

Articles

Beg, Borrow, or Steal: Ten Lessons Law Schools Can Learn from Other Educational Programs in Evaluating Their Curriculums

By DEBRA MOSS CURTIS*

Introduction

INDISPUTABLY, LAW SCHOOLS are under attack.¹ Because of concerns about the legal field and legal education's responsibility in the crisis of new graduates without jobs, law schools are clamoring to respond by seeking and working toward curriculum change. Generally, higher education institutions acknowledge a "responsibility to endeavour to prepare graduates who are able to manage and respond effectively to change and its inherent demands challenges and tensions."² However, there are questions about law schools' ability to do just that. There have been many years of repeated criticisms of the case method and active discussions regarding curriculum reform.³

Despite these questions, law school curriculum reform has been tedious and frustrating, which has resulted, through the years in only

* Debra Moss Curtis is a Professor of Law at Nova Southeastern University Shepard Broad Law Center, where she teaches Contracts, UCC: Sales, UCC: Secured Transactions, and a survey course in the Uniform Commercial Code. Thanks to David M. Moss, Ph.D, Associate Professor at the University of Connecticut Neag School of Education, for helping to shape the ideas in this Article as well as NSU Law Students Jill Aberbach and Mary Grecz for their assistance.

1. Lawrence E. Mitchell, *Law School Is Worth the Money*, N.Y. TIMES, Nov. 28, 2012, at A31, available at <http://www.nytimes.com/2012/11/29/opinion/law-school-is-worth-the-money.html>.

2. Jennifer Sumsion & Joy Goodfellow, *Identifying Generic Skills Through Curriculum Mapping: A Critical Education*, 23 HIGHER EDUC. RES. & DEV. 329, 329 (2004).

3. See Lauren Carasik, *Renaissance or Retrenchment: Legal Education at a Crossroads*, 44 IND. L. REV. 735, 739 (2001); John C. Weistart, *The Law School Curriculum: The Process of Reform*, 1987 DUKE L.J. 317, 317 (1987).

modest changes.⁴ One scholar has pointed out that if one could transport a 1970s law student into a contracts class today, other than the obvious technology and potentially post-dated material, the time-traveled student would find the experience “remarkably similar.”⁵

The tension in legal education has always pitted the academic aspect of the law school experience against the practical knowledge required to be a lawyer.⁶ Legal literature is littered with anecdotal stories of law students leaving law school and not having the basic knowledge required of attorneys.⁷ The movement toward incorporating clinics to teach practical skills is not new. Courtroom advocacy skills training began its serious rise in the 1970s, followed by an increasingly widespread incorporation of other litigation and transactional skills into law schools’ curriculum.⁸ The history of clinical education has been well documented in legal scholarship.⁹ But this decades-old innovation is no longer enough.

While in the past law schools have not had strong incentives to change,¹⁰ things may be different now. It has been posited that the economics of the profession, increased student access to information about law schools, and a new focus on outcomes measurement in learning may be a turning point allowing for greater change.¹¹ In recent economic times, it has become apparent that incorporating basic practical skills into an existing curriculum is just the tip of the curriculum iceberg. Law schools are now seeking to change legal training, not just by incorporating more practical skills, but also by really thinking about doing business differently. This is a vast undertaking for legal faculties who are often as steady as the doctrine of stare decisis.

The current lack of drastic change is not for lack of information or resources. Ample information exists about paths to achieve change

4. Steven C. Bennett, *When Will Law School Change?*, 89 NEB. L. REV. 87, 105 (2010).

5. Peter Toll Hoffman, *Law Schools and the Changing Face of Practice*, 56 N.Y.L. SCH. L. REV. 203, 208 (2011).

6. David M. Moss, *Tethered to Tradition: Toward an Innovative Model for Legal Education*, 17 CHAP. L. REV. 1, 6–7 (2013).

7. See Hoffman, *supra* note 5, at 204.

8. *Id.* at 206–07.

9. See *id.* at 205–06.

10. Bennett, *supra* note 4, at 107.

11. *Id.* at 108–27. Outcomes measurement is the approach to judging educational programs based on what students know, are able to do, or value at the end of a course or program. *Measuring Student Learning*, CORNELL UNIV. CTR. FOR TEACHING EXCELLENCE, <http://www.cte.cornell.edu/teaching-ideas/assessing-student-learning/measuring-student-learning.html> (last updated Apr. 8, 2014).

while enhancing professionalism, ethics, and lawyering skills.¹² Some scholars have blamed professional education and argued that law faculties look backwards to precedent as a rule—as the law reaches to the past to stay on course, so often do those who teach it.¹³ Despite a recognized need for change and the availability of information on how to change, law schools have resisted for a variety of reasons.¹⁴

It is important to note that a lack of change is not unique to the legal academic field but is common throughout academia—faculty members in any field often have little incentive to make changes in how and what they teach and are therefore reluctant to do so.¹⁵ However, some scholars have pointed out that law schools “in particular, are steeped in a culture of academic competition and conformity and seem to resist change even beyond the norms of most educational institutions.”¹⁶ One purported cause of this reluctance in the legal field is rooted in the concern that dramatic curricular changes could affect the *U.S. News and World Report Ranking*, which although criticized, is still a factor in selling schools to prospective students and employers of those students.¹⁷

But, as Bob Dylan said, “the times they are a-changin’.”¹⁸ Some schools have made changes and many organizations have devoted “substantial resources” to providing information to law schools for developing more effective programs.¹⁹ Scholars have pointed out that a “confluence of factors” creates a devastating reality for law students and should push educators to consider reshaping the law school experience.²⁰ The movement for change is not limited to U.S. law schools—even international schools known for their rigidity have been open to some reforms.²¹ The grim economic reality that law students face is forcing some legal educational institutions to discuss

12. Bennett, *supra* note 4, at 101.

13. Eugene Clark, *Looking Forward: Challenges Facing Legal Education in the 21st Century*, 3 PHX. L. REV. 461, 462 (2010).

14. Bennett, *supra* note 4, at 103.

15. *Id.* at 104.

16. *Id.* (internal quotation marks omitted).

17. Toni M. Fine, *Reflections on U.S. Law Curricular Reform*, 10 GERMAN L.J. 717, 730 (2009).

18. BOB DYLAN, *The Times They Are A-Changin’*, on *THE TIMES THEY ARE A-CHANGIN’* (Columbia Records/CBS Records, Inc. 1964).

19. Bennett, *supra* note 4, at 102.

20. Carasik, *supra* note 3, at 736–37.

21. Juny Montoya, *The Current State of Legal Education Reform in Latin America: A Critical Appraisal*, 59 J. LEGAL EDUC. 545, 549 (2010).

their roles in responsibly adding graduates to an oversaturated market.²²

While some commentators claim there is too much wrong with legal education to know where to begin,²³ some educators are looking outward for guidance. Law schools are starting to look to other academic institutions to assess how they have adapted to ensure the success of their students.²⁴ Although historically many law faculties have demonstrated little interest in “learning about or doing research related to the teaching of law,”²⁵ now is the time to take advantage of scholarly advances in other fields of professional education.

This Article examines ten approaches that have informed curriculum decisions in other educational fields and then evaluates their application to legal education. While this Article is not the first to suggest that alternative educational theories must be incorporated into legal education, it constitutes a broader reaching plea. Rather than limiting any changes in legal education to make lawyers like doctors or other professionals, this Article draws on the educational theories underlying the various tools to suggest ways that law schools might learn from and adapt those methods to their curriculums. This Article then offers some conclusions drawn from that analysis.

I. Using Outcome Data as Evidence for Effectiveness

Law faculties are not necessarily trained educators.²⁶ They rarely make curriculum decisions based on data,²⁷ and instead tend to rely on personal experience or preferences. While actual data has occasionally been used in considering what the hypothetical law school experience should look like, a systematic approach to using data will enhance discussions about curriculum reform.²⁸

It is often recognized that educational organizations should use empirical evidence to measure whether their curriculum improve-

22. See Carasik, *supra* note 3, at 759–61.

23. See *id.* at 758–76.

24. See Jennifer S. Bard, “Practicing Medicine and Studying Law”: How Medical Schools Used to Have the Same Problems We Do and What We Can Learn from Their Efforts to Solve Them, 10 SEATTLE J. FOR SOC. JUST. 135, 136 (2011).

25. Clark, *supra* note 13, at 463.

26. Moss, *supra* note 6, at 13.

27. Debra Moss Curtis & David M. Moss, *Curriculum Mapping: Bringing Evidence-Based Frameworks to Legal Education*, 34 NOVA L. REV. 473, 475 (2010).

28. See *id.* at 474–75, 487–88.

ment objectives have truly been met.²⁹ Reliable and transparent data should be the benchmark against which all adjustments are measured.

Data-driven outcomes are not just important internally. All six accreditation agencies for educational institutions and a majority of the program accrediting agencies approved by the U.S. Department of Education have implemented a student-learning outcome approach to assessment in their accreditation criteria.³⁰ Additionally, state higher education boards have instituted accountability requirements that include emphasis on student outcomes.³¹ Higher education institutions also recognize that student recruitment is a competitive process and have determined that they need to consider the specific factors that drive student interest, satisfaction, and retention.³² These factors should include ensuring a quality education as measured by attained outcomes.

Law schools are facing a similar challenge in justifying themselves to potential students. With the attack on legal education at its possible apex and the fewest number of applicants taking the Law School Admissions Test in years, schools are trying to position themselves in the admissions race.³³ While some schools are dramatically revamping their curriculum and others are implementing smaller tweaks,³⁴ one change that all schools should consider is implementing the concept of student-learning outcomes. By stating certain skills as learning outcomes and demonstrating how students actually achieve those outcomes, law schools can equip their students with the skills necessary for the practice of law. Law schools that can produce skilled students are poised to use that information to attract qualified applicants.

Legal education might be more likely to use data-driven outcome measurement if there were more focus on outputs in the accreditation process. Historically, the American Bar Association (“ABA”) law school accreditation process has focused on inputs, such as numbers

29. Clark, *supra* note 13, at 465.

30. John F. Welsh & Sukhen Dey, *Quality Measurement and Quality Assurance in Higher Education*, 10 *QUALITY ASSURANCE EDUC.* 17, 17 (2002).

31. *Id.*

32. *Id.* at 18.

33. Catherine Rampell, *Law School Admission Testing Plunges*, N.Y. TIMES (Nov. 21, 2012, 2:30 PM), <http://economix.blogs.nytimes.com/2012/11/21/law-school-admission-testing-plunges/>.

34. See Davis S. Levine, *What Can We Do on Monday to Improve Our Teaching?*, 17 *CHAP. L. REV.* 29, 30 (2013) (suggesting that law professors should implement simple changes in the classroom); Dianne Molvig, *Pace of Change: Are Law Schools Keeping up?*, 85 *WIS. LAW.* 12, 16–17 (2012) (recognizing that some law schools have implemented more experiential learning programs, such as legal writing courses).

of faculty, books, and classrooms, and less on outputs, such as what students actually learn from a program.³⁵ The tool for measuring whether law schools meet set educational goals needs to change. There does seem to be some evidence that this may be changing; the ABA's Accreditation Policy Task Force released a report in 2007 to evaluate the standards, interpretations, and procedures of the law school accreditation process. The report suggested "[t]he Committee also should consider methods to measure whether a program is accomplishing its stated mission and goals. The Committee should define appropriate output measures and make specific recommendations as to whether the Section should adopt those measures as part of the Standards."³⁶ Despite this recommendation, there has been no change and, as of January 2014, the proposal is still out for notes and comments.³⁷

Accrediting schools by periodically evaluating whether they meet a predetermined set of educational goals is a more direct measurement than evaluating, for example, whether a school has adequately sized facilities.³⁸ The more closely the connection between teaching and goals is monitored, the more assurance there is that law teachers are on the right path.

Another source of data that colleges use to evaluate learning outcomes is alumni information. Alumni surveys existed as early as the

35. See generally AM. BAR ASS'N SECTION LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS (2013), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_final_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_body.authcheckdam.pdf [hereinafter ABA STANDARDS]. The only section of the standards focusing on outputs is Standard 301(a), which states that "[a] law school shall maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession." *Id.* at 19. The remainder of the curriculum-centered standards are focused on inputs such as how much time is spent in the classroom or the types of classes to be taught. *Id.* at 20–30.

36. Memorandum from Chief Justice Ruth McGregor, Chairperson, Legal Education and Admissions to the Bar to Special Committee Appointees and Interested Legal Education Organizations (Oct. 8, 2007), available at <http://apps.americanbar.org/legaled/committees/SpecialCommitteeAppointment.doc>.

37. AM. BAR ASS'N SECTION LEGAL EDUC. & ADMISSIONS TO THE BAR STANDARDS REV. COMM., COMPILATION OF PROPOSALS OUT FOR NOTICE AND COMMENT 6 (2014), available at http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/201401_compilation_proposals_notice_comment.authcheckdam.pdf.

38. See ABA STANDARDS, *supra* note 35, at 49–51.

1930s, but they were not widely used until the 1980s.³⁹ While standardized alumni surveys are often used in higher education, tailoring surveys to achieve specific objectives—such as ascertaining what aspects of the curriculum should be discarded, kept, or changed—can set the stage for a meaningful project.⁴⁰ Today, alumni surveys can be an important part of curriculum reform by helping set and measure educational outcomes.⁴¹

If law schools take a cue from undergraduate schools and mine information from their graduates, they can take even greater strides in meeting learning goals. Because law school is a professional school, a majority of graduates should be found practicing in the field of law, as opposed to alumni from undergraduate schools who may have had intervening educational experiences or ended up in a field unrelated to their undergraduate curriculum. Recent lawyers are a gold mine of information about the connection, or disconnection, between what they learned in law school and what skills or information they actually needed in practice. Their memories are fresh and their needs are tangible. Collecting alumni information regarding their learning experiences can help shape changes and improvements to curriculums in ways that law professors, many of whom do not actively practice, currently do not. This data can drive the changes, instead of the changes driving any data results.

One area of higher education where data-driven outcomes have been used is in medical schools. Medical education is based on evidence about effective teaching.⁴² One educator has explained the curriculum development process for medical schools as one “that integrates a content area with educational theory and methodology and evaluates its impact.”⁴³

Learning outcomes documented through data-driven means measure the effectiveness and value of post-secondary education.⁴⁴ MIT suggested actually measuring the value through a Methods of Measuring Learning Outcomes and Value Added Grid (“Grid”),

39. Joseph Pettit, *Listening to Your Alumni: One Way to Assess Academic Outcomes*, 41 ASS’N FOR INSTITUTIONAL RES. 1, 1–2 (1991), available at <http://airweb3.org/airpubs/41.pdf>.

40. *Id.*

41. *See id.* at 6.

42. *See* Bard, *supra* note 24, at 152.

43. *Id.*

44. LORI BRESLOW, TEACHING & LEARNING LAB., MASS. INST. OF TECH., METHODS OF MEASURING LEARNING OUTCOMES AND VALUE ADDED 3 (2007), available at <http://tll.mit.edu/sites/default/files/guidelines/a-e-tools-methods-of-measuring-learning-outcomes-grid-2.pdf>.

which was built specifically to address concerns about credible means of measuring learning outcomes.⁴⁵ The Grid implements the idea that learning outcomes are best evaluated through a mix of measures categorizing: (1) whether the methodology used collects indirect or direct measures of student learning; and (2) whether the methodology is designed, implemented, and the data analyzed by researchers, faculty, or both.⁴⁶ Because the best assessment of learning outcomes involves all these measures, a combination of these approaches is best and the resulting Grid can assist institutions in development assessment methods for learning outcomes.⁴⁷

Different parties within an institution can create and implement different kinds of measurements. For example, faculties have expressed more interest in the idea of *direct* measurement—the course itself—using a “course-embedded assessment” that might already exist.⁴⁸ Institutionally based direct measurements to assess increases in student knowledge can include standardized tests, performance tests, portfolios compiled over a course of study, and even grades.⁴⁹ In many courses, faculties constantly assess learning outcomes, although they may not document their assessments.⁵⁰ There has been a push for faculty to “go meta”—that is, analyze their class assignments for “evidence of learning” with a formal assessment tool rather than allowing useful feedback to pass them by.⁵¹ Additionally, faculty may also have direct methods of collecting data about learning based on their own methods, such as grades, self-developed standardized tests, documented class observations, or analysis of student work product separate from that required by an institution.⁵² Faculty can develop rubrics to assess these measures.⁵³ Researchers may also use direct measures, such as analyzing available standardized test results, to evaluate student learning.⁵⁴

Additionally, there may be indirect methods of assessing student learning by faculty or researchers. Indirect measures for faculty can include course evaluations and self-monitoring requests to students

45. *Id.* at 2.

46. *Id.*

47. *Id.*

48. *Id.* at 3.

49. *Id.* at 2–3.

50. *Id.* at 3.

51. *Id.*

52. *Id.* Some of these techniques are properly used by either researchers or faculty. *Id.*

53. *Id.*

54. *Id.*

during or after class.⁵⁵ Indirect measures of learning outcomes may also include surveys of upper-class students and alumni and other measurements regarding post-graduate activities.⁵⁶ These surveys are often performed by institutional research and alumni offices, or by outside consultants working with a school.⁵⁷

As institutions try to choose the best methods to assess learning outcomes, they should consider balancing methods, costs, and resource efficiency. In law schools, an obvious weakness in data-driven learning outcomes stems from faculty class measures. As many law classes have only end-of-semester exams, these normative assessments are not useful formative tools. It is likely no coincidence that students consider classes requiring assignments throughout the semester more useful for their training.⁵⁸

Law schools should consider creating more direct tools to measure learning outcomes while making better use of the indirect measurements already used, such as the National Survey on Student Engagement and other alumni surveys.⁵⁹ It is time for schools to listen to their own advice: think like lawyers and use all available evidence to better inform curriculum decisions.

II. Aligning with Best Practices

Anecdotally, law schools often ignore established educational best practices. Best practices are often defined as what is established by data to work in a given situation.⁶⁰ Two such areas where law schools have been notoriously defiant at adopting educational best practices are (1) the use of more formative assessments, and (2) the alignment of their curriculum to outcome measurements.⁶¹

First, most law school courses use only end-of-course normative assessments to measure student progress, rather than using assess-

55. *Id.* at 2–3.

56. *Id.* at 3.

57. *Id.*

58. See Victor M. Goode, *There Is a Method(ology) to this Madness: A Review and Analysis of Feedback in the Clinical Process*, 53 OKLA. L. REV. 223, 226–27 (2000); Michele Mekel, *Putting Theory into Practice: Thoughts from the Trenches on Developing a Doctrinally Integrated Semester-in-Practice Program in Health Law and Policy*, 9 IND. HEALTH L. REV. 503, 508 (2012); Emily Zimmerman, *What Do Law Students Want?: The Missing Piece of the Assessment Puzzle*, 42 RUTGERS L.J. 1, 18 (2010).

59. See *How Institutions Use NSSE*, NAT'L SURVEY STUDENT ENGAGEMENT, http://nsse.iub.edu/html/how_institutions_use_NSSE.cfm (last visited Apr. 27, 2014).

60. *Best Practices in Education*, STATE EDUC. RESEARCH CTR., http://ctserc.org/s/index.php?option=com_content&view=section&id=8&Itemid=28 (last visited Apr. 27, 2014).

61. Zimmerman, *supra* note 58, at 10; Mekel, *supra* note 58, at 507–08.

ment methods that provide formative feedback through multiple evaluated resources.⁶² This lack of feedback for students compounds the pressures that students already feel during final exams and misses an opportunity to apprise students of how to “correct course” while there is still time to make adjustments.⁶³ Pedagogically, there is no justification for this lack of feedback throughout the course. Even the most traditional educational goal of a law school curriculum—training students to think like lawyers—would be better served by students documenting their educational evolution.⁶⁴ When formative assessments are conducted properly, they maximize the student-learning experience without overwhelming students with more work.⁶⁵

Second, law schools fail to align their curriculums with outcome measures.⁶⁶ As discussed earlier, data can and should measure whether learning goals are being met.⁶⁷ Law schools need to stop measuring success in terms of input measures, such as student-to-faculty ratio or the number of volumes in a library, and instead should measure success through demonstrating that students have achieved certain benchmarks.⁶⁸ One fear of pursuing an output-based approach, though, is that the only outcome law schools will consider measuring against is the bar exam and thus the resulting changes will simply be teaching to the test.⁶⁹ However, focusing on standardized tests may not be so bad,⁷⁰ particularly given that the bar exam is not the exclusive outcome measurement.⁷¹

Law schools need to understand that, educationally speaking, the benchmark outcome measurement need not be something as large and standardized as the bar exam. Individual courses can set outcome measures (e.g., “After completion of this course, a student should be able to ___.”); portions of a program can set outcomes (e.g., “After 1L year, a student should be able to ___.”) as well as measurements for an entire curriculum (e.g., “Upon graduation, a student should be qualified to ___.”). Many law schools inherently use the basics of this con-

62. See Emily Zimmerman, *An Interdisciplinary Framework for Understanding and Cultivating Law Student Enthusiasm*, 58 DEPAUL L. REV. 851, 902–04 (2009) (discussing formative feedback in legal writing courses).

63. Carasik, *supra* note 3, at 753.

64. *Id.*

65. Zimmerman, *supra* note 62, at 903–04.

66. Carasik, *supra* note 3, at 763–64.

67. See *supra* Part I.

68. Carasik, *supra* note 3, at 765.

69. *Id.*

70. See *infra* Part III.

71. See *infra* Part X.

cept—faculty know why a course is needed in the curriculum—but rarely incorporate the best practice of demonstrating through evidence and assessments that the outcome measure is actually being met.

The assessment rubric created by the Association of College and Research Libraries can address this problem.⁷² The rubric states that students should have to “find, retrieve, analyze, and use information,” and provides standards to measure whether students know, access, evaluate, use, and understand the ethical and legal implications of information.⁷³

This concept has been applied to law students to measure law student information literacy (“LSIL”), a set of standards and indicators tailored to fit what law students should know.⁷⁴ The reality is that new practitioners still need more skills in legal research—even after the response to relatively recent recommendations clamoring for more to be done with “fundamental lawyering skills,” such as those in the MacCrate report.⁷⁵ In fact, the LSIL standards may use different language, but they convey the same basic competencies recommended by the MacCrate report.⁷⁶ The LSIL standards provide rubrics and a “baseline articulation” for the set of competencies required for the practice of law, as advocated by many best-practices reports.⁷⁷ Law schools should reach beyond the best-practices reports to find resources to help them accomplish the recommendations of these standards.

Law faculty should also consider implementing the best practice of reflection. Reflection is defined as “active, persistent and careful consideration of any belief or supposed form of knowledge in the light of the grounds that support it and the further conclusion to which it tends.”⁷⁸ Similarities have been recognized between reflection and critical thinking.⁷⁹ Reflection solidifies knowledge by forcing students to “return[] to an experience to examine it, deliberately in-

72. Dennis Kim-Prieto, *The Road Not Yet Taken: How Law Student Information Literacy Standards Address Identified Issues in Legal Research Education and Training*, 103 LAW LIBR. J. 605, 607 (2011).

73. *Id.*

74. *Id.* at 610–11.

75. *Id.* at 611–12.

76. *Id.* at 613.

77. *Id.* at 615; see also *Best Practices in Education*, *supra* note 60.

78. Karen Mann et al., *Reflection and Reflective Practice in Health Professions Education: A Systematic Review*, 14 ADVANCES HEALTH SCI. EDUC. 595, 597 (2009).

79. *Id.*

tending that what is learned may be a guide in future situations, and incorporating it into one's existing knowledge."⁸⁰

In the medical field, reflection and reflective practice are described as "essential attributes of competent health care professionals."⁸¹ Practitioners who learn from their experience maintain competence throughout their careers, develop a professional identity, and integrate their knowledge to become better-developed professionals.⁸²

This important function of reflection seems to align easily with the environment of legal education. A substantive law knowledge base is built on reading and synthesizing cases to formulate rules of law and using past knowledge, or precedent, to formulate new courses of action in current cases. Studies show that when students engage in reflection there is a connection to "deep learning,"⁸³ exactly what is sought in processing the law. While students may believe that memorizing doctrine is the purpose of law school, the true goal is deep learning—the ability to critically analyze new ideas and link them to already known concepts and principles (often referred to as synthesis in law school).⁸⁴ Such synthesis leads to better conceptual understanding and long-term retention and allows students to more successfully approach future problems.

Reflection could be incorporated further into legal education by recognizing that course coverage should not be the only driving force in educational planning. When professors of foundational courses present at conferences on their *different* manners of teaching, which include practical simulations and writing exercises, they are frequently asked: "How do you cover all the material?" The general response to this question is: "I don't." Given that lawyering is a *process* of learning and many lawyers admit that most of the substance they use in daily practice was learned on the job and not in the classroom, curriculums should incorporate reflective behavior to create deeper rather than wider coverage of the legal experience. This process would actually prepare students for better learning later in their career.

Teacher support is another best practice in educational programs. In the early 1990s, the National Science Foundation ("NSF")

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.* at 612.

84. See *Deep and Surface Approaches to Learning*, HIGHER EDUC. ACAD. ENG'G SUBJECT CTR., <http://exchange.ac.uk/learning-and-teaching-theory-guide/deep-and-surface-approaches-learning.html> (last visited Apr. 27, 2014).

funded projects designed to reform math and science education by aligning the education system with new curriculum and performance standards.⁸⁵ The NSF successfully accomplished this reform by changing the material taught to students and, more significantly, by providing extensive support for teachers.⁸⁶ This lesson in providing greater support for faculty can be seen as a warning to legal education. Anecdotally, most institutions spend little time, energy, or money training legal educators. This is particularly problematic because legal education is one of the few academic areas in which faculty members are generally not required to have any formalized teaching instruction. However, this study of mathematics education reform indicates that improved classroom practices, made possible by investment in teacher training and support, are a key component of improving students' achievement.⁸⁷

Generally, there are several reasons why educational programs do not necessarily align with best practices. Among them is the bureaucratic gridlock created by the fragmented and often contradictory standards governing educational programs.⁸⁸ The two main goals that drive law school curriculums—producing law students who can pass the bar and producing practice-ready lawyers—often directly conflict in structuring a law curriculum. Courses designated as “bar prep” are traditionally academic, while clinics and workshops impart practical skills that are not tested on the bar exam. This disconnect needs to be resolved before law schools can move forward to align with best educational practices.

While empirical studies of law faculty and curriculum alignment with best practices are scarce, law schools can borrow some lessons from a 2005 work examining successful practices in secondary schools.⁸⁹ While many of the practices that emerged from the study were specific to a given grade level, there were some universal lessons that law faculty should consider.⁹⁰ These include working with an in-

85. Daniel F. McCaffrey et al., *Interactions Among Instructional Practices, Curriculum, and Student Achievement: The Case of Standards-Based High School Mathematics*, 32 J. FOR RES. MATHEMATICS EDUC. 493, 493–94 (2001).

86. *Id.* at 514.

87. *Id.* at 494.

88. Andrew T. Roach et al., *Evaluating the Alignment Among Curriculum, Instruction, and Assessments: Implications and Applications for Research and Practice*, 45 PSYCHOL. SCHS. 158, 158 (2008). Such conflicting standards include instructional content, state content standards, and student assessments. *Id.*

89. Richard A. Villa et al., *Successful Inclusive Practices in Middle and Secondary Schools*, 33 AM. SECONDARY EDUC. 33 (2005).

90. *Id.* at 34.

terdisciplinary curriculum, more fully integrating technology into teaching, enhancing student collaboration and peer-mediated instruction, facilitating cooperative group learning and partner learning, and providing multiple instructional agents in the classroom.⁹¹ It is no secret that these techniques are not widespread in legal education.

Additionally, teachers in this study also suggested best practice themes designed to achieve educational goals, such as administrative support, ongoing professional development, collaboration, and communication among faculty.⁹² While law faculty generally have some control over their school's curriculum, it is important to note that not all the suggested changes in best practices are within that limited control. Administrators must also consider their roles in aligning the legal education program with best practices, although many administrators will automatically consign that to a curriculum decision traditionally within the province of faculty. Thinking about the ways faculty and administration must work together evokes Benjamin Franklin at the signing of the Declaration of Independence: "We must all hang together or assuredly we will all hang separately."⁹³

In short, legal education has for years imagined itself as a unique educational experience and made its own rules for how to do things. The belief that training lawyers in a formal education setting is somehow different than other professional training or education has caused legal education to turn a blind eye to the improvements that have been made in higher education. Instead of incorporating proven educational theories, law schools remain rooted in the past. Law schools would benefit from considering how other educational programs have studied teaching and learning.

III. Aligning with Standardized Exams

Another approach that some programs consider is to more closely tailor their curriculums to standardized exams. This may ring alarm bells in the legal field, as one criticism of outcome measurements has been the concern that law schools will only teach to the bar exam.⁹⁴ Conversely, one of the justifications for law school courses having one end-of-the-semester pressurized normative assessment (i.e. the entire grade resting on one exam at the end of the course) has

91. *Id.*

92. *Id.* at 44.

93. JOHN BARTLETT, FAMILIAR QUOTATIONS 348 (Emily Morison Beck ed., Little Brown, 15th ed. 1980) (1965).

94. Carasik, *supra* note 3, at 765.

been the likeness of those conditions to the bar exam. One of the driving forces in curriculum change was to incorporate more bar courses—those courses teaching material covered on the bar.⁹⁵ So, while criticizing the idea of aligning content to a standardized solution, many law schools have implicitly embraced it. The solution to this problem is to take one of two routes: either adapt legal education by working backwards from the bar exam, or refuse to accept what is touted as a flawed outcome measure and work to reform that outcome measure (i.e., change the bar exam).⁹⁶

The validity of standardized testing and its value to the quality of education is constantly debated.⁹⁷ A national study of elementary school teachers conducted in the early 1990s conclusively showed that teachers felt pressure to improve student test scores, that school administrators gave attention to test preparation, that testing affected instructional planning and delivery, and that substantial time was spent preparing students for testing.⁹⁸ While it is easy to assume that these negative findings apply equally to law school classrooms, empirical data suggests otherwise. Indeed, there are reasons why standardized testing is valid, such as providing a set of meaningful standards to which institutions, teachers, and students can aspire; useful feedback to shape classroom instruction; and accountability to student learning and promotion of necessary changes within schools.⁹⁹ It has been written that the “greatest promise” regarding standardized testing is to have strong standards, a curriculum developed to reflect that content, and to align the assessments with the curriculums being taught.¹⁰⁰ In this way, aligning a curriculum with standardized testing can be a great advantage.

Standardized exams, like most educational tools, have various advantages and disadvantages. Advantages of commercial standardized exams are their convenience, their ability to provide external validity to individual educational processes, and their ability to test large num-

95. *Id.* at 756.

96. *Id.* at 782–83.

97. Joan L. Herman & Shari Golan, *The Effects of Standardized Testing on Teaching and Schools*, 12 *EDUC. MEASUREMENT: ISSUES & PRAC.* 20, 20 (1993).

98. *Id.* at 21–25.

99. JOAN L. HERMAN & SHARI GOLAN, NAT’L CTR. FOR RES. ON EVALUATION, STANDARDS, & STUDENT TESTING, UCLA GRADUATE SCH. OF EDUC., *EFFECTS OF STANDARDIZED TESTING ON TEACHERS AND LEARNING—ANOTHER LOOK 1–3* (1991), available at <http://www.cse.ucla.edu/products/Reports/TEch334.pdf>.

100. See PAUL E. BARTON, *EDUC. TESTING SERV., TOO MUCH TESTING OF THE WRONG KIND; TOO LITTLE OF THE RIGHT KIND IN K-12 EDUCATION* 5, 16 (1999), available at <http://www.ets.org/Media/Research/pdf/PICTOOMUCH.pdf>.

bers of students efficiently.¹⁰¹ The disadvantages are, among others, that these assessments usually measure relatively superficial knowledge or learning and are unlikely to match the specific goals and objectives of a program.¹⁰² These positives and negatives are important to weigh, particularly in light of the fact that the bar exam is usually not optional for a law license.

Law is not the only field in which graduates must pass a state-mandated standardized licensing exam.¹⁰³ In the medical field, that power has been delegated back to the profession through the formation of medical boards that establish procedures for both licensing new practitioners and overseeing those already in practice.¹⁰⁴ But unlike law, which has one licensing exam at the end of education, the medical license is administered in stages correlating to skills learned at each stage of education.¹⁰⁵ This concept is not new to law. California has tried this by implementing the “baby” bar—an exam after the first year of law school designed to give a benchmark before further education.¹⁰⁶ However, this practice is neither widespread nor well connected to practice-related stages of readiness.

One author sees the attitudes toward standardized testing as driving curriculum in terms of a dichotomy between teachers with different levels of experience.¹⁰⁷ While many veteran teachers may find conforming to standards of learning as a loss of power and an increased administrative workload affecting their teaching, newer teachers may see these coordinated standards as opportunities for collaboration and consistency among teachers.¹⁰⁸ Some new teachers see the establishment of collaborative frameworks as providing more freedom. Within the frameworks, teachers retain the freedom to work with the material as they choose while still maintaining support of collaboration within the larger structure.¹⁰⁹

101. UNIV. OF TEX. AT ARLINGTON, ADVANTAGES AND DISADVANTAGES OF VARIOUS ASSESSMENT METHODS I (2006), available at <http://www.uta.edu/irp/unit-effectiveness-process/assets/AssessMethods.pdf>.

102. *Id.*

103. See Bard, *supra* note 24, at 166.

104. *Id.*

105. *Id.* at 167.

106. See *Apply for the First Year Law Students' Exam*, STATE BAR OF CAL., https://www.calbarxap.com/applications/calbar/California_Bar_1st_Year_Exam/ (last visited Apr. 27, 2014).

107. Amber Winkler, *Division in the Ranks: Standardized Testing Draws Lines Between New and Veteran Teachers*, 84 PHI DELTA KAPPAN 219, 219 (2002).

108. *Id.*

109. *Id.* at 222.

A similar dichotomy of thought may be developing in legal education. Some veteran teachers do not want to collaborate or share materials, while newer teachers seem to be more interested as a group in developing a common core. While this is not universal, anecdotal evidence does suggest that as the legal academy ages and new professors enter the profession, there may be a natural progression in the methodology employed by faculty members.

Additionally, the outcome measurement itself may shift. The National Council of Bar Examiners (“NCBE”) is considering implementing a new nationwide portion of the bar exam designed to assess legal research skills.¹¹⁰ Determining how to measure competency in this area is an enormous challenge but schools should use their law librarians to articulate standards for measuring these skills.¹¹¹ Instead of playing catch-up to align curriculum with standardized testing, law schools have the opportunity to steer the conversation on skills testing with input from already knowledgeable faculty. Cooperation between law schools, the practicing bar, and bar examiners to develop a measurement that tests practice skills instead of doctrine would help produce law school graduates that are both exam and practice ready.

This is a win-win scenario both for law schools in developing curriculums and for the NCBE in adding such a practical component to the bar exam. However, bars nationwide are convening to discuss whether their approach should be different.¹¹² Those considering aligning with the bar as an outcome need to keep an eye on the ball in following how and why the exam’s outcome measurements may be changing and then make curricular decisions to align with it.

IV. Utilizing Curriculum Mapping

“Curriculum mapping is a coordinated effort by faculty members to better understand the scope and sequence of their own curriculum with the explicit outcome of engaging in a systematic and evidence-based reform process.”¹¹³ It is a process by which education professionals “document their own curriculum, then share and examine each other’s curriculums for gaps, overlaps, redundancies, and new

110. Kim-Prieto, *supra* note 72, at 616.

111. *Id.*

112. See Mark D. Killian, *Comprehensive Study of the Future Practice of Law Underway*, FLA. BAR, <http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/8effbb4b9dbc0ea985257bfd00414ad6!OpenDocument> (last visited Apr. 27, 2014).

113. Curtis & Moss, *supra* note 27, at 474; see also F.W. English, *Curriculum Mapping*, 37 EDUC. LEADERSHIP 558, 558 (1980).

learning, creating a coherent, consistent, curriculum within and across schools that is ultimately aligned to standards and responsive to student data and other initiatives.”¹¹⁴ One purpose of mapping is to provide information so that “students . . . know where they are going, why they are going there, and what is required of them to get there.”¹¹⁵

As described extensively in a previous work focusing on curriculum mapping alone:

The idea of mapping a curriculum was popularized by Fenwick English in the 1980s as a “reality-based” documentation of the curricular content that is actually taught, and matching it against the prescribed assessments. In the next decade, Heidi Hayes Jacobs enlarged and expounded on that idea, and proposed a multi-phase process for accomplishing the mapping process. In this multi-phase process, the first question to consider when undertaking such a project is, “what is curriculum?” It has been suggested that “curriculum is developed from any material a teacher refers to or uses to decide what to teach, when to teach it, and how much of it to teach,” which may include textbooks, state and national guidelines, administrative directives, and personal experiences, among others. In examining curriculum, when these varying resources and the use of them are not documented or shared in meaningful ways by teachers, the result can be an experience by students that is less than optimal.

....

A curriculum map may be useful to a faculty for many reasons, including helping teachers to understand what is taught throughout a program, coordinating interdisciplinary units, serving as a “venue for fostering conversation about curriculum” among faculty, helping students find the connections between subjects in a curriculum, and helping teachers to reflect upon their own teaching. For example, regarding substance of courses, a curriculum map resulting from this data will enable a faculty to understand when a particular doctrine is actually taught, how it is taught, and if more than once, in what sequence. This information then allows the faculty to determine whether instructional changes are warranted to meet the broader learning goals.¹¹⁶

Other areas of education have widely engaged in curriculum mapping. It is a well-used tool in K-12 education and has been used by

114. SUSAN K. UDELHOFEN, *KEYS TO CURRICULUM MAPPING: STRATEGIES AND TOOLS TO MAKE IT WORK* xviii (2005).

115. *Curriculum Mapping*, OKLA. STATE DEP’T OF EDUC., <http://ok.gov/sde/curriculum-mapping> (last visited Apr. 27, 2014).

116. Curtis & Moss, *supra* note 27, at 475–76 (internal citations omitted).

universities for some time.¹¹⁷ As discussed earlier, law schools are beginning to turn their attention toward outcome measurements of the law school experience, rather than input measurements.¹¹⁸ Also, as noted in a previous work:

Other fields have used outcome assessment planning and mapping in their curriculum building. The Accreditation Counsel for Graduate Medical Education (ACGME) has an outcome project in which assessing the program's actual accomplishments is used as a core measure in evaluating the curriculum. The National Council for Accreditation of Teacher Education (NCATE) makes use of extensive self-study requirements centered on a university's core curriculum, and governs performance-based state licensing for teachers as well as board certification of accomplished teachers. At the institutional level, the Harvard School of Dental Medicine has developed a problem-based approach in which concepts are mastered through group discussion and analysis of real patient cases, and their curriculum map demonstrates an interdisciplinary approach to professional training.¹¹⁹

It is common for law professors to make decisions about their teaching without input or interaction from other faculty members.¹²⁰ Occasionally, individual professors take the initiative to coordinate with other professors teaching in the same subject area, but that is generally the extent of the voluntary undertaking.¹²¹ This failure to communicate is a lost opportunity.¹²² Faculty who coordinate with their peers comment that it provides a valuable opportunity to reflect on their teaching.¹²³ In legal education there are different courses that continue with the same material. For example, contracts precedes a sale of goods or remedies course. Students and professors may treat these courses as independent fiefdoms, but knowing what students learned in the area before or will learn after would enhance both the teaching and the learning experience.

On one hand law schools have the responsibility to prepare students for the bar exam, while on the other hand they must produce

117. *Curriculum Mapping*, CURRICULUM MAPPING 101, <http://curriculummapping101.com/curriculum-mapping-general> (last visited Apr. 27, 2014); *see also* Sumsion & Goodfellow, *supra* note 2, at 329.

118. Bennett, *supra* note 4, at 124.

119. Curtis & Moss, *supra* note 27, at 476–77 (internal citations omitted).

120. John Lande & Jean R. Sternlight, *The Potential Contribution of ADR to an Integrated Curriculum: Preparing Law Students for Real World Lawyering*, 25 OHIO ST. J. ON DISP. RESOL. 247, 250 (2010).

121. *Id.*

122. *Id.*

123. Sumsion & Goodfellow, *supra* note 2, at 338–39.

responsible and competent practitioners.¹²⁴ Many consider these to be conflicting goals.¹²⁵ A curriculum map—the examination of what is actually taught—can foster discussion about integrating these two goals. *Reforming Legal Education: Law Schools at a Crossroads* provides a detailed look at various curriculum-mapping efforts throughout various law school programs and details the challenges law faculty face in trying to map out the curriculum and engage faculty in these types of discussions.¹²⁶

Additionally, the medical education field has been encouraged to engage in curriculum mapping for quite some time.¹²⁷ In 2001, one article urged the medical field to embrace the “genius of mapping” which “give[s] a broad picture of the taught curriculum.”¹²⁸ The article noted that while much attention was devoted to curriculum development, including student-centered learning, problem-based learning, integrated teaching, new learning technologies, and new approaches to assessment, the lack of communication about curriculum was notable.¹²⁹ A curriculum is a program where “the whole is greater than the sum of the individual parts” and the spatial relation among the parts is key.¹³⁰

Benefits of curriculum maps, such as increased vertical and horizontal integration, and the possibility of a wide range of learning opportunities would be as beneficial to legal education as it was in medical education.¹³¹ In law schools, increased vertical integration is a planned connection between courses that students take sequentially from year to year. For example, the faculty teaching a first year contracts course, a second year sales of goods course, and a third year international sales and arbitration course would discuss the learning outcomes of their courses and determine, together, how the courses should reinforce or supplement each other. By contrast, horizontal integration is measuring the different experiences of students taking the same course from different professors to ensure a consistent experience. For example, faculty may look to the common set of learning

124. Carasik, *supra* note 3, at 783.

125. *See id.*

126. *See* DAVID M. MOSS & DEBRA MOSS CURTIS, *REFORMING LEGAL EDUCATION: LAW SCHOOLS AT THE CROSSROADS* 220–26 (2012).

127. *See* Sumsion & Goodfellow, *supra* note 2, at 329.

128. R.M. Harden, *AMEE Guide No. 21: Curriculum Mapping: A Tool for Transparent and Authentic Teaching and Learning*, 23 *MED. TCHR.* 123, 123 (2001) (internal quotation marks omitted).

129. *Id.*

130. *Id.*

131. *See id.* at 135–36.

outcomes across the first year contracts curriculum. Faculty should understand how their curriculums integrate both vertically and horizontally.

A legal education should have predetermined learning outcomes, but it is hard to plan appropriate routes to get students to that goal without first closely examining the current route and where it brings students. Curriculum mapping helps faculty understand what individual courses accomplish in relation to students' other educational experiences and provides a tool to help maximize these learning outcomes. Too few law school programs take the time for this important stage in curriculum planning.

V. Using a Long-Term Planning Process and Buy-In

There is a great difference in curriculum planning centered on short-term goals versus those focused on long-term goals. Often, changes in curriculum are designed to solve a particular problem faced by a faculty and are short term in nature. As a result, long-term goals are sometimes given short shrift.

Once again, medical education reform provides a comparison to an area that advocates of legal education reform often see as having succeeded in long-term organization of curriculum—through bringing practical skills to the four years of medical training.¹³² Because medical training is focused on the long-term goal of excellent patient care, curriculum changes are judged based on how they impact this result.¹³³ In contrast, law schools' long-term goals have been to provide places to learn the law, not to learn how to care for clients.¹³⁴

One medical article reported in 1999 that medical education was under fire for overloading the curriculum with memorization and not placing enough value on the skills and attitudes at the core of the medical profession.¹³⁵ At the time, Brown University had inaugurated a new competency-based curriculum to “better assure that it [was] graduating physicians who possess[ed] the qualities and attributes desired in a competent physician”—the long-term goal of the school.¹³⁶

132. See Bard, *supra* note 24, at 143–44.

133. See *id.*

134. See *id.*

135. Stephen R. Smith & Richard Dollase, *AMEE Guide No. 14: Outcome-Based Education: Part 2—Planning, Implementing and Evaluating a Competency-Based Curriculum*, 21 MED. TCHR. 15, 15 (1999).

136. *Id.*

In law school, however, curriculum design is often subject-matter based. Schools formulate an educational plan based on the bar exam, faculty expertise, or unique and unexplored fields of lawyering. But this piecemeal approach is very different from a comprehensive plan that works backwards from what a graduate should look like as a practicing attorney and designs a start to finish program to get her there. Long-term planning in law schools often stops at preparation for the bar. It is an oft-repeated mantra that law faculty teach *law* school, not *lawyer* school. However, it is clear that teaching and learning are most effective when we know what the milestones and end points are, and we are often guilty of mislabeling these goals in legal education.¹³⁷

To accomplish the process of curriculum planning around long-term goals for medical schools, physicians, non-physician staff, and medical students were asked what abilities successful doctors possessed.¹³⁸ These traits were discussed by working groups and sent to faculty for implementation.¹³⁹ Expectedly, novel changes met with resistance and came up against an “if it ain’t broke, don’t fix it” attitude from faculty still invested in a centralized, faculty-controlled educational model.¹⁴⁰ These concerns were addressed through a variety of approaches and resulted in a new model that educators believe produces graduates ready to deal with the challenges of being a doctor in the twenty-first century, rather than merely producing students with a theoretical factual understanding of the field.¹⁴¹ This type of long-term buy-in to maintain the continuity and standards of the profession through a more responsible curriculum is beneficial to all.

Physician training is not the only area to consider long-term buy-in. Other areas, such as accounting, have adopted this long-term look at how the curriculum should reflect the profession’s values.¹⁴² Additionally, several law schools have undertaken long-term processes to revise their curriculum.¹⁴³ Those who have endured the curriculum reform process know that it requires the cooperation of the Dean,

137. *Id.*

138. *Id.* at 16.

139. *Id.*

140. *Id.*

141. *Id.*

142. See generally Peter C. Brewer, *An Approach to Organizing a Management Accounting Curriculum*, 15 ISSUES ACCT. EDUC. 211, 218 (2000).

143. See generally MOSS & CURTIS, *supra* note 126 (detailing long-term curricular reforms at Washburn University School of Law, University of Iowa College of Law, Nova Southeastern University Shepard Broad Law Center, Golden Gate University School of Law, Charlotte School of Law, and Western State College of Law).

faculty committees, the entire faculty, students, and alumni.¹⁴⁴ This can be a time consuming and treacherous process.¹⁴⁵ But the result of involving all these parties throughout the extensive process can produce a new direction for a school where everyone has a stake in its success.¹⁴⁶

By shifting from thinking about short-term problems, such as declining enrollment or new course offerings, to long-term planning for a program, faculty can both solve the immediate problems that arise and prevent them from reoccurring in the future. Creating future legal professionals, not just law school graduates, demands attention to the long run.

VI. Considering Curriculum Theory

Although the word “curriculum” is frequently used, many in the law field rarely give much thought to what it actually means. Said to have its origins in racing in Greece, a curriculum was literally a course.¹⁴⁷ In Latin, a curriculum was a racing chariot.¹⁴⁸ The idea of a path, or traveling on it, is clearly connected to modern usage, where it is known as “all the learning which is planned and guided by the school, whether it is carried on in groups or individually, inside or outside the school.”¹⁴⁹ Considering the history, law curriculum today could be improved by remembering its roots and treating the curriculum as a vehicle to deliver real learning on a course, rather than as an end product itself.

There are three major ways to define a curriculum: substantively (a physical document), systematically (a framework in which decisions are made), and as an area of professional development furthering knowledge.¹⁵⁰ Law schools tend to focus on the first by considering only the physical manifestation documenting the contents of courses.

144. See Earl Martin & Gerald Hess, *Developing a Skills and Professionalism Curriculum—Process and Product*, 41 U. TOL. L. REV. 327, 351 (2010).

145. See Robert F. Blomquist, *Some Thoughts on Law School Curriculum Reform: Scaling the Mountainside*, 29 VAL. U. L. REV. 641, 660, 662 (1995).

146. See Martin & Hess, *supra* note 144, at 352.

147. Mark K. Smith, *Curriculum Theory and Practice*, ENCYCLOPAEDIA OF INFORMAL EDUC., <http://infed.org/mobi/curriculum-theory-and-practice/> (last visited Apr. 27, 2014).

148. *Id.*

149. A.V. KELLY, *THE CURRICULUM THEORY AND PRACTICE* 12 (6th ed. 2009) (internal quotation marks omitted).

150. See Geneva Gay, *Curriculum Theory and Multicultural Education*, in *HANDBOOK OF RESEARCH ON MULTICULTURAL EDUCATION* 30, 32 (James A. Banks & Chery A. McGee Banks eds., 2d ed. 2004).

Therefore, the first issue regarding curriculum is that law schools appear to define curriculum narrowly as only the set of courses either required or available to its students, even when it is clear that the concept is so much more than that. Law schools sometimes make the mistake of conflating a curriculum with a syllabus, which limits the planning to a consideration of the content or body of knowledge to be transmitted in a single course.¹⁵¹

Curriculum theory, by contrast, is “the interdisciplinary study of educational experience.”¹⁵² Sometimes the idea has been reduced to linking the educational experience to test scores under the political guise of accountability, but that is not the true concept.¹⁵³ Curriculum theory is instead a distinct subfield dedicated to the study of education.¹⁵⁴

One of the challenges in studying curriculum in law is that law schools are forced into a one-size-fits-all approach under the current ABA accreditation standards.¹⁵⁵ The former president of Cornell University recognized that there is no ideal curriculum for every institution,¹⁵⁶ yet the expectations of all law schools are nearly identical. It is apparent that many educational institutions have been forced into a business model of evaluating the bottom line—scores on a standardized test—making school little more than a “skill-and-knowledge factory.”¹⁵⁷ In recent years, law schools may be accused of doing the same thing by only considering bar passage rates or accreditation standards as measures of success. While curriculum may align with standardized testing or other outcomes, that alignment should only occur after considering the curriculum as a whole and making data-based decisions. There is a difference between teaching to the exam and designing a course that turns out a student able to think, reason, pass a standardized exam, and ethically rise to the level of a professional.

One suggested method to encourage law schools to consider curriculum theory is to give schools looser reign in their formulation of legal education.¹⁵⁸ If curriculum is understood as a *conversation* and not a product, it becomes a search for a predetermined desirable out-

151. See KELLY, *supra* note 149, at 9.

152. WILLIAM F. PINAR, WHAT IS CURRICULUM THEORY? 2 (1st ed. 2004) (emphasis omitted).

153. *Id.* at 2–3.

154. *Id.* at 2.

155. Carasik, *supra* note 3, at 769–70.

156. PINAR, *supra* note 152, at 226.

157. *Id.* at 164.

158. Carasik, *supra* note 3, at 769–70.

come, rather than “an exercise in domain specification and task analysis.”¹⁵⁹ One of the key questions in curriculum planning is “[w]hat educational purposes should the school seek to attain?”¹⁶⁰ This is a very different question than the one that is often asked by law school curriculum committees: “What should be taught?” Instead, the question should be about what the end goals or outcomes should be. By using the curriculum as a process to get there and developing an overall learning plan, law schools can begin thinking about the whole lawyer. Curriculums can begin to incorporate areas other than concrete pieces of knowledge because law schools can ask what society values in a lawyer. Educators and students at this level should collaborate to exercise greater control over what they teach and allow experimentation that accommodates the concerns of all parties involved in order to fully open the doors to success.¹⁶¹

Asking such questions could help fill the gaps in professionalism that some see as sorely lacking in legal education and drive a curriculum change to incorporate professionalism more squarely into legal studies. One study regarding professional school education revealed that “the most overlooked aspect of professional preparation was the formation of a professional identity with a moral core of service and responsibility around which each student’s habits of mind and practice are organized.”¹⁶² This evaluation included education of lawyers, physicians, clergy, engineers, and nurses.¹⁶³ Some bar organizations have identified this lack of professionalism among lawyers and it is time law schools take notice as well.¹⁶⁴ It has been suggested that the ABA will likely amend its accreditation standards for law schools to place more emphasis on “ethical professional identity” and service as part of the evaluation of law schools.¹⁶⁵

159. See PINAR, *supra* note 152, at 195.

160. See KELLY, *supra* note 149, at 20.

161. PINAR, *supra* note 152, at 196.

162. Neil Hamilton & Verna Monson, *Legal Education’s Ethical Challenge: Empirical Research on How Most Effectively to Foster Each Student’s Professional Formation (Professionalism)*, 9 U. ST. THOMAS L.J. 325, 327 (2012) (internal quotation marks omitted) (incorporating data from more than fifty site visits).

163. *Id.*

164. Gary Blankenship, *Court Empowers Panels to Address Unprofessionalism*, FLA. BAR NEWS (July 1, 2013), <http://www.floridabar.org/DIVCOM/JN/JNNews01.nsf/Articles/8900945B7C05EAD485257B90006B1215>. A recent proposal by Florida Supreme Court Justice Fred Lewis to codify discipline for professionalism violations further clarifies the need to teach professionalism. Gary Blankenship, *Putting ‘Teeth’ in Professionalism: Comments Sought on Proposed Professionalism Rules*, FLA. BAR NEWS (May 15, 2012), <http://www.floridabar.org/DIVCOM/JN/JNNews01.nsf/Articles/92C1E519C6934A8E852579F4006C11CB>.

165. Hamilton & Monson, *supra* note 162, at 330.

Medical schools have long used formal medical education to transmit professional values to their students,¹⁶⁶ while law schools have relied on just a single course on professional responsibility rather than using the curriculum as a whole to imbue professionalism.

One reason for the limited communication in this area of law school is the unclear meaning of professionalism in the legal field.¹⁶⁷ Professional formation is the “fostering of students’ formation of an ethical professional identity.”¹⁶⁸ While many faculties are skeptical they can impact this process, empirical evidence demonstrates that people develop moral capacities throughout their life.¹⁶⁹ A Carnegie Foundation study of professional schools determined that a student’s professionalism could be fostered if tailored to the student’s stage of development.¹⁷⁰

Imparting professionalism as part of the learning process is a positive by-product that could result from implementing curriculum theory. By understanding that a law faculty’s job regarding curriculum is not merely to name courses or think about what courses to teach but to focus on what needs to be learned, faculty can take advantage of every opportunity to enhance their students’ skills as well as their ethical understanding throughout the curriculum.

VII. Investing in Faculty Professional Development

It is no secret to anyone in the academy that the tri-part traditional means of evaluating faculty—teaching, scholarship, and service—has long dominated the field.¹⁷¹ While those tasks may be universal among faculty working in different fields, the definition and standards for each part are more diverse outside of the legal field. Law faculty are evaluated on teaching, but much of what is considered good teaching is evaluated on whether it repeats what others do or matches the law school experience of those teaching or evaluating.¹⁷² There has clearly not been enough professional development for law

166. See Bard, *supra* note 24, at 192.

167. Hamilton & Monson, *supra* note 162, at 333.

168. Neil Hamilton, *Fostering Professional Formation (Professionalism): Lessons from the Carnegie Foundation’s Five Studies on Educating Professionals*, 45 CREIGHTON L. REV. 763, 765 (2012).

169. *Id.* at 766–67.

170. *Id.* at 771.

171. Mary Ann Connell et al., *Collegiality in Higher Education Employment Decisions: The Evolving Law*, 37 J.C. & U.L. 529, 575–76 (2011).

172. See Carasik, *supra* note 3, at 785.

faculty regarding researching, thinking, and teaching with pedagogical advances.¹⁷³

It is true that law is not the only field facing challenges in professional development. A study of teaching methods in higher education science found issues similar to those faced in legal education.¹⁷⁴ A representative email detailing the predicament of a university science teacher looked like this:

First I feel the primary responsibility that I have is teaching my students to understand science. The administration, however, does not seem to see it that way! In fact, they think each course only takes the actual class time plus a little time out of class to do all the planning and assessment necessary. I find I am putting in eight-hour days to just stay ahead on the classes I am teaching right now. This does not leave much time for creating the new physical science course!

Second, spending the extra time on planning the new course is cutting into my research time. You know the old "Catch 22." You have to do research to publish, publish to get tenure, and at the same time, teach, advise, develop new courses and serve on committees. Why do the priorities seem to be so displaced in higher education? Is there anything to be done about it?

Third, I am having trouble getting my colleagues in the sciences to see a need to put effort into a different way of teaching science.¹⁷⁵

It is easy for many law faculties to see themselves in the author of this email. However, the study evaluating this problem pointed out that a key question to manage this dilemma is "[h]ow can I become a more effective course planner and instructor?"¹⁷⁶ Law faculties rarely ask this question of themselves or each other, because they have not been trained to do so.

The science and law fields actually have much in common in terms of professional development. Select science faculty members may also have little professional training in teaching at the college level, but effective teaching in that field involves the "purposeful, research-informed development of innovative lessons actively involving students in learning."¹⁷⁷ Additionally, the lack of change in the way science courses have been taught, compared with 100 years ago, has

173. *See id.* at 785–86.

174. Dennis W. Sunal et al., *Teaching Science in Higher Education: Faculty Professional Development and Barriers to Change*, 101 SCH. SCI. & MATHEMATICS 246, 246–55 (2001).

175. *Id.* at 246.

176. *Id.* at 247 (internal quotation marks omitted).

177. *Id.*

been questioned.¹⁷⁸ Considering these parallels, law teachers can learn much from this study of science teachers.

While much literature describes the barriers to changing curriculum on macro levels,¹⁷⁹ the barriers to change existing among faculty on the course or classroom level have not been as frequently explored.¹⁸⁰ While there may be many possible causes for the lack of change in the classroom, training faculty in teaching and considering changes in materials is actually within the direct control of faculty members.¹⁸¹

Workshops and courses are the most popular methods of professional development, for distributing literature, and for using experts and peer consultations.¹⁸² While there are ample conferences for law faculty available, attending conferences to discuss teaching is not part of many law teachers' regular routines. Professors who teach skills courses seem to have more frequent opportunities to attend and present at conferences to discuss what actually happens in the classroom, while those teaching doctrinal courses are often only encouraged to attend conferences only to discuss changes in substantive law.¹⁸³

To successfully develop faculty learning, there must be an integrated system of professional development that is "intentional, ongoing, and systemic."¹⁸⁴ In the science field, one suggestion to remedy this problem is to add "action research" to the traditional methods of development already in use.¹⁸⁵ Action research involves faculty members investigating the currently used practices and problems of teaching and questioning their own knowledge and approaches to teaching.¹⁸⁶ The teacher starts with something defined as a problem

178. *Id.*

179. *See generally* John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303 (2007) (discussing roadblocks such as tradition, outdated curriculums, teaching and assessment practices, law school rankings, and increasing costs of legal education); Lewis D. Solomon, *Perspectives on Curriculum Reform in Law Schools: A Critical Assessment*, 24 U. TOL. L. REV. 1 (1992) (examining the efforts of several law schools to include strengthened writing courses and other skills-based courses in the first year); Carasik, *supra* note 3 (discussing numerous law school reform efforts and suggesting that only a full-scale, integrated reform approach will succeed).

180. Sunal et al., *supra* note 174, at 247.

181. *Id.* at 247–48.

182. *Id.* at 248.

183. *See generally* Stephen Daniels et al., *Analyzing Carnegie's Reach: The Contingent Nature of Innovation* (Univ. of Denver Sturm Coll. of Law, Working Paper No. 13-07, 2013).

184. Sunal et al., *supra* note 174 at 249.

185. *Id.* 248–49.

186. *Id.* at 249.

in the teaching area, forms a reflection that becomes a hypothesis, and plans an investigation.¹⁸⁷ Information is collected and analyzed, and conclusions are drawn that can immediately lead to revised instructional strategies in the classroom.¹⁸⁸ There is every reason to believe law school instructors, even with their limited formal teaching training, can implement this data-driven approach.¹⁸⁹ Essentially, this is a process of questioning teaching habits that evolved through trial and error, or prior knowledge, and *mindfully* considering the task of revising them. Without formal teaching experience, many law teachers merely draw on their own experiences—duplicating what was done to them—without consciously considering effective ways to move forward.¹⁹⁰ This trend must be reversed.

Another area in which faculty professional development has been considered is that of medical schools.¹⁹¹ Specifically, mentoring, as a method of assisting junior faculty to set goals, positively impacts faculty development by providing constructive feedback, building confidence, assisting with networking in the field, and helping with scholarship.¹⁹²

A 1995 study of mentoring relationships in medical schools revealed that only about half of the junior faculty had recent mentoring experiences.¹⁹³ However, the study showed that mentoring was effective in improving the quality of job performance in some areas, such as receiving more research grants and having higher career satisfaction.¹⁹⁴ As these areas are also important to law faculty, junior law faculty would certainly benefit from mentoring relationships as well.¹⁹⁵ It should be noted that many law school faculties do engage in mentoring, but it is not generally routine or systematic.

Some law educators have begun to tackle this problem. For example, the Legal Education Analysis and Reform Network (“LEARN”) is a group of “ten law schools [that] have come together to work with the Carnegie Foundation to promote thoughtful innovation in law

187. *Id.*

188. *Id.*

189. See Sonsteng et al., *supra* note 179, at 462.

190. *Id.* at 334.

191. Anita Palepu et al., *Junior Faculty Members' Mentoring Relationship and Their Professional Development in U.S. Medical Schools*, 73 *ACAD. MED.* 318, 318–23 (1998).

192. *Id.*

193. *Id.* at 318.

194. *Id.* at 322.

195. See Carlo A. Pedrioli, *A New Image in the Looking Glass: Faculty Mentoring, Invitational Rhetoric, and the Second-Class Status of Women in U.S. Academia*, 15 *HASTINGS WOMEN'S L.J.* 185, 198–99 (2004).

school curriculum, pedagogy and assessment.”¹⁹⁶ Such support organizations can link those interested in faculty development with schools that cannot devote time or resources to enhancing professional development. Some of LEARN’s resources include conferences and scholarship to help faculty tune into professional development as an important part of their identity.¹⁹⁷

Teaching is not the only area in which increased support of faculty development would be beneficial. This broadening of recognition of interests and expertise by faculty should extend past teaching and into scholarship.¹⁹⁸ Traditionally, the common wisdom is that many law schools maintain narrow definitions of scholarship that counts—that is, scholarship considered for promotion, tenure, or salary increases—although this is difficult to measure as many schools are reluctant to discuss their review standards externally.¹⁹⁹ This definition has often been limited to traditional law review works, placed in a certain quality of journal, and only relating to the area in which the faculty member is currently teaching.²⁰⁰ While faculties are not always explicitly prevented from pursuing other scholarly areas in their work, they are often counseled on what can be considered as contributing to their portfolio. The daunting nature of reaching these standards with limited time and resources frequently limits faculty members’ scholarly pursuits.

While some schools may be more relaxed in defining scholarship—through loosening such requirements as placement of articles in law journals or the connection of scholarship to teaching subject—many still retain a traditional format requirement (i.e., publication in a law review). However, faculty can truly be productive scholars and reach large and diverse audiences through a variety of mediums, such as blogs, journal articles, or media appearances. All of these formats require scholarly preparation and production, and ultimately make

196. Carasik, *supra* note 3, at 785 (internal citations omitted).

197. *Recent News, Commentary, and Analysis*, LEGAL EDUCATION RESOURCE NETWORK, <http://www.law.unlv.edu/learn-news?page=2> (last visited Apr. 27, 2014).

198. Carasik, *supra* note 3, at 807–08.

199. 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, 114 (2010); Christian C. Day, *The Case for Professionally-Edited Law Reviews*, 33 OHIO N.U. L. REV. 563, 566 (2007) (“Law schools require professors to publish as a condition of tenure. The traditional rule is for three scholarly articles in law reviews of sufficient quality.”); Lawrence M. Friedman, *Law Reviews and Legal Scholarship: Some Comments*, 75 DENV. U. L. REV. 661, 661 (1998) (“Law reviews are the primary outlet for legal scholars, and the law review system is unique to legal education.”).

200. See Day, *supra* note 199, at 566.

contributions to their fields. If schools encourage and reward faculty for being productive in all areas of scholarly work, faculty would continue to positively develop and promote a law school's point of view while reaching the legal field at large.

Lastly, law faculty development needs to be supported in providing service to the profession. A law faculty that is actively engaged in the legal community can bring numerous benefits to the law school and, most importantly, to the students who will be transitioning from law school to the legal community. Overall, law faculty need to remember that they are part of a legal community comprised of practicing lawyers, judges, lawyers in training, and those who train them. In recent history, the academy and the practicing bar have seen themselves as parts of different professions. Changing this perspective to view these areas as pieces of the legal profession puzzle would enhance both the legal profession and the training of law students.

VIII. Collaborating with Professionals and Professional Societies

A consistent criticism of law school has been that schools do not give students enough practical knowledge for use in the professional workforce.²⁰¹ Although more schools have begun to integrate theory and skills-based education,²⁰² they cannot do this alone. They need to work in partnership with the legal community to deliver what students need. It has been suggested that schools should pay more attention to ensuring their graduates have skills in areas such as litigation and alternative dispute resolution ("ADR") procedures so they can better understand parties' interests in lawsuits and the full range of lawyers' roles in such cases.²⁰³ The criticism is that these skills are often deemphasized to make room for pure legal analysis in the classroom.²⁰⁴ With the help of practicing attorneys, these two important parts of education could be merged.

Several recommendations have emerged from a study of schools and universities who formed partnerships with professional societies.

201. Maulik Shah, *The Legal Education Bubble: How Law Schools Should Respond to Changes in the Legal Market*, 23 *GEO. J. LEGAL ETHICS* 843, 855 (2010).

202. Fine, *supra* note 17, at 746.

203. Lande & Sternlight, *supra* note 120, at 260–62; *see also* Mary Dunnewold, *Alternative Dispute Resolution: What Every Law Student Should Know*, 38 *STUDENT LAW* 14, 14 (2009).

204. Lande & Sternlight, *supra* note 120, at 259–60.

Law schools could learn from these in their own collaborations.²⁰⁵ The recommendations include making sure partnerships start with informal meetings of personalities in order to develop camaraderie, building a shared vision of what is expected by all parties, and culminating in formalized written policies.²⁰⁶ Such advice can help drive the success of these ventures.

Medical schools have already acknowledged and largely solved the divide between scientists, who only teach in the classroom, and physicians, who are in practice, by employing faculty who both teach and practice. Further, medical schools have addressed that divide by teaching skills to students still in the classroom phase of their education.²⁰⁷ Law schools, however, face the largely unacknowledged challenge that many faculty members are not skilled practitioners of law.²⁰⁸ Medical schools base their curriculum on the premise that on-the-job-training of doctors will be more efficient if basic skills are learned before entering the work force. Law schools are still behind in planning to graduate students with basic skills.²⁰⁹ A large portion of law school faculty members cannot teach skills because they themselves do not have the necessary skills, and their full time pursuit is teaching.²¹⁰

But the structure of the legal academy prevents full-time faculty members from retaining or building law skills concurrently with teaching; thus, the practicing bar must step in.²¹¹ Unlike medical schools that teach basic skills in the first two years to build upon in the third and fourth year, law schools paradoxically isolate a major component of skills training (legal research and writing courses) in the first year and then reserve practicing for the bar for the third year—the end of the educational experience.²¹²

Law schools could greatly benefit from these types of partnerships. One scholar listed faculty inertia to changes in teaching as one of the barriers to improving law school curriculums.²¹³ He also noted that there are incentives for law schools to make changes, such as dif-

205. Elisabeth Hess Rice, *The Collaboration Process in Professional Development Schools: Results of a Meta-Ethnography, 1990–1998*, 53 J. TCHR. EDUC. 55, 63–65 (2002).

206. *Id.*

207. Bard, *supra* note 24, at 170.

208. *Id.* at 171.

209. *Id.* at 181.

210. *Id.* at 184.

211. *Id.* at 185–86.

212. *Id.* at 196.

213. Hoffman, *supra* note 5, at 222–24.

ferentiating from other law schools to remain competitive in the admissions market, improving employment prospects to entice quality students, and conforming to externally required change (such as accreditation standards).²¹⁴ These barriers can be overcome and these incentives met by incorporating the legal profession into the curriculum during the planning and implementation stages.

In response to incorporating legal professionals, there have been many well-founded criticisms of the quality of teaching provided by adjunct faculty.²¹⁵ But, just as a practicing attorney calling on an academic to provide expert testimony would not give the academic free reign in the courtroom, so too should law schools carefully control a practicing attorney invited to the head of the classroom. In court, the trial attorney will use the academic in a very specific way planned to enhance the trial. The same mentality should be true for professionals in the classroom. Rather than simply turning entire subjects and classes over to practicing professionals, a hybrid program—curriculum planning by a full-time teacher with specific skills filled in by the practitioner—could produce very good results.

Another way that the interaction with the legal profession could help students is by creating more meaningful mentoring and career counseling programs.²¹⁶ While many schools have the practicing bar come in for bite-size sessions on “What it is Like to be a ___ Lawyer,” the opportunities between the two areas are not maximized. Rather than the lawyers coming into the law school environment, why do they not invite law students in to see their environment or to sit in court? There should be a level of investment in future lawyers that does not rise to the level of internships or employment but is more focused in furthering career development. The fault lies neither with law firms nor law schools, but if law firms want new lawyers that are comfortable in the profession, they must be willing to give—even just a little—to help create them.

IX. Using Consultants for Planning and Change

Various educational institutions rely on consultants to help the institution design curriculums and deliver better education.²¹⁷ There are several benefits to using outside consultants, whether the consul-

214. *Id.* at 225–28.

215. Bard, *supra* note 24, at 204.

216. Carasik, *supra* note 3, at 789.

217. Tamar Levin, *Universities Turn to Consultants to Trim Budgets*, N.Y. TIMES, Nov. 15, 2009, at A29.

tants come from business or academia. These benefits include the flexibility to tailor the expert to the specific task needed, enhancing credibility based on the credentials of the consultant selected, receiving highly relevant material from someone working specifically in a given area, the ability to choose someone based on presentation style, and availability.²¹⁸ While using an internal expert may provide additional benefits, such as knowledge and familiarity with the program, the overall best effect may be achieved by pairing outside consultants with internal faculty members.²¹⁹

Law faculties sometimes conduct retreats for periods of self-examination, such as when they begin a self-study required for the ABA accreditation process.²²⁰ Often, law faculties will hire an outside consultant to lead discussion under the idea that someone outside the politics of a particular working group can help keep discussions neutral. That person will usually work with a faculty member to help plan the event, but the inside person will usually stay out of the actual program.

When faced with big-picture decision making, such as crafting mission statements or deciding on large-scale policy revisions, faculties often hold facilitated retreats. One rationale behind a facilitated retreat is to have the conversation moderated by a completely neutral party who has no stake in the outcome. As law faculties often have competing agendas, a neutral facilitator may encourage more discussion among differing factions of faculty looking to advance different projects or interests in a curriculum.

Curriculum committees, usually a small group of voluntary or appointed faculty members, are often tasked with the isolated job of considering changes to and restructuring a law school teaching program. When finished with their decision-making process, they will usually bring that decision to the full faculty for a vote of approval.

Consultants can add a positive dimension to that neutral process. A consultant from a particular area of expertise, whether it is a substantive area of law, expertise in teaching, or expertise in revamping a program or a curriculum, can not only help the conversation flow but

218. See Maria Arnone, *Corporate Universities: A Viewpoint on the Challenges and Best Practices*, 3 CAREER DEV. INT'L 199, 199–205 (1998) (outlining the benefits of using outside consultants to design corporate educational material to educate internal employees).

219. *Id.*

220. AM. BAR ASS'N, 2012–2013 ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 10 (2012), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.authcheckdam.pdf.

contribute to it without complicating matters or agreeing with any specific agenda. Someone who can answer the faculty's questions about the process or substance of proposed changes without taking sides can help conflicted faculties push through their own interests towards a beneficial solution for the entire institution. Law faculties can benefit immensely from neutral guidance in considering changes to their curriculums. The up-front investments made in finding and working with consultants can pay off greatly in an end result that truly reflects the faculty's and school's needs for the future.

X. Using Portfolios as Methods of Assessment and Outcome Measuring

Student portfolios come in various formats. A portfolio is, at its essence, a collection of work that incorporates self-reflection to support learning and help students understand their own growth.²²¹ Therefore, it is important to understand that portfolios are not generated simply for their end product—as an outcome—but also for the learning process that students undergo in assembling them.²²²

Other professional-level education programs have taken note of the use of portfolios for monitoring and assessing student achievement.²²³ In higher education, these programs have included medical education, teacher training, writing, and engineering.²²⁴ Portfolios have also been used in fields such as fine arts and architecture for many years and have recently been introduced into the health professions at the undergraduate and post-graduate levels.²²⁵ Although relatively new to higher education, portfolios have been used effectively to show that students have learned in outcome-based education and preparedness for a profession.²²⁶

While traditionally associated with artists, writers, advertisers, and the like, today portfolios are found in all areas of education for learning and assessment.²²⁷ The reasons for this increased adoption range

221. VAL KLENOWSKI, DEVELOPING PORTFOLIOS FOR LEARNING AND ASSESSMENT: PROCESSES AND PRINCIPLES 3 (2002).

222. *Id.* at 3–4.

223. See Sandra L. Ramey & M. Louise Hay, *Using Electronic Portfolios to Measure Student Achievement and Assess Curricular Integrity*, 28 NURSE EDUCATOR 31, 31 (2003).

224. Brenda Johnston, *Summative Assessment of Portfolios: An Examination of Different Approaches to Agreement Over Outcomes*, 29 STUD. HIGHER EDUC. 395, 396 (2004).

225. Margery H. Davis & Gominda G. Ponnampereuma, *Portfolio Assessment*, 32 J. VETERINARY MED. EDUC. 279, 279 (2005).

226. Ramey & Hay, *supra* note 223, at 31.

227. KLENOWSKI, *supra* note 221, at 1.

from dissatisfaction with traditional quantitative assessment approaches to the movement towards qualitative evaluations.²²⁸ Some have asserted that the use of portfolios can help rectify the imbalance of excessive mechanical testing.²²⁹

Portfolios have various advantages as an assessment method. They can reveal student strengths and weaknesses when used formatively, create a great opportunity for feedback, and help assess multiple components of the curriculum.²³⁰ However, they are also time-consuming, challenging to evaluate, potentially costly, difficult to manage, and create a host of other administrative concerns.²³¹ Advantages of portfolios include promoting critical thinking, holding students accountable for their own education, helping assess performance, using multiple methods of assessment, promoting student learning about learning, and reflecting students' progression toward learning outcomes, among other benefits.²³²

In the engineering field, the use of portfolios for outcome assessment became a hot topic after the Accreditation Board for Engineering and Technology *Engineering Criteria 2000*, the guiding document for engineering programs, stated that "each program must have an assessment process with documented results."²³³ The task force on evaluating engineering assessments recognized portfolios, among other methods, as one assessment device that could demonstrate the educational objectives expected of engineering graduates at the university level.²³⁴ Portfolios were identified as having a moderate level of correlation between their creation and the ability to measure learning outcomes for their students.²³⁵ But before adopting a new way to measure outcomes, faculty must be on the same page regarding the assessment plan. Those experienced in methods of assessment suggest that there are three key questions to ask and answer before proceeding with such a plan: (1) Do all the stakeholders agree on the goals and objectives of the program or curriculum being assessed; (2) do they also agree on assessment methods; and (3) does a process exist in which stakeholders receive regular feedback on assessment findings so

228. *Id.* at 2.

229. *Id.*

230. UNIV. OF TEX. AT ARLINGTON, *supra* note 101, at 2, 4.

231. *Id. passim.*

232. Davis & Ponnampuruma, *supra* note 225, at 282 (internal citations omitted).

233. Barbara M. Olds, *The Use of Portfolios for Outcomes Assessment*, in IEEE EDUC. SOC'Y, 1997 FRONTIERS IN EDUCATION CONFERENCE 262 (1997).

234. *Id.*

235. *Id.*

that changes can be made to the program?²³⁶ To answer these questions, there should be extensive input and discussion from all stakeholders—not just faculty, but students, alumni, and the industry in which the program operates.²³⁷ Such conversations can be quite heated and extensive, but all programs benefit from their occurrence.²³⁸

For example, the Colorado School of Mines has successfully used portfolios for many years in its general undergraduate and honors programs.²³⁹ They have determined that the portfolio process does not intrude on normal classroom procedures, that they could view examples of students' work over time, and that overall portfolios raised the awareness for meaningful assessment on campus.²⁴⁰ While the program is still a work in progress, portfolios have been successfully used for both summative and formative evaluations.²⁴¹

Portfolios have also been used in healthcare education for a variety of purposes, such as student reflection and assessment.²⁴² Portfolios are required for nursing programs in the United Kingdom.²⁴³ In a study on the effectiveness of portfolios in this context, the following questions were asked:

1. Are portfolios effective and practical instruments for post-graduate healthcare education?

.....

2. What is the evidence that portfolios are equally useful across health professions, and can they be used to promote interdisciplinary learning?

.....

3. What are the advantages and disadvantages of moving to an electronic format for portfolios?²⁴⁴

236. *Id.* at 263.

237. *Id.*

238. *See id.*

239. *Id.* at 264.

240. *Id.*

241. *Id.* Formative assessments are those that monitor student learning such that students can improve their learning and teachers can improve and modify their teaching to accomplish their goals. *What Is the Difference Between Formative and Summative Assessment?*, EBERLY CTR. FOR TEACHING EXCELLENCE AT CARNEGIE MELLON, <https://www.cmu.edu/teaching/assessment/basics/formative-summative.html> (last visited Apr. 27, 2014). By contrast, summative learning's only purpose is to measure student learning against a predetermined benchmark at the conclusion of the learning process. *Id.*

242. Claire Tochel et al., *The Effectiveness of Portfolios for Post-Graduate Assessment and Education: BEME Guide No. 12*, 31 MED. TCHR. 320, 320 (2009).

243. *Id.* at 320–21.

244. *Id.* at 321.

These questions help to determine whether portfolios are effective tools within a curriculum and to assess whether students are meeting learning goals. The combination of large-scale questions regarding their effectiveness and small-scale questions regarding their format are important examples of how legal educators should approach the topic of incorporating portfolios into their programs.

Portfolios are not just extended résumés, but rather can take one of several forms. At its core, a portfolio collects evidence of achieving desired learning outcomes.²⁴⁵ As determined by the learning outcomes of a particular curriculum, some portfolios contain all material generated in the educational experience, while others contain only select works by an individual.²⁴⁶ A portfolio is more than just a log-book, as it includes not just evidence of work but also annotations of a student's descriptive, analytical, and evaluative reflection on learning.²⁴⁷ In this regard, portfolios reflect academic progress and potentially indicate professional development.²⁴⁸ Accordingly, the tool becomes useful to assess not only past performance but also professionalism.²⁴⁹

Portfolios have advantages as outcome measurements, including the ability to rely less on standardized testing, the ability to support teaching activities with evaluation, the ability to track students over a longer period of time with an evaluation measure, and the use of a broader spectrum of information in assessing a student's performance.²⁵⁰ All of these benefits can be obtained by portfolios as opposed to individual testing, which most programs still heavily rely upon.²⁵¹ Proponents of portfolios have also argued that portfolios are a non-radical, easily adaptable solution to these problems.²⁵² Electronic portfolios may now be "digests of evidence representing the critical skills required for professional and accreditation standards."²⁵³ They can be used both to assess the success of programs as a whole as well as evaluating individual students within a program.²⁵⁴

245. Davis & Ponnampereuma, *supra* note 225, at 279.

246. Ramey & Hay, *supra* note 223, at 31.

247. Davis & Ponnampereuma, *supra* note 225, at 279.

248. Ramey & Hay, *supra* note 223, at 32.

249. Davis & Ponnampereuma, *supra* note 225, at 279.

250. Olds, *supra* note 233, at 262.

251. *Id.*

252. *Id.* at 263.

253. Ramey & Hay, *supra* note 223, at 31.

254. *Id.*

Essentially, portfolios show four levels of assessment—factual recall of knowledge, application of knowledge, simulated examinations of competence assessment, and assessing a real life situation—in other words: “knows,” “knows how,” “shows how,” and “does.”²⁵⁵

There are several incentives and benefits that students may receive from creating electronic portfolios. First, use of the portfolios encourages students to write for a professional audience and helps them make the connection between their schooling and their profession.²⁵⁶ Second, students may be more likely to publish their work, which may be helpful in their job searches to reach a future employer.²⁵⁷ Third, portfolios can be used to assess students’ critical thinking abilities by demonstrating that students can apply their fact-based knowledge to comprehend problems and solve those problems in a creative manner.²⁵⁸

Building a portfolio consists of two major tasks. The first is the decision-making process of what is to be in the portfolio based on curricular structure, and the second is the physical construction or housing of the portfolio.²⁵⁹ In evaluating what should comprise a portfolio, various factors must be analyzed, including “key indicators,” also known as “program outcomes.”²⁶⁰ Program outcomes generally describe the body of knowledge and skills that students should possess after completing a particular set of coursework. They can be college, school, department, or program wide.²⁶¹ Portfolios may be tailored to reflect any of those scopes.

Before students are tasked with preparing a portfolio, they should be familiar with these outcomes and how they will be assessed.²⁶² Students and faculty who understand the learning outcomes can direct their learning to construct a portfolio that properly reflects the desired outcomes and helps ensure those outcomes are met.²⁶³

Additionally, portfolios should demonstrate reflection on the process of *creating* the portfolio.²⁶⁴ As a collection of a student’s work over time, portfolios should demonstrate that students have reflected

255. Davis & Ponnampereuma, *supra* note 225, at 279 (internal citations omitted).

256. Ramey & Hay, *supra* note 223, at 31.

257. *See id.*

258. *Id.*

259. *Id.* at 32.

260. *Id.*

261. *Id.*

262. *See id.*

263. *See id.*

264. *Id.* at 34.

on the learning outcomes, understood them, and have created a portfolio carefully connected to them.²⁶⁵

The last substantive factor to consider in creating a portfolio for school purposes involves understanding the evaluation process applied to the portfolio contents.²⁶⁶ There are several rubrics used in scoring components of professional portfolios. First is an analytical rubric, which divides the portions of the portfolio by subject and shows how each is scored.²⁶⁷ A second is a holistic rubric, which considers the project in its entirety.²⁶⁸ Last, a portfolio can be analyzed by concentrating on the major skills or areas within the whole performance.²⁶⁹ By understanding the assessment tools applied to portfolios, students can best create a portfolio that communicates the desired levels of achievement.

In creating a portfolio program, faculty should be prepared to answer the following questions:²⁷⁰

- (1) "What is the purpose of the portfolio?"²⁷¹
- (2) "What is the audience for the portfolio?" Possible audiences include only faculty or the industry as well.²⁷²
- (3) "What should be included in the portfolio? The only clear answer is *not everything* [produced in the program]."²⁷³
- (4) "Is the primary purpose of the assessment formative? Summative?" Is it designed to understand students' progress or to evaluate them only?²⁷⁴
- (5) "Who keeps the portfolio?" The student or the school can house it, with different implications for the creation of the portfolio and resource management.²⁷⁵
- (6) "Who assesses the portfolio? How often? Over what length of time?" Possible choices for evaluators are individual course faculty, an assessment committee, or outside evaluators, and the ideal time period is at least yearly until the student enters the workplace.²⁷⁶
- (7) To whom and how are portfolio results shown? Having a clear system of understanding how portfolios are used is key to any system.²⁷⁷

265. *Id.* at 32.

266. *Id.* at 33.

267. *Id.*

268. *Id.*

269. *Id.*

270. Olds, *supra* note 233, at 264.

271. *Id.*

272. *Id.*

273. *Id.*

274. *Id.*

275. *Id.*

276. *Id.*

277. *See id.*

Bringing electronic portfolios to higher education is not an easy task. It requires commitment from faculty, administration, and students.²⁷⁸ There must be a balance of labor among these groups to accomplish this integration. Administrators have the responsibility of ensuring that students meet technical needs, students are ultimately responsible for creating the content, and faculty must teach the necessary material including how to create and use the portfolio.²⁷⁹

There are methods to ensure that all these duties are accomplished properly and that steps are taken for the successful implementation of this kind of program. First, faculty may need to redesign courses to incorporate the use of portfolios.²⁸⁰ Included in this process is the idea of identifying key courses throughout the curriculum in which portfolio entries should be made and including methods to encourage this, rather than a blanket statement that portfolios will exist.²⁸¹ The selection of these courses is an important consideration for faculty, as the opportunities to have portfolio content should be aligned with the learning outcome of the programs, as well as practical considerations of accomplishing this task.²⁸²

Students will certainly have an increased workload in accomplishing the development of their individual portfolios. Although faculty may create portfolio opportunities in their classes and there should be some required benchmarks for them, students still need to have some choice as to which works are actually included in their own portfolio.²⁸³ Students should make that decision by carefully considering the information presented to them regarding the purpose of portfolios in their education.²⁸⁴ Students should also have some freedom to organize the portfolio in their own way using their own creativity. As such, the portfolio becomes not only a reflection of their curricular work but also a tangible insight into their work process.²⁸⁵

Practically speaking, portfolio construction takes time, which must be allotted for within the curricular program. To successfully assemble a portfolio, there are five stages: (1) collection of evidence of achievement of learning outcomes; (2) reflection on that learning; (3) evaluation of evidence; (4) defense of evidence; and (5) assess-

278. Ramey & Hay, *supra* note 223, at 33.

279. *Id.* at 34.

280. *Id.*

281. *Id.*

282. *Id.*

283. *Id.*

284. *Id.*

285. *See id.*

ment decision.²⁸⁶ The collection is the traditional assembling of classroom and simulation work done to demonstrate success within the academic curriculum as designed.²⁸⁷ This work has generally received teacher feedback in its creation.²⁸⁸ One caution in this portion of the portfolio is that students should create a balanced sample of work, not one that is over inclusive or overwhelming.²⁸⁹ To solve this problem, students can use an assessment blueprint—mapping curriculum outcomes and content—to ensure that the portfolio has sampled different areas in appropriate proportions.²⁹⁰

First, the construction is a long-term project and, as such, students must know this is not something that can be quickly completed in the weeks leading up to the course ending or graduation. To aid this understanding, adequate time must be built into the curriculum, there must be a reward for the completion of the portfolio, and students must be provided with a roadmap or template for completion.²⁹¹ While not every portfolio needs to be completed in lockstep, such as everyone contributing the same assignments from a certain four courses, a school could consider an old-fashioned numbered menu approach—a student can choose a certain number of assignments from the specific courses, A, B, and C.

Second, the reflective process “should be directed to promote learning, personal and professional development, and improvement of practice.”²⁹² In other words, students must show not only their work but also answer the questions of what did they learn, how did they get there, and how far do they still need to go?

Third, the quality of the evidence in the portfolio needs to be assessed in standard ways under the curriculum.²⁹³ Ratings of projects should be collated among all projects so that the evaluation is reliable and can provide feedback both on the teaching of the material and the learning process of the student.²⁹⁴

A fourth stage can be defense of the portfolio—an interview process to confirm the candidate’s strengths or weaknesses as assessed

286. Davis & Ponnampuruma, *supra* note 225, at 279.

287. *Id.* at 279–80.

288. *Id.* at 280.

289. *Id.*

290. *Id.*

291. Ramey & Hay, *supra* note 223, at 35.

292. Davis & Ponnampuruma, *supra* note 225, at 280 (internal citations omitted).

293. *Id.*

294. *Id.*

from the portfolio.²⁹⁵ Not every student may be included in this process—in the health professions this has been limited to borderline, failing, or honors candidates.²⁹⁶

Last, a full-scale assessment of the portfolio must be resolved.²⁹⁷ In other words, faculties need to consider not only how each portion of the portfolio is assessed in becoming a part of the portfolio, but also how the project as a whole will be evaluated. These considerations are not only pedagogical (on what scale or against what standard) but also address practical issues as to the timing and mechanism of their review.

As for technical support, consideration needs to be given to how these portfolios will be developed and created, housed electronically, and how faculty will be able to access them to give feedback.²⁹⁸ While today's technology certainly allows for this, adjustments may be necessary to incorporate portfolios into the law school environment. However, if law courses can teach law students to complete complex tasks in the legal environment, such as creating web-based applications, then surely this challenge can be conquered.²⁹⁹

In sum, portfolios can fill the gaps in the law school curriculum to demonstrate necessary outcomes, such as being able to produce practice-ready, quality work. While it cannot and should not include all coursework, a balanced portfolio can enhance the professional school experience.³⁰⁰

Even so, questions about portfolios remain. There is a tension between using them as an assessment tool and as a learning or professional development tool.³⁰¹ In fact, one program using portfolios reported faculty complaints of increased workloads, student confusion regarding the correlation between course goals and portfolios, and misunderstandings regarding the purpose of portfolios.³⁰²

These problems are correctable, and suggestions have been made to ensure that portfolio creation is specifically tied to a clearly defined

295. *Id.*

296. *Id.*

297. *Id.* at 281.

298. Ramey & Hay, *supra* note 223, at 35.

299. See Tanina Rostain et al., *Thinking Like a Lawyer, Designing Like an Architect: Preparing Students for the 21st Century Practice*, 88 CHI.-KENT L. REV. 743, 743–44 (2013).

300. Davis & Ponnampereuma, *supra* note 225, at 282.

301. KLENOWSKI, *supra* note 221, at 1.

302. Julia M. Williams, *The Engineering Portfolio: Communication, Reflection and Student Learning Outcomes Assessment*, 18 INT'L J. ENGINEERING EDUC. 199, 200 (2002).

purpose.³⁰³ One concern associated with the portfolio process in other programs was how to assess the student-learning outcome of “effective communication.”³⁰⁴ To help solve the problem of assessing communication skills and define those skills further, it was considered that the portfolio must reflect five important tasks regarding effective communication: (1) defining communication; (2) identifying appropriate skills and mapping them in the curriculum; (3) correlating these learning objectives to courses or the program; (4) facilitating opportunities for students to reflect on learning; and (5) assessing actual student learning.³⁰⁵ The portfolio creation process required the faculty to focus on exactly what was to be learned and how to show it was learned.³⁰⁶ This can ease student concerns and frustrations about why the additional requirement was added and smooth the transition of incorporating portfolios into a program.³⁰⁷

Ultimately, one study found portfolios to be a practical and effective instrument in healthcare education.³⁰⁸ It has even been suggested that some of the difficulties in using portfolios—such as standardizing ways to grade them when different teachers of a same subject value different attributes of quality—were merely part of the necessary process that faculty should be following to provide sound assessment.³⁰⁹ In other words, the process of implementing portfolios can itself improve a program.

This Article is not the first to suggest portfolios for law school students.³¹⁰ Thomas M. Cooley Law School has blazed the trail in this field by setting up voluntary electronic portfolios for students to use to demonstrate their skills.³¹¹

Portfolios could be beneficial for law students in many ways. First, portfolio creation could help solve the problem of students believing doctrinal courses exist in isolation through integrating student thinking. The process of creating and reflecting on their body of work would help students see, remember, and understand the continuity and connection within their course of study. Second, the actual product would be useful in helping the legal profession understand what

303. *Id.* at 204.

304. *See id.* at 200.

305. *Id.* at 201.

306. *See id.* at 204–05.

307. *See id.*

308. Tochel et al., *supra* note 242, at 320.

309. Johnston, *supra* note 224, at 407.

310. Lande & Sternlight, *supra* note 120, at 291–92.

311. *Id.* at 292.

students are accomplishing in a particular course of study when it is presented to them by job seekers.

Last, the directing of and monitoring of documentation of practice-ready skills by law faculty would help the institution meet and promote this important goal and help the practicing bar understand how its new attorneys have been educated. In short, portfolios would benefit the entire student-faculty-bar relationship.

Conclusion

The American system of law is obviously known for its reliance on precedent. Legal education has modeled this system through the years, taking a *stare decisis* approach to its teaching by keeping classroom experiences substantially similar through the years. However, when a court sees a new case that demonstrates the law they have been faithfully applying for years is no longer serving its purpose, the court can change course. Before inventing a radical new direction on which to embark, however, courts look to other jurisdictions or situations from which they might borrow the tried and true, or develop a new plan for their jurisdiction or situation accordingly.

The time has come for legal education to do the same. The current crisis in legal education should demonstrate to legal educators that their previous decisions on how to educate law students should not stand. Legal educators should take a page from courts in seeking guidance from other “jurisdictions” by looking at other programs in higher education, other programs turning out professionals, and those experts with years of experience studying education to help determine what the right path is for legal education. These ten suggestions should be a start for every institution to get to work making a new plan for legal education in the twenty-first century.

