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Alternative Justifications for Academic Support II: How “Academic Support Across the Curriculum” Helps Meet the Goals of the Carnegie Report and Best Practices

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**ALTERNATIVE JUSTIFICATIONS FOR ACADEMIC SUPPORT
II: HOW “ACADEMIC SUPPORT ACROSS THE CURRICULUM”
HELPS MEET THE GOALS OF THE CARNEGIE REPORT AND
BEST PRACTICES**
LOUIS N. SCHULZE JR.*

In the wake of two momentous critiques of legal education, popularly known as the “Carnegie Report” and “Best Practices,” law schools are reconsidering certain basic assumptions about how to educate future lawyers. Even the most forward-thinking reformers, however, struggle with the details of how to implement many of the recommendations of these reports. Providing more formative assessment, for instance, is a laudable objective but one that has serious ramifications in terms of resource expenditures. This article seeks to provide a remedy for many of these struggles: “Academic Support Across the Curriculum.” This article argues that the reconceptualization of an under-leveraged asset in many law schools, Academic Support Programs (ASPs), can help provide crucial improvements in legal education. By examining the reforms urged by the Carnegie Report and Best Practices, and by detailing the methods of certain exemplary ASPs throughout the country, this article analyzes how ASPs just might be the answer to many tough questions.

I. INTRODUCTION

Legal education is indeed at a crossroads. For over a century, the legal academy has prepared students for the practice of law basically using a static methodology.¹ Traditionally, law schools’ sole endeavor was to

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¹ Edward Rubin, *What’s Wrong with Langdell’s Method and What to Do About It*, 60 VAND. L. REV. 609, 648 (2007) (“To rely on a model of education that was designed in the 1870s . . . as the traditional approach to legal education does, denies us the benefit of the entire range of modern thought about the educational process and of the entire field of
(continued)

teach students generally how to “think like a lawyer.”² Training on how to be a lawyer, by contrast, often remained the tacit duty of a student’s first employer.³ Moreover, teaching the law itself, and its application to real cases, has traditionally been anything but explicit. The application of the classic “Socratic Method” often left students with more questions than answers, which was considered desirable in that the cream of the law student crop was thus compelled to find answers on its own.⁴

Despite the supposed desirability of the traditional approach, certain forces have arisen that make these traditions impossible to maintain. The explosion of law school tuition in recent years⁵ has resulted in the “consumerization” of law students; the customers, it seems, now demand more than just inculcation on “thinking like a lawyer.”⁶ Meanwhile, legal employers bemoan the fact that law graduates pass the bar ill-prepared to

modern psychology that informs this area.”), *quoted in* Roy Stuckey, “*Best Practices*” or *Not, It Is Time to Re-Think Legal Education*, 16 CLINICAL L. REV. 307, 308 n.6 (2009).

² WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 47 (2007) [hereinafter CARNEGIE REPORT]. See also Seth Freeman, *Bridging the Gaps: How Cross-Disciplinary Training with MBAs Can Improve Transactional Education, Prepare Students for Private Practice, and Enhance University Life*, 13 FORDHAM J. CORP. & FIN. L. 89, 92 (2008); Jess M. Krannich et al., *Beyond “Thinking Like A Lawyer” and the Traditional Legal Paradigm: Toward a Comprehensive View of Legal Education*, 86 DENV. U. L. REV. 381, 388 (2009).

³ See CARNEGIE REPORT, *supra* note 2, at 88; Jennifer S. Bard, *What We in Law Can Learn From Our Colleagues in Medicine About Teaching Students How to Practice Their Chosen Profession*, 36 J.L. MED. & ETHICS 841, 843 (Supp. 2008); Neil J. Dilloff, *The Changing Cultures and Economics of Large Law Firm Practice and Their Impact on Legal Education*, 70 MD. L. REV. 341, 361–62 (2011) (arguing that mandatory third year employment would be beneficial to potential lawyers and their first employers).

⁴ CARNEGIE REPORT, *supra* note 2, at 2 (describing the case-dialogue method as a game of “hide the ball”). See also Benjamin V. Madison, III, *The Elephant in Law School Classrooms: Overuse of The Socratic Method as an Obstacle to Teaching Modern Law Students*, 85 U. DET. MERCY L. REV. 293, 299–300 (2008).

⁵ See AM. BAR. ASS’N, LIFTING THE BURDEN: LAW STUDENT DEBT AS A BARRIER TO PUBLIC SERVICE 10 (2003), available at <http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/lrap/lrapfinalreport.authcheckdam.pdf>.

⁶ See Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 598, 598–99 (2010).

handle lawyerly tasks wholly independent.⁷ The bottom line is students and the practicing bar now demand that law schools do more to render students “practice ready.”⁸

In response to these and other forces, two influential reports contemporaneously studied the continued viability of the legal education status quo: *Educating Lawyers: Preparation for the Practice of Law* (the Carnegie Report), issued by the Carnegie Foundation for the Advancement of Teaching,⁹ and *Best Practices for Legal Education* (Best Practices), published by the Clinical Legal Education Association (CLEA).¹⁰ The Carnegie Report, based on site visits and interviews with law students and faculty, concluded that although mainstream legal education has many strengths, a great deal of reform is necessary.¹¹ The Carnegie Report’s authors categorize what they see as imperative pedagogical goals into three “apprenticeships”: the “intellectual or cognitive apprenticeship”; the “practical apprenticeship”; and “the apprenticeship of identity and purpose.”¹² The authors contend that mainstream legal education focuses heavily on the first apprenticeship, focuses too little on the last two, and calls for the improvement of the holistic preparation of law students by the integration of all of the apprenticeships in law school curricula.¹³

Even while recognizing the emphasis on the cognitive apprenticeship in law schools, the Carnegie Report nevertheless criticizes the means by which most law schools attend to the intellectual training of lawyers.¹⁴ Similarly, Best Practices recognizes the gap in practical and ethical training in the modern legal academy but also details the fractured means by which law schools attempt to teach substance.¹⁵ Specifically, Best Practices critiques the legal academy for failing to “study and practice

⁷ See Clark D. Cunningham, *Should American Law Schools Continue to Graduate Lawyers Whom Clients Consider Worthless?*, 70 MD. L. REV. 499, 499–500 (2011); Dilloff, *supra* note 3, at 342 (suggesting changes to the law school curriculum to better prepare students for the current realities of practice).

⁸ See Dilloff, *supra* note 3, at 359.

⁹ CARNEGIE REPORT, *supra* note 2.

¹⁰ ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION (2007) [hereinafter BEST PRACTICES].

¹¹ CARNEGIE REPORT, *supra* note 2, at 16–17.

¹² *Id.* at 28.

¹³ *Id.* at 191.

¹⁴ *Id.* at 24.

¹⁵ BEST PRACTICES, *supra* note 10, at 283.

effective educational philosophies and techniques,”¹⁶ for permitting an environment that is “actually harmful to the emotional and psychological well-being of many law students,”¹⁷ and for lacking sufficient opportunities for formative assessment.¹⁸ In short, Best Practices amplifies the Carnegie Report’s call for a fairly drastic change to the status quo of legal education.

In the wake of these calls, the legal academy has responded with mixed reviews. While some law teachers have supported the bipartite call for action enthusiastically,¹⁹ others have balked.²⁰ An important critique of the Carnegie Report and Best Practices reform efforts focused on the problem of cost; these reports had the unfortunate fate of being published at the dawn of the global economic downturn.²¹ Critics pointed out, as the Carnegie Report itself noted, that formative assessment exercises take time, time is a drain on professorial human capital, and this drain in turn requires additional, costly hiring.²² A few voices attempted to rebut this problem,²³ but the issue still persists.

¹⁶ *Id.* at 107.

¹⁷ *Id.* at 111. See also Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883, 894 (2007).

¹⁸ BEST PRACTICES, *supra* note 10, at 239 (“[E]xcept perhaps in legal writing and research courses, the current assessment practices used by most law teachers are abominable.”).

¹⁹ Patricia Grande Montana, *Lessons from the Carnegie and Best Practices Reports: A Look at St. John’s University School of Law’s Street Law Program as a Model for Teaching Professional Skills*, 11 T.M. COOLEY J. PRAC. & CLINICAL L. 97, 97 (2009). In embracing the changes suggested by the Carnegie Report and Best Practices, St. John’s University School of Law offers students an opportunity to participate in the Street Law Program. *Id.* at 99. During the Street Law Program, law students teach practical legal information to high schools students in Queens, New York. *Id.*

²⁰ See Joseph A. Dickinson, *Understanding the Socratic Method in Law School Teaching After the Carnegie Foundation’s Educating Lawyers*, 31 W. NEW ENG. L. REV. 97, 98–100 (2009) (criticizing the Carnegie Report’s challenge to the Socratic Method and Case Method as the “signature pedagogy” of law schools).

²¹ See CARNEGIE REPORT, *supra* note 2, at 202 (noting that the “trade-off between higher costs and greater education effectiveness” is an obstacle to development of a “more balanced and integrated legal education”).

²² See, e.g., Andrea A. Curcio, *Moving in the Direction of Best Practices and the Carnegie Report: Reflections on Using Multiple Assessments in A Large-Section Doctrinal* (continued)

Enter Academic Support Across the Curriculum. Most American law schools provide some type of academic support.²⁴ At many law schools, ASPs are extensive and pervasive; at others, they are relatively modest.²⁵ The role of these programs has been in flux over the two decades of their existence and surely the financial pinch experienced by most law schools is leading to a cessation of resource expansion for them.²⁶ Therefore, many ASPs may face the need to justify their existence.²⁷ Because ASPs provide a positive and healthy environment for students and because these programs are already steeped in the fundamentals of effective educational philosophies and techniques,²⁸ they provide a ready-made solution to many facets that the Carnegie Report and Best Practices call to reform.

Accordingly, law schools can recognize the benefits of many of the positive changes suggested by these two reports by reconfiguring the current paradigm of academic support. While not abandoning ASPs' fundamental role of assisting underperforming students and supporting the success of nontraditional students, Academic Support Across the Curriculum can help a law school:

- (1) increase opportunities for formative assessment;

Course, 19 WIDENER L.J. 159, 159–160 (2009) (noting that most law school professors do not have time during the semester to grade exams and give significant feedback to students).

²³ See generally *id.* at 160 (detailing Professor Curcio's laudable attempts in her first year Civil Procedure class to integrate time-consuming formative assessment opportunities).

²⁴ Stephen E. Schilling & Rebecca M. Greendyke, *How to Win a CALI Award: Some Personal Advice From Two Students Who Have Done It*, 36 U. DAYTON L. REV. 167, 177 (2011).

²⁵ See Louis N. Schulze Jr., *Alternative Justifications for Law School Academic Support Programs: Self-Determination Theory, Autonomy Support, and Humanizing the Law School*, 5 CHARLESTON L. REV. 269, 271 (2011).

²⁶ See *id.* at 271–72 (explaining that some law schools are not adequately funding or substantially committing to ASPs because they are not considered to be cost-effective).

²⁷ See *id.* at 271–73 (introducing the project of presenting alternative justifications for ASPs).

²⁸ See *id.* at 281–83 (describing various techniques used by ASPs and explaining that ASPs are motivated by goals such as helping students understand “how to teach themselves to learn more efficiently” and holding students “accountable for keeping up with the studying and practicing techniques employed by students at the top of the class”), 313 (explaining that encouragement and feedback to students demonstrate a law school's dedication to the success of its students).

- (2) make teaching explicit;
- (3) generate future lawyers who are “self-regulated learners”;
- (4) foster an environment where “faculty with different strengths work in a complimentary relationship”²⁹ instead of a “collection of discrete activities without coherence”;³⁰
- (5) crystallize institutional intentionality and assist in institutional assessment;
- (6) support autonomy, provide a healthy learning environment, and “create a campus culture that is a positive force”;³¹
- (7) fully commit to preparing students for the bar exam;
- (8) use multiple methods of instruction and reduce reliance on Socratic Dialogue and the Case Method;
- (9) train students on receiving and using feedback;
- (10) assess whether students learn what is taught; and
- (11) ensure that summative assessments are also formative assessments.

This article proves that ASPs can attain these goals. Part II of this article defines the terms of this thesis by introducing the Carnegie Report and Best Practices and discussing what is meant by Academic Support Across the Curriculum. Part III of this article details how academic support helps to meet the Carnegie Report’s proposals, and Part IV details how it helps meet many of the goals of Best Practices. Part V raises the possible counterarguments to this analysis and rebuts those concerns. Finally, Part VI draws general conclusions about the implementation of this strategy and the necessity of future research.

II. DEFINING THE TERMS: THE CARNEGIE REPORT, BEST PRACTICES, AND ACADEMIC SUPPORT

Prior to a discussion of how to reconceptualize ASPs to meet the proposals of the Carnegie Report and Best Practices, background information on each of those concepts is necessary. These sections are not meant to be exhaustive descriptions of each subject, but instead a survey of the points of intersection that will serve as the basis for the analysis in Parts III and IV. Additionally, through these sections I hope to provide a

²⁹ CARNEGIE REPORT, *supra* note 2, at 197.

³⁰ BEST PRACTICES, *supra* note 10, at 7 (quoting GREGORY S. MUNRO, OUTCOMES ASSESSMENT FOR LAW SCHOOLS 3–4 (2000)).

³¹ CARNEGIE REPORT, *supra* note 2, at 183.

helpful synopsis of the Carnegie Report and Best Practices, as well background on ASPs, to aid in future research.

A. The Carnegie Report

The Carnegie Report is part of a series of comparative studies by the Carnegie Foundation for the Advancement of Teaching.³² The series examines how several professions educate their members: law, medicine, divinity, engineering, and nursing.³³ The authors, who included both legal and non-legal academicians, conducted extensive observations at a wide variety of law schools and interviewed students, faculty, and administrators.³⁴ The methodology used compared the strengths and weaknesses in legal education against the education models of other professional schools and to view the quality of the legal academy through the lens of current knowledge regarding learning theory.³⁵

The results were mixed. While complimenting the legal academy on its unique and effective approach to inculcating legal knowledge in neophyte lawyers,³⁶ the authors also critiqued the academy as being somewhat retrograde in terms of integrating instructional methods informed by modern knowledge of cognition.³⁷ Also, one of the authors' primary criticisms was to point out the legal academy's general failure to integrate pervasive practical training and opportunities to immerse students in considerations of the social-ethical implications of practicing law.³⁸ In short, law schools focus too much on how to think like a lawyer, and too little on teaching how to lawyer and how to conceptualize what it is to be a lawyer. The Carnegie Report thus categorizes these facets of professional education as apprenticeships: the cognitive or intellectual apprenticeship; the practical apprenticeship; and the apprenticeship of identity and purpose (or the "ethical-social apprenticeship").³⁹

³² *Id.* at 15.

³³ *Id.*

³⁴ *Id.* at 15–16.

³⁵ *Id.* at 1–2.

³⁶ *Id.* at 185.

³⁷ *Id.* at 186–88.

³⁸ *Id.* at 188.

³⁹ *Id.* at 28. The Carnegie Report denotes six tasks that law schools must achieve in preparing students for the cognitive, practice, and ethical-social apprenticeships:

1. Developing in students the fundamental knowledge and skill, especially an academic knowledge base and research[;]

(continued)

1. *The Cognitive Apprenticeship*

The cognitive apprenticeship “focuses the student on the knowledge and way of thinking of the profession.”⁴⁰ This entails indoctrination of “the academic knowledge base of the domain, including the habits of mind that the faculty judge most important to the profession.”⁴¹ Law schools’ primary method of attending to the cognitive apprenticeship, or its “signature pedagogy,” is the case-dialogue, popularly known as the Socratic Method.⁴² The purpose of the case-dialogue, and its “deep structure,” is to teach legal reasoning.⁴³

Gradually, case by case, students discover that reading with understanding means being able to talk about human

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2. Providing students with the capacity to engage in complex practice[;]
 3. Enabling students to learn to make judgments under conditions of uncertainty[;]
 4. Teaching students how to learn from experience[;]
 5. Introducing students to the disciplines of creating and participating in a responsible and effective professional community[; and]
 6. Forming students are able and willing to join an enterprise of public service[.]

Id. at 22.

⁴⁰ *Id.* at 28.

⁴¹ *Id.* See also Kathleen M. Burch & Chara Fisher Jackson, *Creating the Perfect Storm: How Partnering with the ACLU Integrates the Carnegie Report’s Three Apprenticeships*, 3 J. MARSHALL L.J. 51, 55–57 (2009).

The Socratic Method is the ‘legal academy’s standardized form of the Cognitive Apprenticeship,’ which focuses not only on the knowledge, but [also] the fundamental skills, of the profession. The authors of the *Carnegie Report* recognize the skills component of the Socratic Method when they state that ‘with its heavy predominance in the first year, this pedagogy emphasizes a view of the legal profession as constituted not so much by a kind of knowledge as by a particular way [of] thinking, a distinctive stance toward the world.’

Id. at 66 (internal citations omitted).

⁴² CARNEGIE REPORT, *supra* note 2, at 50–51.

⁴³ *Id.* at 51.

conflicts in a distinctively legal voice. The question-and-answer format models this translation process by continually translating ordinary conflicts into the distinctive 'frame' defined by legal points of reference and the requirements of legal doctrine.⁴⁴

While the traditional method has its strengths, the authors reflect on its problems:

Although the process of development parallels that of traditional craft apprenticeships, it is less obvious [in professional education] because the complex cognitive patterns of teacher-experts are generally not [as] explicit and are thus difficult for the student-novices to observe. Likewise, it proves difficult for teachers to discern errors and misunderstandings that may be occurring in the students' minds. These difficulties are especially pronounced in large classroom settings such as those in which the case-dialogue method is often employed.⁴⁵

In addition to the disconnect inherent in the case-dialogue method because of high faculty-student ratios,⁴⁶ law schools' signature pedagogy also distorts the nature of lawyering by creating a false dichotomy between doctrine and clients.⁴⁷ The case-dialogue tends to posit the lawyers as "distanced planners or observers [rather] than as interacting participants in legal actions."⁴⁸ In doing so, it also "forces students to separate their sense of justice and fairness from their understanding of the requirements of legal procedure and doctrine."⁴⁹

Another problem with the method law schools use to tend to the cognitive apprenticeship is the general failure to include proper assessment methods.⁵⁰ The Carnegie Report details two failings in this regard.⁵¹ First,

⁴⁴ *Id.* at 53.

⁴⁵ *Id.* at 61.

⁴⁶ *Id.*

⁴⁷ *Id.* at 56–67. See also Barbara J. Busharis & Suzanne E. Rowe, *The Gordian Knot: Uniting Skills and Substance in Employment Discrimination and Federal Taxation Courses*, 33 J. MARSHALL L. REV. 303, 304 (2000).

⁴⁸ CARNEGIE REPORT, *supra* note 2, at 57.

⁴⁹ *Id.*

⁵⁰ *Id.* at 163–65, 188.

⁵¹ *Id.* at 163–66.

law schools tend to focus on summative assessments to the exclusion (or reduction) of formative assessment.⁵² “Summative assessment involves a snapshot judgment of what a student knows at a particular time and is often used as a tool to evaluate where a student stands in terms of achieving ultimate educational objectives or where the student stands with respect to others.”⁵³ Meanwhile, “formative assessment includes opportunities to practice the knowledge and skills necessary to become an expert, followed by feedback on how well the student has mastered those skills.”⁵⁴ Although cognitive science experts seem to agree that formative assessment is a critical part of learning,⁵⁵ law schools tend to focus on summative assessment;⁵⁶ the Carnegie Report hints that reasons for this include the time-resource drain of formative assessment as well as the perception that law schools’ testing function is more summative as a means by which to provide an explicit sorting method for employers.⁵⁷

The second problem with law school assessments is that most classes, particularly those in the first year, include just one summative assessment, and that one exam accounts for a students’ entire grade for the course.⁵⁸ Although some schools encourage professors to use multiple assessments, the predominant method is the end of semester (or year) single

⁵² CARNEGIE REPORT, *supra* note 2, at 189.

⁵³ Judith Welch Wegner, *Reframing Legal Education’s “Wicked Problems,”* 61 RUTGERS L. REV. 867, 886 (2009). *See also* Krannich et al., *supra* note 2, at 393.

⁵⁴ Burch & Jackson, *supra* note 41, at 71.

⁵⁵ TERRY P. VENDLINSKI ET AL., CRESST REPORT 739: IMPROVING FORMATIVE ASSESSMENT PRACTICE WITH EDUCATIONAL INFORMATION TECHNOLOGY 2 (July 2008), available at <http://www.cse.ucla.edu/products/reports/R739.pdf>. *See also* Burch & Jackson, *supra* note 41, at 71 (“In fact, students learn best when given multiple opportunities of formative assessment, prior to the summative assessment—the final exam. The formative assessment opportunities need not be individually graded or included in the final grade, but the opportunity, followed by the feedback, is essential for effective learning and mastery of the skills needed for practice of the profession.”) (internal citations omitted).

⁵⁶ CARNEGIE REPORT, *supra* note 2, at 188–89.

⁵⁷ *Id.* at 168, 175–76. *See also* Krannich et al., *supra* note 2, at 393 (“The usual result of summative assessments is to rank, sort, and filter those being assessed. Certainly this is most students’ experience with the high-stakes exams given during the first year of law school, which have the effect of opening academic and career options for some students and closing them for others.”).

⁵⁸ CARNEGIE REPORT, *supra* note 2, at 162.

assessment.⁵⁹ Despite the fact that some faculty members acknowledge that “exam-taking skills are learnable skills,” any professorial attempt to teach these skills explicitly is the exception rather than the rule, and none of these practices are “part of a coordinated effort to work out the best use of assessment to improve the learning of law students.”⁶⁰

This seemingly ubiquitous industry-wide standard is decidedly detrimental to students on a number of levels. When coupled with mandatory curves, single assessment regimes are demoralizing, counterproductive, and polarizing.⁶¹ Students reported that intellectual engagement plummets after grades, resulting in their losing “the most valuable aspect of law school—learning.”⁶² It is crucial for the legal academy to start to appreciate just how truly aberrant this method is, compared to other systems of professional education.

2. *The Practical Apprenticeship*

The second apprenticeship is the practical apprenticeship. This mode focuses on forming the skills shared by competent practitioners.⁶³ This includes training in important lawyerly tasks such as legal writing and drafting, taking and defending depositions, negotiating, oral

⁵⁹ *Id.*

⁶⁰ *Id.* at 163.

⁶¹ *Id.* at 165.

The obstacles to improving this situation are quite real. There is evidence that law school typically blares a set of salient, if unintentional, messages that undercut the likely success of efforts to make students more attentive to ethical matters. The competitive atmosphere at most law schools generates a widespread perception that students have entered a high-stakes, zero-sum game. The competitive classroom climate is reinforced by the peculiarities of assessment in first-year courses. The ubiquitous practice of grading on the curve ensures that, no matter how talented or hard-working the students are, only a predetermined number will receive A's. Such a context is unlikely to suggest solidarity with one's fellow students or much straying from a single-minded focus on competitive achievement.

Id. at 31.

⁶² *Id.* at 165.

⁶³ *Id.* at 28.

argumentation, client counseling, and others.⁶⁴ Legal writing classes and clinics often serve as the source for this mode of learning,⁶⁵ and the Carnegie Report praised the pedagogical methods used in these contexts for their ample use of formative assessment and other powerful coaching and “scaffolding” techniques.⁶⁶ In short, the practical apprenticeship is that which trains law students how to facilitate their ability to think like a lawyer into an ability to act like a lawyer.

Despite the benefits of practical apprenticeship, facilitating the movement toward practice skills is usually a “secondary focus of legal education”⁶⁷ and, despite reports that new lawyers and employers most appreciate skills-related teaching in law school, “it remains controversial within legal education to argue that law schools should undertake responsibility for initiating and fostering this phase of legal preparation.”⁶⁸ This hesitancy, to put it lightly, has resulted in a fragmented and incomplete systemic approach to teaching lawyerly skills.⁶⁹ Thus, one of the most amplified aspects of the Carnegie Report’s critique stated that law schools should more fully and formally integrate the practical apprenticeship into the law school curriculum.⁷⁰

One can see the academy’s aversion to the practical apprenticeship in many places, some subtle and some not so subtle.⁷¹ At most law schools, the practical apprenticeship is primarily experienced not formally, within the law school curriculum, but informally by students working without credit and often without pay for local practitioners.⁷² Also, students

⁶⁴ *See id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 173–74.

⁶⁷ *Id.* at 87.

⁶⁸ *Id.*

⁶⁹ *Id.* at 7.

⁷⁰ *Id.* at 194–95.

⁷¹ *See* Sheldon & Krieger, *supra* note 17, at 894–95. Sheldon and Krieger’s work detailed the “‘corrosive effect’ of law school on law students’ well-being, values, and motivation” and “attributed [this] corrosive effect to a ‘problematic institutional culture’ that overvalued scholarship, undervalued teaching, employed unsound teaching and testing techniques, and overemphasized the abstract rather than training in the practical.” Nelson P. Miller, *An Apprenticeship of Professional Identity: A Paradigm for Educating Lawyers*, MICH. B.J., Jan. 2008, at 20, 21 (quoting Sheldon & Krieger, *supra* note 17, at 883).

⁷² CARNEGIE REPORT, *supra* note 2, at 88. Although this certainly is not a new development, it is interesting that the informal norms of acquiring practical experience
(continued)

perceive the devaluation of skills-learning from the way law schools treat these classes.⁷³ For instance, skills classes are often taught by faculty members other than those who teach doctrinal courses, and the skills instructors often have professional titles that differ from those of doctrinal faculty.⁷⁴ Whether students know it, those who teach skills are often paid less by law schools and often have a relatively relegated status within the academy in terms of voting rights, tenure eligibility, and participation in law school governance.⁷⁵ At many schools visited by the Carnegie Report's authors, "students commented that faculty view courses directly oriented to practice as of secondary intellectual value and importance."⁷⁶ Given these phenomena, it is hardly surprising that the authors of the

developed in a way that provides human capital cheaply to practitioners. When legal education migrated into the university and away from the previous regime of formal apprenticeships, one of the justifications for doing so was to end the exploitation of apprentices by practitioners. Stephen Ellmann, *The Clinical Year*, 53 N.Y.L. SCH. L. REV. 877, 884–85 (2008–2009). While paying these apprentices little to no compensation for their labor, practitioners often charged apprenticeship fees for use of the books they used to conduct legal research for the practitioner. David S. Romantz, *The Truth About Cats and Dogs: Legal Writing Courses and the Law School Curriculum*, 52 U. KAN. L. REV. 105, 108–09 (2003). It seems that the modern informal dolling out of students to practitioners, without credit or pay, replicates the exploitation of yesteryear in a way that further crystallizes the hegemony of the haves over the have-nots. At least the apprentices of the nineteenth century common law era did not have to go \$120,000 into debt and be exploited by practitioners.

⁷³ See generally Deborah Zalesne & David Nadvorney, *Integrating Academic Skills into First Year Curricula: Using Wood v. Lucy, Lady Duff-Gordon to Teach the Role of Facts in Legal Reasoning*, 28 PACE L. REV. 271 (2007).

⁷⁴ CARNEGIE REPORT, *supra* note 2, at 87–88. See generally Jo Anne Durako, *Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, 50 J. LEGAL EDUC. 562, 562–63 (2000) (discussing the disparities between legal writing and doctrinal courses and noting the gender implications of unequal pay).

⁷⁵ See generally Durako, *supra* note 74, at 863 (discussing the disparate pay, job security, and titles of women and skills professors).

⁷⁶ CARNEGIE REPORT, *supra* note 2, at 88. See also Zalesne & Nadvorney, *supra* note 73, at 273 (describing the schism between skills and doctrine and stating that skills teachers are often not tenure-track, the credit allocation to their courses is minimal, "and the course is otherwise marginalized, thereby sending a message to students that such skills work is of secondary importance[]").

Carnegie Report found the practical apprenticeship to be integrated into legal education in a less than optimal way.

3. *The Apprenticeship of Identity and Purpose*

The third apprenticeship is that of identity and purpose (or the ethical-social apprenticeship). The Carnegie Report loosely associates this concept with professional responsibility,⁷⁷ but in using the broader term of “professional identity,” the authors seem to imply a wider set of attributes than merely instruction on rules of permissible professional conduct.⁷⁸ Indeed, in defining this term, the authors state that this apprenticeship “introduces students to the purposes and attitudes that are guided by the values for which the professional community is responsible.”⁷⁹ The Carnegie Report expressly acknowledges the false dichotomy in legal education between teaching the rules of professional conduct and a broader discourse about what it means, morally and ethically, to be a lawyer.⁸⁰ The Carnegie Report finds that clinical legal education is the primary venue in which the broader discourse occurs,⁸¹ while the mandated “Professional Responsibility” course is where the narrower indoctrination occurs.⁸² Because learning the rules of permissible conduct is mandatory in law school and those rules are explicitly tested on the bar, while the broader discourse of ethics is haphazard and not required, the implications for students is that the academy values the former over the latter.⁸³

⁷⁷ CARNEGIE REPORT, *supra* note 2, at 14.

⁷⁸ *Id.* at 14, 129.

⁷⁹ *Id.* at 28.

To neglect formation in the larger public purposes for which the profession stands and their meaning for individual practitioners is to risk educating mere legal technicians for hire in the place of genuine professionals. Therefore, the goal of professional education cannot be analytical knowledge alone or, perhaps, even predominantly. . . . Rather, the goal has to be holistic: to advance students toward genuine expertise as practitioners who can enact the profession’s highest levels of skill in the service of its defining purposes.

Id. at 160.

⁸⁰ *Id.* at 129.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

Therefore, the Carnegie Report discusses a number of potential reforms for the integration of the broader concept of professional identity in legal education.⁸⁴ First, the authors call for the pervasive integration of identity and purpose throughout the curriculum.⁸⁵ They view the “relentless focus . . . on the procedural and formal qualities of legal thinking” as creating a severely unbalanced approach to the promotion of students’ growth into competent and responsible lawyers.⁸⁶ The authors assert that many law faculty view instruction on morals and justice as antithetical to analytical goals such as “rigor, skepticism, intellectual distance, and objectivity.”⁸⁷

Thus, despite the fact that the American Bar Association (ABA) requires instruction on professional responsibility⁸⁸ and the ABA’s earlier MacCrate Report counted among its priorities “striving to promote justice, fairness, and morality[.]”⁸⁹ law schools have nevertheless reacted in a merely “additive” way.⁹⁰ This means that rather than integrating consideration of morals, justice, and problem-solving, law schools have added a free-standing class in the curriculum which serves as a one-stop-shopping for a wide, systemic problem.⁹¹ In response, the Carnegie Report details ways in which law schools can broaden the conversation to balance and intermingle instruction on the cognitive apprenticeship with that of the practical and ethical apprenticeships.⁹²

⁸⁴ *Id.* at 147 (describing “a continuum of teaching and learning experiences concerned with the apprenticeship of professional identity” that ranges from courses in legal ethics to externships and clinical courses, which focus more on direct experience and practice).

⁸⁵ *Id.* at 147, 151–52.

⁸⁶ CARNEGIE REPORT, *supra* note 2, at 145. The authors report several statements by law students, which they find telling with regard to the impact of the relative absence of a discourse on morals and justice. *Id.* at 141–42 (“[L]aw schools create people who are smart without a purpose.” “It seems like legal thinking can justify anything.” “Most teachers don’t bring in ethical concerns.” “You are supposed to divorce yourself from those concerns.”).

⁸⁷ *Id.* at 133.

⁸⁸ *Id.* at 136.

⁸⁹ *Id.* at 136 (internal quotation marks omitted) (quoting AM. BAR ASS’N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM 3 (1992) [hereinafter MACCRATE REPORT]).

⁹⁰ *See id.*

⁹¹ *See id.*

⁹² *Id.* at 145–61.

The next reform urged by the Carnegie Report relating to the apprenticeship of identity and purpose is “modeling positive professional ideals.”⁹³ Law teachers stand as object-lessons for their students. In some ways, this is explicit in modeling analytical methods; in other ways, it is subtle in the choices they make in terms of emphasizing certain objectives over others; and still in other ways, it is implicit or inadvertent in terms of the professionalism they exude.⁹⁴ In other words, law teachers, both individually and institutionally, serve as role models for students as they begin to build their “professional selves.”

Therefore, the Carnegie Report notes that the most significant way that faculty model behavior is how they handle power and authority.⁹⁵ “From the first day of class onward, law students are vividly aware of the power that faculty wield over their future prospects.”⁹⁶ One professor interviewed framed this in terms of faculty serving as object-lessons in civility.⁹⁷ As a result, the Carnegie Report suggests that in addition to formal training in professional responsibility, less formal but pervasive discourse on ethics, and practical training in ethical-social behavior in clinics, law school faculty should closely consider the way that they can impact students’ perceptions of what it means to “live a life in the law.”⁹⁸

B. Best Practices

Best Practices is a collaborative effort spearheaded by the CLEA, with Roy Stuckey of University of South Carolina School of Law as the principal author.⁹⁹ Included in the list of contributors are many clinicians, some doctrinal professors, and a few law school deans.¹⁰⁰ As the document developed, the authors sought input from the legal academy by submitting multiple drafts to several organizations in the legal education field, such as Association of American Law Schools (AALS) annual meetings, various listservs, and the ABA Section of Legal Education.¹⁰¹ The authors of Best Practices coordinated with a number of the authors of the Carnegie Report,

⁹³ *Id.* at 156.

⁹⁴ *Id.* at 156–57.

⁹⁵ *Id.* at 157.

⁹⁶ *Id.*

⁹⁷ *Id.* at 157–58.

⁹⁸ *Id.* at 148–52, 157–60.

⁹⁹ BEST PRACTICES, *supra* note 10, at ix.

¹⁰⁰ *Id.* at x.

¹⁰¹ *Id.* at ix.

integrating certain findings and conclusions from that study.¹⁰² Therefore, there is some overlap between the two documents, which can best be described as a shared sense of the necessity of reform in the project of teaching future lawyers.

The purpose of Best Practices is to spark “[a] serious, thoughtful reconsideration of legal education in the United States”¹⁰³ The authors state their presumptions at the outset:

1. Most new lawyers are not as prepared as they could be to discharge the responsibilities of law practice.
2. Significant improvements to legal education are achievable, if the issues are examined from fresh perspectives and with open minds.
3. The process for becoming a lawyer in the United States will not change significantly.¹⁰⁴

This last presumption is rather striking in contrast to its predecessors in that the first two seem to be set on the goal of achieving positive change while the last item seems to question whether that very goal is possible. The authors raise some optimism in a footnote, stating that if the final presumption is invalid, they encourage the profession to conduct a broad recalculation of how to train lawyers in the United States.¹⁰⁵

The authors then ratchet up the tension by noting that modern criticisms of legal education are not aimed merely at peripheral concerns, but instead focused on fundamental flaws in the way the legal academy teaches new lawyers.¹⁰⁶ Comments such as “law school is empirically irrelevant, theoretically flawed, pedagogically dysfunctional, and expensive” support this contention.¹⁰⁷ The authors note that studies of legal education “have universally concluded that most law school graduates lack the minimum competencies required to provide effective and responsible legal services.”¹⁰⁸ They conclude that “[i]t is time for legal

¹⁰² *Id.* at xi.

¹⁰³ *Id.* at 1.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 1 n.1.

¹⁰⁶ *Id.* at 2 (quoting MUNRO, *supra* note 30, at 46 n.113).

¹⁰⁷ *Id.* at 2 (internal quotations omitted) (quoting Gary Bellow, *On Talking Tough to Each Other: Comments on Condlin*, 33 J. LEGAL EDUC. 619, 622 (1983)).

¹⁰⁸ *Id.*

educators, lawyers, judges, and members of the public to reevaluate our assumptions about the roles and methods of law schools and to explore new ways of conceptualizing and delivering learner-centered legal education.”¹⁰⁹

The authors lay out their specific recommendations for achieving these objectives in seven distinct chapters, each of which focuses on a separate “big picture” issue.¹¹⁰ Chapter Two focuses on “Best Practices for Setting Goals of the Program of Instruction.”¹¹¹ Key concepts in this chapter include: committing to preparing students for practice; explicitly articulating educational goals; joining in the global movement toward “outcomes-focused education”;¹¹² developing abilities to resolve legal problems effectively and responsibly; and assisting students in acquiring attributes of effective responsible lawyers (such as self-reflection and lifelong learning skills, intellectual and analytical skills, core knowledge and understanding of the law, professional skills, and professionalism).¹¹³

Other commentators have echoed these concerns. Critics have noted that legal theory and practical skills have consistently been estranged in the process of educating lawyers.¹¹⁴ Complaints from “consumers of legal education” (i.e. students, judges, professors, and bar members) desperately urge legal institutions to instruct on the practical skills of lawyering more adequately.¹¹⁵ As far back as 1973, Chief Justice Burger chastised the legal community for failing to teach law students the basic attributes

¹⁰⁹ *Id.* at 3.

¹¹⁰ *See id.* at i–v.

¹¹¹ *Id.* at ii.

¹¹² *Id.* *See also* Janet W. Fisher, *Putting Students at the Center of Legal Education: How an Emphasis on Outcome Measures in the ABA Standards for Approval of Law Schools Might Transform the Educational Experience of Law Students*, 35 S. ILL. U. L.J. 225, 247 (2011) (“[T]he ABA Standards for Approval of Law Schools will likely be revised to emphasize outcome measures.”).

¹¹³ BEST PRACTICES, *supra* note 10, at ii.

¹¹⁴ Kristin K. Robbins-Tiscione, *A Call to Combine Rhetorical Theory and Practice in the Legal Writing Classroom*, 50 WASHBURN L.J. 319, 319 (2011).

¹¹⁵ *See, e.g.*, Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 FORDHAM L. REV. 227, 232–33 (1973); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 34 (1992); Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 910–13 (1933).

lawyers need to function.¹¹⁶ Professor Robert Rhee recently argued that the chief flaw in legal education is “the failure to produce more market-ready lawyers with skills and knowledge to add value more quickly in a complex and challenging practice environment.”¹¹⁷

Chapter Three centers on “Best Practices for Organizing the Program of Instruction” and discusses achieving congruence; developing knowledge, skills, and values; integrating theory, doctrine, and practice; and teaching professionalism throughout the entire course of study.¹¹⁸ The core of the document addresses the concept of “delivering instruction,” devoting Chapters Four (delivering instruction, generally), Five (experiential courses), and Six (non-experiential courses) of Best Practices to these topics.¹¹⁹ Specific recommendations on these issues are numerous, but important passages (for purposes of this article) include those on maintaining effective and healthy teaching and learning environments within the law school;¹²⁰ using multiple methods of instruction to reduce the reliance on Socratic dialogue and the Case Method;¹²¹ and using context-based education throughout the curriculum.¹²²

Again, these concepts are not new critiques of legal education.¹²³ Leading a recent initiative termed the “humanizing movement,” Lawrence

¹¹⁶ Burger, *supra* note 115.

¹¹⁷ Robert J. Rhee, *On Legal Education and Reform: One View Formed from Diverse Perspectives*, 70 MD. L. REV. 310, 311 (2011). See also Cunningham, *supra* note 7, at 504 (stating that United States legal education is unique from other common law countries in that it does not require “rigorous practice preparation,” thereby making recent law school graduates worthless in the practicing community); William Hornsby, *Challenging the Academy to a Dual (Perspective): The Need to Embrace Lawyering for Personal Legal Services*, 70 MD. L. REV. 420, 435 (2011) (arguing that law schools must “reassess the career preparation and orientation they provide their students”); Michael Serota, *A Personal Constitution*, 105 NW. U. L. REV. COLLOQUY 149, 154 (2010), available at <http://www.law.northwestern.edu/lawreview/colloquy/2010/27/LRColl2010n27Serota.pdf> (“American legal education . . . has historically valued theoretical knowledge over practical application.”).

¹¹⁸ BEST PRACTICES, *supra* note 10, at ii.

¹¹⁹ *Id.* at ii–v.

¹²⁰ *Id.* at 110–30.

¹²¹ *Id.* at 132–40.

¹²² *Id.* at 141–56.

¹²³ See, e.g., Justine A. Dunlap, “I’d Just as Soon Flunk You as Look at You?” *The Evolution to Humanizing in a Large Classroom*, 47 WASHBURN L.J. 389, 394 (2008); Jennifer Jolly-Ryan, *Promoting Mental Health in Law School: What Law Schools Can Do* (continued)

Krieger and other scholars recognize an unhappiness and imbalance in the legal profession which initially develops in law school.¹²⁴ The constant fear of a “cold call” combined with the cutthroat learning environment is detrimental to most students’ ability to learn.¹²⁵ Critics have classified the Socratic Method as “classroom bullying, which demeans and belittles law students.”¹²⁶ Commentators argue that, by focusing on the emotional and psychological well-being of students, teachers enhance a student’s ability to succeed.¹²⁷

Chapter Seven then discusses “Best Practices for Assessing Students Learning” and Chapter Eight deals with “Best Practices for Assessing Institutional Effectiveness.”¹²⁸ Within these two chapters are important recommendations regarding the expansion of student assessment from purely summative to more formative ones;¹²⁹ improving the validity and reliability of student assessments;¹³⁰ collecting data to assess institutional effectiveness;¹³¹ and using that data to implement curricular improvements.¹³²

for Law Students to Help Them Become Happy, Mentally Healthy Lawyers, 48 U. LOUISVILLE L. REV. 95, 106–08 (2009); Melissa H. Weresh, *I’ll Start Walking Your Way, You Start Walking Mine: Sociological Perspectives on Professional Identity Development and Influence of Generational Differences*, 61 S.C. L. REV. 337, 375–76 (2009) (“[T]he humanizing movement is focused on ‘the way[] legal education is conducted, the impact those choices may have on the attitudes, values, health and well-being of law students, and the possible relationship between each of those matters and the problems experienced by our graduates in the profession.’”) (quoting *Humanizing Law School*, FLA. ST. U. C. L., http://www.law.fsu.edu/academic_programs/humanizing_lawschool.html (last visited Nov. 17, 2011)).

¹²⁴ Weresh, *supra* note 123. See also *Humanizing Legal Education Symposium, October 19–21, 2007*, WASHBURN U. SCH. L., <http://washburnlaw.edu/humanizinglegaleducation> (last visited Nov. 17, 2011) (containing all publications from the symposium).

¹²⁵ Jolly-Ryan, *supra* note 123, at 105.

¹²⁶ *Id.* at 107.

¹²⁷ Dunlap, *supra* note 123, at 394.

¹²⁸ BEST PRACTICES, *supra* note 10, at v.

¹²⁹ *Id.* at 255–60.

¹³⁰ *Id.* at 241–44.

¹³¹ *Id.* at 266–70.

¹³² *Id.* at 272–74.

Simply stated, modern critics of legal education argue that “[c]urrent assessment practices in American law schools are not valid, reliable, or fair.”¹³³ On the issue of reliability of methods, problems include the imprecision of law school grading, especially poorly-drafted objective testing, and the often random distribution of grades due to mandatory curves.¹³⁴ From a broad picture, commentators note that some current assessment methods disregard important lawyering skills such as creativity, problem-solving, research skills, influencing and advocating, and listening.¹³⁵ The single “do-or-die” assessment places significant stress on students and the lack of feedback leaves students to play a high-stakes guessing game in trying to succeed on the final exam.¹³⁶

C. Academic Support Across the Curriculum

In coining the term Academic Support Across the Curriculum, I mean to imply a change in mindset and not necessarily a change in action. This article suggests that ASPs, because they already are structured to focus on many of the pedagogical goals in the Carnegie Report and Best Practices,¹³⁷ can serve as the launching point for a broader movement to provide support to all law students. That outcome, however, depends on law schools’ willingness to conceive of academic support in a more holistic sense than might currently be the case. Therefore, this section describes both ASP as currently constituted and as modified to become Academic Support Across the Curriculum.

¹³³ Rogelio A. Lasso, *Is Our Students Learning? Using Assessments to Measure and Improve Law School Learning and Performance*, 15 BARRY L. REV. 73, 83 (2010). This article provides practical methods for establishing feedback assignments from students to teachers, such as hypothetical answers, self-graded computer quizzes, scored but not graded practice exams, and informal classroom assessments. *Id.* at 99–102. By supplying sufficient feedback, professors will ensure that students “take control over their own learning.” *Id.* at 75.

¹³⁴ See generally *id.* at 82–83.

¹³⁵ Jamie R. Abrams, *A Synergistic Pedagogical Approach to First-Year Teaching*, 48 DUQ. L. REV. 423, 432–33 (2010).

¹³⁶ Lasso, *supra* note 133, at 79.

¹³⁷ See generally Antoinette Sedillo Lopez, *Leading Change in Legal Education: Good News for Diversity*, 31 SEATTLE U. L. REV. 775, 775–77 (2008).

1. Current Forms of ASP

Professor Sheilah Vance defines academic support as “a comprehensive program designed to help law students succeed academically through a combination of substantive legal instruction, study skills, legal analysis, legal writing, and attention to learning styles.”¹³⁸ Law school academic support methods nationally are diverse, however, because what works well for one school might be fruitless at another.¹³⁹ As mentioned elsewhere, the methods of “law school academic support . . . can be sorted into four temporal categories: (1) pre-law school academic support, (2) first-year academic support, (3) upper-class academic support, and (4) post-law school academic support.”¹⁴⁰

“Pre-law school academic support methods usually include programs [occurring] prior to the regular law school orientation.”¹⁴¹ In essence, these programs constitute a more intensive version of law school orientation and intentionally strive to prepare students for what is ahead.¹⁴² Extensive programs, such as the CLEO Summer Institute,¹⁴³ show strong results in terms of preparing students for law school.¹⁴⁴ Regardless of

¹³⁸ Sheilah Vance, *Should the Academic Support Professional Look to Counseling Theory and Practice to Help Students Achieve?*, 69 UMKC L. REV. 499, 503 n.24 (2001). Professor Vance argues that academic support supplemented by counseling would be most beneficial to students. *Id.* at 499. While academic support programs will provide students help academically, counseling services can help students adjust to law school and its academic demands. *Id.* at 531.

¹³⁹ Ellen Yankiver Suni, *Academic Support at the Crossroads: From Minority Retention to Bar Prep and Beyond—Will Academic Support Change Legal Education or Itself Be Fundamentally Changed?*, 73 UMKC L. REV. 497, 498 (2004).

¹⁴⁰ Schulze, *supra* note 25, at 278 (citing Ricardo Villarosa & Ruth Ann McKinney, Conference Presentation: The Five W's of Strong Academic Support Programs 2 (2008) (unpublished PowerPoint Presentation) (on file with author)).

¹⁴¹ *Id.* at 279.

¹⁴² See Jean Boylan, *Crossing the Divide: Why Law Schools Should Offer Summer Programs for Non-Traditional Students*, 5 SCHOLAR 21, 27–30 (2002) (describing the types of in-house summer programs as: (1) those focusing on legal skills; (2) those including substantive classes; (3) and those providing “[m]ini-introductions to the law school environment”).

¹⁴³ See *What is CLEO*, CLEO, <http://www.cleoscholars.com/index.cfm?fuseaction=Page.viewPage&pageId=498&parentID=482&nodeID=2> (last visited Aug. 7, 2011).

¹⁴⁴ Schulze, *supra* note 25, at 279 (citing Eulius Simien, *The Law School Admission Test as a Barrier to Almost Twenty Years of Affirmative Action*, 12 T. MARSHALL L. REV. (continued)

measurable results, these programs often have intangible but nevertheless important consequences, such as building community, easing students' pre-law school apprehension, providing a head-start on doctrine, and facilitating the success of non-traditional law students.¹⁴⁵

"First year academic support methods are myriad."¹⁴⁶ They include, among other things, peer-based, structured study groups or tutoring; workshops on law school study skills (such as outlining, note-taking, and case-briefing); faculty-based academic counseling; weekly classes; mentoring programs; ASP libraries; and feedback on student work.¹⁴⁷ Some schools employ large classroom academic support instruction,¹⁴⁸ some prefer one-to-one academic support,¹⁴⁹ and still others combine these forms.¹⁵⁰ Some schools integrate doctrine and skills,¹⁵¹ while others create a clear line of demarcation between the two.¹⁵² Some schools provide academic support only to students with incoming indicators of potential underperformance,¹⁵³ some provide support only those who experience actual underperformance,¹⁵⁴ and some provide support to all students.¹⁵⁵

359, 383–84 (1987) (focusing on law school graduation rate of CLEO alumnae as indicative of its success)).

¹⁴⁵ Schulze, *supra* note 25, at 279–80 (citing Boylan, *supra* note 142, at 26 (calling for all law schools to adopt pre-law school programs to offset the disadvantage suffered by students lacking cultural exposure to the Socratic Method)).

¹⁴⁶ Schulze, *supra* note 25, at 280.

¹⁴⁷ Schulze, *supra* note 25, at 281 (citing Richard Cabrera & Stephanie Zeman, *Law School Academic Support Programs—A Survey of Available Academic Support Programs for the New Century*, 26 WM. MITCHELL L. REV. 205, 209–10 (2000)).

¹⁴⁸ Schulze, *supra* note 25, at 281 n.37.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ See Elizabeth M. Bloom & Louis N. Schulze Jr., *Integrating Doctrinal Material and Faculty into Academic Support Courses*, THE LEARNING CURVE (AALS Section on Academic Support), Fall 2009, at 13, available at <http://www.aals.org/documents/sections/academicsupport/LearningCurve200912Fall.pdf>. One of the differences between traditional academic support and what I will describe as Academic Support Across the Curriculum is the elimination of the false dichotomy between doctrine and skills.

¹⁵² *Id.* at 14.

¹⁵³ See Leslie Yalof Garfield, *The Academic Support Student in the Year 2010*, 69 UMKC L. REV. 491, 495–96 (2001).

¹⁵⁴ *Guide to Student Services*, U. CONN. SCH. L. (Aug. 7, 2011), <http://www.law.uconn.edu/student-handbook/guide-student-services>.

Upper-class academic support is less common, but many schools are introducing programs to support second and third year students.¹⁵⁶ For instance, Northeastern University Law School, the University of Connecticut School of Law, and New England Law | Boston offer upper-division classes available to students whose law school grade point averages indicate the potential for underperformance later in law school or on the bar exam.¹⁵⁷ Because these students are more advanced, a focus on introductory skills, such as outlining and case-briefing, may be less warranted. Thus, these classes are often directly linked with doctrinal courses¹⁵⁸ and aim to improve students' legal analysis abilities and likelihood of passing the bar exam.¹⁵⁹ Law school ASPs have also started to offer bar preparation courses for upper-class students.¹⁶⁰ Because the ABA recently altered its accreditation standards to permit law schools to

¹⁵⁵ See MELINDA DREW, NORTHEASTERN UNIVERSITY SCHOOL OF LAW ACADEMIC SUCCESS PROGRAM: GUIDE TO ACADEMIC AND DISABILITY SERVICES 2 (2011–2012), available at <http://www.northeastern.edu/law/pdfs/academics/aspguide.pdf>; *Academic Excellence Program*, NEW ENGLAND SCH. L., http://www.nesl.edu/students/registrar_courses.cfm (last visited Nov. 18, 2011) [hereinafter *Academic Excellence Program*].

¹⁵⁶ See DREW, *supra* note 155; *Academic Excellence Program*, *supra* note 155; *Advanced Legal Methods*, U. CONN. SCH. L., <http://www.law.uconn.edu/academics/courses/1098-7550-10> (last visited Nov. 18, 2011).

¹⁵⁷ DREW, *supra* note 155, at 4. See also *Academic Excellence Program*, *supra* note 155; *Advanced Legal Methods*, *supra* note 156.

¹⁵⁸ See DREW, *supra* note 155, at 4–5; *Academic Excellence Program*, *supra* note 155.

¹⁵⁹ See DREW, *supra* note 155, at 2, 6; *Academic Excellence Program*, *supra* note 155.

¹⁶⁰ See DREW, *supra* note 155, at 6; *Academic Excellence Program*, *supra* note 155.

grant credit for these courses,¹⁶¹ schools are intentionally using these classes to prepare students for success on state bar exams.¹⁶²

Finally, law schools may even provide academic support after law school. This usually occurs in the form of continued assistance for students as they prepare for the bar exam.¹⁶³ For many schools, this support occurs between graduation and a student's first bar exam.¹⁶⁴ Increasingly, though, law schools are reaching out to graduates who have failed the bar exam.¹⁶⁵ A barrier to successful intervention, however, seems to be these students' reticence to admit their troubles with the bar exam.¹⁶⁶ This stigma effect actually pervades much of the venture of academic support and is propagated by the appearance that academic support is reserved for those who have failed.¹⁶⁷ The next section details

¹⁶¹ See AM. BAR ASS'N, APPROVED MOTION TO CONCUR OF HOUSE OF DELEGATES 1 (2008), available at <http://www.abajournal.com/files/112B.pdf?>. The ABA, which governs law school accreditation, resolved to delete Interpretation 302-7 of the *Standards for Approval of Law Schools* concerning bar examination preparation courses. *Id.* That interpretation provided that "[i]f a law school grants academic credit for a bar examination preparation course, such credit may not be counted toward the minimum requirements for graduation established in Standard 304. A law school may not require successful completion of a bar examination preparation course as a condition of graduation." *Id.* See also Leigh Jones, *More Schools Consider Making Exam Prep Classes a Requirement*, NAT'L L.J., Sept. 10, 2008.

¹⁶² DREW, *supra* note 155, at 6; *Academic Excellence Program*, *supra* note 155; *Bar Exam Preparation*, ST. LOUIS U. SCH. L., http://law.slu.edu/academics/bar_exam/index.html (last visited Nov. 18, 2011); *Bar Preparation*, U. RICHMOND SCH. L., <http://law.richmond.edu/academics/upper-level/bar.html> (last visited Nov. 18, 2011).

¹⁶³ *Bar Exam Preparation*, *supra* note 162; *Bar Preparation*, *supra* note 162.

¹⁶⁴ See generally *Bar Exam Preparation*, *supra* note 162; *Bar Preparation*, *supra* note 162 (offering a bar preparation course during the semester as well as weekly bar preparation counseling and tutoring during the bar study period).

¹⁶⁵ AM. BAR ASS'N, *Chapter 3: Interpretation 301-6*, Draft for April Meeting (2011), http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/20110707_interpretation_301_6_april_draft.authcheckdam.pdf.

¹⁶⁶ See generally Derek Alphan et al., *Yes We Can, Pass the Bar. University of the District of Columbia, David A. Clarke School of Law Bar Passage Rates – From the Titanic to Queen Mary!*, 14 UDC/DCSL L. R. 9, 19 (2011).

¹⁶⁷ See generally *id.*

how Academic Support Across the Curriculum, reconfigured for the benefit of all students, might shed that stigma effect.

2. *A Revised Approach: Academic Support Across the Curriculum*

Academic support is a relatively new phenomenon in law schools.¹⁶⁸ Like all new systemic law school endeavors—legal writing and clinical education, for example—a period of growth is necessary. Some law schools arguably undervalue the potential of their ASPs, which are often the locale of outstanding teachers, faculty with whom students connect strongly, and members of the law school community dedicated to empowering individual and institutional success. It seems counterintuitive then that ASPs are often relegated in the law school status,¹⁶⁹ are frequently constrained in terms of their permissible methods,¹⁷⁰ and are often cordoned off for use only by certain students.¹⁷¹ This section details how law schools can harness the potential of an underused resource to the benefit of all students, other faculty, and the institution.

First, one must understand the term “Across the Curriculum.” This is not a novel idea or term, but instead one that is already in use in academia and even in law schools. The Across the Curriculum moniker stems mainly from “Writing Across the Curriculum” (WAC), a pedagogy that originated in Britain in secondary schools and migrated to the United States into colleges and universities.¹⁷² In turn, that pedagogy migrated to American law schools, and there is now a substantial body of scholarship on the subject as well as at least a few law schools who have expressly adopted the WAC method.¹⁷³ The general idea is that instead of teaching writing in an isolated way, perhaps in the context of some material disconnected from students’ doctrinal learning, law schools should instead teach writing pervasively not only in a specialized legal writing class, but

¹⁶⁸ Paula Lustbader, *From Dreams to Reality: The Emerging Role of Law School Academic Support Programs*, 31 U.S.F. L. REV. 839, 841–42 (1997).

¹⁶⁹ Adam G. Todd, *Academic Support Programs: Effective Support Through a Systemic Approach*, 38 GONZ. L. REV. 187, 192–93 (2002–2003).

¹⁷⁰ See Suni, *supra* note 139, at 505–06.

¹⁷¹ Cabrera & Zeman, *supra* note 147, at 208–09.

¹⁷² Andrea McArdle, *Writing Across the Curriculum: Professional Communication and the Writing That Supports It*, 15 LEGAL WRITING 241, 241–42 (2009).

¹⁷³ *Id.* at 243.

also in doctrinal classes as well.¹⁷⁴ This forges a link between skills and doctrine.

Most scholarship on the subject posits that there are two potential benefits of this approach. The first is that students will become better at the craft of legal writing if they are exposed to this professional task pervasively.¹⁷⁵ This is the so-called “transactional” model.¹⁷⁶ The second is the notion that students will learn the doctrine better if the learning method includes writing tasks.¹⁷⁷ This is the so-called “writing-to-learn” model.¹⁷⁸ Both the transactional and writing-to-learn models find support in the three modern education theories of behaviorism, cognitivism, and constructivism.¹⁷⁹

What then is Academic Support Across the Curriculum? In other words, what changes are necessary to harness the potential of this underused resource? First, Academic Support Across the Curriculum focuses on the same learning theory support as the writing to learn model. The learning theories of behaviorism, cognitivism, and constructivism have several themes in common. One is that learning should begin at a basic level that is within the understanding of the student; the material should become more complex when the students have absorbed the material into their “preexisting knowledge base.”¹⁸⁰ Another is that students should be

¹⁷⁴ *Id.* at 243–44.

¹⁷⁵ See Pamela Lysaght & Cristina D. Lockwood, *Writing-Across-the-Law-School Curriculum: Theoretical Justifications, Curricular Implications*, 2 J. ASS’N LEGAL WRITING DIRECTORS 73, 106–07 (2004).

¹⁷⁶ McArdle, *supra* note 172, at 243–44.

¹⁷⁷ *Id.* at 242.

¹⁷⁸ *Id.*

¹⁷⁹ Lysaght & Lockwood, *supra* note 175, at 77, 93–94.

¹⁸⁰ *Id.* at 93.

Starting in behaviorism with B.F. Skinner, it has been advocated that instruction begin with introductory materials within the student’s learning capabilities and move to more complex material only when the student is ready. Bloom’s Taxonomy of Educational Objectives also demonstrates that students must start with basic knowledge before proceeding to more complex levels of thinking. And a basis of mastery learning, cognitivism, and constructivism is that students begin a curriculum with a preexisting knowledge base. Whether these theorists view learning as mastery of the subject, creation or modification of schema, or creation of understanding, they all agree that teachers must

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exposed to multiple learning methods.¹⁸¹ A third theme is that students should receive feedback to develop a deeper understanding of the material.¹⁸² Finally, each learning theory advocates that “students should be taught to be autonomous learners,”¹⁸³ not merely slaves to the “sage on the stage.”¹⁸⁴

start with information within the student's pre-existing knowledge base and work towards the student's learning more complex materials that require more complex levels of thinking.

Id.

¹⁸¹ *Id.* at 93.

Related to the belief that each student begins with an individualized knowledge base, mastery learning, cognitivism, and constructivism advocate a variety of teaching methods to ensure that the instruction is linked to each student's knowledge base. Specifically, mastery learning advocates a variety of teaching methods to aid students who need to learn better or relearn the material. Cognitivists believe that a variety of teaching methods, including those that encourage active student involvement, will increase or facilitate cognitive activity concerning the information whereby students will better encode the information. Constructivists believe that exposure to different teaching methods will help students construct an understanding of the material, especially when the method incorporates social interaction.

Id.

¹⁸² *Id.* at 93–94.

This theme also began in behaviorism and has continued through subsequent emerging learning theories. Behaviorists believe that practice and feedback ensure that the students will learn because they will change their behavior and provide the desired response to the stimulus . . . Cognitivists believe that applying the information and receiving feedback will help students retain the information in long-term memory by facilitating the learner's appropriate encoding. Further, constructivist principles support the use of authentic learning tasks as a form of applying information. Learning occurs through the teacher's feedback on the student's performance of the task.

Id.

¹⁸³ *Id.* at 94.

(continued)

Academic Support Across the Curriculum would have these same features. First, learning must start at a basic level and advance once students are ready. This connotes introducing students to the type of learning they will encounter, the sources of that learning in law school, and the expectations that the law school has for how students must demonstrate their learning. In other words, Academic Support Across the Curriculum would include instruction at the beginning of law school orienting students to their learning objectives and expectations; this explicit teaching is largely absent in law school,¹⁸⁵ where students instead must figure out the learning process themselves.¹⁸⁶

Second, Academic Support Across the Curriculum should act as a resource for the diversification of law school teaching methods. While doctrinal professors teach using the Socratic dialogue, ASP professors would deconstruct that material into how it must be applied on exams. Of course, this necessitates the abolition of the false dichotomy between skills and substance,¹⁸⁷ because it is clear from many sources that this strange arrangement in law schools is a serious impediment to students' success.¹⁸⁸

Third, Academic Support Across the Curriculum would be the means by which students receive feedback (formative assessment) to allow them to comprehend the material more richly. Finally, Academic Support

Metacognition suggests that students will enhance their learning by being conscious of how they learn. Metacognition as a theory did not begin to impact learning theory until after behaviorism's decline in popularity. In fact, metacognition is incongruent with the behaviorist idea that the teacher controls the learning environment. Metacognition, however, facilitates mastery learning, and cognitivists believe that experts have more developed schemata within a domain because they are proficient at metacognition.

Id.

¹⁸⁴ Vernellia R. Randall, *Increasing Retention and Improving Performance: Practical Advice on Using Cooperative Learning in Law Schools*, 16 T.M. COOLEY L. REV. 201, 205 (1999).

¹⁸⁵ See Lysaght & Lockwood, *supra* note 175, at 92–94.

¹⁸⁶ See *id.*

¹⁸⁷ Busharis & Rowe, *supra* note 47, at 304 (discussing the “false dichotomy between ‘skills’ and ‘substance’ in law school that undermines the likelihood of successful legal education”).

¹⁸⁸ See, e.g., *id.* at 304 n.7.

Across the Curriculum would act to support students' growth into autonomous learners, allowing them to become practitioners who can begin practicing law with minimal oversight soon after law school. This final feature connotes that ASPs should provide support to all law students and not merely to those who struggle.

III. HOW ACADEMIC SUPPORT ACROSS THE CURRICULUM HELPS TO MEET THE CARNEGIE REPORT'S PROPOSALS

This part analyzes how the changes detailed above can meet many of the calls for reform entailed in the Carnegie Report. To do this, it synthesizes four factors listed by the Carnegie Report that dovetail with the features of Academic Support Across the Curriculum noted above. In short, Academic Support Across the Curriculum can: (1) provide opportunities for formative assessment; (2) help make teaching explicit; (3) generate future lawyers who are self-regulated learners; and (4) foster an environment where "faculty with different strengths work in a complementary relationship"¹⁸⁹ instead of a "collection of discrete activities without coherence."¹⁹⁰ Examples of methods used in various ASPs throughout the nation demonstrate how these practices help meet the reforms.

A. How Academic Support Across the Curriculum Provides Opportunities for Formative Assessment

As previously discussed, formative assessment consists of "opportunities to practice the knowledge and skills necessary to become an expert, followed by feedback on how well the student has mastered those skills."¹⁹¹ Due to the high faculty-student ratios in law school,¹⁹² giving meaningful feedback to so many students in the context of complex materials is nearly impossible.¹⁹³ Therefore, formative assessment is insufficiently present in the legal academy.¹⁹⁴ Although many doctrinal

¹⁸⁹ CARNEGIE REPORT, *supra* note 2, at 197.

¹⁹⁰ BEST PRACTICES, *supra* note 10, at 7.

¹⁹¹ Burch & Jackson, *supra* note 41, at 71.

¹⁹² Christine N. Coughlin et al., *See One, Do One, Teach One: Dissecting the Use of Medical Education's Signature Pedagogy in the Law School Curriculum*, 26 GA. ST. U. L. REV. 361, 414 (2010).

¹⁹³ *See id.*

¹⁹⁴ *Id.* at 401, 414. The exception to this rule is in legal writing and clinical education. *Id.* at 378. It seems like a paradox that these two areas of the academy, which employ some
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professors would likely agree with the Carnegie Report authors that feedback is laudable, they are simply ill-equipped to provide it given time and resource constraints.

Enter Academic Support Across the Curriculum. A number of forward-thinking law schools provide formative assessment to students on their progress in doctrinal classes through the auspices of academic support. At New England Law | Boston, for instance, the Academic Excellence Program (AEP) works together with doctrinal professors to create essay practice exam questions in students' first semester of law school.¹⁹⁵ Usually in a Torts class, the doctrinal professor and AEP Professor will jointly generate a one-hour long fact pattern, similar to what students might encounter on the final exam, and students have the opportunity to write an essay response during the weekly AEP class for each first year section.¹⁹⁶ The Torts and AEP Professors then co-teach a review of the essay and provide a model answer or "lines of analysis."¹⁹⁷ Students receive feedback on this exercise both through comparison to the model answers and from the AEP Professors.¹⁹⁸ This method allows students to experience a law school exam, make their first attempt at completing an essay prior to graded exams, and gauge how well they are performing at that stage in the semester.

Similarly, at Suffolk University Law School, the ASP provides direct faculty feedback to students on their midterm exam essays.¹⁹⁹ Each January, the ASP at Suffolk Law begins to work directly with individual students who underperformed on their midyear exams.²⁰⁰ Prior to meeting with a student, the ASP Professor will choose an essay that represents errors common in the student's work and write a memo to the student

of the best pedagogical methods, are two of the more relegated areas of the academy in terms of the status of its members.

¹⁹⁵ See Louis N. Schulze Jr., *Academic Excellence Course Syllabus* (2010) [hereinafter *Academic Excellence Course Syllabus*] (on file with author).

¹⁹⁶ *Id.* Evidence of the pedagogical strength of this class is the fact that nearly 60%–70% of a given section attends the weekly class in the fall semester despite the fact that it is voluntary and not-for-credit. *Id.*

¹⁹⁷ See *id.*

¹⁹⁸ *Id.*

¹⁹⁹ See Telephone Interview with Herb Ramy, Director of Suffolk Law Academic Support Program (June 8, 2011) [hereinafter *Ramy Telephone Interview*] (on file with author).

²⁰⁰ See *id.*

detailing the analytical and structural weaknesses.²⁰¹ The student will then review that memo prior to the meeting and ask questions of the ASP Professor during the meeting.²⁰² In this way, the student not only receives direct feedback on analytical errors but also has the opportunity to ask questions about that feedback after reading the memo. This method, therefore, not only provides students with faculty guidance on how to improve but also allows students to take an active part in appreciating the feedback.

In this way, these methods supplement the doctrinal faculty in that they allow students to receive feedback on their written work from faculty whose specific skill set includes formative assessment. Reconfiguring these methods into Academic Support Across the Curriculum would entail making these resources available not just to underperforming students, but to all students. Providing this type of feedback broadly, as is the case at New England Law | Boston,²⁰³ meets this goal and thus satisfies the Carnegie Report's recommendations for more formative assessment in a way that does not substantially burden doctrinal faculty.

B. How Academic Support Across the Curriculum Helps Make Teaching Explicit

Another problem identified in the Carnegie Report is that law schools have the tendency to make teaching less than explicit by forcing them to intuit not only the law but also how they will be tested on the law.²⁰⁴ The

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ See Academic Excellence Course Syllabus, *supra* note 195.

²⁰⁴ See Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 352 (2001).

[L]aw professors expect students to figure out on their own what the students need to know and what they need to be able to do to succeed in the class. During classroom instruction, law professors hope the combination of their classroom comments and their critiques of students' comments will enhance students' legal reasoning, case analysis, issue spotting, drafting, and policy analysis skills, will open the students' minds to legal theory, will allow the students to understand the doctrine under study, and will encourage students to develop desired values. Law teachers, however, usually fail to identify for their students (and, sometimes, even for themselves) which goals

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traditional scenario had students showing up for law school, buying books, engaging in Socratic dialogue, and then being tested months later on how well they inductively taught themselves both the substance of doctrine and the process of legal analysis.²⁰⁵ Learning theory claims that this method is less than positive in terms of optimizing students' learning potential.²⁰⁶ Explaining learning objectives to students prior to learning enhances students' ability to succeed.²⁰⁷

The proponents of the traditional regime argue though that this method of instruction helps separate the wheat from the chaff; in other words, if students are unable to determine what the learning objectives are and how to achieve them, they are not bright enough to practice law.²⁰⁸ Thus, legal educators do a service both to would-be lawyers, to law firms, and to future clients in ensuring that future lawyers not only know the law and can apply it, but can also learn the law without costly start-up time or training.

The problems with this thinking are numerous, though. First, the traditional approach fails to account for students lacking the legal-cultural background necessary to prepare them to induce the learning objectives of law school. This, in turn, produces a practicing bar open only to those whose cultural or financial backgrounds prepared them to understand the nature of legal analysis. Second, the traditional approach fails to account for students who, if appraised of the learning objectives of law school,

they are teaching at any given moment. This approach requires the students not only to sort the insightful student comments from the comments lacking insight, but also to figure out, from the professor's comments and questions, both the professor's instructional goals and the relationships between those goals and the instruction presented.

Id.

²⁰⁵ See Corinne Cooper, *Letter to a Young Law Student*, 35 TULSA L.J. 275, 282–83 (2000) (“[L]aw is a self-teaching discipline.”).

²⁰⁶ See Laurie C. Kadoch, *The Third Paradigm: Bringing Legal Writing “Out of the Box” and into the Mainstream: A Marriage of Doctrinal Subject Matter and Legal Writing Doctrine*, 13 LEGAL WRITING 55, 76 (2007).

²⁰⁷ Ann Marie Cavazos, *The Journey Toward Excellence in Clinical Legal Education: Developing, Utilizing and Evaluating Methodologies for Determining and Assessing the Effectiveness of Student Learning Outcomes*, 40 SW. L. REV. 1, 21 (2010).

²⁰⁸ Victoria S. Salzmänn, *Here's Hulu: How Popular Culture Helps Teach the New Generation of Lawyers*, 42 MCGEORGE L. REV. 297, 299 (2011) (“If a student fails to grasp the material, it was his own deficiency that is to blame.”).

could quickly adjust, learn the law, and learn how to analyze legal problems. In short, it ignores the idea that students can be taught how to be the type of self-regulated learner who can succeed in law practice.²⁰⁹ Finally, the traditional approach fails to recognize that it does a disservice even to those who could induce law school learning objectives independently; these students, if properly apprised of the learning tasks at the outset of law school, could achieve an even greater learning trajectory than under the traditional model. Accordingly, it is abundantly clear that the “hide the ball” method of law school pedagogy is logically and practically unsound.²¹⁰

The Carnegie Report states that making teaching explicit is difficult in law school because, unlike traditional craft apprenticeships where teacher-experts can model behavior in an obvious way, the legal expert-teacher’s complex cognitive pattern is not as easily observed.²¹¹ Nonetheless, law teachers can make teaching explicit by

- (1) [m]odeling, by making cognition visible[;]
- (2) [c]oaching, by providing guidance and feedback[;]
- (3) [s]caffolding, by providing support for students who have not yet reached the point of mastery[; and]
- (4) [f]ading, by encouraging students when they are ready to proceed on their own.²¹²

Boston College Law School’s ASP was designed explicitly to help make the doctrinal teaching more explicit.²¹³ The ASP at this school

²⁰⁹ See Michael Hunter Schwartz, *Teaching Law Students to Be Self-Regulated Learners*, 2003 MICH. ST. DCL L. REV. 447, 449 (2003).

²¹⁰ See Zalesne & Nadvorney, *supra* note 73, at 274.

This disconnect is a critical failing of legal education: students in the first year should learn academic skills explicitly, rather than intuit them, so that they are better prepared in their second and third years to focus on the denser doctrines and inclusion of more practice-oriented skills.

Id.

²¹¹ CARNEGIE REPORT, *supra* note 2, at 61.

²¹² *Id.*

²¹³ See Telephone Interview with Elisabeth Keller, Director of Boston College Law School Academic Support Program (June 9, 2011) [hereinafter Keller Telephone Interview] (on file with author).

employs a “full disclosure theory of law school,” meaning that the program is designed to introduce students up front to law school learning objectives, the expectations of the faculty, and the methods to achieve success.²¹⁴ To achieve this goal, the ASP offers a series of workshops early in the fall semester describing the methods necessary for success in law school.²¹⁵ The workshops are open to all first year students and explicitly teach the students how to prepare for law school classes, how to outline a course in preparation for final exams, and how to take a law school exam.²¹⁶ Because Boston College Law School is an elite, top-tier law school, its students have a history of academic and intellectual success.²¹⁷ The law school created the ASP to explain explicitly to these successful students how law school learning objectives differ from those of students’ previous experiences: “The students did well in undergrad . . . but they did well at something very different—if we tell them how it’s different and how they can succeed, they will do well. If we don’t tell them how it’s different, that’s when they won’t meet their learning objectives.”²¹⁸ The ASP employs successful upper-class law student tutors to coach first year students in terms of their performance, both on substance and skills, and first year students can meet with these tutors all year long or discontinue meetings once they master the material.²¹⁹

In this way, the ASP at Boston College Law School helps make teaching explicit. The workshops on important law school skills make cognition visible by showing students precisely how an expert learner prepares for class, outlines, or writes an exam. The use of tutors provides coaching to first year students by providing guidance and feedback both on substance and skills. Meanwhile, the ability of students to meet with the same tutor throughout the year provides scaffolding, allowing the first year students to receive support while they achieve mastery. Finally, the program provides “fading,” by discontinuing tutoring once the first year students have achieved mastery.²²⁰ In these ways, Boston College’s ASP

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ See *Profile of the Student Body*, B.C. L., <http://www.bc.edu/schools/law/admission/profile.html> (last visited Nov. 18, 2011) (listing some of the school’s high rankings on lists such as *U.S. News & World Report* and the *National Law Journal*).

²¹⁸ Keller Telephone Interview, *supra* note 213.

²¹⁹ *Id.*

²²⁰ See *id.*

makes teaching more explicit, thus satisfying another of the Carnegie Report's recommendations.

C. How Academic Support Across the Curriculum Generates Future Lawyers Who Are Self-Regulated Learners

The Carnegie Report also advocates that law schools should do a better job of producing self-regulated learners.²²¹ Professional schools cannot "teach students to be competent" in each and every situation; instead, "the essential goal of professional schools must be to form practitioners who are aware of what it takes to become competent in their chosen domain and to equip them with the reflective capacity and motivation to pursue genuine expertise. They must become 'metacognitive' about their own learning"²²² This is the essence of self-regulated learning.

More specifically, self-regulated learning is an educational psychology theory that "involves the active, goal-directed, self-control of behavior, motivation, and cognition for academic tasks by an individual student."²²³ Furthermore,

[s]elf-regulated learners . . . view . . . academic learning as something they do for themselves rather than as something that is done to or for them. They believe academic learning is a proactive activity, requiring self-initiated motivational and behavioral processes as well as metacognitive ones. Unlike their less skilled peers, self-regulated learners control their own learning experiences through processes such as goal-setting, self-monitoring, and strategic thinking.²²⁴

²²¹ CARNEGIE REPORT, *supra* note 2, at 172–73.

²²² *Id.* at 173.

²²³ Schwartz, *supra* note 209, at 452 (quoting Paul Pintrich, *Understanding Self-Regulated Learning*, in NEW DIRECTIONS FOR TEACHING AND LEARNING: UNDERSTANDING SELF-REGULATED LEARNING NO. 63, 5 (Paul Pintrich ed., 1995)).

²²⁴ *Id.* (quoting Barry Zimmerman, *Developing Self-Fulfilling Cycles of Academic Regulation: An Analysis of Exemplary Instructional Models*, in SELF-REGULATED LEARNING: FROM TEACHING TO SELF-REFLECTIVE PRACTICE 1 (Dale H. Schunk & Barry J. Zimmerman eds., 1998)).

Self-regulated learning generally requires three steps in the “cycle” of learning: (1) forethought; (2) performance; and (3) reflection.²²⁵ Teaching students to employ this approach not only makes them better students but also will make them better lawyers because they can continuously and repeatedly engage the self-regulated learning cycle to improve their skills and knowledge.

The ASP at Washburn University School of Law, dubbed the “Expert Learning Program” or “Ex-L,” focuses on achieving this goal.²²⁶ Ex-L begins with an intensive “First Week Program” when students first arrive to law school, which helps students build their thinking, case reading, and case briefing skills.²²⁷ Students are then placed in a small “law firm” of five to six students for purposes of the “Structured Study Group Program” which continues for the rest of the semester under the leadership of “a successful, carefully-trained and closely-supervised upper division law student.”²²⁸ The upper-class leader, however, is not a tutor; instead, this student serves to guide the law firm “to engage in the behaviors

²²⁵ *Id.* at 454–55. Forethought consists of “task perception, self-efficacy, self-motivation, goal setting, and strategic planning.” *Id.* at 455. The performance phase includes “(1) attention-focusing, (2) the activity itself (including the student’s mental process for performing the activity properly), and, most importantly, (3) the self-monitoring the student performs as she implements her strategies and begins to learn.” *Id.* at 458. The reflective phase includes “self-evaluation, attribution, self-reaction, and adaptation.” *Id.* at 461.

²²⁶ See *First Week Assignment and Expert Learning Program (Ex-L)*, WASHBURN U. SCH. L., <http://washburnlaw.edu/students/firstweek/expertlearning/> (last visited Nov. 18, 2011).

²²⁷ See *id.*

The program consists of [eleven] hours of classroom instruction taught by the students’ regular doctrinal professors and [eight] hours of structured study group cooperative learning experiences The students learn self-regulated learning, case reading and briefing, note-taking, basic legal civics, and they are introduced to client interviewing and counseling, outlining, applying and distinguishing cases, and applying rules to facts.

Ex-L Program Description, WASHBURN U. SCH. L., <http://washburnlaw.edu/facultystaff/curriculum/ex-lprogram.php> (last visited Nov. 18, 2011). Importantly, this entire program is set in the context of one of the students’ doctrinal classes. *Id.*

²²⁸ *First Week Assignment and Expert Learning Program (Ex-L)*, *supra* note 226.

characteristic of successful law school study groups,” “stay on task,” “contribute equally to all group work,” and “collaborate in a way that encourages everyone to succeed in law school.”²²⁹ In this way, the law firm and its constituent members receive guidance in terms of proper approaches but still “develop autonomous, reflective learning skills needed to succeed in law school, on the bar exam, and in law practice.”²³⁰ Because the entirety of the program puts the onus on students to teach themselves the law, but still provides enough structure to help them find the most effective and efficient methods, the Ex-L program leverages the most powerful aspect of “self-regulated learner” theory.

²²⁹ *Id.* For example,

[t]he leaders must read a 60-page training manual, and each must attend a six-hour summer training program. The leaders also meet with the Ex-L director one hour per week for additional training. The students evaluate their facilitators mid-semester, and each facilitator’s group sessions are visited at least twice per semester (all visits are unannounced) by a peer or by the director.

Ex-L Program Description, supra note 227.

²³⁰ *First Week Assignment and Expert Learning Program (Ex-L), supra* note 226.

The groups meet twice per week, one hour each time and range among all the students’ first-year subjects. One meeting per week focuses on law school learning skills, including: outlining and creating graphic organizers, synthesis, developing broad and narrow holdings, spotting issues, planning and editing LARW papers, developing examples and non-examples of all their concepts, creating their own law school exam-like hypos and memorization. The other meeting always involves writing answers to practice hypos The group facilitators do not teach substantive law. Rather, they get the students to teach each other because studies show that 90% of people can learn when they have to teach someone else, but only 10% of the population can learn from lectures.

Ex-L Program Description, supra note 227.

D. How Academic Support Across the Curriculum Fosters an Environment Where “Faculty with Different Strengths Work in a Complimentary Relationship” Instead of a “Collection of Discrete Activities Without Coherence”

The Carnegie Report noted that during the authors’ visits to law schools, faculty members stated that “exam-taking skills are learnable skills.”²³¹ Still, they continued, efforts to teach these skills are hardly pervasive and systemic; instead these practices are not “part of a coordinated effort to work out the best use of assessment to improve the learning process of law students.”²³² The Carnegie Report noted that “[a]s in teaching for legal analysis and lawyering skills, the most powerful effects on student learning are likely to be felt when faculty with different strengths work in a complementary relationship.”²³³ What the Carnegie Report contemplates, in implementing its theme of integrating different apprenticeships, is the coordination of different areas of the law school: doctrine, clinics, legal writing, academic support, and other facets.²³⁴ In doing this, a law school would harness the strengths from each area of the academy to create a synergy that would be more powerful than the sum of its parts. In other words, doctrinal professors could do well in that which they were trained to do (doctrine and theory) and academic support professors could do well in that which they are trained to do (learning theory and formative assessment), all for the benefit of student learning and all the while cross-pollinating the different skills between different faculty.

City University of New York School of Law (CUNY), which the Carnegie Report spotlighted for praise, employs just this type of union of abilities.²³⁵ The law school’s academic support website announces this philosophy by explicitly stating that its “Irene Diamond Professional Skills Center” is “not an ancillary part of the academic program, but a fully integrated component of the overall curriculum.”²³⁶

The methods of CUNY’s Professional Skills Center (the Center) mirror this philosophy. In the first semester, the Center offers sessions for all

²³¹ CARNEGIE REPORT, *supra* note 2, at 163.

²³² *Id.*

²³³ *Id.* at 197.

²³⁴ *See id.* at 191–93.

²³⁵ *See id.* at 34–38.

²³⁶ *Academic Support*, CITY U. N.Y. SCH. L., <http://www.law.cuny.edu/academics/Support.html> (last visited Nov. 18, 2011).

students on skills necessary for academic success.²³⁷ These “sessions track the required first-year doctrinal classes,” meaning that the skills training are taught in the context of doctrinal materials.²³⁸ Similarly, the Center also offers exam review sessions that explicitly review not only the skills aspect of exam performance, but also the doctrine.²³⁹ These sessions are co-taught by ASP professors and doctrinal professors in a way that brings together these two groups’ strengths.²⁴⁰

In the second semester, the Center offers the Legal Methods course to students who seek to strengthen their performance.²⁴¹ This course is strongly recommended for students with a GPA from 2.3–2.7 and required for students on probation.²⁴² It is open to other students as space permits.²⁴³ The class offers significant opportunities for exam practice, and is coordinated with the students’ shared doctrinal courses of Torts, Contracts, and Law & Family Relations.²⁴⁴

Each of the facets of CUNY’s Professional Skills Center has (at least) one thing in common: the integration of doctrine and academic support. This nexus creates a powerful learning tool for students in that they have the opportunity to develop lawyerly skills in the context of the doctrines they’re working to comprehend in their casebook courses.²⁴⁵ In this way, CUNY’s Professional Skills Center helps meet the suggestions of the Carnegie Report by fostering an environment in which faculty with different strengths work in a complimentary relationship.

Unfortunately, these “contextualized” ASP classes are the exception and not the norm.²⁴⁶ In many law schools, ASPs are prohibited from teaching skills in the context of doctrinal materials, and the ASP is forced to teach important law school skills in some way that is independent from

²³⁷ *Professional Skills Center*, CITY U. N.Y. SCH. L., <http://www.law.cuny.edu/academics/Support/ProfessionalSkillsCenter.html> (last visited Oct. 4, 2011).

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *See id.*

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *See Bloom & Schulze*, *supra* note 151, at 13 (noting the importance of integrating doctrine into ASP skills instruction).

²⁴⁶ *Suni*, *supra* note 139, at 504–05.

students' current learning.²⁴⁷ There is no scholarship attesting to the pedagogical justifications for this type of policy, but these practices may be based on a perceived hierarchical status whereby ASPs are seen as a bottom rung on the law school caste system, thus relegating their methods to being abstracted from the mainstream curriculum. This pedagogy serves no one. Luckily, the trend in legal education is moving toward the integration of doctrine and skills, and the number of ASPs utilizing a "contextualized" model is growing.²⁴⁸

IV. HOW ACADEMIC SUPPORT ACROSS THE CURRICULUM HELPS MEET THE BEST PRACTICES PROPOSALS

As noted previously, there is a good deal of overlap between Best Practices and the Carnegie Report. This section focuses on Best Practices' distinct concepts but also covers area of overlap between the two works. Key areas where Academic Support Across the Curriculum can meet the Best Practices' calls for reform include: (a) crystallizing institutional intentionality and assisting with institutional assessment; (b) helping to create a healthy learning environment; (c) assisting the law school in fully committing to preparing students for the bar exam; (d) contributing to diversifying teaching methods and reducing reliance on the Socratic and Case Methods; (e) training students on receiving and using feedback; and (f) ensuring that summative assessment can also be formative.

A. How Academic Support Across the Curriculum Helps Crystallize Institutional Intentionality and Assists in Institutional Assessment

Best Practices spends a chapter discussing assessment of institutional effectiveness.²⁴⁹ On a related note, the Carnegie Report details the importance of "crystalizing institutional intentionality."²⁵⁰ This section discusses these interrelated concepts.

1. How ASPs Aid in Assessing Institutional Effectiveness

Best Practices' focus on institutional assessment concentrates on whether law schools are evaluating the program of instruction for effectiveness in preparing students for the practice of law.²⁵¹ It

²⁴⁷ Schulze, *supra* note 25, at 284.

²⁴⁸ *Id.* at 284 n.45.

²⁴⁹ See BEST PRACTICES, *supra* note 10, at v.

²⁵⁰ See, e.g., CARNEGIE REPORT, *supra* note 2, at 182.

²⁵¹ BEST PRACTICES, *supra* note 10, at 265.

recommends that law schools engage in this self-reflection “longitudinally, repeatedly, and as part of the institutions’ process of doing business.”²⁵² It notes that the ABA accreditation process requires law schools to evaluate the effectiveness of the course of instruction and encourages law schools to use various methods to gather information.²⁵³ Best Practices further encourages law schools to focus on outcome measures, such as documentation of student learning, bar passages rates, and job placement.²⁵⁴ Most importantly, Best Practices endorses the idea that law schools should consistently utilize assessment measures to improve the effectiveness of the course of instruction.²⁵⁵

ASPs aid in meeting Best Practices’ call for institutional assessment in a number of ways. First, ASPs may often collect quantitative data on the effectiveness of their activities each year for each cohort of students going through the support program. Because law schools usually assess their institution by means of other criteria, such as bar passage rate and incoming LSAT scores,²⁵⁶ ASP statistics provide alternative methods of collecting data on institutional effectiveness. Furthermore, ASPs often collect qualitative data reflecting on students’ experiences in the support programs.²⁵⁷ Finally, ASPs may also alter their methodologies based upon changes in statistical evidence, thus evidencing a law school’s tendency to improve the course of study based upon assessment measures.

For instance, the SCALES program at the John Marshall Law School in Chicago uses outcome measures to assess the effectiveness of its pre-admissions academic support program.²⁵⁸ The SCALES program consists of two graded courses in which at-risk students enroll in the summer before law school.²⁵⁹ Their permanent admission to the law school is conditioned

²⁵² *Id.*

²⁵³ *Id.* at 265–66.

²⁵⁴ *Id.* at 267–71.

²⁵⁵ *Id.* at 270–71.

²⁵⁶ See generally David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 9, 2011, at B1 (noting employment statistics as a measure).

²⁵⁷ See, e.g., Kristine S. Knaplund & Richard H. Sander, *The Art and Science of Academic Support*, 45 J. LEGAL EDUC. 157, 196–97 (1995) (noting that UCLA has attempted to compile qualitative data through surveys).

²⁵⁸ Sonia Bychkov Green et al., *Sailing Against the Wind: How a Pre-Admission Program Can Prepare At-Risk Students for Success in the Journey Through Law School and Beyond*, 39 U. MEM. L. REV. 307, 310–12 (2009).

²⁵⁹ *Id.*

upon successful completion of these two courses, and the program is designed to provide a foundation and context for first year law school coursework.²⁶⁰ The SCALES program is intended to provide at-risk students with academic support while at the same time allowing them to demonstrate their potential to succeed in law school by performing well on two examinations.²⁶¹ The faculty of the SCALES program collected qualitative and quantitative evidence of students' experience in the program.²⁶² The faculty also monitored the future success of SCALES students, including their bar passage (each of the thirteen successful SCALES students passed the exam).²⁶³ Importantly, the law school used this data to justify the retention of the program and the decision to change from a "sink-or-swim" pre-admission program to the current model.²⁶⁴ This use of a multitude of assessment tools in the SCALES program is evidence of ASPs' ability to fulfill this facet of Best Practices' call to action.²⁶⁵

2. *How ASPs Aid in Crystalizing Institutional Intentionality*

Similarly, the Carnegie Report notes that law schools should make efforts to "crystalize institutional intentionality."²⁶⁶ In essence, this means that law school faculties should develop the capacity to work together to leverage individual strengths as a means by which to achieve common objectives.²⁶⁷ This contrasts with what might be considered the traditional law school's default mode of an atomistic, uncoordinated series of individuals working alone without parlaying other faculty members' complementary abilities.²⁶⁸

²⁶⁰ *Id.* at 310–12, 320.

²⁶¹ *Id.* at 310–12.

²⁶² *Id.* at 320–21, 332.

²⁶³ *Id.* at 320–21.

²⁶⁴ *Id.* at 310–11, 347.

²⁶⁵ For other examples of ASPs using assessment measures to improve program effectiveness, see generally Knaplund & Sander, *supra* note 257, at 159 ("Our [empirical] analysis of seven distinct academic support initiatives at UCLA shows that support *can* substantially and demonstrably improve both short-term and long-term academic performance, but the effects vary markedly across UCLA's programs.").

²⁶⁶ See CARNEGIE REPORT, *supra* note 2, at 182.

²⁶⁷ See *id.* at 191.

²⁶⁸ See *id.*

New York Law School's Academic Skills Program demonstrates this concept. That program offers a number of different academic support measures,²⁶⁹ but the "Principals of Legal Analysis" class (PLA) best demonstrates the notion of ASP acting to solidify institutional intentionality.²⁷⁰ Students in the bottom third of the first year class after December exams enroll in the three-credit PLA course.²⁷¹ The mainstay of this course is feedback provided by Academic Skills Program faculty in nearly every class session.²⁷² Students write answers to essay questions developed by the doctrinal professors from whom they are learning in other courses.²⁷³ The feedback focuses on students' legal analysis abilities and is intended to substantially improve the students' abilities to improve their performance in doctrinal courses.²⁷⁴ Feedback from students after the course indicates that the program can make all the difference in a student's ability to succeed in first year exams.²⁷⁵

A great deal of coordination is required in this course between doctrinal professors and PLA faculty.²⁷⁶ As noted, doctrinal faculty create the essay problems that form the basis of the students' work and the subsequent feedback.²⁷⁷ Although this takes faculty resources, it also "results in a faculty engagement in terms of improving students' performance."²⁷⁸ Thus, the course design directly impacts the institution's implementation of its goal to help struggling students succeed. An added benefit is the fact that the doctrinal professors subsequently release the essay problems to the entire first year class to provide additional practice work for exam preparation.²⁷⁹ The PLA course's integration of doctrine,

²⁶⁹ *Academic Advising*, N.Y. L. SCH. WEBSITE, http://www.nyls.edu/academics/academic_advising (last visited Oct. 13, 2011).

²⁷⁰ See Telephone Interview with Kris Franklin, Director of New York Law School's Academic Skills Program (June 23, 2011) [hereinafter Franklin Telephone Interview] (on file with author).

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ See, e.g., Email from Anonymous Student to Richard Matasar, Dean, New York Law School (June 20, 2011, 21:40:29 EDT) (on file with author).

²⁷⁶ Franklin Telephone Interview, *supra* note 270.

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Id.*

skills, and support, coupled with the use of formative assessment and a wide range of faculty members, really is the embodiment of a large number of the suggestions both in Best Practices and in the Carnegie Report.

B. How Academic Support Across the Curriculum Helps Support Student Autonomy, Provide a Healthy Learning Environment, and "Create a Campus Culture that Is a Positive Force"

Best Practices spends some time dealing with certain issues that have come to the attention of the legal academy in recent years.²⁸⁰ Chapter Four, which focuses on "Best Practices for Delivering Instruction, Generally," includes a section entitled "Create and Maintain Effective and Healthy Teaching and Learning Environments."²⁸¹ Included within this section are subsections on "Do No Harm to Students," "Support Student Autonomy," "Foster Mutual Respect Among Students and Teachers," and "Have High Expectations."²⁸² These phrases are all key terms arising out of the "humanizing legal education" movement.²⁸³

This movement centers around an ever-growing body of literature attesting to the negative impact law school has on students' psyche. In one important study, Professors Kenneth Sheldon and Lawrence Krieger found that law students' "subjective well-being" plummeted in the first year of law school.²⁸⁴ Another study "found that 44% of law students meet the criteria for clinically significant levels of psychological distress."²⁸⁵ An additional study found that law students also suffer from significantly higher levels of drug and alcohol use than college and high school graduates of the same age, and that law students' already heightened

²⁸⁰ BEST PRACTICES, *supra* note 10, at 1.

²⁸¹ *Id.* at ii.

²⁸² *Id.*

²⁸³ See generally Lawrence S. Krieger, *Human Nature as a New Guiding Philosophy for Legal Education and the Profession*, 47 WASHBURN L.J. 247, 260–61 (2008) (defining "humanizing legal education"); Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL'Y L. & ETHICS 357, 374, 383 (2009) (discussing autonomy, support, and the humanizing movement).

²⁸⁴ Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261, 261 (2004).

²⁸⁵ Peterson & Peterson, *supra* note 283, at 359 (internal citations omitted).

alcohol use further increases between the second and third year of law school.²⁸⁶

Reacting to these studies and the humanizing movement, Best Practices notes:

The learning environments in the best teachers' classrooms provide challenging yet supportive conditions in which learners feel a sense of control over their education; work collaboratively with others; believe that their work will be considered fairly and honestly; and try, fail, and receive feedback from expert learners in advance and separate from any summative judgment of their effort.²⁸⁷

Best Practices recommends that law schools affirmatively act to "do no harm to students" and "[s]upport [s]tudent [a]utonomy."²⁸⁸ The term "do no harm to students" is one of the primary tenets of the humanizing legal education project.²⁸⁹ It essentially suggests that law schools must avoid mystifying the educational process, engage in occasional encouragement, and provide effective feedback to students so that they can hone their learning.²⁹⁰ In general, it means making a conscious effort to evaluate the educational philosophies and methods of an institution to ensure that rigor and psychological well-being can go hand-in-hand.

The ASP at Suffolk Law explicitly seeks to provide means by which to do no harm to students.²⁹¹ Although Best Practices recommends that law teachers take measures to avoid doing harm in the first place, the Suffolk ASP works to mitigate any harm that might occur nonetheless. For instance, the ASP holds a workshop once a year aimed at helping students achieve balance while attending law school.²⁹² To optimize the

²⁸⁶ Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 79 (2002) (citing Ass'n of Am. Law Sch., *Report of the Special AALS Committee on Problems of Substance Abuse in Law Schools*, 44 J. LEGAL EDUC. 35, 41–42 (1994)).

²⁸⁷ BEST PRACTICES, *supra* note 10, at 110 (internal citations and quotations omitted).

²⁸⁸ *Id.* at 110–14.

²⁸⁹ Schulze, *supra* note 25, at 290 (citing Barbara Glesner Fines, *Fundamental Principles and Challenges of Humanizing Legal Education*, 47 WASHBURN L.J. 313, 313–18 (2008)).

²⁹⁰ BEST PRACTICES, *supra* note 10, at 112.

²⁹¹ Ramy Telephone Interview, *supra* note 199.

²⁹² *Id.*

effectiveness of this session, the ASP professor directly explains how a lack of balance can undermine law school performance.²⁹³ Bringing the topic to law school performance makes the workshop more directly relevant to students and makes the session more credible.²⁹⁴ At crucial times in the semester—such as when students’ legal writing papers are due or at a time when doctrinal professors are picking up the pace—the ASP sends emails to students explicitly stating that it is normal to encounter stress during these times.²⁹⁵ This ensures students that their concerns and stress are not isolated but in fact perfectly normal and shared by most other students.²⁹⁶ This message serves to undermine harm by de-isolating students who might otherwise feel that their apprehension is abnormal.²⁹⁷

Finally, the ASP professors at Suffolk Law take specific measures in dealing with underperforming students to undermine any harm occasioned by those students’ underperformance.²⁹⁸ For instance, where appropriate, the ASP professor might tell these students that their academic difficulties are “absolutely a fixable problem” or that the students have been “doing a ton of work, and it looks great.”²⁹⁹ Students respond to this by indicating that “they look forward to ASP meetings . . . because at least [they will] feel better.”³⁰⁰ This humanizes the law school environment because it fills the students with a sense of confidence.

“Support [s]tudent [a]utonomy,” another topic related to the humanizing movement, relates to the psychological concept of “self-determination theory” of human motivation.³⁰¹ Self-determination theory

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.* at 113. See also Corie Rosen, *Creating the Optimistic Classroom: What Law Schools Can Learn from Attribution Style Effects*, 42 MCGEORGE L. REV. 319, 323 (2011); Carol L. Wallinger, *Autonomy Support 101: How Using Proven Autonomy Support Techniques Can Increase Law Student Autonomy, Engender Hope, and Improve Outcomes*, 48 DUQ. L. REV. 385, 386 (2010).

includes three subsets: autonomy, relatedness, and competence.³⁰² Autonomy support includes three requisites:

(a) choice provision, in which the authority provides subordinates with as much choice as possible within the constraints of the task and situation; (b) meaningful rationale provision, in which the authority explains the situation in cases where no choice can be provided; and (c) perspective taking, in which the authority shows that [the authority] is aware of, and cares about, the point of view of the subordinate.³⁰³

Best Practices thus suggests that law schools should

involve students in curricular and other institutional decisions that affect students; give students as much choice as possible within the constraints of providing effective educational experiences; explain the rationale for teaching methodologies and assignments . . . ; and demonstrate in word, deed, and spirit that the point of view of each student is welcomed and valued.³⁰⁴

Thus, the Best Practices section on creating and maintaining effective and healthy teaching and learning environments encapsulates many of the theories of the humanizing movement.

ASPs also enhance perceived autonomy support.³⁰⁵ As detailed in a previous article, ASPs' focus on learning styles theory effectively individualizes the law school learning experience.³⁰⁶ While the first year of law school largely deprives students of choice provision, due to the

³⁰² Schulze, *supra* note 25, at 300 (citing Marylene Gangé & Edward L. Deci, *Self-Determination Theory and Work Motivation*, 26 J. ORG. BEHAV. 331, 336–37 (2005)). “According to SDT, all human beings require regular experiences of autonomy, competence, and relatedness to thrive and maximize their positive motivation.” Sheldon & Krieger, *supra* note 17, at 885. Put another way, people need to feel that they are working or learning in a manner of their own choice (autonomy); “they are good at what they do or at least can become good at it” (competence); and their work or learning has purpose and allows them to “relate meaningfully to others” (relatedness). *Id.*

³⁰³ Sheldon & Krieger, *supra* note 17, at 884.

³⁰⁴ BEST PRACTICES, *supra* note 10, at 114.

³⁰⁵ Schulze, *supra* note 25, at 320–30.

³⁰⁶ *Id.* at 315–16.

mandatory curriculum at most schools and the fairly ubiquitous pedagogy of the Case Method,³⁰⁷ ASPs can nevertheless provide students with choice over how they absorb the material. As detailed previously, the Study for Success Program at Oklahoma City University School of Law provides instruction on learning styles theory to individualize the law school learning process.³⁰⁸ In a series of workshops open to all students, attendees learn the scientific basis and theories behind preferred learning styles.³⁰⁹ They then use the “VARK” instrument³¹⁰ to determine whether they are visual, aural, read-write, kinesthetic, or “multimodal” learners.³¹¹ The instructor then explains examples of how to accomplish certain law school study tasks in a more effective way, using one’s preferred learning style.³¹²

Moreover, the Academic Skills Program at Elon University School of Law includes instruction on personality typology to provide students with the ability to personalize their learning.³¹³ By having students complete the Myers Briggs Type Indicator (MBTI) test, students are able to learn their personality type.³¹⁴ This helps them understand their “basic preferences of each of the four dichotomies specified or implicit in Jung’s theory” and to identify and describe “the [sixteen] distinctive personality types that result from the interactions among the preferences.”³¹⁵ Doing so “give[s] students an even deeper understanding of how they, as individuals, learn new material, interact with others, and process information.”³¹⁶ In doing so, this method (as well as instruction on learning styles theory) helps

³⁰⁷ *Id.* at 324.

³⁰⁸ E-mail from Chelsea M. Baldwin, Assistant Director, Academic Achievement, Oklahoma City University School of Law, to Louis N. Schulze Jr., Assistant Professor of Law and Director, Academic Excellence Program, New England Law | Boston (July 7, 2010, 14:55 CST) [hereinafter Baldwin E-mail] (on file with author).

³⁰⁹ *Id.*

³¹⁰ *Id.*; Neil D. Fleming, *VARK: A Guide to Learning Styles* (2001), <http://www.vark-learn.com/english/index.asp> (last visited Nov. 19, 2011).

³¹¹ Baldwin E-mail, *supra* note 308.

³¹² *Id.*

³¹³ Telephone Interview with Dr. Martha Peters, Professor of Legal Education, Elon University School of Law (June 29, 2010) [hereinafter Peters Telephone Interview] (on file with author).

³¹⁴ *Id.*; *MBTI Basics*, THE MYERS & BRIGGS FOUNDATION, <http://www.myersbriggs.org/my-mbti-personality-type/mbti-basics> (last visited Oct. 17, 2011).

³¹⁵ Peters Telephone Interview, *supra* note 313; *MBTI Basics*, *supra* note 314.

³¹⁶ Schulze, *supra* note 25, at 325.

provide students with a choice in their learning, thus fulfilling the need for autonomy support.

C. How Academic Support Across the Curriculum Helps a Law School Fully Commit to Preparing Students for the Bar Exam

Best Practices explicitly recommends that law schools commit to the objective of preparing students for the bar exam.³¹⁷ This recommendation is controversial,³¹⁸ and the issue of the degree to which law schools should directly involve themselves in preparing students for licensure tests has an interesting history in the legal academy. Explicit training for the bar exam (or explicit training in anything in law school) strikes some in the academy as cutting too close to a trade school mentality.³¹⁹ This mentality, in turn, is inconsistent with the “university model” of legal instruction, whereby the study of law is scholarly and the mindset comports with the scientific method’s ethos of critical analysis.³²⁰ Thus, one could say that the legal

³¹⁷ BEST PRACTICES, *supra* note 10, at 15. See also Bard, *supra* note 3, at 847 (noting how medical schools support their students’ licensure efforts while not becoming trade schools, and stating that legal academics should similarly equip students).

³¹⁸ See Bard, *supra* note 3, at 845 (responding to the objection that law schools will resort to teaching to tests); Soc’y of Am. Law Teachers, *Society of American Law Teachers Statement on the Bar Exam*, 52 J. LEGAL EDUC. 446, 446–50 (2002) (discussing how the bar examination negatively affects legal education).

³¹⁹ See Daniel Gordon, *Does Law Teaching Have Meaning? Teaching Effectiveness, Gauging Alumni Competence, and the MacCrate Report*, 25 FORDHAM URB. L.J. 43, 63 (1997).

The MacCrate Report probably is so delicate in avoiding explicitly describing legal education as training because a description of legal education as training connotes the negative image of the trade school. Law schools seek to avoid being labeled trade schools. On one hand, law firms probably would not express much shock or indignation when the MacCrate Report called their professional development programs “training.” On the other hand, law professors might worry that their educational programs would not fit well into the university system if their educational programs are called training programs.

Id.

³²⁰ 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, 127 (2010) (“[L]aw
(continued)

academy's resistance to explicit bar training has been hard-wired into its collective psyche ever since Dean Langdell took legal education out of the apprenticeship model and into the university.³²¹

Luckily, recent developments have caused the academy to become more moderate on this position, allowing a more holistic approach to legal education. The ABA, the organization responsible for law school accreditation, deleted Interpretation 302-7 of the *Standards for the Approval of Law Schools* regarding bar examination preparation courses.³²² That interpretation stated: "If a law school grants academic credit for a bar examination preparation course, such credit may not be counted toward the minimum requirements for graduation established in Standard 304. A law school may not require successful completion of a bar examination preparation course as a condition of graduation."³²³ With this change, law schools may now provide credit for these courses and require them for graduation.³²⁴ Oftentimes, these programs are housed within or coupled with ASPs.³²⁵

professors increasingly have felt the need to prove themselves as legitimate academicians in the university lest they be perceived as mere teachers at a trade school."); Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 527 (1991) ("Langdell viewed law as a 'science' and believed that it should be studied by scientific methods.").

³²¹ See generally Laura I. Appleman, *The Rise of the Modern American Law School: How Professionalization, German Scholarship, and Legal Reform Shaped Our System of Legal Education*, 39 NEW ENG. L. REV. 251, 251-53 (2005) (describing the evolution of legal training from apprenticeships to university model).

³²² AM. BAR ASS'N, ADOPTION BY THE HOUSE OF DELEGATES (Aug. 11-12, 2008), available at www.americanbar.org/content/dam/aba/migrated/leadership/2008/annual/adopted/OneHundredTwelveB.doc.

³²³ *Id.*

³²⁴ See Jones, *supra* note 161; Denise Riebe, *A Bar Review for Law Schools: Getting Students on Board to Pass Their Bar Exams*, 45 BRANDEIS L.J. 269, 272 (2007) (stating that "[t]he ABA's new Interpretation 302-7 permits law schools to grant academic credit for bar preparation courses" and advocating "that law schools should provide bar preparation programs to meet their obligation to prepare students for admission to the bar").

³²⁵ Rebecca C. Flanagan, *Laboratories for Change: Using Academic Support Programs to Apply Innovative Teaching Methods Across the Curriculum*, in REFORMING LEGAL EDUCATION (David Moss & Debra Curtis Moss eds.) (forthcoming 2012) (manuscript at 23) (on file with author).

The bar preparation program at the University of the District of Columbia, David A. Clarke School of Law (UDC-DCSL) is an example of a program, coupled with academic support that demonstrates the thesis of this section as well as many of the other key points of this article.³²⁶ After several years of declining bar passage rates, UDC-DCSL revamped its bar and academic support programs.³²⁷ This happened to coincide with the ABA's changes in the permissible scope of for-credit bar preparation courses.³²⁸ The new bar preparation course was more rigorous and included a review of key doctrinal subjects on the bar.³²⁹ This review provided an opportunity for students to refresh their recollection on these subjects so that the learning curve on post-graduation bar preparation would not be quite so steep.³³⁰ It also allowed instructors to enhance students' bar exam test-taking skills by giving multiple choice and essay questions set in the context of bar-tested subject matters.³³¹

The program also administered a "bar exam survey" to third year students for the purpose of gathering information about students' plans, distributing information, and encouraging students to prepare for their bar studies well in advance.³³² The program also provided students with materials, including videos, multiple choice questions, and essays,

³²⁶ Alphran et al., *supra* note 166, 18–19. The program focused on many of the educational psychology theories I have previously noted in this article. For instance, the authors state:

Self-efficacy was a part of the self-regulated learning approach in the academic support program, focusing on students' beliefs they could learn and succeed in law school. A shift or transformation in building a culture of success was important. Negative attitudes and pessimism affect motivation for learning. Low self-efficacy can also reduce a student's belief in reaching his or her potential success. The program aimed at helping students believe in their potential success and in their ability to overcome obstacles to their learning by increasing opportunities for preparation to take the bar.

Id. at 19.

³²⁷ *Id.* at 18.

³²⁸ *Id.* at 25.

³²⁹ *Id.* at 18.

³³⁰ *Id.*

³³¹ *Id.*

³³² *Id.* at 20.

provided by commercial bar preparation companies.³³³ The program was based on, and closely coordinated with, various academic support methodologies already in place within the law school.³³⁴ The authors reported that bar passage results for students targeted by this program improved over the course of the years studied.³³⁵ This program is a solid example of fulfillment of Best Practices' call for law schools to commit seriously to their students bar passage efforts.

D. How Academic Support Across the Curriculum Helps a Law School Use Multiple Methods of Instruction and Reduce Reliance on Socratic Dialogue and the Case Method

Both Best Practices and the Carnegie Report criticize traditional law school instruction for relying too heavily on the Socratic and Case Methods.³³⁶ Importantly, neither text advocates the elimination of these tools, but instead suggest that Socratic dialogue and use of the Case

³³³ *Id.* at 21–22.

³³⁴ *Id.* at 22–23.

³³⁵ *Id.* at 39. Similarly, at New England Law | Boston, the law school created a three-credit bar preparation course called “Advanced Legal Analysis.” *Bar Examination Preparation Program*, NEW ENGLAND LAW | BOSTON, <http://www.nesl.edu/exceptional/BarExamPrepProgram.cfm> (last visited Oct. 31, 2011). This course is available to all graduating seniors either in the fall semester (for those graduating in December and sitting for the bar examination in February) or in the spring (for May graduates sitting for the July bar examination). *Academic Excellence Program*, *supra* note 155. The course meets twice a week, and students receive instruction on study methods for the bar examination, substantive law on the Multistate Bar Examination, and practice problems for both multiple choice and essay problems. *Bar Examination Preparation Program*, *supra*. Each student meets individually with the Director of Bar Support Services and receives instruction on application issues, preparing for the Character and Fitness Evaluation, and studying for the Multistate Professional Responsibility Exam. Additional support is even available after graduation, as the director of the program mentors students and provides additional instruction in the months before the bar exam. *Id.* Since introducing this course in 2009, students have flocked to enroll in it. The introduction of this course facilitated an annual increase in the law school's bar passage rate, culminating in a school record 93.6% pass rate in the summer of 2010 (the first year that all graduating students had access both to the Advanced Legal Analysis class in their senior years and the entire Academic Excellence Program in their first and second years). *Academic Excellence Program*, *supra* note 155.

³³⁶ BEST PRACTICES, *supra* note 10, at 132–41; CARNEGIE REPORT, *supra* note 2, at 186–88.

Method should be intertwined with other viable methodologies.³³⁷ This section discusses some of the imperfections in these two methods and describes ASP measures that can help integrate other approaches to classroom learning.

The Socratic Method is criticized for being an incomplete means by which to teach law.³³⁸ In terms of learning styles theory, the Socratic Method only (arguably) connects with “aural” learners due its basis in communicative speech. Even those learners are often dissatisfied with the Socratic Method because they prefer learning by lecture, a method in which the information is presented directly to the learner, rather than necessitating the extraction of salient points by the learner.³³⁹ Students tending toward other learning styles, by contrast, are less aided by the Socratic Method because it does not fulfill the kinesthetic, read-write, or visual elements desired by those learners.³⁴⁰ This problem is even more

³³⁷ BEST PRACTICES, *supra* note 10, at 207–25; CARNEGIE REPORT, *supra* note 2, at 191–92.

³³⁸ Madison, *supra* note 4, at 300–01. “[E]ven those who have a preference for aural learning (and, hence, are the ones who should best learn in a Socratic-focused class) benefit from having other methods of teaching support the “aural” learning offered by the Socratic method.” *Id.*

³³⁹ *See id.* at 313–14.

³⁴⁰ *See id.* at 312 n.72, 313–14. There is a substantial debate in the educational psychology field regarding learning styles theory. *See* Eric A. DeGroff & Kathleen A. McKee, *Learning Like Lawyers: Addressing the Differences in Law Student Learning Styles*, 2006 BYU EDUC. & L.J. 499, 509–10 (2006). It is fair to say that many in that field believe that changing teaching methods to satisfy students’ diverse learning styles is empirically unsound. *Id.* at 544. Moreover, Professor Friedman wisely points out that the Socratic Method is a unique means by which to focus students on particular skills unlikely to be fostered by other teaching methods.

This article offers two defenses. First, like the Carnegie Report and Best Practices, this article does not advocate for the wholesale abandonment of the Socratic Method. It plays a useful role in educating future lawyers. *Id.* at 536. Instead, teaching methods should be expanded to include other means of penetrating students’ minds from different directions. The combination of the distinct advantages of the Socratic Method with other approaches will optimize the degree to which students absorb material. Second, although debate rages with respect to whether changing teaching methods to accommodate learning styles is sound, there is no disagreement that students should study in a way that most effectively leverages their preferred learning style. *See* Salzmann, *supra* note 208, at 299. Thus, ASPs should teach students how to study in ways that make use of these methods.

acute in recent years because, with the development of personal computers and other digital media, students entering law school are now more diverse in terms of learning style.³⁴¹ While law students prior to 1990 were usually read-write learners, the “Millennial Generation” of law students has a far greater representation of diverse learning styles because that generation grew up learning in an environment dominated by the Internet.³⁴² Accordingly, the decades-old criticisms of the Socratic Method are now amplified by changes in the fundamental composition of the pool of learners.

Another critique of the Socratic Method is its negative impact upon women and students of color. In a groundbreaking study of female students at the University of Pennsylvania Law School, Lani Guinier and her co-authors found evidence that the Socratic Method has the tendency to alienate women and make them feel “delegitimated.”³⁴³ This, in turn, led to a negative impact on these students’ performance levels.³⁴⁴ Similarly, scholars have criticized the Socratic Method for its impact upon students of color, finding a number of flaws in its methodology as it pertains to African-American and Hispanic students in particular.³⁴⁵

³⁴¹ Salzmann, *supra* note 208, at 299.

³⁴² Madison, *supra* note 4, at 297–98. See also Joan Catherine Bohl, *Generations X and Y in Law School: Practical Strategies for Teaching the “MTV/Google” Generation*, 54 LOY. L. REV. 775, 778–82 (2008) (comparing learning styles among different generations and discussing the impact of technology on the Millennial generation); Weresh, *supra* note 123, at 360–61.

³⁴³ Lani Guinier et al., *Becoming Gentlemen: Women’s Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 3–4 (1994) (“[M]any women are alienated by the way the Socratic Method is used in large classroom instruction, which is the dominant pedagogy for almost all first-year instruction.”).

³⁴⁴ *Id.* at 5. There are “substantial material consequences for those women who exit the Law School after sustaining what they describe as a crisis of identity. These women graduate with less competitive academic credentials, are not represented equally within the Law School’s academic and social hierarchies, and are apparently less competitive in securing prestigious and/or desirable jobs after graduation.” *Id.* See also Sari Bashi & Maryana Iskander, *Why Legal Education Is Failing Women*, 18 YALE J.L. & FEMINISM 389, 391–93 (2006).

³⁴⁵ See generally Carole J. Buckner, *Realizing Grutter v. Bollinger’s “Compelling Educational Benefits of Diversity”—Transforming Aspirational Rhetoric into Experience*, 72 UMKC L. REV. 877, 889–91 (2004) (“Critical race theorists argue there is no intrinsic necessity to the current methods of legal education, which have their genealogical roots in
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Meanwhile, the Case Method approach attracts criticism as well.³⁴⁶ First, the Case Method's focus on appellate cases ignores the need to train law students to play a role in the litigation, not just to act as neutral observers of other lawyers.³⁴⁷ Second, because law students' only window into the world of law practice is through appellate cases, they are left with the impression that all cases must resolve in the zero-sum-game, or pugilistic arena of litigation, giving little attention to the notion of positive dispute resolution.³⁴⁸ Third, basing grades upon a semester in which the

white legal culture."'). *But see* Elizabeth Mertz et al., *What Difference Does Difference Make? The Challenge for Legal Education*, 48 J. LEGAL EDUC. 1, 4 (1998). Mertz et al., found:

Information about the effects of different kinds of discourse (for example, the effects of extended Socratic dialog versus other kinds of dialog) was mixed and complicated Our findings demonstrate that the Socratic [M]ethod is not a single or clear variable along which one can map gender and race disparity or equality, instead showing the ways that other aspects of classroom interaction and teaching interact with Socratic pedagogy to affect student participation.

Id.

³⁴⁶ See generally Benjamin H. Barton, *A Tale of Two Case Methods*, 75 TENN. L. REV. 233, 236 (2008) ("[M]any of the criticisms cluster around the idea that law schools could and should do more to prepare students for the actual practice of law than they currently do."); James Eagar, *The Right Tool for the Job: The Effective Use of Pedagogical Methods in Legal Education*, 32 GONZ. L. REV. 389, 390 (1996–1997) ("[T]o be most effective, law teachers need to be aware of a wide range of different pedagogical methods available to them, and to use those methods which best meet the educational goals of the course they are teaching.").

³⁴⁷ Barton, *supra* note 346, at 235, 237.

³⁴⁸ Janeen Kerper, *Creative Problem Solving vs. the Case Method: A Marvelous Adventure in Which Winnie-the-Pooh Meets Mrs. Palsgraf*, 34 CAL. W. L. REV. 351, 353–54 (1998).

Traditional law school methods emphasize the study of appellate cases, rules, statutes, and the procedures of the adversary method. The lawyer's perceived role is to vindicate the client's individual interests. Conflict is viewed as a zero-sum game with rights and liabilities, and winners and losers. Advocacy and assertiveness are seen as important skills. Emotion is consciously repressed in favor of a detached analysis.

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sole mode of learning is through reading cases fails to measure other important lawyerly skills, such as negotiation, judgment, and communication.³⁴⁹ Fourth, the Case Method “delude[s] its practitioners into believing that law [is] science, not policy, and that other scholarly disciplines . . . [have] nothing to offer.”³⁵⁰

Again, neither Best Practices nor the Carnegie Report advocates the abolition of these two methods, as both have their strengths.³⁵¹ Both texts do, however, support the notion of diversifying law school teaching to include broader methods to achieve broader goals.³⁵²

Certain aspects of Charleston Law School’s Academic Success Program assist in diversifying teaching methods, thus helping to mitigate the problems noted above. As with many ASPs, Charleston’s program at one point made multiple weekly sessions available to first year students,³⁵³ which covered basic law school skills such as outlining, case reading, note-taking, etc.³⁵⁴ The program went beyond that, however, by co-teaching

Id.

³⁴⁹ Barton, *supra* note 346, at 239–40.

³⁵⁰ Andrew E. Taslitz, *Exorcising Langdell’s Ghost: Structuring a Criminal Procedure Casebook for How Lawyers Really Think*, 43 HASTINGS L.J. 143, 148 (1991) (quoting JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 80 (1976)). In other words, when Langdell developed the Case Method as a means by which to legitimate the “science” of academic inquiry into law (a social construct), it led subsequent generations of students to buy into that theory just a little too much—law students are left with the impression that there is always an empirically “right” answer, ignoring a legal realist theory that what law “is” is more complex than merely the scientific deduction of principles from legal texts. See Weaver, *supra* note 320, 565–69.

³⁵¹ See Ryan Patrick Alford, *How Do You Trim the Seamless Web? Considering the Unintended Consequences of Pedagogical Alterations*, 77 U. CIN. L. REV. 1273, 1274 (2009) (arguing that current attempts to reform legal education fail to consider the positive aspects of the Socratic Method); Peterson & Peterson, *supra* note 283, at 378–89 (arguing that the Socratic Method should not be abandoned, merely implemented differently). See generally THOMAS D. EISELE, *BITTER KNOWLEDGE: LEARNING SOCRATIC LESSONS OF DISILLUSION AND RENEWAL*, xiii–xiv (2009).

³⁵² BEST PRACTICES, *supra* note 10, at 221–25; CARNEGIE REPORT, *supra* note 2, at 191–92.

³⁵³ See Telephone Interview with Mark E. Hoch, Assistant Dean, Charleston Law School (June 27, 2011) [hereinafter Hoch Telephone Interview] (on file with author).

³⁵⁴ *Id.*

sessions with doctrinal faculty.³⁵⁵ For instance, the academic success faculty co-taught an end-of-semester review session with the torts faculty.³⁵⁶ This session provided students with the opportunity to read an essay exam question similar to one they might see on an exam and hear the Torts Professor and Academic Success Professor discuss various issues related to the successful completion of the essay.³⁵⁷ The Academic Success Professor, for instance, would discuss issues pertaining to preparing to write an essay: time-management, issue-spotting, keeping issues separate, etc.³⁵⁸ The doctrinal professor would then lead the class on a discussion of the doctrinal analysis of the problem.³⁵⁹

Importantly, the Academic Success Professor was tasked with explaining a “matrix” to the students that allows them to keep the parties, their claims, and their defenses separate for analytical purposes.³⁶⁰ The doctrinal professor then deconstructed the problem in a pedagogical method comparable to a “cognitive think-aloud.”³⁶¹ This method allowed students to see an expert in the field think through the problem, thus allowing students to emulate the task on the exam. This type of cognitive think-aloud thus permitted the doctrinal professor to teach in a way outside the usual Socratic and Case Methods, and the Academic Success Professor’s use of a matrix demonstrated a cognitive schema that not only

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ *Id.*

³⁵⁸ *Id.*

³⁵⁹ *Id.*

³⁶⁰ *Id.*

³⁶¹ *Id.* Professor Kowalski describes cognitive think-aloud as a “running monologue” in which she explains to students her “internal reasoning and decision-making” for writing or discussing a particular point. Tonya Kowalski, *True North: Navigating for the Transfer of Learning in Legal Education*, 34 SEATTLE U. L. REV. 51, 98 (2010). See also Michael Hunter Schwartz, *Using Course Webpages to Improve Student Learning: Theoretical Justifications and Concrete Examples* 3–4 (Washburn University School of Law, Jan. 26, 2007) (“A cognitive think aloud is a technique developed in other educational settings in which the instructor, often prompted by another expert colleague, traces her mental processes while engaging in a problem-solving enterprise such as legal analysis.”). See generally MICHAEL HUNTER SCHWARTZ ET AL., *TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM* 48, 121 (2009).

helped students answer essays better, but also allowed them to visualize the doctrinal material in a new way.³⁶²

Another way this school's ASP diversifies teaching methods is through presenting lunchtime movies related to the doctrinal materials students are learning.³⁶³ For instance, when students are learning the Equal Protection Clause in Constitutional Law, the program presents the film "The Road to Brown."³⁶⁴ This 1990 documentary details the efforts of Charles Hamilton Houston in crafting the litigation strategy that led to the Supreme Court declaring educational segregation unconstitutional.³⁶⁵ Students thus have the opportunity to see the historical context for the doctrine they are learning in Constitutional Law. More importantly, they can see the litigation strategy of the parties and view the important lawyering lessons to be gleaned. For the purposes of this article, however, the importance lies in the fact that the Constitutional Law professors, who will attend the screening of the documentary and lead a discussion thereafter, would not have time in class to engage in this effort. In this regard, then, the Academic Success Program allows these professors to teach Equal Protection in a way other than the traditional Socratic and Case Methods, thus meeting the Best Practices' calls to reform.

E. How Academic Support Across the Curriculum Helps a Law School Train Students on Receiving and Using Feedback

Best Practices also recommends that law schools train students on receiving and using feedback.³⁶⁶ In addition to the positive impact this would have on students' learning trajectories, it would also have a positive impact on their future careers as lawyers; new lawyers must learn quickly

³⁶² "Schemas are 'critical building blocks of the human cognitive process.' They permit us to process the never-ending amount of information we encounter each day." Leah M. Christensen, *The Psychology Behind Case Briefing: A Powerful Cognitive Schema*, 29 CAMPBELL L. REV. 5, 11 (2006) (quoting Ronald Chen & Jon Hanson, *Categorically Biased: The Influence of Knowledge Structures on Law and Legal Theory*, 77 S. CAL. L. REV. 1103, 1131 (2004)).

³⁶³ Hoch Telephone Interview, *supra* note 353.

³⁶⁴ *Id.*

³⁶⁵ William A. Link, *Film Review*, 31 HIST. EDUC. Q. 523, 523–24 (1991).

³⁶⁶ BEST PRACTICES, *supra* note 10, at 125–26.

how to interpret and implement feedback from senior lawyers, judges, and clients.³⁶⁷

This suggestion implicates the field of “interpersonal dynamics,” a seemingly touchy-feely subject that most lawyers and law professors are likely to dismiss as “soft.”³⁶⁸ In truth, though, law students and young lawyers need to excel in this area to be successful.³⁶⁹ In a course called “Interpersonal Dynamics for Attorneys,” at University of San Francisco School of Law, Professor Joshua D. Rosenberg trains students on how to develop these skills that elude so many practicing lawyers and, potentially leads the public at large to dislike lawyers.³⁷⁰ This course teaches

the relationship skills that are (or at least ought to be) used by attorneys daily—the skills that make them better negotiators, better co-workers, better at attracting and retaining clients, and better investigators. They are also the skills that will enable them to have more effective and more meaningful relationships with those with whom they work. These skills, put simply, are (1) the ability to communicate (listen as well as speak) more clearly and completely; (2) self-awareness; and (3) an openness and receptivity to other people.³⁷¹

One of the facets of this course is teaching students how to receive and use feedback.³⁷² Based on the concept that “our thoughts, feelings, behaviors and perceptions influence each other,”³⁷³ the course aims to give students a forum to engage in a discourse about the subconscious impact that their perception of each other’s behavior has on their interactions.³⁷⁴ In this way, students can strengthen their ability to portray themselves in a way that benefits their goals in the practice of law—in negotiations, in

³⁶⁷ See Joshua D. Rosenberg, *Interpersonal Dynamics: Helping Lawyers Learn the Skills, and the Importance, of Human Relationships in the Practice of Law*, 58 U. MIAMI L. REV. 1225, 1226 (2004). See generally BEST PRACTICES, *supra* note 10, at 2.

³⁶⁸ See Rosenberg, *supra* note 367, at 1258–60.

³⁶⁹ *Id.* at 1234.

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² *Id.* at 1244.

³⁷³ *Id.* at 1240.

³⁷⁴ *Id.* at 1245.

litigation, and in other settings.³⁷⁵ For instance, Professor Rosenberg gives the hypothetical example of a young associate who, upon being assigned a research task by a partner, fails to ask follow-up questions.³⁷⁶ Based on the partner's demeanor, the associate perceives that the partner seems extremely rushed and that any questions from the associate would annoy the partner.³⁷⁷ Lacking adequate instruction, the associate then works until 2:00 a.m. on research the partner ultimately deems useless, and the relationship between the two lawyers fractures, as both perceive the other as failing to communicate adequately.³⁷⁸ The Interpersonal Dynamics for Attorneys course aims to make these subtle issues more obvious and to help train students on how to avoid this negative scenario.³⁷⁹

Similarly, ASPs can help students overcome weaknesses in receiving and using feedback from professors. In this way, the student-professor relationship serves as a foil for the students' later relationships with senior lawyers at the start of their careers. In the ASP at Boston College Law School, for instance, student tutors provide a significant amount of the academic support at the law school.³⁸⁰ These student tutors are successful upper-class students who meet individually with first years who either self-select after the ASP orientation or who are referred for support by the Dean of Students or faculty.³⁸¹ The student tutors receive training on how to prepare first year students for their meetings with doctrinal professors in the wake of poor performance or even just regular meetings with faculty.³⁸² The purpose of this preparation is to fill the gap between the students and the faculty: faculty report that underperforming students sometime come to see them without the ability to articulate cogent questions, and other students report that they are so lost in the course that they do not even know what questions to ask.³⁸³ The preparation by the upper-class tutors bridges this gap by identifying the underperforming students' fundamental problems and helping them develop questions to facilitate a meaningful

³⁷⁵ *See id.*

³⁷⁶ *Id.* at 1227–28.

³⁷⁷ *Id.*

³⁷⁸ *Id.*

³⁷⁹ *Id.* at 1227–28, 1234–35.

³⁸⁰ Keller Telephone Interview, *supra* note 213.

³⁸¹ *Id.*

³⁸² *Id.*

³⁸³ *Id.*

interaction with doctrinal professors.³⁸⁴ In this way, this method acts to prevent a miscommunication similar to the scenario detailed by Professor Rosenberg in his piece on interpersonal dynamics.

This method, in turn, accomplishes a number of desirable objectives. First, it facilitates a more effective communication between professor and student, thus enabling students to receive feedback to help them learn the law more effectively. Second, the training by upper-class tutors, who may have some experience working in a legal environment, informally communicates norms to the first year student on appropriate behavior and preparation in communicating with faculty—in other words, it helps condition novice learners in meeting the task of becoming professionals. Third, more efficient meetings free up time for doctrinal professors in that fewer students now attend office hour appointments with little understanding of how to prepare themselves adequately for these meetings. Finally, this training also improves the law school environment because, by improving the effectiveness of these meetings, both students and professors are mutually engaged in the goal of educating students for success.

*F. How Academic Support Across the Curriculum Helps a Law School
Ensure that Summative Assessments are also Formative Assessments*

As noted previously, both the Carnegie Report and Best Practices extensively discuss the fact that law schools could be doing a better job at providing formative assessment for students.³⁸⁵ Best Practices describes formative assessment as “purely educational,” arguing that this type of assessment should be conducted throughout the course.³⁸⁶ Formative assessments help both students and teachers determine the proficiency of their current tactics without the dire consequences of summative assessment.³⁸⁷ While summative assessment is essential to provide the public with lawyers possessing “basic levels of competence,” formative assessment is necessary to ensure that students at least have the opportunity to succeed after taking the time to evaluate their current methods of absorbing the information.³⁸⁸

³⁸⁴ *Id.*

³⁸⁵ See generally BEST PRACTICES, *supra* note 10, at 2–4; CARNEGIE REPORT, *supra* note 2, at 89–91.

³⁸⁶ BEST PRACTICES, *supra* note 10, at 255–56.

³⁸⁷ *Id.*

³⁸⁸ *Id.*

In addition to this, though, Best Practices notes that law schools should do a better job ensuring that summative assessments can be used as formative assessments.³⁸⁹ The status quo is that once a student takes a final exam, that exam then becomes useless; it is never seen again and merely sits in the bottom of a cabinet in a professor's office.³⁹⁰ Instead, these exams can serve as a powerful source of learning for law students.

For instance, at Brooklyn Law School, the ASP uses students' summative assessments as formative assessment. Using both midterm and final exams, the ASP Director meets individually with students who underperformed.³⁹¹ First, the director has the students read an "A" answer to the same exam.³⁹² The director then has the underperforming student deconstruct the "A" answer to find the "IRAC" in it.³⁹³ Having found that organization in the strong essay, the underperforming student is then asked to deconstruct the student's own answer in an attempt to locate the organization by means of IRAC.³⁹⁴ Usually, students are unable to do so, and the ASP Director then asks the underperforming student to reconstruct the student's own answer to confirm with IRAC.³⁹⁵ The ASP Director then asks the underperforming student to deconstruct the rest of the student's essay for other differences between it and the strong answer.³⁹⁶ The student finds these inconsistencies and is encouraged to write more practice essays adhering to the newly-found aspects of a strong essay.³⁹⁷ Because students diagnose their own problems, the ASP Director tells them that they have the ability to do well going forward because the student figured out how to do it right.³⁹⁸ The method is even more effective when, as is the case at Brooklyn Law, the doctrinal professor also gives students feedback on how their essays could have been stronger.³⁹⁹

³⁸⁹ *Id.* at 260–61.

³⁹⁰ *Id.* at 261.

³⁹¹ Interview with Linda Feldman, Director of Academic Support, Brooklyn Law School, June 13, 2011 [hereinafter Feldman Interview].

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ *Id.*

³⁹⁵ *Id.*

³⁹⁶ *Id.*

³⁹⁷ *Id.*

³⁹⁸ *Id.*

³⁹⁹ *Id.* An important facet to this particular story is that at many schools ASP professionals would not be "permitted" to give feedback to students using students' own
(continued)

This approach makes use of summative assessments in a way that is atypical of the usual procedure at most law schools.⁴⁰⁰ This method meets the recommendation of Best Practices without requiring additional work by doctrinal professors. It allows students to see the mistakes they made and correct those mistakes in the future, thus increasing students' learning trajectory rather than making the same mistakes repeatedly. In this way, this method also teaches students professionalism because it subtly communicates the idea to students that, as lawyers, they must constantly review their performance to improve their skills.

V. COUNTERARGUMENTS TO THIS PROPOSAL AND ANY REBUTTALS

Having defined Academic Support Across the Curriculum and having provided a number of examples of how this concept can help law schools meet the recommendations of the Carnegie Report and Best Practices, this section now articulates and addresses some potential counterarguments to these ideas. This will not be an exhaustive list, and the rebuttals may not fully satisfy every reader. The intent with this section, however, is to provoke discussion within the academic support community, and the legal education community more generally, on how to reconceptualize academic support as a means by which to help accomplish many of the goals of Best Practices and the Carnegie Report.

A. Academic Support Across the Curriculum Is Merely "Additive" and Not "Integrative"

First, one of the overarching themes of the Carnegie Report is that, unlike the response to the earlier MacCrate Report, law schools should integrate the three apprenticeships—cognitive, practical, and professional—into all aspects of legal education.⁴⁰¹ Thus, instead of adding a single,

exams. Flanagan, *supra* note 325, at 24. Moreover, at many of these schools, doctrinal professors would not fill in this gap by themselves providing the feedback; the exams would just sit dormant, unable to assist students on improving their performance. BEST PRACTICES, *supra* note 10, at 261. This type of policy, likely predicated implicitly on antiquated notions of hierarchy rather than any pedagogical logic, denies students the opportunity to improve, creates a less effective learning environment, and dehumanizes the law school experience for students. By contrast, Brooklyn Law's forward-thinking method serves as an object-lesson to students about how the faculty and administration seek to enhance students' learning experience.

⁴⁰⁰ BEST PRACTICES, *supra* note 10, at 261.

⁴⁰¹ CARNEGIE REPORT, *supra* note 2, at 27–28.

mandatory “Professional Responsibility” or “Legal Writing” class to the curriculum, law schools instead should teach practical skills, doctrine, theory, and professionalism pervasively throughout the curriculum.

One might argue that Academic Support Across the Curriculum could merely be “additive” in that it posits the idea of hiring one ASP professional, or a small group of them, to administer certain isolated ASP spots in the curriculum. For instance, a first semester class in which students are explicitly oriented to the learning objectives of law school would be merely additive if it was a stand-alone course that ended upon the termination of the fall semester.

This suggestion, however, is different. Law school ASPs should reconceptualize around the notion of pervasive and integrative support of students’ learning. For instance, the programs should be pervasive in that they are open to all students throughout their law school careers (as is the case in the program at New England Law | Boston),⁴⁰² rather than just open to certain students in their first year. The programs would be integrative in that, instead of being set apart from doctrinal instruction, they would instead be integrated transparently by means of such things as co-teaching sessions with doctrinal faculty (such as the case at Charleston Law School),⁴⁰³ using exams from doctrinal courses as formative assessment (as is the case at Brooklyn Law),⁴⁰⁴ or coordination between academic support and doctrinal faculty for the benefit of both constituencies (such as the PLA program at New York Law School).⁴⁰⁵

In fact, truly integrating the three apprenticeships would mandate not just academic support, but Academic Support Across the Curriculum as well. Implementing ASPs divorced from other aspects of the curriculum, cordoned off from certain students, and invisible to doctrinal faculty would be a waste of the potential for transformative improvements for law students, law schools, and faculty.

⁴⁰² See *Academic Excellence Program*, *supra* note 155.

⁴⁰³ See Hoch Telephone Interview, *supra* note 353.

⁴⁰⁴ See Feldman Interview, *supra* note 391.

⁴⁰⁵ See Franklin Telephone Interview, *supra* note 270.

B. Academic Support Across the Curriculum Risks Abandonment of ASPs' Important Traditional Roles

ASPs originated in law schools in part as a means by which to dedicate support services for minority students.⁴⁰⁶ Later, ASPs broadened to provide services for other students.⁴⁰⁷ After this change, though, the central mission of most ASPs was to help underperforming students to improve their performance and succeed in law school.⁴⁰⁸ One could argue that by implementing an Academic Support Across the Curriculum model with the additional roles of co-teaching with doctrinal faculty, orienting all new students to the learning objective of law school, and completing other tasks, ASP professionals would no longer have time to focus on minority students or underperforming students. As a result, underperforming students would no longer directly benefit from the individual attention currently provided by ASPs, law schools would academically dismiss more students, and many more students would therefore leave law school with a year's tuition in debt and no degree to obtain employment.

This is a valid argument, and there is no easy answer to the reality that law schools lack inexhaustible funds to hire more and more teachers. In fact, the Carnegie Report struggles with this same conundrum created by limited resources.⁴⁰⁹ Nonetheless, this proposed role of enhanced academic support does not necessitate an "either/or" choice. In some programs, for instance, the ASP starts in students' first year by spreading resources fairly broadly, then focusing on underperforming students as they progress through law school. For instance, at New England Law | Boston, the entire class has access to the fall course called "Academic Excellence," which introduces fundamental law school skills, explicitly teaches legal analysis, and overtly prepares students for success on exams.⁴¹⁰ In the second semester, the same class is still available to all students, but underperforming students are invited to take part in regularized, individual meetings with academic support faculty to create and facilitate study plans, give feedback on performance, and prepare for

⁴⁰⁶ Kathy L. Cerminara, *Remembering Arthur: Some Suggestions for Law School Academic Support Programs*, 21 T. MARSHALL L. REV. 249, 252 (1996).

⁴⁰⁷ Judith J. Devine & Jennifer D. Odom, *Do Academic Support Programs Reduce the Attrition Rate of First-Year Law Students?*, 29 T. MARSHALL L. REV. 209, 214 (2004).

⁴⁰⁸ Flanagan, *supra* note 325, at 21.

⁴⁰⁹ See CARNEGIE REPORT, *supra* note 2, at 189–91.

⁴¹⁰ *Academic Excellence Program*, *supra* note 155.

spring exams.⁴¹¹ Finally, in students' third semester, only students within a certain portion of the class may enroll in the two-credit "Legal Analysis" class which intentionally sets out to enhance the performance of these specific students.⁴¹² In this way, this ASP roughly equates to Academic Support Across the Curriculum by co-teaching with doctrinal professors, coordinating instruction with doctrinal faculty, and integrating doctrinal exams into academic support. While not the optimal solution, this brand of Academic Support Across the Curriculum better meets the needs demonstrated by the Carnegie Report and Best Practices.

C. "Academic Support Across the Curriculum Might Not Fit in the 'Culture' of One's Law School"

Recently, a relevant post appeared on a popular blog written by and for law professors. The topic of the original post pertained broadly to curricular reform, pedagogy, and the Carnegie Report. Deciding that the ideas of this article were germane, the author of this article submitted a comment briefly summarizing several of the major themes of this piece. Although the comment received generally positive reactions, one subsequent commenter stated that Academic Support Across the Curriculum might not fit within a school's culture. The commenter's use of the word "culture" was intriguing; what exactly does "culture" mean here?

Based on the overall context of the commenter's remarks, it seems the commenter was suggesting that at some schools, situating certain methods within an academic support setting would be improbable due to the hierarchical structures within the law school. Simply put, at some law schools the ASP would not be "permitted" to use methods that incorporate doctrinal material because the "culture" of that law school relegates the work of ASPs strictly to noncontextualized or marginalized settings. For instance, there exists an ASP professor who has taught law for decades and holds an advanced degree in education but who, despite these qualifications, was "prohibited" by a newer doctrinal faculty member from integrating the school's ASP with this professor's first year doctrinal course. This, apparently, was considered appropriate in the "culture" of the law school.

If posited as a counterargument to the proposals of this article, this line of "cultural" rejection of sensible pedagogy is untenable. The ethos of the

⁴¹¹ See *id.*

⁴¹² See *id.*

Carnegie Report and Best Practices is to challenge the engrained aspects of law school “culture” that lack pedagogical or logical justifications. Even the use of the vague term “culture” seems to suggest a certain unspoken social awkwardness in recognizing the latent hierarchical subordination involved. If the commenter is against this type of subordination, the commenter would come out and call it what it is; if the commenter is not against it, yet still cognizant that there is something just not quite right about it, the commenter would use an oblique reference like “culture” to avoid having to stare directly into the eyes of a norm that relegates the author’s colleagues to unjustly diminished roles within the academy.

When one recognizes that many ASP professionals have earned advanced degrees in education,⁴¹³ thus making some experts on pedagogy, the “cultural” bias against the integration of ASP into the curriculum seems absurd. Adding to that absurdity the additional fact that many ASP professionals are women and people of color,⁴¹⁴ the absurdity becomes a striking injustice. Although beyond the scope of this paper, the subordination of these expert teachers, which has a substantial disparate impact upon women and people of color,⁴¹⁵ deserves future attention in legal scholarship.

VI. CONCLUSION

There are (at least) two contestable presumptions implicit in law schools. The first is that if you sit one hundred students in a room, give them casebooks, test them at the end of the year, and they will “figure out” what is expected of them. The second is that academic support must be dedicated strictly to those who struggle in law school. The point of this article is to reconfigure these presumptions and suggest that Academic Support Across the Curriculum, explicitly supporting the learning of all

⁴¹³ Flanagan, *supra* note 325, at 28–29.

⁴¹⁴ See generally Durako, *supra* note 74, at 576 n.59 (“Academic support may have even higher percentages of women than legal writing. If so, it is likely that salary and status may be even lower than for legal writing.”); Nancy Levit, *Keeping Feminism in Its Place: Sex Segregation and the Domestication of Female Academics*, 49 U. KAN. L. REV. 775, 787 (2001) (noting that the membership of one school’s “Ad Hoc Academic Support Committee . . . averaged 65% female over the five years, approximately twice the percentage of women on the faculty during those years”).

⁴¹⁵ See generally Durako, *supra* note 74, at 586 (noting that putting “women in the faculty in subordinate positions . . . may even act to perpetuate negative gender stereotypes”).

students, can help rebut the traditional presumption that students can “figure it out” themselves.

ASPs are often under-utilized in many law schools.⁴¹⁶ This is unfortunate because most ASP professionals serve as a potential source to assist law schools in meeting the recommendations of the Carnegie Report and Best Practices. As demonstrated by the examples detailed in this article, Academic Support Across the Curriculum can, among other things, help make teaching explicit, enhance law schools’ ability to provide formative assessment, and help make law school a more positive, healthy, and effective learning environment. The Carnegie Report and Best Practices stand as the legal academy’s latest effort to improve the way it trains law students to provide legal services; Academic Support Across the Curriculum can be a valuable asset in that laudable effort.

⁴¹⁶ See Cerminara, *supra* note 406, at 250 (“[L]aw schools often marginalize or treat these programs as afterthoughts.”).

