August 20, 2011

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

Louis N. Schulze, Jr., New England School of Law

Available at: https://works.bepress.com/louis_schulze/3/
ALTERNATIVE JUSTIFICATIONS FOR ACADEMIC SUPPORT II: HOW “ACADEMIC SUPPORT ACROSS THE CURRICULUM” HELPS MEET THE GOALS OF THE CARNEGIE REPORT AND BEST PRACTICES

LOUIS N. SCHULZE, JR.*

ABSTRACT

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

I. INTRODUCTION

Legal education is indeed at a crossroads. For over a century, the legal academy has prepared students for the practice of law using

* Associate Professor of Law and Director of Academic Support, New England Law | Boston. My thanks to each of the ASP professionals who contributed to this piece, to Professors Elizabeth Bloom, Lawrence Friedman, and Jordan Singer for their insightful comments on earlier drafts, and to my excellent research assistant Melaney Hodge. I also am grateful to New England Law | Boston for its financial support of this work.
basically a static methodology.\textsuperscript{1} Traditionally, law schools’ sole endeavor was to teach students generally how to “think like a lawyer.”\textsuperscript{2} Training on how to be a lawyer, by contrast, often remained the tacit duty of a student’s first employer.\textsuperscript{3} Moreover, the teaching of the law itself, and its application to real cases, traditionally has been anything but explicit; the application of the classic Socratic method often left students with more questions than answers, and this result was considered desirable in that the cream of the law student crop was thus compelled to find answers on its own.\textsuperscript{4}

Despite the supposed desirability of the traditional approach, certain forces have arisen, however, that make these traditions impossible to maintain. The explosion of law school tuition in the last ten years\textsuperscript{5} has resulted in the “consumerization” of law students; the customers, it seems, now demand more than just inculcation on “thinking like a lawyer.”\textsuperscript{6} Meanwhile, legal employers bemoan the

\textsuperscript{1} Edward Rubin, \textit{What’s Wrong with Langdell’s Method and What to Do About it}, 60 VAND. L. REV. 609, 648 (2007) (stating that “[t]o rely on a model of education that was designed in the 1870s ... as the traditional approach to legal education does, denies us the benefit of the entire range of modern thought about the educational process and of the entire field of modern psychology that informs this area.”), quoted in Roy Stuckey, “Best Practices” or Not, \textit{It Is Time to Re-Think Legal Education}, 16 CLINICAL L. REV. 307, 320 (2009).


fact that law graduates pass the bar ill-prepared to handle lawyerly tasks wholly independent.\textsuperscript{7} The bottom line is that students and the practicing bar now demand that law schools do more to render students “practice ready.”

In response to these and other forces, two influential reports contemporaneously studied the continued viability of the legal education status quo: \textit{Educating Lawyers: Preparation for the Practice of Law},\textsuperscript{8} issued by the Carnegie Foundation for the Advancement of Teaching, and \textit{Best Practices for Legal Education: A Vision and a Road Map},\textsuperscript{9} published by the Clinical Legal Education Association. The Carnegie Report, based on site visits and interviews with law students and faculty, concluded that while mainstream legal education has many strengths, a great deal of reform is necessary.\textsuperscript{10} The Carnegie Report’s authors categorize what they see as imperative pedagogical goals into three “apprenticeships”: the intellectual and cognitive apprenticeship; the practical apprenticeship; and the apprenticeship of identity and purpose.\textsuperscript{11} They contend that mainstream legal education focuses heavily on the first apprenticeship, focuses too little on the last two, and calls for the improvement of the holistic preparation of law students by the integration of all of the apprenticeships in law school curricula.\textsuperscript{12}

But even while recognizing the emphasis in law schools upon the cognitive apprenticeship, the Carnegie Report criticizes the means by which most law schools attend to the intellectual training of lawyers.\textsuperscript{13} Similarly, Best Practices recognizes the gap in practical and ethical training in the modern legal academy but also details the fractured means by which law schools attempt to teach substance. Specifically, Best Practices critiques the legal academy for failing “to study and practice effective educational philosophies and techniques,”\textsuperscript{14} for permitting an environment that is “actually harmful to the emotional

\textsuperscript{7} See Clark D. Cunningham, \textit{Should American Law Schools Continue to Graduate Lawyers Whom Clients Consider Worthless?}, 70 Md. L. Rev. 499 (2011); see also Dilloff, supra note 3, at 341 (suggesting changes to the law school curriculum to prepare students better for the realities of practice).
\textsuperscript{8} Carnegie Report, supra note 2.
\textsuperscript{10} Carnegie Report, supra note 2, at 17.
\textsuperscript{11} Id. at 28.
\textsuperscript{12} See id. at 185-202.
\textsuperscript{13} Id. at 24.
\textsuperscript{14} Best Practices, supra note 9, at 107.
and psychological well-being of many law students, and for lacking sufficient opportunities for formative assessment. In short, Best Practices amplifies the Carnegie Report’s call for a fairly drastic change to the status quo of legal education.

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

Enter “Academic Support Across the Curriculum.” Most American law schools provide some type of academic support. At many law schools, Academic Support Programs (“ASPs”) are extensive and pervasive; at others, they are relatively modest. The

---

15 Id. at 111; see also Kennon M. Sheldon & Lawrence S. Krieger, Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883, 894 (2007).
16 Best Practices, supra note 9, at 239 (stating that “except perhaps in legal writing and research courses, the current assessment practices used by most law teachers are abominable”).
17 Patricia Grande Montana, Lessons from the Carnegie and Best Practices Reports: A Look at St. John’s University School of Law’s Street Law Program as a Model for Teaching Professional Skills, 11 T.M. COOLEY J. PROF. & CLINICAL L. 97, 110-11 (2008). In embracing the changes suggested by the Carnegie and Best Practices Reports, St. John’s University School of Law offers students an opportunity to participate in the Street Law Program. Id. at 99. During the Street Law Program, law students teach practical legal information to high schools students in Queens, New York. Id.
19 See, e.g., Andrea A. Curcio, Moving in the Direction of Best Practices and the Carnegie Report: Reflections on Using Multiple Assessments in A Large-Section Doctrinal Course, 19 WIDENER L.J. 159 (2009) (detailing Professor Curcio’s laudable attempts in her first year Civil Procedure class to integrate time-consuming formative assessment opportunities).
role of these programs has been in flux over the two decades of their existence and surely the financial pinch experienced by most law schools is leading to a cessation of resource expansion for such programs. As such, and as I have detailed previously, many ASPs may face the need to justify their existence. Because ASPs provide a positive and healthy environment for students and because these programs are already steeped in the fundamentals of effective educational philosophies and techniques, they provide a ready-made solution to many facets of the Carnegie and Best Practices call to reform.

Accordingly, the thesis of this article is that law schools can recognize the benefits of many of the positive changes suggested by these two reports by reconfiguring the current paradigm of academic support. While not abandoning ASPs’ fundamental role of assisting underperforming students and supporting the success of nontraditional students, “academic support across the curriculum” can help a law school: (1) increase opportunities for formative assessment; (2) make teaching explicit; (3) generate future lawyers who are “self-regulated learners”; (4) foster an environment where “faculty with different strengths work in a complimentary relationship” instead of a “collection of discrete activities without coherence”, (5) crystalize institutional intentionality and assist in institutional assessment; (6) support autonomy, provide a healthy learning environment, and “create a campus culture that is a positive force”, (7) fully commit to preparing students for the bar exam; (8) use multiple methods of instruction and reduce reliance on Socratic Dialogue and the Case Method; (9) train students on receiving and using feedback; (10) assess whether students learn what is taught; and (11) ensure that summative assessments are also formative assessments.

The article will prove that ASPs can attain these goals. Part II of this article defines the terms of this thesis by introducing the Carnegie and Best Practices Reports and discussing what is meant by

22 Carnegie Report, supra note 2, at 197.
23 Best Practices, supra note 9, at 7 (quoting GREGORY S. MUNRO, OUTCOME ASSESSMENT FOR LAW SCHOOLS 3-4 (2000)).
24 Carnegie Report, supra note 2, at 183.
“academic support across the curriculum.” In Part III of this article, I detail how academic support helps to meet the Carnegie Report’s proposals, and, in Part IV, I detail how it helps meet many of the goals of Best Practices. Part V raises the possible counterarguments to my analysis and, hopefully, sufficiently rebuts those concerns. Finally, Part VI draws general conclusions about the implementation of this strategy and the necessity of future research.

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

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

A. The Carnegie Report

“Educating Lawyers” is part of a series of comparative studies by the Carnegie Foundation for the Advancement of Teaching. The series examines how several professions educate their members: law, medicine, divinity, engineering, and nursing. The authors, who included both legal and non-legal academicians, conducted extensive observations at a wide variety of law schools and interviewed students, faculty, and administrators. The overall methodology was to compare the strengths and weaknesses in legal education against the education models of other professional schools and to view the quality of the legal academy through the lens of current knowledge.

26 Carnegie Report, supra note 2, at dust jacket.
27 Id. at 22.
28 Id. at dust jacket.
regarding learning theory.\textsuperscript{29}

The results are mixed. While complementing the legal academy on its unique and effective approach to inculcating legal knowledge in neophyte lawyers,\textsuperscript{30} the authors also critiqued the academy as being somewhat retrograde in terms of integrating instructional methods informed by modern knowledge of cognition.\textsuperscript{31} Also, one of the authors’ primary criticisms was to point out the legal academy’s general failure to integrate pervasive practical training or opportunities to immerse students in considerations of the social-ethical implications of practicing law.\textsuperscript{32} In short, law schools focus more on how to \textit{think} like a lawyer, too little on teaching how to \textit{lawyer}, and how to conceptualize what it is to be a lawyer. The Report thus categorizes these facets of professional education as “apprenticeships”: the cognitive/intellectual apprenticeship; the practical apprenticeship; and the apprenticeship of identity and purpose (or ethical-social apprenticeship).\textsuperscript{33}

1. \textit{The Cognitive Apprenticeship}

The cognitive apprenticeship “focuses the student on the knowledge and way of thinking of the profession.”\textsuperscript{34} This entails indoctrination of “the academic knowledge base of the domain, including the habits of mind that the faculty judge most important to

\textsuperscript{29} Id. at 2.
\textsuperscript{30} Id. at 185.
\textsuperscript{31} Id. at 186-87.
\textsuperscript{32} Carnegie Report, \textit{supra} note 2, at 188.
\textsuperscript{33} Id. at 28. The Carnegie Report denotes six tasks that law schools must achieve in preparing students for the cognitive, practice, and ethical-social apprenticeships:

1. Develop in students the fundamental knowledge and skill, especially an academic knowledge base and research;
2. Provide students with the capacity to engage in complex practice;
3. Enable students to learn to make judgments under conditions of uncertainty;
4. Teach students how to learn from experience;
5. Introduce students to the disciplines of creating and participating in a responsible and effective professional community; and
6. Create students who are able and willing to join an enterprise of public service.

\textsuperscript{34} Id. at 28.
the profession.”\(^{35}\) Law schools’ primary method of attending to the cognitive apprenticeship, or its “signature pedagogy,” is the case dialogue, popularly known as the “Socratic Method.”\(^{36}\) The purpose of the case-dialogue, its “deep structure,” is to teach legal reasoning.\(^{37}\)

Gradually, case by case, students discover that reading with understanding means being able to talk about human conflicts in a distinctively legal voice. The question-and-answer format models this translation process continually translating ordinary conflicts into the distinctive ‘frame’ defined by legal points of reference and the requirements of legal doctrine.\(^{38}\)

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

[Although the process of development parallels that of traditional craft apprenticeships, it is less obvious [in professional education] because the complex cognitive patterns of teacher-experts are generally not as explicit and are thus difficult for the student-novices to observe. Likewise, it proves difficult for teachers to discern errors and misunderstandings that may be occurring in the students’ minds. These difficulties are especially pronounced in large classroom settings such as those in which the case-dialogue method is often employed.\(^{39}\) ]

In addition to the disconnect inherent in the case-dialogue caused by high faculty-student ratios, law school’s signature pedagogy also distorts the nature of lawyering by creating a false dichotomy between doctrine and clients; the case-dialogue tends to posit the lawyers as “distanced planners or observers [rather] than as interacting

---

\(^{35}\) Id.; see also Kathleen M. Burch & Chara Fisher Jackson, Creating the Perfect Storm: How Partnering with the ACLU Integrates the Carnegie Report's Three Apprenticeships, 3 J. MARSHALL L.J. 51, 55-56 (2009).

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

\(^{36}\) Id. at 66.

\(^{37}\) Carnegie Report, \textit{supra} note 2, at 51.

\(^{38}\) Id.

\(^{39}\) Id. at 53.

\(^{39}\) Id. at 61.
participants in legal actions.” In so doing, it also “forces students to separate their sense of justice and fairness from their understanding of the requirements of legal procedure and doctrine.”

Another problem with the method law schools use to tend to the cognitive apprenticeship is the general failure to include proper assessment methods. The Carnegie Report details two failings in this regard. First, law schools tend to focus on summative assessments to the exclusion (or reduction) of formative assessment. “Summative assessment involves a snapshot judgment of what a student knows at a particular time and is often used as a tool to evaluate where a student stands in terms of achieving ultimate educational objectives or where the student stands with respect to others.” Meanwhile, formative assessment includes “opportunities to practice the knowledge and skills necessary to become an expert, followed by feedback on how well the student has mastered those skills.”

Although cognitive science experts seem to agree that formative assessment is a critical part of learning, law schools tend to focus on summative assessment; the Carnegie Report hints that reasons for this include the time-resource drain of formative assessment as well as the perception that law school’s testing function is more summative as a means by which to provide an explicit sorting method for employers.

40 Id. at 57.
41 Id. at 57.
42 Carnegie Report, supra note 2, at 189.
43 Judith Welch Wegner, Reframing Legal Education’s ”Wicked Problems”, 61 RUTGERS L. REV. 867, 886 (2009); see also Kramich et. al., supra note 2, at 393.
44 Burch & Jackson, supra note 35, at 71.
46 Id. at 57.

In fact, students learn best when given multiple opportunities of formative assessment, prior to the summative assessment - the final exam. The formative assessment opportunities need not be individually graded or included in the final grade, but the opportunity, followed by the feedback, is essential for effective learning and mastery of the skills needed for practice of the profession.

Id.
46 Carnegie Report, supra note 2, at 168.

The usual result of summative assessments is to rank, sort, and filter those being assessed. Certainly this is most students’ experience with the high-stakes exams given during the first year of law school, which have the
The second problem with law school assessments is that most classes, particularly those in the first year, include just one summative assessment, and that one exam accounts for a students’ entire grade for the course.\textsuperscript{47} Although some schools encourage professors to use multiple assessments, the predominant method is the end of semester (or year) single assessment. Despite the fact that some faculty members acknowledge that “exam-taking skills are learnable skills,”\textsuperscript{48} any professorial attempt to teach these skills explicitly is the exception rather than the rule, and “[n]one is part of a coordinated effort to work out the best use of assessment to improve the learning of law students.”\textsuperscript{49}

This seemingly ubiquitous industry-wide standard is decidedly detrimental to students on a number of levels. Single assessment regimes, when coupled with mandatory curves, are demoralizing, counterproductive, and polarizing.\textsuperscript{50} Students reported that intellectual engagement plummets after grades, resulting in their losing “the most valuable aspect of law school – learning.”\textsuperscript{51} It is crucial for the legal academy to start to appreciate just how truly aberrant this method is, compared to other systems of professional education.

2. \textit{The Practical Apprenticeship}

The second “apprenticeship” is the “practical apprenticeship.”

\begin{itemize}
\item The obstacles to improving this situation are quite real. There is evidence that law school typically blares a set of salient, if unintentional, messages that undercut the likely success of efforts to make students more attentive to ethical matters. The competitive atmosphere at most law schools generates a widespread perception that students have entered a high-stakes, zero-sum game. The competitive classroom climate is reinforced by the peculiarities of assessment in first-year courses. The ubiquitous practice of grading on the curve ensures that, no matter how talented or hard-working the students are, only a predetermined number will receive As. Such a context is unlikely to suggest solidarity with one’s fellow students or much straying from a single-minded focus on competitive achievement.
\end{itemize}
This mode focuses on forming the skills shared by competent practitioners. This includes training in important lawyerly tasks such as legal writing and drafting, taking and defending depositions, negotiating, oral argumentation, client counseling, and others. Legal writing classes and clinics often serve as the source for this mode of learning, and the Carnegie Report praised the pedagogical methods used in these contexts for their ample use of formative assessment and other powerful coaching and “scaffolding” techniques. In short, the practical apprenticeship is that which trains law students how to facilitate their ability to think like a lawyer into an ability to act like a lawyer.

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

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

52 Id. at 28.
53 Carnegie Report, supra note 2, at 174.
54 Id. at 87.
55 Id. at 194.
57 Carnegie Report, supra note 2, at 88. Although this certainly is not a new development, it is interesting that the informal norms of acquiring practical
skills-learning from the way law schools treat such classes. For instance, skills classes are often taught by faculty members other than those who teach doctrinal courses, and the skills instructors often have professional titles that differ from those of doctrinal faculty. Whether students know it or not, those who teach skills are often paid less by law schools and often have a relatively relegated status within the academy in terms of voting rights, tenure eligibility, and participation in law school governance. At many schools visited by the Carnegie Report’s authors, students commented that doctrinal faculty members viewed courses on lawyering skills as of secondary importance and intellectual value. Given these phenomena, it is hardly surprising that the authors of the Carnegie Report found the practical apprenticeship to be integrated into legal education in a less than optimal way.

3. The Apprenticeship of Identity and Purpose

The third apprenticeship is that of “identity and purpose” (or the “ethical-social” apprenticeship). The Carnegie Report loosely experience developed in a way that provides human capital cheaply to practitioners. When legal education migrated into the university and away from the previous regime of formal apprenticeships, one of the justifications for doing so was to end the exploitation of apprentices by practitioners. Stephen Ellmann, The Clinical Year, 53 N.Y.L. SCH. L. REV. 877, 885 (2008/2009). While paying such apprentices little to no compensation for their labor, practitioners often charged apprentices fees for the use of the books they used to conduct legal research for the practitioner. David S. Romantz, The Truth About Cats and Dogs: Legal Writing Courses and the Law School Curriculum, 52 U. KAN. L. REV. 105, 108-09 (2003). It seems that the modern informal dolling out of students to practitioners, without credit or pay, replicates the exploitation of yesteryear in a way that further crystallizes the hegemony of the haves over the have-nots. At least the apprentices of the 19th century common law error did not have to go $120,000 into debt AND be exploited by practitioners.

58 Carnegie Report, supra note 2, at 88; see generally Jo Anne Durako, Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing, 50 J. LEGAL EDUC. 562, 562 (2000) (discussing the disparities between legal writing and doctrinal courses and noting the gender implications of unequal pay).

59 See generally Durako, supra note 58 (discussing the disparate pay, job security, and titles of women and skills professors).

60 Carnegie Report, supra note 2, at 88; see also Deborah Zalesne & David Nadvorney, Integrating Academic Skills into First Year Curricula: Using Wood v. Lucy, Lady Duff-Gordon to Teach the Role of Facts in Legal Reasoning, 28 PACE L. REV. 271, 273 (2008) (describing the schism between skills and doctrine and stating that skills teachers are often not tenure-track, the credit allocation to their courses is minimal, “and the course is otherwise marginalized, thereby sending a message to students that such skill work is of secondary importance”).
associates this concept with professional responsibility, but in using the broader term of “professional identity,” the authors seem to imply a wider set of attributes than merely instruction on rules of permissible professional conduct. Indeed, in defining this term, the authors state that this apprenticeship “introduces students to the purposes and attitudes that are guided by the values for which the professional community is responsible.” The Report expressly acknowledges the false dichotomy in legal education between teaching the rules of professional conduct, on the one hand, and a broader discourse about what it means, morally and ethically, to be a lawyer. The Report finds that clinical legal education is the primary venue in which the broader discourse occurs, while the mandated “Professional Responsibility” course is where the narrower indoctrination occurs. Because the rules of permissible conduct are mandatory in law school and explicitly tested on the bar, while the broader discourse of ethics is haphazard and not required, the implications for students is that the academy values the former over the latter.

As such, the Report discusses a number of potential reforms for the integration of the broader concept of professional identity in legal education. First, the authors call for the pervasive integration of identity and purpose throughout the curriculum. They view the “relentless focus . . . on the procedural and formal qualities of legal thinking” as creating a severely unbalanced approach to the promotion of students’ growth into competent and responsible lawyers. They assert that many law faculty view instruction on

---

61 Carnegie Report, supra note 2, at 14.
62 Id. at 28.
63 To neglect formation in the larger public purposes for which the profession stands and their meaning for individual practitioners is to risk educating mere legal technicians for hire in the place of genuine professionals. Therefore, the goal of professional education cannot be analytical knowledge alone or, perhaps, even predominantly. Rather, the goal has to be holistic: to advance students toward genuine expertise as practitioners who can enact the profession’s highest levels of skill in the service of its defining purposes.
64 Id. at 129.
65 Id.
66 Id. at 147.
67 Carnegie Report, supra note 2, at 145. The authors report several statements by law students, which they find telling with regard to the impact of the relative absence of a
moral and “justice” as antithetical to analytical goals such as “rigor, skepticism, intellectual distance, and objectivity.”

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

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

As such, the Report notes that the most significant way that faculty model behavior is how we handle power and authority. “From the first day of class onward, law students are vividly aware of the power that faculty wield over their future prospects.” One professor interviewed framed this in terms of faculty serving as object-lessons in civility. As a result, the Carnegie Report suggests

---

68 Id. at 133.
69 Id. at 136 (citing AM. BAR ASSOC., SECTION OF LEGAL EDUC. AND PROF’L DEV., AN EDUC. CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 140-141 (1992)).
70 Id. at 156
71 Id. at 156-57.
72 Id. at 157.
73 Carnegie Report, supra note 2, at 157.
74 Id. at 157-58.
that in addition to formal training in professional responsibility, less formal but pervasive discourse on ethics, and practical training in ethical-social behavior in clinics, law school faculty should closely consider the way that they can impact students’ perceptions of what it means to “live a life in the law.”\textsuperscript{75}

\textbf{B. Best Practices}

“Best Practices” is a collaborative effort spearheaded by the Clinical Legal Education Association, with Roy Stuckey of University of South Carolina School of Law as the principal author.\textsuperscript{76} Included in the list of contributors are many clinicians, some doctrinal professors, and a few law school deans.\textsuperscript{77} As the document developed, the authors sought input from the legal academy by submitting multiple drafts to various organizations in the legal education field, such as AALS annual meetings, various listservs, and the ABA Section of Legal Education.\textsuperscript{78} The authors of Best Practices coordinated with a number of the authors of the Carnegie Report, integrating certain findings and conclusions from that study. As such there is some overlap between the two documents, which can best be described as a shared sense of the necessity of reform in the project of teaching future lawyers.

The purpose of Best Practices clearly is to spark “[a] serious, thoughtful reconsideration of legal education in the United States . . .”\textsuperscript{79} The authors state their presumptions at the outset that:

1. Most new lawyers are not as prepared as they could be to discharge the responsibilities of law practice,
2. Significant improvements to legal education are achievable, if the issues are examined from fresh perspectives and with open minds; and
3. The process for becoming a lawyer in the United States will not change significantly.\textsuperscript{80}

This last presumption is rather striking in contrast to its

\textsuperscript{75} Id. at 157.
\textsuperscript{76} Best Practices, supra note 9, at ix.
\textsuperscript{77} Id. at viii.
\textsuperscript{78} Id. at ix.
\textsuperscript{79} Id. at 1.
\textsuperscript{80} Id. at 1.
predecessors in that the first two seem to be set on the goal of achieving positive change while the last item seems to question whether that very goal is possible. The authors raise some optimism in a footnote, stating that if the final presumption is invalid, they encourage the profession to conduct a broad recalculation of how to train lawyers in the United States.81

The authors then ratchet up the tension by noting that modern criticisms of legal education are not aimed merely at peripheral concerns, but instead focused on fundamental flaws in the way the legal academy teaches new lawyers.82 Comments included to support this contention include: “. . . law school is empirically irrelevant, theoretically flawed, pedagogically dysfunctional, and expensive.”83 They note that: [studies of legal education] have universally concluded that most law school graduates lack the minimum competencies required to provide effective and responsible legal services.”84 They conclude from all of this that “[i]t is time for legal educators, lawyers, judges, and members of the public to reevaluate our assumptions about the roles and methods of law schools and to explore new ways of conceptualizing and delivering learner-centered legal education.”

The authors lay out their specific recommendations for achieving these objectives in seven distinct chapters, which each focus on a separate “big picture” issue. Chapter Two focuses on “Best Practices for Setting Goals of the Program of Instruction.” Key concepts in this chapter include committing to preparing students for practice; explicitly articulating educational goals; joining in the global movement towards “outcomes-focused education” 85; developing abilities to resolve legal problems effectively and responsibly; and assisting students in acquiring attributes of effective responsible lawyers (such as self-reflection and lifelong learning skills, intellectual and analytical skills, core knowledge and understanding

81 Id. at 1, n. 1.
82 Best Practices, supra note 9, at 2.
83 Id. at 2 (citing Gary Bellows, On Talking Tough to Each Other: Comments on Condlin, 33 J. LEGAL EDUC. 619, 622-23 (1983)).
84 Id.
85 Id. See also Janet W. Fisher, Putting Students at the Center of Legal Education: How an Emphasis on Outcome Measures in the ABA Standards for Approval of Law Schools Might Transform the Educational Experience of Law Students, 35 S. ILL. U. L.J. 225, 247 (2011) (stating that the “[American Bar Association] Standards for Approval of Law Schools will likely be revised to emphasize outcome measures”).

116
of the law, professional skills, and professionalism).\textsuperscript{86}

Other commentators have echoed these concerns. Critics have noted that legal theory and practical skills have consistently been estranged in the process of educating lawyers.\textsuperscript{87} Complaints from “consumers of legal education,” (i.e. students, judges, professors, and bar members) desperately urge legal institutions to instruct on the practical skills of lawyering more adequately.\textsuperscript{88} As far back as 1972, Chief Justice Burger chastised the legal community for failing to teach law students the basic attributes lawyers need to function.\textsuperscript{89} Professor Robert Rhee recently argued that the chief flaw in legal education is “the failure to produce more market-ready lawyers with skills and knowledge to add value more quickly in a complex and challenging practice environment.”\textsuperscript{90}

Chapter Three centers on “Best Practices for Organizing the Program of Instruction” and discusses achieving congruence, developing knowledge, skills, and values, integrating theory, doctrine, and practice, and teaching professionalism throughout the entire course of study.\textsuperscript{91} The core of the document addresses the concept of “delivering instruction,” devoting Chapters Four (delivering instruction, generally), Five (experiential courses), and Six (non-
experiential courses) to Best Practices for these topics.\textsuperscript{92} Specific recommendations on these issues are myriad, but important passages (for purposes of this article) include those on maintaining effective and healthy teaching and learning environments within the law school;\textsuperscript{93} using multiple methods of instruction to reduce the reliance on Socratic dialogue and the case method;\textsuperscript{94} and using context-based education throughout the curriculum.\textsuperscript{95}

Again, these concepts are not new critiques of legal education. Leading a recent initiative termed the humanizing movement, Lawrence Krieger and other scholars recognize an unhappiness and imbalance in the legal profession which initially develops in law school.\textsuperscript{96} The constant fear of a cold-call combined with the cutthroat learning environment is detrimental to most students’ ability to learn.\textsuperscript{97} Critics have classified the Socratic method as “classroom bullying, which demeans and belittles law students.”\textsuperscript{98} Commentators argue that, by focusing on the emotional and psychological well-being of students, teachers enhance a student’s ability to succeed.\textsuperscript{99}

Chapter Seven then discusses “Best Practices for Assessing Students Learning” and Chapter Eight deal with “Best Practices for Assessing Institutional Effectiveness.”\textsuperscript{100} Within these two chapters

\textsuperscript{92} Id. at 105-234.
\textsuperscript{93} Id. at 110-30.
\textsuperscript{94} Id. at 132-40.
\textsuperscript{95} Id. at 141-56.
\textsuperscript{98} Id. at 107.
\textsuperscript{100} Best Practices, supra note 9, at 235-61.
are important recommendations regarding the expansion of student assessment from purely summative to more formative ones; improving the validity and reliability of student assessments; collecting data to assess institutional effectiveness; and using that data to implement curricular improvements.

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

C. Academic Support Across The Curriculum

In coining the term “Academic Support Across the Curriculum,” I mean to imply a change in mindset and not necessarily a change in action. My intent is to suggest that ASPs, because they already are structured to focus on many of the pedagogical goals in the Carnegie and Best Practice Reports, can serve as the launching point for a broader movement to provide support to all law students. But that outcome depends on law schools’ willingness to conceive of academic support in a more holistic sense than might currently be the case. Therefore, this section describes both ASP as currently

101 Id. at 255-60.
102 Id. at 241-44
103 Id. at 266-70
104 Id. at 272-74.
105 Rogelio A. Lasso, *Is Our Students Learning? Using Assessments to Measure and Improve Law School Learning and Performance*, 15 BARRY L. REV. 73, 83 (2010). This article provides practical methods for establishing feedback assignments from students to teachers, such as hypothetical answers, self-graded computer quizzes, scored but not graded practice exams, and informal classroom assessments. *Id.* at 99-102. By supplying sufficient feedback, professors will ensure that students “take control over their own learning . . . .” *Id.* at 75.
107 Lasso, *supra* note 105, at 79.
constituted and as modified to become “ASP Across the Curriculum.”

1. **Current Forms of ASP**

Professor Sheilah Vance defines academic support as “a comprehensive program designed to help law students succeed academically through a combination of substantive legal instruction, study skills, legal analysis, legal writing, and attention to learning styles.”

Law school academic support methods nationally are diverse, however, because what works well for one school might be fruitless at another. As I have detailed elsewhere, the methods of law school academic support can be sorted into four temporal categories: (1) pre-law school academic support; (2) first-year academic support; (3) upper-class academic support; and (4) post-law school academic support.

Pre-law school academic support methods usually include programs occurring prior to the regular law school orientation. In essence, these programs constitute a more intensive version of law school orientation or intentionally strive to prepare students for what is ahead. Extensive programs, like the CLEO Summer Institute, show strong results in terms of preparing students for law school. Regardless of measurable results, however, these programs often have intangible but nevertheless important consequences, such as

---

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

109 See Schulze, *supra* note 21, at 278.


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


building community, easing students’ pre-law school apprehension, providing a head-start on doctrine, and facilitating the success of non-traditional law students.\footnote{114}{See Boylan, supra note 111, at 26 (calling for all law schools to adopt pre-law school programs to offset the disadvantage suffered by students lacking cultural exposure to the Socratic method).}

First year academic support methods are myriad. They include, among others, peer-based, structured study groups or tutoring, workshops on law school study skills (such as outlining, note-taking, and case-briefing), faculty-based academic counseling, weekly classes, mentoring programs, ASP libraries, and giving feedback on student work.\footnote{115}{Richard Cabrera & Stephanie Zeman, Law School Academic Support Programs – A Survey of Available Academic Support Programs for the New Century, 26 Wm. MITCHELL L. REV. 205, 209-10 (2000).} Some schools employ large classroom academic support instruction, some prefer one-to-one academic support, and still others combine these forms. Some schools integrate doctrine and skills, while others create a clear line of demarcation between the two.\footnote{116}{See Elizabeth Bloom & Louis N. Schulze, Jr., Integrating Doctrinal Material and Faculty into Academic Support Courses, 2009 THE LEARNING CURVE 13, 13, available at http://www.aals.org/documents/sections/academicsupport/LearningCurve200912Fall.pdf. One of the differences between traditional academic support and what I will describe as “ASP Across the Curriculum” is the elimination of the false dichotomy between doctrine and skills.} Some schools provide academic support only to students with incoming indicators of potential underperformance, some provide support only those who experience actual underperformance, and some provide ASP to all students.

Upper-class academic support is less common, but many schools are introducing programs to support second and third year students. For instance, Northeastern University Law School, the University of Connecticut School of Law, and New England Law | Boston offer upper-division classes available to students whose law school grade point averages indicate the potential for underperformance later in law school or on the bar exam.\footnote{117}{See Academic Success Program, NORTHEASTERN UNIVERSITY SCHOOL OF LAW, http://www.northeastern.edu/law/academics/curriculum/asp/index.html (last visited Aug. 7, 2011); Guide to Student Services, UNIVERSITY OF CONNECTICUT SCHOOL OF LAW, http://www.law.uconn.edu/student-handbook/guide-student-services (last visited Aug. 7, 2010); Academic Excellence Program, NEW ENGLAND SCHOOL OF LAW, http://www.nesl.edu/exceptional/academic_excellence.cfm (last visited Aug. 7, 2011).} Because these students are more advanced, a focus on introductory skills, such
as outlining and case-briefing, may be less warranted. Thus, these classes are often directly linked with doctrinal courses\textsuperscript{118} and aim to improve students’ legal analysis abilities and likelihood of passing the bar exam. Law school ASPs also have started to offer bar preparation courses for upper-class students. Because the American Bar Association recently altered its accreditation standards to permit law schools to grant credit for such courses,\textsuperscript{119} schools are intentionally using these classes to prepare students for success on state bar exams.

Finally, law schools even provide academic support after law school. This usually occurs in the form of continued assistance for students as they prepare for the bar exam. For many schools, this support occurs between graduation and a student’s first bar exam.\textsuperscript{120} Increasingly, though, law schools are reaching out to graduates who have failed the bar exam,\textsuperscript{121} but a barrier to successful intervention


\textsuperscript{119} The American Bar Association, which governs law school accreditation, resolved to delete Interpretation 302-7 of the Standards for Approval of Law Schools concerning bar examination preparation courses. See SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, REPORT TO THE HOUSE OF DELEGATES (2008), available at http://www.abanet.org/legaled/standards/noticeandcomment/%2044118-%201.DOC. That interpretation had provided that: “If a law school grants academic credit for a bar examination preparation course, such credit may not be counted toward the minimum requirements for graduation established in Standard 304. A law school may not require successful completion of a bar examination preparation course as a condition of graduation.” Id.; see also Leigh Jones, More Schools Consider Making Exam Prep Classes a Requirement, NAT’L L.J., Sept. 10, 2008, http://www.law.com/jsp/article.jsp?id=1202424397151.


\textsuperscript{121} See SECTION ON LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, MEMORANDUM TO DEANS OF ABA APPROVED LAW SCHOOLS, UNIVERSITY PRESIDENTS, CHIEF JUSTICES OF STATE SUPREME COURTS, BAR ADMISSION AUTHORITIES, DEANS OF UNAPPROVED LAW SCHOOLS, LEADERS OF OTHER ORGANIZATIONS INTERESTED IN ABA STANDARDS, STANDARDS REVIEW COMMITTEE:
seems to be such students’ reticence to admit their troubles with the bar exam. This stigma effect actually pervades much of the venture of academic support and is propagated by the appearance that academic support is reserved for those who have failed. The next section will detail how ASP Across the Curriculum, reconfigured for the benefit of all students, might shed that stigma effect.

2. ASP Across the Curriculum

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

First, one must understand the term "Across the Curriculum." This is not a novel idea or term on my part, but instead one that is already in use in academia and even in law schools. The "Across the Curriculum" moniker stems mainly from "Writing Across the Curriculum," a pedagogy that originated in Britain in secondary schools but migrated to the United States into colleges and universities. In turn, that pedagogy migrated to American law schools, and there is a substantial body of scholarship on the subject as well as at least a few law schools who have expressly adopted the "WAC" method. The general idea is that instead of teaching


123 Id. at 243.
writing in an isolated way, perhaps in the context of some material disconnected from students’ doctrinal learning, law schools teach writing pervasively not only in a specialized legal writing class but in doctrinal classes as well. This forges a link between skills and doctrine.

Most scholarship on the subject posits that there are two potential benefits of this approach. The first is that students will become better at the craft of legal writing if they are exposed to this professional task pervasively.124 This is the so-called “transactional” model.125 The second is the notion that students will learn the doctrine better if the learning method includes writing tasks.126 This is the so-called “writing-to-learn” model.127 Both the transactional and “writing to learn” model find support in the three modern education theories of behaviorism, cognitivism, and constructivism.128

So, what then is “ASP Across the Curriculum”? In other words, what changes are necessary in order to harness the potential of this underused resource? First, ASP Across the Curriculum focuses on the same learning theory support as the “writing to learn” model. The learning theories of behaviorism, cognitivism, and constructivism have several themes in common. One is that learning should begin at a basic level that is within the understanding of the student; the material should become more complex when the students have absorbed the material into their “preexisting knowledge base.”129

---

125 McCardle, supra note 122, at 242–43
126 Id. at 242.
127 Id. at 242.
128 Lysaght & Lockwood, supra note 124, at 94.
129 Id. at 93.
Another is that students should be exposed to multiple learning methods.\textsuperscript{130} A third theme is that students should receive feedback to develop a deeper understanding of the material.\textsuperscript{131} Finally, each learning theory advocates that students should be taught to be autonomous learners,\textsuperscript{132} not merely slaves to the “sage on the stage.”

ASP Across the Curriculum would have these same features. First, learning must start at a basic level and advance once students are ready. This connotes introducing students both to the type of learning they will encounter, the sources of that learning in law school, and the expectations that the law school has for how students must demonstrate their learning. In other words, ASP Across the

\textit{Id.\textsuperscript{130}} Id. at 93.

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

\textit{Id.\textsuperscript{131}} Id. at 93-94.

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

\textit{Id.\textsuperscript{132}} Id. at 94.

Metacognition suggests that students will enhance their learning by being conscious of how they learn. Metacognition as a theory did not begin to impact learning theory until after behaviorism’s decline in popularity. In fact, metacognition is incongruent with the behaviorist idea that the teacher controls the learning environment. Metacognition, however, facilitates mastery learning, and cognitivists believe that experts have more developed schemata within a domain because they are proficient at metacognition.
Curriculum would include instruction at the beginning of law school orienting students to their learning objectives and expectations; this explicit teaching is largely absent in law school, and students instead must figure out the learning process themselves.

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

Third, ASP Across the Curriculum would be the means by which students receive feedback, formative assessment, to allow them to comprehend the material more richly. Finally, ASP Across the Curriculum would act to support students’ growth into autonomous learners, allowing them to become practitioners who can begin practicing law, with minimal oversight, soon after law school. This final feature connotes that ASPs should provide support to all law students and not merely to those who struggle.

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

In this Part, I analyze how the changes detailed above can meet many of the calls for reform entailed in the Carnegie Report. To do this, I have synthesized four factors listed by that Report that dovetail with the features of ASP Across the Curriculum noted above. In short, ASP Across the Curriculum can: (1) provide opportunities for formative assessment; (2) help make teaching explicit; (3) generate future lawyers who are “self-regulated learners”; and (4) foster an environment where “faculty with different strengths work in a complimentary relationship” instead of a “collection of discrete activities without coherence.” I use examples of methods used in various ASPs throughout the nation to demonstrate how these practices help meet these reforms.

A. How ASP Across the Curriculum Provides Opportunities for Formative Assessment.

As previously discussed, formative assessment consists of “opportunities to practice the knowledge and skills necessary to become an expert, followed by feedback on how well the student has mastered those skills.”

Due to the high faculty-student ratios in law school, giving meaningful feedback to so many students in the context of complex materials is nearly impossible. As such, formative assessment is insufficiently present in the legal academy. Although many doctrinal professors would likely agree with the Carnegie authors that feedback is laudable, they are simply ill-equipped to provide it given time and resource constraints.

Enter ASP Across the Curriculum. A number of forward-thinking law schools provide formative assessment to students on their progress in doctrinal classes through the auspices of academic support. At New England Law | Boston, for instance, the Academic Excellence Program works together with doctrinal professors to create essay practice exam questions in students’ first semester of law school. Usually in Torts, the doctrinal professor and AEP Professor will jointly generate a one-hour long fact pattern, similar to one students might encounter on the final exam, and students have the opportunity to write an essay response during the weekly AEP class for each first-year section. The Torts and AEP Professors then co-teach a review of the essay and provide a model answer or “lines of analysis.” Students receive feedback on this exercise both through comparison to the model answers and also from the AEP Professors.

136 The exception to this rule is in legal writing and clinical education. It seems like a paradox that these two areas of the academy, that employ some of the best pedagogical methods, are two of the more relegated areas of the academy in terms of the status of its members.
137 See LOUIS N. SCHULZE, JR., ACADEMIC EXCELLENCE COURSE SYLLABUS (on file with author).
138 Id. Evidence of the pedagogical strength of this class is the fact that nearly 60-70% of a given section attends the weekly class in the fall semester despite the fact that it is voluntary and not-for-credit.
This method allows students to experience a law school exam, make their first attempt at completing an essay prior to graded exams, and to gauge how well they are performing at that stage in the semester.

Similarly, at Suffolk University Law School, the Academic Support Program provides direct faculty feedback to students on their midterm exam essays. The ASP at Suffolk Law begins in January to work directly with individual students who underperformed on midyear exams. Prior to meeting with a student, the ASP Professor will choose an essay that represents errors common in the student’s work and write a memo to the student detailing the analytical and structural weaknesses. The student will then review that memo prior to the meeting and ask questions of the ASP Professor during the meeting. In this way, the student not only receives direct feedback on analytical errors but also has the opportunity to ask questions about that feedback after reading the memo. This method, therefore, not only provides students with faculty guidance on how to improve, but also allows students to be an active part of appreciating the feedback.

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

B. How ASP Across the Curriculum Helps Make Teaching Explicit.

Another one of the problems identified in the Carnegie Report is that law schools have the tendency to make teaching less than

---

139 See Telephone Interview with Herb Ramy, Director of Suffolk Law Academic Support Program (June 8, 2011) [hereinafter Ramy Telephone Interview] (on file with author).
140 Id.
141 Id.
142 Id.
143 Id.
explicit by forcing them to intuit not only the law but also how they will be tested on the law.\textsuperscript{144} The traditional scenario had students showing up for law school, buying books, engaging in Socratic dialogue, and then being tested months later on how well they inductively taught themselves both the substance of doctrine and the process of legal analysis. Learning theory tells us that this method is less than positive in terms of optimizing students’ learning potential.\textsuperscript{145} Explaining learning objectives to students prior to learning enhances students’ ability to succeed.\textsuperscript{146}

The proponents of the traditional regime argue, though, that this method of instruction helps separate the wheat from the chaff; in other words, if a student is unable to determine what the learning objectives are and how to achieve them, she is not bright enough to practice law.\textsuperscript{147} Thus, legal educators do a service both to would-be lawyers, to law firms, and to future clients in ensuring that future lawyers not only know the law and can apply it, but can learn the law without costly start-up time or training.


\textsuperscript{147} Victoria S. Salzmann, \textit{Here’s Hulu: How Popular Culture Helps Teach the New Generation of Lawyers}, 42 MCGEORGE L. REV. 297, 299 (2011) (“If a student fails to grasp the material, it was his own deficiency that is to blame.”).
The problems with this thinking are myriad, though. First, the traditional approach fails to account for students lacking the legal-cultural background to prepare them to induce the learning objectives of law school. This, in turn, produces a practicing bar open only to those whose cultural or financial backgrounds prepare them to understand the nature of legal analysis. Second, the traditional approach fails to account for students who, if appraised of the learning objectives of law school, could quickly adjust, learn the law, and learn how to analyze legal problems. In short, it ignores the idea that students can be taught how to be the type of self-regulated learner who can succeed in law practice. Finally, the traditional approach fails even to recognize that it does a disservice even to those who could induce law school learning objectives independently; these students, if properly appraised of the learning tasks at the outset of law school, could achieve an even greater learning trajectory than under the traditional model. Accordingly, it is abundantly clear that the “hide the ball” method of law school pedagogy is logically and practically unsound.

The Carnegie Report states that making teaching explicit is difficult in law school because, unlike traditional craft apprenticeships where teacher-experts can model behavior in an obvious way, the legal expert-teacher’s complex cognitive pattern is not as easily observed. Nonetheless, law teachers can make teaching explicit by: “(1) modeling, by making the cognition visible; (2) coaching, by providing guidance and feedback; (3) scaffolding, by providing support for students who have not yet reached the point of mastery; and (4) fading, by encouraging students when they are ready to proceed on their own.”

Boston College Law School’s Academic Support Program was designed explicitly to help make the doctrinal teaching more

---

149 See Zalesne & Nadworney, supra note 60, at 274.
This disconnect is a critical failing of legal education: students in the first year should learn academic skills explicitly, rather than intuit them, so that they are better prepared in their second and third years to focus on the denser doctrines and inclusion of more practice-oriented skill.

Id.
150 Carnegie Report, supra note 2, at 61.
151 Id.
The ASP at that school employs a “full disclosure theory of law school,” meaning that the program is designed to introduce students up front to law school learning objectives, the expectations of the faculty, and the methods to achieve success. To achieve this goal, the ASP offers a series of workshops early in the fall semester describing the methods necessary for success in law school. The workshops are open to all first-year students and explicitly teach the class how to prepare for law school classes, how to outline a course in preparation for final exams, and how to take a law school exam. Because Boston College Law School is an elite, top-tier law school, its students have a history of academic and intellectual success. The law school created the ASP to explain explicitly to these successful students how law school learning objectives differ from those of students’ previous experiences: “The students here did well as undergraduates, but they did well at something very different – if we tell them how it’s different and how they can succeed, they will do well. If we don’t tell them how it’s different, that’s when they won’t meet their learning objectives.” The ASP employs successful upper-class law student tutors to coach first-year students in terms of their performance, both on substance and skills, and first-year students can meet with these tutors all year long or discontinue meetings once they master the material.

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

---

152 See Telephone Interview with Elisabeth Keller, Director of Boston College Law School Academic Support Program (June 9, 2011) [hereinafter Keller Telephone Interview] (on file with author).
153 Id.
154 Id.
155 Id.
156 Id.
157 Id.
makes teaching more explicit, thus satisfying another of the Carnegie Report’s recommendations.

C. How ASP Across the Curriculum Generates Future Lawyers Who are Self-Regulated Learners.

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

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

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

Self-regulated learning generally requires three steps in the “cycle” of learning: (1) forethought; (2) performance; and (3) reflection. Teaching students to employ this approach not only

---

158 Carnegie Report, supra note 2, at 172-73.
159 Id. at 173.
160 Schwartz, supra note 148, at 452.
161 Id. (quoting Barry Zimmerman, DEVELOPING SELF-FULFILLING CYCLES OF ACADEMIC REGULATION: AN ANALYSIS OF EXEMPLARY INSTRUCTIONAL MODELS, IN SELF-REGULATED LEARNING: FROM TEACHING TO SELF-REFLECTIVE PRACTICE 1 (Dale H. Schunk & Barry J. Zimmerman eds., 1998)).
162 Forethought consists of “task perception, self-efficacy, self-motivation, goal setting, and strategic planning.” Schwartz, supra note 148, at 455. The performance phase includes “(1) attention-focusing, (2) the activity itself (including the student’s mental process for performing the activity properly), and, most importantly, (3) the self-monitoring the student performs as she implements her strategies and begins to
makes them better students but will also make them better lawyers because they can continuously and repeatedly engage the self-regulated learning cycle to improve their skills and knowledge.

The ASP at Washburn University School of Law, dubbed the “Expert Learning Program” or “Ex-L,” focuses on achieving this goal. Ex-L begins with an intensive “First Week Program,” when students first arrive to law school which helps students build their thinking, case reading, and case briefing skills. Students are then placed in a small “law firm” of five to six students for purposes of the “Structured Study Group Program” which continues for the rest of the semester under the leadership of “a successful, carefully-trained and closely-supervised upper division law student.” But the upper-class leader is not a tutor; instead, this student serves to guide the law firm “to engage in the behaviors characteristic of successful law school study groups; stay on task; contribute equally to all group work; and collaborate in a way that encourages everyone to succeed in law school.” In this way, the law firm and its constituent members receive guidance in terms of proper approaches but still “develop autonomous, reflective learning skills needed to succeed in law school, on the bar exam, and in law practice.”

learn.” Id. The reflective phase includes “self-evaluation, attribution, self-reaction, and adaptation.” Id. 163 See First Week Assignment and Expert Learning Program (Ex-L), Washburn University School of Law, http://washburnlaw.edu/students/firstweek/expertlearning/ (last visited Aug. 18, 2011).

The program consists of [eleven] hours of classroom instruction taught by the students’ regular doctrinal professors and [eight] hours of structured study group cooperative learning experiences . . . . The students learn self-regulated learning, case reading and briefing, note-taking, basic legal civics, and they are introduced to client interviewing and counseling, outlining, applying and distinguishing cases, and applying rules to facts. Ex-L Program Description, http://washburnlaw.edu/facultystaff/curriculum/ex-lprogram.php (last visited Aug. 18, 2011). Importantly, this entire program is set in the context of one of the students’ doctrinal classes. Id. 164 First Week Assignment, supra note 163.

Id.

The leaders must read a 60-page training manual, and each must attend a six-hour summer training program. The leaders also meet with the Ex-L director one hour per week for additional training. The students evaluate their facilitators mid-semester, and each facilitator’s group sessions are visited at least twice per semester (all visits are unannounced) by a peer or by the director. Ex-L Program Description, supra note 163. 166 First Week Assignment, supra note 163.
of the program puts the onus on students to teach themselves the law, but still provides enough structure to help them find the most effective and efficient methods, the Ex-L program leverages the most powerful aspect of “self-regulated learner” theory.

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

The Carnegie Report noted that during the authors’ visits to law schools, faculty members stated that “exam-taking skills are learnable skills.”\(^{167}\) Still, they continued, efforts to teach these skills are hardly pervasive and systemic; instead “[n]one is part of a coordinated effort to work out the best use of assessment to improve the learning process of law students.”\(^{168}\) The Report noted that “[a]s in teaching for legal analysis and lawyering skills, the most powerful effects on students learning are likely to be felt when faculty with different strengths work in a complementary relationship.” What the Report contemplates, in implementing its theme of integrating different apprenticeships, is the coordination of different areas of the law school: doctrine, clinics, legal writing, academic support, and other facets. In doing this, a law school would harness the strengths from each area of the academy to create a synergy that would be more powerful than the sum of its parts. In other words, doctrinal professors could do well that which they were trained to do (doctrine and theory) and academic support professors could do well that which they are trained to do (learning theory and formative assessment), all for the benefit of student learning and all the while cross-pollinating

---

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

Ex-L Program Description, supra note 163.

\(^{167}\) Carnegie Report, supra note 2, at 163.

\(^{168}\) \textit{Id.}
the different skills between different faculty.

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

The methods of CUNY Law’s Professional Skills Center mirror this philosophy. In the first semester, the Center offers sessions for all students on skills necessary for academic success. These sessions “track the required first-year doctrinal classes,” meaning that the skills training are taught in the context of doctrinal materials. Similarly, the Center also offers exam review sessions that explicitly review not only the skills aspect of exam performance, but doctrine as well. These sessions are co-taught by ASP professors and doctrinal professors in a way that brings together those two groups’ strengths.

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

Each of the facets of CUNY’s Professional Skills Center has (at least) one thing in common: the integration of doctrine and academic support. This nexus creates a powerful learning tool for students in that they have the opportunity to develop lawyerly skills in the context of the doctrines they working to comprehend in their

170 Id.
171 Id.
172 Id.
173 Id.
174 Id.
175 Id.
176 Id.
177 Id.
In this way, CUNY’s Professional Skills Center helps meet the suggestions of the Carnegie Report by fostering an environment in which faculty with different strengths work in a complimentary relationship.

Unfortunately, these “contextualized” ASP classes are the exception and not the norm. In many law schools, ASPs are prohibited from teaching skills in the context of doctrinal materials, and the ASP is forced to teach important law school skills in some way that is independent from students’ current learning. I have discovered no scholarship attesting to the pedagogical justifications for such a policy, but I might suggest that such practices may be based on a perceived hierarchical status, whereby ASPs are seen as a bottom rung on the law school caste system, thus relegating their methods to being abstracted from the mainstream curriculum. This pedagogy serves no one. Luckily, the trend in legal education is towards the integration of doctrine and skills, and the number of ASPs utilizing a “contextualized” model is growing.

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

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

A. How ASP Across the Curriculum Helps Crystalize Institutional Intentionality and Assists in Institutional Assessment.

Best Practices spends a chapter discussing assessing
institutional effectiveness. On a related note, the Carnegie Report details the importance of “crystalizing institutional intentionality.” This section discusses these interrelated concepts.

1. How ASPs Aid in Assessing Institutional Effectiveness.

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

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

For instance, the SCALES program at the John Marshall Law School – Chicago uses outcome measures to assess the effectiveness

---

179 Best Practices, supra note 9, at 265.
180 Id.
181 Id. at 265-66.
182 Id. at 270.
of its pre-admissions academic support program.\textsuperscript{183} The SCALES program consists of two graded courses, in which at-risk students enroll in the summer before law school.\textsuperscript{184} Their permanent admission to the law school is conditioned upon successful completion of these two courses, and the program is designed to provide a foundation and context for first-year law school coursework.\textsuperscript{185} The SCALES program is intended to provide at-risk students with academic support while at the same time allowing them to demonstrate their potential to succeed in law school by performing well on two examinations.\textsuperscript{186} The faculty of the SCALES program collected qualitative and quantitative evidence of students’ experience in the program.\textsuperscript{187} The faculty also monitored the future success of SCALES students, including their bar passage (each of the thirteen successful SCALES students passed the exam).\textsuperscript{188} Importantly, the law school used this data to justify the retention of the program and the decision to change from a “sink-or-swim” pre-admission program to the current model. This use of a multitude of assessment tools in the SCALES program is evidence of ASPs’ ability to fulfill this facet of Best Practices’ call to action.\textsuperscript{189}

2. How ASPs Aid in Crystalizing Institutional Intentionality.

Relatedly, the Carnegie Report notes that law schools should make efforts to “crystalize institutional intentionality.” In essence, this means that law school faculties should develop the capacity to work together to leverage individual strengths as a means by which to achieve common objectives. This contrasts with what might be considered the traditional law school’s default mode of an atomistic, uncoordinated series of individuals working alone without parlaying

\textsuperscript{184} Id. at 310-11.
\textsuperscript{185} Id.
\textsuperscript{186} Id.
\textsuperscript{187} Id. at 332-33.
\textsuperscript{188} Id. at 320-21, 344.
\textsuperscript{189} For other examples of ASPs using assessment measures to improve program effectiveness, see generally Kristine S. Knaplund & Richard H. Sander, \textit{The Art and Science of Academic Support}, 45 J. LEGAL EDUC. 157, 159 (1995) (stating that “[o]ur [empirical] analysis of seven distinct academic support initiatives at UCLA shows that support can substantially and demonstrably improve both short-term and long-term academic performance, but the effects vary markedly across UCLA’s programs).
other faculty members’ complementary abilities.

New York Law School’s Academic Skills Program demonstrates this concept. That program offers a number of different academic support measures, but the “Principals of Legal Analysis” (“PLA”)\(^{190}\) class best demonstrates the notion of ASP acting to solidify institutional intentionality. With regard to the PLA class, students in the bottom third of the first year class after December exams enroll in this three-credit course.\(^{191}\) The mainstay of this course is feedback provided by Academic Skills Program faculty in nearly every class session.\(^{192}\) Students write answers to essay questions developed by the doctrinal professors from whom they are learning in other courses.\(^{193}\) The feedback focuses on students’ legal analysis ability and is intended to improve the students’ abilities substantially so as to improve their performance in doctrinal courses.\(^{194}\) Feedback from students after the course indicates that the program can make all the difference in a student’s ability to succeed in first year exams.\(^{195}\)

A great deal of coordination is required in this course between doctrinal professors and PLA faculty.\(^{196}\) As noted, doctrinal faculty create the essay problems that form the basis of the students’ work and the subsequent feedback.\(^{197}\) Although this takes faculty resources, it also “results in a faculty engagement in terms of improving students’ performance.”\(^{198}\) Thus, the course design directly impacts the institution’s implementation of its goal to help struggling students to succeed.\(^{199}\) An added benefit is the fact that the doctrinal professors subsequently release the essay problems to the entire first year class to provide additional practice work for exam preparation.\(^{200}\) The PLA course’s integration of doctrine, skills, and

---

\(^{190}\) See Telephone Interview with Kris Franklin, Director of New York Law School’s Academic Skills Program (June 23, 2011) [hereinafter Franklin Telephone Interview] (on file with author).

\(^{191}\) Id.

\(^{192}\) Id.

\(^{193}\) Id.

\(^{194}\) Id.

\(^{195}\) See Email from Anonymous Student to Dean Richard Matasar (on file with author).

\(^{196}\) Franklin Telephone Interview, supra note 190.

\(^{197}\) Id.

\(^{198}\) Id.

\(^{199}\) Id.

\(^{200}\) Id.
support, coupled with the use of formative assessment and a wide range of faculty members, really is the embodiment of a large number of the suggestions both in Best Practices and in the Carnegie Report.

B. How ASP Across the Curriculum Helps Support Student Autonomy, Provide a Healthy Learning Environment, and “Create a Campus Culture that is a Positive Force.”

Best Practices spends some time dealing with certain issues that have come to the attention of the legal academy in recent years. Chapter Four, which focuses generally on “Best Practices for Delivering Instruction, Generally,” includes a section entitled “Create and Maintain Effective and Healthy Teaching and Learning Environments.”

Included within this section are subsections on “Do No Harm to Students,” “Support Student Autonomy,” “Foster Mutual Respect Among Students and Teachers,” and “Have High Expectations.” These phrases are all key terms arising out of the “humanizing legal education” movement.

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

201 Best Practices, supra note 9, at 105.
202 Id. at 110-116.
increases between the second and third year of law school.

Reacting to these studies and the humanizing movement, Best Practices notes that the learning environments in the best teachers’ classrooms provide: “challenging yet supportive conditions in which learners feel a sense of control over their education; work collaboratively with others; believe that their work will be considered fairly and honestly; and try, fail, and receive feedback from expert learners in advance and separate from any summative judgment of their effort.”

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

“Support student autonomy,” another topic related to the humanizing movement, relates to the psychological concept of “self-determination theory” of human motivation. Self-determination theory includes three subsets: autonomy, relatedness, and competence. Autonomy support then includes three requisites:

207 Best Practices, supra note 9, at 110.
208 Id. at 110-114.
209 Schulze, supra note 21, at 290 (citing Barbara Glesner Fines, Fundamental Principles and Challenges of Humanizing Legal Education, 47 Washburn L.J. 313, 317 (2008)).
210 Best Practices, supra note 9, at 112.
212 Schulze, supra note 21, at 300-01 (citing Sheldon & Krieger, supra note 15, at 885). According to SDT, all human beings need to experience autonomy, competence, and relatedness to thrive and maximize their potential. Put another way, people need to feel that they are working or learning in a manner of their own choice.
(a) choice provision, in which the authority provides subordinates with as much choice as possible within the constraints of the task and situation; (b) meaningful rationale provision, in which the authority explains the situation in cases where no choice can be provided; and (c) perspective-taking, in which the authority shows that he or she is aware of, and cares about, the point of view of the subordinate.\footnote{Sheldon & Krieger, supra note 15, at 884.}

Best Practices thus suggests that law schools should:

- involve students in curricular and other decisions that affect students, give students as much choice as possible within the constraints of providing effective educational experiences;
- explain the rationale for teaching assignments and methodologies and assignments … ; and demonstrate in word, deed, and spirit that the point of view of each student is welcomed and valued.\footnote{Best Practices, supra note 9, at 114.}

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

The ASP at Suffolk Law explicitly seeks to provide means by which to “do no harm” to students. Although Best Practices recommends that law teachers take measures to avoid doing harm in the first place, the Suffolk ASP works to prevent any harm that might occur nonetheless. For instance, the ASP holds a workshop once a year aimed at helping students achieve balance while attending law school.\footnote{Ramy Telephone Interview, supra note 139, at 1-2.} To optimize the effectiveness of this session, the ASP professor directly explains how a lack of balance can undermine law school performance.\footnote{Id.} Bringing the topic to law school performance makes the workshop more directly relevant to students and makes the session more credible.\footnote{Id.} At crucial times in the semester, like when students’ legal writing papers are due or at a time when doctrinal professors are picking up the pace, the ASP sends emails to students

\begin{itemize}
  \item autonomy; they are good at what they do or at least can become good at it
  \item competence; and their work or learning has purpose and allows them to relate meaningfully to others (relatedness).
\end{itemize}
\footnote{Id.}
explicitly stating that it is normal to encounter stress during these times.218 This ensures students that their concerns and stress are not isolated, but in fact perfectly normal and shared by most other students.219 This message serves to undermine harm by de-isolating students who otherwise might feel that their apprehension is abnormal.220

Finally, the ASP professors at Suffolk Law take specific measures in dealing with underperforming students to undermine any harm occasioned by those students’ underperformance.221 For instance, where appropriate, the ASP professor might tell such a student that their academic difficulties are “absolutely fixable” or that the student “has been doing a ton of work, and it looks great.”222 Students respond to this by indicating that they look forward to ASP meetings because “at least they will feel better.”223 This humanizes the law school environment because it fills the students with a sense of confidence.

ASPs also enhance perceived autonomy support. As detailed in a previous article, ASPs’ focus on learning styles theory effectively individualizes the law school learning experience.224 While the first year of law school largely deprives students of choice provision, due to the mandatory curriculum at most schools and the fairly ubiquitous pedagogy of the case method, ASPs can nonetheless provide students with choice over how they choose to absorb the material. As detailed previously, the Study for Success Program at Oklahoma City University College of Law provides instruction on learning styles theory to individualize the law school learning process.225 In a series of workshops open to all students, attendees learn the scientific basis and theories behind preferred learning styles.226 They then use the

218 Id.
219 Id.
220 Id.
221 Ramy Telephone Interview, supra note 215.
222 Id.
223 Id.
224 See Schulze, supra note 21, at 316.
225 See E-mail from Chelsea M. Baldwin, Assistant Director, Academic Achievement, Oklahoma City University School of Law, to Louis N. Schulze, Jr., Assistant Professor of Law and Director, Academic Excellence Program, New England Law | Boston (July 7, 2010, 14:55 CST) [hereinafter Baldwin E-mail] (on file with author).
226 Id.
VARK instrument\textsuperscript{227} to determine whether they are visual, auditory, read-write, kinesthetic, or “multimodal” learners.\textsuperscript{228} The instructor then explains examples of how to accomplish certain law school study tasks in a more effective way, using one’s preferred learning style.\textsuperscript{229}

Moreover, the Academic Skills Program at Elon University School of Law includes instruction on personality typology to provide students with the ability to personalize their learning.\textsuperscript{230} By having students complete the Myers Briggs Type Indictor (MBTI) test, students are able to learn their personality type to help them understand their basic preferences “of each of the four dichotomies specified or implicit in Jung’s theory” and to identify and describe “the sixteen distinctive personality types that result from the interactions among the preferences.”\textsuperscript{231} Doing so then allows students to appreciate better how they, as individuals, learn new material, process information, and interact with others. In so doing, this method (as well as instruction on learning styles theory) helps provide students with choice in their learning, thus fulfilling the need for autonomy support.

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

Best Practices explicitly recommends that law schools commit to the objective of preparing students for the bar exam.\textsuperscript{232} This recommendation is controversial, and the issue of the degree to which law schools should directly involve themselves in preparing students for licensure tests has an interesting history in the legal academy. Explicit training for the bar exam (or explicit “training” in anything in law school) strikes some in the academy as cutting too close to a

\textsuperscript{227}Id.; see \textit{VARK A GUIDE TO LEARNING STYLES} (2010), http://www.vark-learn.com/english/index.asp.
\textsuperscript{228}Baldwin E-mail, \textit{supra} note 225.
\textsuperscript{229}Id.
\textsuperscript{230}See Telephone interview with Dr. Martha Peters, Elon University School of Law (June 29, 2010) (on file with author).
\textsuperscript{232}Best Practices, \textit{supra} note 9, at 15; see also Bard, \textit{supra} note 3, at 847 (noting how medical schools support their students’ licensure efforts while not becoming trade schools, and stating that legal “academics should teach and prepare their students for success by ensuring that they are adequately equipped to pass their state’s bar examination”).
“trade school” mentality. This mentality, in turn, is inconsistent with the “university model” of legal instruction, whereby the study of law is scholarly and the mindset comports with the scientific method’s ethos of critical analysis. Thus, one could say that the legal academy’s resistance to explicit bar training has been hard-wired into our collective psyche ever since Langdell took legal education out of the apprenticeship model and into the university.

Luckily, recent developments have caused the academy to become more moderate on this position, allowing a more holistic approach to legal education. The American Bar Association, the organization responsible for law school accreditation, deleted Interpretation 302-7 of the Standards for Approval of Law Schools regarding bar examination preparation courses. That interpretation


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

Id. 234 Russell L. Weaver, Langdell’s Legacy: Living with the Case Method, 36 VILL. L. REV. 517, 527 (1991) (stating that “Langdell viewed law as a ‘science’ and believed that it should be studied by scientific methods”); Brent E. Newton, Preaching What They Don’t Practice: Why Law Faculties’ Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy, 62 S.C. L. REV. 105, 127 (2010) (stating that “law professors increasingly have felt the need to prove themselves as legitimate academicians in the university lest they be perceived as mere teachers at a trade school”).


236 See Section of Legal Education and Admissions to the Bar, AMERICAN BAR ASSOCIATION, http://www.abanet.org/legaled/standards/noticeandcomment/2044118_201.DOC (last visited Aug. 7, 2011); see also Denise Riebe, A Bar Review for Law Schools: Getting Students on Board to Pass Their Bar Exams, 45 BRANDEIS L.J. 269, 272 (2007) (stating that “[t]he ABA’s new Interpretation 302-7 permits law schools to grant academic credit for bar preparation courses” and advocating “that law schools should provide bar preparation programs to meet their obligation to prepare students for admission to the bar”).
had stated that: “If a law school grants academic credit for a bar examination preparation course, such credit may not be counted toward the minimum requirements for graduation established in Standard 304. A law school may not require successful completion of a bar examination preparation course as a condition of graduation.”

With this change, law schools may now provide credit for such courses and require them for graduation. Oftentimes, these programs are housed within or coupled with ASPs.

The bar preparation program at the University of the District of Columbia, David A. Clarke School of Law is an example of a program, coupled with academic support, that demonstrates the thesis of this section as well as many of the other key points of this article. After several years of declining bar passage rates, UDC-DCSL revamped its bar support and academic support programs. This happened to coincide with the ABA’s changes in the permissible scope of for-credit bar preparation courses.

The new bar preparation course was more rigorous and included a review of key doctrinal subjects on the bar. This review provided an opportunity for students to refresh their recollection on these subjects so that the learning curve on post-graduation bar preparation would not be quite so steep. It also allowed instructors to enhance students’ bar exam test-taking skills by giving multiple choice and essay questions set in the context of bar-tested subject matters.

237 Id.
238 See Jones, supra note 119.
239 Derek Alphran, Tanya Washington, & Vincent Eagan, Yes We Can, Pass the Bar. University of the District of Columbia, David A. Clarke School of Law Bar Passage Initiatives and Bar Pass Rates-from the Titanic to the Queen Mary!, 14 U. D.C. L. REV. 9, 18 (2011). The program focused on many of the educational psychology theories I have noted previously in this article. For instance, the authors state that: Self-efficacy was a part of the self-regulated learning approach in the academic support program, focusing on students’ beliefs they could learn and succeed in law school. A shift or transformation in building a culture of success was important. Negative attitudes and pessimism affect motivation for learning. Low self-efficacy can also reduce a student’s belief in reaching his or her potential success. The program aimed at helping students believe in their potential success and in their ability to overcome obstacles to their learning by increasing opportunities for preparation to take the bar.

240 Id. at 19.
241 Id.
242 Id. at 18.
243 Id.
244 Id.
The program also administered a “bar exam survey” to seniors, for the purpose of gathering information about students’ plans, distributing information, and encouraging students to prepare for their bar studies well in advance. The program also provided students with materials, including videos, multiple choice questions, and essays, provided by commercial bar preparation companies. The program was based on, and closely coordinated with, various academic support methodologies already in place within the law school. The authors reported that bar passage results for students targeted by this program improved over the course of the years studied. This program is a solid example of fulfillment of Best Practices’ call for law schools to commit seriously to their students bar passage efforts.

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

Both Best Practices and the Carnegie Report critique traditional law school instruction for relying too heavily on the Socratic and case methods. Importantly, neither text advocates the elimination of these tools, but instead suggest that Socratic dialogue and use of the case method should be intertwined with other viable methodologies.

246 Id. at 21-22.
247 Id. at 23. Similarly, at New England Law | Boston, the law school created a three-credit bar preparation course called “Advanced Legal Analysis.” This course is available to all graduating seniors either in the fall semester (for those graduating in December and sitting for the bar examination in February) or in the spring (for May graduates sitting for the July bar examination). The course meets twice a week, and students receive instruction on study methods for the bar examination, substantive law on the Multistate Bar Examination, and practice problems for both multiple choice and essay problems. Each student meets individually with the Director of Bar Support Services and receives instruction on application issues, preparing for the Character and Fitness Evaluation, and studying for the Multistate Professional Responsibility Exam. Additional support is even available after graduation, as the Director of the program mentors students and provides additional instruction in the months before the bar exam. Since introducing this course in 2009, students have flocked to enroll in it. The introduction of this course facilitated an annual increase in the law school’s bar passage rate, culminating in a school record 93.6% pass rate in the summer of 2010 (the first year that all graduating students had access both to the Advanced Legal Analysis class in their senior years and the entire Academic Excellence Program in their first and second years).
248 Carnegie Report, supra note 2, at 186-87; Best Practices, supra note 9, at 132-41.
This section discusses some of the imperfections in these two methods and describes ASP measures that can help integrate other approaches to classroom learning.

The Socratic method is criticized for being an incomplete means by which to teach law. In terms of learning styles theory, the Socratic method only (arguably) connects with “aural” learners due its basis in communicative speech. But even those learners are often dissatisfied with the Socratic method because they prefer learning by lecture – a method in which the information is presented directly to the learner, rather than necessitating the extraction of salient points by the learner. Students tending towards other learning styles, by contrast, are even less aided by the Socratic method because it does not fulfill the kinesthetic, read-write, or visual elements desired by those learners. This problem is even more acute in recent years because, with the development of personal computers and other digital media, students entering law school are now more diverse in terms of learning style. While law students prior to 1990 usually were read-write learners, the “Millennial Generation” of law students has a far greater representation of diverse learning styles, because that generation grew up learning in an environment dominated by the Internet. Accordingly, the decades-old criticisms of the Socratic

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

Id. at 312 fn. 72. There is a substantial debate in the educational psychology field regarding learning styles theory. It is fair to say that many in that field believe that changing teaching methods to satisfy students’ diverse learning styles is empirically unsound. Moreover, as my colleague Professor Friedman wisely points out, the Socratic method is a unique means by which to focus students on particular skills unlikely to be fostered by other teaching methods.

I offer two defenses. First, like the Carnegie Report and Best Practices, I do not advocate for the wholesale abandonment of the Socratic method. It plays a useful role in educating future lawyers. Instead, I advocate for the expansion of teaching methods to include other means of penetrating students’ minds from different directions. The combination of the distinct advantages of the Socratic method with other approaches will optimize the degree to which students absorb material. Second, although debate rages with respect to whether changing teaching methods to accommodate learning styles is sound, there is no disagreement that students should study in a way that most effectively leverages their preferred learning style. Thus, ASPs should teach students how to study in ways that make use of these methods.

Salzmann, supra note 147, 299.

Madison, supra note 4, at 297; see also Joan Catherine Bohl, Generations X and Y in Law School: Practical Strategies for Teaching the “MTV/Google” Generation, 54
Another critique of the Socratic method is its negative impact upon women and students of color. In a groundbreaking study of female students at the University of Pennsylvania Law School, Lani Guinier, et al, found evidence that the Socratic method has the tendency to alienate women and make them feel “delegitimated.” This, in turn, led to a negative impact on these students’ performance levels. Similarly, scholars have criticized the Socratic method for its impact upon students of color, finding a number of flaws in its methodology as it pertains to African-American and Hispanic students in particular.


Guinier et al., supra note 135, at 3 (stating that “many women are alienated by the way the Socratic method is used in large classroom instruction, which is the dominant pedagogy for almost all first-year instruction”). See also Sari Bashi & Maryana Iskander, Why Legal Education Is Failing Women, 18 Yale J.L. & Feminism 389, 391-92 (2006). See generally Carole J. Buckner, Realizing Grutter v. Bollinger’s “Compelling Educational Benefits of Diversity”—Transforming Aspirational Rhetoric into Experience, 72 UMKC L. Rev. 877, 911 (2004) (stating that “critical race theorists argue there is no intrinsic necessity to the current methods of legal education, which have their genealogical roots in white legal culture”). But see Elizabeth Mertz et al, What Difference Does Difference Make? The Challenge for Legal Education, 48 J. Legal Educ. 1, 4 (1998). Mertz et al, found that:

Information about the effects of different kinds of discourse (for example, the effects of extended Socratic dialog versus other kinds of dialog) was mixed and complicated. On the one hand, the classrooms in which women participated more were the least Socratic; on the other hand, when a classroom was more Socratic, women performed better in extended dialogs than they did in shorter, more informal dialogs. Students of color again had highly variable patterning, with some of their highest and lowest participation rates occurring in relatively Socratic classrooms, and with both high and low participation rates in both smaller and larger classes, and across status hierarchies. Stressing nonessentialist aspects of our results, we also note that students of color did well in one of the heavily Socratic classes taught by a white male in traditional style. Our findings demonstrate that the Socratic method is not a single or clear variable along which one
Meanwhile, the case method has attracted criticism as well.\textsuperscript{257} First, the case method’s focus on appellate cases ignores the need to train law students to play a role in the litigation, not just to act as neutral observers of other lawyers.\textsuperscript{258} Second, because law students’ only window into the world of law practice is through appellate cases, they are left with the impression that all cases must resolve in the zero-sum-game, pugilistic arena of litigation, giving little attention to the notion of positive dispute resolution.\textsuperscript{259} Third, basing grades upon a semester in which the sole mode of learning is through reading cases fails to measure other important lawyerly skills, such as negotiation, judgment, and communication.\textsuperscript{260} Fourth, the case method “delude(s) its practitioners into believing that law [is] science, not policy, and that other scholarly disciplines ... [have] nothing to offer.”\textsuperscript{261}

\begin{flushright}
\textit{Id.}
\end{flushright}

\textsuperscript{257} See generally Benjamin H. Barton, \textit{A Tale of Two Case Methods}, 75 \textit{TENN. L. REV.} 233, 236 (2008) (stating that many of the criticisms of the law school case method “cluster around the idea that law schools could and should do more to prepare students for the actual practice of law than they currently do”); James Eagar, \textit{The Right Tool for the Job: The Effective Use of Pedagogical Methods in Legal Education}, 32 \textit{GONZ. L. REV.} 389, 390 (1997) (stating that “to be most effective, law teachers need to be aware of a wide range of different pedagogical methods available to them, and to use those methods which best meet the educational goals of the course they are teaching”).

\textsuperscript{258} Barton, supra note 257, at 235.


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

\begin{flushright}
\textit{Id.}
\end{flushright}

\textsuperscript{259} Id. at 239-240.

\textsuperscript{261} Andrew E. Taslitz, \textit{Exorcising Langdell’s Ghost: Structuring A Criminal Procedure Casebook for How Lawyers Really Think}, 43 \textit{HASTINGS L.J.} 143, 148 (1991). In other words, when Langdell developed the case method as a means by which to legitimate the “science” of academic inquiry into law, a social construct, it led subsequent generations of students to buy into that theory just a little too much – law students are left with the impression that there is always an empirically “right” answer, ignoring a legal realist theory that what law “is” is more complex than merely the scientific deduction of principles from legal texts.
Again, neither Best Practices nor the Carnegie Report advocate the abolition of these two methods, as they do have their strengths. Both texts do, however, support the notion of diversifying law school teaching to include broader methods to achieve broader goals.

Certain aspects of Charleston Law School’s Academic Success Program assist in diversifying teaching methods, thus helping to mitigate the problems noted above. As with many ASPs, Charleston’s program makes multiple weekly sessions available to first year students, which covers basic law school skills such as outlining, case reading, note-taking, etc. The program goes beyond that, however, by co-teaching sessions with doctrinal faculty. For instance, the academic success faculty co-teach an end-of-semester review session with torts faculty. This session provides students with the opportunity to read an essay exam question similar to one they might see on an exam and hear the torts professor and academic success professor discuss various issues related to the successful completion of the essay. The academic success professor, for instance, discusses issues pertaining to preparing to write the essay: time-management, issue-spotting, keeping issues separate, etc. The doctrinal professor then leads the class on a discussion of the doctrinal analysis of the problem.

Importantly, the academic success professor is tasked with explaining a “matrix” to the students that allows them to keep the parties, their claims, and their defenses separate for analytical purposes. The doctrinal professor then deconstructs the problem in

---

262 See generally Thomas D. Eisele, Bitter Knowledge: Learning Socratic Lessons of Disillusion and Renewal (2009); see also Ryan Patrick Alford, How do You Trim the Seamless Web? Considering the Unintended Consequences of Pedagogical Alternations, 77 U. Cin. L. Rev. 1273, 1274 (2009) (arguing that current attempts to reform legal education fail to consider the positive aspects of the Socratic method); Peterson & Peterson, supra note 203, at 379 (arguing that the Socratic method should not be abandoned, merely implemented differently).

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

264 Id.
265 Id.
266 Id.
267 Id.
268 Id.
269 Hoch Interview, supra note 263.
270 Id.
a pedagogical method comparable to a “cognitive think-aloud.”

This method is a means by which to allow students to see an expert in the field think through the problem, thus allowing students to emulate the task on the exam.

This type of cognitive think-aloud thus permits the doctrinal professor to teach in a way outside the usual Socratic and case methods, and the academic success professor’s use of a “matrix” demonstrates a cognitive schema that not only helps students answer essays better, but also allows them to visualize the doctrinal material in a new way.

Another way this school’s ASP diversifies teaching methods is thru presenting lunchtime movies related to the doctrinal materials students are learning. For instance, when students are learning the Equal Protection Clause in Constitutional Law, the program presents the film “The Road to Brown.” This 1989 documentary details the efforts of Charles Hamilton Houston in crafting the litigation strategy that led to the Supreme Court declaring educational segregation unconstitutional. Students thus have the opportunity to see the historical context for the doctrine they are learning in Constitutional Law. More importantly, they can see the litigation strategy of the parties and view the important lawyering lessons to be gleaned. For the purposes of this article, however, the importance lies in the fact that the Constitutional Law professors, who will attend the screening of the documentary and lead a discussion thereafter, would not have

---

271 Id. Professor Kowalski describes “cognitive think-aloud” as a “running monologue” in which she explains to students her “internal reasoning and decision-making” for writing or discussing a particular point. Tonya Kowalski, True North: Navigating for the Transfer of Learning in Legal Education, 34 Seattle U. L. Rev. 51, 98 (2010); see also Michael Hunter Schwartz, Using Course Webpages to Improve Student Learning Theoretical Justifications and Concrete Examples 3-4 (Jan. 26, 2007), http://ssrn.com/abstract=959682 (“A cognitive think aloud is a technique developed in other educational settings in which the instructor, often prompted by another expert colleague, traces her mental processes while engaging in a problem-solving enterprise such as legal analysis.”); see generally Michael Hunter Schwartz, Sophie Sparrow & Gerald Hess, Teaching Law by Design: Engaging Students from the Syllabus to the Final Exam 48, 121 (2009).

272 Hoch Interview, supra note 263.

273 “Schemas are ‘critical building blocks of the human cognitive process.’ They permit us to process the never-ending amount of information we encounter each day.” Leah M. Christensen, The Psychology Behind Case Briefing: A Powerful Cognitive Schema, 29 Campbell L. Rev. 5, 11 (2006).

274 Hoch interview, supra note 263.

275 THE ROAD TO BROWN (Univ. of Va. 1989).

time in class to engage in this effort. In this regard, then, the academic success program allows these professors to teach Equal Protection in a way other than the traditional Socratic and case methods, thus meeting the calls to reform of the Best Practices text.

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

Best Practices also recommends that law schools train students on receiving and using feedback. In addition to the positive impact this would have on students’ learning trajectories, in the field of law it would also have a positive impact on their future careers as lawyers; new lawyers must learn quickly how to interpret and implement feedback from senior lawyers, judges, and clients.

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

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

One of the facets of this course is teaching students how to

---

277 Best Practices, supra note 9, at 125.
279 Id.
280 Id.
receive and use feedback.\textsuperscript{281} Based on the concept that “our thoughts, feelings, behaviors and perceptions influence each other,”\textsuperscript{282} the course aims to give students a forum to engage in a discourse about the subconscious impact that their perception of each other’s behavior has on their interactions.\textsuperscript{283} In this way, students can strengthen their ability to portray themselves in a way that benefits their goals in the practice of law – in negotiations, in litigation, and in other settings.\textsuperscript{284} For instance, Professor Rosenberg gives the hypothetical example of a young associate who, upon being assigned a research task by a partner, fails to ask follow-up questions.\textsuperscript{285} Based on the partner’s demeanor, the associate perceives that the partner seems extremely rushed and that any questions from the associate would annoy the partner.\textsuperscript{286} Lacking adequate instruction, the associate then works until 2:00 a.m. on research the partner ultimately deems useless, and the relationship between the two lawyers fractures, as both perceive the other as failing to communicate adequately.\textsuperscript{287} The Interpersonal Dynamics for Attorneys course aims to make these subtle issues more obvious and to help train students on how to avoid this negative scenario.\textsuperscript{288}

Similarly, ASPs can help students overcome weaknesses in receiving and using feedback from professors. In this way, the student-professor relationship serves as a foil for the student’s later relationships with senior lawyers at the start of her career. In the ASP at Boston College Law School, for instance, student tutors provide a significant amount of the academic support at the law school.\textsuperscript{289} These student tutors are successful upper-class students who meet individually with first-years who either self-select after the ASP orientation or who are referred for support by the Dean of Students or faculty.\textsuperscript{280} The student tutors receive training on how to prepare first year students for their meetings with doctrinal professors in the wake of poor performance or even just regular meetings with faculty.\textsuperscript{281}

\begin{footnotes}
\item[281] Id. at 1244.
\item[282] Id. at 1240.
\item[283] Id. at 1245.
\item[284] Rosenberg, supra note 278, at 1245.
\item[285] Id. at 1227-28
\item[286] Id.
\item[287] Id.
\item[288] Id.
\item[289] Keller Telephone Interview, supra note 152.
\item[280] Id.
\item[281] Id.
\end{footnotes}
The purpose of this preparation is to fill the gap between the students and the faculty: faculty report that underperforming students sometime come to see them without the ability to articulate cogent questions; and meanwhile students report that they are so lost in the course that they do not even know what questions to ask.\textsuperscript{292} The preparation by the upper-class tutors bridges this gap by identifying the underperforming student’s fundamental problems and helping them develop questions to facilitate a meaningful interaction with doctrinal professors.\textsuperscript{293} In this way, this method acts to prevent a miscommunication similar to the scenario detailed by Professor Rosenberg in his piece on interpersonal dynamics.

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

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

As noted previously, both the Carnegie Report and Best Practices extensively discuss the fact that law schools could be doing a better job at providing formative assessment for students. Best Practices describes formative assessment as “purely educational,” arguing that such assessment should be conducted throughout the course.\textsuperscript{294} Formative assessments help both students and teachers

\textsuperscript{292} Id.
\textsuperscript{293} Id.
\textsuperscript{294} Best Practices, \textit{supra} note 9, at 255.
determine the proficiency of their current tactics without the dire consequences of summative assessment.\textsuperscript{295} While summative assessment is essential to provide the public with lawyers with “basic levels of competence,” formative assessment is necessary to ensure that students have at least the opportunity to succeed after taking the time to evaluate their current methods of absorbing the information.\textsuperscript{296}

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

For instance, at Brooklyn Law School, the Academic Support Program uses students’ summative assessments as formative assessment. Using both midterm exams and even final exams, the ASP director meets individually with students who underperformed.\textsuperscript{297} First, she has the students read an “A” answer to the same exam.\textsuperscript{298} She then has the underperforming student deconstruct the “A” answer to find the “IRAC” in it.\textsuperscript{299} Having found that organization in the strong essay, the underperforming student is asked to deconstruct her own answer in an attempt to locate the organization by means of IRAC.\textsuperscript{300} Usually, students are unable to do so, and the ASP director then asks the underperforming student to reconstruct her own answer to confirm with IRAC.\textsuperscript{301} The ASP director then asks the underperforming student to deconstruct the rest of her essay for other differences between it and the strong answer.\textsuperscript{302} The student finds these inconsistencies and is encouraged to write more practice essays adhering to the newly-found aspects of a strong essay.\textsuperscript{303} Because students diagnose their own problems, the ASP director tells them that they have the ability to do well going forward.

\begin{footnotes}
\footnotetext{295}{Id. at 256.}
\footnotetext{296}{Id. (citing the Carnegie Report, supra note 2, at 242).}
\footnotetext{297}{Interview with Linda Feldman, Director of Academic Support, Brooklyn Law School, June 13, 2011 [hereinafter Feldman Interview].}
\footnotetext{298}{Id.}
\footnotetext{299}{Id.}
\footnotetext{300}{Id.}
\footnotetext{301}{Id.}
\footnotetext{302}{Id.}
\footnotetext{303}{Feldman Interview, supra note 297.}
\end{footnotes}
because the student figured out how to do it right. The method is even more effective when, as is the case at Brooklyn Law, the doctrinal professor also gives students feedback on how their essays could have been stronger.

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

V. A FEW COUNTERARGUMENTS TO MY PROPOSAL AND THEIR REBUTTALS

Having defined “Academic Support Across the Curriculum” and having provided a number of examples of how this concept can help law schools meet the recommendations of the Carnegie Report and Best Practices, I turn now to articulate and address some potential counterarguments to these ideas. I am sure that this will not be an exhaustive list, and I am also confident that my rebuttals may not fully satisfy every reader. My intent with this section, instead, is to provoke discussion within the academic support community, and the legal education community more generally, on how to reconceptualize academic support as a means by which to help accomplish many of the goals of Carnegie and Best Practices.

304 Id.
305 Id. An important facet to this particular story is that at many schools ASP professionals would not be “permitted” to give feedback to students using students’ own exams. Moreover, at many such schools, doctrinal professors would not fill in this gap by themselves providing the feedback; the exams would just sit dormant, unable to assist students on improving their performance. This type of policy, likely predicated implicitly on antiquated notions of hierarchy rather than any pedagogical logic, denies students the opportunity to improve, creates a less effective learning environment, and dehumanizes the law school experience for students. By contrast, Brooklyn Law’s forward-thinking method serves as an object-lesson to students about how the faculty and administration seek to enhance students’ learning experience.
A. Academic Support Across the Curriculum is Merely “Additive” and not “Integrative.”

First, one of the overarching themes of the Carnegie Report is that, unlike the response to the earlier MacCrate Report, law schools should integrate the three apprenticeships – cognitive, practical, and professional – into all aspects of legal education. Thus, instead of adding a single, mandatory “Professional Responsibility” or “Legal Writing” class to the curriculum, law schools instead should teach practical skills, doctrine, theory, and professionalism pervasively throughout the curriculum.

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

But, my suggestion is different. I suggest that law school ASPs reconceptualize around the notion of pervasive and integrative support of students’ learning. For instance, the programs should be pervasive in that they are open to all students throughout their law school careers (as is the case in the program at New England Law | Boston),\(^{306}\) rather than just open to certain students in their first year. The programs would be integrative in that, instead of being set apart from doctrinal instruction, they would instead be transparently integrated by means of such things as co-teaching sessions with doctrinal faculty (such as the case at Charlotte Law School),\(^ {307}\) using exams from doctrinal courses as formative assessment (as is the case at Brooklyn Law),\(^ {308}\) or coordination between academic support and doctrinal faculty for the benefit of both constituencies (such as the PLA program at New York Law School).\(^ {309}\)

In fact, truly integrating the three apprenticeships would mandate not just academic support, but, as I have framed it, ASP Across the Curriculum. Implementing ASPs divorced from other aspects of the curriculum, cordoned off from certain students, and invisible to

---

\(^{306}\) See supra notes 117-119 and accompanying text.
\(^{307}\) See supra notes 263-272 and accompanying text.
\(^{308}\) See supra notes 297-305 and accompanying text.
\(^{309}\) See supra notes 190-194, 196-200 and accompanying text.
doctrinal faculty would be a waste of the potential for transformative improvements for law students, law schools, and faculty.

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

ASPs originated in law schools in part as a means by which to dedicate support services for minority students.\textsuperscript{310} Later, ASPs broadened to provide services for other students.\textsuperscript{311} After this change, though, the central mission of most ASPs was to help underperforming students to improve their performance and succeed in law school. One could argue that by implementing an “ASP Across the Curriculum” model, with the additional roles of co-teaching with doctrinal faculty, orienting all new students to the learning objective of law school, and other tasks, ASP professionals would no longer have time to focus on minority students or underperforming students. As a result, underperforming students would no longer directly benefit from the individual attention currently provided by ASPs, law schools would academically dismiss more students, and thus many more students would leave law school with a year’s tuition in debt and no degree to obtain employment.

This is a valid argument, and there is no easy answer to the reality that law schools lack inexhaustible funds to hire more and more teachers. In fact, the Carnegie Report struggles with this same conundrum.\textsuperscript{312} Nonetheless, the enhanced role of academic support that I propose does not necessitate an “either/or” choice. In some programs, for instance, the ASP starts in students’ first year by spreading resources fairly broadly, then focusing on underperforming students as they progress in law school. For instance, at New England Law | Boston, the entire class has access to the fall course called “Academic Excellence,” which introduces fundamental law school skills, explicitly teaches legal analysis, and overtly prepares students for success on exams. In the second semester, the same class is still available to all students, but underperforming students are invited to take part in regularized, individual meetings with academic support faculty to create and facilitate study plans, give feedback on


\textsuperscript{312} Carnegie Report, \textit{supra} note 2, at 190.
performance, and prepare for spring exams. Finally, in students’ third semester, only students within a certain portion of the class may enroll in the two-credit “Legal Analysis” class which intentionally sets out to enhance the performance of these specific students. In this way, this ASP roughly equates to “ASP Across the Curriculum” by co-teaching with doctrinal professors, coordinating instruction with doctrinal faculty, and integrating doctrinal exams into academic support. While not the optimal solution, this brand of ASP Across the Curriculum better meets the needs demonstrated by the Carnegie Report and Best Practices.

VI. CONCLUSION

There are (at least) two contestable presumptions implicit in law schools. The first is that if you sit one hundred students in a room, give them case books, and test them at the end of the year, they will “figure out” what is expected of them. The second is that academic support must be dedicated strictly to those who struggle in law school. The point of this article has been to reconfigure these presumptions and suggest that “academic support across the curriculum,” explicitly supporting the learning of all students, can help counterbalance the impact of the traditional presumption that students can “figure it out” themselves.

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