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# Managing a Law Practice: What You Need to Learn in Law School

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# Managing a Law Practice: What You Need to Learn in Law School

Gary A. Munneke\*

## I. Introduction

Every lawyer must be an effective manager in order to become and remain competent. This simple, but fundamental truth has implications not only for the practice of law, but for the process of legal education as well. In an era of intense competition, lawyers must demonstrate competence in order to succeed, but the acquisition of competence is not always easy to attain. This is because the integral role of practice management as a key element of competence has not been fully appreciated by educators or the practicing bar.

In 1991, however, the American Bar Association Task Force on Law Schools and the Profession: Bridging the Gap (popularly known as the MacCrate Task Force) articulated a statement of fundamental lawyering skills and values.<sup>1</sup> The MacCrate Task Force Report (“MacCrate Report”) identified “Organization and Management of Legal Work” among those fundamental skills.<sup>2</sup> The report also described the acquisition of professional skills and values as a learning continuum that begins long before law school and extends throughout a lawyer’s professional life.<sup>3</sup> If we accept these two tenets of the MacCrate Report,

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\* Professor of Law, Pace University School of Law. Portions of this article are derived from a presentation entitled, “The Success of All Lawyers is Tied to Practice Management Skills,” given at the State Bar of Wisconsin Midwinter Convention, on January 29, 1999. The author wishes to thank former research assistants Debra Whitson, Cynthia Kasina, Thomas Sciacca, Stephanie Skelly, Andrea Roberts, Jennifer Ramme, and Justina Parrello, for their assistance in producing this article. The views expressed in this article are those of the author alone, and do not represent the policy of the American Bar Association.

1. See AM. BAR ASS’N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT ON THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992).

2. *Id.* at 199. “[A] lawyer should be familiar with the skills, concepts, and processes required for efficient management, including appropriate management of time, effort and resources; timely performance and completion of work; cooperation among co-workers; and orderly administration of the office.” *Id.*

3. *Id.* at 8. “The Task Force’s collective effort has resulted in the recognition that the task of educating students to assume the full responsibilities of a lawyer is a

then lawyers are all on an extended journey to discover how to organize and operate their practices more effectively.<sup>4</sup>

In 2007, the Carnegie Foundation released a report, “Educating Lawyers: Preparation for the Profession of Law,”<sup>5</sup> which confirmed the basic tenets of the MacCrate Report about the importance of teaching professional skills in law school, but incorporated insights gained through public debate about the goals and objectives of legal education since 1991, including revisions to the Standards for Approval of Law Schools dealing with professional skills,<sup>6</sup> the enunciation of best practices in legal education in a report from the Clinical Legal Education Association (CLEA),<sup>7</sup> and changes in the educational world general in the application of technology as a teaching and learning tool.

This article will focus on the value of teaching law students the specific skills of organization and management, as they relate to the larger set of fundamental lawyering skills described in the Carnegie and MacCrate Reports, as well as other studies. First, this article will review the development of skills education in law schools, including the teaching of practice management skills. Second, the article will discuss the emerging law of law practice management. Finally, this article will describe the pedagogy of teaching both skill and doctrine involving law practice management as an integral part of the process of legal education, utilizing live classroom, on-line and distance learning models.

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continuing process that neither begins nor ends with three years of law school study.” *Id.*

4. Not all commentators accepted the MacCrate vision of professional skills. *See, e.g.,* Carrie Menkel-Meadow, *What’s Missing From the MacCrate Report—of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593 (1994). On the other hand, there has been very little criticism of the notion of a learning continuum. The continuum concept postulates that some of the skills of lawyering are acquired in the developmental years before law school, some during law school itself, and some learned through experience and continuing education during practice. *See* AM. BAR ASS’N, *supra* note 1, at 8.

5. WILLIAM M. SULLIVAN, ET AL., CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

6. *See* 2009-2010 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 301 & Interpretations (Am. Bar Ass’n), *available at* <http://www.abanet.org/legaled/standards/standards.html> [hereinafter STANDARDS].

7. ROY STUCKEY, ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007). *See also* Best Practices for Legal Education Blog, <http://bestpracticeslegaled.albanylawblogs.org> (last visited Aug. 31, 2010).

## II. The Changing Face of Legal Education

For at least the past one hundred years, there has been a schism between those who believe that legal education should teach students to “think like lawyers” and those who believe that law school should teach students to *be* lawyers.<sup>8</sup> The traditional law school curriculum utilizing case study, Socratic dialogue, and legal analysis represents the former approach. The live-client law school clinic is the embodiment of the latter.

Judging from the rhetoric that has accompanied the growth of the clinical education movement in law schools, an uneducated observer might conclude that the two educational theories are mutually exclusive. Many law professors (who often constitute the core support for the “analytical” school) speak disdainfully about the work of practicing lawyers, as if the dissection of appellate court opinions should be considered a higher moral calling.<sup>9</sup> Some practitioners (who frequently represent the “practical” school) dismiss as irrelevant to the practice of law the views of “ivory tower” professors.<sup>10</sup> In truth, important educational values imbue both traditional legal education and evolving skills and clinical models. Increasingly, law schools are discovering that both curricular approaches must be accommodated in order to provide students an adequate legal education. Thus, skills education must balance doctrinal education and skills training in the law school curriculum today.<sup>11</sup>

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8. See, e.g., James Eagar, *The Right Tool for the Job: The Effective Use of Pedagogical Methods in Legal Education*, 32 GONZ. L. REV. 389 (1996); Harry T. Edwards, *The Growing Disjunction Between Legal Studies and the Legal Profession*, 91 MICH. L. REV. 34 (1992); Sallyanne Payton, *Essays on Legal Education: Is Thinking Like a Lawyer Enough?*, 18 U. MICH. J. L. REFORM 233 (1985); William R. Trail & William D. Underwood, *The Decline of Professional Legal Training and a Proposal for its Revitalization in Professional Law Schools*, 48 BAYLOR L. REV. 201 (1996).

9. See, e.g., Mark Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Education*, 34 UCLA L. REV. 577 (1987) (comparing the traditional method of teaching appellate cases with focusing more on skills programs such as clinical education). Although Professor Spiegel is not from the “analytical” school, his article provides a useful insight and description of it.

10. See, e.g., John S. Elson, *Why and How the Practicing Bar Must Rescue American Legal Education from the Misguided Priorities of American Legal Academia*, 64 TENN. L. REV. 1135 (1997); Stephen J. Friedman, *Why Can't Law Students Be More Like Lawyers?*, 37 U. TOL. L. REV. 81 (2005).

11. One might ask whether certain skills are not more effectively learned in the course of practice; however, the fact that skills might be honed over time is no argument for not introducing them during law school. For instance, taking a course in trial advocacy may not be sufficient to produce a competent trial lawyer, but the fact that the learning process involves experiential learning over time is no reason not to teach trial advocacy in law school. The same thing may be said for all the other fundamental lawyering skills identified by MacCrate. See AM. BAR ASS'N, *supra* note 1, at 141.

Legal education has evolved since the 1960s in many ways.<sup>12</sup> Although core courses have remained basically the same,<sup>13</sup> most law schools have considerably broadened their elective course offerings. Law schools have experimented with a wide range of esoteric, political, and interdisciplinary courses,<sup>14</sup> as well as new theoretical approaches to legal education.<sup>15</sup> Specialized course offerings at both the JD and post-graduate

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12. See THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES: COMMENTARIES AND PRIMARY SOURCES (Steve Sheppard ed., 1999) [hereinafter HISTORY].

13. Most law schools teach Contracts, Torts, Property, Civil Procedure, plus one or two other courses such as Criminal Law, Constitutional Law, Legal Process, or Professional Responsibility. However, many law schools have changed credit allocations for first year courses in order to permit experimentation in the first year, including clinic experience (University of Maryland) and lawyering skills (William & Mary).

14. See, e.g., Pace Law School Course Descriptions, <http://www.law.pace.edu/files/registrar/coursedescriptions.pdf> (last visited May 28, 2010) (describing courses in Animal Law, Hazardous Waste, Poverty Law, Bioethics Medical Malpractice, various seminars, Business Planning, Law and Education, and Environmental Law). An examination of catalogs of other law schools in the United States would produce similar listings.

15. For example, beginning in the 1960s, the Critical Legal Studies movement called for the deconstruction of legal doctrine, which proponents argued favored traditional ruling classes. For an overview of the Critical Legal Studies movement, see Gary Minda, *Neil Gotanda and the Critical Legal Studies Movement*, 4 ASIAN L.J. 7 (1997). On the other side of the political spectrum, the Law and Economics movement purported to assess judicial decision-making in terms of economic cost-benefit analysis. See generally Thomas F. Cotter, *Legal Pragmatism and the Law and Economics Movement*, 84 GEO. L.J. 2071 (1996). The formula  $B > PL$  articulated by Judge Learned Hand in *United States v. Carroll Towing*, 159 F.2d 169 (2d Cir. 1947), elides into the sophisticated analyses of Judge Richard Posner in *Greycas, Inc. v. Proud*, 826 F.2d 1560 (7th Cir. 1987):

Many producers of information have difficulty appropriating its benefits to society. The property-rights system in information is incomplete; someone who comes up with a new idea that the law of intellectual property does not protect cannot prevent others from using the idea without reimbursing his costs of invention or discovery. So the law must be careful not to weigh these producers down too heavily with tort liabilities. For example, information produced by securities analysts, the news media, academicians, and so forth is socially valuable, but as its producers can't capture the full value of the information in their fees and other remuneration the information may be under-produced. Maybe it is right, therefore—or at least efficient—that none of these producers should have to bear the full costs. (Similar reasoning may explain the tort immunity, now largely abrogated, of charitable enterprises, and the tort immunities of public officers.

*Greycas*, 826 F.2d at 1564.

level have made many law schools unique.<sup>16</sup> Student dissatisfaction with three years of the same diet has prompted a rethinking of the objectives of the upper level curriculum as well. A heightened focus on careers has both supported change and fueled demands by young lawyers and law students for law schools to place greater emphasis on professional skills.<sup>17</sup> From the 1970s through the 1990s, law schools devoted increasing resources to career services in response to the growing student demand for greater access to the job market.<sup>18</sup> This focus on career issues emerges as a type of academic consumerism, which often drives students' curricular choices, which, in turn, forces law faculties to respond with new course offerings and teaching methods.

Over the years, the American Bar Association has been a major contributor to the process of change in legal education.<sup>19</sup> Clinical legal

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16. See, e.g., Pace Law School—Environmental Law Program, <http://law.pace.edu/environment/index.html> (last visited May 28, 2010) (describing a specialized program in environmental law). Many, if not all, law schools have created comparable specialty programs in areas ranging from taxation to sports and entertainment law. A list of post-J.D. degrees offered by ABA-accredited law schools is available at American Bar Association, Post JD / Non JD Programs at Law Schools, <http://www.abanet.org/legaled/postjdprograms/postjdc.html> (last visited May 28, 2010).

17. See, e.g., Thomas D. Morgan, *Economic Reality Facing 21st Century Lawyers*, 69 WASH. L. REV. 625, 635 n.33 (1994):

Indeed, before we react too vigorously to a perceived crisis in producing lawyers with practice skills today, it may be useful to look at the 1990 survey by the ABA Young Lawyers Division. One conclusion of the survey was that 48% of the respondents thought the skills training they had received was not very useful. Almost two-thirds of respondents reported they had “not much” difficulty with investigating facts and dealing with ethical problems in their early practice years. Over one-fifth reported great difficulty conducting a trial and knowing their way around the courts, but even among lawyers who began their careers in solo practice, fewer than 20% reported great difficulty in drafting documents and handling pre-trial pleading and motions.

Professor Morgan goes on to say: “The fact is that learning a foreign language may be more important for a twenty-first century lawyer than taking a trial advocacy course.” *Id.* at 635.

18. The importance placed upon career services is also embodied in standards adopted by the American Bar Association and other organizations. See STANDARDS, *supra* note 6, § 511. “STUDENT SUPPORT SERVICES: A law school shall provide all its students, regardless of enrollment or scheduling option, with basic student services, including . . . an active career counseling service to assist students in making sound career choices and obtaining employment.” *Id.*

19. The American Bar Association, through its Section of Legal Education and Admissions to the Bar, establishes standards for the accreditation of law schools and applies the Standards through its Accreditation Project, which approves new schools and

education and skills training represent a major thrust in the direction of integrating law practice training into the law school curriculum, and it seems apparent that these practice-oriented curricular programs are now firmly entrenched in the educational mainstream.<sup>20</sup> ABA Standard 301 now states:

(a) A law school shall maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession.

(b) A law school shall ensure that all students have reasonably comparable opportunities to take advantage of the school's educational program, co-curricular programs, and other educational benefits.<sup>21</sup>

Lawyering skills courses, which employ techniques such as role-playing, simulations, interactive technology tools, videotaping, drafting, and other innovative approaches have given new breadth to curricular offerings.<sup>22</sup> The term "lawyering skills" has come to refer to courses that do not use, as clinical courses do, live clients and real cases as the primary vehicle for imparting professional skills. In fact, clinicians may integrate simulations and other teaching methods into the classroom components of their clinical classes, and professors who teach traditional law school courses incorporate some skills training into their classes.<sup>23</sup>

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conducts sabbatical reviews of existing schools. *See id.* § 302(a)(4) ("each [law] student [is required to] receive *substantial* instruction in . . . professional skills generally regarded as necessary for effective and responsible participation in the legal profession" (emphasis added)). The Legal Education Section Council revised the Standards in December of 2005, with the concurrence of the ABA House of Delegates in 2006, to place significantly greater emphasis on clinical and skills education. *Id.* Further revisions to the Standards in 2009 retained this reference to professional skills. *See id.*

20. *See, e.g.*, Margaret Martin Barry, John C. Dubin & Peter A. Joy, *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1 (2000); Richard A. Boswell, *The Integration of Progressive Thought and Action: Keeping the Practice in Clinical Education and Scholarship*, 43 HASTINGS L.J. 1187 (1992).

21. STANDARDS, *supra* note 6, § 301.

22. Clinical courses also teach skills, so it is something of a misnomer to refer to "skills" courses as something distinct from clinical education. However, popular usage typically considers live client courses as clinics, and courses based on simulations or practice oriented problem solving as skills.

23. The Clinical Legal Education Association (CLEA) has developed a set of best practices for teaching clinical skills, which covers a range of different professional skills and teaching methods. This Best Practices Project tapped the expertise of law teachers

With the advent of computer technology, many professors began experimenting with new teaching methods in both traditional and skills courses. Some of these include the use of presentation software to assist in the delivery of information in the classroom, computerized research class assignments, electronic books and study aids, e-mail and online discussion groups, interactive problem-solving exercises, on-line testing, introduction of practice software applications, video and audio recording and storage of classes and programs, interactive distance learning, and others.<sup>24</sup> The proliferation of technology in law schools portends a fundamental restructuring of legal education and reevaluation of its core assumptions.<sup>25</sup> While technology may not translate equally well for all courses and

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inside and outside of CLEA in order to develop a broad consensus of opinion. See Univ. of S.C. Sch. of Law, Faculty: Roy T. Stuckey, [http://law.sc.edu/faculty/stuckey/best\\_practices](http://law.sc.edu/faculty/stuckey/best_practices). Professor Roy Stuckey, of the University of South Carolina School of Law has served as leader of this ambitious effort. More pragmatic in its approach, Gonzaga Law School has established a Center for Innovative Law School Teaching that sponsors an annual teaching conference, faculty grants, and a newsletter, *The Law Teacher*. See also Arturo Lopez Torres & Mary Kay Lundwall, *Moving Beyond Langdell II: An Annotated Bibliography of Current Methods for Law Teaching*, 35 GONZ. L. REV. 1 (2000).

24. See, e.g., GENE KOO, BERKMAN CTR. FOR INTERNET & SOC'Y AT HARVARD LAW SCH., *NEW SKILLS, NEW LEARNING: LEGAL EDUCATION AND THE PROMISE OF TECHNOLOGY* (2007), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=976646](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=976646) (recommending the use of technology to teach practice skills that students do not otherwise learn in law school). See also CONFERENCE OF CHIEF JUSTICES, NATIONAL ACTION PLAN FOR ATTORNEY CONDUCT AND PROFESSIONALISM 12 (2001), available at [http://ccj.ncsc.dni.us/impl\\_plan.pdf](http://ccj.ncsc.dni.us/impl_plan.pdf); Center for Computer-Assisted Legal Instruction (CALI), <http://www.cali.org> (last visited Aug. 4, 2010) (providing materials and holding conferences describing the variety of experimentation going on in the field of law teaching). Although some professors consider computer tools in law school classrooms to be anathema, many other professors are actively exploring means of integrating technology into their courses. Law students are often ahead of their professors in terms of facility with technology, having come up through high school and college with computers at their side. Within a decade, the majority of law students will have lived with computers virtually since birth.

25. For example, the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association recently amended its Interpretations of Standards for the Approval of Law Schools to permit students to complete twelve hours of law school credit via distance learning. See STANDARDS, *supra* note 6, § 306. The change disappointed traditionalists, who argued that the value of face-to-face contact between professors and students is integral to the process of legal education; at the same time, distance learning proponents would have gone even further. See Concord Law School, *Benefits of Distance Learning*, <http://www.concordlawschool.edu/benefits-of-distance-learning.asp> (last visited Aug. 4, 2010) (Concord Law School is an on-line institution that in 2006 graduated its second graduating class using a distance learning model). It is easy to forget that in the 1830s, Abraham Lincoln became a lawyer by ordering a set of books and studying them by firelight until he was ready to seek admission to the bar, an early form of distance learning.



pedagogical models, there is little doubt that it will continue to have an impact on the education of lawyers, particularly in the clinical and skills arena.

Just as education in legal skills is a core element of legal education, organization and management of legal work represents a subset of skills education.<sup>26</sup> As skills education has emerged as a core component of legal education, practice management has become increasingly central to skills education. The remainder of this article will focus on how law practice management education fits within the broad universe of legal education, as well as the narrower galaxy of professional skills.<sup>27</sup>

### III. The Law of Law Practice Management

With the emergence of course offerings in the field of law practice management, it is not surprising that a body of scholarship has emerged related to topics taught in law practice management courses. Currently, there are two casebooks and a nutshell on law practice management.<sup>28</sup> American Bar Foundation research has addressed the demographics of the legal profession, the structure of law practice, and the career patterns of lawyers. A portion of a Symposium, "Ten Years After MacCrate," published in 2003, examined the emergence of law practice management education as one of the ten critical lawyering skills.<sup>29</sup> The American Bar Association and other publishers offer a variety of practical books on law practice management.<sup>30</sup>

In addition to this more general scholarship, law reviews in recent years have published an increasing number of articles on topics related to practice management, including the organization and management of legal work.<sup>31</sup> This scholarship often deals with practice issues for law firms and other organizations that deliver legal services to clients, including such topics as:

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26. See STANDARDS, *supra* note 6, § 302, interpretation 302-2.

27. See *infra* text accompanying notes 60-71, 91-96.

28. See GARY A. MUNNEKE, LAW PRACTICE MANAGEMENT: MATERIALS AND CASES (3d ed. 2007); THOMAS MCKNIGHT STEELE, MATERIALS AND CASES ON LAW PRACTICE MANAGEMENT: A LEARNING TOOL FOR LAW STUDENTS (2004).

29. See Symposium, *The MacCrate Report: Ten Years Later*, 23 PACE L. REV. 343 (2003); Thomas McKnight Steele, *The MacCrate Report: Its Impact on Education in Law Firm Management*, 23 PACE L. REV. 613 (2003).

30. See, e.g., American Bar Association Web Store, <http://ababooks.org> (last visited Aug. 5, 2010).

31. See *infra* notes 91-105 and accompanying text.

firm organization,<sup>32</sup>  
law firm mergers and breakups,<sup>33</sup>  
human resources,<sup>34</sup>  
office technology,<sup>35</sup>  
fees and billing,<sup>36</sup>

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32. See S. S. Samuelson, *The Organizational Structure of Law Firms: Lessons From Management Theory*, 51 OHIO ST. L.J. 645 (1990). See also UNIF. P'SHIP ACT, §§ 10(5), 18(g)-(h), 6 U.L.A 156, 213-14 (2001) [hereinafter UPA].

33. ROBERT W. HILLMAN, HILLMAN ON LAWYER MOBILITY: THE LAW AND ETHICS OF PARTNER WITHDRAWALS AND LAW FIRM BREAKUPS (2d ed. 2006); GERRY MALONE & HOWARD MUDRICK, ANATOMY OF A LAW FIRM MERGER: HOW TO MAKE OR BREAK THE DEAL (2d ed. 2000); GARY A. MUNNEKE & ANTHONY E. DAVIS, THE ESSENTIAL FORMBOOK: COMPREHENSIVE MANAGEMENT TOOLS FOR LAWYERS (2005) (containing discussion and sample forms for law firms creating partnership termination agreements); Randall S. Thomas, Stewart J. Schwab & Robert G. Hansen, *Megafirms*, 80 N.C. L. REV. 115 (2001); Mark I. Weinstein, *The Revised Uniform Partnership Act: An Analysis of Its Impact on the Relationship of Law Firm Dissolution, Contingent Fee Cases and the No Compensation Rule*, 33 DUQ. L. REV. 857, 860 (1995) ("In spite of the potential difficulties associated with the lack of a written agreement, many law firms organized as partnerships do not have a written partnership agreement. In fact, a significant percentage of firms doing business as partnerships do so on the basis of an oral agreement.").

34. See, e.g., *Hishon v. King & Spalding*, 467 U.S. 69 (1984); *EEOC v. Sidley & Austin*, 315 F.3d 696 (7th Cir. 2002); *Caruso v. Peat, Marwick, Mitchell & Co.*, 664 F. Supp. 144 (S.D.N.Y. 1987); *Lucido v. Cravath, Swaine & Moore*, 425 F. Supp. 123, 128 (S.D.N.Y. 1977); Steven A. Meyerowitz, *Support Staff: How to Get the Most Out of Your Support Staff*, 23 PA. LAWYER 40 (2001). See also 42 U.S.C. § 2000e-2 (2001). Several states have also enacted laws similar to Title VII. See, e.g., CAL. GOV'T CODE § 12940 (*Deering* 2001); NEV. REV. STAT. § 284.010 (2001); N.Y. CIV. SERV. LAW § 200 (Consol. 2001). For a good overview of how Title VII and state equal employment laws affect law firms, see FRANCIS T. COLEMAN & DOUGLAS E. ROSENFELD, HANDLING PERSONNEL ISSUES IN THE LAW OFFICE: YOUR LEGAL RESPONSIBILITIES AS AN EMPLOYER 1-11 (1997).

35. See, e.g., *Unauthorized Practice of Law Committee v. Parsons Technology, Inc.*, No. 3:97CV-2859H, 1999 WL 47235 (N.D. Tex. Jan. 22, 1999), *vacated and remanded* by 179 F.3d 956 (5th Cir. 1999) (finding that the "Quicken Family Lawyer" was engaged in the unauthorized practice of law and enjoining its sale in Texas); RICHARD E. SUSSKIND, THE FUTURE OF LAW: FACING CHALLENGES OF INFORMATION TECHNOLOGY (1996); Brian E. Daughdrill, *Poking Along in the Fast Lane on the Information Super Highway: Territorial-Based Jurisprudence in a Technological World*, 52 MERCER L. REV. 1217 (2001); Katy Ellen Deady, *Cyberadvice: The Ethical Implications of Giving Professional Advice Over the Internet*, 14 GEO. J. LEGAL ETHICS 891 (2001); Samuel A. Guiberson, *The Challenge of Technology in the New Practice of Law*, 25 OHIO N.U. L. REV. 563 (1999); Catherine J. Lanctot, *Attorney-Client Relationships in Cyberspace: The Peril and the Promise*, 49 DUKE L.J. 147 (1999); Catherine Sanders Reach, David Whelan & Molly Flood, *Feasibility and Viability of the Digital Library in a Private Law Firm*, 95 LAW LIBR. J. 369 (2003).

36. See, e.g., Susan Saab Fortney, *The Billable Hours Derby: Empirical Data on the Problems and Pressure Points*, 33 FORDHAM URB. L.J. 171 (2005); George B. Shepherd & Morgan Cloud, *Time and Money Discovery Leads to Hourly Billing*, 1999 U. ILL. L. REV. 91 (1999); Bradley A. Ullrick, *The Alternative Billing*

compensation,<sup>37</sup>  
economics of law practice,<sup>38</sup>  
career issues,<sup>39</sup>  
management-related legal malpractice,<sup>40</sup>  
marketing legal services,<sup>41</sup> and  
trends in the profession affecting the practice of law.<sup>42</sup>

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*Diner: Serving Up a New Billing Scheme for the Technological Age*, 5 J. TECH. L. & POL'Y 2 (2000).

37. See, e.g., William Kummel, *A Market Approach to Law Firm Economics: A New Model for Pricing, Billing, Compensation and Ownership in Corporate Legal Services*, 1996 COLUM. BUS. L. REV. 379 (1996); Alan R. Olson, *Compensating Managing Partners*, 70 N.Y. BAR J. 47 (1998).

38. See, e.g., Gary L. Birnbaum & P. Bruce Converse, *Law Office Management: The Economics of Law Practice: Where Does the Money Go?*, 33 AZ. ATTORNEY 24 (1997); Corporate Counsel Section of the New York State Bar Association, *Report on Cost-Effective Management of Corporate Litigation*, 59 ALB. L. REV. 263 (1995) (listing the use of contract lawyers or a "rent-an-associate" as a cost-cutting method).

39. See, e.g., Lee Ann Reno, *At the Crossroads: Making a Change in Your Career*, 69 TEX. J. BUS. L. 131 (2006).

40. See, e.g., RONALD E. MALLIN & JEFFREY M. SMITH, *LEGAL MALPRACTICE* § 5.8 (5th ed. 2000) (describing how actions of law office staff may result in firm malpractice liability); George M. Cohen, *Legal Malpractice Insurance and Loss Prevention: A Comparative Analysis of Economic Institutions*, 4 CONN. INS. L.J. 305 (1997-1998); Deborah K. Holmes, *Learning from Corporate America: Addressing Dysfunction in the Large Law Firm*, 31 GONZ. L. REV. 373, 382 (1995) ("Between 1985 and 1989, there were 71 law firm mergers involving 83 firms with more than 50 lawyers, 58 of which had more than 100 lawyers.").

41. See, e.g., *Florida Bar v. Went for It, Inc.*, 515 U.S. 618 (1995); *Peel v. Attorney Registration and Disciplinary Comm'n of Ill.*, 496 U.S. 91 (1990); *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626 (1985); *In re RMJ*, 455 U.S. 191 (1979); *In re Primus*, 436 U.S. 412 (1978); *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447 (1978); *Bates v. State Bar of Ariz.*, 433 U.S. 350 (1977); *Van O'Steen, Bates v. State Bar of Arizona: The Personal Account of a Party and the Consumer Benefits of Lawyer Advertising*, 37 ARIZ. ST. L.J. 245 (2005). Collectively, these cases represent an endorsement of commercial speech for the purpose of engaging in advertising by lawyers, within a set of evolving boundaries. What may not be apparent at first glance is the reluctance of bar associations and disciplinary counsel offices to accept the fundamental notion that it is appropriate for lawyers to actively seek clients. See LORI ANDREWS, *BIRTH OF A SALESMAN* (1980); WILLIAM E. HORNSBY, *MARKETING AND LEGAL ETHICS: THE BOUNDARIES OF PROMOTING LEGAL SERVICES* (1999).

42. See, e.g., Diane Leigh Babb, *Take Caution When Representing Clients Across State Lines: The Services Provided May Constitute the Unauthorized Practice of Law*, 50 ALA. L. REV. 535 (1999); Forrest S. Mosten, *Unbundling: Current Developments and Future Trends*, 40 FAM. CT. REV. 15 (2002) (describing how unbundling increases consumer access to legal services); Gary A. Munneke, *Dances with Nonlawyers: A New Perspective on Law Firm Diversification*, 61 FORDHAM L. REV. 559 (1992); Gary A. Munneke & Ann L. MacNaughton, *Practicing Law Across Geographic and Professional Borders: What Does the Future Hold?*, 47 LOY. L. REV. 665, 678 (2001).

Much of the scholarship addresses questions of professional failure, manifested in professional error leading to either malpractice or discipline,<sup>43</sup> although some articles deal more with achieving competence or excellence in practice than with failure.<sup>44</sup> In one sense, law practice management involves the practical application of rules governing professional conduct to the practice of law.

In short, as scholars begin to look at the structure, management and economics of law firms, a body of work is beginning to emerge, and will continue to evolve. The scholarship of law practice management not only reflects the importance of research and writing on the dynamics of the practice of law, it also provides evidence for recognizing a discrete discipline within legal education for teachers and scholars in this field.

The Association of American Law Schools Directory of Law Teachers indicates that 108 individuals listed themselves as Law Office Management teachers in 2009.<sup>45</sup> A 1995 survey, conducted by the American Bar Association Commission on Advertising, indicated that about fifty law schools offered a course called Law Practice Management, The Business of Law, Law Office Economics, Office Practice, Law Office Technology, Law Practice, Legal Marketing, and other titles reflecting subject matter that incorporates management of legal work, and of professional legal organizations.<sup>46</sup> This is consistent with anecdotal evidence gleaned from law school literature and websites.<sup>47</sup> Although the numbers are not large, an identifiable number of law schools offer courses in the discrete subject area called law

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43. See, e.g., Robert R. Keatinge, *Multidimensional Practice in a World of Invincible Ignorance: MDP, MJP, and Ancillary Business After Enron*, 44 ARIZ. L. REV. 717 (2002).

44. See, e.g., Alan K. Simpson, *Humor, Politics, and the Practice of Law*, 42 ARIZ. L. REV. 1 (2000); Dennis P. Stolle & David B. Wexler, *Therapeutic Jurisprudence and Preventative Law: A Combined Concentration to Invigorate the Everyday Practice of Law*, 39 ARIZ. L. REV. 25 (1997); Rodney J. Uphoff, James J. Clark & Edward C. Monahan, *Preparing the New Law Graduate to Practice Law: A View From the Trenches*, 65 U. CIN. L. REV. 381 (1997).

45. See ASS'N OF AM. LAW SCH., 2009-2010 DIRECTORY OF LAW TEACHERS, (2010). Although the AALS Directory uses the term Law *Office* Management, the category includes professors who teach Law Practice Management, Law Office Economics, and Law Practice. The AALS Directory does not include a substantial number of adjunct professors who also teach courses in this field.

46. See AM. BAR ASS'N, COMM'N ON ADVERTISING, SURVEY OF LAW SCHOOL LAW PRACTICE MANAGEMENT COURSES (1995).

47. See Steele, *supra* note 29. Professor Steele reports that in 2002, a survey of all law school catalogs in the United States revealed that fifty-seven law schools listed a course in Law Practice Management, or similar name.

practice management.<sup>48</sup> As law practice becomes increasingly specialized, a new specialty in law firm management law is evolving. This specialty will merit consideration as a discrete subject area in law schools.

#### IV. A Law School Course in Law Practice Management

Law schools have approached teaching law practice management skills in a variety of ways. As with any course, from Torts to Trademarks, the individual professor personalizes the subject matter. To suggest that there is one way to teach law practice management would be as foolish as saying that there is only one way to teach Torts, Contracts, or any other law school course.<sup>49</sup> Some schools have incorporated elements of law practice management into numerous law school courses over time,<sup>50</sup> while other schools have offered courses in law practice management for decades.<sup>51</sup>

The work of centers such as the Institute for Law school Teaching at the Gonzaga University School of Law and the network of legal educators that has resulted in the report “Best Practices for Legal Education” testify to substantial interest in aspects of the pedagogical project.<sup>52</sup> New York University (NYU) and the City University of New York (CUNY) each exemplify ongoing efforts to bring aspects of legal apprenticeship into active relation. CUNY offers both doctrinal and lawyering seminars in the first year and also provides opportunities for extensive clinical experiences;<sup>53</sup> whereas, NYU links doctrinal, lawyering and clinical courses.<sup>54</sup> There, the lawyering curriculum also serves as a connecting point for faculty discussion and theoretical work,

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48. In addition to the schools that teach standalone courses, the 1995 ABA Survey states that a number of schools incorporate law practice management education into other clinical or skills courses. See AM. BAR ASS’N, *supra* note 46.

49. There is, however, in the area of law practice management, as in other subjects, a rough consensus among teachers as to the basic content and coverage of the course. It is not enough to say that a course *can* be taught, or that it *is* being taught, or that the practicing bar wants it taught. The faculty must approve the course after a curriculum committee decides that it meets the educational objectives of the institution. Then, the dean and faculty must identify someone with a unique set of skills and credentials to teach the course, and law students must register for it.

50. Elements of a course in law practice management frequently come up in Torts, In-House Counsel, Professional Responsibility, Corporations and Partnerships, Labor Law, Employment Discrimination, and a number of other law school courses.

51. The author of this article has taught a course in law practice management since 1981 and has authored a casebook. See MUNNEKE, *supra* note 28.

52. SULLIVAN, ET AL., *supra* note 5.

53. *Id.*

54. *Id.*

as well as a way to encourage students to consider their educational experience as a unified effort.<sup>55</sup>

Yale Law School has restructured its first-year curriculum by reducing the number of required doctrinal courses and encouraging students to elect an introductory clinical course in their second semester.<sup>56</sup> This approach reflects a course of study that encourages students to shift their focus between doctrine and practical experience often, so as to gradually develop more competence in each area while making more linkages between them.<sup>57</sup>

Southwestern Law school has instituted a new first-year curriculum, in which students take four doctrinal courses in their first semester rather than five, allowing for an intensified two-semester, integrated lawyering course plus an elective course in their second semester.<sup>58</sup> The lawyering course expands a legal writing and research experience to include detailed work in legal methods and reasoning, as well as interviewing and advocacy.<sup>59</sup>

#### A. *Why Teach Law Practice Management?*

Legal education still remains the only professional education opportunity that does not require some practical, supervised training before one is licensed in the workplace.<sup>60</sup> Most law schools give only casual attention to teaching students how to use legal thinking in the complexity of actual law practice. This approach poses a greater risk of creating problems for students once they move into the practice of law. Particularly, because students not only lack exposure to courses focusing on professional and practical skills, they are also unable to become efficient in these areas due to such a lack of opportunity to perfect these skills.

Professor Debra Moss Curtis uses her personal teaching experiences to provide a valuable suggestion on how to incorporate a course which falls under the umbrella of Law Practice Management into the law school curriculum: a course on Law Office Management.<sup>61</sup> Though

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55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. Debra Moss Curtis, *Teaching Law Office Management: Why Law Students Need to Know the Business of Being Lawyers*, 71 ALB. L. REV. 201, 204 (2008).

61. *Id.* at 205.

distinguishable from law practice management in that it focuses on managing the legal organization, i.e., the law firm, as opposed to a broad set of skills critical to the delivery of legal services, law office management serves as a means to expose students, most of whom do not have an MBA, to an aspect of law practice management.<sup>62</sup> Curtis suggests that Law Office Management concepts can be taught to students through clinical experiences,<sup>63</sup> and that in-house clinics can model office management systems so that students learn the skills needed to be professionals in the business of law.<sup>64</sup>

Perhaps the strongest reason for teaching law practice management is the need to prepare lawyers for the practice of law.<sup>65</sup> Although law school should not become a trade school, legal educators cannot ignore the nexus between legal education and the profession it serves.<sup>66</sup> If law schools have a responsibility to prepare students for “effective and responsible participation in the legal profession,”<sup>67</sup> then it follows that skills related to the “organization and management of legal work”<sup>68</sup> are an integral part of the educational process.

A second reason for teaching law practice management in law school is that it provides a nexus between academic lawyers and practitioners. Law professors, by virtue of their positions, are well-situated to influence the direction of the legal profession and practitioners.<sup>69</sup> Conversely, if

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62. *Id.*

63. *Id.* at 219.

64. *Id.*

65. Although this question is not a new one, it is certainly a current one. The American Bar Association in 2006 Amendments to the Standards for the Approval of Law Schools included the following language in Standard 301 (a): “A law school shall maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession.” STANDARDS, *supra* note 6, § 301(a). Standard 302 goes on to say that “A law school shall require that each student receive substantial instruction in: . . . professional skills generally regarded as necessary for effective and responsible participation in the legal profession.” *Id.* § 302(a)(4). This standard is clarified in Interpretation 302-2: “Each law school is encouraged to be creative in developing programs of instruction in professional skills related to the various responsibilities which lawyers are called upon to meet, [including] . . . organization and management of legal work.” *Id.* § 302, Interpretation 302-2.

66. This proposition has been articulated by at least one law school dean in recent years. See Stephen J. Friedman, *Why Can't Law Students Be More Like Lawyers?*, 37 TOL. L. REV 81 (2005).

67. STANDARDS, *supra* note 6, § 301(a) (emphasis added).

68. STANDARDS, *supra* note 6, § 302, Interpretation 302-2. The Standards borrow the language “organization and management of legal work,” along with the other fundamental lawyering skills and values, from the 1991 MacCrate Report. See AM. BAR ASS'N, *supra* note 1.

69. The concept that law schools can and should exercise intellectual and moral

professors and law schools fail to exercise a leadership role in the profession, because they either reject the role or are not perceived by practitioners as relevant to the practice of law, then the ability of academics to influence the standards of conduct, ethics, and behavior of practitioners will diminish.<sup>70</sup> If professors are viewed as out-of-touch with reality, they will be less effective promoting humanistic values such as pro bono and public service work, and access to justice.<sup>71</sup> Academic lawyers, at least some of them, need to demonstrate that they understand practitioners by becoming scholars of the practice of law.

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leadership for the legal profession is not new or novel. See HISTORY, *supra* note 12; ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S (1983). In recent years, however, the number of law schools increased. Academic lawyers are positioned not only to mold professional values of aspiring lawyers, but also to influence the attitudes and behaviors of those who have graduated from law school and the profession as a whole. Just as academic lawyers exercise leadership in reforming the substantive law, they should assert leadership in maintaining the professional values.

70. For example, in the ABA debate over multidisciplinary practice, academics largely supported the direction of the Commission on Multidisciplinary Practice to facilitate relationships between law firms and nonlegal, professional service providers. See generally American Bar Association, Center for Professional Responsibility, Commission on Multidisciplinary Practice Bibliography, <http://www.abanet.org/cpr/mdp/multicombibliography.html> (last visited Aug. 5, 2010). The reaction of practitioners, however, toward the Commission's proposal was generally negative. See generally *id.* When the practitioner-dominated House of Delegates voted on changes to the Rules of Professional Conduct to permit limited multidisciplinary practice, the proposals were soundly defeated.

71. The issue of professional values has been discussed during debates on multidisciplinary practice and multijurisdictional practice. See Munneke & MacNaughton, *supra* note 42. If we start with the premise that there are both fundamental lawyering skills and core professional values, as postulated in the MacCrate Report and we also accept the MacCrate notion of an educational continuum in the acquisition of these skills and values, it follows that law school is one of the places where skills and values are learned. In fact, with respect to professional values, many of the attitudes that students learn in law school about the work of lawyers, the operation of the justice system and the ethics of the profession are inculcated during law school. When students begin law school, they see the profession from the outside looking in, but when they graduate, they see it from the inside looking out. Professors are major contributors to the creation of a value system that will operate throughout their students' professional lives, so if students are taught to be cynical, manipulative, dishonest and belligerent, they will carry those values into the practice of law. If professors teach students respect for the law, civility, commitment to public service and fair dealing, students will bring those values to the practice.



B. *What Should a Law Practice Management Course Accomplish?*

The Carnegie Report suggests the need for a greater emphasis on skills, particularly practice oriented skills.<sup>72</sup> Courses on Law Practice Management address and teach such skills. Without more practical and hands-on training, many students enter the job market with little understanding of how law firms operate or what they need to do to succeed in a world outside the classroom. Without practice skills courses, law students are unable to put their knowledge into practice. Specifically, Law Practice Management courses allow students to not only learn practical skills, but to perfect such skills. Without efficiency in the practice of law, there is little, if any, room for success.

Law Practice Management courses cover the fundamentals of law practice, emphasize professionalism, increase emphasis on developing post-graduation skills, and prepare law students for legal practice. It follows that law schools should offer such courses to educate students regarding the fundamental principles of professionalism and basic lawyering skills.<sup>73</sup>

Law Practice Management courses are designed to expose law students to fundamental aspects of how law firms operate, how lawyers deliver legal services, and how students acquire professional management skills. Law students learn about how they must organize and manage their work successfully. They develop an appreciation for the business side of law practice as well as legal issues that impact law firms. Students frequently perceive that law school may not have given them many of the tools they need to practice law. Because the Law Practice Management course is most often offered as an elective course, it attracts students who recognize the importance of understanding the importance of these skills.

C. *Academic Parallels*

The evolution of Law Practice Management as a law school course tracks the development of other academic subjects. In the 1950s and 1960s, few law schools offered Professional Responsibility.<sup>74</sup> As the years passed, however, the subject attained increasingly greater academic recognition,

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72. SULLIVAN, ET AL., *supra* note 5.

73. CONFERENCE OF CHIEF JUSTICES, *supra* note 24.

74. See James E. Moliterno, *An Analysis of Ethics Teaching in Law Schools: Replacing Lost Benefits of the Apprenticeship System in the Academic Atmosphere*, 60 U. CIN. L. REV. 83 (1991).

and today it is an ABA requirement that all law students receive training in professional responsibility.<sup>75</sup>

More recently, courses in Interviewing and Counseling have undergone the same sort of metamorphosis. Thirty years ago there were few courses on Interviewing and Counseling, but a few schools began to experiment in the area. Today, the majority of law schools have some kind of Interviewing and Counseling course.

These are just two examples, but they reflect a tendency in legal education for new courses to begin as experimental, then to gain a curricular foothold, and to finally emerge as mainstream course offerings. Integrating a new course into the law school curriculum takes time. Law Practice Management courses have moved beyond experimental and have gained a foothold, but they have not yet achieved mainstream status.<sup>76</sup> There still remain a number of hurdles to its acceptance as a legitimate course of study.

The first hurdle involves philosophical opposition of educators who simply say law school should not teach this subject because it lacks the intellectual rigor of the traditional law school curriculum.<sup>77</sup> These teachers would argue that law schools should not be involved in anything that deviates from traditional case analysis.<sup>78</sup> As described in Section III of this article,<sup>79</sup> a body of law that can be described as the law of law practice management is currently evolving; a growing number of articles and comments are appearing in law reviews analyzing and criticizing this body of law.<sup>80</sup> The American Law Institute's Restatement of the Law Governing

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75. See STANDARDS, *supra* note 6.

76. See *supra* notes 45-48 and accompanying text.

77. Whether an element of the curriculum or an externship in a law office, legal educators have opposed practical training in areas of law practice management since the early twentieth century. See HISTORY, *supra* note 12, at 880-85. See also David G. Oedel, *Deming, TQM and the Emerging Managerial Critique of Law Practice*, 37 ARIZ. L. REV. 1209, 1213 (1995) ("Conceding the relevance of practice to the academy, a few law schools have recently added courses in such *alien subjects* as law practice management.") (emphasis added).

78. Such teachers may also object philosophically to teaching of other practice skills courses, such as Interviewing and Counseling, Alternative Dispute Resolution, and Negotiations.

79. See *supra* notes 28-59 and accompanying text.

80. See, e.g., Peggy C. Davis, *Law and Lawyering: Legal Studies with an Interactive Focus*, 37 N.Y.L. SCH. L. REV. 185 (1992); Alan M. Lerner, *Law & Lawyering in the Work Place: Building Better Lawyers by Teaching Students to Exercise Critical Judgment as Creative Problem Solver*, 32 AKRON L. REV. 107 (1999); Howard Lesnick, *Infinity in a Grain of Sand: The World of Law and Lawyering as Portrayed in the Clinical Teaching Implicit in the Law School Curriculum*, 37 UCLA L. REV. 1157 (1990); Theodore J. Schneyer, *Searching for New "Particles" in the Law of Lawyering: Recent*

Lawyers addresses many of the issues mentioned earlier in this article.<sup>81</sup>

A related problem is the non-scholarly status many faculties ascribe to scholarship in the area of law practice management.<sup>82</sup> Adjunct professors who are practitioners may discover that the law school academic community often accords less status to skills subjects taught by adjuncts than traditional subjects taught by full-time teachers.

The second hurdle is an attitude that the role of the law school should not be to train lawyers in practical skills. This question has been addressed in Part II of this article,<sup>83</sup> which argued that legal education should include both education in traditional legal analysis and reasoning and professional skills, including law practice management.

The third hurdle involves academic freedom. Law school faculties have a right to teach what they deem appropriate, consistent with the broad directives of ABA Standards. They may perceive efforts to encourage them to teach Law Practice Management as interference with academic prerogatives. Although this sort of opposition is largely intellectual, at least some of it is more pragmatic. Entrenched interests in the law school environment may oppose curriculum reform, because they see competition for a limited number of new positions and new courses. If they view the introduction of Law Practice Management as a threat to their own interests, they are not likely to support adding it to the curriculum, making it difficult in such circumstances to overcome legacy opposition.

Another hurdle is the effect of status. All law schools in the United States today ultimately emulate the Harvard model introduced by Dean Langdell in the 1870s.<sup>84</sup> They build a traditional curriculum; they try to place their students with prestigious firms; they hire faculty with traditional credentials. Because schools gain status from being recognized by traditional measures of quality,<sup>85</sup> there is little incentive for the school to invest in non-traditional, more experimental curricular innovations.<sup>86</sup>

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*Developments in the Attribution of "Clienthood"*, 1 J. INST. STUD. LEGAL ETHICS 79 (1996).

81. See RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS (2000).

82. Parenthetically, a tenure track faculty member who is interested in law practice management should find out whether such writing will be acceptable for tenure purposes, and if necessary engage in scholarly writing in a more traditional field until she achieves tenure.

83. See *supra* notes 8-27 and accompanying text.

84. See HISTORY, *supra* note 12, at 509-24. See also W. Burlette Carter, *Reconstructing Langdell*, 32 GA. L. REV. 1 (1997).

85. See U.S. News and World Report, Rankings—Best Law Schools, <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/rankings> (last visited Aug. 5, 2010). These rankings focus on perceived status in the legal community as a basis for reputation of law schools.

86. Much has been written about the negative effects of the so-called ratings game

The final hurdle involves economics. Skills courses are generally more costly than Socratic courses taught in large sections, because most clinic and skills courses are taught in small sections.<sup>87</sup> Law Practice Management is no exception. It would be very expensive to require every student who goes through law school to take a course like Law Practice Management, and many schools cannot justify the expense for a limited enrollment elective. Adding new courses frequently means more expense at a time when law school budgets are extremely tight.

Despite these problems, teaching Law Practice Management should be an important priority for every law school. Deans and faculties should find ways to overcome the hurdles described above, and give students an opportunity to learn this fundamental lawyering skill. Competence in practice is more than knowledge of substantive law; it involves a whole array of skills utilized over an entire career. Management and planning skills are equally important to long-term career development as knowledge of substantive law.<sup>88</sup>

#### D. *The Economics of Law Practice*

It is important for law students and new lawyers to appreciate law firm economics. For example, students should understand how the hiring process works. Too often, students simply look at this process in terms of preparing a resume, drafting a cover letter, and sending applications to everybody in the world. Students who have management training are more likely to be good career planners than those who do not, because they are more likely to understand what they need to do to be productive and effective members of a legal services delivery team.

If law students understand law practice management, they will be more productive. There is a learning curve for mastering the practice of

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precipitated (if not created) by the annual U.S. News law school ratings. *See id.* A full discussion of that topic is beyond the scope of this article, but it is worth noting for the purposes of this article that the ranking system produces significant pressures for law schools to allocate resources to those activities likely to improve their rankings, and this often means that innovative and experimental approaches to education are less likely to gain administrative support than approaches traditionally linked to prestige in legal education.

87. Because of the need for direct feedback and evaluation by instructors, the best way to teach a problem and simulation course with practical components is to limit enrollment. In fact, it would be impractical to teach most skills courses in large sections, the way first year and upper level Socratic courses are generally taught.

88. Incorporating legal skills into the law school curriculum is a broad topic more fully discussed in another article. *See* Gary A. Munneke, *Legal Skills for a Transforming Profession*, 22 PACE L. REV. 105 (2001).

law, and it may take years to understand how to perform legal work both competently and efficiently. Students exposed to a Law Practice Management education are more likely to be productive at an earlier stage in their careers.<sup>89</sup> If law schools fail to provide management skills training, law firms will be forced to teach young attorneys what they could have been taught before graduation from law school, or worse, these young attorneys may learn by trial and error, at clients' expense.

Associate attrition from law firms in the first three to five years after graduation from law school is a product of many factors, at least one of which is the lack of understanding for and appreciation of law firm economics. Most students know little about law firms as businesses, or what it takes to succeed in a law firm environment. As a result, they become frustrated and unhappy; they fail to produce what is expected of them, either in quantity or quality of work, or both; and they leave. Law firms often evaluate new lawyers negatively, not because these lawyers lack substantive knowledge, but because the novitiates fail to appreciate how they fit into the law firm setting or what is really required of them in order to become productive lawyers over the long haul.<sup>90</sup>

#### E. *Lawyers as Managers*

Lawyers may suffer from a deficiency of management skills for several reasons. First, the practice of law is changing, but many lawyers approach the future with heels firmly planted in the past.<sup>91</sup> It is difficult to be an effective manager in an environment that is evolving rapidly for those who do not learn to manage change.<sup>92</sup> Second, lawyers can be myopic about their work as lawyers,<sup>93</sup> and they do not believe they can

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89. For this and a broad overview of the many benefits of offering a course in law practice management, see R. Lisle Baker, *Enhancing Professional Competence and Legal Excellence Through Teaching Law Practice Management*, 40 J. LEGAL EDUC. 375 (1990).

90. See, e.g., MICHAEL K. MAGNESS & CAROLYN M. WEHMANN, *YOUR NEW LAWYER, THE LEGAL EMPLOYER'S COMPLETE GUIDE TO RECRUITMENT, DEVELOPMENT, AND MANAGEMENT* 256 (3d ed. 2000).

91. GARY M. MUNNEKE, *SEIZE THE FUTURE: FORECASTING AND INFLUENCING THE FUTURE OF THE LEGAL PROFESSION* 25 (2000) (quoting conference speaker Charles Robinson).

92. *Id.* at 25.

93. See *Chair's Column*, LAW PRAC. MGMT., Mar. 1999 (lawyer fifty years from now discovers law practice management books and materials from 1999, and she looks at it and comments, "Wow, these people really had it right. I wonder why nobody learned." If we examine the literature of law practice management from the early twentieth century, it is apparent that many things have not changed.). See also DWIGHT MCCARTHY, *LAW OFFICE MANAGEMENT* (1927). Maybe lawyers today are dealing with Pentium chips and

learn anything from the experiences of professionals in other fields in the business world.<sup>94</sup> Third, many lawyers are disinterested in management.<sup>95</sup> Fourth, because lawyers have not studied business, they are not trained as managers. Instead, lawyers study substantive law courses for three years, and then somehow believe, as only lawyers could, that they are qualified to run a business. This kind of arrogant attitude—that no one can do *anything* as well as a lawyer can—can get in the way of effective management. Finally, lawyers fear the unknown and management, for them, is the unknown.

All these reasons contribute to the conclusion that lawyers as a group need to improve their management skills. If they want to serve clients more effectively, they must learn to become better managers. The process of training lawyers to do a better job as managers can begin during law school, but it needs to continue during the practice of law. If management is a key to success in the practice of law, and lawyers do not learn management skills, they increase the likelihood of professional failure. This is the yin and yang of practice management.<sup>96</sup> Such failure can lead either to malpractice, disciplinary action or sanction. Learning to be a manager helps lawyers to practice more effectively and at the same time avoid error. From a completely pragmatic point of view,

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they were talking about typewriters, but there were still discussions about the growth in the number of lawyers and competition with outside forces and change in the profession and how our way of life is threatened by all of these things.

94. “My father was a business professor. He taught Management for his entire career, and when I first decided to teach a course in Law Practice Management in 1981 he was thrilled about it and offered me his collection of management books. My response was to ask why would I need such books as this course was for lawyers. Then I thought about what I said.” GARY A. MUNNEKE, MATERIALS AND CASES ON LAW PRACTICE MANAGEMENT, 1 LAW PRACTICE MANAGEMENT 1 (2d ed. 2002).

95. If lawyers had wanted to go into business, they would have gone to business school and gotten a business degree. Many of us made an affirmative decision to go to law school as an alternative to business school. It can come as quite a shock, then, to find out that as lawyers, we manage a business; we manage people; we manage work; we manage money; and we manage ourselves.

96. See MUNNEKE, *supra* note 28, at 50:

The Eastern religious concept of yin and yang has some application to the question of competence in the Western practice of law. Like the interlocking circles of the symbol, we need to understand that excellence and failure are two faces of the same coin. The behavior that produces quality legal services is often the same behavior that is lacking when lawyers fail to meet the professional standard of care. Thus, maintaining a good calendar system can ensure that a lawyer does not miss deadlines, and failing to maintain a calendar can be the cause of overlooking a critical date.

learning practice management skills makes sense.

#### F. *Course Content*

A course in law practice management deals with the theory of law practice, the pragmatic considerations of how the firm operates, and the role of new lawyers in the delivery of legal services to clients. Because many law students have little or no background in business, the course may introduce novel concepts to them. Furthermore, the course provides a laboratory for applying legal knowledge as well as nonlegal experience in a practical setting.

Law Practice Management incorporates three distinct types of management: management of the organization or the firm; management of the legal work product; and management of the individual as a professional person.<sup>97</sup> Not all law school graduates will be law firm managers, although many will have some firm management responsibilities. However, all lawyers are unquestionably managers of the legal work they handle. Personal management skills, while not applicable to legal work exclusively, are integral to effective management in either of the other two areas.

##### 1. Management of the Organization

According to *2000 Lawyer Statistical Report*, produced by the American Bar Foundation, there may be as many as 47,563 law firms in the United States with two lawyers or more,<sup>98</sup> and close to 324,903 solo practices,<sup>99</sup> which means there are almost 350,000 law offices that need to be managed, and lawyers are involved to some degree in the management of all these firms.

Although the number of lawyers who start their own practices

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97. The source of this statement is unclear, although it is not original to the author. It probably derives from a continuing legal education program sponsored by the ABA Law Practice Management Section during the late 1970s or early 1980s, by an unknown speaker. The author has not seen the statement in written materials, but it resonated so well with the author's experience teaching in this area that it deserves reiteration here.

98. See CLARA N. CARSON, AM. BAR FOUND., 2000 LAWYER STATISTICAL REPORT 15 (2000). This number has probably risen since 2000, because the number of lawyers has increased to over 1,000,000 since the report was released, although an increase in the number of law firm mergers over the same period, resulting in a growing number of lawyers practicing in large firms, would suggest a consolidation in the number of law practices.

99. See *id.* at 29.

immediately after law school is quite small,<sup>100</sup> the number of lawyers who at some point in their careers will start their own firm is substantial.<sup>101</sup> Because solo practitioners typically have fewer available resources than larger law firms, which frequently hire the professional management talent they need, these statistics suggest a significant need for management training in solo practices and small firms.

## 2. Management of the Legal Work Product

The second facet of law practice management entails management of the legal work product, where every lawyer is a manager. From senior partner to new associate, every lawyer has a professional duty to deliver quality work to clients. In this sense, management is not something that is just left to the managing partner or the law firm administrator. The Model Rules of Professional Conduct codify this responsibility in Rule 5.2 by noting that subordinate lawyers are required to exercise their own judgment on ethical questions and refuse assignments from supervisory lawyers that are clearly improper.<sup>102</sup> Rules 5.1(b) and 5.3(b) make clear that all lawyers, not just partners, can exercise supervisory authority over non-lawyer staff, as well as over other lawyers.<sup>103</sup>

## 3. Management of the Individual as a Professional Person

The third facet of management is more general: management of the individual as a professional person. Management in this sense involves transferable skills that can be utilized in every field of work, not exclusively the practice of law. These skills are integral to career development as well as personal satisfaction.<sup>104</sup>

Skill contemplates a learned ability to perform some high-level function. A simpler way to think of a skill is that it is an action verb; *i.e.*,

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100. See The National Association for Law Placement, Trends in Graduate Employment (1985-2007), <http://www.nalp.org/2008jultrendsgrademployment?s=employment%20trends%20for%20recent%20graduates> (last visited Aug. 5, 2010).

101. Although there are no good statistics on the number of lawyers who will open an office at some point in their professional lives, anecdotally, considering the attrition from existing firms and the emergence of new firms every year, the number is considerable.

102. See MODEL RULES OF PROF'L CONDUCT R. 5.2 (1983).

103. See *id.* at R. 5.1(b), R. 5.3(b).

104. MUNNEKE, *supra* note 28, at 322-53 (discussing the relationship between personal management skills, career development and satisfaction).



to do, to jump, to run, to read. Some people may start out with abilities that others must develop, but a person intelligent enough to get into law school is capable of achieving a set of fundamental legal skills. Although it is important to contemplate a basic skill set that all lawyers possess, it is also useful to recognize that individuals have a personal skill set including talents unique to them. Humans are not generic; it is important for lawyers to understand the personal skills that set them apart from the crowd.

#### 4. Topics in Law Practice Management

The core topics for the course include: the structure of the American legal profession and the present legal services delivery system; changes, including competition and technology, which affect lawyers' ability to serve clients; law firm structure and organization, with a focus on the legal relationship among partners; marketing legal services to potential clients; client relations; charging fees and billing for services; managing human resources, including supervising subordinates and managing staff (hiring, training, evaluating, promoting and terminating employees), along with legal requirements for law firm employers; securing office space and furnishing an office with equipment, furniture and other necessary elements; information and knowledge management, from online research to Internet-based services; financial management and planning, with coverage of client trust accounting and financing a startup business; law office systems, including substantive practice systems, document assembly, litigation and administrative support (calendar, filing, conflicts checking and timekeeping); and professional skills and values for success in the practice of law.<sup>105</sup>

The material at different times may focus on management of the law firm, management of the legal work product, or management of the individual as a professional person. At all times, the material should be presented with a backdrop of the professional responsibilities and legal decisions governing the practice of law. Although certain aspects of the course may focus on students who plan to open their own law firms after graduation, the totality of the experience should benefit all students, whatever their career choices.

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105. *See id.* at ix-xv.

### G. *Pedagogy*

The structure of a course in Law Practice Management depends on the constraints of the particular institution and the educational philosophy of the individual teacher. The following represent the primary pedagogical approaches:

#### 1. Format

The most straightforward approach is to teach a three-credit introductory course in law practice management. The course enrollment should be limited.<sup>106</sup> This format combines lecture, Socratic dialogue, group projects and student presentations in a combination established by the professor.<sup>107</sup> Some may employ more lectures, or conduct the class entirely by the Socratic method. Others may want to focus on projects and demonstrations. The teacher can be a full-time faculty member<sup>108</sup> or a practitioner serving as an adjunct professor.<sup>109</sup>

A number of law school clinics regularly teach students about practice

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106. Because of the intensive feedback required, a limited enrollment is essential. Of course, the class could be offered in a larger lecture format, or in a smaller seminar format, but enrollment in the 20-24 student range is ideal for interactive group oriented activities and open discussions. Some schools offer the course for two credits, but based on personal experience, the author contends that the workload is far too great to be accommodated in a two-credit offering.

107. Students complete a number of projects over the course of the semester. At the beginning of the semester, students divide voluntarily into "small law firms" of four to six people. These law firms are responsible for completing their projects. The professor grades the projects and provides feedback during class. As in any law firm, the group makes its own management decisions and establishes project responsibilities. Firms can even expel a "lawyer" who does not carry his share of the load. An expelled student thereafter becomes a "solo practitioner" for the remainder of the course; as such he or she is required to do all the assignments individually.

108. Many law schools do not have a full-time faculty member who is interested in or qualified to teach a course in law practice management. Although many schools rely on adjunct professors to teach this course, it is not enough simply to find a practitioner willing to teach. The law school will want to retain someone who has demonstrated an understanding of effective management skills in his or her practice, just as it will want to hire a skilled litigator to teach trial advocacy. It does not necessarily follow that an individual who possesses management skills will also possess teaching skills. In addition, many schools have limited budgets for adjunct faculty, and a course in law practice management will inevitably compete for resources with other important curricular topics.

109. There are advantages and disadvantages to each. A full-time professor will be more integrated with the law school community, sensitive to curricular priorities and positioned to engage in research and writing on the subject. A practitioner may have more, or at least more recent real world experience in managing a law firm.

management in the clinics' classroom components. Clinical interns must apply management practices (e.g., timekeeping) in the furtherance of their clinic responsibilities. In the sense that the clinic is an in-house firm, and like any firm it must be managed, many management skills can be learned in this setting.<sup>110</sup> The clinic is, however, unlikely to help students in some of the business-related areas included in the full course (e.g., billing, marketing).<sup>111</sup>

Some law schools permit students to complete externships with private law firms, discussing the externs' experiences, including management issues, through a classroom component. The pedagogy of sharing differing experiences in various settings will be likely to produce considerable fodder for discussion. The problem with such an approach is that topics arise when they arise in students' externships, so the professor leading the discussion has little control of timing or coverage.

Some schools teach law practice management material as a component in another course. This may be the result of institutional design, although it usually reflects an interest on the part of faculty to introduce the subject into the law school's curriculum. Some of the courses where law practice management components may be found are the following: Professional Responsibility; Interviewing and Counseling; Negotiation; Lawyering Process; Legal Writing/Legal Methods; Professional Liability; Legal Drafting; and Estate/Business Planning.

Business schools often offer courses on managing professional practices as part of an MBA curriculum.<sup>112</sup> At the same time, many law

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110. *But see* Gary S. Laser, *Educating for Professional Competence in the Twenty-First Century: Educational Reform at Chicago-Kent College of Law*, 68 CHI.-KENT L. REV. 243, 267 n.118 (1992-1993) (“[O]ne way to lower the cost [of clinical programs] is to have many of the subjects that clinics currently teach such as lawyering skills, substantive law, and law office management be taught in larger classroom settings and to leave the actual live client learning in the clinic as a way of lowering costs.”).

111. *Id.*

112. For example, Harvard Business School currently offers a course entitled “Leading Professional Service Firms.” Harvard Business School MBA Program, Leading Professional Service Firms, <http://www.hbs.edu/mba/academics/coursecatalog/1770.html> (last visited Aug. 5, 2010). *See also* Cornell Law School, Spotlight, Distinguished Guests in the “Law and Ethics of Business Practice” Seminar, <http://www.lawschool.cornell.edu/spotlight.cfm?pageid=60353> (last visited Aug. 5, 2010); Harvard Law School: Courses, Introduction to Advocacy (ITA): Skills and Ethics in Clinical Practice, <http://www.law.harvard.edu/academics/courses/2009-10/?id=7113> (last visited Aug. 5, 2010); Harvard Law School: Courses, Legal Profession: Delivery of Legal Services, <http://www.law.harvard.edu/academics/courses/2009-10/?id=6705> (last visited Aug. 5, 2010); S.J. Quinney College of Law of the University of Utah, Course Description and Syllabus, Client Crisis Management, [http://www.law.utah.edu/\\_personfiles/667/SYLLABI/4927.pdf](http://www.law.utah.edu/_personfiles/667/SYLLABI/4927.pdf) (last visited Aug. 5,

schools also allow students to take a limited number of courses outside the law school, or offer a joint JD/MBA program.<sup>113</sup> Some students take advantage of these programs to learn about management from a business school perspective. It is conceivable that the law school could develop a law practice management course in cooperation with the business school, particularly if there exists a framework such as a joint degree program.

A few schools, while recognizing the importance of the subject matter, elect to offer law practice management on a noncredit basis: through programs sponsored by the law school career services office; through Bridge-the-Gap programs, sometimes sponsored jointly with a bar association; or through continuing legal education programs offered for lawyers to which students are admitted free or at a discount.

A recent survey of the nation's law schools suggests that the number of schools offering a course on law practice management is approximately fifty.<sup>114</sup> The number has increased from a handful of schools in the early 1970s.<sup>115</sup> If an average of fifty schools offer the course each year, and if an average of fifty students per school take the course (an elective), then it would appear that only 2,500 out of 42,000 annual law school graduates<sup>116</sup> (16.8%) take a course in this fundamental lawyering skill. Considering the fact that over half of each graduating class enters private practice (and a high percentage of those go to small firms), it is unfortunate that the vast majority of graduates enter the practice of law with no formal education in law practice management.

## 2. Distance Learning Alternatives

One way to increase the number of students who are taught law practice management skills is to take advantage of distance learning technology in order to reach a wider audience.<sup>117</sup> Distance learning

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2010); S.J. Quinney College of Law of the University of Utah, Course List, <http://www.law.utah.edu/course-schedule/course-list/> (last visited Aug. 5, 2010) (listing the course "Conflict Management").

113. Pace University offers a joint JD/MBA degree. For a description of this program, see Pace Law School, JD/MBA, [http://web.pace.edu/page.cfm?doc\\_id=23738](http://web.pace.edu/page.cfm?doc_id=23738) (last visited Aug. 5, 2010). Many other law schools offer similar programs.

114. See *See* AM. BAR ASS'N, *supra* note 46 and accompanying text.

115. Periodic informal surveys by the author prior to the ABA study.

116. See U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 196 (120th ed. 2000) (noting that 40,079 law degrees were conferred in 1997).

117. See DAVID I. C. THOMSON, LAW SCHOOL 2.0: LEGAL EDUCATION FOR A DIGITAL AGE (2009). In 2006, the ABA amended the Standards and Procedures for the Approval of Law Schools to incorporate more liberal language allowing distance learning, as follows, in Standard 306:

educational models provide an excellent opportunity to leverage the limited number of teachers in this subject.<sup>118</sup> The American Bar Association traditionally resisted educational approaches that did not use direct student-professor contact.<sup>119</sup> Historically, this stance may have

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(a) A law school may offer credit toward the J.D. degree for study offered through distance education . . . . Such credit shall be awarded only if the academic content, the method of course delivery, and the method of evaluating student performance are approved as a part of the school's regular curriculum approval process.

(b) Distance education is an educational process characterized by the separation, in time or place, between instructor and student. . . .

(c) A law school may award credit for distance education courses and may count that credit toward [graduation] . . . . if: (1) there is ample interaction with the instructor and other students both inside and outside the formal structure of the course throughout its duration; and (2) there is ample monitoring of student effort and accomplishment as the course progresses.

(d) A law school shall not grant a student more than four credits in any term, nor more than a total of 12 credit hours, toward the J.D. degree . . . .

STANDARDS, *supra* note 6, § 306.

Furthermore, Interpretation 306-3, provides that traditional courses may incorporate distance education into the class without counting against the 12 hour limit in a Standard:

Courses in which two-thirds or more of the course instruction consists of regular classroom instruction shall not be treated as "distance education" for purposes of Standard 306(d) . . . even though they also include substantial on-line interaction or other common components of "distance education" courses so long as the instruction complies with the provisions of subsections (1) and (2) of Standard 306(c).

*Id.* § 306, Interpretation 306-3.

118. Indeed, this principle has application for a variety of narrow or specialized courses. A law school may not be in a position to hire a full-time or even an adjunct faculty member to teach a small number of students in light of other curricular demands. Yet, someone who teaches at one school may be able to reach students at a number of schools. Would this not mean that, in theory, all first year courses in the United States could be taught by five or six professors? The answer is no, because of the pedagogical limitations involved in delivering meaningful education to very large audiences. On the other hand, it could be argued that some professors could be better utilized if they could reach a larger audience of students than they do now. Arguably, every law graduate should learn about practice management skills, but until the law school community is willing to embrace this principle, the short term goal should be to reach the maximum number of students possible.

119. See John Mayer, *Alternate Futures: The Future of Legal Education* (1998), in HISTORY, *supra* note 12, at 1187 (noting that the ABA has never allowed law schools to

been influenced by a desire on the part of the ABA to upgrade the quality of legal education by eliminating correspondence education provided by so-called “diploma mills.”<sup>120</sup> The ABA’s about face in the revised standards seeks to accommodate the emergence of distance education without abandoning the principles of traditional legal education entirely.<sup>121</sup>

Advances in computer technology today make distance learning more feasible than at any time in the past. Not only has Concord Law School, an institution built around a distance learning model, produced two graduating classes, these students have performed moderately well on the California Bar Exam.<sup>122</sup> Pennsylvania State University—Dickinson Law School has announced a plan to offer classes at both the main University campus in State College, and the Law School’s original campus in Carlisle, allowing students at either campus to take courses at the other campus using sophisticated distance learning tools.<sup>123</sup> Other law schools are considering opportunities for more limited ventures in distance learning.<sup>124</sup>

Although some subject areas are not conducive to distance learning approaches, the topic of law practice management is not one of those. On the contrary, practitioners increasingly are delivering services to clients, communicating with courts and other parties online, and

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offer for-credit courses by correspondence or other means of distance education).

120. *Id.* For much of the nineteenth century, prospective lawyers could order a set of law books, and read the law until they were ready to sit for a bar examination. Abraham Lincoln is probably the best known of these self-taught lawyers. *See, e.g.,* CARL SANDBURG, *ABE LINCOLN GROWS UP* (1928). As reading the law began to give way to law school as the preferred road of access to the bar, some entrepreneurs sought to develop correspondence law schools. The ABA successfully developed standards that required in-residence education for graduation, and ultimately law school graduation as an exclusive ticket to the bar exam.

121. At one time, the Standards prohibited law schools from granting credit by correspondence. Standard 306 now provides that law schools may grant distance education credit for up to twelve hours of law school coursework after the first year. *See* STANDARDS, *supra* note 6, § 306 (“A law school shall not grant credit for study by correspondence. A law school may grant credit for distance learning study in accordance with such temporary or permanent guidelines as are authorized by the Council.”).

122. *See* Concord Law School, <http://www.concordlawschool.edu/index.html> (last visited Aug. 6, 2010). *See also* Mark Healy, *Back to School*, *INDUSTRY STANDARD*, Apr. 10, 2000 (describing the vision of Concord’s founders).

123. *See* Penn State Law—Penn State Law’s Unified Two-Location Operation, [http://law.psu.edu/the\\_penn\\_state\\_law\\_experience/student\\_life/unified\\_school](http://law.psu.edu/the_penn_state_law_experience/student_life/unified_school) (last visited Aug. 31, 2010) (describing plans for a two-campus institution, linked by technology).

124. *See, e.g.,* Andrea L. Johnson, *Distance Learning and Technology in Legal Education: A 21st Century Experiment*, 7 *ALB. L.J. SCI. & TECH.* 305 (1998).

practicing from virtual offices connected to each other by the Internet.<sup>125</sup> Thus, learning how to work in such an electronic environment is consistent with the broad objective of teaching law students about managing a law practice. To the extent that a law school course uses electronic tools as a part of the educational process, it simultaneously prepares students for the practice of law as they will find it after law school.

In addition, a distance learning model for law practice management education permits a number of synergistic ventures: offering the class at multiple schools sharing a faculty member, or using a practitioner to teach the class who could not otherwise break away from the office. In short, the new Standard gives all law schools an opportunity to experiment with distance learning in law practice management, and provides students access to a skills course they might not otherwise be able to take.

#### a. *Current Innovations*

Law school teachers are exploring technology applications and distance learning alternatives in a variety of ways. Many technology initiatives were developed by individual faculty members. These bellwethers took the time to study the technology, rather than just their substantive fields of expertise.<sup>126</sup> Their efforts generated dialogue and collaboration through such groups as CALI, the Association of American Law Schools Teaching Methods Section, the Gonzaga Law School Institute for Law School Teaching, and the American Association of Law Libraries, to name a few.<sup>127</sup> A few law schools undertook an institutional

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125. See AM. BAR ASS'N, LAW PRACTICE MGMT. SECTION, TECH. 2000 TASK FORCE, LAWYERS SERVING SOCIETY THROUGH TECHNOLOGY (2000) (report of the national conference on developments in e-lawyering); Gary A. Munneke, *The Rebirth of E-Lawyering?*, N.Y. L.J., Sept. 24, 2001, at T13.

126. This phenomenon roughly tracks the early years of computers in law firms. Before computers became commonplace in law offices, it often took the personal interest of one or more lawyers to become interested in computer application, to convince their firms to make the jump from manual to automated systems and to spearhead the implementation of technology in the office.

127. See American Association of Law Libraries, <http://www.aallnet.org/index.asp> (last visited Aug. 5, 2010); Association of American Law Schools Section on Teaching Methods, [https://memberaccess.aals.org/eWeb/dynamicpage.aspx?webcode=ChpDetail&chp\\_cst\\_key=7f6a02b7-e5a2-4d18-bfcd-d464ad64e42b](https://memberaccess.aals.org/eWeb/dynamicpage.aspx?webcode=ChpDetail&chp_cst_key=7f6a02b7-e5a2-4d18-bfcd-d464ad64e42b) (last visited Aug. 31, 2010); Center for Computer-Assisted Legal Instruction, *supra* note 24; Gonzaga Law School, Institute for Law School Teaching, <http://www.law.gonzaga.edu/About-Gonzaga-Law/Institute-for->

examination of the implications of technology on the law school curriculum.<sup>128</sup> Although both Lexis/Nexis and Westlaw have been available to students and faculty members for over two decades, the relationship between content in casebooks and other legal materials, the medium (print, microfiche, DVD, Internet) and the curriculum was hardly explored.<sup>129</sup>

Examples of experimentation with technology abound. Many law schools have created wired classrooms, which permit students to utilize laptop computers in the classroom and professors to integrate computer presentations into their classes. Schools have also increased the number of locations where users can plug in to law school networks, or developed wireless networks, thereby significantly increasing access to information. Some schools have even developed extranets, allowing students and faculty access from remote locations away from the law school building. Both students and faculty increasingly use e-mail not only to communicate, but also to exchange documents, collaborate on projects, schedule meetings, and to forward Internet links and other research work product. Network technology presently makes it possible to develop online discussion groups, web pages, blogs and interactive assignments. In fact, entire classes can be offered online to students who can log-in to class discussions, presentations, exercises and even tests.<sup>130</sup> Many institutions have invested in teleconferencing technology and videoconferencing facilities. The latter development means that professors can teach students in two or more locations, or that two or more teachers can team teach from different sites.<sup>131</sup>

#### b. *Technology at Pace Law School*

Pace Law School is fairly typical of law schools in the United States at the beginning of the twenty-first century. The law school is linked by a powerful network supported by both law school and university IT professionals. The law school maintains its own IT staff to assure rapid response to installation and service requests and to implement

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Law-School-Teaching/default.asp (last visited Aug. 5, 2010).

128. See Robert Hammerstone, *Public Interest Lawyering in the Digital Age*, COLUM. L. SCH. REP. 2 (Spring 2000).

129. Today, both WestGroup and Lexis-Nexis as well as other publishers are seriously considering electronic publishing alternatives.

130. See, e.g., Linda C. Fentiman, *A Distance Education Primer: Lessons from My Life as a Dot.Edu Entrepreneur*, 6 N.C. J. L. & TECH. 41 (2004).

131. See Helen Leskovac, *Distance Learning in Legal Education: Implications of Frame Relay Videoconferencing*, 8 ALB. L.J. SCI. & TECH. 305 (1998).



technology policy as articulated by the dean and the faculty technology committee.

Most of the public areas of the Law School, including classrooms, the Library, dormitories and study areas are supported by a wireless network. The Library also provides computer rooms that double as learning centers and computer labs for students who do not have computers on campus. Student, faculty and staff connectivity is available both on and off campus. Users can access their e-mail, contacts and calendars from distant locations using Microsoft Web Access, and faculty members can set up a virtual personal network (VPN) for working away from the office.

Like most law schools in the United States, Pace has created a Web site.<sup>132</sup> This site serves both as a communication hub for the law school community, including links to electronic mail, discussion groups, the academic calendar, and general information, and also as a face to the outside world including applicants, alumni, the organized bar and other interested browsers. Both the Pace Center for Continuing Legal Education and individual professors are experimenting with webcasting and other forms of asynchronous distance education.

Because Pace University is a multi-campus institution, it has invested in videoconferencing facilities on all of its campuses.<sup>133</sup> For the law school, this means that the videoconference room is in the law school itself. A faculty member can reserve the videoconference room the same way that she would arrange for any other room and traditional audiovisual equipment.<sup>134</sup> Although the videoconference facility is presently underutilized, the potential exists for a variety of distance learning activities.

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132. See Pace University School of Law, <http://www.law.pace.edu> (last visited Aug. 6, 2010). Links to every ABA-approved law school are available at American Bar Association, [ABA-Approved Law Schools Alphabetically](http://www.abanet.org/legaled/approvedlawschools/alpha.html), <http://www.abanet.org/legaled/approvedlawschools/alpha.html> (last visited Aug. 5, 2010).

133. These facilities permit university committees to meet, administrative presentations to create synchronous communications with several locations, and faculty members to participate in professional activities requiring videoconferencing capabilities. The author, for example, served for three years on the university's Strategic Agenda Steering Committee, which included representatives of all campuses, schools and colleges in the university, and further sought input from a variety of administrative offices, faculty and students over an extended period of time. Many of the meetings of the SASC were conducted via videoconference from facilities in New York City, White Plains and Pleasantville, New York.

134. This means that the time you want may be taken by someone who has reserved the room first, and that you may need to justify the allocation of funds or demonstrate outside funding to cover line charges, support staff and other expenses.

With technology resources such as these, professors can integrate a variety of tools in their teaching, research, writing and professional activities. Despite the availability of this technology, many professors eschew technology, at least in their teaching methods. But those who do embrace technology have a variety of tools at their disposal. Students, who typically have been around computers since a young age, view technology resources as necessities rather than luxuries. The point of this is that Pace is not unlike most other law schools in the United States, both with respect to the availability and utilization of technology.

*c. Law Practice Management Online*

Today, the convergence of available technology and loosening of ABA restrictions on distance education provides a compatible milieu for the advancement of Law Practice Management courses online. The prospect of integrating elements of these new technologies into the Law Practice Management curriculum is appealing for several reasons. First, the subject matter of law practice management is inherently about technology, because technology applications have become so pervasive in the law office. It would almost be a *non sequitur* to talk about technology applications in a Law Practice Management class and not utilize those same applications pedagogically. Second, Law Practice Management is fundamentally a skills course, where learning by doing, rather than Socratic dialogue, is the primary learning tool.<sup>135</sup> In a class that combines discussion with lectures, research assignments, simulations, problem solving exercises and hands-on use of technology, it makes a great deal of sense to balance live and online contact. Third, it may be possible to export Law Practice Management to schools that do not teach the subject because they do not have anyone to teach it. A full-time faculty member who writes and teaches in this field may be better positioned to provide an intellectually rigorous learning experience than an adjunct professor who devotes two or three hours per week to teaching (but engages in practice management on a daily basis in her firm).<sup>136</sup> Finally, because the integration of technology into Law Practice

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135. Arguably, there is value in the face-to-face contact between professor and students in the traditional law school class that involves dissection of appellate cases as the principal pedagogical tool.

136. The author has taught Law Practice Management continuously since 1982, authored a ThomsonWest casebook on the subject, chaired the ABA's Law Practice Management Section, and engaged in a variety of other writing and speaking projects over the past two decades.

Management courses is not only feasible, but also desirable, law schools that want to add this course offering to the curriculum can do so.

The first phase for any Law Practice Management professor desiring to implement technology in the classroom is to learn the basics. The techno-novice professor might begin by utilizing e-mail as a communication tool, to distribute notices and assignments and to answer questions.<sup>137</sup>

In time, the professor might graduate from messaging to information delivery, either by attaching documents (e.g., articles, cases, news stories) or inserting Internet links to web pages.<sup>138</sup> The professor soon learns that students can turn in class assignments, submit drafts of papers that can be edited electronically, and perform other learning tasks through document exchange. This sort of activity builds a skill set that students are likely to use as practitioners in communications with clients, co-workers, other lawyers, the courts and professional associations.

After becoming comfortable with these basic tools, the professor may take the step of creating an online discussion group. In the most informal way, a message sent to all members of a class can serve as a discussion group template. Most schools offer online software provided by Blackboard®, TWEN®, or other products. For the professor, the task of populating discussions with information, questions and commentary can be daunting, because unless the professor takes the lead to make online discussions happen, the list will probably languish.<sup>139</sup> Most sophisticated software will permit threaded discussions, real time web conferencing, polling and other features, but the professor starting out may want to become comfortable managing a simple discussion list, before trying to use more sophisticated tools.

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137. The author asks students who will be absent or unprepared for class to contact him by e-mail. This permits acknowledgement and follow up questions. Students are encouraged to pose questions about class discussions or readings by e-mail, and these can be answered directly and quickly. Many students who feel intimidated about coming to a professor's office to ask a question will feel comfortable asking the same question electronically. Some professors argue that such an invitation to students will result in a burdensome flood of e-mail. In practice, this has not been the case.

138. As a law school with a concentration in environmental law, the green practice of eliminating paper reprints at Pace saves considerable resources. Even if we assume that students print documents that are sent to them, it is likely that many students use documents in electronic form only and that professors will not duplicate extra copies that go to waste.

139. Whether students are required to participate in the discussion group or whether participation is an option, and whether students are graded for their contributions to the discussion group are matters best left to the individual professor.

The second phase of technology in the classroom is to incorporate PowerPoint® presentations, Excel® spreadsheets, charts and other images into the classroom experience. Some professors may not be comfortable using technology in this way, but it makes sense in Law Practice Management, where classroom demonstrations of law office software applications,<sup>140</sup> examples of documents, system flow charts and a variety of tools can be presented visually to energize a discussion. The Law Practice Management course at Pace prepares students to use the following technology applications: Word (including advanced features), PowerPoint, Excel, Google Reader, Time Matters, Front Page, Project, SharePoint, and other programs.

The third phase in the application of technology goes to the creation of a true distance learning teaching model. The Law Practice Management course at Pace is sufficiently robust to be exported to distant educational sites, and the law school possesses the resources to distribute the course to students from other law schools. The Law School might be able to give non-Pace students access to the Law Practice Management course as visitors. Components of the course might be accessed by faculty members at other institutions through a web portal, either the Pace University Web site,<sup>141</sup> the Law School Web site,<sup>142</sup> or TWEN.<sup>143</sup> Web access opens any class to any law student who has the ability to go online.<sup>144</sup> The Web interface provides opportunities to disseminate information, including announcements, assignments and content such as programs, presentations, articles, web links, commentary and other features, as well as interactive features.<sup>145</sup> It might be feasible to deliver course material and other web content electronically, i.e., webcast, using audio and video files, giving students more personal contact with the professor than two-dimensional content.<sup>146</sup>

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140. Many legal software vendors will provide demonstration versions of their software upon request, or it may be available on line. To identify software products, see LAW TECH. NEWS, available at <http://www.law.com/jsp/lawtechnologynews/index.jsp>.

141. See Pace University, <http://www.pace.edu> (last visited Aug. 6, 2010).

142. See Pace University School of Law, *supra* note 132.

143. See Westlaw, TWEN, <http://lawschool.westlaw.com/TWEN> (last visited Aug. 6, 2010).

144. Security protocols may deny visiting students and faculty access to class sites, but the technology exists that if permissions are negotiated, access can be arranged.

145. The author is mindful of the copyright issues associated with web publication, and notes that the development of web content inevitably involves obtaining permission to use copyrighted material. See Laura N. Gasaway, *Impasse: Distance Learning and Copyright*, 62 OHIO ST. L.J. 783 (2001).

146. Video technology is advancing rapidly, not only because of high speed

It is also possible using videoconferencing technology to hold synchronous classes at multiple sites at other law schools. Students enrolled at different sites could thus participate in the same class at the same time, by linking classrooms to each other electronically, so that participants can participate in real time from a number of locations. A variety of conferencing software products make this teaching option feasible on many campuses.<sup>147</sup> These products enhance the connectivity and hence the quality of the experience of participants. A collateral advantage of videoconferencing is that anything that is played through the system can be saved and played back at a later date.

Despite the theoretically limitless number of students who could enroll in a Law Practice Management course built around distance learning, the constraints of communication that apply to single site live classes still apply to distance learning. As classes get larger, they become more impersonal. The professor may get to know everyone in a class of twenty, and proportionately smaller numbers in classes of sixty, one-hundred or one-hundred fifty. What chance would the professor have to interact with one thousand students?<sup>148</sup> This limitation might be offset by collaborating with additional teachers or assistants as class size grows, but the burden of contacts with students, evaluating projects, and grading performance inevitably grows as the student-teacher ratio increases.

An integrated synchronous videoconference Law Practice Management course originating from Pace Law School in White Plains, New York, or any other law school for that matter, could provide a multi-campus experience with distance learning groups, delivering a course far beyond the walls of the home institution. The course should retain the structure, content and integrity of the live course that in the

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transmission of data, but also because of the resolution enhancements of hardware. Reminiscent of early motion pictures, the grainy, jerky images associated with Internet video have improved by quantum leaps in recent years. Real time transmission of data contemplates students viewing and listening to lectures or classroom discussions from wherever they are able to connect to the Internet.

147. Videoconferencing software allows speakers to post documents, change ownership of the list so someone other than the teacher can present, poll participants, and send messages to individual participants or the entire group.

148. Perhaps it would be possible to utilize teaching assistants to provide personal student-teacher contact in larger groups, something that many universities have done for decades in large undergraduate classes. In the context of distance learning, conceivably the professor could, for example, serve ten sites, each site with twenty-five students and one teaching assistant, for a total of 250 students, ten TAs and one professor. Although the professor would not have contact with all 250 students, each student would work in a "class" of twenty-five.

past has been limited to a single location.<sup>149</sup>

A word about continuing legal education is in order as well. Inasmuch as many lawyers graduated from law school with little or no management training, there is a vast market for lawyers who would benefit from advanced management training. The technologies described in this article could be applied to CLE courses designed for practicing lawyers. Although such courses would differ from law school practice management offerings, post-graduate models could utilize much of the same material and structure. Although it is beyond the scope of this article, distance learning CLE for law practice management represents a fourth phase in the implementation of technology at Pace Law School.

## V. Conclusion

This article described a number of authorities, which have recognized that the skills associated with organizing legal work and managing a practice are central to competent lawyering. When lawyers practice proficiently and efficiently, then clients are well-served. When clients are well-served, the system of justice is enhanced. And the system of justice may be the only thing that keeps the barbarians at bay; so, it follows that if we teach students to be good managers, we are saving civilization as we know it. It is time for law schools to recognize the importance of this subject and find ways to integrate law practice management into the core law school curriculum.

Individual lawyers strive to succeed in their careers. Although the word “succeed” means different things to different people, a common thread in the various definitions of success is the accomplishment of professional goals. For a third year law student, success might mean getting a job. For someone who has been practicing for thirty years, it might mean financial security. For another person, it might mean respect in the community or the profession. For someone else it might mean attaining personal career satisfaction, doing justice or making society a

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149. The use of teaching assistants to handle project evaluation, student interaction, and group discussion could alleviate the burden for the professor. Although this article uses the term teaching assistant, local group leaders would in fact be local practitioners serving in an adjunct faculty capacity. The model is similar to that used at some schools for legal writing and appellate advocacy courses where full-time faculty members serve as course coordinator and supervise adjuncts who work with small sections of the larger class. The host school would license the course to satellite schools to cover payment to the professor and other production costs. The satellite schools would be required to cover the expenses for their own videoconference facilities, line charges for classes and the salary of an adjunct teaching assistant.

better place to live. Regardless of how individuals define success, a part of the formula for achieving it is always management: management of the organization where they work; management of the legal work product and management of themselves as professionals.

Management skills can be taught, and they can be taught in law school. The acquisition of management skills is part of an educational continuum that begins long before law school and extends throughout one's professional career,<sup>150</sup> but at least some of this education can occur during law school. Practice management can be taught as a distinct course, as a segment of another course, or as an element of a simulation or live client clinic, but it should not be ignored.

Although many pedagogical approaches exist for teaching law practice management, and the approach may vary depending on the needs, philosophy and personnel of the institution, the subject matter lends itself to innovative teaching methods. Inasmuch as technology applications in law practice are an important aspect of practice management education, it makes sense to use these applications as a part of the educational process.

At a minimum, electronic mail and online discussion groups as methods of communication track the way students will communicate with lawyers, clients and others when they enter practice. Online document assembly, calendar, database and other electronic practice tools, when integrated into practice management education, not only provide training in law office operations, but also open the door to collaborative drafting, analysis and problem solving.

The greatest potential for innovation lies in the area of distance learning. Although the American Bar Association Standards for the Approval of Law Schools have opened the door to distance learning,<sup>151</sup> law schools are just beginning to explore the potential of this new universe of teaching. Just as law students are permitted to work off campus for clinics, internships and externships, distance learning opportunities provide a viable educational model, as long as the educational integrity of the learning process is maintained.

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150. See AM. BAR ASS'N, *supra* note 1, at 199.

151. See *supra* notes 121-25.

Just as legal services are no longer bound by the four walls of the law office, education without walls is not only feasible, but desirable. Without denigrating the value of face-to-face contact, distance learning, like distance representation of clients, provides opportunities to enhance and expand the scope of communications.

The tools for distance learning in recent years have become technologically attainable and monetarily affordable. High speed Internet access and sophisticated applications combine to provide educators with a variety of tools. This article has described several alternatives: a web site dedicated to law practice management, utilization of real-time online meetings; and real-time videoconferencing. Collectively, these tools can provide law practice management education to students at multiple locations, and allow self-guided study by students in appropriate circumstances.

More than ever before, law schools must focus attention on preparing students to practice law, including not only the ability to analyze legal questions and knowledge to answer legal questions, but also the skill to perform the work of a lawyer competently and proficiently. Graduates today do not have the luxury of gaining these skills over the leisurely period of guided professional growth under the tutelage of senior lawyers; instead new associates must hit the ground running and demonstrate that they can be productive within months rather than years. In this environment, law schools must teach students the basic professional skills necessary to succeed in the practice of law. Even though with experience lawyers can further hone these skills, including those involving the organization and management of legal work, law school should be the starting point in the acquisition of all fundamental lawyering skills for all students.

The reports of MacCrate, Carnegie, the Clinical Legal Education Association (CLEA) and the Conferences of the Chief Justices yield the same conclusion; a need for law schools to further advance the professional skills of their graduates so that each graduating class consists of students who are adequately trained to think like lawyers.

Practicing law involves applying legal knowledge through the application of professional skills, including managing a law practice and its legal work. A lawyer may have the requisite knowledge and possess sufficient lawyering skills, but without using such knowledge and skills efficiently, there is little opportunity for a successful legal career. Additionally, the inability to use the requisite knowledge and skills efficiently results in a greater risk of committing professional error. As a result, ineffective delivery of legal services appears inevitable.