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The Professor and the Judge: Introducing First Year Students to the Law in Context

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The Professor and the Judge: Introducing First-Year Students to the Law in Context

Michael B. Mushlin and Lisa Margaret Smith

Introduction

For the past six years, the authors, one a law professor and the other a federal judge, have joined forces to teach introductory civil procedure to first semester first-year students. As far as our research discloses, there is no similar example in an American law school of a full-time law professor and a sitting federal judge teaching civil procedure together.¹ Our collaboration for the fall semester of this two-semester, first-year course seeks to give the students a flavor of the practical aspects of civil procedure and a context within which to grasp doctrinal concepts. Our approach supplements the traditional casebook materials and typical Socratic teaching method used in a normal first-year law course with five exercises that we have developed,² a court visit, and regular appearances in the classroom by the judge.³

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1. Our research has not uncovered any similar example of a judge and a professor collaborating to teach a civil procedure course.
2. The exercises are structured around an actual case in which the judge presided years earlier. There are other variations including visits to a courtroom to hear the argument in a case. *See infra* Section I.
3. For a full description of the course see *infra* Section I.

Our approach is contrary to the traditional theory of legal instruction, which holds that students learn first by a rigid diet of Socratic teaching of the fundamentals of legal analysis without any exposure to the real world or even a simulation of it. Before undertaking our experiment, we asked if there is value in altering this paradigm by deviating from the traditional Socratic approach to introduce students to a full contextual understanding of what will be expected from them as lawyers. We asked this question because we recognized that the first semester of the first year of professional training is not the time to teach the intricate skills of a profession. We also asked whether the first year curriculum could be modified so as not to require its massive overhaul.

We answered yes to both questions. We decided that since students are most impressionable at the beginning, not introducing them to the full breadth of the legal profession at this critical juncture is a lost opportunity. Our theory is that beginning students should receive more contextual introduction to the profession—not to teach them skills, but rather because this is the best way to achieve what should be the goal of their first semester of law school: to give them a firm foundation to understand and use legal doctrine while introducing them to their profession’s work. Without some introduction to skills and professional values, students are not “guided toward an understanding of the intricate relationships among doctrinal, strategic, interpersonal and ethical analysis” required for professional practice.⁴ We contend that with this understanding, it is easier to master the foundational concepts.

Our experiment’s central idea is that it is essential at the beginning of law school to provide a contextual introduction to the work of the profession. A diet of appellate decisions is certainly one way to feed developing legal minds but there also is a growing recognition that this teaching method lacks essential nutrients of a healthy legal education. At least three national reports over the last 20 years have lamented and criticized the incompleteness of legal education.⁵ Far-thinking law school administrators and scholars also have joined this choir.⁶ As a result of this ferment, legal education has changed, with

4. Peggy Cooper Davis, *Slay the Three-Headed Demon!*, 43 *Harv. C.R.-C.L. L. Rev.* 619, 621 (2008) [hereinafter *Slay the Three-Headed Demon!*].
5. A.B.A., *Legal Education and Professional Development—An Educational Continuum Report on the Task Force on Law Schools and the Profession: Narrowing the Gap* (1992) [hereinafter *MacCrate Report*]. See also Roy Stuckey, et al., *Best Practices for Legal Education: A Vision and a Road Map* (CLEA 2007); William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass 2007) [hereinafter *Carnegie Report*].
6. See Peggy Cooper Davis, *Desegregating Legal Education*, 26 *Ga. St. U. L. Rev.* 1271 (2010) for a comprehensive list and analysis of supporting faculty members in the legal community [hereinafter *Desegregating Legal Education*].

a growth in clinical legal education⁷ and a flourishing of simulation courses.⁸ However, most of these changes have occurred in courses taught in the upper division years. The first year of law school, and particularly the first semester, with a few notable exceptions,⁹ remains unchanged at most schools.

The study of doctrine divorced from practice imparts the implicit message that the mastery of legal doctrine and legal rules is all that matters, that the ability to engage in legal analysis is the essential, almost exclusive skill of an attorney. In this kind of arid and unreal environment, students understandably may come to believe that “thinking like a lawyer” simply means digesting appellate opinions and issue-spotting during long exams; it may tell them that other skills, such as interviewing, counseling, fact development, problem-solving and advocacy are not nearly as important and can be picked up later without a great deal of intellectual effort. Equally insidious, an exclusively doctrinal curriculum gives rise to a “shadow pedagogy” that sends the “tacit message . . . that for legal professionals, matters of justice are secondary to formal correctness.”¹⁰ This breeds cynicism at the outset of students’ legal training. The damage the traditional approach causes cannot be cured easily in later years of law school. For these reasons, we set out to find a way to make some modest changes to the first semester of the first year to address these deficiencies which we describe in this article.

This article has five parts. In Part I, we describe the alterations we have made to a typical first-year Civil Procedure course so it is more relevant and so it introduces students more realistically to the profession. In Part II, we discuss the students’ evaluations of the course, which provide rich data on their perceptions of our experiment, just after they have taken the class but before final examinations. In Part III, we describe how this experiment aligns with the legal education reform movement by changing the introductory months that are critical in professional training programs. In Part IV, we describe how our experiment compares with similar reform efforts that others are undertaking in professional education curriculums, particularly those focused on introductory training. We canvass changes we have identified in medical, dentistry, and engineering programs. We conclude the article in Part V with our analysis of the benefits and potential costs of putting in place a change like ours. Based on our experience and study, we conclude that our approach

7. Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for This Millennium: The Third Wave*, 7 *Clinical L. Rev.* 1 (2000); *see also* Arthur B. LaFrance, *Clinical Education and the Year 2010*, 37 *J. Legal Educ.* 352, 359-60 (1987).
8. J. Damian Ortiz, *Going Back to Basics: Changing the Law School Curriculum by Implementing Experiential Methods in Teaching Students the Practice of Law*, NYLS Clinical Research Institute Paper No. 08/2012 (2012).
9. NYU Law: Required First Year Courses, *available at* <http://www.law.nyu.edu/academics/courses/requiredfirstyearcourses/index.htm>. *See also* Desegregating Legal Education, *supra* note 6, for a contribution by Rachel J. Littman that describes other changes to first-year education.
10. Carnegie Report, *supra* note 5, at 58.

(or a similar variation) should be made a part of the normal first semester law school experience. Our experience demonstrates that law schools can and must change the first-year curriculum to inculcate in students at the outset a more rounded, meaningful understanding of the context in which lawyers work.

I. The Experiment

Our approach has evolved from year to year but the central theme and style has remained the same. At our law school, civil procedure is a two-semester course, starting with a three-hour, multi-week class devoted to pleadings, discovery, summary judgment, trial, appeal, and simple joinder.¹¹ In the second semester, students are introduced to personal and subject matter jurisdiction, the Erie doctrine, res judicata, and complex joinder issues. We launched our collaboration in the first semester course because that is when students are first introduced to the legal profession and because of the course's topics: the litigation process itself lends most comfortably to our exercises. Over the five years of our experiment, the class size was typical for Civil Procedure, with enrollments of 50 to 70 students.

Our experiment supplements the traditional course with three techniques that seek to give context to materials that students study. The first involves *Popup v. Dickens*, the facts of which are drawn from a straightforward diversity case that was before Judge Smith several years ago; we use it as the springboard for written and simulation exercises described below. Second, the judge comes into class, for example, and lectures on course topics such as discovery. Third, we require students to observe an actual proceeding before the judge and to discuss it with attorneys in the case.

A. The First Technique: *Popup v. Dickens*

Popup v. Dickens is the centerpiece of our collaboration: a straightforward, quasi mythical case. It arises out of an incident in which a North Carolina boy was hit by a metal bat wielded by his father's college friend during a backyard whiffle ball game at the friend's home in suburban New York. This fact pattern is based on a real case handled by the judge. We have changed the names of the parties to protect the privacy of the litigants and have altered the facts to

11. Detailed Course Information: Pace Law School, Civil Procedure I: From Pleadings To Appeal (2012), available at https://banners.pace.edu/prod/bwckctlg.p_disp_course_detail?cat_term_in=200920&subj_code_in=LAW&crse_num_in=610A ("This course is an introduction to civil litigation, from commencement of an action through disposition on appeal, studied in the context of the federal procedural system. It will include the formation and defense of claim (pleading), discovery, alternatives to trial (pre-trial motions and summary judgment), the trial, and the review of the disposition of litigation (post trial motions and appellate review). In addition to casebook reading and discussion, students will have the opportunity to participate in drafting exercises, problem solving, role-playing and simulations to give them a realistic introduction to the structure of the court system and framework of a lawsuit.").

simplify it. The case as we present it to the students essentially resembles in most particulars the actual case.

Paul Popup is married, has a son, Philip, 12, and his college friend is Charles Dickens, who soon will become a defendant. During a “pick up” whiffle ball game at Dickens’ home, Charles used an aluminum bat (not the usual plastic model). Toward the end of the game, Philip pitched to Charles, Charles swung and lost his grip of the bat. It flew into the air and struck Philip in the face, causing significant injury.¹² Philip was taken to the hospital where he was diagnosed with a fractured bone around his eye and 35 stitches were needed to close a gash around his eye.. For at least two years, Philip continued to seek treatment from specialists due to headaches he suffered as a result of the injury. His grades also slipped and he has a permanent scar near his eye. There were out-of-pocket expenses for Paul and the medical insurance company has placed a lien on any future judgment in Philip’s favor to recover its expenses to date. In addition to straining an old college friendship, this accident has resulted in the Popups filing a federal diversity action in the Southern District of New York. Plaintiffs seek compensation for actual expenses and future expenses, as well as pain and suffering for these injuries.¹³

B. Popup v. Dickens Exercises

We have generated five exercises from this case—slightly varied from year to year—each designed to give context, enliven the material, and deepen comprehension of basic concepts. The exercises do not touch on every aspect of the rules and they are not intended to supplant clinical or trial practice courses. Rather, these exercises augment the traditional Socratic dialogue component of the course and provide students a frame of reference. They serve as a foundation for what students learn both in this course as well as in other courses in which the rules of Civil Procedure come into play. Giving the students an opportunity for active application of the rules tends to excite their interest in a way that is difficult to achieve through ordinary lectures and readings.

12. We tell students that the medical files show that Philip was taken to the hospital by ambulance after the incident. He was diagnosed with a “fractured orbital” and was released with recommendations for follow-up appointments. After the injury, Philip has been treated by a number of physicians and specialists. One physician, a plastic surgeon, said the fracture likely would heal as he got older. The records indicate that Phillip has a scar on his face where his eye was injured. Philip now has headaches that doctors say are a result of the fracture. We also tell the students that the medical bills for Philip’s injury to date are approximately \$80,000 but that insurance has paid some of this. We also tell students that the records indicate that Philip is now often in pain and suffers from almost daily headaches. His school records show that his grades have gone down since the injury and that Philip also has trouble focusing in school.

13. 28 U.S.C. § 1332.

The first exercise involves complaint drafting.¹⁴ The second and third are discovery exercises: one to develop a discovery plan, the other to conduct a deposition of either Paul Popup or Charles Dickens. The fourth exercise is the argument of a summary judgment motion in the case. The final exercise is a simulated mediation and settlement discussion in the case conducted by the judge. Each exercise is accompanied by prepared instructions. The students' written submissions also are reviewed and commented on in class.

1. Complaint Drafting Exercise

After studying the rules on pleadings, the students in this exercise draft a complaint for the imaginary plaintiff in *Popup v. Dickens*. These complaints are reviewed and returned to the students with comments. Immediately afterwards, we devote a class session to reviewing these with general remarks and specific, but anonymous, examples to highlight well or poorly drafted complaints. We follow up next by giving students a model complaint we have prepared to show them one way that trained lawyers might commence the case.

2. Discovery Exercises

We have developed two discovery exercises. The first is the discovery plan; the second is a deposition exercise.

a. THE DISCOVERY PLAN

This exercise asks students to draft a discovery plan in the case for plaintiff. The exercise encourages students to think about the ways in which facts may be developed during litigation and what role each lawyer plays in deciding how to develop such facts. Students are told to refer to the complaint they drafted in the case as they develop their discovery plan. They learn that the defendant has filed an answer denying the complaint's central claims and asserting a number of affirmative defenses. Students must craft a proposed discovery plan to present at a Rule 26 conference before the United States Magistrate Judge overseeing discovery in the case. Students, again, get back with comments their plans, which subsequently are reviewed in class. When students prepare this plan, it provides a platform for us to discuss the benefits and drawbacks of the various discovery tools and the importance of complying with Rules 16 and 26.¹⁵

b. THE DEPOSITION EXERCISE

Students next simulate a deposition, working in pairs to depose both Charles Dickens and Paul Popup. In the pairings, one student serves as counsel for the *Popup* plaintiffs in deposing defendant Dickens and, in

14. For the past two years we added an exercise in which the students prepare an answer to the complaint.

15. Fed. R. Civ. P. 16, 26. (describing pretrial conferences and the development of discovery plans).

addition, plays Popup in his deposition. The other student serves as counsel for Dickens in deposing plaintiff Popup and plays Dickens in his deposition. Witnesses in each deposition also may act as their own attorney and may make objections during the questioning. Separate instructions are given to each student attorney/witness with additional case information that may or may not be revealed, depending on what is discovered in the deposition. These confidential instructions contain previously undisclosed information about both Popup and Dickens.¹⁶ We have the students spend one to two hours on this exercise, then one or more pairs of students are called on to demonstrate the exercise in class. The entire class then is invited to suggest more questions for the deponent and, thus, all benefit from these suggestions. The judge also attends class. After they take the depositions, students discuss their purposes and relative success or lack thereof. After this review and demonstration, students receive the facts given to their partner as a kind of benchmark to determine if they were sufficiently thorough in their deposition to discover the undisclosed information. Students then prepare a memo, commenting on how they could have conducted their deposition more effectively in light of what they learned through this exercise.

3. Summary Judgment Exercise

Students in this exercise, assigned to either the role of plaintiffs' or defendant's counsel, must prepare and argue a motion for summary judgment in *Popup v. Dickens*. We provide the students with papers, based on the actual motion filed in the real case, but we do not give them the memorandum of law. Students prepare an outline of their argument before class. They are limited in their prep work to materials in the class syllabus on summary judgment, as well as to a few short New York state cases on issues presented in the case, like assumption of the risk.¹⁷ We neither expect nor permit students to conduct

16. The undisclosed information about Dickens is that a month before the deposition, he was arrested for driving while intoxicated and given a breathalyzer test showing he had a blood alcohol level of .13 when stopped. The blood alcohol level for a DWI charge is .08. He has hired a criminal defense attorney in his driving case, paying a \$12,500 retainer that does not cover trial representation, if it comes to that. He has not told his wife about his arrest nor paying an attorney funds from his business account. He was arrested at 4:00 p.m., after spending several hours at a local bar with some of his employees, one of whom drove him home from the police station (keeping his wife unaware of his arrest). He has a court date scheduled for a week or so after the deposition. The undisclosed information about Popup is that his son had a bicycle accident several months before this incident. He has been told by at least one neurologist that his son's headaches, though they did not start until after the incident involving Dickens, may have been caused by the bicycle accident in which Philip went head over heels from his bike onto a sidewalk. The boy did not get medical attention after the bike accident. Popup, on Philip's behalf, has sued the bicycle manufacturer for injuries Philip sustained in the bike accident, including a claim that the headaches he now suffers were caused, at least in part, by that incident. That lawsuit was dismissed last year on motion for summary judgment, after discovery was completed and before the Dickens lawsuit was filed.

17. *Trainer v. Camp Hadar Hatorah*, 748 N.Y.S.2d 386 (N.Y. 2002); *Karr v. Brant Lake Camp*, 691 N.Y.S.2d 427 (N.Y. 1999); *Redden v. Baum*, 666 N.Y.S.2d 334 (N.Y. 1997); *Maurer v.*

independent research. We call on at least two students to argue in class before the judge. The judge questions and tests their comfort with the summary judgment standards they have learned about and provides them with an observable dose of the reality of oral motion practice. The students' one-page outlines of their arguments must be submitted one day before the class in which they will present. We also post after the class the judge's actual ruling on the summary judgment motion in the real case on which *Popup v. Dickens* is based.

4. Mediation and Settlement Simulation

Because most cases are resolved without trial or final judicial determination, we believe it is crucial for first-year, first-semester students to be exposed to mediation and negotiations.¹⁸ We have experimented over the years with exercises on alternative dispute mechanisms. But we reach this point in the course as the semester ends and exams loom, so we must consider this reality in fashioning these exercises. As a result, we do not ask students to write here, and, instead, have tapped alternatives: the judge's law clerks, for example, have played the roles of counsel for several years, after which it was decided that students could take on this responsibility by splitting into teams and conducting mediation themselves. We always follow the exercises with discussions on the role of settlement and the skills of negotiation. Most recently, a professor who specializes in negotiation has joined us to help prepare materials and lead discussion for this session.

B. The Second Technique: Appearances by the Judge during Civil Procedure Classes

The judge attends classes periodically throughout the semester to lecture on discovery, review students' written exercises, and preside at simulations. This introduces the judge early on so that she is a familiar presence to students. Her visits also give students early exposure to a key player actively engaged in actual litigation, the judge.¹⁹

C. The Third Technique: Court Visit

Students attend a live court proceeding once during the semester. For the first two years of this experiment, that proceeding occurred at the law school and involved arguments before students on a pending motion for summary judgment. Students received the papers in advance and met with the attorneys after the argument so they could question the counsel. In both cases, the

Feinstein, 623 N.Y.S.2d 326 (N.Y. 1995); Checchi v. Socorro, 565 N.Y.S.2d 175 (N.Y. 1991); Marlowe v. Rush-Henrietta Cent. School Dist., 561 N.Y.S.2d 934 (N.Y. 1990).

18. Desegregating Legal Education, *supra* note 6, at 1274 (describing how legal education has never prompted the author to think "about how to resolve a dispute without litigation").

19. This is comparable to recent innovations to medical school curricula. See *infra* for a discussion of those innovations. Medicine, Patients and Society I, Weill Cornell Medical College, available at http://www.med.cornell.edu/education/curriculum/first/med_pat.html [hereinafter MPS I].

judge rendered her decision before the semester's end and made it available to students. In other years, students went to the judge's courtroom to observe argument on a pending motion. The motion one year involved a discovery dispute; in the other, it was argument of a motion to amend a complaint under FRCP 15(a).

All of these visits are scheduled so students will hear arguments pertinent to issues they are studying. Students always received the papers in advance and met with the attorneys afterward. These meetings, which occur outside the judge's presence, normally are freewheeling discussions of the case, the attorneys' roles and the relationships between adversaries and the case itself. After most of the visits the judge rendered her decision following the argument and before the semester's end.²⁰ It is arguably better for students to go to court rather than for a case to occur in the law school, as it makes them go to an actual place where legal work is conducted.

II. The Student Reaction

We surveyed the students in four of the five years of our experiment to elicit their views and feedback on our civil procedure course.²¹ The surveys were confidential²² and varied slightly from year to year. They all elicited data about each exercise for that year as well as the students' overall reaction to the experiment. The surveys also provided information about the impact of including the judge in class. The surveys specifically asked students to rate the value of each exercise and the court visit telling us if it was "very helpful," "helpful," "somewhat helpful" or "not helpful." For the last two years of the surveys, students were asked to estimate how much time they had spent outside of class on each exercise, as well as the courtroom visit. What proved most insightful were individual student comments provided in empty spaces following our targeted questions. Students were encouraged to write additional comments and critiques on individual exercises. The surveys finished with an open-ended request to students for "[a]ny additional comments about the value of the course in general. . . ."²³

20. In only one case this was not done because the case developed in a manner that made a determination by the semester's end by the judge impossible.

21. The surveys were obtained in 2007, 2009, 2011, and 2012.

22. The students were told that the survey was not a substitute for the separate evaluation of the entire course and of the professor who teaches it. Rather, the survey asked students for specific reactions and opinions about the collaboration between a full-time professor and a sitting judge in a first-year civil procedure class as an experiment. In the introduction to each survey we wrote: "We very much need and value your candid assessment of the experience. What worked? What did not work? How can it be improved? The survey is anonymous. Your identity will not be known. I will not look at your answers until grading is complete. We really appreciate your honest responses in the spaces." See Confidential Survey Civil Procedure (Dec. 2007, Dec. 2009, Dec. 2010, and Dec. 2011) (on file with authors).

23. *Id.*

While the survey responses did not address all the critical questions this experiment raises nor produce scientifically reliable information on the course's impact on students,²⁴ it nevertheless revealed useful information about our experiment, offering valuable insight into how they subjectively experienced the course. Our data offer a unique perspective since these surveys were conducted immediately after the semester's end and while students' reactions were fresh in their minds. This immediacy has merit but also limitations since students could not assess the course's long-term value to their legal training and their careers. While the surveys provide rich anecdotal evidence of the course's value, this evidence comes from novitiates in the law. Below we offer qualitative and quantitative highlights of the survey results.

A. Survey Quantitative Results

The 2010 and 2011 surveys were designed to allow for collection of quantitative and qualitative data. The 2007 and 2009 surveys yielded anecdotal information only. We did attempt to quantify this data, as well. Tracking it across the four years for which surveys were conducted shows that students overwhelmingly viewed the methods we employed as helpful and recommended that this method of teaching civil procedure continue with minor adjustments.

1. The Exercises and the Court Visit

Students overall viewed the exercises as helpful to their education and as boosting their appreciation for and understanding of the legal profession. For example, the complaint drafting exercise was viewed as helpful or very helpful by 84.2 percent of students surveyed in 2011 and by 99 percent of those surveyed in 2010. Of all the methods used, students viewed the complaint drafting exercise and court visit as the most helpful. A resounding 78 percent of the students surveyed in 2010 rated the court visit as very helpful, while 96 percent of the class regarded the overall experience favorably.²⁵

Respondents varied as to which exercises were the most successful. Those exercises that won the most approval were the complaint drafting exercise, the deposition and the court visit.²⁶ The exercises receiving the lowest scores were

24. The survey does not, for instance, provide hard data on whether the students learned more about the doctrine of civil procedure than they would have in a traditional course. Moreover, we cannot use the survey to measure scientifically whether, as a result of this experiment, students are better oriented to absorb professional skills or professional ethics training.

25. In 2011, the percentage of students who regarded the court visit as helpful was somewhat lower but still overwhelming, with 87 percent reporting it as helpful or very helpful.

26. The complaint drafting exercise was seen as helpful or very helpful by 100 percent of the respondents in 2010 and by 94.2 percent of respondents in 2011. In 2009, 65 percent of respondents also made specific reference to this exercise's effectiveness (Survey Analysis, at 8, on file with authors). Individual comments from 2007 and 2009 described the complaint exercise as "invaluable information" that "forced [students] to really examine what was required by the rules for its drafting" (Survey Analysis, at 4). The deposition exercise was seen as helpful or very helpful by 98.2 percent of the respondents in 2010 and by 76.9 percent of respondents in 2011. The court visit was seen as helpful or very helpful by 96.3 percent of

the discovery plan and the mediation exercise.²⁷ Although additional work was required of the students, in the years for which data were collected on them, there was not a single exercise that the majority of the students did not regard as helpful or very helpful to them in their studies. This was also true of the court visit²⁸

2. Time Spent on Exercises and the Court Visit

In 2010 and 2011, we also collected data from students on the extra time they had spent on these exercises and the court visit.²⁹ This information is important in evaluating whether this method of teaching civil procedure is not just effective but also an efficient use of students' time. In 2010, the majority of the students spent between two and four hours on each of these exercises. In 2011, adjustments were made indicating that most students subsequently only had spent between one hour and two hours on each of the exercises.³⁰ On average, quantitative data on this point suggest that students spend 12 to 15 hours more over the semester on the exercises. That is a modest investment of time considering the rule of thumb for first-year students is that they spend three hours of preparation for every one hour of class time.³¹

3. Other Data

In 2007 and 2009, when the experiment was new, we asked students whether it should be continued. By a resounding vote of 96 percent (60 out of 62), the students in 2007 believed that it should. After making adjustments based on student surveys, this approval rating increased to 100 percent in 2009.³²

the respondents in 2010 and by 86.5 percent of respondents in 2011.

27. The discovery exercise was seen as helpful or very helpful by 54.6 percent of the respondents in 2010 and by 52 percent of respondents in 2011. In 2009, of the 16 percent of respondents who made specific reference to the effectiveness of this exercise, only 12.5 percent of those respondents thought the discovery exercise had worked, while the other 87.5 percent of those respondents felt that it did not work. The negotiation/mediation exercise was seen as helpful or very helpful by 77.4 percent of the respondents in 2010 and by 69.3 percent of respondents in 2011. *Id.* at 9.
28. The lowest approval rating for any individual exercise during this five-year period was 52 percent for the second discovery exercise conducted in 2011.
29. This is a measure of the additional time that students spent, disregarding the time commitment associated with reading, briefing, and otherwise preparing for a traditional first-year course.
30. Moving forward, these exercises will be administered in accordance with the 2011 survey results, so that most students spend between one and two hours on each of the exercises.
31. Sally Kane, Preparing for Your First Year of Law School, About.com: Legal Careers, July 10, 2012, available at <http://legalcareers.about.com/od/educationandtraining/a/lawschoolprep.htm>.
32. See Survey Analysis, at 14-15, 26-27.

B. Qualitative Results

After each question in all four surveys (2007, 2009, 2010, and 2011), students were prompted for further comments. The result was a rich amount of anecdotal evidence as to how first-year, first-semester students experienced our experiment. Our questions were open-ended. The 2011 survey, for example, asked students to “Please rate the value of this exercise by marking the response that is most accurate and giving your thoughts in the spaces below. What was helpful about the exercise? Unhelpful?” This prompt was repeated for each exercise to elicit targeted feedback. The final question to that survey was qualitative and asked the students to record in the space given “[a]ny additional comments about the value of the course in general.”³³

The amount of information received was enormous and covered a full range of students’ reaction to the course, including personal opinions and recommended improvements based on their experience.³⁴ To provide a flavor of these responses, we have reproduced a representative sample of these comments below.

Students reacted favorably to the exercises. As we anticipated, they appreciated seeing the real world of practice come to life. They told us that the exercises also helped them make connections with legal doctrines they studied through traditional, law course book readings. As one student wrote in 2007, “the exercises worked because it made the students feel as though they are practicing what they are reading about. It also provided experience on writing complaints and depositions.... Students can learn from their mistakes.”³⁵ We offer below a representative sample of these comments for each exercise.

i. Written Exercises: Pleadings, Discovery Memos

a. PLEADINGS

Comments about the pleadings exercises, in which students drafted a complaint (and also an answer in 2011), demonstrated an appreciation that this work provided a practical application of some of the more challenging principles taught in the class. This was especially true in 2010 and 2011, because the complaints were drafted in the wake of the U.S. Supreme Court’s landmark *Iqbal*³⁶ and *Twombly*³⁷ rulings, in which the Court specifically addressed the importance of a properly drafted complaint.³⁸ Thus, in those years, the

33. See, e.g., 2011 Survey (on file with the author).

34. On file with the authors are memos summarizing data compiled from each year’s survey. These memos total 46 pages (or 53 pages, including the charts at the end).

35. Survey Analysis, at 11.

36. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

37. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

38. See Patricia W. Hatamyar, *The Tao of Pleading: Do Twombly and Iqbal Matter Empirically?*, 49 *Amer. U. L. Rev.* 553, 556 (2010) (concluding through empirical study that there has been a noticeable increase in the amount of 12(b)(6) motions granted in district courts since

exercises took on a heightened importance. One student said the complaint drafting exercise was a “great way of solidifying the idea of making plausible pleadings. . . . [It] really made me consider the requirements established by *Twombly*.”³⁹ Another student wrote that the exercise “forced me to really engage w/ *Iqbal* & *Twombly* in order to make sure that the pleadings actually stated a claim upon which relief could be granted.”⁴⁰

It is hard to ignore the connection between these exercises and the real world of practice. As one student noted about the complaint drafting exercise, “it is something we will be doing in practice. Our struggles in figuring it out will help us to remember our mistakes next time we go to draft a complaint.”⁴¹ Another student spoke about how the exercise “put this topic into perspective!”⁴² One student exactly captured the essence of our aims, remarking, “[i]t is one thing to learn about how to do something or how not to do something. It is something else entirely to actually do it.”⁴³ “Another was grateful that “we weren’t just reading rules in the abstract, but used them in a ‘real’ way (for class).”⁴⁴ This was echoed by another who said the exercise “makes the complaint more tangible, instead of just an abstract document. I’m also pleased that I had a chance to write my first complaint in an academic setting and receive feedback on it. . . .”⁴⁵ Another student commented that the exercise “forced me to read the rules carefully and to actively learn rather than just read and memorize.”⁴⁶ According to another, the exercise “took the mystery out of the practical application of what we read about.”⁴⁷ To yet another student, it was “helpful to think about what plausible [complaints] looked like, what well-pleaded [complaints] looked like, and in general realize the skill involved in drafting well.”⁴⁸

b. DISCOVERY MEMOS

We asked students to prepare memos on their vision of how discovery should proceed in the *Popup v. Dickens* case. In 2011, students prepared two memos: the first before the in-class discussion of discovery, and the second after that class.

these decisions). See also Hon. Colleen McMahon, *The Law of Unintended Consequences: Shockwaves in the Lower Courts After Bell Atlantic Corp. v. Twombly*, 41 Suffolk U. L. Rev. 851, 853 (2008).

39. Survey Analysis, at 15.

40. *Id.*

41. *Id.* at 28.

42. *Id.*

43. *Id.*

44. *Id.* at 29.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* at 30.

These memos were not as well received as the pleading assignments. Some students reported that it helped make them “aware of what thing[s] to ask for in discovery.”⁴⁹ It helped students “actively think about discovery” which otherwise they would “have approached passively.”⁵⁰ Many students, however, expressed dissatisfaction with this assignment, indicating that it came too early in the discussion of discovery⁵¹ and was disconnected from material that they were studying in the traditional part of the course.⁵² Some students also regretted that this was a solitary exercise and that they did not collaborate with others. In their opinion, peer-to-peer collaboration could have been useful.⁵³ Of these two discovery memos, the students plainly preferred the second, which asked them to reflect on how they would conduct discovery after they had learned its rudiments in class.⁵⁴

2. The “On Your Feet” Exercises: Depositions and Summary Judgment

With the deposition and summary judgment argument exercises, students got the opportunity, for the first time, to perform on their feet as advocates. The response to these oral exercises was strong. One student commented on how new and foreign the experience was of acting like a lawyer for the first time.⁵⁵ Another student said that the deposition “[r]eally helped me understand the role of an attorney... [and] made me think critically about the situation while developing questions.”⁵⁶ While we do not intend for students to master the

49. *Id.* at 34.

50. *Id.* See also *id.* at 34-35 (“[I]t was helpful to consider which types of discovery tools I would want to employ were I actually a lawyer working on this case.”; “[I]t was helpful to make you think about what info you would require & how you would go about getting that.”; “[T]his was helpful in simply thinking from a practical perspective what I would want to know about the other party’s case.”).

51. See *id.* at 35 (“At this point, we hadn’t gone over discovery in depth yet so I didn’t really know what to ask for.”; “[D]id not really know what to do on this because was beginning of discovery.”).

52. *Id.* at 36 (“I did not really find this memo helpful. The memo didn’t really ask me to apply our lessons on discovery to the facts of the case.”; “[T]his memo merely felt as if I had to reiterate the discovery tools listed in the textbook.”).

53. This student-driven opinion to collaborate may not represent an overall class consensus.

54. *Id.* at 38-39 (“It was a good practical application of what we learned in class about discovery.”; “[T]his exercise was much more active than the first memo.”; “[H]elpful because it reinforced what we learned about discovery too”; “[T]his was more helpful than the first memo because it was done after substantial instruction was given.”).

55. *Id.* at 17 (That student remarked that “[p]reparing a deposition was very different...it was also interesting to see just how different the actual deposition was from what we prepared ahead of time.” Another student said that “preparing for a deposition really allowed me to think much more critically about my case. Preparing for this exercise also helped develop [my] questioning skills.”).

56. *Id.* at 17. See also *id.* at 19 (“This was a great practice at real lawyering.”; “[L]oved the way we had to act as attorneys before the judge and actually use the skills of a lawyer, specifically persuasion, to argue before a judge and incorporate case law into our arguments”).

art of taking a competent deposition or making a brilliant summary judgment argument, we were gratified by some student comments indicating they had picked up on the skills necessary to be effective in the future. In making that connection, one student remarked, “I learned that even listening is a skill that certainly takes years and experience.”⁵⁷ Another said that it was a valuable experience “trying to get information from another person.”⁵⁸ Students also commented that the exercises showed the difficulty of these skills.⁵⁹ Many students were grateful for this experience at such an early phase of their legal training.⁶⁰

It is our assessment that seeing the application of doctrine in this controlled environment helped students distill difficult models into basic concepts. As one student noted, the summary judgment exercise “helped make the standard with which the court decides summary judgment much more clear.”⁶¹ Perhaps the best summary of the experience came from a student who simply said after the summary judgment exercise that “I will not forget [R]ule 56 after this.”⁶²

3. Negotiation and Mediation Exercises

Of all the subjects we studied in the doctrinal portion of the class, the one least extensively covered is negotiation and mediation. Because the vast majority of all cases are resolved without formal adjudication, we felt our course needed an exercise on alternative dispute mechanisms. We have varied this exercise over the years. Initially, we conducted a mock mediation before Judge Smith and used her law clerks and sometimes students from class to play the attorneys. In recent years, we divided students into groups to negotiate in class. In 2011, we brought in a colleague who teaches negotiation in the upper-division curriculum to brief the class beforehand and to critique the performances afterwards. This was a well-received addition.⁶³

57. *Id.* at 17. *See also id.* at 18 (“Taking the time to question a classmate allowed me to gain a good perspective on how a deposition might go. It was also useful to see my follow up questions and judge my ability to dig into the relevant issues.”; “[L]earned about which questions to ask and how you really cannot rely on a ‘script’ because you won’t always be able to anticipate the responses you get”; “[I]t was interesting to learn that as much as you prepare your questions and prepare a...plan of attack, the deposition will almost always take you in an unexpected direction.”).

58. *Id.* at 36.

59. *Id.* at 37.

60. *See id.* at 37.

61. *Id.* at 19 (“It help[ed] me grasp the idea of summary judgment better...it helped explain Celotex.”; “[T]his was tough...but it was effective in making me really apply the case law from class, such as Celotex, to the situation in *Popup v. Dickens*.”).

62. *Id.*

63. *Id.* at 40–41 (“Judge Smith + Professor Griffin were very helpful.”; “I especially appreciated seeing the results of the class on the board & I was very interested in Prof. Griffins’ comments and Judge Smith’s experiences.”).

For the mediation exercises, students appreciated the practical value of the experience⁶⁴ but reported it was unconnected to their classroom studies.⁶⁵ The negotiation exercise was better received,⁶⁶ perhaps because the students were more actively engaged.⁶⁷ But here, too, the subject matter did not fit easily with the material studied formally in civil procedure.⁶⁸ Students reported feeling at sea when asked to engage in the exercise.⁶⁹ One benefit of the negotiation exercise is that ethical issues arose that we could address with the students.⁷⁰

4. Court Visit

Students were powerfully impressed⁷¹ by the opportunity to hear argument on a motion on a subject that was being taught in class at the time before a judge with whom they were familiar.⁷² One student even said that “[t]his was my first time ever in a court and I think it really added to not only my civil procedure experience, but my first semester experience in general.”⁷³ Another said, “It was very helpful seeing the rules applied to a real motion.”⁷⁴ Apparently

64. *Id.* at 20 (“[I] enjoyed this exercise mostly because of how practical it was.”; “[P]reparation helped a lot b/c it made you realize how much thought has to go into settlement.”).
65. *Id.* (“[P]robably the least amount of material in the casebook so it was helpful to put it to practice”; “[H]ard to prepare [for] because the materials in the casebook spent relatively little time on mediation. Felt like I was guess[ing] on my demand without actually knowing what I should ask for.”).
66. *Id.* at 40-41 (“Great Exercise! Must repeat. The negotiation review with Judge Smith was extremely useful. Learned a lot about negotiations.”; “[V]ery helpful experience, especially since the majority of cases settle”).
67. *Id.* (“[I]t was fun practicing a negotiation and helped me realize importance of clients’ concerns.”; “[T]his, like the deposition exercise, was good practice in managing a lot of information as well as anticipating the desires/request of the other party.”).
68. *Id.* at 41-42 (“I would have liked more guidance beforehand on what elements or things are important in a negotiation.”; “[T]he reflection and discussion of the actual negotiation was very helpful, but the actual negotiation was confusing and challenging to me because I didn’t have a lot of previous knowledge on the subject.”).
69. *Id.* (“We didn’t address how to negotiate prior so we didn’t know what to do or discuss.”; “I thought the discussion afterwards + basic points about negotiation were more helpful than the negotiation itself.”; “I feel it would have been better if we had a little more guidance before doing this exercise.”).
70. *Id.* at 40 (“I did not realize attorneys could not lie to the other about their bottom line or that the bottom line is not typically revealed.”; “[M]y partner totally lied about what they were allowed to settle for.”).
71. *Id.* at 32-33 (“I think this memory of visiting the court room will stay w/me forever.”; “[T]his was by far my favorite exercise. I believe that watching the civ pro process happen 1st hand was one of the best ways to learn about it.”).
72. *Id.* at 32 (“[I]t was amazing having Judge Smith come in and really connect expectations and the rules.”).
73. *Id.* at 18.
74. *Id.* See also *id.* at 19. (“I enjoyed the visit and liked how the topic fit in really well w/ what we were learning at that point in class.”; “[T]he court visit really helped put the FRCP into

some students got a boost of self-esteem from the visit, remarking that the visit was “a highlight of the semester. As a law student, I was able to follow the proceedings, identify critical shortcomings & positive points of counsel.”⁷⁵ As mentioned, for a number of students, this was their first experience in court.⁷⁶ “I was amazed that everything we learned about showed up in a short court hearing. This really showed civ pro in action.” “Enjoyed it very much! To see in real life what we study in books is [an] unparalleled experience!”⁷⁷

For some students, the court visit was “the most interesting part of the course.” One student remarked that the visit showed the value of mastering doctrine as “they actually do play a pivotal role in successfully litigating a case.”⁷⁸

5. The Collaboration with Judge Smith

Many students said they benefited from the participation of a federal court judge in class. To these students, Judge Smith offered a practical perspective and shed light on their textbook material. Some even described her as a needed supplement to the cases. One student wrote: “it was nice to get her insights into what happens in practice and how she approaches the various trial procedures.”⁷⁹ Many students appreciated the exposure to how a “real” judge thinks and rules on issues. One student wrote that “having the judge at class allowed us to see a practical application of the rules of civil procedure.”⁸⁰ Another wrote, “I really enjoyed getting Judge Smith’s opinion and hearing her personal experiences. It really helped to illustrate what we read.”⁸¹ Many students expressed similar ideas and praised the value of adding a judge’s perspective to class materials.⁸²

perspective. It showed me how the attorneys and judges use them.”; “good experience to see the dynamics of a courtroom and the interaction between the judge and attorneys”; “[W]e got to see the Rules played out in quite a dynamic way.”).

75. *Id.* at 18.

76. *Id.* at 19 (“I had never been to court previous to this visit so it was a very fun & educational experience.”).

77. *Id.* at 32.

78. *Id.* at 33.

79. *Id.* at 2.

80. *Id.*

81. *Id.*

82. *Id.* at 2-3 (“She gave first-hand examples that aren’t available from our readings. As a first year student it was helpful to have a judge explain various court proceedings as well as giving real-world examples.”; “[I]t was insightful and additionally interesting when Judge Smith taught discovery. Her experience and position of authority gave particular insight into understanding the rules of discovery.”). *See also id.* at 10 (“I really enjoyed and valued having a judge come in...the judge gave us a great real-world perspective on how things are done...It was also valuable to have a different perspective on how the law works. Frankly, I feel that my civ pro class was much better due to the [j]udge’s participation.”; “[I]t was fascinating to learn about how the FRCP were used/viewed by Judge Smith—it gave me

6. Suggestions for Change

We asked students to critique their experience and offer suggestions for change. The responses over the years highlighted two themes: students wanted more guidance on how to engage in each of the exercises before the fact⁸³ and they wanted more feedback about the quality of their work after the fact.⁸⁴

7. Summing Up the Surveys

While the confidential surveys do not by any means conclusively establish the validity of our experiment, they do show that in the collective minds of the 218 students who took the class, it was a beneficial experience overall and should be repeated into the future.⁸⁵ One student spoke for most, saying “all of the exercises we did this semester made learning and appreciating the rules so much more exciting, interesting, and easy. Having practical examples of how the rules actually work was so much more helpful than just reading a case and moving on.”⁸⁶

III. The Experiment Responds to Calls for Change in American Legal Education

Our experiment takes place in the context of the ongoing debate about the nature of legal education and amid calls for change to its traditional structure. In recent years, there have been numerous, persistent pleas for change to legal education.⁸⁷ As the fiscal crisis descended with its yet unknown, permanent

a ‘relatable’ aspect to a course that, by its nature, was not as relatable as other courses.”; *Id.* at 21-2 (“[T]he collaboration with Judge Smith was infinitely helpful and I feel it was a wonderful part of the class. The exercise was so valuable in helping me understand the course materials better.”; “[O]verall I thought that collaboration between the professor & Judge made the class not only a great learning experience but also helped us gain real world practical knowledge.”); *Id.* at 29 (“[I]t was helpful to get first-hand experience on how to draft a complaint and reassuring to have feedback from a sitting judge.”).

83. *Id.* at 16-20, 28-30, 37-38 (“I think we needed a little more guidance as to what questions lead to us revealing the needed information from the other attorney.”; “I wish I had more training on how to conduct a deposition. I was not sure what questions to ask and I did not know any strategies. All I knew was the format.”; “It would have been more helpful if we would have gotten more direction on the structure of the complaint beforehand.”; “I would have liked to discuss the format of the complaint more prior to the exercise. It was our first assignment and many of us had never seen a complaint before in our lives. It would have been helpful to go over the general setup and formatting, then leave us to c[o]me up w/ a clean, concise pleading.”; “[A] little more direction beforehand might have been more helpful than hearing all of our mistakes afterward.”).
84. *Id.* at 30 (“I think doing the exercise after you cover complaints—so we can apply what we learned—would be more helpful than drafting one beforehand.”). *See also id.* at 9-13.
85. This data is based on 62 respondents in 2007, 49 respondents in 2009, 55 respondents in 2010, and 52 respondents in 2011.
86. *Id.* at 21.
87. *See* Carnegie Report, *supra* note 5. *See also* Stuckey, *supra* note 5; Harry T. Edwards, The Growing Disjunction Between Legal Education and the Legal Profession, 91 Mich. L. Rev. 34 (1992) (discussing the harm to legal education as a result of overabundance of Socratic

impact on the legal profession, the appeal of a modified curriculum that incorporates practical job-skills has strengthened.⁸⁸ These demands have not gone unheeded. While much more needs to be done, significant alterations have already been made to legal education in the time since we attended law school. Clinics, for example, once rare, now are standard at most law schools.⁸⁹ In addition, a great deal of attention has been brought to bear on the second and third years of formal, non-clinical legal education.⁹⁰ These include courses that introduce instruction in the skills of lawyering such as courses on interviewing, counseling, negotiation, trial practice, externships, and the like.⁹¹

Our experiment deals with the part of legal education receiving the least attention: the first semester of the first year. At most schools, the first year of legal instruction differs little from when we were in school decades ago. That is to say, the first year is characterized by a review of appellate decisions through discussion using Socratic dialogue or its modified version called the case dialogue method.⁹² In our view, the exclusive (or near-exclusive) reliance on case dialogue is misplaced in the first semester, when students are particularly impressionable and getting introduced to their future profession. In our view, this method creates an imbalance between students' perception of legal practice and what actually will be expected of them as lawyers. Our experiment endeavors to address that imbalance. In this section, we briefly recount and critique the history of the Socratic Method in the first year of legal education. We end this section with a discussion as to why we believe it was essential for the legal academy to find ways to make at least modest changes

discussion of theory and not enough practical and doctrinal instruction).

88. David Segal, *Law School Economics: Ka Ching!*, N.Y. Times, July 16, 2011, at BU1. *See also* Richard A. Matasar, *Law School Cost, Educational Outcomes, and a Reformer's Agenda* (July 19, 2011), available at http://www.nyls.edu/news_and_events/matasars_response_to_nytimes/ (Dean Matasar responds to N.Y. Times article, claiming that the need to comply with ABA regulations is largely to blame) [hereinafter *Law School Cost*]. *See also* Debra Cassens Weiss, *New York Law School Dean Hits Legal Ed, But Hikes Class Size 30%*, ABA Journal (July 18, 2011), available at http://www.abajournal.com/news/article/new_york_law_school_law_dean_hits_legal_ed_but_hikes_class_size_30/.
89. *See* AALS/ABA Guidelines For Clinical Legal Education (1980); *see also* Report of the Committee on the Future of the In-House Clinic, 42 J. Legal Educ. 508 (1992); Roberta M. Gubbins, *A Bit Of History On Law Clinics And Law Schools: The 1960's Saw A Sea Change In Attitudes Towards Law Clinics*, LegalNews.com, July 5, 2011, available at <http://www.legalnews.com/detroit/1001293>.
90. Patrick G. Lee, *Law Schools Get Practical: With the Tight Job Market, Course Emphasis Shifts From Textbooks to Skill Sets*, Wall St. J. (July 10, 2011), available at <http://online.wsj.com/article/SB10001424052702304793504576434074172649718.html>.
91. Rosemary Kind, *Negotiation Skills for Lawyers*, available at <http://www.ark-group.com/downloads/NegSkillstoc.pdf>; *see also* Steven Lubet, *Modern Trial Advocacy: Analysis and Practice* (Nat'l Inst. for Advoc. 2004); Henry Rose, *Legal Externships: Can They Be Valuable Clinical Experiences for Law Students?*, 12 Nova. L. Rev. 95 (1987-88).
92. *See* Carnegie Report, *supra* note 5, at 2-3 (The term "case dialogue" method is used by the Carnegie Foundation for the Advancement of Teaching in this seminal work to characterize how the Socratic dialogue is used in most American law schools.).

to the first-year curriculum to correct this imbalance and why we still feel it is necessary to take more steps in this direction.

A. The Socratic Method or Case Dialogue Method, and Criticism Thereof

American legal education increasingly has been criticized for its overreliance on what is basically a single method of instruction.⁹³ That method, called somewhat generically the Socratic Method and introduced into legal education by Christopher Columbus Langdell in the latter part of the 19th Century,⁹⁴ needs no introduction to the audience likely to be reading this article. To oversimplify, it is a method of instruction that relies on the close analysis and dissection of largely appellate decisions to discern a governing principal of law that then can be applied to hypothetical cases with slightly varying facts.⁹⁵

For more than 100 years, the primary method of instruction of law students in the United States has not been, as once was the case, through apprenticeships or through lectures based on legal treatises, but rather on the careful analysis and dissection of appellate decisions under the tutelage of a law professor using the Socratic Method. Reforms that have come—and they have not been insubstantial—largely have focused on adjusting second- and third-year curriculums. To this day, aside from a few notable exceptions,⁹⁶ American law students in the first year and particularly in the first semester are introduced to the legal profession primarily through the Socratic Method or a variation of it. As the Carnegie Foundation concluded, following its extensive study of legal education, “compared to other professional fields, which often employ multiple forms of teaching through a more prolonged socialization process, legal pedagogy is remarkabl[y] uniform across variations in schools and student bodies. Excepting a few schools, the first-year curriculum is similarly standardized.”⁹⁷

There is, to be sure, real value to the case dialogue method. It instills a rigor of thought and analysis that is “universally acknowledged” to be a key

93. See MacCrate Report, *supra* note 5.

94. Christopher Tomlins, Book Review, 59 J. Legal Educ. 657 (2009-10). See also Bruce A. Kimball, *The Inception of Modern Professional Education: C.C. Langdell, 1826-1906* (Univ. of North Carolina Press 2009).

95. Cynthia G. Hawkins-León, *The Socratic Method-Problem Dichotomy: The Debate Over Teaching Method Continues*, BYU Educ. & L.J. (1998). See also Stephanie M. Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. Legal Educ. 147 (1988); Orin S. Kerr, *The Decline of the Socratic method at Harvard*, 78 Neb. L. Rev. 113 (1999).

96. Mary Kate Kearney & Mary Beth Beazley, *Teaching Students How to “Think Like Lawyers”*: Integrating Socratic Method with the Writing Process, 64 Temple L. Rev. 885 (1991).

97. See Carnegie Report, *supra* note 5, at 186. See also NYU Law: Required First Year Courses, *supra* note 9; Georgetown Law: J.D. Program, *The First Year Program of Instruction*, available at <http://www.law.georgetown.edu/curriculum/jdprog.cfm#First>.

attribute that any successful attorney possesses.⁹⁸ Despite its exposure and contributions over the past three decades, there has been increasing discontent with this method of instruction as the primary method to formally train students for the practice of law.⁹⁹ Perhaps the critique that best joins together all of these points is that of New York University Law School Professor Peggy Cooper Davis, who recently wrote that the problem with the overreliance on the Socratic Method is that it “segregates” the cognitive part of being a lawyer from “the ethical and the practical” aspects of lawyering.¹⁰⁰

Welcomed changes have come thanks to the criticism of the traditional, extreme reliance on the Socratic Method.¹⁰¹ But most of the change has occurred in the upper class curriculum.¹⁰² With notable exceptions,¹⁰³ today’s first-year class looks much as it did during our time in law school decades ago. We believe the time has come for change and our experiment is a step in that direction.

B. The Need for Change to the First-Year Curriculum

Case dialogue instruction, which “has dominated the first year of most legal education through much of the past century,”¹⁰⁴ is an effective way to train in what the Carnegie Foundation, in its comprehensive study of legal education, referred to as “cognitive ability.”¹⁰⁵ This is defined as the ability to engage in careful legal analysis and to learn how to think like a lawyer. Carnegie points out that there is more to being a lawyer than just this ability. To be prepared for the practice of law, a student should be grounded not only in the cognitive

98. See MacCrate Report, *supra* note 5, at 5, 29 (MacCrate observed that the importance of this skill is “universally acknowledged”).

99. MacCrate Report, *supra* note 5, at 243. See also Sam Sue, Assessing the MacCrate Skills: Developing a Good Survey, 23 Pace L. Rev. 657, 663 (2003). Richard A. Matasar, Skills and Values Education: Debate about the Continuum Continues, 46 N.Y.L. Sch. L. Rev. 395 (2003) (hereinafter Skills and Values Education) (“generations of lawyers [have] anger at their law schools” for the “inadequacy of their education”). Desegregating Legal Education, *supra* note 6; 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. (2008).

100. See Desegregating Legal Education, *supra* note 6. See also Carrie Menkel-Meadow, Taking Law and... Really Seriously: Before, During and After the Law, 60 Vand. L. Rev. 555 (2007).

101. Margaret Martin Barry, Practice Ready: Are We There Yet?, 32 B.C. J. L. & Soc. Just. 247 (2012); See also Menkel-Meadow, *supra* note 100.

102. Robert W. Gordon, New Developments in Legal Theory, in *The Politics of Law: A Progressive Critique* 292-93 (David Kairys ed., Pantheon 1982); Duncan Kennedy & Karl E. Klare, A Bibliography of Critical Legal Studies, 94 Yale L.J. 461 (1984); Peter Gabel & Paul Harris, Building Power and Breaking Images: Critical Legal Theory and the Practice of Law, 11 N.Y.U. Rev. L. & Soc. Change 369, 370-71 (1982).

103. NYU Law: Required First Year Courses, *supra* note 9; Georgetown Law: J.D. Program, The First Year Program of Instruction, *supra* note 97.

104. Carnegie Report, *supra* note 5, at 47.

105. *Id.* at 46.

ability to perform legal analysis but also should be able to engage in legal practice; students also should be endowed with knowledge and understanding of the values of the profession.¹⁰⁶ However, first-year curriculums thoroughly instruct students in the first of these attributes and postpone the other two.

The argument for preserving the status quo asserts that students are not ready to tackle the complex and messy aspect of legal practice at the beginning of their legal studies. Proponents also claim that first-year students are too overwhelmed to appreciate what it means to be a true professional and upholder of legal ethics. In their view, skills training and ethics instruction must be postponed until the students first learn the skills of legal analysis. This argument is a major reason why the first-year curriculum, with its emphasis on the case dialogue method, has remained so constant over the years.¹⁰⁷ It is also the reason that so many resist any change to it. As the dean of Stanford Law School said, “the first year generally works...the problem is...the second and third year.”¹⁰⁸

We disagree with this view. We contend the separation of “analytical” and “practical” training, which in most American law schools is “acute,”¹⁰⁹ has significant and unnecessary costs.

The first casualty: without some introduction to skills and professional values, students will not be “guided toward an understanding of the intricate relationships among doctrinal, strategic, interpersonal and ethical analysis” which is paramount for professional practice.¹¹⁰ With case dialogue instruction, a student’s initial imprint of the law is that of legal doctrine divorced from practice. This is akin to introducing a person to an elephant by blindfolding him and allowing him only to touch its trunk.¹¹¹ The student so instructed sees law as a predetermined set of facts and as an abstract set of legal doctrines that are applied to these facts by appellate courts in the form of majestic and eloquently written opinions. In a world where facts are given and where the human dimension is left out, students are not given the tools to analyze and understand the interrelationship between doctrine, practice, and values.¹¹² Without this understanding, students easily can form the misimpression

106. *Id.* at 58.

107. Other reasons include economics. The cognitive skills of case reading and analysis can be mastered in large classes. So the case dialogue method of instruction is efficient.

108. Barry, *supra* note 101, at 262 (quoting Dean Larry Kramer in Carnegie Report, *supra* note 5, at 66 (“[found] nearly all law faculty with whom we spoke to be proponents of the case-dialogue method as the best means for inducting novices into the craft of legal reasoning”)); *see also* Karl N. Llewellyn, *The Case Law System in America* (Univ. of Chicago Press 1989).

109. Carnegie Report, *supra* note 5, at 83.

110. Slay the Three-Headed Demon!, *supra* note 4, at 621.

111. The analogy stems from the ancient proverb of the wise man whose message was that several people may view the same experience in different ways because of their perspective. Andha Naal (AVM Productions 1954).

112. *See* Stuckey, *supra* note 5, at 81-82, 96.

that lawyers are “distanced planners or observers rather than as interacting participants in legal actions.”¹¹³ Moreover, an exclusive diet of appellate decisions without an understanding of the context in which these cases arise may create the early indelible impression that the law lacks ethical substance.¹¹⁴ As the Carnegie Foundation put it, the traditional first-year curriculum causes “personal values gradually to fade from view.”¹¹⁵

A second casualty is that the study of doctrine divorced from practice imparts the implicit message that mastery of legal doctrine and legal rules is all that matters; misguided students may believe that the ability to engage in legal analysis is the essential (if not exclusive) skill of an attorney. Thus, students understandably have come to believe that “thinking like a lawyer” requires “careful study” but that other skills such as interviewing, counseling, fact development, problem-solving, and advocacy are not nearly as important and can be picked up later without a great deal of intellectual effort.¹¹⁶

A third casualty is that the case dialogue method gives students a “skewed and inaccurate version of the legal profession and their roles in it.”¹¹⁷ Contact with clients and “ethical substance” are missing in this pedagogy.¹¹⁸ The Carnegie Foundation warned that this skewing gives rise to a “shadow pedagogy”¹¹⁹ which sends the “tacit message...that for legal professionals, matters of justice are secondary to formal correctness.”¹²⁰ Karl Llewellyn warned students long ago, in his famous essay on legal education, that the case dialogue method in the first year will do just that. It will, he said, “knock your ethics into temporary amnesia.”¹²¹ He went on to say that with the case dialogue method, students will “acquire [the] ability to think precisely, to analyze coldly, to work within a body of materials that is given, to see and to see only, and to manipulate the machinery of law.”¹²²

Professor Llewellyn also believed that this damage could be cured. He wrote that once students formed the ability to engage in legal analysis, they then could regain their perspective and learn other essential lawyering tasks. But to do so, he acknowledged the student must first learn to no longer be a “legal machine: and must regain his or her perspective as a human being.”¹²³

113. Carnegie Report, *supra* note 5, at 57.

114. *Id.* at 58.

115. *Id.* at 31.

116. Slay the Three-Headed Demon!, *supra* note 4, at 621-22.

117. Stuckey, et al., *supra* note 5, at 22.

118. Carnegie Report, *supra* note 5, at 57.

119. *Id.* at 56.

120. *Id.* at 58.

121. K. N. Llewellyn, *Bramble Bush: On Our Law and Its Study* 116 (Oceana Pub., Inc. 1981).

122. *Id.*

123. Carnegie Report, *supra* note 5, at 78 (quoting Karl Nickelson Llewellyn).

We are not so sure that the damage can so easily be undone. We agree with the Carnegie Foundation that the case dialogue method leaves students too distant from the tasks of lawyers. With the practice of law a “vaguely imagined future,”¹²⁴ with “distorted socialization to the profession,”¹²⁵ the case dialogue method unadorned can cause too many students to disengage from the learning process in a way that even “later experience with fuller approximations to practice and actual clients may not be able to reverse.”¹²⁶ At the very least, this “disconnection in the first year sets up a major problem of reintegration in the remaining two years.”¹²⁷

We set out to do our part, to find a way to make modest changes to the first year to address these deficiencies. We did so with, as far as we know, the first collaboration between a full-time educator and a sitting judge to redesign a traditional first-year class to be taught in a new way.¹²⁸ We believe that the foundation for these criticisms and the accompanying recommendations for change are not novel, but instead have existed in legal education as well as in other professional training programs nationwide. In our opinion, the potential benefits to current and future students and young lawyers far outweigh the costs of making the adjustments needed to introduce our program into mainstream curricula. It is time for the law school curriculum to catch up with the changing demands in the legal profession.

IV. The Experiment Aligns with Innovations in Other Professions

Professional education generally is moving in the direction of providing context to students as they begin their studies. The Carnegie Foundation, which in recent years has studied law, medicine, engineering, divinity and nursing education, has stressed in each of its reports the need for what it calls “curricular integration.”¹²⁹ The foundation reported that “[i]n every field we studied, we concluded that the most overlooked aspect of professional preparation was the formation of a professional identity with a moral and

124. *Id.* at 60.

125. *Id.*

126. *Id.* at 77.

127. *Id.* at 78–82; *See also id.* at 84 (Beginning students’ legal education almost entirely at one end of the pedagogical continuum is simply not the best start for introducing students to the full scope and demands of the world of the law...the first-year experience as a whole, without conscious and systematic efforts to counterbalance, tips the scales...away from cultivating the humanity of the student and toward the student’s re-engineering into a “legal machine.”).

128. While we have not conducted a vigorous survey, we have been attentive to other examples of similar collaborations by a judge and a professor in other schools, and we have presented on our experiment at two national conferences. To date, we have not found reports of any similar effort.

129. *See* Molly Cooke, David M. Irby & Bridget C. O’Brien, *Educating Physicians: A Call for Reform of Medical School and Residency* ix (Jossey-Bass 2010) [hereinafter *Educating Physicians*].

ethical core of service and responsibility around which the habits of mind and of practice could be organized.”¹³⁰ In this section, we briefly set out curricular innovations in the fields of medicine, dentistry, and engineering in teaching first-year beginning students.¹³¹

A. Medicine

In 2010, the Carnegie Foundation surveyed medical education as part of its program of investigating professional training in other fields.¹³² Its discussion of medical education was published 100 years after the landmark Flexner Report on medical education, which also was commissioned by Carnegie and published in 1910.¹³³ The groundbreaking Flexner Report contributed significantly to creating the system of medical education we have today.¹³⁴ Indeed, Flexner’s report was so influential that his “concept of the medical curriculum became the working model for the last 100 years: two years of basic science instruction, followed by two years of clinical clerkship experience in a university teaching hospital.”¹³⁵ In this way, Abraham Flexner and his report did for medical education what Langdell did for legal education: it changed fundamentally the way students were taught to be doctors, just as Langdell changed how students were taught to be lawyers.¹³⁶

Just as Langdell’s method is not without its problems,¹³⁷ so, too, did the Flexner approach fail to meet medical students’ needs in the 21st century. Critics have said that the standard medical school curriculum, adopted in response to the Flexner Report, is “inflexible” and riven by an artificial, intellectual divide

130. *Id.*

131. While we provide a brief overview it is beyond the scope of this article to discuss in detail the full impact and efficacy of these efforts on their respective professions.

132. Pat Hutchings, Mary Taylor Huber & Anthony Ciccone, *The Scholarship of Teaching and Learning Reconsidered: Institutional Integration and Impact* (Jossey-Bass 2011). *See also* Educating Physicians, *supra* note 129; Patricia Benner, et al., *Educating Nurses: A Call for Radical Transformation* (Jossey-Bass 2009).

133. Abraham Flexner, *Medical Education in the United States And Canada: A Report To The Carnegie Foundation for the Advancement of Teaching* (Carnegie Foundation for the Advancement of Teaching 1910) [hereinafter Flexner Report]. *See also* Molly Cooke, M.D., David M. Irby, Ph.D., William Sullivan, Ph.D. & Kenneth M. Ludmerer, M.D., *American Medical Education 100 Years after the Flexner Report*, 355 *New Eng. J. Med.* 1339-44 (2006).

134. The Flexner Report advocated changes such as raising admission standards, training fewer doctors, relocating training facilities to college campuses and affiliating each medical program with a particular university, lengthening the medical school curriculum from two years to four, and various other changes that have become common practice in today’s society. *See* Flexner Report, *supra* note 133.

135. Ralph L. Nachman & Peter M. Marzuk, *Flexner Redux*, 54 *Persp. in Biology and Med.* 55-60 (2011).

136. *See supra* Part III.

137. *See supra* Part III. B. (discussing limitations of the case dialogue method).

between the “basic science” years one and two, and the clinical years three and four.”¹³⁸

One of the negative effects of this dichotomy in medical education as stated in the Carnegie Report is that:

The lack of integration results in early-stage medical students typically failing to appreciate the relevance and clinical context for the information they encounter in their classroom work. The other side of this issue is that, once in a clinical environment, students struggle to recognize the relations between what they have been taught in the classroom and the problems patients present so they feel they have to learn everything all over again. Learning facts disassociated from patients results in a 30 to 50 percent loss of knowledge by the time the students reach the clinical setting.¹³⁹

To fix this problem the report recommended that medical schools revise their curricula so there is more “vertical integration” of “the formal knowledge in the preclinical years with the experiential knowledge acquired in the clinical years.”¹⁴⁰ One article reported that as a result of the 2010 report:

Strong bridges are being constructed across the chasm dividing the basic science and clinical years, including the linkage of clinical problems with basic science, and the promotion of required faculty-mentored medical student research in translational medicine. Many schools have started programs in the first year that allow students to follow a panel of patients longitudinally, so as to appreciate how an illness evolves and impacts the patient’s functioning and quality of life, as well as how a team is needed to care for a patient in the long term.¹⁴¹

One example is Medicine, Patients and Society I (MPS I), a first-year, first-semester course at the Weill Cornell Medical College.¹⁴² In the course, students explore topics such as “communication, professionalism, the medical history, clinical reasoning, the patients’ perspective, medicine and culture, the social history, health care disparities, [and] patient education and adherence.”¹⁴³ The course’s goal is that by December of the first year, aspiring physicians “will be able to take a complete medical history of a patient, and will [have] learn[ed] to document [these] finding[s] in a write-up. [These students] will also learn how to take basic vital signs, . . . and learn how to act [as] first responder[s]

138. See Nachman, *supra* note 135, at 57. See also Edward C. Halperin et al. Abraham Flexner of Kentucky, His Report, Medical Education in the United States and Canada, and the Historical Questions Raised by the Report, 85 J. Assn. Am. Med. C. 203, 206 (2010).

139. *Id.*

140. See Nachman, *supra* note 135, at 57.

141. See *id.* at 58.

142. Medicine, Patients and Society I, Weill Cornell Medical, available at http://www.med.cornell.edu/education/curriculum/first/med_pat.html [hereinafter MPS I].

143. *Id.*

in crises.”¹⁴⁴ This course also has “office preceptor sessions,” in which students spend one afternoon each week in the office of a physician.¹⁴⁵ This part of the course, which is somewhat similar to our courtroom visit but is more developed, requires the novice medical students to observe the physician’s “interactions with patients and staff” and asks them to interview patients selected by the preceptor physician.¹⁴⁶ Another example is Introduction to Clinical Medicine, a first year course at The Albert Einstein College of Medicine.¹⁴⁷ In this course students participate in small-group discussions that expose these first-years to the practical applications of this skill to their profession.¹⁴⁸ A third example is the mandatory Student Continuity Practice at the University of Connecticut’s School of Medicine.¹⁴⁹ This course places students in private physicians’ offices in their first semester and encourages them to visit with these practitioners once a week to observe.¹⁵⁰ The class “gives students the opportunity to develop a conceptual understanding of medicine while developing skills in history taking, physical examination and clinical reasoning.”¹⁵¹

B. Dentistry

Comparable efforts also are under way in dental education, as can be seen in an article in the *Journal of Dental Education* entitled “The Changing Face of Dental Education: The Impact of PBL.” This article makes the case for introducing first-semester dental students to the skills and values of the profession at the inception of their education.¹⁵² The authors’ rationale for this proposed change parallels our proposed reform to traditional law school curricula in many ways. They complain about basic introductory courses in dental school that lack context, noting the difficulty that occurs when “classes are designed to tell students at the beginning all the material they must learn and the order in which they must learn it, yet provide little information on the relevance of the material to future career objectives...”¹⁵³ One contextual reform to dentistry is that at New York University’s Dental program, first-semester students enroll

144. *Id.*

145. *Id.*

146. *Id.*

147. Susan M. Coupey, Mimi McEvoy, Daniel C. Myers & Maria Marzan, Preparing Einstein Students to Practice Twenty-first Century Medicine, 20 *Einstein J. Biology & Med.* 71 (2004).

148. *Id.*

149. M. Brownell Anderson & Steven L. Kanter, MD, Medical Education in the United States and Canada, 2010, 85 *J. Assn. Am. Med. Colleges* 120 (2010).

150. *Id.* at 120-23.

151. Student Continuity Practice, University of Connecticut School of Medicine, *available at* <http://medicine.uhc.edu/current/scp/index.html>.

152. Alan G. Finchman, Ph.D. & Charles F. Shuler, D.M.D., Ph.D., The Changing Face of Dental Education: The Impact of PBL, 65 *J. Dental Educ.* 406 (2001).

153. *Id.* at 412.

in General Dentistry Simulation I: Clinical Foundation, Dental Anatomy, and Biomaterials.¹⁵⁴ As part of this course, students practice basic dentistry functions on a simulated human model. This approach is similar to ours in that we encourage law students to engage in complaint/answer drafting, as well as to conduct a simulated deposition for the same purpose; these exercises aim to introduce students to basic competencies of their chosen profession.

C. Engineering

The study of engineering, unlike many other professional degree programs, often begins at the undergraduate level.¹⁵⁵ Nevertheless, there is a need at the outset in these programs, as in other professions, to inculcate the professional values and practical skills needed for graduates to be well-educated and succeed in their field.

One noteworthy program that introduces first-year students to the practical context of engineers' lives was created at the Rochester Institute of Technology, as part of a revised engineering curriculum.¹⁵⁶ The program consists of two concurrent courses taught in the first two quarters of a student's first year at the institute.¹⁵⁷ The first course, Measurements, Instrumentation and Controls, introduces students to "LabView programming and data-acquisition techniques" and provides them with "an opportunity to set up and use various sensors and other electronic devices that they might use as future mechanical engineers."¹⁵⁸ The second course, Introduction to Mechanical Engineering Design, is structured to teach students the formal design process. In this course, students work in small teams on two design projects.¹⁵⁹ A second example of a contextual engineering course for first-year engineering students is a course used at Trinity College.¹⁶⁰ Students in this course apply

154. *Id.*

155. Columbia Engineering: The Fu Foundation School of Engineering and Applied Science, Columbia Engineering and New York City, *available at* <http://www.engineering.columbia.edu/seas-columbia-and-new-york-city> Cornell University College of Engineering, Undergraduate Education, *available at* <http://www.engineering.cornell.edu/academics/undergraduate/index.cfm>; Princeton University School of Engineering and Applied Science: Undergraduates, *available at* <http://www.princeton.edu/engineering/undergraduate/>; Purdue University School of Engineering Education, Undergraduate Program: Multidisciplinary Engineering and Interdisciplinary Engineering Studies, *available at* <https://engineering.purdue.edu/ENE/Academics/Undergrad/>; Trinity College, Engineering, *available at* <http://www.trincoll.edu/Academics/MajorsAndMinors/Engineering/Pages/default.aspx>.

156. Elizabeth DeBartolo & Risa Robinson, A Freshman Engineering Curriculum Integrating Design and Experimentation, 35 *Int'l. J. Mechanical Engineering Educ.* 91 (2007).

157. *Id.* at 95. *See also* Clive L. Dym, Teaching Design to Freshmen: Style and Content, 83 *J. Engineering Educ.* 303-08 (1994).

158. *See* DeBartolo, *supra* note 156, at 95.

159. *Id.*

160. David J. Alhgren, Fire-fighting Robots and First-year Engineering Design: Trinity College Experience, 31st Annual Frontiers in Education Conference (2001).

technical knowledge they learn to design “an autonomous, competitive, fire-fighting mobile robot.”¹⁶¹ The course’s goal is for students to design and build a small robot that can navigate a model house-shaped maze and to extinguish a candle therein.¹⁶² Throughout the semester, students build their robots by adapting theoretical knowledge from the lectures. The semester culminates in a competition that tests the robots’ navigation of the maze and extinguishing of the flame.¹⁶³

As is the case with our class, these courses share the idea of integrating practical work with the study of foundational, technical knowledge at a very early stage. To the extent that the course has students tackling the work of a professional in the field, at least in a rudimentary way, it inculcates professional values, while also allowing aspiring professionals to appreciate how theory and doctrine are essential to solve a practical problem.¹⁶⁴

161. *Id.* at 1.

162. Students are divided into teams and assigned a mentor: a student who had completed the course. “The responsibilities of a mentor were to attend team meetings and workshop sessions, help teams with project planning and management, provide advice on personnel issues, help teams to develop and adhere to schedules and provide limited technical assistance. The mentors’ role in the design process was to provide guidance and encouragement but not to participate in the design itself. *Id.* at 2.

163. *Id.* at 4.

164. Trinity College, Course Descriptions: Course Catalogue for Engineering, available at <http://www.trincoll.edu/Academics/MajorsAndMinors/Engineering/Pages/Course.aspx>. There are similar efforts at other engineering programs nationwide to establish contextual learning courses for first-year engineering students. See, e.g., Purdue University School of Engineering, First-Year Engineering Program, available at <https://engineering.purdue.edu/ENE/Academics/FirstYear/> (At the Purdue University School of Engineering, first-year engineering students are required to take a course called “Ideas to Innovation (I2I) Learning Laboratory.” The laboratory consists of seven “studios,” which take students through each step of the design process. The “students identify design criteria for a particular problem, come up with potential alternatives, plan for a chosen solution, build and test a prototype, evaluate their work, and refine their solution.”); Columbia Engineering: The Fu Foundation School of Engineering and Applied Science, Interdisciplinary Engineering Courses, available at <http://bulletin.engineering.columbia.edu/interdisciplinary-engineering-courses>; Design Fundamentals Using Advanced Computer Technologies: The Penny Harvest Cart, available at <http://community.seas.columbia.edu/csllp/presentations/spring05/pcart.pdf> (“[S]tudents learn the basics of engineering design from problem definition to detailed conceptual design. Computer technologies such as advanced three-dimensional graphical and computational applications are applied in the service of authentic community-based design projects, using a state-of-the-art design facility known as the Botwinick Multimedia Learning Laboratory. Aligned with the technical components of the design, students develop collaboration, communication, problem solving, and project management skills, as well as a life-long orientation of social responsibility and community service.”); NC State Engineering, First Year Engineering, available at <http://www.engr.ncsu.edu/firstyear/> (In this first-year engineering course (E101: Introduction to Engineering) students work on a design project that culminates in an annual freshman engineering design day. The day “is an opportunity for our first year engineering students to showcase the design projects that they have been working on throughout the semester through display and competition. These projects allow students to put core design concepts into practice during their first semester while learning how to work successfully in a design team.”).

V. A Proposal For Change

Our collaboration is a new and, we believe a, promising way to provide a contextualized experience for first-year law students. While we do not have definitive empirical data quantifying our experiment's value,¹⁶⁵ as described in detail above, in six years of teaching it, we have amassed a great deal of information from students on their impressions of the course and its components.¹⁶⁶ That data at the very least indicate that the experiment has been favorably received by our students and we believe that this feedback strengthens our course's significance. Our experiment proved popular not merely for its entertainment value; most students urged that it be repeated in future years, despite the additional commitment it adds to an already rigorous curriculum. Students normally do not endorse the value of added work without good reason. Their reasons for endorsing our course track those that motivated us to embark on this experiment. In their comments, the students repeatedly said they welcomed how our course exposed them to legal practice. They told us in their comments that they benefited greatly from our classroom exercises, as well as from their guided visit to federal court. These are the exact reasons that commentators and reformers of professional education in many fields, not just the law,¹⁶⁷ have advanced the idea that it is essential—especially at the outset of professional training—to expose fledgling professionals to the messy reality they will operate in as practitioners. These same reasons fueled our journey.

We are convinced, as well, that our approach alleviates first-year law student anxiety. A recent study measuring law students' experiences throughout their first year concluded that “collaborative experience and well-structured critical analysis of lawyers' work are necessary, not only to professional excellence, but also to students' ability to contain stress sufficiently to manage the complex mental work of learning and using the law.”¹⁶⁸ Our experience convinces us

165. We do not, for example, have empirical data that would tell us whether students who have experienced our course learn more civil procedure, as reflected by performance on student examinations, than do those who undergo a more traditional class. We do not know whether exposure to our approach improves performance on the bar examination, whether it increases competence after graduation or whether it encourages students who ultimately decide that law is not for them to leave law school earlier than they would have, had they not taken this course. These and other matters are all useful topics for further empirical investigation.

166. *Supra* Part II.

167. *Supra* Part IV.

168. Peggy Cooper Davis, Ebony Coletu, Bonita London & Wentao Yuan, Making Law Students Healthy, Skillful, and Wise, 56 N.Y. L. Sch. L. Rev. 487, 488 (2011-12). New York Law School has been at the cutting edge of legal reform, having entertained countless initiatives to reform legal education. In fact, New York Law School owes its existence to a rebellion against the status quo—the institution was founded by a group of disgruntled law professors who were opposed to the implementation of the Socratic Method.

that this course (or something similar)¹⁶⁹ should be made a part of the normal first-semester law school experience for American law students. This change to the first-year curriculum is a realistic and attainable goal.¹⁷⁰

This is not to say that there are not costs, drawbacks, and difficulties in implementing our revised curriculum or that it is the only way to accomplish needed change.¹⁷¹ The first hurdle to replicating our approach is enlisting a judge to participate. While our collaboration between a judge and a professor is the first of its kind that we know of, this does not mean it would take extraordinary effort to find other jurists to teach this way elsewhere. We are convinced that many qualified judges would be willing partners. In our experience, judges can make a significant contribution without undue investment of time.¹⁷² We hope that, as public servants, many more of them would welcome the chance to contribute in this way.¹⁷³

A second challenge to reproducing this model effectively is for professors to be willing to share the podium with another authority figure. Collaborative teaching requires an additional, conscious consideration on professors'

169. We do not wish to be understood as advocating our model as the only way to meet the imperative of providing a contextualized learning experience for students. We say many other models similar to ours may also be successful, so long as they accomplish the goal—exposing students to how concepts they study are applied in practice along with the chance to interact or at least observe the practice of law.
170. There is growing anecdotal evidence that some sort of contextualized education in the first year of law school is beneficial. *See, e.g.*, Kristen Holmquist, Challenging Carnegie, 61 *J. Legal Educ.* 353, 373 (2012) (proposing that law professors “infuse our curriculum with factual, empirical and normative content far beyond what that which can be gleaned from appellate cases”); 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.* 326 (2008) (“[I]ntegrating a lawsuit into the teaching of a course certainly has pedagogical value.”); Russell E. Lovell, II, Trial Practicum Integral to First-Year Law School Curriculum, 90 *Judicature* 114 (2006) (describing the practice of integrating court visits into the first-year curriculum).
171. There is more than one way to skin a cat. For examples of other techniques and approaches to providing context in legal education, including in the first year, *see, e.g.*, The Institute for Law Teaching and Learning, *available at* <http://lawteaching.org/>; Northeastern University School of Law, Legal Skills in Social Context, *available at* <http://www.northeastern.edu/law/academics/curriculum/lssc/index.html> (Students work through “simulated programs” to begin sharpening the “relevant skills” that will make them effective advocates.).
172. The time commitment can vary depending on arrangements but it is possible for a judge to make a meaningful contribution with less than 20 hours of her time during a semester. This calculation covers the judge visiting class thrice (for the exercises on complaint drafting, summary judgment and negotiation or mediation) as well as hosting a class field trip to observe her in court.
173. *See, e.g.*, Judith Ann Lanzinger, Judges Teaching in Law School: Who, What, Where, and Why Not?, 43 *J. Legal Educ.* 96 (1993) (urging that judges be recruited by law schools and citing the benefits to judges of such an association); Justice Elizabeth Lacy, Judge Paul Michel & Judge John R. Tunheim, Law School Curriculum, Training law Students and the Vitality of the Profession: The Judicial Perspective—A Panel Discussion, 1 *J. Ass’n Legal Writing Directors* 297 (2001).

part; the professor-author of this article was committed to the idea of the collaborative model. For the collaboration to succeed, the professor must create a rapport with the judge and they continually must work together through the duration of the semester. At times, the professor must be willing to give over complete control of the classroom experience. This relationship takes time and considerable effort to build and maintain. We discovered, over time, that once we clarified our roles, collaboration became easier. We settled on an approach in which the professor ultimately was the authority figure in the class; he was responsible for classroom management and logistics, leading class discussion and, ultimately, grading students. Students were made aware of this balance of authority and responsibly—this clarification benefited us and our students.¹⁷⁴

Another challenge is that our method can reduce the time that a professor has to cover the topics of civil procedure. In our judgment, this tradeoff is insignificant because the class time we devote to our collaboration, including the five exercises and the courtroom visit, is less than 10 percent of the total that students at Pace Law School spend in civil procedure.¹⁷⁵

A final complication is that our methodology increases the professor's workload, since he must review student submissions, and comment on and discuss them. This might sound more burdensome than is the reality because assignments are reviewed on a pass/fail basis and a pattern emerges during grading that hastens the process. Since we are not teaching skills but only introducing them, we looked at each submission merely to determine whether it met certain basic requirements.¹⁷⁶ This is not as demanding as scrutinizing and grading every submission to ensure student mastery of a skill. In any event, it is too late in the day to complain about programs structured to provide students with constructive feedback throughout the semester. The benefits of this are well established.¹⁷⁷

174. In the early stages of our collaboration, before we were clear in our own minds about how to proceed, a number of our students reported that they were confused about the roles we each played and that obviously was unsettling to them.
175. At Pace Law School, civil procedure is a 6-credit, two-semester experience over two, 13-week semesters. There are two classroom meetings per week. Thus students have 52 class meetings devoted to civil procedure. Our experiment involved five exercises that consumed classroom time (on complaint drafting, depositions, summary judgment and negotiation, plus a courtroom visit). Thus, our exercises consumed 9.62 percent of the class time devoted to civil procedure.
176. We seek to establish that the students demonstrated that they understand the relationship between the lesson and the exercise, understand the role that this skill plays in the litigation model, and show a basic understanding of the format.
177. See, e.g., Carol Springer Sargent & Andrea Anne Curcio, Empirical Evidence that Formative Assessments Improve Law Students' Final Exam Performance, 61 J. Legal Educ. 379 (2012) (citing the extensive literature which demonstrates that providing feedback to law students "enhances student learning and performance" and that students "also believe that [they] could learn better if they had more feedback"); Kristin B. Gerdy, Teacher, Coach, Cheerleader, and Judge: Promoting Learning through Learner-Centered Assessment, 94 Law Libr. J. 59 (2002-4); John M. Burman, Out-of Class Assignments as a Method of

The potential challenges just outlined, of course, pale in comparison with the obvious benefit of providing students a contextualized experience at the beginning of their legal careers. Introducing these skills at the start of a legal education, when a first impression can be so lasting, we believe is the way to go. Our course teaches law students at the outset of their career that law is more than doctrine; it introduces students to practical skills that lawyers need and to ethical dilemmas that they face in their day to day practice; it acquaints students with an accomplished legal professional who is engaged in the administration of justice; and our approach provides a workable, economical, and practical model that can be implemented without undue difficulty at other schools across the country.