and Journalism departments can help you with focus groups to get ideas from alumni and lawyers in your community about the skills and values students should learn in law school. Medical school models of assessment can be great sources for skills based assessment. University accreditation initiatives are likely to involve a review [...]

Comments (0)

Collaborative work on H1N1

“Education is not the filling of a pail, but the lighting of a fire.” —Yeats

NEW ARTICLES ON LEGAL EDUCATION REFORM

Teaching about the Nexus between Law and Society: From Pedagogy to Andragogy, by Patricia L. Easteal, Legal Education Review, Vol. 18, Nos. 1&2, pp. 163-172, 2008. **(SSRN Abstract)**

What Law Schools Should Teach Future Transactional Lawyers: Perspectives from Practice, by Michael Woronoff

QUICK LINKS

Please Select



Albany Law's Centers provide countless opportunities



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Legal Education Analysis & Reform Network

PARTICIPATING SCHOOLS

- **CUNY Law School**
- **Indiana University School of Law (Bloomington)**
- **Georgetown University Law Center**
- **Harvard Law School**
- **New York University School of Law**
- **Southwestern Law School**
- **Stanford Law School**
- **University of Dayton School of Law**
- **University of New Mexico Law School**
- **Vanderbilt University Law School**



LEARN

Legal Education Analysis & Reform Network

CONTINUING REFORM EFFORTS

1. Update Educating Lawyers
2. Create a website with rich collection of teaching resources (Housed at Albany Law School?)
3. Conduct small teaching seminars and workshops for law teachers across the country.
4. Design and operate a summer institute on law teaching for exchange among faculty with at least 3 years experience.
5. Develop pilot “Rounds About Teaching” project **in a few law schools**. (replication projects)
6. Coordinate National Collaboration in Course Development and teaching by doctrinal, clinical, and skills faculty.
7. Create a network for deans to provide OPPORTUNITIES for INNOVATION in assigning profs to courses & INCENTIVES (grants, travel stipends, sabbaticals) for those who want to develop innovative programs



LEARN

Legal Education Analysis & Reform Network

PROVIDING TOOLS, INFORMATION & ASSESSMENTS

- 1. Use of interactive classroom technology (e.g. clickers)**
- 2. Costs and benefits of periodic written assignments/ examinations as supplements to, or supplements for traditional final exams**
- 3. Use of monitored wiki-postings and listservs**
- 4. Modifications to the end-of-term letter or number grade**
- 5. How and when to use and/or standardize simulations**
- 6. Alternatives to the traditional bar exams**



INDIVIDUAL LAW SCHOOL INITIATIVES

- Many law schools have engaged in systematic reform efforts already. These fall into 5 categories:
 - Programmatic Efforts
 - First-Year Reform
 - Third-Year Reform
 - Experiential & Client-Focused Initiatives
 - Teaching Effectiveness & Learning Assessment



PROGRAMMATIC EFFORTS

- Case Law School's **"CaseARC Integrated Lawyering Skills Program"**
- Cal Western's **"STEPPS Program"**
- Dayton School of Law: **"Lawyer as a Problem Solver"**
- William Mitchell **"Pathways"** Program –
<http://www.wmitchell.edu/pathways>
- Vanderbilt – National PR / U.S. News



FIRST-YEAR REFORM

By end of 1st year, students should have learned to: read a case, a statute, a contract, a lease, a complaint, an interrogatory, and a treaty.

- Mandatory first-year curriculum should provide students with an introduction to the modern legal system.
 - Administrative State
 - Transactional Law
 - How Administrative State & Transactional Law are in Business
 - Globalization
 - Social Policy
- The University of Washington (Seattle) **“Foundation for Legal Studies.”**
- Harvard: 3 new requirements
 - Legislation & regulations course
 - Global legal systems and concerns
 - “Problems and Theories” focusing on problem solving
- Vanderbilt: Two new courses --- **“The Life of the Law” and “The Regulatory State”**



THIRD-YEAR REFORM

“No other educational model uses a passive learning model in the third year of teaching.”

- **Entire 3rd Year devoted to experiential learning**
 - Washington & Lee entirely reinvented the third-year to make it a year of professional development through simulated and actual practice experiences.
- **Coherent Organization**
 - Of the upper class curriculum so that students are encouraged to study one area in-depth.
- **Capstone Courses:**
 - New York Law School
 - Osgood Hall Law School (Toronto)
 - University of Pennsylvania
 - Duke University
 - University of Tennessee
 - Missouri State
 - University of Dayton
 - Baylor
 - William Mitchell



EXPERIENTIAL & CLIENT FOCUSED INITIATIVES

- Expanding Clinical / Field Placement Offerings
- Intersession Courses
- Interdisciplinary Simulation Efforts
- Bringing Expert Practitioners into Doctrinal Classes
- Requiring Clinics





TEACHING EFFECTIVENESS & LEARNING ASSESSMENT

- Collaborative teaching efforts: doctrinal & skills & clinical & practitioners
- Focus on what Students learned NOT what teacher “covers”
- Structured Feedback from Professors (Clickers, Midterms, Written submissions....)
- Structured Practice-Theory Integration



ABA Considering Outcomes Approach



- ***Sweeping Accreditation Review May Prompt ‘Sea Change’ in Law School Evals***
- The most significant change in the Standards for Approval of Law Schools is likely to be a move away from evaluating law schools on the basis of criteria that measure “input”—such things as faculty size, budget and physical plant. Instead, the Legal Education Section would evaluate law schools more heavily on the basis of “outcome” measures.

ABA COUNCIL ON LEGAL EDUCATION

- The essential difference is that outcome measures would focus on what students actually take away from their educational experience at a particular law school rather than what the school teaches.
- Shifting to an emphasis on outcomes rather than input is essentially a done deal, said committee vice chair Margaret Martin Barry, a professor at The Catholic University of America's Columbus School of Law in Washington, D.C. In an interview with the ABA Journal this week, she explained that a special study committee, backed by the council of the Legal Education Section, urged that the change in emphasis be incorporated into the accreditation standards.



Food for Thought

1. *Has your school **integrated** doctrinal, clinical, skills, and professionalism in courses and teaching methodologies?*
2. *Has your school **systemized a progression of learning** for your students?*
3. *Does your school engage in **Best Practices** in teaching, curriculum development & institutional assessment?*

