

# Reforming the Law School Curriculum from the Top Down

R. Michael Cassidy

## I. Introduction

With growing consensus that legal education is in “turmoil”<sup>1</sup> if not “crisis,”<sup>2</sup> law schools need to take advantage of industry upheaval to catalyze innovation in the way we train our students. Curriculum reform, long the “third rail” of faculty politics, is now essential if some law schools are going to survive the present tsunami of low enrollments and stagnant hiring. As surprising as it may seem, law school deans have never been in a stronger bargaining position with their faculties and boards of trustees with respect to curriculum innovation.

In the pages that follow, I offer a potentially pivotal reform to the third-year curriculum that could reap substantial benefits throughout the J.D. program. The “Advanced Legal Problem Solving” (ALPS) workshops described in this essay would better prepare our students for the successful practice of law, and would help law schools respond in an efficient and cost-effective way to two important new accreditation standards regarding experiential learning and outcomes assessment recently adopted by the American Bar Association.

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1. See Olufunmilayo B. Arewa et al., *Enduring Hierarchies in American Legal Education*, 89 IND. L. J. 941, 1003-04 (2014) (noting that structural changes in the legal profession and a decline in the legal job market after the credit crisis have led to a sense of “turmoil” in legal education).
2. See Lincoln Caplan, *An Existential Crisis for Law Schools*, N. Y. TIMES, July 15, 2012, at SR10; see also BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS I* (2012).

## II. The Problem

As law school enrollments (and therefore revenues) continue to decline,<sup>3</sup> institutions are being forced to cut staff, reduce operating costs, and offer buyouts to full-time faculty.<sup>4</sup> At best, however, these responses are the equivalent of treading water in a rising and stormy sea. Law schools need to innovate in the product they are offering in order to convince college graduates that a law degree is worth the investment. They also need to distinguish themselves from competitors in order to attract legal employers in a persistently soft job market.<sup>5</sup> The value proposition of a law degree is increasingly tied to two commodities that we offer to our “customers”: quality preparation for practice, and realistic job prospects. While a few highly ranked law schools might safely rest on their laurels and continue to attract students,<sup>6</sup> many mid-ranked and lower-ranked

3. Total enrollment in U.S. law schools has dropped 24 percent since 2010. Mark Hansen, *Law School Enrollments Down*, A.B.A. J. (Dec. 17, 2013, 2:30 PM), [http://www.abajournal.com/news/article/law\\_school\\_enrollment\\_down\\_11\\_percent\\_this\\_year\\_over\\_last\\_year\\_data\\_shows](http://www.abajournal.com/news/article/law_school_enrollment_down_11_percent_this_year_over_last_year_data_shows). See *ABA Section of Legal Education Reports 2013 Law School Enrollment Data*, A.B.A. (Dec. 17, 2013), [http://www.americanbar.org/news/abanews/aba-news-archives/2013/12/aba\\_section\\_of\\_legal.html](http://www.americanbar.org/news/abanews/aba-news-archives/2013/12/aba_section_of_legal.html). The total annual number of applicants to law schools has fallen 37 percent since 2010. Karen Sloan, *Law School Enrollment Slump Continues*, NAT'L L. J. (July 21, 2014), <http://www.nationallawjournal.com/id=1202663837843/Law-School-Enrollment-Slump-Continues>.
4. Ameet Sachdev, *Law Schools Adjust to Lower Enrollments*, CHI. TRIB., Dec. 2, 2013, [http://articles.chicagotribune.com/2013-12-01/business/ct-biz-1201-law-school-declines-20131201\\_1-law-school-enrollments-elite-schools](http://articles.chicagotribune.com/2013-12-01/business/ct-biz-1201-law-school-declines-20131201_1-law-school-enrollments-elite-schools); Peter Schworm, *Waning Ranks at Law Schools*, BOSTON GLOBE, July 6, 2014, at A1.
5. Recently released data from the National Association for Law Placement (NALP) reveal that, for six straight years beginning with the recession of 2008, the employment rate for recent law school graduates in full-time positions has fallen. For students in the Class of 2013, only 64.4 percent of graduates had secured jobs for which a J.D. degree was required within nine months of graduation. Press Release, NAT'L ASS'N FOR LAW PLACEMENT (NALP), *NALP Press Release on Selected Employment Findings for the Class of 2013 2* (June 19, 2014), [http://www.nalp.org/2013\\_selected\\_pr](http://www.nalp.org/2013_selected_pr). [hereinafter *NALP Press Release*]. Several observers have noted that the job market for U.S. law school graduates has shrunk not only due to the credit crisis and resulting 2008 recession, but also due to outsourcing of legal jobs to contract attorneys and overseas workers, and technological innovations that eliminate the need for humans to perform certain legal tasks. See Sachdev, *supra* note 4; see also John O. McGinnis, *Machines v. Lawyers*, CITY J., Spring 2014, at 12.
6. See Arewa et al., *supra* note 1, at 969 (describing market lock-in of corporate law firm jobs by national law schools, which “gradually diminished, if not completely eliminated, the incentive of leading law schools to compete on the basis of educational quality or innovations”). One nugget of good news in the recently released NALP data is that, of the 2013 graduates who found full-time work, more found work in big law firms than in the prior few years. See *NALP Press Release, supra* note 5, at 4. “Of the class of 2013 law graduates working in private practice about nine months after graduation, 20.6% land a job at a firm with more than 500 lawyers. . . . Such positions accounted for 16.2% of law firm jobs held by 2011 graduates.” Jennifer Smith, *Big Law Firms Resume Hiring*, WALL ST. J. ONLINE, (June 23, 2014, 10:06 AM), <http://online.wsj.com/articles/big-law-firms-resume-hiring-1403477513>. While this slight uptick in hiring among big firms is cause for cautious optimism, only students at highly ranked law schools or near the top of their class at lower-ranked law schools are likely to secure such positions.

law schools will need to set themselves apart from the “Pack of 203” through curricular innovation.

Criticisms of legal education by educational specialists,<sup>7</sup> the practicing bar,<sup>8</sup> and public commentators<sup>9</sup> have diminished public confidence in law schools and adversely affected the attitudes of prospective students and employers.<sup>10</sup> Both insiders and outsiders to legal education now seem to agree that we need to do a better job of equipping our graduates with the lawyering skills, professional judgment, and ethical values essential to the effective practice of law, and that these three primary objectives need to be pursued in an integrated fashion throughout the curriculum, rather than simply being confined to clinics and externships.<sup>11</sup>

While the climate seems ripe for reform, the academy has been slow to change its teaching model. In terms of pedagogy, the most common reaction to the legal education crisis has been to expand clinical offerings and add externship opportunities, while leaving the rest of the traditional law school curriculum essentially in place.<sup>12</sup> This can hardly be called innovation—it is piecemeal reform at best, and at worst the equivalent of rearranging the deck chairs on the Titanic. Judith Wegner has cogently deconstructed the source of faculty resistance to curriculum reform, which she identifies as one of the most intransigent or “wicked” problems in legal education.<sup>13</sup> Curriculum

7. See WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 12 (2007) (favoring a rethinking of legal education in a more integrated approach that emphasizes practical skills development and professional identity formation at all stages of the curriculum).
8. See *Report and Recommendations*, A.B.A. TASK FORCE ON THE FUTURE OF LEGAL EDUCATION 3 (Jan. 24, 2014), [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/report\\_and\\_recommendations\\_of\\_aba\\_task\\_force.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf) (“The balance between doctrinal instruction and focused preparation for the delivery of legal services needs to shift still further toward developing the competencies and professionalism required of people who will deliver services to clients.”).
9. See Ethan Bronner, *A Call for Drastic Changes in Educating New Lawyers*, N.Y. TIMES, Feb. 11, 2013, at A11; David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 20, 2011, at A1.
10. *Report and Recommendations*, *supra* note 8, at 9.
11. See SULLIVAN ET AL., *supra* note 7, at 12-13; Nancy B. Rapoport, *Rethinking U.S. Legal Education: No More “Same Old, Same Old,”* 45 CONN. L. REV. 1409, 1427 (2013).
12. Rapoport, *supra* note 11, at 1414-15. See Stephen Daniels et al., *Analyzing Carnegie's Reach: The Contingent Nature of Innovation*, 63 J. LEGAL EDUC. 585, 609 (2014) (survey of 118 law schools revealed that since 2001 many schools reported adding lawyering skills and clinical classes, but far fewer took integrated approaches to reform).
13. Judith Welch Wegner, *Reframing Legal Education's “Wicked Problems,”* 61 RUTGERS L. REV. 867, 943 (2009).

reform is subject to faculty approval;<sup>14</sup> in the absence of a majority of faculty agreeing on systemic changes, individual faculty members will continue to have considerable autonomy in fashioning their upper-level course offerings.<sup>15</sup> Law professors have an incentive to tailor research seminars around their scholarly interests.<sup>16</sup> Moreover, even when they are teaching larger, doctrinal courses in the upper-level program, so-called “podium” faculty have very little familiarity with forms of pedagogy other than that under which they learned the law—the case method.<sup>17</sup> They thus are naturally resistant to taking on the challenge and the very hard work of developing new course materials that will take a problem-oriented approach to educating law students, especially when the incentives offered in the legal academy are mostly structured around scholarly productivity.

The intractability of the upper-level curriculum has led many faculty committees to focus—repeatedly, and perhaps irrationally—on the first-year course of study. What courses should we teach to “One Ls,” and in how many credit hours? These two questions get asked and re-asked every five or six years at most law schools across this country. While some schools have toyed with reform by adding regulatory and international perspectives to the first-year program,<sup>18</sup> such changes have altered only what subjects we teach, without any meaningful change to *how we teach them*, and without any substantial augmentation of the professional skills being imparted to our students.<sup>19</sup>

14. ABA Accreditation Standard 201(c) provides that “the dean and the faculty shall each have a significant role in determining educational policy.” *Revised Standards for Approval of Law Schools*, A.B.A. (Aug. 2014), [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/201406\\_revised\\_standards\\_clean\\_copy.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201406_revised_standards_clean_copy.authcheckdam.pdf) [hereinafter *Revised Standards*].
15. Nancy B. Rapoport, *Eating our Cake and Having it, Too: Why Real Change is so Difficult in Law Schools*, 81 IND. L. J. 359, 363 (2006) (noting that the freedom tenured law professors have in terms of setting their own research agendas and the courses they teach is “unparalleled”).
16. See Wegner, *supra* note 13, at 942-43.
17. See *id.*
18. See Leigh Jones, *Schools Altering Curriculum Beyond First Year*, NAT’L L.J., Oct. 16, 2006 (reporting reactions to Harvard’s announcement that it will require first-year students to take new courses, including a class on legislation and regulation and one on global legal systems).
19. One refreshing exception appears to be Harvard Law School’s Problem Solving Workshop, a mandatory three-week intercession course for first-year law students. Started in 2010, this course exposes students to seven different fact patterns posing a variety of legal problems for clients, and in working through these simulations the students exercise and develop skills in fact gathering, interviewing and counseling, brainstorming, crafting decision trees, communicating options to clients, crafting emails, undertaking negotiations and making presentations. The professor works with a team of local alumni in providing feedback to students on their performances and work product. Elaine McArdle, *Beyond the Case Method*, HARV. L. BULL. (Summer 2010). While their pedagogical objectives are largely the same, two notable differences between the HLS Problem Solving Workshop and my Advanced Legal Problem Solving Workshop, described below, are that my capstone courses would be offered in the third year and would be subject-specific, thus enabling the faculty to assume background legal knowledge and develop more sophisticated problems as teaching tools.

In essence, curriculum committees have avoided what Wegner terms the “wicked” problem in legal education (the second and third years of law school) by tinkering at the margins with what already is working fairly well (the first year). Faculty committees at most schools are so accustomed to periodically re-evaluating the first-year curriculum that one senior colleague at my own institution has refused to participate in yet another first-year curriculum review unless and until the upper-level program is addressed.

### III. Proposed Reform

Deans need to commandeer the ship of curriculum reform in a way that responds to the urgency of the crisis in legal education, while appropriately respecting faculty governance. As surprising as it might seem, a good place to start would be with the adjunct faculty. Adjunct faculty members play a critical role in teaching and mentoring our students, and their contributions to the enterprise of legal education should not be underestimated. Yet at many law schools, their enormous skills and talents are not being utilized strategically. And unlike full-time appointments, adjunct positions are terminable at will and subject to decanal prerogative. So law school deans have more leverage for curricular experimentation within this sphere than they do elsewhere.

One catalyst for change would be for deans to announce to the adjunct faculty that the law school will be reconsidering their appointments at expiration of the current academic year, in order to make room for new, experimental courses. Fiscal resources now devoted to adjunct faculty could then be redirected to a new experimental third-year curriculum (described below), and adjuncts would be invited to reapply for a teaching position in that curriculum if their background, interests, and course evaluations indicated they were a proper fit for the new course offerings. Essentially, many part-time faculty would be required to “throw in their cards” in order to allow the administration to “reshuffle the deck.” Deans can rightly blame this decision on continued enrollment decline and resulting need for fiscal austerity and resource realignment

In place of many of the specialty courses currently offered by adjunct faculty,<sup>20</sup> I propose that law schools implement a menu of approximately fifteen third-year courses I call “Advanced Legal Problem Solving” workshops (“ALPS”). ALPS would be offered in a variety of particular subject areas as

20. Not all courses currently offered by adjunct faculty members could be discontinued outright. Some that are important building blocks for a new lawyer’s competency in a given field would need to be reassigned to full-time faculty (e.g., ERISA, Corporate Finance or Land-Use Planning). This reassignment might be made as an addition to the full-time faculty member’s current teaching load (in schools that are contemplating increasing teaching loads in response to present economic difficulties) or as a substitute for a low-enrollment research seminar currently offered by that full-time faculty member. Even after this realignment, however, some upper-level courses that benefit uniquely from a practitioner’s expertise might still need to be offered by adjunct faculty. Nevertheless, schools faced with financial constraints might need to discontinue many adjunct offerings in order to make room for the capstone courses I describe below.

final academic preparation for students intending to practice in that field (e.g., “ALPS: Estate Planning,” “ALPS: Environmental Law;” “ALPS Criminal Law,” “ALPS: Patent Law,” etc.). A potential list of ALPS that canvasses common career trajectories for many of our graduates is set forth in Appendix A. Enrollment would be capped at fifteen to twenty students per section. Each of these three-credit capstone courses would be taught in workshop fashion by a two-person team comprising a regular full-time faculty member and a prominent practitioner in the field. Students would be required to take one three-credit ALPS course in their final year as a condition for graduation. Each ALPS workshop would have designated prerequisites that would have to be completed before enrollment in the course (for example, in an “ALPS: Environmental” course the students might be required to take Environmental Law, Administrative Law, and Land-Use Planning prior to enrollment).

Many scholars have lamented the lack of focus on problem-solving skills in legal education, and have suggested that law school should more closely emulate business school and medical school models.<sup>21</sup> The overarching goal of my ALPS courses would be to have students grapple with a variety of actual problems lawyers confront in particular substantive fields, and to impart the skills necessary to address these problems. Students understand the meaning and application of legal doctrine best when they have to identify and navigate an authentic problem. This is what Paul Maharg calls “transactional” learning; the negotiation between an individual and the complex factual environment in which the individual finds himself.<sup>22</sup> The problems in my ALPS courses would be presented through carefully constructed simulations designed to emphasize the following professional skills: fact gathering, interviewing and counseling clients, identifying objectives, brainstorming alternatives, assessing risks, communicating options, developing strategic plans, and negotiating

21. See Mark Neal Aaronson, *Thinking Like a Fox; Four Overlapping Domains of Good Lawyering*, 9 CLINICAL L. REV. 1, 17-19 (2002); R. Michael Cassidy, *Beyond Practical Skills: Nine Steps for Improving Legal Education Now*, 53 B.C. L. REV. 1515, 1520-22 (2012); David M. Moss, THE HIDDEN CURRICULUM OF LEGAL EDUCATION: TOWARD A HOLISTIC MODEL OF REFORM, 2013 J. DISP. RESOL. 19, 20 (2013); Rapoport, *supra* note 11, at 1424-26. Professor Aaronson has captured the essential difference between the business school model of problem solving and the law school model of problem solving. “[B]usiness schools use extended case narratives as core teaching material, while law schools traditionally emphasize appellate case opinions. . . . Business school case studies, unlike appellate court opinions, seek to replicate the full mix of factors that comprise a problem situation, not just a distilled version intended to frame best particular legal questions. Accordingly, there is much more opportunity as part of a business school problem solving methodology to question first assumptions and to account for a variety of potentially relevant objectives.” Aaronson, *supra* at 19-20.
22. PAUL MAHARG, TRANSFORMING LEGAL EDUCATION: LEARNING AND TEACHING THE LAW IN THE EARLY TWENTY-FIRST CENTURY 173 (2007). See also Wegner, *supra* note 13, at 884 (“The emphasis on engagement in ‘complex practice’ places the focus where it should be, not in individual ‘practice skills’ such as negotiation or even legal research, but instead emphasizes the practice ‘context’ in which multiple strategies, skills, and tools must be employed.”).

with others.<sup>23</sup> Simulations in my ALPS courses would be scaffolded<sup>24</sup>—students would perform the task or address the simulated problem themselves, perhaps in teams, and provide feedback to one another, after which they would be shown an example by a practitioner who would demonstrate how s/he might approach the problem, and then the class would proceed to the next level of assignment. Providing students with an opportunity to ask questions and comment on a practitioner’s model in an interactive fashion will enable them to draw out the practitioner’s experience and wisdom, and the reasons behind her subsidiary decisions. Appendix B to this essay sets forth course descriptions in two potential ALPS workshops (Estate Planning and Patent Law)<sup>25</sup> that will help clarify how each of these pedagogical objectives might be pursued in a particular substantive area.

In my own field of Criminal Law, I could imagine co-teaching an “ALPS: Criminal Law” course with a seasoned and thoughtful practitioner that would have the students grapple with the following five assignments, using simulations (crafted from real cases) that would demonstrate the type of strategic thinking, planning, and client counseling that prosecutors and defense attorneys routinely perform. First, students would be required to counsel a client who has been offered a fast-track plea agreement on the condition that s/he waive a motion to suppress in a narcotics possession case. In addressing this assignment, students would be required to review a search warrant application and a police arrest report and assess the likelihood of succeeding on a motion to suppress the evidence seized, and thereafter counsel the client on the risks

23. Professors Schultz and Zedeck conducted a multiyear empirical study of 3,000 Berkeley and Hastings law graduates to determine what competencies were most important to the successful practice of law. The results of the study have come to be labeled the “Berkeley factors.” See Marjorie M. Schultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admissions Decisions*, 36 *LAW & SOC. INQUIRY* 620, 629-30 (2011). The team identified 26 competencies: analysis and reasoning; creativity/innovation; problem solving; practical judgment; researching the law; fact finding; questioning and interviewing; influencing and advocating; writing; speaking; listening; strategic planning; organizing and managing one’s own work; organizing and managing others; negotiation skills, ability to see the world through the eyes of another; networking and business development; providing advice and counsel and building relationships with clients; developing relationships with the legal profession; evaluation, development and mentoring; passion and engagement; diligence; integrity/honesty; stress management; community involvement and service; and self-development. Nancy Rapoport has urged legal educators to consider these skill sets as the building blocks of an adequate legal education, and to figure out precisely where and in which courses different competencies will be emphasized. Rapoport, *supra* note 11, at 1416. The primary goal of my third-year ALPS is to emphasize the following Berkeley competencies, which I believe are not fully and adequately conveyed elsewhere in the curriculum, perhaps even in some types of clinics: creativity/innovation; problem solving; practical judgment; strategic planning; providing advice and counsel and building relationships with clients; and negotiation skills.

24. MAHARG, *supra* note 22, at 175-76. As Maharg notes, truly effective transactional learning involves close collaboration among the students themselves and between the students and the faculty members. *Id.* at 174.

25. I am grateful to my colleagues Ray Madoff and David Olson for assisting me with these course descriptions.

and benefits of pleading guilty and waiving that motion. Second, students would be required to examine a grand jury transcript in a sexual assault case from the perspective of a defense attorney, identifying the potential grounds for a motion to dismiss and drafting such a motion. Third, students would be assigned to negotiate a cooperation agreement between the government and the alleged accomplice in an armed robbery case, under which the defendant might agree to plead guilty and testify in exchange for a reduced sentence and cooperation against a co-defendant. After counseling and advising the client, the defense students would then need to negotiate and draft both a preliminary proffer agreement and then a plea agreement with students representing the government. Fourth, I would assign the students to play the role of a defense attorney advising a client in a relatively straightforward drunken-driving case about whether to testify in his own defense. Students would be provided with a copy of a transcript of the government's evidence in an actual DUI trial up to the point when the government rests, and a copy of the defendant's criminal record. They would then need to advise their fictional client about the advantages and disadvantages of testifying, taking into account the nature and strength of any testimony already introduced by the government, their client's version of events, and anticipated impeachment on cross-examination. Finally, students would be asked to read a summary of the evidence introduced in a federal honest services mail fraud prosecution and draft proposed jury instructions to submit to the court on behalf of either the defendant or the government.<sup>26</sup>

The primary benefit of these subject-specific ALPS is that they would begin to model and impart reflective judgment for our students in a problem-solving context. Practical skills and judgment<sup>27</sup> are the two competencies seasoned professionals most often find lacking in law school graduates.<sup>28</sup> The law is a skills-based, service-oriented profession. A Ph.D. student in English can learn about Emily Dickinson by studying her poetry, taking classes on the subject from erudite and thoughtful scholars, and talking to other graduate students about her work and her technique. But you cannot develop the rudimentary skills of a gymnast by talking about gymnastics and watching others do it. At some point, you need to mount the balance beam or uneven bars and try it yourself, hopefully with a seasoned coach nearby to dissect your performance and break your fall. The practice of law is more like gymnastics than it is like poetry, and the sooner we recognize this critical difference the better off our

26. For helpful examples of other problems that have been used in a Federal Criminal Law course taught at the University of Texas School of Law, see Susan R. Klein, *Integrating Problem Solving Exercises into Federal Criminal Law*, 11 OHIO ST. J. CRIM. L. 775, 776-77 (2014).

27. "Judgment' is the ability to deliberate well-to accurately assess a complex situation, to recognize and identify alternatives, and to select the course of conduct most likely to achieve the desired ends." Cassidy, *supra* note 21, at 1523; see Lawrence B. Solum, *Symposium: Empirical Measures of Judicial Performance: A Tournament of Virtue*, 32 FLA. ST. U. L. REV. 1365, 1385 (2005).

28. See Karen Sloan, *Reality's Knocking: The Ivory Tower Gives Way to the Real World's Demands*, NAT'L L. J., Sept. 7, 2009 (reporting that employers want young attorneys with more judgment and practical skills, not just knowledge of legal doctrine).



students will be. As Nancy Rapoport has convincingly argued elsewhere, our goal in the third-year program should be to shape “novice professionals” who are capable of exercising judgment in applying legal knowledge to specific client problems.<sup>29</sup>

In addition to shaping strategic, innovative thinkers, the ALPS workshops I envision would have five additional benefits for the law school curriculum. I call these the “trickle-down” effects of my proposed ALPS courses, in order to emphasize that what at first blush might seem to be an incremental reform might over time reap more widespread benefits that will reverberate throughout the J.D. program. First, partnerships between full-time faculty members and accomplished practitioners will expose members of the academy more directly to real client problems that arise in practice, and some of the cutting-edge legal issues that emerge from such problems. One source of the disconnect between legal education and the practice of law is that very few podium faculty have significant practice experience before entering the academy.<sup>30</sup> Even those faculty members who practiced law for any significant period of time before becoming professors risk getting “stale” as their experience fades. Coaxing faculty members out of their comfort zones to engage in ALPS workshops side by side with practitioners not only will help the full-time faculty members keep their legal knowledge fresh, but it will also expose them to the benefits of new teaching methodologies, such as scaffolded simulations and “flipped” classrooms.<sup>31</sup> Over time, such exposure may serve to introduce full-time professors to the benefits and rewards of stepping out from behind their podiums, thus paving the way for pedagogical innovation even in more traditional core courses.

Second, involving seasoned practitioners in the design and delivery of ALPS workshops would partner the profession in legal education reform, further repairing the disconnect between the academy and the needs of our industry.<sup>32</sup> Prominent practitioners will become invested in what we are teaching our graduates, and how exactly we are doing so. Architecture programs have long recognized the advantages of forging such partnerships by inviting “juries” of critics to provide feedback to graduate students on their design projects.<sup>33</sup> By

29. Rapoport, *supra* note 11, at 1417.

30. See Brent E. Newton, *Preaching What They Don't Practice: Why Law Faculties' Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy*, 62 S.C. L. REV. 105, 129-30 (2010).

31. In a “flipped” classroom, students study the doctrine on their own time (perhaps through online lectures or videos) and then briefly present what they have learned in class before answering questions from the instructor and engaging in demonstrations to practice what they have learned. See Rapoport, *supra* note 11, at 1421; William R. Slomanson, *Blended Learning: A Flipped Classroom Experiment*, 64 J. LEGAL EDUC. 93, 95 (2014).

32. See Moss, *supra* note 21, at 28.

33. See, e.g., Karen W. Arenson, *Student Project: Redesign Church Hit Sept. 11*, N. Y. TIMES, Jan. 23, 2002, at B9 (reporting that a jury of professionals assessed student models for rebuilding a demolished church).

inviting accomplished practitioners to serve as ALPS faculty members and to assist in developing the problems used in my new capstone courses, the school is acknowledging that it values input from the profession in what skills and competencies our students need to effectively practice law. When that same ALPS faculty member invites her colleagues from within or outside the law firm to attend class, provide feedback to students, and model reflective judgment, the law school is engaged in an important form of marketing about its product to a core external constituency.<sup>34</sup> This outreach to the profession might reap huge benefits down the road, as outside participants in the problem-solving workshops begin to appreciate both the talents of the students they are critiquing and the sincere efforts being made by the law school to make its program more relevant to the legal profession.

A third collateral benefit of my ALPS approach is that it will help fight student disengagement in the third year. The hackneyed adage about law school that “in the first year they scare you to death; in the second they work you to death; in the third they bore you to death”<sup>35</sup> unfortunately has more than a germ of truth to it. We need to make the final year of law school relevant and dynamic if we are going to counteract the tendency of third-year students to “check out,”<sup>36</sup> and if we are going to successfully rebut calls to make the study of law in the United States a two-year program.<sup>37</sup> Washington & Lee’s approach of drastically reducing electives in the third year and dominating *both* semesters with practica<sup>38</sup> is not the only solution, and perhaps not even the best solution, to the persistent problem of third-year malaise.

Fourth, creation of a structured and consistent ALPS program will perform an important advising function within law schools. Students will be able to plan their course of study *backward* by anticipating what capstone workshop they may wish to take in their third year, and ensuring that they complete all

34. For a discussion of the extensive use of alumni volunteers in Harvard 1L Problem Solving Workshop, see McArdle, *supra* note 19.

35. John Schwartz, *Evaluating That Third-Boring-Year*, N. Y. TIMES, Aug. 1, 2014, at ED25.

36. See Mitu Gulati et al., *The Happy Charade: An Empirical Examination of The Third Year of Law School*, 51 J. LEGAL EDUC. 235, 259 (2001) (surveying third-year law students at eleven law schools during their final semester, and finding that students did not perceive the third year as relevant to their agenda; students believed that law school was too theoretical and disconnected from the practice of law, and they thirsted for applying what they had learned to solving client problems).

37. Ruth Tam, *Obama: Law Schools Should Think About Being ‘Two Years Instead of Three’*, WASH. POST, Aug. 23, 2013. Even the ABA Task Force on Legal Education has encouraged state bars to experiment with allowing students to enter the practice of law after two years of class work “plus a year of carefully structured, skills-based experience, *inside a law school or elsewhere.*” See *Report and Recommendations*, *supra* note 8, at 28 (emphasis).

38. Third-year students at Washington & Lee School of Law are required to take four experiential modules (two each semester) that may entail simulation courses, clinics or externships. In addition, third-year students enroll in a two-week skills immersion workshop at the beginning of each semester, one transactional and one focused on litigation. A one-credit professionalism course introduces the third year of study in the fall. See James Moliterno, *Long Overdue Medicine for What Ails Legal Education*, 41 LITIG. 55-56 (Fall 2014).

designated prerequisites during their first and second years of study. Certainly not all law students, and perhaps not even most law students, enter professional training with a focused career plan. But by the time they have worked for two summers and engaged in an externship or a clinic, it is likely that at least their initial career trajectory will have crystallized. If they are able to narrow their focus to two *potential* ALPS workshops by the fall of their second year, they will be able to complete the necessary coursework for both capstones over the next two semesters before having to make a final selection in their third year of study. The benefits of “mapping” the curriculum in this way should not be underestimated; many of our students are thirsting for more guidance about what knowledge and competencies will be expected of them when they begin to practice law.

Finally, and most instrumentally, creation of ALPS workshops in the third year of study would be an efficient and cost-effective way for law schools to satisfy two rigorous new ABA accreditation standards. After lengthy study and debate, the ABA House of Delegates on August 11, 2014, approved several significant changes to law school accreditation standards.<sup>39</sup> Two of the more important changes to the standards involve experiential learning and outcome assessments. Standard 303(a)(3) requires law schools to impose a six-credit experiential learning requirement, compared with the previous requirement of “substantial instruction” in professional skills.<sup>40</sup> Many law schools do not have the resources or the capacity to offer a seat to every student in a clinic or externship program. My three-credit ALPS course would cover half of this new six-unit requirement, and students who do not also participate in a clinic<sup>41</sup> or externship would find abundant opportunities to fulfill the balance of those credits by participating in moot court or more narrowly focused professional skills courses such as negotiations, trial practice, or advanced legal research. Second, beginning in academic year 2016-2017,<sup>42</sup> law schools will be required to

39. See Tony Mauro, *ABA Delegates Approve Law School Reform*, NAT'L L.J. Aug. 11, 2014. A version of the current 2013-2014 Standards redlined against new standards approved by the Section on Legal Education and Admission to the Bar at its March 2014 and June 2014 meetings is available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/201406\\_revised\\_standards\\_redline.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201406_revised_standards_redline.authcheckdam.pdf).

40. See *Revised Standards*, *supra* note 14, at 14-15.

41. My arguments in this essay should not be confused as a critique of clinical legal education, or an argument in favor of diverting resources away from the clinics. If resources were no constraint, ideally students would be encouraged—if not required—to take a clinic before participating in their capstone ALPS workshop, preferably during their second year. Clinical pedagogy forces students to recognize that the legal problems of their clients typically are not bounded by discrete doctrinal subject areas, see Rapoport *supra* note 11, at 1426, and requires students to grapple head-on with the nature, meaning, and limits of a lawyer's role in a way that simulations, no matter how realistic, cannot possibly do. See Aaronson *supra* note 21, at 13-14. Moreover, because clinics typically involve human rather than institutional clients, this form of teaching is essential for integrating into the curriculum soft skills such as empathy, interpersonal communication, and relationship building—all critical to the successful practice of law.

42. The ABA Section of Legal Education and Admission to the Bar has published a transition

“conduct ongoing evaluation of the law school’s program of legal education, learning outcomes, and assessment methods” in order to determine the degree of student attainment of learning objectives.<sup>43</sup> The ALPS courses I envision would provide deans and academic associate deans with the perfect feedback mechanism to fulfill this new outcomes assessment requirement. Seasoned practitioners will be able to view the work of third-year students to assess whether they have achieved key competencies in their chosen fields, and will be able to provide important feedback to the administration on what coverage needs to be adjusted in prerequisite courses in order to make students even better prepared in future years for their final ALPS workshops.<sup>44</sup> In essence, the carefully selected ALPS adjunct professors could serve informally as a “Council of Academic Advisors” to the Dean in their respective fields, resulting in continuous improvement of the overall academic program over time.

The title of this essay was intended as a double entendre. I predict that subject-specific and team-taught problem-solving workshops will have ripple effects throughout the curriculum. But they can also be implemented on a pilot basis by the Dean, top-down, without a formal vote of the faculty and without any immediate change to graduation requirements. Deans who wish to experiment with this model simply need to get “buy-in” from five or six full-time faculty members at their law schools who are willing to pilot workshops in their respective fields. After one or two years of experimentation and data collection, if the workshops are successful the entire faculty can then be asked to make student participation a requirement, and to expand the number of capstone courses to cover a broader array of subjects.

#### IV. Conclusion

My recommendation for more strategic use of adjunct faculty, better collaboration between adjunct faculty and full-time faculty, and the creation of team-taught capstone courses focused on problem solving is admittedly a modest approach to curriculum reform. It does not require wholesale revision of the first-year curriculum, and it does not necessitate a costly expansion of the clinics. Its primary benefits lie in the way it can open a dialogue between the academy and the profession, and begin to shape an integrated problem-

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and implementation plan for the revised accreditation standards that allows schools to delay implementation of the more rigorous curriculum and assessment revisions until 2016. See *Transition to and Implementation of the New Standards and Rules of Procedure for Approval of Law Schools*, A.B.A. (Aug. 13, 2014), [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/2014\\_august\\_transition\\_and\\_implementation\\_of\\_new\\_aba\\_standards\\_and\\_rules.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2014_august_transition_and_implementation_of_new_aba_standards_and_rules.authcheckdam.pdf).

43. See *Revised Standards*, *supra* note 14, at 23 (Standard 315).

44. *Id.* Interpretation 315-1 provides examples of methods that deans and faculty may use to measure the degree by which students have attained competency in the school’s learning outcomes, and includes “evaluation of student learning portfolios” and “student performance in capstone courses.” The completion of written and videotaped oral assignments in my proposed “ALPS” workshops would essentially become a student’s “portfolio” for purposes of this interpretation.

solving approach to legal education that may successfully infiltrate the mindset and habits of professors now overly wedded to the Langdellian method.

This is not intended as a one-size-fits-all solution. Law schools face different degrees of urgency in curriculum reform depending on their ranking, their financial resources, their enrollment history, and the talents and backgrounds of their full-time faculty members. Not all schools share (or aspire to share) the same center of gravity with respect to their emphasis on theory, practice and professional formation. And at some schools, geographical location may play a limiting role in attracting and fully utilizing quality adjunct lecturers. The ALPS workshops I describe might make most sense for schools that need to increase the teaching load of their full-time faculty while strategically placing their strongest institutional footprint in the area of professional skills in a way that is more cost-effective than expanded clinical offerings.

**Appendix A: Proposed Third-Year Capstone Courses (“ALPS”)**

ALPS: Bankruptcy  
ALPS: Civil Rights Law  
ALPS: Commercial and Banking Law  
ALPS: Complex Litigation  
ALPS: Corporate Law  
ALPS: Criminal Law  
ALPS: Employment Law  
ALPS: Environmental Law  
ALPS: Estate Planning  
ALPS: Evidence  
ALPS: Immigration Law  
ALPS: Patent Law  
ALPS: Personal Injury and Medical Malpractice  
ALPS: Probate and Family Law  
ALPS: Real Estate Finance and Conveyancing  
ALPS: Taxation

**Appendix B: Sample “ALPS” Course Descriptions***Advanced Legal Problem Solving: Estate Planning*

Attorneys are responsible for explaining the estate-planning process to their clients, helping the clients identify and refine their objectives, and gathering all relevant information necessary to prepare an estate plan that will meet these objectives. In this course, students will engage in mock interviews and counseling sessions serving as both clients and lawyers engaged in the estate-planning process. Working in teams, students will draft wills for their clients based on the information gathered in client intake. Students will also draft a health care proxy and a durable power of attorney. Students will draft advice letters to their clients explaining the advantages and disadvantages of various forms of charitable giving, including a comparison of establishing a private foundation and a donor-advised fund. Students will draft a life insurance trust and a letter to the client explaining the terms of that trust in plain English. Throughout the semester, students will write short papers reflecting on their roles as both attorneys and clients.

*Advanced Legal Problem Solving: Patent Law*

In this course students will engage in a series of simulations drawn from the practice of patent law. Students may be asked to draft patent claims, practice basic patent searching, compare patentable inventions to “prior art,” create claim charts assessing patent validity and infringement, negotiate with counter-parties as to the licensing of intellectual property rights, construe patent claim terms, engage in claim construction “Markman” hearings, and argue summary judgment on issues of patent validity and infringement. The exercises will focus on legal and practical issues involved in practicing patent law, including interacting with and advising clients.