

Nova Law Review

Volume 12, Issue 1

1987

Article 3

The New Nova Curriculum: Training Lawyers For The Twenty-First Century

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Abstract

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KEYWORDS: training, lawyers, curriculum

The New Nova Curriculum: Training Lawyers For The Twenty-First Century

Roger I. Abrams* and Michael R. Masinter**

I. Introduction

Periodically, law faculty rethink the nature of legal education. Should law schools train practicing lawyers or legal thinkers? How should the course of study be organized? And how do you teach students to research and write? Few of these issues are settled for all time. Searching for the soul of legal education, academics rediscover the truths of an earlier age, recycling old methodologies as modern innovations. Fads come and go. Much has been written about this academic pastime of curriculum reform.¹

Virtually all curriculum reform is heralded as "groundbreaking" or "fundamental."² Why would anyone bother to engage in the arduous task unless the payoffs were projected to be great? Having invested considerable time and at least a modicum of thought, faculty members are unlikely to discount the importance of their efforts. The faculty of Nova University Law Center revised its curriculum during the 1985-86 and 1986-87 academic years. Like all proud parents, we see the child of our labors as significant for us. We recognize, of course, that it is hard to evaluate our efforts objectively at this stage, but, perhaps predictably, we think that others might benefit from our example.

The Nova curriculum reform came in two stages. During 1985-86, the faculty focused on the first year program. Some of what was done

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1. See, e.g., Weistart, *The Law School Curriculum: The Process of Reform*, DUKE L.J. 317 (1987); Anstead, *A Second Chance: Learning What Law School Never Taught Me*, 10 NOVA L.J. 289 (1986); Gorman, *Assessing and Reforming the Current Law School Curriculum*, 30 N.Y.L. SCH. L. REV. 609 (1985); Macdonald, *Curricular Development in the 1980's: A Perspective*, 32 J. LEGAL EDUC. 569 (1982); Comment, *A "Modest" Proposal: Reform of the Law School Curriculum*, 23 LOY. L. REV. 144 (1977).

2. See Goldstein, *Eugene V. Rostow as Dean, 1955-1965*, 94 YALE L. J. 1323 (1985).

followed current trends in legal education.³ The faculty reduced substantive courses to four credit hours from six and moved the Constitutional Law course, also reduced to four hours, to the first year. The distinctive, and perhaps unique, change in the first year curriculum was structural rather than substantive. The faculty abolished the traditional large first year class section. Students were grouped into six sections of about forty persons, half the prior size.

In academic year 1986-87, the Nova faculty approved a second stage of curricular reform. It created a Workshop Program consisting of an assortment of limited enrollment skill-oriented courses primarily designed for third year students. Workshops unite advanced doctrine in particular substantive areas, such as real estate, criminal or international law, with lawyering skill development through simulation and drafting exercises. This article will describe the new Nova curriculum within the context of current thought about educational innovation. Although the new curriculum reflects the special character of Nova Law Center, it might also fit comfortably in other law schools. If so, it would be valuable to understand what we did and why we did it.

II. The First Year Curriculum

A. Background

Before 1986, the first year curriculum at Nova was virtually indistinguishable from curricula at most law schools. We offered two semester six credit sequences in Contracts, Property, Torts, and Civil Procedure, one semester three credit classes in Criminal Law and Legal Process, and a two semester three credit Legal Research and Writing class. Without exception, our first year classes met in groups of 90 students. Students completed the first year with 33 of the 87 credits required for graduation.

Our faculty recognized at the outset of our curriculum review that much has changed since Langdell bequeathed us the standard fare of first year courses.⁴ Langdell conceived of law as a set of principles

3. Gorman, *supra* note 1 at 616; Macdonald, *supra* note 1, at 571-73; Comment, *supra* note 1 at 150-54; Brest, *A First-Year Course in the "Lawyering Process,"* 32 J. LEGAL EDUC. 344; Shreve, *Classroom Litigation in the First Semester of Law School - An Approach to Teaching Legal Method at Harvard,* 29 J. LEGAL EDUC. 95 (1977).

4. The triumph of the Langdellian curriculum over other approaches to legal education is well documented. See, e.g., R. STEVENS, *TWO CHEERS FOR 1870: THE AMERICAN LAW SCHOOL,* in *LAW IN AMERICAN HISTORY* (1971); L. FRIEDMAN, *A HISTORY*

rooted in the natural order of things. Because law was fixed and determinate, a "brooding omnipresence,"⁶ the role of both legal scholars and judges was to discover those principles through rigorous analysis. With appellate decisions as the raw material for study, law schools were to function as laboratories, analyzing those cases to discover the underlying principles. Law teachers led large classes of students in case analysis by questioning individual students in what we now call, "rather pretentiously,"⁶ the Socratic Method. Thus, legal education fit nicely into the late nineteenth century university as a scientific discipline.⁷

The triumph of Legal Realism over Langdell's formalism⁸ is so complete that in recent years it has been difficult to find an American legal scholar who embraces Langdell's view of law as a fixed body of independent principles discoverable through case analysis.⁹ Indeed, we regard nineteenth century legal philosophy with the same sort of curiosity that we reserve for the flat earth theory of medieval astronomy. Nevertheless, legal education in general, and first year curricula in particular, continue largely unchanged. To borrow from Maitland, Langdell may be dead, but he rules from the grave.

OF AMERICAN LAW 612-20 (2d ed. 1985); and the writings of our colleague, Anthony Chase, including Chase, *The Birth of the Modern Law School*, 23 AM. J. LEGAL HISTORY 329 (1979); Chase, *Origins of Modern Professional Education: The Harvard Case Method Conceived as Clinical Instruction In Law*, 5 NOVA L.J. 323 (1981); CHASE, *American Legal Education since 1885: The Case of the Missing Modern*, 30 N.Y.L. SCH. REV. 519 (1985).

5. *Guaranty Trust Co. v. York*, 362 U.S. 99, 102 (1945).

6. STEVENS, *supra* note 4, at 437.

7. For Langdell, the characterization of law study as a scientific inquiry was essential to its continued inclusion within the university at a time when it might otherwise have degenerated into a trade mastered through apprenticeship. Chase, *American Legal Education Since 1885: The Case of the Missing Modern*, 30 N.Y.L. SCH. L. REV. 519 (1985).

8. For an illuminating account of Langdell's jurisprudence, see T. Grey, *Langdell's Orthodoxy*, 45 U. PITT. L. REV. 1 (1983). Grey characterizes Langdell's jurisprudence as "classical orthodoxy" marked by an "aspiration that the legal system be made complete through universal formality, and universally formal through conceptual order." *Id.* at 11. At its heart, Langdell's jurisprudence sought to root law firmly in the sciences through formalism.

9. The current rebirth of interest in natural law attributable to Dworkin and others has none of the trappings of Langdell's formalism. While natural law has only recently re-emerged in American legal scholarship, it flourishes in the literature of political philosophy. See, e.g., L. STRAUSS, *WHAT IS POLITICAL PHILOSOPHY* (1959). The current popularity of A. BLOOM, *THE CLOSING OF THE AMERICAN MIND* (1987) may presage a revival of interest in classical natural law.

We examined our Langdellian curriculum and found the following deficiencies. Our first year:

- (1) lumped students into huge classes of 90 or more;
- (2) burdened students with a disproportionately high academic load — first year courses comprised 38 percent of the credits required for graduation;
- (3) scattered student focus among five substantive courses plus research and writing each semester;
- (4) denied students any overview of either legal education or law as part of a process of self-government;
- (5) concealed the explosive growth of public law;
- (6) ignored the role of legislatures and administrative agencies in the creation of law;
- (7) and eschewed what we disparagingly call "skills training."

With this critique in hand, we returned to our Langdellian curriculum with an obvious question: If Langdell's world is not our world, then why does his curriculum persist? Either we resist change with remarkable tenacity because we are stubborn, lazy or stupid, or we do so because there is still something of value in that curriculum. In short, why teach case analysis in a world where fixed principle has given way to judge-made precedent? The answer seemed apparent: case analysis, and the skill of critical reasoning upon which it rests, remain essential skills of both the modern advocate and the modern scholar.¹⁰ The assumption that law is contingent, which the critical scholars share with the realists, does not threaten the place of the law school in the modern university; it leads to nihilism only if we further suppose that all law is the result of random decisionmaking. If, instead, we suppose law to be contingent but not arbitrary — perhaps explainable by political currents, economic forces, or a poorly understood cultural hierarchy — then we must concede a role for case analysis both as scholars and advocates. As scholars, we use case analysis to illuminate the relationship between law and external cultural, social or political forces. As practicing advocates, we use case analysis to understand the limits of judicial freedom in order to better structure our advocacy. Thus, for all its obvious shortcomings, Langdell's curriculum has much to teach

10. Without apologizing for the persistence of Langdellian case analysis, see Chase, *American Legal Education Since 1885*, *supra* note 4, at 537 n.66, it is worth noting that the deconstructionist essays which characterize much critical legal scholarship rely upon careful case analysis.

today.

Given the continuing central role of case analysis, the reorganization of our curriculum did not require a complete break with the past. We still need to teach our students to think critically and analytically, goals which we share with both the modern and the classical university. Because we are a professional school, we differ from the humanities in our need to set that teaching in the specialized context of appellate decisions, for they remain the source of much doctrine. We use those decisions, however, to teach analytical reasoning rather than simply to furnish doctrine. We do not teach Torts students *Ryan v. New York Central R.R. Co.*¹¹ because it is the inevitable result of the natural order of the universe or because it teaches important doctrine; rather we teach it precisely because it suggests that external forces shape the law¹² and that judges who make law are a product of their culture and history.

B. Identifying Goals

Bearing in mind that we do teach professionals, we concluded that case analysis ought to remain a central component but not the only central component of what we do. We have a responsibility to teach doctrine, not because it is right or inevitable but because it remains the stuff of modern law. And we have an obligation to teach advocacy skills, for lawyers practice as problem solvers, counsellors, and advocates rather than law review editors.

As we reflected upon what it was we should teach, it became apparent that the critical thinking we call case analysis lay at the core. Students can master doctrine at any time, but without analytical skills,

11. 35 N.Y. 210, 91 Am. D. 49 (1866). The defendant's passing train negligently ignited a fire in its adjacent woodshed; the fire spread to the adjoining property and destroyed a home. Grounding its rule in the doctrine of proximate cause, the court limited the liability of the railroad for igniting fires to the homeowner upon whose home its sparks fell. More broadly, the court held that one who negligently starts a fire upon his own property is not liable for losses suffered by adjoining or remote landowners. The case is noteworthy both for those who would explain the law of torts in instrumental terms and for those who would explain it as a system of loss allocation rooted in insurability considerations.

12. The felt need to facilitate industrial expansion by limiting liability for negligence drove the court to create doctrine to justify a result. Less charitably, the court served the interests of the ruling class (the railroads and factory operators). Or perhaps, consistent with the current infatuation with the dismal science, the perceived cost of compensation decreased allocative efficiency.

they can make no use of it. In order to function as problem solvers and advocates, students need to develop the faculty of critical reasoning and master necessary doctrine. The obvious time to focus upon critical thinking as the primary teaching goal is during the first year. While students should learn doctrine in first year classes, mastery of doctrine is far less important than learning to think and analyze critically. While students should begin to think and work as advocates in the first year, we should recognize that successful advocacy requires both the ability to reason critically and a certain mastery of doctrine. Thus, mastering doctrine and learning the skills of advocacy and counselling are secondary goals of the first year of law school; the primary goal should remain the development of critical thinking.

The balance of goals we identified should develop through three years of education. As students become more critical in their thinking, they can absorb more doctrine. Thus, second year survey courses should contain proportionately more doctrine. While those courses continue to teach critical thinking and advocacy skills, they necessarily should be richer in doctrine. By the third year, students should have well developed critical faculties and a substantial mastery of a broad body of doctrine; what remains is to learn to use that knowledge and abilities as would lawyers — in solving problems, in counselling, and in advocacy. Thus, the focus of each of the three years should differ, progressing from critical analytical thinking in the first year, to mastery of doctrine in the second year, to problem solving and advocacy in the third year.

C. *Designing the Curriculum*

What remained was to fashion a first year curriculum which responded to our earlier criticisms and which offered the opportunity to better teach critical thinking. Remembering the origin of the Socratic method, we were struck by the different student-faculty ratio which prevailed when Plato was a student compared to today's law school. While student-faculty ratios in graduate schools hover around 6 to 1, law school ratios frequently exceed 25 to 1.¹³ The impact of high stu-

13. With the ABA maximum ratio of 29 students per faculty member, an average teaching load of 6 credits per semester, an average course of three credits, and an average student registration of 15 credits per semester, classes must average students 72.5 students. With a more desirable (and more expensive) ratio of 24 students per faculty, classes must average 60 students. While the use of adjuncts reduces the aver-

dent-faculty ratios at Nova fell most heavily upon first year students.¹⁴

The collective experience of our faculty and our colleagues at other schools has been that large classes inhibit effective teaching.¹⁵ The deadening effects of large classes bear mentioning. Because regular class participation is impossible, the most a student can expect is to listen to a series of dialogues. Because simulation exercises are time-consuming, they do not happen. Because writing exercises take time to grade and critique, they are not assigned.¹⁶ The lure of the traditional question and answer class is irresistible for the simple reason that class size precludes every other teaching method except lecturing.¹⁷ We con-

age class size, it also dilutes the educational experience.

14. During the semester preceding the restructuring of our first year curriculum, our full-time faculty devoted 45 hours to our three first year sections and 116 hours to upperclass students even though first year students comprised well over one third of our enrollment. With the use of adjuncts limited to upperclass courses, the disparity in the allocation of full time faculty was much worse.

15. There is a substantial body of research concerning the relationship between class size and student achievement in primary and secondary school education, but little research into that relationship within the university. Not surprisingly, many studies document an inverse relationship between class size and effectiveness. In *The Effects of Class Size on Student Achievement: A Review of the Literature* (1980) (available from EDRS database), the South Carolina Department of Education reports that the results of twice as many studies favor small classes over large classes. Significantly, the review observed:

Those studies which reveal class size to have no effect on student achievement are based almost totally upon student achievement in terms of cognitive learning; those which find class size significant measure other areas of growth as well, including aesthetic, personal and creative development; problem solving skills; and mental health.

Id. at 1. Transposing the review and the literature upon which it rests to the law school, large classes are an effective device if and only if the only goal is to convey doctrine. When the goals expand to include teaching critical reasoning, writing skills, oral advocacy, problem solving skills, and creativity, small classes are more effective. The review also reports that in smaller classes, teachers "[e]xperience greater personal satisfaction, a greater sense of achievement, and more genuine enjoyment in teaching."

Id. at 2.

16. Even those conscientious faculty who employ writing exercises concede that time constraints preclude the substantial critiquing and grading of student work in large first year classes. See, e.g., Bean, *The Use of Writing Assignments in Law School*, 37 J. LEGAL EDUC. 276 (1987). It is difficult to imagine the value of a writing exercise returned without a detailed critique; no self-respecting English teacher would return a paper simply marked "unsatisfactory" or "satisfactory."

17. Curiously, most law faculty condemn lecturing as lazy teaching without explaining how it seems to work so well in undergraduate education. There is something to be said for the methodology as the rational response to a large class and a limited

cluded that the restructuring of our first year curriculum had to address class size as well as course content.

In fashioning a proposal to meet our criticisms of the previous curriculum, the curriculum committee considered the possibility of reducing our six credit sequences to single four credit courses. Various schools have reduced one or more of the standard first year classes to three or four credits. That practice, and the general lack of uniformity in assigning academic credit to a subject suggest a larger truth—no course inherently requires any number of credits. Traditionally we have linked academic credit to doctrinal content, viewing the decision to increase academic credit as a way to increase doctrinal coverage.¹⁸ Implicit within the link between credits and doctrinal content is the assumption that our primary responsibility is to teach doctrine. But we concluded that our primary responsibility is to teach analytical reasoning and critical thinking. By deemphasizing the role of doctrinal coverage in favor of teaching critical reasoning, we severed the link between academic credits and coverage. While it remained true that we could teach more contracts doctrine in a ten credit course than a two credit course, it also remained true that neither course offering could cover all the doctrine one might call contracts law.¹⁹ More importantly, the omission of some doctrine in favor of the development of reasoning skills meshed with our view of the relative importance of each within the first year. Thus, we could reduce doctrinal coverage within a given course without reducing its value in teaching critical thinking.

Although we first saw the reduction from six to four credits in traditional courses as simply a way of making room in the first year for constitutional law, we recognized during our discussions that hidden

time, especially if the major goal is to convey information.

18. Two very different explanations may account for our practice of linking academic credits to doctrinal coverage. We each view our courses as significant, and we therefore stay abreast of doctrinal growth. Because we know more about the growth of doctrine at the margin of our respective courses, we are ever driven to expand the content of those courses. When doctrinal content reaches the time limit imposed by academic credits, we expand the number of credits to accommodate additional doctrine. Alternatively, we fill any increase in academic credits with additional doctrine because that is easier than designing new teaching methods.

19. Many upper class courses are aspects of what could be called contracts law, including Sales, Commercial Paper, Insurance, and Labor Law. This may simply reflect a hitherto undiscovered practice of curriculum reform — whenever a component of the law of contracts becomes particularly important in current practice, we remove it from the first year and give it a new name.

within the reduction of six credit sequences to one semester four credit courses was the opportunity to halve the size of our first year sections. When combined with the other benefits which flowed from the creation of four credit classes, the opportunity to create small sections in which we could give greater attention to teaching critical thinking seemed too good to be true. We quickly settled upon a first year curriculum with four credit fall courses in Criminal Law, Contracts, and Torts, four credit spring courses in Constitutional Law, Property, and Civil Procedure, and two credits each semester of Legal Research, Writing and Advocacy.

The revised curriculum abandoned the traditional six hour format for first year classes for sound reasons. By producing a more focused and intensive experience, we gained in our ability to teach analytical skills much more than we lost in doctrinal coverage; each first year teacher has a student for an extra hour each week (up from three to four) who is distracted by two fewer courses (down from six to four). We established a balance of public and private law courses each semester, easing the transition to law school by beginning with those classes which students are more likely to be able to relate to prior life experience.

The expansion of our research and writing program responded directly to the need of our entering students to improve their writing skills and afforded a further opportunity to focus upon analytical reasoning. Because clarity of thought is an essential prerequisite to good writing, our research and writing faculty joined in our effort to teach critical thinking. Within our tradition of classroom autonomy, some writing faculty begin with case analysis and analytical reasoning. Their early writing exercises build upon classroom discussion of a series of cases, teaching both the conceptual analysis necessary for effective writing and the articulation of ideas. Other writing faculty begin with an overview of research, but retain the shared focus on analytical reasoning. In the writing classes, students write, rewrite and write again; both the academic significance of the class and the time it required dictated an increased role in the curriculum.²⁰

20. Students enter the first year of law school with little notion of what we are about. In an effort to demystify the teaching goals and methods of law school and to reduce the accompanying anxiety, we created a four day introductory program for entering students taught by all members of the faculty. In that program, we provide an overview of the law school experience and the legal system, introduce the skill of case analysis, and try to foster a sense of camaraderie among new students.

Within the limits of each school's faculty student ratio, first year class size reflects the balance struck among the needs of first year students, the needs of upperclass students, and the desire of faculty to teach advanced courses. Both the need for curricular diversity and the desire for professional growth inhibit any move toward small first year classes. Thus, many schools strike that balance in favor of large first year classes. Schools with six credit sequences typically accommodate faculty teaching interests and the need for curricular diversity by offering first year teachers an advanced course as the second course each semester. Because a move to smaller first year classes would require a commitment of greater faculty resources to the first year curriculum, first year classes remain large.

By moving to single semester four credit courses, we accomplished the reduction of class size without cannibalizing our upper class curriculum. Most of our first year teachers teach two sections of a first year course during the same semester. Because the American Bar Association and the Association of American Law Schools both regard the second section of a course taught in the same semester as half the preparation load of the first section, teaching two sections of a four credit course counts as a teaching load of six hours. Our new regime leaves first year teachers free to teach the same two upper class courses per year while teaching two sections of the same first year course instead of two semesters of one section. With no additional commitment of faculty resources, we halved the size of our first year classes.

D. Evaluation

We now have a year's experience teaching four credit first year classes to smaller sections. While, as expected, first year teachers found it necessary to reduce doctrinal coverage, none reported that the resulting course was educationally deficient. In fact, quite the opposite was the case. Taking advantage of the smaller classes, many first year teachers assigned regular writing exercises, and some designed simulation exercises. All found the experience of teaching smaller classes to be both more enjoyable and more effective. None found the experience of teaching two sections of the same course to be unusually difficult, and none complained of boredom.²¹ While a full evaluation must await

21. In coming years we are prepared to rotate the double section assignments. Over time, teaching eight contact hours per semester may take its toll on a faculty member. Fortunately, in most subject areas we have sufficient faculty to assure ade-

progress of first year students through the upperclass curriculum, initial results are encouraging. Student performance in 1986-87 was measurably better than in prior years.

While the modifications we implemented at first might appear modest, they mark a turn away from the tendency toward Hessian training inherent in courses which emphasize doctrinal content at the expense of analysis. Taken as a whole, they create a new approach to the first year of law school.

III. The Workshop Program

A. Background

There is a fundamental tension within legal education between professional training and abstract learning.²² That conflict translates into curricular choices.²³ Of course, good attorneys must understand both the analytic underpinnings of the jurisprudence they apply and the ways lawyers go about applying the law. The Nova faculty adopted the Workshop Program as a means of addressing the need to more fully prepare students for the practice of law. The Program was designed to accomplish this goal by combining within single courses in the upper-level curriculum both the development of lawyering skills and the transmittal of advanced doctrine.

Under the tradition of faculty autonomy in determining course

quate rotation.

22. See generally REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS, 1979 A.B.A. SEC. LEGAL EDUC. & AD. TO BAR (1979).

23. There are, of course, other policy conflicts that can translate into curricular choices. Two recent examples come to mind. A number of law schools have been consumed by the battle between the traditional conservative approach to legal education and its radical alternative offered by the Critical Legal Studies Movement. See Symposium, *Critical Legal Studies*, 36 STAN. L. REV. 1-674 (1984); Klare, *The Law-School Curriculum in the 1980s: What's Left?* 32 J. LEGAL EDUC. 336 (1982); cf. Benson, *The You Bet Metaphorical Reconstructionalist School*, 37 J. LEGAL EDUC. 210 (1987). At the other end of the political spectrum, George Mason University Law School is currently undergoing an ultra-conservative revolution to install a Law-and-Economics approach to legal education. *Dean on Crusade*, 26 BROWARD REV. 121, May 22, 1987 at 1. Professor John Weistart of Duke recently explored the difficulties inherent in any "radical redirection" of a law school curriculum, concluding that law faculties "might be hesitant to cast their lot with a single, comprehensive perspective." Weistart, *supra* note 1, at 318, 333, 337.

content,²⁴ Nova faculty always have been generally free within their individual courses to allocate available classroom time. They could emphasize lawyering skills or doctrine as they wished within the constraints of a fourteen week semester. For example, a class hour in torts might be devoted to discussing economic theories of damage calculation or exploring the practicality of proving damages by creating "day in the life" films. The choice was the instructor's, within limits, of course. One would assume the course on torts would have a good deal to say about negligence, although whether it covered defamation or business torts might be a matter of instructor choice.

Considered as a whole, the collection of courses of the Nova curriculum, as in most law schools, pointed towards traditional substantive courses focusing on case analysis and theory. There were offerings that emphasized practical lawyering, such as the in-house and external clinics, but the lawyering content of most courses was left to individual faculty preference. The existing curriculum was not the result of a conscious choice by the faculty, but rather was the product of incremental decision-making. Over the years, the faculty planted new trees in the curriculum without viewing the whole forest. Adding one offering at a time in response to individual instructor requests threatened no one's turf.²⁵ At the same time, it left the upper-level curriculum as an unstructured collection of traditional large substantive courses with an expanding menu of small seminars devoted to subject matter of interest to individual faculty members. The Nova upper-level curriculum lacked cohesion, a characteristic it shared with most other law schools.²⁶

In revising the upper-level curriculum, the Nova faculty sought to give some focus to the third year of law study while maintaining an overall balance between skills training and the transmittal of doctrine. Legal reasoning is at the core of the lawyer's job, and it was our hope that students would master the fundamentals of this skill during their first years at school. By the third year, it was time students were given the opportunity to apply the law. No lawyer is ever asked to respond to totally hypothetical questions in essay form, except perhaps on a bar examination.²⁷ Lawyers are problem solvers, retained by persons who

24. Weistart, *supra* note 1, at 331.

25. Professor Weistart refers to this as a process of curriculum reform by "absorption and accommodation," Weistart, *supra* note 1, at 318.

26. Weistart, *supra* note 1, at 324, n. 25.

27. See, Oliver, *Testing the Bar Exam*, CAL. LAW., June, 1985, at 52; Getz, Siegfried & Calvan, *Competition at the Bar: The Correlation Between the Bar Exami-*

seek advice and counsel, representation and defense,²⁸ and many commentators have suggested over the years that law schools pay greater attention to the development of the skills students will need to perform these roles.²⁹ We knew that future attorneys must learn the theory of the law, but to do so without learning something of the practice of the law is to appreciate the quality of good wine without knowing how it should be served. Similarly, to learn only the practicalities of legal practice without mastering the underpinnings of the jurisprudence is to know of the shape of the carafe but not its contents.

The Nova Workshop Program was inspired by all of these concerns. Designed to balance the yin and yang of legal education — the practical with the principled — the Program was also intended to ease the transition from academic life to lawyering life and to demonstrate — were there any doubt — that lawyers practice law and do not simply think about it. At the same time, workshops would introduce students to advanced doctrine in a variety of substantive areas. Workshops were not to be pure “skills” courses. Within the small class setting, students would “practice” lawyering while confronting the variety of substantive problems lawyers face on a day-to-day basis. In this way, the Nova upper-level curriculum would allow students the opportunity to take courses that would prepare them to perform a full variety of lawyer tasks.

B. A Typical Workshop

A Labor Law Workshop is included in the Program. It focuses on the normal day-to-day activities of the labor lawyer in the areas of collective bargaining and labor arbitration.³⁰ With the introductory labor

nation Pass Rate and the Profitability of Practice, 67 VA. L. REV. 863 (1981).

28. Friedman, *The Law and Society Movement*, 38 STAN. L. REV. 763, 775 (1986); Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA L. REV. 754 (1984); Anawalt, *The Habit of Success*, 10 NOVA L. J. 255 (1986); Anderson, *Lawyering in the Classroom: An Address to First Year Students*, 10 NOVA L.J. 271, 272 (1986).

29. See, e.g., Wald, *Teaching the Trade: An Appellate Judge's View of Practice-Oriented Education*, 36 J. LEGAL EDUC. 38 (1986); Sander, *Alternative Dispute Resolution in the Law School Curriculum: Opportunities and Obstacles*, 34 J. LEGAL EDUC. 229 (1984); Holmes, *Education for Competent Lawyering — Case Method in a Functional Context*, 76 COLUM. L. REV. 535, 567-72 (1972); Vukowich, *The Lack of Practical Training in Law Schools: Criticisms, Causes and Programs for Change*, 23 CASE W. RES. L. REV. 140 (1971).

30. Dean Abrams taught this workshop from 1975 until 1986 at Case Western

law course as a prerequisite, students enter the Workshop conversant with the basic structure of national labor policy and the role arbitration and collective bargaining play within that policy. In the Workshop they learn about the theories of collective bargaining and the substance of the collective bargaining agreement. At the same time, students develop the skills labor lawyers use in practice; they learn how to negotiate, arbitrate, and draft contract language and briefs. During the semester, students in the Labor Law Workshop participate in a nine-week bargaining simulation. Based on a written problem detailing an employer-union relationship with confidential memos setting point values for certain negotiation outcomes, students negotiate as members of three-person teams under the instructor's supervision. Bargaining sessions are held once a week for at least one hour at a time and often longer. A date for conclusion of the bargaining project is preannounced, as is the cost imposed on participants of not reaching agreement — a grade of F. The completed collective bargaining agreement is evaluated by the instructor both for style and content.

During the first twelve weeks of the course, class sessions focus on the analysis of arbitration decisions and selected problems. Through those discussions, the central issues of labor-management relations are explored — management rights, union security, discharge and discipline, subcontracting, and fringe benefits — at the same time the students are negotiating over these matters in their bargaining simulation sessions.

During the first half of the semester, students write a ten-page arbitration brief based on a transcript of an actual case. After the completion of the bargaining project, students arbitrate grievances based on the provisions of their own collective bargaining agreements. The arbitrations are conducted in class, using witnesses and documents, and are videotaped for critique by the instructor. In a course like the Labor Law Workshop, students not only do what labor lawyers do, but they also discuss the substantive issues labor lawyers confront. Skill development is placed in a substantive context. There are also many opportunities throughout the semester to introduce principles of labor economics and decision analysis, broadening the student's perspective beyond the confines of traditional labor lawyering.

Reserve University School of Law. Much of the inspiration for the workshop came from Professor (now Judge) Harry Edwards who authored the innovative problem supplement to *COLLECTIVE BARGAINING AND LABOR ARBITRATION* by Rothschild, Merrifield and Edwards.

C. *The Scope of the Workshop Program*

The Nova faculty approved eighteen courses to be part of the Workshop Program.³¹ Some of these workshops were already included in the curriculum. Some preexisting seminars were adapted to the workshop format by adding simulation and drafting components. A few totally new workshops were created. Almost all the workshops are taught by regular members of the Nova faculty, although adjunct professors are suitable instructors for workshops in their own substantive specialty areas.

In creating the Program, the faculty did not specify the precise components of each of the workshops. Individual instructors were given the discretion to choose among available techniques consistent with the lawyering perspective. All the workshops include the drafting of documents, although the contents of these documents depend upon the subject matter context. For example, the Real Property Workshop includes drafting documents likely to arise in a complex real estate transaction, while other workshops more closely tied to the courtroom include exercises in drafting litigation documents. Many workshops also include discovery, trial, and appellate practice simulation exercises.

As is apparent, the Workshop Program is a modest restructuring of Nova's upper-level curriculum. It was not intended as a wholesale substitute for the established third year of law school. The workshops are not mandatory, but current enrollment figures suggest that all students will complete at least one workshop before graduation. There are sufficient offerings for each third year student to have a workshop experience. The Program adds balance to the upper-level curriculum, but does not push aside major substantive offerings.

D. *Critique*

Some academics might consider the entire workshop concept to be controversial. They might say that academics should teach what they know — legal reasoning and doctrine. "Lawyering" is what lawyers are supposed to teach each other in a law firm.

Lawyers do teach other lawyers on occasion, but more often the

31. The faculty approved workshops in appellate practice, business planning, civil rights litigation, commercial law, estate planning, family law litigation, international law, labor law, land development, lawyering process, legal drafting, legal research, pre-trial practice, prisoners' and patients' rights, probate and trust law, real property, tax law, and torts litigation.

development of lawyering skills is left to post-graduate trial and error. In states such as Florida where very small firms predominate, there is little opportunity for the formal training of junior associates. Most Nova graduates practice in a small firm setting or as sole practitioners. The Workshop Program is one of the ways the Law Center fulfills its responsibility to train the whole lawyer.³²

It might be difficult to create workshops in those law schools where faculty members feel alienated not only from the established bar, but also from the practice of law. Many law professors came to academia because they disliked being lawyers for one reason or another.³³ How can *these* people be asked to teach a workshop which explores how a lawyer does his or her job? Of course they cannot. While that roadblock is present at many schools, it is not a problem at Nova Law Center. Virtually the entire law faculty has practiced law and, in addition to their teaching, scholarly writing and committee work, faculty members continue to be involved with actual legal controversies and bar activities. Most feel comfortable in course settings combining practical lawyering skills with substantive doctrine. Moreover, the law faculty understands the legal profession and the needs of practice. The Workshop Program is the natural outgrowth of the Nova faculty's pre-existing interest in the practice of the profession.

The cost of curricular reform must always be a major concern, although those who propose reform rarely focus on the issue.³⁴ The Nova faculty consciously considered the effect of adoption of the Program on existing offerings and how these workshops would be staffed. The Program did not require hiring additional faculty, although two new faculty members each teach one workshop as part of their regular course load. As noted above, most of the workshops were either already part of the curriculum or were revisions of existing advanced courses

32. The Law Center fulfills its obligation in other ways as well. Professional Responsibility is a mandatory upper-level course. The Law Center's popular Trial Advocacy Program introduces students to litigation tactics. The broad range of substantive offerings in courses and seminars allow students to prepare for the practice of law in a variety of fields. See generally, Kestin, *Bridging the Gap Between School and Practice*, 70 A.B.A. J. 56 (Jan. 1984).

33. McFarland, *Self-Images of Law Professors: Rethinking the Schism in Legal Education*, 35 J. LEGAL EDUC. 232 (1985); Glickstein, *Law School: Where the Elite Meet to Teach*, 10 NOVA L.J. 541 (1986). See generally, Chase, *Origins of Modern Professional Education: The Harvard Case Method Conceived As Clinical Instruction in Law*, 5 NOVA L.J. 323 (1981).

34. Weistart, *supra* note 1, at 324.

and seminars. The cost was minimal.

E. *Evaluation*

How will we know if the workshops are successful? Little work has been done on the question of measuring the success or failure of curricular change. Perhaps we just know good curriculum when we see it? Bar passage rates would not seem to be a true indicator since they do not measure practical lawyering skills. We must look to other measures to evaluate this curricular change. The free market place is one measure. If students find the workshops useful, they will enroll. But enrollment is the product of a variety of factors in addition to course content, such as convenient scheduling. In any case, it reflects a prediction by students as to what courses will be useful rather than a measure of their actual success. Perhaps participants in the Workshop Program might be surveyed after a period of time in practice as to whether they believe the Program enhanced their lawyering abilities. Finally, faculty members teaching in the Program should be able to assess, based on their own academic experiences, whether these courses worked well. The Workshop Program should be evaluated through combination of these techniques.

The success of the Program will depend on correctly setting within each course the balance of lawyering skills and substantive doctrine. Workshops are not seminars designed to facilitate student study in narrowly-focused areas. Workshops are not clinics or pure skill development courses. The key to the success of the workshops lies in the instructors' ability to integrate practice and substance, as every lawyer must do every day.

IV. Conclusion

The new curriculum we have described reflects the nature of the Nova Law Center. Small classes in the first year and workshops in the third demonstrate our commitment to train quality lawyers. In the final measure, the motivation of our students and the abilities of our faculty will determine the success of the new educational program. Good teachers who care about their students will produce good lawyers whatever the curriculum. That was the case at Nova before these changes were made, and it continues to be so after our reforms were instituted. So why bother tinkering with the curriculum?

It is hard to argue persuasively for the proposition that large first

year classes and traditional Socratic survey courses in the upper-level curriculum are preferable vehicles for educating law students. Obviously, we believe that first-year students learn better in small sections and graduates who have had a workshop or two are better equipped to face the challenges of practice. As a whole, the reforms involve a significant commitment of our resources, but we feel it is worth the price to do our job better.