See One, Do One, Teach One: Dissecting the Use of Medical Education’s Signature Pedagogy in the Law School Curriculum (forthcoming 2010)

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SEE ONE, DO ONE, TEACH ONE:
DISSECTING THE USE OF MEDICAL EDUCATION’S SIGNATURE PEDAGOGY
IN THE LAW SCHOOL CURRICULUM

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INTRODUCTION

The Socratic dialogue is the predominant method used to teach law students to transfer their developing and emerging analytical powers into
professional skills, such as effective research and writing.1 While the Socratic dialogue does contribute to advancing and improving students’ legal reasoning skills -- helping them to better “think like a lawyer” -- its use in the law school curriculum is naturally limited because of the mix of theory and skills taught in legal education. With the recent publication of the *Best Practices in Legal Education*2 (the “Best Practices report”), and the Carnegie Report on the Advancement of Teaching3 (the “Carnegie Report”), law professors today have an unprecedented opportunity to consider and adopt pedagogies that have been successfully used in other professional disciplines that integrate professional skills and theory in their professional training programs. In this article, we focus specifically on the “see one, do one, teach one” approach used in medical education because of its broad potential applicability in legal education, especially insofar as it seeks to hone students’ inductive and deductive analytical skills. Because medical students and law students develop early professional reasoning skills in parallel ways,4 successful medical school pedagogy may be particularly applicable to the law school setting.

While legal education offers myriad potential uses for the “see one, do one, teach one” approach, this article dissects the signature pedagogy by focusing on the use of simulation and samples, active learning exercises, and peer teaching opportunities as a corollary to using visualization, application, and demonstration in the medical context. This article explicitly guides legal educators through the process of implementing the methodology and addresses potential concerns that law professors may raise when considering adopting some or all of the “see one, do one, teach one” pedagogy in the form of “see many, do many, teach many.”


This article will conclude that utilizing the “see one, do one, teach one” methodology from medical education in law schools will accomplish two main objectives: It will 1) help students engage with course material on a deeper analytical level, allowing them to internalize theory and skill and transfer that knowledge to another legal problem; and 2) provide context for the students, allowing them to recognize the breadth of a legal concept and how the individual pieces they are learning fit together as a whole. Accordingly, borrowing the signature “see one, do one, teach one” pedagogy from medical education will ultimately help students better learn the foundational skills of lawyering and bridge the gap between law school and the practice of law.

I. A BRIEF HISTORY:
THE EMERGENCE OF THE “SEE ONE, DO ONE, TEACH ONE” PEDAGOGY AND THE REFORM OF AMERICAN MEDICAL EDUCATION

“See one, do one, teach one” is the “traditional format for acquiring medical skills based on a three step process – visualize, perform and [demonstrate.]” Specifically,

‘See one, do one, teach one’ is a useful strategy that combines the benefits of different learning styles. The process comes from the medical model. Medical students will see someone put on a splint, put on the splint, and then teach someone else to put on a splint. The process involves them seeing the skilled model, doing it themselves and then teaching the skill to another student. Maximum learning results when the learner goes through all these activities.

Although its origin is unknown, the maxim is an accurate way to describe the “goal of producing critical thinkers [that] remains the primary

5 Carol McCrehan Parker, Writing Through the Curriculum: Why Law Schools Need It and How to Achieve It, 76 NEB. L. REV. 561, 583-84 (1997).
7 Chick Moorman & Thomas Haller, See One, Do One, Teach One, EZINEARTICLES.COM, http://exzinear ticles.com/?See-One-Do-One-Teach-One&id=219888
objective of medical educators today. **8** “See one, do one, teach one” is effective because it provides a mix of “analytic thinking, skillful practice, and wise judgment on which each profession rests.” **9** The maxim is thus optimal for educating professionals in settings where theory and skill necessarily coincide. Medical education excels in “bringing the teaching of skills into increasingly close contact with the teaching of the basic sciences that underlie medical practice . . . [and] recognizing that medical science is best taught in the context of medical practice, with integral connections between the fundamental knowledge base and the complex skills of professional practice.” **10**

Medical education and the “see one, do one, teach one” philosophy have been criticized **11** for several reasons – among them, the method’s reliance on students’ learning curve when performing procedures on live patients, **12** the publish or perish culture where research dominates medical teaching, **13** and the increasing use of technology to research disease on a molecular or nano level, rather than on a whole patient level. **14** However, these concerns can be overcome in the medical

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**9** SULLIVAN ET AL., supra note 3, at 27.

**10** Id. at 192-93.

**11** Molly Cooke et al., American Medical Education 100 years after the Flexner Report, 355 NEW ENG. J. MED. 1339, 1342 (Sept. 28, 2006); see also Laura Lin & Bryan A. Liang, Reforming Residency: Modernizing Education and Training to Promote Quality and Safety in Healthcare, 38 J. HEALTH L. 203, 221 (2005) (“‘See one, do one, teach one’ has been a long-standing mantra of medical education.” Although this mantra has been repeated for years, it does not create an optimal training or learning environment.”); Lars Noah, Medical Education and Malpractice: What’s the Connection?, 15 Health Matrix 149, 151 (2005) (stating that the practical training medical school students and residents receive has its shortcomings and arguing that the emphasis on practical training detracts from theoretical, scientific, and interpersonal training); Susan B. Rubin and Laurie Zoloth, Clinical Ethics and the Road Less Taken: Mapping the Future by Tracking the Past, 32 J.L. Med. & Ethics 218, 223 (2004) (arguing that teaching ethics in medical school is less effective when the students are not constantly monitored, as they are not under the “see one, do one, teach one” method.)

**12** Steven Lubet, Like a Surgeon, 88 CORNELL L. REV. 1178, 1181 (2003) (book review)(“[M]any medical procedures (unlike, say, legal briefs) cannot simply be redone if the first effort is inadequate. In medicine, especially in surgery, there is no such thing as a rough draft.”).

**13** Cooke, et al., supra note 12, at 1340.

**14** Id.; LUDMERER, LEARNING TO HEAL, supra note 9, at 280.
context and – perhaps more easily – in the law school context, as well. In fact, some medical scholars recently opined that:

Although the dictum ‘see one, do one, teach one’ may have characterized the way in which clinical skills were learned in the past, it is now clear that for training in skills to be effective, learners at all levels must have the opportunity to compare their performance with a standard and to practice until an acceptable level of proficiency is attained.15

In other words, to “do many” – without changing other parts of the sequence – may be enough to improve student learning so as to make the benefits of the pedagogy outweigh its drawbacks.

What’s more, the concerns articulated about the use of “see one, do one, teach one” as used in medical education today do not mean that the educational philosophy is in itself flawed. As does any type of educational philosophy, this pedagogy requires appropriate experience, reflection, theory and application16 for its effective implementation. Indeed, despite valid criticisms, the American medical education system is thought to be one of the most successful in the world17 because of its emphasis on experiential learning, critical thinking, and the integration of theory, skills and values that are learned, in part, by seeing, doing and teaching within the appropriate structured educational setting.

“See one, do one, teach one” is well-matched to the law school setting, as well, because those core educational goals are similar to those in the medical school setting. The core goal of medical education is to hone students’ inductive and deductive analytical skills so that they can internalize both the theory of the illness and the skills that will allow them to identify and treat illness.18 Similarly, the core goal of legal

15 Id. at 1342 (noting that “[c]ognitive psychology has demonstrated that facts and concepts are best recalled and put into service when they are toughed, practiced and assessed in the context in which they will be used.”).
16 STUCKEY, ET AL., supra note 2, at 167 (quoting SULLIVAN, ET AL., EDUCATING LAWYERS 178 (Draft July, 2006)) (“Experience is the immersing of one’s self in a task or similar event- the doing. Reflection involves stepping back and reflecting on both the cognitive and affective aspects of what happened or was done. Theory entails interpreting the task or event, making generalizations, or seeing the experience in a larger context. Application enables one to plan for and make predictions about encountering the event or task for a second time.”).
17 Lubet, supra note 13, at 1181.
18 LUDMERER, LEARNING TO HEAL, supra note 8, at 280.
education is to hone nearly-identical inductive and deductive analytical skills so that students can both internalize the legal theory accurately and ethically to identify a client’s problem and master the skills to provide sound legal advice and assistance. The history of the two educational models further illustrates that the two professions have shared experiences in education reform and that that the professions can and should borrow effective educational practices from each other to improve the educational process and client/patient outcomes.

America’s status as a leader in medical education is a relatively new phenomenon that has arisen in the past two centuries. Medical education’s reform in America started as part of a larger social reform movement taking place with “the emergence of the modern university, the growth of this country’s system of public education, the muckraking reforms of the Progressive Era, and assumption of new regulatory authority by the state and federal government, and the rise of American philanthropy.” This larger social reform movement encompassed many intellectual disciplines, including law.

In the 1870’s, when Christopher Columbus Langdell reformed legal education, then Harvard President Charles W. Eliot, who “encouraged Langdell’s experiment, . . . was doing so as a part of a broader university reform effort that “encompassed changes in the sciences, the medical school, and the law school.” The changes were designed to “move[] the schools away from reading and lecture and toward experiential education.” Specifically, “[f]or the hard sciences and the medical school, Eliot recommended labs, field experiences, and a teaching hospital, along with the clinical instruction that attends that experience.”

In connection with these changes, Harvard Medical School’s course of study was

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19 LUDERMER, LEARNING TO HEAL, supra note 8, at 4-5.
20 James E. Moliterno, Legal Education, Experiential Education, and Professional Responsibility, 38 WM. & MARY L. REV. 71, 83-34 (1996); see also LUDMERER, LEARNING TO HEAL, supra note 8, at 67 (“In many cases, . . . scholars in quite different fields responded to a growing state of knowledge in a similar way: by rejecting deductive logic, traditional authority, and dry, sterile textbook learning. . . . [M]any intellectuals became cultists of experience, embracing empiricism and an evolutionary concept of knowledge. . . . such thinkers as Thorstein Veblen in economics, Oliver Wendell Holmes, Jr., in law and Charles A. Beard in history.”).
21 Id. (citing Anthony Chase, The Birth of the Modern Law School, 23 AM. J. LEGAL HIST. 329, 342 (1979)).
22 Id.
23 LUDMERER, LEARNING TO HEAL, supra note 8, at 67 (quoting CHARLES W. ELIOT, HARVARD MEMORIES 65-66 (1923)).
extended to three years, new science subjects were added to the curriculum, and each student was required to perform laboratory work. It is no surprise, therefore, that Eliot indicated that Langdell’s reformed “law school classroom should resemble the laboratory in the medical school.”

Medical education was further revolutionized in 1910 when Abraham Flexner joined forces with the Carnegie Foundation for the Advancement of Teaching and assessed each of the 155 medical schools then in the United States. Flexner wrote a highly publicized report, *Medical Education in the United States and Canada*, which publically transformed American medical education. While many scholars credit Flexner individually with the transformation of medical education, “[t]he ideas he popularized to the public in his report were those that had developed in medical facilities [like Harvard] during the 1870’s and 1880’s.” These were the same ideas that likely influenced Eliot and Langdell’s construct of the law school “laboratory.”

Flexner frequently cited the work of philosopher, psychologist, and educational reformer John Dewey and promoted the importance of Dewey’s ideas of progressive education so that students “could learn from their sensory experiences in an individualized fashion.” At the time of Flexner’s report, behaviorism was leading educational theory. Under the theory of behaviorism, student learning was considered dependent upon the environment. Students learned by repetition and reinforcement for

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26 LUDERMER, TIME TO HEAL, supra note 24, at 4.
27 Cooke et al., supra note 11, at 1339.
28 ABRAHAM FLEXNER, MEDICAL EDUCATION IN THE UNITED STATES AND CANADA (New York: Carnegie Foundation for the Advancement of Teaching 1910).
29 LUDERMER, TIME TO HEAL, supra note 24, at 5.
30 Id.
31 Eichorn, supra note 25, at 110.
33 LUDERMER, LEARNING TO HEAL, supra note 8, at 167.
34 MICHAEL HUNTER SCHWARTZ, EXPERT LEARNING FOR LAW STUDENTS 35 (2005).
learning take place by either reward or punishment.\textsuperscript{35} Around 1929, however, the cognitive theory became popular. This theory focused less on external factors, such as environment, reward and punishment, and more inward on brain-based development – specifically, that the memory system with its short-term and long-term sorting and encoding components guide the learning process.\textsuperscript{36} Educational psychologists later promoted a constructivist view of learning where students actively construct or build new ideas based on current or past knowledge by solving realistic problems.\textsuperscript{37} While behaviorist theory predominated during Flexner’s time, constructivism was the theory more closely associated with the Dewey’s progressive work and Flexner’s revolutionary report.\textsuperscript{38}

Flexner’s report specifically posited that formal analytic reasoning, the kind of thinking integral to the natural sciences, was a necessary component of the education model for doctors in training.\textsuperscript{39} Flexner theorized that medical education should deemphasize lecture-based learning and emphasize laboratory or clinical practice as the “core of the learning experience.”\textsuperscript{40} Flexner also “envisioned a clinical phase of education in academically-oriented hospitals, where thoughtful clinicians would pursue research stimulated by the questions that arose in the course of patient care and teach their students to do the same.”\textsuperscript{41} The goal was to “foster critical thinking, not merely the memorization of facts.”\textsuperscript{42}

Nearly a century later, Flexner’s report continues to shape American medical education.\textsuperscript{43} Medical education is divided into two years of teaching the basic sciences, along with professional skills in interviewing, counseling, and the like.\textsuperscript{44} This classroom component is followed by two years of clinical study.\textsuperscript{45} During the clinical component -- the third and

\textsuperscript{35} Id.; see also ANGELINE STOLL LILLARD, MONTESSORI: THE SCIENCE BEHIND THE GENIUS (Oxford Univ. Press 2007).
\textsuperscript{36} SCHWARTZ, supra note 34, at 37.
\textsuperscript{37} Id.
\textsuperscript{38} LUDERMER, LEARNING TO HEAL, supra note 8, at 167.
\textsuperscript{39} Cooke, et al., supra note 11, at 1339-40.
\textsuperscript{40} LUDERMER, TIME TO HEAL, supra note 24, at 6.
\textsuperscript{41} Cooke et al., supra note 11, at 1339.
\textsuperscript{42} LUDERMER, LEARNING TO HEAL, supra note 8, at 5.
\textsuperscript{43} Thomas R. Fisher & Daniel B. Hinshaw, Models from Other Disciplines – What Can We Learn From Them? 1 J. ALWD 165, 176-77 (2001)
\textsuperscript{44} Id.
fourth year of medical school -- students participate in clinical rotations with direct and frequent access to clinical faculty. After graduating from medical school, doctors typically complete a “lengthy post-graduate residency . . . in which poorly paid neophytes continue to train under the supervision of their elders.” As residents become more experienced, they assist in the teaching and training of the newer residents. Interestingly, throughout the process, most medical schools utilize the problem-based learning method “borrowed” from Langdell’s case method implemented in the 1870’s at Harvard Law School.

II. WHAT THE EXPERTS SAY:
IMPORTING PEDAGOGICAL MODELS FROM MEDICAL EDUCATION INTO LEGAL EDUCATION

“We owe it to our students to try to be excellent teachers who skillfully employ a wide range of teaching methods.”

While modern American legal and medical education reformation theories may have enjoyed a similar starting point in the 1870’s, any resemblance between the law school classroom and the medical school laboratory has virtually disappeared. According to one recent empirical study, however, first and second year law students demonstrate developing reasoning skills very similar to those of their medical school counterparts. This study, together with the recent landmark

46 Id. Professor Montgomery was discussing the fact that “[l]egal education has a dramatically different philosophy than medical education . . . By graduation, every medical student has spent considerable time in a teaching hospital acquiring professional skills and a sense of the professional identity of the medical profession.” Id.

47 See infra note 108; see also HOWARD S. BURROW & ROBYN M. TAMBLIN, PROBLEM BASED LEARNING APPLIED TO MEDICAL EDUCATION (Springer 2000).

48 See supra notes 19-31 and accompanying text.

49 STUCKEY ET AL., supra note 2, at 133.

50 Krieger, supra note 4, at 351-53. Significantly, Krieger’s study also found that third-year law students, unlike fourth-year medical students, “showed only a slight change in reasoning strategy compared to second-year students . . . [and] there was little change between their recall of relevant facts and that of second-year students . . . [whereas] [f]ourth year medical students focused on developing a coherent explanation for a problem.” Id. at 352. Krieger hypothesizes that the differences in reasoning skills between the final-year medical and law students may turn on the difference in later-year curriculum in that medical students all
recommendations of the Best Practices report and the Carnegie Report, illustrates that the professions can and should again borrow effective educational practices from each other to improve the learning process, students’ analytical synthesis, and client/patient outcomes.51

According to the landmark Best Practices report, “law schools [should] follow the lead of other professional schools and transform their programs of instruction so that the entire educational experience is focused on providing opportunities to practice solving problems under supervision in an academic environment. This is the most effective and efficient way to develop professional competence.”52 What’s more, “law schools need to expand their educational goals,”53 and teachers should “choose teaching methods that most effectively and efficiently achieve desired outcomes.”54 Best Practices quotes John Mudd in stating,

the landscape encountered in law practice is different [from that in law school]. It is not populated with cases and doctrine, but with clients and their problems. . . .The landscape is messy and unfamiliar. Not surprisingly, new lawyers report being disoriented and unprepared for this world. Some feel cheated by their legal education as they are left to construct a new map and to do so often without the help of an experienced guide.55

engage in clinical training in their last two years, whereas only a subset of law students do so. Id. at 353.

51 This is not to say that legal education should emulate medical education in its entirety; indeed, to do so would not be fruitful given the differences in financial constraints (see supra notes 11-14 and accompanying text) and the fact that much of medical education has itself been criticized (see supra notes 11-14 and accompanying text). The adoption of medical school methodologies other than “see one, do one, teach one” is therefore beyond the scope of this article.

52 STUCKEY ET AL., supra note 2, at 144; see also id. at 170 (“All forms of experiential education involve problem-based learning, so one of the strengths of experiential education is that it gives students opportunities to practice solving problems and to receive feedback on the quality of their efforts.”)

53 STUCKEY ET AL., supra note 2, at 19.

54 Id. at 130 (noting that “[i]n legal education in the United States, most law teachers use a limited range of teaching methods that are not always carefully chosen for their effectiveness”).

55 Id. at 19, n.40 (quoting John O. Mudd, Beyond Rationalization: Performance-Referenced Legal Education, 35 J. LEGAL EDUC. 189, 197 (1986)).
Toward the desired end of “initiat[ing] novice practitioners to think, to perform, and to conduct themselves . . . like professionals,”56 Best Practices recommends that “legal educators . . . investigate the feasibility of applying [medical education assessment techniques] to assessments during law school, as part of the bar examination, and after entry into practice.”57

The Best Practices report acknowledges that, just as it was difficult for medical schools to transform their curricula,58 so too will reformation present challenges for legal education.59 Realistically, the Report admits, “creating a curriculum that focuses on developing professional problem-solving expertise will take some reconceptualizing of the law curriculum and the faculty’s roles in it.”60 Because medical schools have successfully overcome some hurdles characteristic of curriculum reform, however, the Report concludes that law schools should similarly “adjust[] . . . our attitudes and practices”61 better to prepare students to enter law practice.

Even more extensively than Best Practices, the Carnegie Report devotes considerable attention to medical education as a potential source of insight for developments in legal education.62 The Report notes that

56 Id. at 19 (noting that all forms of professional education share this objective).
57 Id. at 253; see also id. at 271(suggesting that law schools adapt recommendations from the Accreditation Council of Graduate Medical Education for choosing means of and implementing assessment systems)
58 And, as noted throughout this article, this transformation is an ongoing process.
59 STUCKEY ET AL., supra note 2, at 145.
60 Id. at 145.
61 Id. at 146.
62 See, e.g., SULLIVAN ET AL., supra note 3, at 80-81 (“The consequence [of the fact that most of medical education is carried out in settings of actual patient care] is to provide medicine a real advantage, compared to engineering or law, for integrating its forms of apprenticeship.”); Id. at 130 (finding important similarities between teaching trust in the attorney-client and doctor-patient relationships and suggesting that legal education should use medical education as a model in teaching students how to establish such trusting relationships as a key component of professionalism); Id. at 175 (contrasting the clinical training and subsequent concrete skills assessment that occurs in medical schools with law schools’ lack of “the institutional intentionality to develop and mandate these approaches”); Id. at at 192-93 (noting with approval that medical education has vastly expanded and enhanced the role of clinical education, “bringing the teaching of skills into increasingly close contact with the teaching of the basic sciences that underlie medical practice . . . [and] recogn[zing] that medical science is best taught in the context of medical practice, with integral connections
“[i]f . . . medicine [cannot] provide [a] direct model[,] for how law might deal with its problem of integrating into the cognitive, practical, and professional, [it] do[es] provide some insight into the law’s particular problems and possibilities.”

The Report notes that law schools tend to emphasize “cognitive training in the classroom setting” while medical schools use “forms of teaching tied directly to settings of practice” “almost exclusively.”

While the Carnegie Report stresses that the cognitive training so prevalent in legal education today has its benefits, it also expresses concerns that cognitive training alone will not lead to “subsuming the skills or the habits of judgment needed by the competent and responsible legal professional.”

It goes on to note that “professional activities typically blend and mix what the academic treatment of law works hard, for legitimate intellectual reasons, to keep separate: knowledge, know-how, and ethical judgment.”

As explained in Part I, medical and legal education do have a history of borrowing concepts from each other that work. Medical education did not blindly adopt the law school model, however; rather, “these latter day case methods, with their focus on problem solving and decision for action, in principle address the cognitive, the practical, and the ethical-social. In this sense, they represent an enriched and more complex development of the original model.”

between the fundamental knowledge base and the complex skills of professional practice. Medical education has been receptive to pedagogical and curricular change to advance the goals of a more seamless integration of theory, practice, and professional responsibility.”). Cf. Id. at 107-08 (noting that neither medical schools nor law schools do an ideal job of integrating the teaching of knowledge and practical skills and that observation and listening can be “powerful pedagogy” but have “important limitations.”).

Id. at 81.

Id.

Id.

Id.

Id. (noting that cognitive training has the “ability to abstract concepts and principles from situations and to compress learning into controlled components that can be mastered more or less independently of any knowledge of the situations to which the concepts apply.”).

Id.

Id.

Id. at 199. The Report goes on to suggest that “[f]or law schools, a new look at the potential richness of case teaching could be both a way to reinvigorate a heritage and a common focus for renewal of educational mission. . . . involv[ing] a larger conversation with other types and uses of cases — . . . in
Indeed, medical education has come a long way in recent years, the Carnegie Report notes, “benefit[ing] from the insights of empirical, historical, and conceptual studies that employ insights from the social sciences and the humanities.” The Carnegie Report also comments that medical schools “have employed a variety of means: new curricula, extensive use of simulation to train clinical skills, and problem-based learning, to name a few” and suggests that law schools similarly reflect on how they can more effectively reach the needs of their constituent students by recognizing “the importance of providing a broader form of legal education.” The Report suggests a transparent process in which law schools, following the example of medical schools, solicit feedback both internally and externally about the institution’s “goals and priorities.”

Many scholars over decades of research have foreshadowed and echoed the recommendations of Best Practices and Carnegie that legal education look to medical education as a model. According to Susan Sturm and Lani Guinier, medical education, unlike its legal counterpart, emphasizes “deep understanding” of critical topics through experiential learning and collaborative efforts; legal education tends to promote a “relatively narrow idea of professionalism and law, one focused on medicine, in nursing . . . for example . . . [I]t may significantly enhance the pedagogical imaginations of law school faculty. . . . Welcoming [the case method back to law schools] with its various enhancements would be to reclaim a legacy while acquiring new resources for legal education’s own renewal.” Id. at 199-200.

71 Id. at 94. The “past three decades” have particularly been a period of significant development.
72 Id.
73 Id.
74 Id.
75 Id. at 182. Listening to such feedback, the Report goes on to say, “contributes significantly to educational quality.”
76 Cf. James R. Maxeiner, Educating Lawyers Now and Then: Two Carnegie Critiques of the Common Law and the Case Method, 35 INT’L J. LEGAL INFO. 1, 22 (2007) (“While legal education is much the same as in 1914, medical education has ‘changed its face.’ Medical schools now have three missions: education, patient care and scientific research. Their resources have increased exponentially to accommodate their two new missions. Today, to say that medical and law schools are comparable because both are professional schools, is rather like saying that elephants and mice are comparable because both species are mammals. Yes, mice may learn much from elephants, but no one would expect a mouse to act like an elephant.”) (emphasis added).
individual mastery and manipulation of doctrine in the context of formal adjudication or its shadow.” Strum and Guinier posit that legal education would do well to borrow pedagogy from medical education, better to broaden student perspectives about the profession.

Lessons learned from medical education can also inform our pedagogy with respect to non-clinical skills. In a recent article about teaching empathy, Kristen Gerdy has reflected,

Yet law is not alone as a profession that calls upon its practitioners to understand and care about people. Medicine also requires this ‘heart,’ and medical schools often do focus on training students to deal effectively with patients. There are numerous parallels between a doctor’s ‘bedside manner’ and a lawyer’s ability to interact with her clients, and as such, law faculty may learn from how medical faculty attempt to teach such things without having to vastly expand the existing curriculum.”

Gerdy then writes compellingly and at length about legal education’s opportunity to take important lessons about patient/client care from medical education experts.

Christophe Courchesne notes that medical education has already offered

important lessons for law schools, particularly for clinical legal education. Indeed, the ‘rounds’ model of the latter years of medical school formed the basis for advances in clinical programs at law schools since their inception. As clinical legal education matures, it continues to learn from medical schools as they have added more specific training

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77 Susan Sturm & Lani Guinier, The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity, 60 VAND. L. REV. 515, 533 (2007)).
78 Kristin B. Gerdy, Clients, Empathy, and Compassion: Introducing First-Year Law Students to the “Heart” of Lawyering, 87 NEB. L. REV. 1, 4 (2008); see also id. at 41-49 (describing how medical schools do a better job than law schools of teaching interaction with, and compassion for, patients and clients).
79 Id. at 49-61.
in skills to balance the once-exclusive focus on cases.80

Lawrence Grosberg has commented that adoption of the standardized patient technique of teaching “students how to apply their medical or legal knowledge in context, with the specific situation of each patient or client in mind”81 works exceptionally well. And at least one law school has engaged in an actual partnership between a law school and a medical school, recognizing that “lawyers and doctors . . . both value professional autonomy and decision-making; both have a fundamental fiduciary duty to the individual client or patient; and “[b]oth professions have ethical aspirations and legal obligations to provide services to the community and individuals who cannot afford to pay them.”82 What’s more, “[m]edical-legal education provides a unique opportunity to engage law and medical students in interdisciplinary problem-solving while also expanding their understanding of complex issues of social justice and inequality in our legal and healthcare systems.”83

Some scholars, however, argue that the “see one, do one, teach one” methodology may not be, in and of itself, a good fit for legal education. Says one scholar, “The medical school adage, see one, do one, teach one, does not leave much room for ponder one, reject one, tinker one.”84

81 Lawrence M. Grosberg, Medical Education Again Provides a Model for Law Schools: The Standardized Patient Becomes the Standardized Client, 51 J. LEGAL EDUC. 212, 212 (2001).
82 Elizabeth Tobin Tyler, Allies Not Adversaries: Teaching Collaboration to the Next Generation of Doctors and Lawyers to Address Social Inequality, 11 J. HEALTH CARE L. & POL'Y 249, 250 (2008). Note, however, that Tobin Tyler goes on to say, “As one commentator notes, we teach law and medical students different approaches to seeking truth: ‘[T]he two professions look for truth in unrelated ways. While medicine seeks objective, absolute truths, the law, employing the adversary system, seeks relative truths.’ Or, put another way: ‘In essence, lawyers are trained to look at a black and white situation and see the gray, while doctors are trained to find the black and white from a gray situation.'” Id. at 293.
83 Id. at 252.
84 Kenney F. Hegland, Book Review: Final Exam: A Surgeon’s Reflections on Mortality by Pauline Chen, 4 Marq. Elder's Advisor 369, 372 (2007); see also Lin and Liang, supra note 11, at 221-22; Lubet, supra note 12, at 1181 (“The philosophy of clinical training in medicine is often summarized as “see one, do one, teach one,” meaning that residents are expected to learn quickly as they
Furthermore, medical school itself has been soundly critiqued, and at least one scholar questions whether we should trade one flawed model for another.\footnote{Courchesne, supra note 80, at 38-39 (“Through different methods, the model afflicts students with many of the same psychological effects that law students experience - indeed, the “walking wounded” may be as apt a description of medical students as of law students. Other criticisms of medical schools involve the extraordinary all-consuming intensity and length of the educational experience, the failure of schools to steer students into non-lucrative community practice, the questionable wisdom of several years of largely passive memorization, and the fiscal distress occasioned by the expense of running teaching hospitals.”). Even with the shortcomings inherent to medical education, the benefits of “see one, do one, teach one” are plentiful.}

The “ponder one, reject one, tinker one” formulation and the “see one, do one, teach one” methodology are not mutually exclusive, however. Where the “see one, do one, teach one” methodology is adapted into a “see many, critique many, engage with many; do many; teach and reconsider many” structure, the limitations of the methodology turn into its strengths. Whereas the name of the method seems to suggest that the number of opportunities - “one” - is a key component of its success, in reality physicians-in-training repeat each segment of the sequence many times,\footnote{Ludermcr, Learning to Heal, supra note 8, at 176 (quoting Flexner, supra note 28, at 99).} and the repetition of the activity yields skill proficiency.\footnote{Robert F. Bruner, Repetition is the First Principal of All Learning, available at http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=66030.} What’s more, medical education as it currently exists may have its own limitations, but those limitations may be about the educative model as a whole, not about the visualization, application, demonstration component of that model.

Despite the general criticisms of medical education, then, the “see one,
do one, teach one” method so critical to medical education may play a beneficial role in legal education.88 According to Stephen Lubet:

It obviously makes great sense to be shown the right way to do something, rather than to blunder about until one discovers it for oneself. All of law school is based on the premise that purposeful instruction is preferable to experimentation. In particular, clinical education posits that mentoring can save initiates from the pitfalls of false leads and blind alleys. As they say in medical school, “See one, do one, teach one.”89

III. IMPORTING THE SEE ONE, DO ONE, TEACH ONE MODEL INTO THE LAW SCHOOL CLASSROOM: THE VISUALIZATION, APPLICATION AND DEMONSTRATION SEQUENCE

If law schools are to follow the lead of other professional schools and transform their curricula so that students are better prepared to enter law practice, then professors may well adopt the “see one, do one, teach one” method to initiate that transformation. Although clinical and legal writing professors already are apt to use this method in showing samples, having students perform during in-class writing or drafting assignments, and guiding peer review sessions, professors in the rest of the legal academy are not as likely to use application and demonstration learning techniques as frequently or effectively as their clinical and legal writing colleagues.90

88 It is important to note, however, that medical education takes place over many more years than does legal education (typically at least seven years versus three). Therefore, the “see one, do one, teach one” sequence may be more spread out in medical school, with first and second year medical students observing, third and fourth year students and interns practicing, and residents in their sixth and seventh years of medical education teaching. In law school, the entire sequence could take place within one course (with co-student teaching of basic analytical skills) or over the course of a couple of years (as with near-peer teaching of multi-step skills).

89 Steven Lubet, Lessons From Petticoat Lane, 75 NEB. L. REV. 916, 917 (1996); Lubet, supra note 12, at 917.

90 See, e.g., SULLIVAN ET AL., supra note 3, at 104 (“In a number of the legal writing programs we observed, students reported that they learned by ‘watching, following examples, being talked through what was modeled in class.’ . . . The legal writing courses the students were describing provide a pedagogical experience that in many ways complements what is missing in the case-dialogue
The following sections therefore demonstrate how the “see one, do one, teach one” model can successfully imported into the law classroom.

A. See One: Using Samples to Provide Context

“There is no more effective way to help students understand what it is like to be a lawyer than to have them [ ] perform the tasks that lawyers perform or observe practicing lawyers at work.”91

According to the Best Practices report, “In addition to experience, students can more rapidly develop problem-solving expertise by . . . observing how experts solve problems . . .”92 Despite this, law professors

classes that make up most of the students’ first year. . . Writing assignments are structured and paced to emphasize drafting and redrafting in response to the instructor’s criticism and suggestions. Students often read each other’s work and are encouraged to learn from each other.”); see also id. at 108 (“In legal writing courses that are informed by composition theory, the pedagogy is, like that of clinical medicine, performative and learned in role. That is, students learn primarily by being led, coached, and given abundant feedback directed to improving their ability to practice legal reasoning in specific contexts. Many students with whom we spoke noted the ways in which their writing courses accelerated their progress in legal reasoning in doctrinal courses, especially seminars beyond the first year; some wanted more such linkage. In these examples, legal writing is already coming to play an important role in helping students to cement basic patterns of legal thinking; it also serves as a bridge between the learning of legal thinking and the mastery of the skills demanded in order to practice law.”); Id. at 109 (“Much of legal writing instruction today is concerned with developing better methods for promoting students’ abilities to engage in knowledge-transforming performance.”); Id. at 110 (“[I]n writing instruction, the focus is typically on the generation of a product for a specific rhetorical situation – a simulated or actual piece of legal work. Because of this, students are challenged to engage with the uncertainties of specific practical contexts and to search for solutions together, using the instructor (and one another) as coach and resource. The coaching is precisely intended to support this process of discovery and refinement within a complex context. In its fully developed form, the pedagogy makes this developmental process itself visible to the learners, so that they can become aware of the components of their growing abilities to write – and think – as legal professionals.”)

91 STUCKEY ET AL., supra note 2, at 170.
92 Id. at 143; see also Johanna Shapiro et al., Teaching the Art of Doctoring: An Innovative Medical Student Elective, 28 MED. TEACHER 30, 33 (2006) (citing A. Keith W. Brownell & Luc Cote, Senior Residents' Views on the Meaning of
other than those teaching in legal writing or clinical programs have not traditionally turned to samples, however, when teaching legal concepts.93 Students rarely see a contract in Contracts class, nor do they see a complaint in Civil Procedure.94 Students often face an assignment without a clear idea of the broader context in which the product will be used or without an idea of what the finished product should look like.

To advance student learning, however, professors may use samples of various types for various purposes. While some professors might want to show students documents that apply legal analytic tools in practice, others might choose to distribute sample essay exam answers, and still others might play video or audio presentations of excellent advocacy. Even live examples or simulations may work to teach students how real lawyers employ legal analysis in the representation of clients.

93 This is true despite the Best Practices observation that “[l]aw schools should determine what types of legal documents their graduates will be expected to produce when they begin law practice and provide instruction in how to produce such documents. After all, it does no good to teach a student to think like a lawyer if the student cannot convey that thinking in writing.” STUCKEY ET AL., supra note 2, at 149.

The Best Practices report recommends the use of simulations or samples of various types:

In some subject matter courses, law teachers encourage or require students to spend time in legal settings that illuminate issues considered in the course. For example, a course on judicial management of litigation may arrange for students to observe pretrial or settlement conferences in judges’ chambers. A family law professor teaching a seminar on “the child and state” may have students visit family court, the child advocate, or a law guardian.95

Where professors do use samples to teach legal concepts, too often they underutilize them. Frequently, students are relegated to using the lone sample in the appendix of a textbook that, though unexplained, stands as the ultimate prototype, bidding students to imitate it without question or deliberate choice. Even when a professor provides more than one sample for students, inadequate comparative discussion of the strengths and weaknesses of each document leave the students confused to why some examples are better than others. Whether using one sample or many, professors should present samples in a thoughtfully explained way so that students can visualize the project and then understand and make deliberate analytical decisions about it.96

1. The Benefits of Using Samples

Using simulations or samples benefits students in two ways: First, using samples helps students engage in the material on a deeper analytical level.97 Second, viewing a sample provides context for the

95 STUCKEY ET AL., supra note 2, at 165.
96 See generally Natalie A. Markman, Bringing Journalism Pedagogy Into the Legal Writing Class, 43 J. LEGAL EDUC. 551, 565 (1993) (suggesting that legal writing professors should use multiple samples from student and professional writers to help law students learn the fundamentals of legal writing and that textbooks should include multiple “livel[y]” examples); Craig B. Little, Teaching by Examples, 9 TEACHING SOCIOLOGY 401, 402 (1982) (proposing the use of model exam answers to teach students to write better essay exams).
students, allowing them to understand the breadth of an assignment and how the individual pieces they are learning fit together as a whole.98 Thus, using simulations or samples as the first step in the “see one, do one, teach one” sequence can increase the students’ ability to learn, retain and transfer knowledge.

As demonstrated by the Best Practices Report and the Carnegie Report discussed above, legal educators have traditionally taught in a linear fashion, teaching concepts using a combination of reading assignments, the Socratic method and lecture-oriented classes.99 This traditional legal education played well in the decades after Langdell implemented the Socratic dialogue, in large part, because books and lectures were the primary vehicles for communicating information.

Students today are children of the visual age, many using electronic media since preschool.100 They do not always learn best in a linear fashion, and taking relevant notes from a lecture is difficult for some.101 Because the ways in which information is conveyed and the ways in which individual recipients learn that information has expanded, teachers need to diverge from the traditional methods of required reading and lecture to impart knowledge.102

98 Parker, supra note 4, at 583-84.
99 See also Jason M. Dolin, Opportunity Lost: How Law School Disappoints Law Students, the Public and the Legal Profession, 44 CAL. W. LAW. REV. 219, 222 (Fall 2007) (Langdell created the casebook method and 130 years later his creation remains “the dominant teaching modality, largely unquestioned by those who populate academia even though there is no sound pedagogical reason for its pervasive use); Deborah L. Rhode, Kicking the Socratic Method and Other Reforms for Law School, THE CHRONICLE OF HIGHER EDUCATION B15 (Jan. 6, 2001) (arguing that the Socratic method and the competitive nature of the law school experience short-changes students, in part, because they “fail to supply enough opportunities for the individual feedback and interaction that are crucial to effective education.”).
100 Tracy McGaugh, Generation X in Law School, 9 J. LEG. WRITING INST. 119, 125-28 (2003). (noting that for current generations visual information from the television, the Internet, and the phone has traditionally been presented all at once).
101 M.H. Sam Jacobsen, Primer on Learning Styles, 25 SEATTLE L. REV. 139, 140-54 (2001). A large part of the change in learning style results not just from generational changes, but from the increased ethnic diversity law students now bring; different cultures have usually had different learning styles Id. at 140-41 n.3, n.4.
102 Dolin, supra note 99, at 222-25.
As the visual age has evolved (and perhaps because of it), students today want and need to engage the material in a different way to learn it. Although research leaves little doubt that the visual age has influenced the learning styles and abilities of students, whether such influence is a good thing remains unclear. For example, in his article Madison notes the downsides to the visual age research has found:

. . . (“[C]hildren's brains today might be constructing slightly different road systems from those, say, twenty years ago. If they are being attracted to different types of stimuli, both structure and function could be altered.”) [Citing Jane M. Healy, Endangered Minds: Why Our Children Don’t Think (1990)]; id. at 55 (it is possible that children who grow up with a lot of input from television might be different from those who grew up with input from an individual speaker); id. at 80 (television and computers may influence children to listen passively because they are used to fast-paced and constantly-changing information); id. at 127 (contemporary culture, with its video games, television, music focused on the “feel,” and “gestural, telegraphic speech,” puts more focus on “holistic and visual skills, often at the expense of language and analysis”); id. at 210-11 (“A number of studies have shown that children get information from television primarily through attention to visual action and nonverbal sounds (booms, crashes, music), not through following the dialogue .... Yet, as programs are increasingly designed to attract attention, the child viewer gains the habit of ignoring language in favor of visual and auditory gimmicks.”); id. at 216 (“The overall effects of television viewing and other forms of video on the growing brain are poorly understood, but research strongly indicates that it has the potential to affect both the brain itself and related learning abilities. Abilities to sustain attention independently, stick to problems actively, listen intelligently, read with understanding, and use language effectively may be particularly at risk.”).

More recent research suggested that frequent use of video games can permanently change the brain functions of long-term users. In 2002, Akio Mori, a cranial nerve specialist and professor at Nihon University College of Humanities and Sciences in Tokyo Japan, espoused a claim that video gaming could change the brainwave activity in young people. Helen Phillips, New Scientist, Video Game “Brain Damage” Claim Criticized, www.newscientist.com (July 11, 2002) (last accessed Jan. 5, 2009). Mori’s ideas were based on a study of the brainwave patterns of 240 people, between the ages of 6 and 29. Id. Although Mori’s claims have been largely criticized and
students “do more listening, answer questions, work in small groups, or complete writing assignments” to internalize the learning.\textsuperscript{104} Taking notes in a lecture does not always facilitate internalization of the material. Furthermore, lectures can be boring; listening to a lecture on dry material or reading paragraphs of thick text on a page cannot compete with the flashing visual images the internet can provide.\textsuperscript{105} Thus, because the presentation of the material is less appealing and the material itself is less than stimulating, students are less likely to engage with it for deep understanding.\textsuperscript{106} Students entering law school have been accustomed in somewhat discounted, the debate over the effect of visual technology on brain wave function has not ended; to the contrary, scientists are increasing testing on the effect of visual technology in various capacities. See Science Daily, Neurofeedback May Help “Retrain” Brainwaves in Children With Autism, http://www.sciencedaily.com/releases/2008/04/080423175535.htm; Brain Waves Drive Man’s Bionic arm, http://www.cnn.com/2003/HEALTH/09/25/bionic.arm/ (last accessed Jan. 5, 2009).

Despite the negative impact of the visual age, society will not likely retreat to pen, paper, and lectures as the primary form of communication. Accordingly, legal education must adapt to the evitable changes.

\textsuperscript{104} Benjamin V. Madison, The Elephant in the Law School Classrooms: Overuse of the Socratic Method as an Obstacle to Teaching Modern Law Students, 85 U. DET. MERCY L. REV. 293, 320 (Spring 2009). Critics of the Socratic-casebook method have gone so far as to say this method is not only “pedagogically ineffective, but is downright damaging to [students’] mental and emotional health. . . . Yet, while law school remains mired in the past, law practice today is more complex, more competitive, and more stressful than ever before. In a consumer oriented world, consumers of legal services are demanding greater services at lower price points than ever before. A premium has been placed on speed and efficiency in the delivery of legal services. It is a world and a practice alien to the one that Langdell knew.” Dolin, supra note 99, at 224-226 (citations omitted).

\textsuperscript{105} For recent generations dubbed “Gen-Xers” and “Millenials,” education and entertainment, once two separate endeavors, are now “inextricably intertwined.” McGaugh, supra note 100, at 124. Despite the dramatic change in learning styles and the availability of teaching media, some authorities believe law schools, in failing to acknowledge such changes, have “stagnated.” Dolin, supra note 99, at 222-24.

\textsuperscript{106} Madison, supra note 104, at 321-22 (citing Paul Bateman, Toward Diversity in Teaching Methods in Law Schools: Five Suggestions from the Back Row, 17 QUINNIPAC L. REV. 397, 398-99, 419-20, 424-25 (1997); STEPHEN D. BROOKFIELD, THE SKILLFUL TEACHER 268 (2006)). These authorities advocate using a variety of methods to accommodate learning styles and to connect with
earlier educational experiences to using more visually stimulating material; they are therefore more likely to read when the text provides more points of entry within a chapter or section.\textsuperscript{107} Similarly, students are more apt to understand why material is effective if they are asked to dissect and engage with it.\textsuperscript{108}

Medical schools have long understood that to internalize information, a young physician would necessarily have to first see the subject matter to understand it; in other words, students learn better when they can visualize the topic of study.\textsuperscript{109} Hence, gross anatomy, in which medical students dissect and student a human cadaver, is almost universally a first-semester class in medical school because it provides context to the human body. Understandably, students are more apt to learn and remember concepts about the heart, for example, if they have actually dissected one.\textsuperscript{110}

The same experiential learning concept is true for legal education. According to the Carnegie Report, “[S]tudents learn best when they can ‘reflect on’ their knowledge and performance in relation to models

students including small groups, videos, guest lecturers, discussions, games, PowerPoint presentations, cartoons, film clips, and breaking lectures up into smaller pieces.

\textsuperscript{107} Madison, supra note 104, at 321-22.
\textsuperscript{108} McGaugh, supra note 100, at 128 (noting that new generations of law students need to interact with information to absorb it.).
\textsuperscript{109} Although medical education has long adhered to contextual learning through hands-on instruction and clinical rotations coupled with some lecture, recent trends in the past two decades show many medical schools moving entirely to a problem-based learning experience (PBL) or at least to a curriculum that integrates PBL experiences while decreasing the number of lecture-based classes. Cam Enarson and Liza Cariaga-Lo, Influence of Curriculum Type on Student Performance in the United States Medical Licensing Examination Step 1 and Step 2 Exams: Problem-based Learning vs. Lecture-based Curriculum, 35 MEDICAL EDUCATION 1050-55 (2001). In PBL learning, information is mastered in the same context in which it will be used. Robert Donner & Harmon Bickley, Problem-based learning in American Medical Education: An Overview, BULLETIN MED. LIBR. ASSOC. 294, 294 (Vol. 81 No. 3, July 1993). “PBL is seen as a student driven process in which the student sets the pace and the role of the teacher becomes one of guide, facilitator, and resource.” Id.
\textsuperscript{110} See Eichorn, supra note 25, at 110. (Langdell believed that using his model “[S]tudents would dissect cases much in the same way medical students would dissect a cadaver.”).
supplied by the teacher.” Nonetheless, the legal academy has been reluctant to embrace such a large shift in teaching method, choosing in most part to hold to the stalwarts of legal education—reading, lectures, and the Socratic method. Even many law professors who have ventured into using more diverse teaching methods often eschew the use of samples in the classroom. Some of those who have used samples have had problems arise because “[s]tudents are not told [] how to go about the activity of production, such as negotiating trouble spots or generating alternative strategies when the first (or second, or third) does not work.”

Seeing varied samples to teach legal concepts, however, is an “active learning” device that, if used intentionally and deliberately, will allow students to engage with and internalize the material. Even after taking Civil Procedure and Trial Practice in law school, most lawyers could not draft a complaint without first seeing what a complaint looks like. Similarly, even though students may have a grasp of legal analysis and know the components of an analytical piece, they will not likely be able to draft a good analysis without seeing one first.

Scholars in other fields have noted that students may better understand concepts underlying tasks they must perform when they first see examples of how experts have performed the same tasks. For example, in one study, algebra students who first looked at examples of worked problems involving “step-by-step guidance” were able to work subsequent similar problems themselves more quickly and accurately than

111 Sullivan et al., supra note 3, at 61.
113 Nancy Soonpaa, Using Composition Theory and Scholarship to Teach Legal Writing, 3 J. LEG. WRITING INST. 81, 90 (1997).
114 “It is legitimate and reasonable for students to want to see examples of the kinds of documents they are being asked to prepare, especially because the document is probably unlike anything that most first-year aw students have previously seen or written.” Tracy, supra note 97, at 309.
115 See, e.g., Robert K. Atkinson, et al., Learning from Examples: Instructional Principles from the Worked Examples Research, 70 REV. OF EDUC. RESEARCH 181, 182-85 (2000) (“Even though learning from worked examples has recently attracted much attention, the notion of learning by example is not new. Indeed, it has been a major theme in educational research for at least the past four decades. During the mid-1950s to the 1970s, cognitive and educational psychologists adopted the learning-by-example paradigm to examine and describe the processes involved in concept formation. . . . The worked examples literature is particularly relevant to programs of instruction that seek to promote skills acquisition.”)
were their peers who did not first look at worked examples. According to the study authors, while looking at a sample problem might not allow students to "develop a strong representation of the relevant rules, it might be reasonable to suggest that it is a necessary first step," largely because "in a semantically rich domain . . . acquisition of schemas may be inextricably linked with an increasing facility in the use of general . . . rules. . . It may be difficult or impossible to obtain a complete understanding of . . . rule[s] until a large number of schemas incorporating it have been acquired." Therefore, the study authors concluded,

[I]t can be hypothesized that increased acquisition periods will generally increase the strength and number of schemas acquired and that this increase will be magnified by the use of worked examples. . . we would like to argue that the usual emphasis on conventional problem solving in educational settings may be misplaced. Alternative techniques such as a heavy reliance on worked examples may be preferable. While worked examples are commonly employed until students are assumed to have obtained a basic familiarity with new material, the procedure is normally abandoned beyond this point to be replaced with conventional problems. It may be beneficial to persist with examples until complete familiarity with the material is obtained.

Just as in math and science, samples can be particularly helpful in legal education because effective analysis is so varied. Many legal

117 Id.
118 Id.
119 Note that, in the U.K., the term “worked example” is also used in the writing classroom to refer to samples of writing given to students as learning tools.
120 Id. at 87.
121 Samples can “dispel students’ perception that there is but one ‘right’ approach to writing” by showing different ways to organize and present analysis. Helene S. Shapo & Mary Lawrence, Surviving Student Memos, 6 PERSP. TEACHING LEGAL RESEARCH & WRITING 90, at *1-2 (1998). “The use of different samples can respond to these concerns by demonstrating what the structure should be,
authorities are quite subjective, and a reader can construe them in several different ostensibly “correct” ways. Moreover, a writer can present his analysis of a legal topic in many different ways depending on how he understands the material. Thus, seeing samples that reflect such variety, along with some consistencies in structure and content, can benefit students by teaching these key analytic components in broad strokes. Samples not only show the overall organization and structure of a legal document, but they also model the ways in which lawyers can conduct and present analysis.122 Samples can also demonstrate which of the writer’s choices are effective and how organizational choices work or fail. For most legal documents, while the structure may be consistent, the analytical content within that structure can vary greatly. By using different samples, the students can see the consistency of structure does not preclude variability of analytical content.123

Therefore, using samples as the first step in the law school version of the “see one, do one, teach one” sequence can increase the students’ abilities to learn, retain, and transfer knowledge.

In practice, experienced lawyers know to begin with samples. Like doctors who usually “see one” before doing, the first thing most seasoned lawyers do when they are asked to draft a document with which they are not familiar (perhaps a complaint, a contract, or a motion) is to get a “go-by,” or sample of the document that another lawyer has done in another case. Although law practice mimics medical education’s “see one” part of the sequence, then, legal education does not usually do so.

Whether law students truly learn from samples depends enormously on how a law professor uses them. For a sample to be an effective learning tool, the professor must know what pedagogical goals the sample will address, explicitly explain how the sample illustrates those goals, consider how the student will respond to the sample, and require the student actively to engage the sample on some level. Through the following six steps, professors can use the “see one” method effectively and maximize student understanding of lessons that can be carried into the future:

Place the samples students will use in their appropriate pedagogical context.

while showing that different approaches and analyses can generate very different documents that are far from mechanical.” Tracy, supra note 97, at 314.

122 Tracy, supra note 97, at 309.
123 Id. at 314-15.
The first step in using the “see one, do one, teach one” sequence is to determine what pedagogical goals the sequence will meet and what new concepts the students should understand after reviewing the sample. A professor should establish discrete goals. Students may learn more if the review is broken into smaller chunks. By determining the goals for the lesson and concepts that students should learn, professors can more precisely tailor each lesson to meet that goal.124

Use several samples, not just one.

While any sample can be misconstrued as a “model,” using several samples together helps to lessen that danger. Using several samples can also dissuade students from believing that one “perfect” or “correct” mode or expression of legal analysis actually exists.125 By using more than one sample, students can see that, although lawyers may analyze a legal concept in different ways or from different angles—especially where client interests may diverge—each version can still be effective for different reasons.126 Additionally, students can see what qualities ineffective samples have in common.127

Similarly, educational psychologists have posited that “[e]ncountering multiple examples enable solvers ‘to form generalized rules that are not restricted to overly specialized contexts thus facilitating transfer.’”128 In one study requiring school-age children to calculate how to fill water jars with varying amounts of water, children who were

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124 STUCKEY ET AL., supra note 2, at 130-32.
125 Shapo & Lawrence, supra note 121, at *2; Parker, supra note 4, at 583 (“To use models of legal writing effectively, teachers should try to provide more than one example of ‘good writing’ in a particular format.”).
126 See, e.g., Atkinson, supra note 115, at 208 (“[E]xamples can in fact help educators achieve the goal of fostering adaptive, flexible transfer among learners. For instance, the research on inter-example features of lesson design point to the importance of providing a wide range of examples (and having students emulate examples) that illustrate multiple strategies and approaches to similar problems, which should help foster broad transfer and ‘cognitive flexibility.’”).
exposed to multiple types of formulas before solving a new problem were more successful overall, perhaps because “the variance in the source procedural features fostered the formation of an abstract schema, which was presumably applied more flexibly to novel situations.” According to the study, “exposure to invariant problems led to solutions that were quickly learned but narrowly applied, whereas experiencing a wide variety of problems led to solutions that were learned more slowly but applied more broadly and flexibly.” Most notably, the study authors posited that the study underscored “the importance of providing multiple examples with diverse procedures to facilitate students’ learning a general solution and applying it flexibly to a broader range of problems.”

Providing a deficient sample, without disclosing its quality, before showing students a thorough, well-written sample can effectively allow students to simulate a reader’s experience and understand why incomplete or sloppy analysis impede a reader’s understanding. Students then are more apt to understand why the better sample meets the reader’s needs and communicates the analysis more clearly.

Identify how students will respond to the sample, based on their familiarity with the subject matter.

Students respond to samples according to the level of familiarity they have with the topic and the basic document. When students first read a sample document on a subject with which they have little familiarity, the students will respond as a typical reader, usually finding only the basic analytical flaws and holes that any new reader would

129 Chen, supra note 128, at 711.
130 Id. at 712.
131 Id. at 713.
132 Tracy, supra note 97, at 316 (“Students are more receptive to understanding and applying structure in legal writing if they can see for themselves why it is needed.”); Cornelia S. Grobe & Alexander Renkl, Finding and Fixing Errors in Worked Examples: Can This Foster Learning Outcomes?, 17 LEARNING AND INSTRUCTION 612, 627 (2007) (“[E]rrors or impasses do not per se “drive” learning. The effects of impasses depend on the learners and whether they have the appropriate prerequisites (i.e., prior knowledge) to react productively to them. Likewise, the positive effects of self-explaining why incorrect solutions are not appropriate . . . should also be restricted to cases in which the learner has the knowledge prerequisites to actually explain the error.”).
133 Tracy, supra note 97, at 316.
134 Id.
find. The more familiarity the student has with the substantive topic, however, the more the student reader will glean about structure and analysis from the sample. If the student is familiar with the legal topic but has not engaged in independent legal analysis about it, “the student will be able to see how the process by which the analysis was developed—through reading and class discussion of the authority—was transformed into a structure which successfully explains that analysis.” Perhaps the strongest response occurs when reviewing students have themselves analyzed the same topic.

By anticipating the students’ likely responses as readers, the professor can more deliberately choose the samples and the pedagogical effect they will underscore.

Identify and evaluate in detail the differences between the samples that meet audience needs and those that do not, having students specifically address why some samples are more effective than others.

To use samples effectively, law professors must discuss the reasons why the legal analysis in the samples succeeds or fails. Furthermore, professors must show the students how to effectively engage with the samples for maximum learning. Professors should annotate samples thoroughly, noting both the “good” and “bad” points. Perhaps more importantly, professors should explicitly identify why those portions of a document are good or bad, specifically explaining why they do not meet analytical criteria. The class should dissect each part of the sample to learn how each part contributes to the overall legal analysis – much like medical students dissect cadavers to understand the workings of each body system. By questioning the words on the page and dissecting the analysis, students are far more likely not only to understand the

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135 Id.
136 Id.
137 Id. (“If students are given a sample memorandum on a matter on which they have already written, the sample will serve to confirm their work and will become part of the critiquing and feedback process.”)
138 Id. at 317.
139 Or the professor can have the students identify and explain; by annotating the samples themselves, the students are likely to better internalize the lessons. See Shapo & Lawrence, supra note 121, at *2.
140 Eichorn, supra note 25, at 110.
analytic process and substance but to transfer more easily the concepts they have learned to the next topic for discussion.\footnote{See, e.g., Kurt VanLehn, et al., \textit{A Model of the Self-Explanation Effect}, 2 J. OF THE LEARNING SCIENCES, 1, 1 (1992) ("Students who explain examples to themselves learn better, make more accurate self-assessments of their understanding, and use analogies more economically while solving problems [the so-called ‘explanation effect’]."); see also Laurel Currie Oates, \textit{I Know I Taught Them How To Do That}, 7 J. LEG. WRITING INST. 1, 7 (2001)\footnote{See Jacobsen, \textit{supra} note 101, at 167-69 ("The social milieu in which learning takes place affects student comfort; the more comfortable the learner, the more the student will learn.").}}

Professors can present samples using “see one” in more than one way. They can show portions of samples in class, and then students can discuss the strengths and weaknesses within each sample before comparing the samples to one another. This classroom exercise not only facilitates discussion on the analytical choices the author may have made, but also allows the professor to answer unexpected questions that many students may share. Although such an open discussion often helps students internalize concepts they may not have previously understood, the efficacy of this method may depend on student learning styles.\footnote{See \textit{Jacobsen}, \textit{supra} note 101, at 167-69 ("The social milieu in which learning takes place affects student comfort; the more comfortable the learner, the more the student will learn.").}

After identifying the characteristics of the sample analysis privately, students can discuss their findings with the whole class, in small groups, or with a professor-led discussion. Such an exercise would appeal to a broad range of learners and help students gain insights that can be transferred to later assignments in the course.

\section*{2. Why Some Professors View the Use of Samples as Problematic}

Some professors disdain the use of samples for many reasons. The most obvious reason is that students will look at the sample in a perfunctory way, without integrated understanding or thought as to how the document’s writer went through the analytical process.\footnote{Shapo and Lawrence, \textit{supra} note 121, at *2.}\footnote{Id. at *2.} Additionally, the sample, although exactly on point according to the lawyer who created it, may not always reflect the instructional information the professor and the course textbook are trying to impart.\footnote{\textit{Id. at *2.}} Professors may also omit samples because finding a comprehensive “good” sample takes so much time and effort, usually requiring the professor to draft such a sample.
The main reason professors reject sample use in the classroom is because of the danger samples can pose to the students. Using samples may present a risk because of the potential for students simply to accept the analysis in the sample wholesale without understanding the organizational and analytical choices the writer made after assessing the law and its application to the client’s facts.145 Particularly when a professor only offers students one sample, students may use it as a universal “model” rather than a “sample.”146 That is, students may see the sample as a “template from which to create all documents of that type or, not yet having sufficient experience in the [writing] genre to recognize what is good about the model document, may emulate its less desirable attributes.”147 Therefore, a challenge to the professor is to have students reflect sufficiently on the sample’s analysis to decide which parts of the document were the most (or least) effective and why.

While students naturally want to see an examples of good legal analysis, at some point a sample may seem to transform from a representative way to communicate analysis to a “model” of analysis that is objectively correct.148 More disturbingly, the student may not attend to the analytic lessons the professor is trying to teach. Instead, students may see the sample as a rigid guide to “what the professor wants” and try to emulate the sample over strictly, especially on an exam. By mimicking the sample, the student may learn enough to get through the exam, but the distinction between what the teacher must want versus the ability to think independently blurs considerably. Consequently, the “model” becomes an impediment rather than a tool for learning. Without a keen understanding of what parts of the model were good and why, the students do not internalize any lessons that can be transferred to the next topic of analysis or to future projects they will encounter in practice.149

Another problem law professors may encounter is finding an adequate sample to use. While “bad” or ineffective samples may be plentiful, good samples are often elusive.150 Although the professor can draft a sample document, doing so requires a good deal of time not often available during a busy semester. Even the samples included in the textbooks can pose problems because “[n]ot all [law professors] agree

145 Oates, supra note 141, at 7.
146 Shapo & Lawrence, supra note 121, at *2.
147 Parker, supra note 5, at 583-84.
148 Id.
149 Oates, supra note 141, at 7-9 (noting processes to maximize transfer).
150 See Shapo & Lawrence, supra note 121, at *2-3.
about the quality of someone else’s . . . samples . . . and poor . . . examples in a text lead to confusion.”

A student-written sample in the form of a memorandum or exam answer, especially one on a topic with which students in the class have familiarity, can be even more problematic. Using a poor example of legal analysis can shame the student who wrote it, even when the student is not mentioned by name. On the other hand, a sample exam answer from the best student in the class may be excellent in the professor’s experienced eye, which tends to evaluate how the sample has meet the course’s pedagogical objectives as a whole. The novice student analyst, however, may not yet be able to see the whole, but instead may tend to focus on less important individual pieces of the document. Consequently, he may stray from considering how best to engage in thoughtful legal analysis and, instead, perseverate on what kind of exam answer would please their professor. Even worse, the students may become disgruntled with the professor’s grading assessments and why an exam with any errors was “better” than their own.

Samples may also fail to advance pedagogical goals when they do not reflect the lessons taught in the course textbook. Although experienced legal thinkers know that legal analysis may take a number of forms, novice writers do not. They rigorously adhere to the instructions

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151 Id. at *2.
152 See Joanne Durako, et al., From Product to Process: Evolution of a Legal Writing Program, 58 U. Pitt. L. Rev. 719, 721 (1997) (explaining that annotated samples written by professors were used to “reinforce” lessons of good writing and editing).
153 The Hippocratic oath says, “First, do no harm,” and the legal academy would benefit in incorporating this medical practice into legal teaching. Although the days of abusively using the Socratic method has passed, see Rhode, supra note 99, at B15, shaming a student will not achieve good results in learning. See Barbara Glesner Fines, Fundamental Principles and Challenges of Humanizing Legal Education, 47 Washburn L.J. 313, 313-15 (2008).
154 For characteristics of a novice reader, see Coughlin, et al., A Lawyer Writes 55-56 (Carolina Acad. Press 2008).
155 Shapo and Lawrence, supra note 121, at *2
156 For example, legal writing professors across the country often disagree of using the classic IRAC paradigm in organizing writing assignments. See e.g. Jane Kent Gionfriddo, Dangerous! Our Focus Should Be Analysis, Not Formulas Like IRAC, 10(1) The Second Draft (Bulletin of the Legal Writing Institute) 2-3 (Nov. 1995); Charles Calleros, IRAC: Tentative and Flexible and Therefore Reliable, 10(1) The Second Draft (Bulletin of the Legal Writing Institute) 4 (Nov. 1995); Robin S. Wellford, IRAC
of their textbook and often do not have the ability to discern why a document that strays from the textbook’s guidelines can also reflect strong analytic process. And when the document does stray, the students become discouraged and frustrated as they struggle to hit a moving target.\textsuperscript{157}

Nonetheless, the benefit of sample usage greatly outweighs its drawbacks. “Over and over again, researchers have found that transfer is more likely to occur when students have been presented with a number of different examples that have similar underlying structures and problem solutions but different surface features.”\textsuperscript{158} If law professors want to create that kind of internalized learning which will transfer to future law school courses and later to law practice, then they should use samples. A critical part of this visualization piece, however, is that the professor must go beyond the superficial characteristics of the samples to underlying analytic patterns, themes, and structures.\textsuperscript{159}

By following the six steps above and using simulation and samples to teach defined pedagogical points through concrete exercises, the professor can avoid most, if not all, of the pitfalls. Critical evaluation and discussion of why samples succeed or fail can overcome any drawbacks to their use by providing a depth of understanding the students would not get otherwise. Despite the inherent problems samples can bring to the classroom, students in law school today need to engage with material at its core to understand it and to transfer that understanding to the next task.\textsuperscript{160}

Despite the inherent problems samples can bring to the classroom, using them thoughtfully and properly can greatly enrich the learning process and more deeply impart lasting learning to students. Thus, integrating samples into the classroom as the first step of the “see one, do one, teach one” sequence can engage students on a deeper level and help them to advance their legal analytic skills.

\textsuperscript{157} See Wellford, \textit{supra} note 156, at 19.
\textsuperscript{158} Oates, \textit{supra} note 141, at 7.
\textsuperscript{159} Id. at 8.
\textsuperscript{160} See, e.g., STUCKEY ET AL., \textit{supra} note 2, at 146.
B. Do One: Applying Theory and Skill

“[S]tudents must shift from learning by observation and discussion to learning by performance.”\(^{161}\)

That students learn effectively through experience is a fundamental tenet of educational learning theory.\(^{162}\) Toward that end, doing one is a crucial component of the “see one, do one, teach one” methodology because it (1) allows students to do the important work of an attorney; (2) encourages students to assess their success and provides explicit and relevant guideposts for improving on work; and (3) provides context for the analytical and writing theory. What’s more, “[l]earning through doing in law school teaches students to learn experientially throughout their lifetimes.”\(^{163}\)

The importance of “do one” is best illustrated by the fact that “medical school educators have in recent years altered their ‘case-centered’ approach in favor of ‘skills-centered’ training. . . . Significantly, medical schools have substantially increased the amount of training time they devote to clinical skills, typically embedding clinical skills training in the entire medical school curriculum.”\(^{164}\) Incorporating active learning activities into the curriculum can involves both “real life” and simulated experiences having an Evidence professor ask students to argue a motion in limine on behalf of the prosecution and defense, to having a Contracts professor have her students draft a simple contract.\(^{165}\) The possibilities are endless, and the experience is rewarding for both the student and the professor.

1. The Benefits of Do One

While “do one” may at first glance seem to be a misnomer (as it is also the ultimate goal for a lawyer), it is the step that links mastery of theory with skill. Specifically, it is the link that allows the student to go from

\(^{161}\) SULLIVAN ET AL., \textit{supra} note 3, at 108.

\(^{162}\) See generally DAVID A. KOLB, EXPERIENTIAL LEARNING: EXPERIENCE AS THE SOURCE OF LEARNING AND DEVELOPMENT (Englewood Cliffs, NJ: Prentice Hall 1984) (also noting that reflection upon experience is critical to the learning process).

\(^{163}\) STUCKEY ET AL., \textit{supra} note 2, at 172.


\(^{165}\) STUCKEY ET AL., \textit{supra} note 2, at 172.
visualizing a legal concept or problem to demonstrating theory to solve new problems through peer teaching. The entire learning process is dependent upon “do one,” and the process is neither efficient nor effective without active, individual expression of the skill. As the Carnegie Report says,

[N]ovices can begin to learn the rudiments of litigation practice, for example, by attending to the core elements of the procedural and conceptual models exemplified in expert practice. Teachers make this possible by allowing novices to work with and imitate multiple examples, using the conceptual models as scaffolds through which to understand feedback, in order to guide their assimilation of more skillful performance.166

“‘Transfer’ refers to a student's ability to employ skills in one context that have been learned in a different context.”167 Courses that include or emphasize active learning skills - like those used in the training of physicians - help student more easily transfer skills they learned in school to their future practice. Specifically, allowing students to “do one” enables the student to:

(1) bridge the gap between theory and practice;168
(2) 'synthesize' substantive law with procedural law;169
(3) introduce and integrate the client and other personalities into the ‘study and practice of law’;170
(4) expose students to advocacy;171 and
(5) teach students to analyze a problem from the beginning, rather than dissecting it at the end.172

Active learning exercises, like those used in medical education, incorporate components of the predominant learning theories of

166 SULLIVAN at 101-02.
167 Binder & Bergman, supra note 164, at 197-98.
168 Id.
169 Id.
170 Id.
171 Id.
172 Id.
behaviorism, cognitivism and constructivism. Specifically, students learn from repetition, reward and punishment (characteristic of behaviorism); brain-based learning, sorting, encoding and retention of material from short-term to long-term memory (characteristic of cognitivism); and, most importantly, the ability to apply learned concepts and ideas to new situations (deriving from both cognitivism and constructivism).

At least one scholar has noted that most clinical law professors base their claims that experiential learning is effective in the law school setting on anecdotal rather than empirical observations. That deficiency prompted him to conduct an empirical study comparing the lawyering skills of law students who had participated in a law school clinic with the same skills of those who had not. The results of his study supported the conclusion that students who have participated in experiential education activities in law school are better able to identify some relevant facts in a legal fact pattern, identify legal rules relevant to a client’s problem, identify client interests, and consider next steps in a client representation.

While many schools are in the process of discussing curricular changes that would involve more “do one” or active learning activities, the 2008 Association of Legal Writing Directors survey illustrates that only 16% of the 186 responding schools actually implemented changes in

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173 See supra Part I. and notes 31-37 for a more detailed discussion of the leading learning philosophies.
175 See generally Id.
176 Id. at 379. However, Krieger notes that even clinical students did not pick up on all relevant facts provided to them.
177 Id. at 383-84. It is important to note that students who had not enrolled in a clinic were able to cite more legal rules overall, but that the clinical students were able to cite to a higher percentage of relevant rules out of the ones identified. Id. at 395.
178 Id. at 389-90.
179 Id. at 393-94. Krieger does note that the typical next step articulated by the clinical students was to engage in legal research, not, according to Krieger, “the type of strategic reasoning used by experts in problem solving.” Id. at 394. Moreover, according to the Krieger study, clinical students were less likely to draw inferences from the facts, leading the study author to ponder whether “the clinical experience may stifle the fact brainstorming process.” Id. at 386.
their legal writing programs at the time of the survey. Not surprisingly, clinicians and legal writing professors remain at the forefront of their law school colleagues in incorporating the types of experiential learning opportunities discussed in *Best Practices* and the Carnegie Report in their classroom. To extrapolate, then, casebook professors may incorporate even less experiential learning into their curriculum – to the detriment of their students’ learning.

Implementing active learning exercises or a “do one” mode of teaching requires intentionality and patience. The professor needs to provide the appropriate structure to expose students not only to theory and skill, but to the relationship between the two, allowing them to synthesize the two lawyering components. Therefore, professors should look to some guidelines to “promote the likelihood of transfer” of information, help students retain it, and increase the likelihood that they will apply it to new situations.

Through five key steps, a professor can maximize student understanding of concepts that can be carried to the future:

**Students should do more than one.**

Professors should provide students with multiple opportunities to “do one” that relate to the concept or skill the professor wants to teach. “Without repeated opportunities, concepts are unlikely to become encoded in students' long term memories.” Some educational psychologist theorize that repetition of a skill – or the “do one, do many” philosophy - actually moves theory and skill from short-term to long-term memory, or to another place in the brain where it remains more “permanent.” Even in medical schools, students typically do not one, but many.

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181 Id. For example, among legal writing professionals, the time spent lecturing in legal writing classes is approximately 31.80%, the time responding to question and class questions is 23.39%, the time actively demonstrating concepts is 10.70%, the time spent on in-class exercises is 9.74%, the time doing group activities is 16.8%, and the time doing in-class writing is 8.36%.

182 Moliterno, *supra* note 20, at n.37.

183 Binder & Bergman, *supra* note 164, at 201.

184 Id.

185 See *supra* note 86.

186 Cooke, et al., *supra* note 11, at 1340; LUDMERER, LEARNING TO HEAL, *supra* note 7, at 280.
Repetition of a professional skill brings “expertise and smoothness.” As Atul Gwande reflects in his book Complications: A Surgeon’s Notes on Imperfect Science, “We want perfection without practice. Yet everyone is harmed if no one is trained for the future.” As the Best Practices report says, “If proficiency in the performance of specific lawyering tasks is an educational objective, students [should] have repeated opportunities to perform the tasks to be learned or improved upon until they achieve the desired level of proficiency.” Moreover, as Flexner so aptly observed when publicizing medical education reform, “[I]f one had one hundred hours in which to learn to ride a horse or to speak in public, one might profitably spend an hour (in divided doses) in being told how to do it, four hours watching a teacher do it, and the remaining ninety-five hours in practice.”

Students should “do one” in multiple diverse contexts.

Professors should encourage students to “do one” using skills that involve the same legal concept or issue but are present in different contexts. As David Binder and Paul Berman note in their article Taking Lawyering Skills Training Seriously, cognitive psychologists affirm “the use of varied context examples can build a robust schema, which will in turn support far transfer. In summary, a powerful instructional strategy to avoid inert knowledge to yield far-transfer performance is to provide varied context examples . . . , which will allow students to focus on building flexible schema based on the deep structure and show that it may be reactivated by a variety of surface features.”

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188 Id.
189 Association of Legal Writing Directors Legal Writing Institute, supra note 180.
190 LUDERMER, LEARNING TO HEAL, supra note 8, at 176 (quoting FLEXNER, supra note 28, at 99.)
191 Binder & Bergman, supra note 164, at 201.
192 Id.
193 Id.
The “do one” activities should be spread out over time.

Professors should offer students the opportunity to engage in “do one” activities over time.194 “Research by psychologists suggests that ‘the same amount of overall practice is much more effective for long term retention when the practice is distributed over time. . . . For example, four twenty-minute segments distributed over two days is more effective than the same four twenty-minute practice sessions over one day.”195

Students should receive feedback.

Professors should ensure that students receive timely and comprehensive feedback on any “do one” activity or performance.196 Feedback that “that provides students with the opportunity to revise their thinking as they work on tasks” is likely to be particularly effective.197 Legal education theorists note that, without detailed and individualized feedback, attempts at simulation and experiential learning in the law school classroom may fall flat because students have no way of assessing their successes and no guideposts for improving upon their work.198

Students should have the opportunity to self-evaluate.

Students should employ appropriate methods for self-evaluation or reflection.199 “Reflection involves stepping back and reflecting on both the cognitive and affective aspects of what happened or was done.”200 Guided reflection will enable the students the opportunity to evaluate their own performance.201 While each student’s experience and perception of self is unique, professors can provide instruction and materials on reflective thinking, and “require the students to write

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194 Id.
195 Id.
196 Id.
197 Id.
198 STUCKEY ET AL., supra note 2, at 143 (citing SULLIVAN ET AL., supra note 3, at 178).
199 Id.
200 STUCKEY ET AL., supra note 2, 15 166 (quoting SULLIVAN ET AL., supra note 3, at 178).
201 Id.
reflective journals, and have students perform self-evaluations at one or more points during the semester and at the end of the term.\footnote{Stuckey et al., supra note 2, at 173.}

2. Why Some Professors Are Reluctant to Ask Their Students to “Do One”

Law professors often report two major issues with having students “do one.” First, the more students practice their skills, the more time professors must spend responding to their efforts. The challenge is to incorporate further analytic opportunities during already hectic semesters where the average law professor teaches several courses, engages in school service, and advances her own scholarly agenda.

Second, many students report that they are asked to “do one” in a vacuum— in other words, they are expected to simulate the work of an attorney without any informed idea of what that work would look like.\footnote{What’s more, the Carnegie Report notes that respondents in a study agreed with the proposition that “‘law school teaching is too theoretical and unconcerned with real life practice.’” See Sullivan et al., supra note 3, at 76 (quoting Dinovitzer, R., et al., After the J.D.: First Results of a National Study of Legal Careers 79 (2004)).} Legal education theorists note that, without detailed and individualized feedback, attempts at simulation and experiential learning in the law school classroom may fall flat because students have no way of assessing their successes and no guideposts for improving upon their work.\footnote{See, e.g., Sullivan et al., supra note 3, at 100 (“By giving learners opportunities to practice approximations to expert performance and giving these students feedback to help them improve their performance, educators are providing an apprentice-like experience of the mind.”).}

Both of these issues have real implications for the implementation of the “see one, do one, teach one” methodology in the law school classroom; however, both concerns are surmountable because the “see one, do one, teach one” methodology itself can help to safeguard against them.

Grading, Commenting, and Conferencing

Professors who use the “see one, do one, teach one” sequence will necessarily have a disproportionately heavy teaching and grading load when compared to professors who employ the traditional Socratic method
in their teaching. Whereas most law professors grade one set of exams at the end of a semester, using samples may require professors to give individualized feedback on assignments for up to 100 students per class (or more). What’s more, while law professors may typically grade an exam answer by reading through it and using a rubric, providing detailed feedback on students’ attempts to “do one” is a considerable investment of time for the professor, time that the professor must take away from scholarship and school service or from personal obligations.

One potential solution to this issue is to have students “teach one” – teach guide each other through analyzing basic legal issues or creating simple documents, perhaps with the aid of a professor-generated checklist or guided list of questions. Another possible solution is to have students work in teams or small groups to “do one,” just as they might in law practice, thereby cutting down on the sheer number of assignments a law professor must grade and comment upon as well as the number of conferences she must hold.

Students’ Lack of Exposure

A common complaint in the law school classroom is that professors ask students to “do one,” or engage in legal analysis, without giving students a real idea about how to go about it. Even when professors offer guidance, the guidance is often in the form of a hypothetical or description rather than a concrete example. Students therefore lack confidence in their abilities to parlay their analytical abilities into producing a complaint, a trial brief, or a contract because

205 See, e.g., Robert C. Downs and Nancy Levit, If It Can’t Be Lake Wobegone . . . A Nationwide Survey of Law School Grading and Grade Normalization Practices, 65 UMKC L. Rev. 819, 824 (1997) (citing Paul T. Wangerin, “Alternative” Grading in Large Section Law School Classes, 6 FL. J. L. & PUB. Pol’y 53, 54 (1993)) (“grading is far and away the most distasteful aspect of law school teachers’ jobs …. most law school teachers will not give the slightest consideration to the use of teaching/grading techniques that call for a larger commitment of grading time than that already spent.”); Michael P. Allen, Making Legal Education Relevant to Our Students One Step at a Time: Using the Group Project to Teach Personal Jurisdiction in Civil Procedure, 27 HAMLINE L. REV. 133, 150-54 (2004).
206 Id. at 822.
207 Id. at 823.
208 Id.
209 See supra Part IIIA (discussion of see one).
Again, the “see one, do one, teach one” model itself can provide a solution to this common issue. When professors incorporate the “see one” component into the law school curriculum through the use of samples, students have concrete examples of what their analytic output they have little real-life exposure to documents like these.\(^{210}\) The task of creating their own work, then, while still daunting, seems less impossible because the expectations are clear and visible.\(^{212}\)

C. Teach One: Demonstrating Mastery

“There is nothing that makes you learn more than teaching it yourself.”\(^{213}\)

Medical education has been successful in its approach to experiential learning and development of critical thinking skills. It is no surprise, then, to learn that the word “doctor” is derived from the Latin word for “teacher.”\(^{214}\) “[E]ffective peer teaching works on both a cognitive and affective level, for peer teacher and learner alike.”\(^{215}\) Moreover, it is not a stretch for the law professor to incorporate peer teaching to mimic the “teach one” portion of the medical education philosophy.\(^{216}\) Peer teaching lies near the heart of Langdell’s intended

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\(^{210}\) See, e.g., SULLIVAN ET AL., supra note 3, at 105.
\(^{211}\) See supra notes 158-59 and accompanying text for recommendations.
\(^{212}\) See, e.g., STUCKEY, ET AL., supra note 2, at 130.
\(^{215}\) Croskery-Roberts & Becker, Avoiding Common Problems In Using Teaching Assistants: Hard Lessons Learned From Peer Teaching Theory and Experience, 13 LEGAL WRITING: J. LEGAL WRITING INST. 269, 275 (2007); see also LILLARD, supra note 34, at 208 (citing Bargh J.A. & Schul, Y., On the cognitive benefits of teaching. 75 J. EDUC. PSYCHOL. 593-604 (1980)).
\(^{216}\) Other scholars have commented that peer teaching may be particularly effective in legal education. See, e.g., Philip C. Kissam, Thinking (by Writing) About Legal Writing, 40 VAND. L. REV. 135, 164-68 (1979)(“[W]hat substantial objection can there be to using paid assistants or other class members to comment, under faculty guidelines, on the substance of a student’s short, ungraded writing exercises?”); Michael Hunter Schwartz, Humanizing Legal Education: An Introduction to a Symposium Whose Time Came, 47 WASHBURN
reforms because “students learn better when they participate in the teaching process.”

Scholars have commented that “peer teaching is considered a ‘subset of the collaborative learning movement in higher education.’” Furthermore, “faculty can encourage a cooperative atmosphere in learning. Creating formal structures for peer teaching can accomplish this goal. [However], as a method of structuring the standard curriculum, one may hypothesize that pure peer teaching is rare.”

1. The Benefits of Teach One

Peer teaching “builds on individuals’ strengths and mobilizes them as active participants in the learning process – this is true for teachers as well as students.” The teacher must not only understand the material or concept being taught, but must also apply these from different vantage points to understand her students’ motivations and learning styles in order to effectively pass on the information. Through “teaching one,” the students “learn the subject better and deeper, [and] they also learn transferable skills in helping, cooperation, listening and L.J. 235, 245 (2008) (describing having enrolled students “re teach” contracts concept to the entire class); Kristine S. Knaupland and Richard H. Sander, *The Art and Science of Academic Support*, 45 J. LEGAL EDUC. 157, 189-91 (1995) (describing an academic support Community Property class in which “for each topic, two students were tagged to be the teachers. The teachers were responsible for preparing a brief overview of the issue, and for answering student questions. . . the students who played the role of professor discovered (as most beginning law teachers discover) that they learned the material more thoroughly than they ever had in a student role . . .” and noting that the students who took the class “had a statistically significant and moderately strong effect on a student’s general performance in law school.”).


218 Croskery-Roberts and Becker, supra note 215, at 269, 275 (citing NEAL A. WHITMAN, TO TEACH IS TO LEARN TWICE (Assn. for Study Higher Educ. 1988)).


221 Arky, supra note 217, at 1922-46.
Teaching also enables students to apply information to new situations more effectively because the process of teaching another student shifts the information from short-term to long-term memory. When you teach a skill or concept, you have to think about it, formulate it in your mind, rehearse how you want to explain it, say it aloud, and adjust your responses to the learner’s questions and level of understanding. You may have to come up with new examples, new words for explaining, and new ways of thinking of the skill or concept involved. Engaging in this process serves you (the teacher) as much as it does the learner. It increases your retention.

Finally, several scholars have commented that students may be in the best position to teach other students because they are able to recall their more recent struggles with the material, as well as relate to their peers on an equal level.

Topping, supra note 223, at 631-45; see also Fines, supra note 219, at 912-913 (“Where peers interact in learning there tends to be both a cognitive and an affective difference in the approach to the process by both participants.”)

Moorman, supra note 7.

Id.

Croskery-Roberts & Becker, supra note 215, at 276 (“Experienced professors sometimes are so familiar with a subject that they unconsciously omit information or procedural steps needed for complete understanding by less experienced (or completely inexperienced) first-year students. . . .most [peer teachers] have not mastered legal writing and analytical skills to such an extent that they risk skipping explanatory steps, or at least as many steps as a more experienced professor might omit.”); see also Fines, supra note 219, at 914 (“Since the peer has only recently learned (or is currently learning) the material being taught, the peer teacher is more likely to consciously think through the steps of the learning process than one who has greater expertise.”); Terrill Pollman, A Writers Board and a Student-Run Writing Clinic: Making the Writing Community Visible at Law Schools, 3 LEG. WRITING 277, 284 (“[peer teachers] remember clearly which concepts or skills are likely to cause confusion and distress to first year students”).

Croskery-Roberts and Becker, supra note 215, at 276; see also Fines, supra note 219, at 914 (“The combination of a greater opportunity for empathy on the part of the peer teacher and a lesser need for deference from the peer student creates an affective environment in which the student peers view themselves as partners in a process of learning.”); see also Pollman, supra note 228, at 284 (noting that students may find other students more approachable and less intimidating than a professor).
Peer teaching may take one of two forms: Co-peer teaching, where students who are on equal academic footing teach each other through demonstration, simulation, or small groups; and near peer teaching, where more experienced students act as teaching assistants to the professor or tutors. The learning benefits for the students are similar in both forms of peer teaching.

To illustrate, many psychological studies have shown the effectiveness of academic peer teaching. In one study, the University of South Carolina Medical School analyzed the academic effects of peer teaching among medical students. The article found that students who participated in a program where they taught their peers in small group settings performed statistically better on medical school performance exams and overall GPA than students who did not participate in such “teach one” opportunities.

In another study, college students were divided into three groups and asked to read a passage. The first group was told that they should only read the material, and that they would be later tested. The second group was told that they should read the material and expect to have to teach the material. Instead of having the students teach the material, however, the second group was instead tested on the material. The third group was told to read the material, prepare to teach the material, and then actually teach the material to peers. The results reflected that the students who prepared to teach and actually taught showed the highest level of understanding of the passage. The students who prepared to teach but did not teach had a bit lower understanding of the material. The students who performed the worst were those who were only read the

227 WHITMAN, supra note 220, at 59.
228 Id.
229 LILLARD, supra note 35, at 208 (citing L.F. Annis, The processes and effects of peer tutoring, J. OF PRAC. RESEARCH & APP. 762 (1983)).
231 Id.
232 LILLARD, supra note 35.
233 Id.
234 Id.
235 Id.
236 Id.
237 Id.
So, in order to have student learn most effectively, we should teaching our students not only to learn, but also to teach.

Teaching as a conduit to learning is not only effective academically, but also socially. Students who prepare material to teach tend to enjoy the learning process and may even be more engaged in it. To test this hypothesis, in another study, undergraduate psychology class students were given passages to read on brain development just before a school vacation and were asked to prepare for either an exam or a session in which they would have to teach another student. When the students returned from vacation, they were tested on the material and questioned about their engagement in the study process. Surprisingly, students who read to be examined reported that they spent more time preparing than the students who had read to teach to one another. Students who read to teach, however, were more intrinsically involved, and they rated themselves as more actively engaged in the reading, more interested in the material, more willing to return, and happier about the process overall.

On a measure of conceptual learning, a significant difference existed between the two groups, with the teaching group’s score almost double that of the exam group’s score.

Moreover, teaching provides students with greater self-insight. While individuals’ teaching methods tend to be similar to those they themselves have experienced, they also tend to recall those previous teaching experiences that worked for them – in other words, they tend to teach with the same teaching methods that successfully matched their own learning style.

The ways to employ the “teach one” philosophy are limited only by the professor’s creativity and imagination. The following guidelines, however, will help peer teachers and students to learn most effectively:

238 Id.
239 Id.
240 Id.
241 Id.
242 Id.
243 Id.
244 Id. On rote learning, there was not a statistically significant difference, however, between the readers and the teachers.
Describe context and the pedagogical goals of the peer teaching activity.

When incorporating a peer teaching activity, the students should understand the legal concepts being taught, as well as the context and goals involved. Students sometimes mistake collaborative learning exercises as exercises where the teacher wants to spend time on outside research, rather than focused on her students. Peer-teaching should not make the student-teacher into a substitute teacher. Rather, “in the collaborative learning classroom, the instructor is in no sense a passive figure. Collaborative learning is not unstructured learning; it replaces one structure, the traditional one, with another, the collaborative structure.” Explicitly describing concepts, goals and context enables the students to understand that the exercise is relevant and explicitly designed to further the learning process.

Have explicit standards for the selection of near-peer teachers.

Hiring teaching assistants or tutors can be a rewarding task for both the professor and the teaching assistant or tutor. The relationships can be strong and extremely positive for both parties. Typically, professors simply view who did well in the class in making the decision; however, the professor should consider further characteristics in her selection to avoid selecting a person who are simply doing the job for purposes of ego building. Instead, professors should interview teaching assistants and tutors who not only did well in the class but showed a passion for the subject, encountered and overcame struggles in the subject, or who show a passion for teaching.

Incorporate a variety of peer teaching activities.

There are many ways to incorporate co-peer teaching into the law school classroom in the form of partnerships and work groups. For example, a professor can utilize creative dialogue where the students are instructed to organize into small discussion groups, elect a spokesperson to record the group’s theories, then report back to the larger group. A professor can also have students participate in group projects, answer study guide questions in pairs or groups, give “teacher of the day” lectures, lead class discussions, or conduct demonstrations or

247 WHITMAN, supra note 220, at 49.
248 Id.
249 Id.
To illustrate the broad nature of possible peer teaching activities within the law classroom consider the following three creative ideas that can be used effectively to “teach one” after students “do one” in different contexts:

In Describing the Ball: Improve Teaching by Using Rubrics — Explicit Grading Criteria, Sophie Sparrow discusses the use of rubrics—or “sets of detailed written criteria used to assess student performance.” Professor Sparrow explains that well-developed rubrics can help focus both the teaching and learning process because they set forth explicitly the goals of the assignment. Having students act as “teacher” to review a peer’s drafting sample of a Complaint, Contract or other type of writing assignment, and provide input into the rubric designed by the professor – or even having the students design a rubric based upon class instruction -- enables the students to understand and articulate course goals and expectations, as well as empowering them to apply them to their own drafts.

In Teaching in Reverse: A Positive Approach to Analytical Errors in 1L Writing, Susan Provenzano and Leslie Kagen suggest allowing students to engage in the process of error analysis to identify and correct predictable analytic mistakes before any type of written assignment is graded. These legal writing professors analyzed several years worth of errors in students’ closed memorandum assignments, and charted and quantified common errors in various aspects of writing. Professors could easily use the student samples provided in Teaching in Reverse in a “teach one” exercise; however, professors could also find and use similar analytic errors in any set of law school writing assignments, regardless of whether the subject matter was skill-based or doctrinal. Having students teach their peers by identifying and explaining basic analytical errors, as well as the root causes of those errors, would be a meaningful learning experience. Peer teaching using the information in this article could be done through the use of small group settings, through peer critique, or by through individual presentations to a small group or class.

250 Id.
252 Id.
253 Id.
254 Provenzano & Kagen, supra note 127.
255 Id. at 124.
256 Id. at 149-52.
257 Id.
In *From Grimm to Glory: Simulated Oral Argument as a Component of Legal Education’s Signature Pedagogy*, Lisa McElroy describes an oral argument simulation designed to help students learn to synthesize rules from multiple authorities, weigh authority, analogize and distinguish, and reason to predict and argue case outcomes at the beginning of the legal educational process. While the simulation in and of itself is an excellent “teach on e” active learning exercise that will provide context for beginning law students, following its use, students could analyze the student transcript and describe to their peers advantages and disadvantages of the various arguments in the simulation.


259 McElroy is a co-author of this article.

260 Id.
2. Why Some Professors View Peer Teaching as Problematic

While peer teaching within the law school curriculum already takes place in upper level seminars where students must present to the class, in the first year curriculum – as well as in large lecture classes - very few professors formally try peer teaching despite the well-established academic and social advantages. Professors typically have several primary concerns about having students teach other students. First, law professors may lack the time to teach students to teach. Specifically, given the amount of material the professor needs to cover, professors may hesitate to integrate innovative teaching methodologies into an already packed syllabus. Second, many professors are concerned that students do not have the experience or insight successfully to teach other students to engage in legal analysis. Third, the law school hierarchy presupposes in many instances that professors talk and students listen; to upset this apple cart is intimidating to many, whether on a conscious or subconscious level.

Taking the Time

Incorporating a peer teaching component into the class need not be time- consuming – one study even showed the effectiveness of three minute peer teaching modules. What’s more, students can effectively spend time outside of class commenting on and editing each other’s work, whether independently, in cooperative pairs, or in small groups.

An important consideration for time allocation is the utility of that time; in other words, how effectively is the time spent? What lessons do the students take away from the learning experience? And what are the time-based costs of the pedagogical method? In answering these questions, professors who are initially reluctant to have students teach other students may come to change their minds. Teaching, as explained previously, is a highly effective means of learning, so much so that

261 See generally Croskery-Roberts and Becker, supra note 215.
262 See supra notes 205-11 and accompanying text (discussing time constraints for law professors); see also Kissam, supra note 216, at 165.
263 See Kissam, supra note 216, at 165.
264 See infra notes 275-279.
265 Kristen H. Mayfield & Timothy Vollmer, Teaching Math Skills to At Risk Students Using Home Based Peer Tutoring, 40 JOURNAL OF APPLIED BEHAVIORAL ANALYSIS 223-237 (No. 2 2007).
Students who teach others take away lessons, not only about the substance of the material, but about the professional interactions that all lawyers experience with each other, providing students who teach with more “bang for their buck.” And when students are trained to teach each other well, the time costs may be net positive – in other words, more students will have more opportunities for active learning, allowing more students to learn more important material in less time.

When professors require students to “teach one” (analyze, edit, comment, revise, or conference with peers) outside of class, the time gains may be even more significant. When students have actively engaged with material outside of class (as opposed to listening or reading, more common forms of out-of-class assignments), it can be hypothesized that they may come to class with more nuanced questions and thoughts about the nature and substance of their work. If they are learning more outside of class because teaching is such a valuable learning experience, then a professor may spend class time on more sophisticated material, or material that may properly be the domain of the professor alone.

Deconstructing the Hierarchy

It is no secret that law schools – and, indeed, law firms – can be hierarchical places. Duncan Kennedy recognized a generation ago that faculty and students form a fundamental hierarchy, in which, “the students accept without question the teachers' views as truth.” Furthermore, Steve Sheppard has commented that Kennedy believes that “the institution attempts to legitimate its structural organization and values by formally presenting them to the student as intrinsic components of ‘thinking like a lawyer.’” Thus, the law school transmits the formal structure of the institution by preparing the student for hierarchical relationships (teacher-student is equated with partner-associate, judge-counsel, and lawyer-client) as well as by telling the student that acceptance of these relationships is necessary for effective lawyering.

The hierarchies inherent to law schools may discourage

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266 See supra notes 220-46 and accompanying text.
267 Id.
269 Guinier et al., supra note 1, at 69.
professors, particularly inexperienced professors, from allowing or encouraging students to teach other students. Some may be afraid of relinquishing their role in the hierarchy and thereby losing control of the classroom. Still, as Lani Guinier has noted, “[g]iven the high student-faculty ratio and the large classroom format, at least some of the learning that goes on in legal education must take place within informal faculty mentoring relationships or in peer-to-peer contacts. Large lectures alone cannot provide for the needs of students. In addition, these informal settings allow for more interaction and thus cater to a different kind of learning.”

Helpfully, many scholars note that peer teaching works best in an environment where the professor is closely supervising it.

**CONCLUSION**

Legal education experts have admonished the academy to incorporate more “real world,” immersive learning experiences to complement established law school teaching. To that end, legal education has a chance to expand its methods and incorporate trends that have been successful for other professional disciplines and for adult education generally. Medical education in particular has been successful in modifying its approach to experiential learning in order to help students develop critical thinking skills. The “see one, do one, teach one” approach has both academic, cognitive, and social advantages, and law professors can advance student learning, improve student enjoyment, and ingrain pivotal concepts into students’ minds. Using simulations, and

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270 Id. at 100 n. 183.
271 Fines, supra note 219, at 879. Fines does note the “risks” of allowing students more autonomy (“Surrendering some control does have some significant political implications . . . When students are given the power and responsibility to formulate their own learning tasks, they approach learning with greater flexibility and creativity and a greater sensitivity to nuance.” Id. at 899. But peer teaching can help to restructure the hierarchy: “Rather than viewing the relationship as one in which knowledge is given from teacher to student, the peer learner is more likely to see the process of working with another peer as a cooperative one in which both participants are actively learning.” Id. at 913.
272 See, e.g., Croskery-Roberts and Becker, supra note 215 at 290-91, 295-298.
273 See generally SULLIVAN ET AL., supra note 3.
274 Id. at 22.
samples will not only give students more context for their work and appeal to a wider host of students with different learning styles, but will facilitate more internalized learning that students can transfer to other assignments, classes, and to the effective practice of law.