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EDUCATING LAWYERS

Preparation for the
Profession of Law

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

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The Foundation's two-year study of legal education involved a reassessment of teaching and learning in American and Canadian law schools today. Intensive field work was conducted at a cross section of 16 law schools during the 1999-2000 academic year. The study re-examines "thinking like a lawyer"—the paramount educational construct currently in use. The report shows how law school teaching affords students powerful intellectual tools while also shaping education and professional practice in subsequent years in significant, yet often unrecognized, ways. The study was funded by The Atlantic Philanthropies.

About the Authors

WILLIAM M. SULLIVAN is a senior scholar at The Carnegie Foundation for the Advancement of Teaching. He is the author of *Work and Integrity* and co-author of *Habits of the Heart*.

ANNE COLBY co-directs The Carnegie Foundation for the Advancement of Teaching's Preparation for the Professions Program and Higher Education and the Development of Moral and Civic Responsibility Program.

JUDITH WELCH WEGNER is professor of law at the University of North Carolina at Chapel Hill where she has served as dean. Formerly a senior scholar with The Carnegie Foundation for the Advancement of Teaching, she has served as president of the Association of American Law Schools.

LLOYD BOND is a senior scholar with The Carnegie Foundation for the Advancement of Teaching, working in the area of assessment across several of the Foundation's programs.

LEE S. SHULMAN is the 8th president of The Carnegie Foundation for the Advancement of Teaching. He is the first Charles E. Ducommun Professor of Education Emeritus and Professor of Psychology Emeritus (by courtesy) at Stanford University, past president of the American Educational Research Association (AERA), and a member of the National Academy of Education.

SUMMARY

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Introduction

The profession of law is fundamental to the flourishing of American democracy. Today, however, critics of the legal profession, both from within and without, have pointed to a great profession suffering from varying degrees of confusion and demoralization. A reawakening of professional élan must include revitalizing legal preparation. It is hard to imagine that taking place without the enthusiastic participation of the nation's law schools. Law school provides the single experience that virtually all legal professionals share. It is the place and time where expert knowledge and judgment are communicated from advanced practitioner to beginner. It is where the profession puts its defining values and exemplars on display, and future practitioners can begin both to assume and critically examine their future identities.

Educating Lawyers examines the dramatic way that law schools develop legal understanding and form professional identity. The study captures the special strengths of legal education, and its distinctive forms of teaching. It follows earlier studies of professional education conducted by The Carnegie Foundation for the Advancement of Teaching. Beginning with the landmark Flexner Report on medical education of 1910 and other pioneering studies of education in engineering, architecture, teaching and law, the Foundation has for nearly one hundred years influenced improvement of education for the professions.

As the Foundation enters its second century, *Educating Lawyers* becomes part of a series of reports on professional education issued by the Foundation through its Preparation for the Professions Program. *Educating Clergy* was the first in this series, which will include reports on the education of engineers, nurses and physicians.

Educating Lawyers is thus informed by the findings of the Foundation's concurrent studies of professional education. It is also, like the other studies, grounded in direct observation of education in process. Over the space of two academic semesters, a research team visited 16 law schools in the United States and Canada. The schools, both public and private, were chosen to be geographically diverse, ranging from coast to coast and north to south. Several are among the more selective schools. Several are freestanding schools, while others are less selective institutions within large state university systems. One school is historically black, while two (one in Canada, the other in the United States) are distinctive for their attention to Native American and First Nation peoples and their concerns. Several schools were chosen because they were judged by many to represent important strengths in legal education.

Overview of Legal Education

Education of professionals is a complex educational process, and its value depends in large part upon how well the several aspects of professional training are understood and woven into a whole. That is the challenge for legal education: linking the interests of legal educators with the needs of legal practitioners and with the public the profession is pledged to serve—in other words, fostering what can be called civic professionalism.

THAT IS THE CHALLENGE FOR LEGAL EDUCATION: LINKING THE INTERESTS OF LEGAL EDUCATORS WITH THE NEEDS OF LEGAL PRACTITIONERS AND WITH THE PUBLIC THE PROFESSION IS PLEDGED TO SERVE.

Like other professional schools, law schools are hybrid institutions. One parent is the historic community of practitioners, for centuries deeply immersed in the common law and carrying on traditions of craft, judgment and public responsibility. The other heritage is that of the modern research university. These two strands of inheritance were blended by the inventors of the modern American law school, starting at Harvard in the 1870s with President Charles William Eliot and his law dean, Christopher Columbus Langdell. The blend, however, was uneven. Factors beyond inheritance—the pressures and opportunities of the surrounding environment—have been very important in what might be called the epigenesis of legal education. But as American law schools have developed, their academic genes have become dominant.

The curriculum at most schools follows a fairly standard pattern. The juris doctor (JD) degree is the typical credential offered, requiring three years of full-time or four years of part-time study. Most states require the degree for admission to practice, along with a separate bar examination. Typically, in the first year and a half, students take a set of core courses: constitutional law, contracts, criminal law, property law, torts, civil procedure and legal writing. After that, they choose among courses in particular areas of the law, such as tax, labor or corporate law. The school-sponsored legal clinics, moot court competition, supervised practice trials and law journals give the students who participate opportunities to practice the legal skills of working with clients, conducting appellate arguments, and research and writing.

Law schools use the Socratic, case-dialogue instruction in the first phase of their students' legal education. During the second two years, most schools continue to teach, by the same method, a number of elective courses in legal doctrine. In addition, many also offer a variety of elective courses in seminar format, taught in ways that resemble graduate courses in the

arts and sciences. What sets these courses apart from the arts and sciences experience is precisely their context—law school as apprenticeship to the profession of law. But there is room for improvement. The dramatic results of the

THE DRAMATIC RESULTS OF THE FIRST YEAR OF LAW SCHOOL'S EMPHASIS ON WELL-HONED SKILLS OF LEGAL ANALYSIS SHOULD BE MATCHED BY SIMILARLY STRONG SKILL IN SERVING CLIENTS AND A SOLID ETHICAL GROUNDING.

first year of law school's emphasis on well-honed skills of legal analysis should be matched by similarly strong skill in serving clients and a solid ethical grounding. If legal education were serious about such a goal, it would require a bolder, more integrated approach that would build on its strengths and address its most serious limitations. In pursuing such a goal, law schools could also benefit from the approaches used in education of physicians, teachers, nurses, engineers and clergy, as well as from research on learning.

Five Key Observations

OBSERVATION 1 Law School Provides Rapid Socialization into the Standards of Legal Thinking.

Law schools are impressive educational institutions. In a relatively short period of time, they are able to impart a distinctive habit of thinking that forms the basis for their students' development as legal professionals. Visiting schools of different types and geographical locations, the research team found unmistakable evidence of the pedagogical power of the first phase of legal education. Within months of their arrival in law school, students demonstrate new capacities for understanding legal processes, for seeing both sides of legal arguments, for sifting through facts and precedents in search of the more plausible account, for using precise language, and for understanding the applications and conflicts of legal rules. Despite a wide variety of social backgrounds and undergraduate experiences, they are learning, in the parlance of legal education, to “think like a lawyer.” This is an accomplishment of the first order that deserves serious consideration from educators of aspirants to other professional fields.

OBSERVATION 2 Law Schools Rely Heavily on One Way of Teaching to Accomplish the Socialization Process.

The process of enabling students to “think like lawyers” takes place not only in a compressed period of time but primarily through the medium of a single form of teaching: the case–dialogue method. Compared to other professional fields, which often employ multiple forms of teaching through a more prolonged socialization process, legal pedagogy is remarkably uniform across variations in schools and student bodies. With the exception of a few schools, the first-year curriculum is similarly standardized, as is the system of competitive grading that accompanies the teaching and learning practices associated with case dialogue. The consequence is a striking conformity in outlook and habits of thought among legal graduates.

In particular, most law schools emphasize the priority of analytic thinking, in which students learn to categorize and discuss persons and events in highly generalized terms. This emphasis on analysis and system has profound effects in shaping a legal frame of mind. At a deep, largely uncritical level, the students come to understand the law as a formal and rational system, however much its doctrines and rules may diverge from the common sense understandings of the lay person. This emphasis on the procedural and systematic gives a common tone to legal discourse that students are quick to notice, even if reproducing it consistently is often a major learning challenge.

OBSERVATION 3 The Case–Dialogue Method of Teaching Has Valuable Strengths but Also Unintended Consequences.

The case–dialogue method challenges students to grasp the law as a subject characterized by a particular way of thinking, a distinctive stance toward the world. And, as do the particular methods of teaching for other professions, the case–dialogue method offers both an accurate representation of central aspects of legal competence and a deliberate simplification of them. The simplification consists in the abstraction of the legally relevant aspects of situations and persons from their everyday contexts. In the case–dialogue classroom, students learn to dissect every situation they meet from a legal point of view.

By questioning and argumentative exchange with faculty, students are led to analyze situations by looking for points of dispute or conflict and considering as “facts” only those details that contribute to someone’s staking a legal claim on the basis of precedent. The case–dialogue method drills students, over and over, in first abstracting from natural contexts, then operating upon the “facts” so abstracted according to specified rules and procedures, and drawing conclusions based upon that reasoning. Students discover that to “think like a lawyer” means redefining messy situations of actual or potential conflict as opportunities for advancing a client’s cause through legal argument before a judge or through negotiation.

By contrast, the task of connecting these conclusions with the rich complexity of actual situations that involve full-dimensional people, let alone the job of thinking through the social consequences or ethical aspects of the conclusions, remains outside the case–dialogue method. Issues such as the social needs or matters of justice involved in cases do get attention in some case–dialogue classrooms, but these issues are almost always treated as addenda. Being told repeatedly that such matters fall, as they do, outside the precise and orderly “legal landscape,” students often conclude that they are secondary to what really counts for success in law school—and in legal practice. In their all-consuming first year, students are told to set aside their desire for justice. They are warned not to let their moral concerns or compassion for the people in the cases they discuss cloud their legal analyses.

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This warning does help students escape the grip of misconceptions about how the law works as they hone their analytic skills. But when the misconceptions are not addressed directly, students have no way of learning when and how their moral concerns may be relevant to their work as lawyers and when these concerns could throw them off track. Students often find this confusing and disillusioning. The fact that moral concerns are reintroduced only haphazardly conveys a cynical impression of the law that is rarely intended.

Two Major Limitations of Legal Education

1. Most law schools give only casual attention to teaching students how to use legal thinking in the complexity of actual law practice. Unlike other professional education, most notably medical school, legal education typically pays relatively little attention to direct training in professional practice. The result is to prolong and reinforce the habits of thinking like a student rather than an apprentice practitioner, conveying the impression that lawyers are more like competitive scholars than attorneys engaged with the problems of clients. Neither understanding of the law is exhaustive, of course, but law school’s typically unbalanced emphasis on the one perspective can create problems as the students move into practice.¹
2. Law schools fail to complement the focus on skill in legal analyses with effective support for developing ethical and social skills. Students need opportunities to learn about, reflect on and practice the responsibilities of legal professionals. Despite progress in making legal ethics a part of the curriculum, law schools rarely pay consistent attention to the social and cultural contexts of legal institutions and the varied forms of legal practice. To engage the moral imagination of students as they move toward professional practice, seminaries and medical, business and engineering schools employ well-elaborated case studies of professional work. Law schools, which pioneered the use of case teaching, only occasionally do so.

Both of these drawbacks—lack of attention to practice and inadequate concern with professional responsibility—are the unintended consequences of reliance upon a single, heavily academic pedagogy, the case–dialogue method, to provide the crucial initiation into legal education.

OBSERVATION 4 Assessment of Student Learning Remains Underdeveloped.

Assessment of what students have learned—what they know and are able to do—is important in all forms of professional education. In law schools, too, assessing students’ competence performs several important educational functions. In its familiar summative form, assessment sorts and selects students. From the start, assessment is used as a filter; law schools typically admit only students who are likely to succeed in law school as judged by performance on the Law School Admissions Test; and high-stakes, summative assessment is critical at the end of each of the first two semesters of law school, when essay examinations in each doctrinal course will determine students’ relative ranking, opening academic options for the remainder of some students’ legal education and legal careers—and closing them for others. The bar examination is another high-stakes, summative assessment that directly affects law school teaching but is administered by an independent body.

Summative assessments are useful devices to protect the public, for they can ensure basic levels of competence. But there is another form of assessment, formative assessment, which focuses on supporting students in learning rather than ranking, sorting and filtering them. Although contemporary learning theory suggests that educational effort is significantly enhanced by the use of formative assessment, law schools make little use of it. Formative assessments directed toward improved learning ought to be a primary form of assessment in legal education.

OBSERVATION 5 Legal Education Approaches Improvement Incrementally, Not Comprehensively.

Compared to 50 years ago, law schools now provide students with more experience, more contextual experience, more choice and more connection with the larger university world and other disciplines. However, efforts to improve legal education have been more piecemeal than comprehensive. Few schools have made the overall practices and effects of their educational effort a subject for serious study. Too few have attempted to address these inadequacies on a systematic basis. This relative lack of responsiveness by the law schools, taken as a group, to the well-reasoned pleas of the national bar and its commissions antedates the study on which *Educating Lawyers* is based.

The relatively subordinate place of the practical legal skills, such as dealing with clients and ethical-social development in many law schools, is symptomatic of legal education’s approach to addressing problems

and framing remedies. To a significant degree, both supporters and opponents of increased attention to “lawyering” and professionalism have treated the major components of legal education in an *additive* way, not an integrative way.

Providing additional classroom coverage of professionalism issues will not be an easy task. Law school curriculum reform is a tedious and often frustrating task and seems to work best when modest changes are made at the margin by adding one or two additional courses. If the proponents of the need for increased law school training in ethics and professionalism are right, however, an effort equivalent to that which led to the increase in clinical legal education in the 1970s and the increased emphasis on skills training in the 1990s is required. The aim of this effort should be to elevate the twin concepts of the practice of law as a public service calling and the development of the capacity for reflective moral judgment to the same level as legal knowledge and traditional legal skills. This is indeed an ambitious goal. (American Bar Association, 1996)

Moreover, efforts to add new requirements are almost universally resisted, not only in legal education, but in professional education generally, because there is always too much to accomplish in too little time. Sometimes this problem becomes so acute that the only solution is to extend the time allocated to training. In engineering, for example, current debate centers on the question of whether the master’s rather than the bachelor’s degree should be the entry-level credential for the field. Extending the duration of training is a radical solution, however, and certainly not one that would appeal to law school administrators, faculty or students.

This additive strategy of educational change assumes that increasing emphasis on the practical and ethical-social skills of the profession will reduce time for and ultimately affect the extent to which students develop skills in legal analyses. Thus, practical skills are addressed only to a point. This is not only a logistical problem (too much to accomplish in a limited amount of time) but it is also a conceptual and pedagogical problem. In essence, the additive strategy assumes that the legal analysis so prominent in legal education is sufficient in its own terms, only requiring slight increase in attention to the practical and ethical-social skills of a beginning lawyer.

Toward a More Integrated Model: A Historic Opportunity to Advance Legal Education

Law school provides the beginning, not the full development, of students' professional competence and identity. At present, what most students get as a beginning is insufficient. Students need a dynamic curriculum that moves them back and forth between understanding and enactment, experience and analysis. Law schools face an increasingly urgent need to bridge the gap between analytical and practical knowledge, and a demand for more robust professional integrity. Appeals and demands for change, from both within academic law and without, pose a new challenge to legal education. At the same time, they open to legal education a historic opportunity to advance both legal knowledge—theoretical and practical—and the capacities of the profession.

Legal education needs to be responsive to both the needs of our time and recent knowledge about how learning takes place; it needs to combine the elements of legal professionalism—conceptual knowledge, skill and moral discernment—into the capacity for judgment guided by a sense of professional responsibility. Legal education should seek to unite the two sides of legal knowledge: formal knowledge and experience of practice.

In particular, legal education should use more effectively the second two years of law school and more fully complement the teaching and learning of legal doctrine with the teaching and learning of practice. Legal education should also give more focused attention to the actual and potential effects of the law school experience on the formation of future legal professionals.

Recommendations

RECOMMENDATION 1 Offer an Integrated Curriculum.

To build on their strengths and address their shortcomings, law schools should offer an integrated, three-part curriculum: (1) the teaching of legal doctrine and analysis, which provides the basis for professional growth; (2) introduction to the several facets of practice included under the rubric of lawyering, leading to acting with responsibility for clients; and (3) exploration and assumption of the identity, values and dispositions consonant with the fundamental purposes of the legal profession. Integrating the three parts of legal education would better prepare students for the varied demands of professional legal work.

In order to produce such integrative results in students' learning, however, the faculty who teach in the several areas of the legal curriculum must first communicate with and learn from each other.

RECOMMENDATION 2 **Join “Lawyering,” Professionalism and Legal Analysis from the Start.**

The existing common core of legal education needs to be expanded to provide students substantial experience with practice as well as opportunities to wrestle with the issues of professionalism. Further, and building on the work already underway in several law schools, the teaching of legal analysis, while remaining central, should not stand alone as it does in so many schools. The teaching of legal doctrine needs to be fully integrated into the curriculum. It should extend beyond case–dialogue courses to become part of learning to “think like a lawyer” in practice settings.

Nor should doctrinal instruction be the exclusive content of the beginner’s curriculum. Rather, learning legal doctrine should be seen as prior to practice chiefly in the sense that it provides the essential background assumptions and habits of thought that students need as they find their way into the functions and identity of legal professionals.

RECOMMENDATION 3 **Make Better Use of the Second and Third Years of Law School.**

After the JD reports that graduates mostly see their experiences with law–related summer employment after the first and second years of law school as having the greatest influence on their selection of career paths.² Law schools could give new emphasis to the third year by designing it as a kind of “capstone” opportunity for students to develop specialized knowledge, engage in advanced clinical training, and work with faculty and peers in serious, comprehensive reflection on their educational experience and their strategies for career and future professional growth.

RECOMMENDATION 4 **Support Faculty to Work Across the Curriculum.**

Both doctrinal and practical courses are likely to be most effective if faculty who teach them have some significant experience with the other, complementary area. Since all law faculty have experienced the case–dialogue classroom from their own education, doctrinal faculty will probably make the more significant pedagogical discoveries as they observe or participate in the teaching of lawyering courses and clinics, and we predict that they will take these discoveries back into doctrinal teaching. Faculty development programs that consciously aim to increase the faculty’s mutual understanding of each other’s work are likely to improve students’ efforts to make integrated sense of their developing legal competence. However it is organized, it is the sustained dialogue among faculty with different strengths and interests united around common educational purpose that is likely to matter most.

RECOMMENDATION 5 **Design the Program so that Students—and Faculty—Weave Together Disparate Kinds of Knowledge and Skill.**

Although the ways of teaching appropriate to develop professional identity and purpose range from classroom didactics to reflective practice in clinical situations, the key challenge in supporting students’ ethical–social development is to keep each of these emphases in active communication with each other.

The demands of an integrative approach require both attention to how fully ethical–social issues pervade the doctrinal and lawyering curricula and the provision of educational experiences directly concerned with the values and situation of the law and the legal profession. As the example of medical education suggests, these

concerns “come alive” most effectively when the ideas are introduced in relation to students’ experience of taking on the responsibilities incumbent upon the profession’s various roles. And, in teaching for legal analysis and lawyering skills, the most powerful effects on student learning are likely to be felt when faculty with different strengths work in a complementary relationship.

RECOMMENDATION 6 Recognize a Common Purpose.

Amid the useful varieties of mission and emphasis among American law schools, the formation of competent and committed professionals deserves and needs to be the common, unifying purpose. A focus on the formation of professionals would give renewed prominence to the ideals and commitments that have historically defined the legal profession in America.

RECOMMENDATION 7 Work Together, Within and Across Institutions.

Legal education is complex, with its different emphases of legal analysis, training for practice and development of professional identity. The integration we advocate will depend upon rather than override the development of students’ expertise within each of the different emphases. But integration can flourish only if law schools can consciously organize their emphases through ongoing mutual discussion and learning.

Examples from the Field

Some law schools are already addressing the need for a more dynamic, integrated curriculum. The work of centers such as the Institute for Law School Teaching at the Gonzaga University School of Law and a far-flung network of legal educators that has resulted in the report “Best Practices for Legal Education” testify to substantial interest in aspects of the pedagogical project.³ Indeed, the idea for an integrated approach draws liberally on their inspiration.

The law schools of New York University (NYU) and the City University of New York (CUNY) each exemplify, in different ways, ongoing efforts to bring the three aspects of legal apprenticeship into active relation. CUNY cultivates close interrelations between doctrinal and lawyering courses, including a resource-intensive investment in small sections in both doctrinal and lawyering seminars in the first year and a heavy use of simulation throughout the curriculum. The school also provides extensive clinical experience linked to the lawyering sequence. At NYU, doctrinal, lawyering and clinical courses are linked in a variety of intentional ways. There, the lawyering curriculum also serves as a connecting point for faculty discussion and theoretical work, as well as a way to encourage students to consider their educational experience as a unified effort.

Other schools have embarked on different experiments. Yale Law School has restructured its first-year curriculum by reducing the number of required doctrinal courses and encouraging students to elect an introductory clinical course in their second semester. This is not full-scale integration of the sort necessary to legal education, but it and other efforts like it point toward an intermediate strategy: a course of study that encourages students to shift their focus between doctrine and practical experience not once but several times, so as to gradually develop more competence in each area while making more linkages between them.

Courses and other experiences that develop the practical skills of lawyering are most effective in small-group settings. Of all the obstacles to this reform, the relatively higher cost of the small classes is the most difficult to overcome, especially at institutions without large endowments. In this light, it is encouraging to note the

emergence of what may be another, less resource-intensive strategy. Southwestern Law School has instituted a new first-year curriculum, in which students take four doctrinal courses in their first semester rather than five, allowing for an intensified two-semester, integrated lawyering course plus an elective course in their second semester. The lawyering course expands a legal writing and research experience to include detailed work in legal methods and reasoning, as well as interviewing and advocacy. Professionalism explicitly grounds the course through the introduction of case studies of lawyer careers that have been drawn from empirical research, such as the studies done by the American Bar Foundation referred to earlier. In addition, the Southwestern plan also provides extensive academic support where needed to enhance student success.

The Rewards of Innovation

Developing an integrated curriculum and approach to teaching designed to meet a common mission of forming professionals will not be a simple or effortless process. On the part of faculty, it will require both drawing more fully on one's own experience and learning from each other. It will also require creativity.

Greater coherence and integration in the law school experience is not only a worthy project for the benefit of students; it can also incite faculty creativity and cohesion. Attention to issues of teaching and learning often results in improvements and even experiments in teaching. And when innovation is the focus of a group of

colleagues in and across institutions, the practice of teaching can become the basis of community, where the substantive knowledge about teaching and learning can be built upon and shared publicly over time, in the fashion of traditional academic scholarship, rather than being gained and lost anew with each individual teacher.⁴ By making classroom

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practice the subject of critical scrutiny, law professors would be applying to their teaching and their students' learning the kind of skill and intellectual attention they routinely bring to their legal scholarship. Curricular integration and collaborations could also open the opportunity for faculty, particularly new faculty, to develop their careers in novel ways, both directly through new methods of teaching and also through scholarship about teaching and learning.

As desirable—and necessary—as developing a more balanced and integrated legal education might be, change does not come without effort and cost. Forward-thinking faculty and schools will have to overcome significant obstacles. A trade-off between higher costs and greater educational effectiveness is one. Resistance to change in a largely successful and comfortable academic enterprise is another. However, in all movements for innovation, champions and leaders are essential factors in determining whether or not a possibility becomes realized. Here, the developing network of faculty and deans concerned with improving legal education is a key resource waiting to be developed further and put to good use.

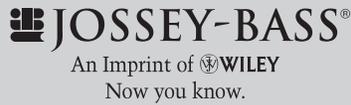
It is well worth the effort. The calling of legal educators is a high one—to prepare future professionals with enough understanding, skill and judgment to support the vast and complicated system of the law needed to sustain the United States as a free society worthy of its citizens' loyalty. That is, to uphold the vital values of freedom with equity and extend these values into situations as yet unknown but continuous with the best aspirations of our past.

¹ Dinovitzer, R., and others, *After the JD: First Results of a National Study of Legal Careers*. Overland Park, KS: The National Association for Law Placement Foundation for Law Career Research and Education and the American Bar Foundation, 2004, pp. 77-82.

² Dinovitzer and others, *After the JD*, pp. 79, 82.

³ Stuckey, R. and others. "Best Practices for Legal Education." Nelson Mullins Riley & Scarborough Center on Professionalism at the University of South Carolina School of Law. [<http://professionalism.law.sc.edu/news.html#CLEA>].

⁴ Huber, M. T., and Hutchings, P. *The Advancement of Learning: Building the Teaching Commons*. San Francisco: Jossey-Bass, 2005.



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