Integrating Theory and Practice in a Competency-Based Curriculum: Academic Planning at the University of Montana School of Law

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INTEGRATING THEORY AND PRACTICE IN A COMPETENCY-BASED CURRICULUM: ACADEMIC PLANNING AT THE UNIVERSITY OF MONTANA SCHOOL OF LAW

Gregory S. Munro*

I. Introduction

If you want to go from New York to San Francisco, you’re not likely to get there soon by voyaging to Rio de Janeiro. Maybe you should go to Rio, even if your ultimate destination is ‘Frisco; for, when you arrive in ‘Frisco, you’ll be a wiser citizen, thanks to the knowledge gained on that detour. But if your final goal is ‘Frisco, then ‘Frisco ought to be somewhere on your itinerary. On the itinerary of most university law schools you’ll find no mention of a trip, not even of a side-trip, to the court-house or to real everyday lawyerdom. The student’s travels consist almost entirely of detours.

—Jerome Frank

II. Scope

This article discusses development of a practice-referenced law school curriculum with particular emphasis on the role of stated competencies in preparing law students for practice. The article analyzes the process and problems inherent in the implementation of a competency-based curriculum with specific reference to the Academic Planning Project underway at the University of Montana School of Law.

III. Background

A. The Continuing Call for Change in Legal Education

Recently, 150 representatives of sixty American law schools, accredited by the American Bar Association (ABA), met in St.

* Assistant Professor and Director of Professional Skills, University of Montana School of Law; J.D., University of Montana. The author, in reporting the development of the curriculum and competencies at the University of Montana Law School, neither claims credit for the vast changes undertaken by the faculty, nor presumes to speak for them in reporting the results, which are a credit to the professors and deans who have engaged in the Academic Planning Project at the Law School during the past decade.

Louis, Missouri, for a conference entitled, "Making the Competent Lawyer: Models for Law School Action." The representatives, mostly law school deans and associate deans, met to discuss the relation between legal education and legal competence, perhaps an odd topic to those who assume that the two go hand in hand. But the conference reflected the ABA's concern about the perceived growing incoherence between American legal education and the competence of the new lawyers entering the profession in this country. Since the early 1900s, the ABA, the principal professional organization for this nation's practicing lawyers and the primary accrediting agency for American law schools, has expressed concern about the preparation of law students for the practice of law.

Early in this nation's history the "apprenticeship" system evolved as the primary method of legal education only to be replaced, about a century ago, by university-based law schools. The "apprenticeship" system was based on the British "Inns of Court" and involved the tutoring and, perhaps more importantly, the mentoring of the fledgling lawyer by a master with substantial experience in the law. This system emphasized the training of lawyers for the representation of individual clients.

In 1784 Judge Tapping Reeve founded Litchfield, the first private American law school. As a class, the private law schools that followed Litchfield differed from apprenticeships in two ways: (1) The students studied in a group, and (2) a teacher interpreted what the students observed in their daily contact with lawyers and the courts. During the nineteenth century, university-based law schools appeared, coexisting at first with the apprenticeship system and the private law schools, while steadily gaining influence as the demand for representation of corporate and institutional clients increased in the United States. In 1870 Dean Langdell at Harvard Law School introduced the casebook method for the "scientific" study of law, a method destined to dominate legal education in the United States for the next century. The study of law as a science assumed that doctrinal analysis of cases would disclose certain immutable principles, and that the graduate armed with knowledge of these principles was prepared to enter law practice. As the demand for lawyers increased with the growth of corporate America, this system flourished. Eventually, law schools from coast to coast emulated Harvard, adopting whole curricula consisting almost entirely of appellate case study.

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3. Frank, supra note 1, at 1312.
4. For an intriguing insight into the "brilliant neurotic" behind this method, see id.
Most lawyers reading this article today were trained under the casebook method and entered the legal profession equipped with the rules and theories of cases and the analytical and synthetic skills that are developed in studying appellate cases. While their law school curriculum exposed them to formal legal research and writing, it did not emphasize the application of theory or the development of professional skills. Nevertheless, the profession appears to flourish.

The ABA and a significant number of educators, however, have questioned the casebook method as the preeminent pedagogy for teaching lawyers. As Van Alstyne, Julin and Barnett argue in their book, The Goals and Missions of Law Schools, the Langdellian scientific method assumes responsibility for only one skill: analytical reasoning. Even the development of students’ analytical reasoning abilities is constrained by the almost exclusive reliance on the study of appellate cases. According to these authors, the end product of such law school education is a graduate who is a “generalist,” having a broad, general analytical background in the law and lacking any ability to apply legal theory. The development of professional skills and the ability to apply legal theory must occur after the graduate enters practice, and then it occurs at the expense of the clients.

Van Alstyne, Julin and Barnett are the latest in a long history of critics of the casebook method. Early in this century, Josef Redlich, an Austrian scholar, criticized the casebook method noting that: (1) faculty writing of casebooks came at the expense of scholarship in legal science and such areas as legal history and comparative law; and (2) the casebook method displaced courses and lectures dealing with fundamental concepts and perspectives on the law. In 1921 a formal report commissioned by the Carnegie Foundation at the request of the ABA analyzed the casebook method and warned of its educational shortcomings. In the 1930s and 1940s, Jerome Frank, the noted educator and Second Circuit jurist, made an avocation of pleading for abandonment of the Langdellian method, likening it to restricting the education of “future horti-
culturists” to the study of “cut flowers.” Any review of the literature on legal education of the last twenty years will reveal a rising chorus of voices demanding that the schools, in Roger Cramton’s words, accept “the responsibility that comes with being one of the gatekeepers to the profession: the obligation to provide a basic grounding in the knowledge, skills, and attitudes which are fundamental to most activities undertaken by lawyers.”

Since the early 1900s, the ABA has also expressed its concern with the state of legal education. In 1920, after the Flexner Report made an incisive analysis of the problems inherent in medical education in the United States, the ABA requested that the Carnegie Foundation fund a similar study of the condition of legal education in the nation. The resulting report, which appeared in 1921, decried the weaknesses inherent in the homogenous methodology of American legal education already evident at that time. In 1979 an ABA Task Force studying the role of law schools with regard to lawyer competency issued recommendations for broadening the skills imparted to law students as well as the methods used. The recommendations from the ABA Task Force report have become central themes in the present movement for reforming legal education. Recently the ABA, perceiving a growing dichotomy between law school education and the practice of law, formed another task force whose very name, “Task Force on Law Schools and the Profession: Narrowing the Gap,” suggests the problem perceived by the ABA. The goal of this Task Force is “to serve as a catalyst to stimulate improved preparation of law graduates for participation in today’s legal profession.”

his presentations contained in that article.

11. Frank, supra note 1, at 1313.


13. Cramton, supra note 12, at 323.

14. A. Flexner, Medical Education in the United States and Canada (Carnegie Found. for the Advancement of Teaching Bull. No. 4, 1910).

15. Professional Education, supra note 9, at 5.

16. A. Reed, Training for the Public Profession of the Law (1921). See also Professional Education, supra note 9, at 5-7.

17. ABA Sec. of Legal Educ. & Admissions to the Bar, Lawyer Competency: The Role of the Law Schools (1979) [hereinafter Cramton Report].

18. MacCrate, Task Force on Law Schools and the Profession Formed, Syllabus,
Traditional legal education avows its purpose as training students to "think like lawyers," but shuns any responsibility for professional practice competence. While presuming that doctrinal analysis of appellate cases teaches one to think like a lawyer, traditional legal education assumes that graduates will learn to practice law in law firms capable of providing that practical education. Specifically, the system, being greatly influenced by the "prestige" schools, assumes that graduates will be trained by large "prestige" metropolitan law firms or as Dean Sexton of the New York University School of Law calls them, "megafirms." This assumption belies the fact that seventy-seven percent of private practitioners reportedly practice in firms of two to ten lawyers. In fact, neither the nation’s legal needs nor the educational needs of the nation's new lawyers are met by "prestige" metropolitan megafirms.

Traditional legal education provides no "system" by which entry-level lawyers are trained to practice law. It is entirely possible that learning to practice law, even in the case of graduates of "prestige" law schools, is more the result of their own native intelligence and ingenuity than anything imparted them by their law schools. One cannot help but analogize this scenario to allowing a medical doctor to perform surgery after three years of medical school and prior to either an internship or a residency. Victor Rosenblum aptly reflects the ABA’s concern in his report of the student who asked Chief Justice William Rehnquist whether he would recommend that the student enter a sole practice after law school. The Chief Justice said, “I wouldn’t recommend it to your clients.”

If law schools accept as their mission meeting the public’s needs for legal services by (1) assuring broad access of all members of society to those trained to address their legal needs, and (2) providing appropriately trained legal professionals to fill those needs, then legal education must assess the traditional law curriculum by testing its design to determine whether it can meet that mission. Assessing the traditional law curriculum and designing a way to fulfill the above mission is precisely what the University of Montana School of Law undertook in 1979 in its Academic Plan-

20. GOALS AND MISSIONS, supra note 4, at 71.
21. Id. at 32, 47.
23. GOALS AND MISSIONS, supra note 4, at 82.
25. GOALS AND MISSIONS, supra note 4, at 43.
B. Origins of the Competency-Based Curriculum at the University of Montana School of Law

In 1979, under the leadership of Dean John O. Mudd and buttressed by the Cramton Report,\(^\text{26}\) the faculty of the Law School at the University of Montana formed an Educational Development Committee for the purpose of academic planning. The Dean charged the committee with two goals: (1) identifying the requirements of legal education for the subsequent ten to fifteen years, and (2) identifying the needs that must be filled by legal education generally, and the University of Montana School of Law in particular.\(^\text{27}\) Addressing the second objective would require evaluation of the school's current educational program as well as its ability to respond to future needs.\(^\text{28}\)

The Law School secured funding to begin this major academic planning project through a substantial grant from the Fund for Improvement of Post Secondary Education. The School, in its grant application, proposed to study and identify the needs of legal education in a rural state like Montana and to begin designing and implementing a curriculum responsive to the needs identified. The proposal rested on the thesis that legal education for law students intending to practice in a rural state like Montana had to be structured differently than legal education for law students destined for large metropolitan law firms.\(^\text{29}\) The faculty proposed to design a curriculum and method of instruction with reference to the needs of lawyers practicing in a "non-urban" setting. The curriculum would emphasize the integration of theoretical and practical skills by identifying as its foundation the knowledge and skills required of lawyers in non-urban settings.

The committee identified as a "desired outcome" of a law curriculum "a competent beginning lawyer."\(^\text{30}\) Aspiring to the education of the competent beginning lawyer as the desired outcome for the Law School's new curriculum was revolutionary. The author is aware of no other law school that articulates its goal as the prepa-

\(^{26}\) Cramton Report, supra note 17.

\(^{27}\) Memorandum from Dean John Mudd to Educational Development Committee (Nov. 26, 1979)(regarding committee objectives)(available in the Dean's Office, University of Montana School of Law).

\(^{28}\) Id.

\(^{29}\) University of Montana School of Law, Abstract of Grant Application to Fund for Improvement of Post Secondary Education (1979).

ration of lawyers with entry-level practice competency. By focusing on the desired outcome instead of the study or modification of the then-existing curriculum, the faculty sought to avoid the inertia of traditional legal education that might stifle the project.31

Having adopted the goal of educating for beginning professional practice competence, the faculty considered the question of what constitutes this competence. What are the traits and abilities of the competent entry-level lawyer? The faculty elected to gather empirical data from the practicing bar and judiciary of Montana to assist in answering that question. Working with practitioners and educational specialists, the faculty designed a comprehensive survey that posed a fundamental question: “What abilities[, in terms of skills, knowledge and traits,] do lawyers need to practice law effectively in Montana?”32

In December of 1980 the Law School, with the assistance of the Montana Supreme Court, distributed the survey to the 1554 members of the State Bar of Montana, requesting that they identify those abilities necessary to the practice of law in Montana and to evaluate the extent to which they observed graduates to possess those abilities.33

On the basis of the survey results and their own experience and study, the faculty determined that there are four distinct but related dimensions to lawyer competence in a rural state:

(1) A knowledge of legal rules and procedure.
(2) The ability to apply those rules and procedures to concrete problems.
(3) An understanding of the role of law in society and of the lawyer as the embodiment of that role. . . .
(4) The personal qualities as well as the interpersonal skills needed to work effectively with others.34

The faculty concluded that “legal education has historically addressed (1) above fairly well, (2) less well, (3) inadequately, and (4) hardly at all.”35 If a new curriculum were to meet the needs of the

31. A study of a previous survey suggested the error that occurs when lawyers assess a curriculum by comparing it to their own law school experience instead of comparing it to their practice experience. Id. at 14.
32. Id. at 13.
33. The same survey was later administered to the Idaho Bar Association for further empirical evidence. Id. at 12. For a complete discussion of the survey and its results, see id. at 13-25, app.
34. UNIVERSITY OF MONTANA SCHOOL OF LAW, ACADEMIC PLANNING PROJECT: INTERIM REPORT 5 (1984) [hereinafter INTERIM REPORT]. In short form the Law School refers to these four dimensions as: (1) knowledge, (2) skill, (3) perspective, and (4) character.
35. Id.
bar and the public, it would have to address all four dimensions. The survey provided important data to help answer the questions as to the knowledge, abilities, perspectives and traits essential to the competent lawyer.

III. Development of Stated "Competencies" as a Key Component of the Competency-Based Curriculum

A. The Concept of Competencies at Montana

Having adopted as its desired outcome lawyers possessing entry-level professional competence, and having concluded that such education would involve the four dimensions of knowledge, skill, perspective and character, the faculty then concerned itself with the design and implementation of a curriculum which would accomplish this goal. To do so required the faculty to articulate those abilities deemed essential to the entry-level lawyer. The lawyers' survey provided the raw material from which the faculty began the formulation of a statement of competencies that every law student should possess upon graduation.

Competencies may be appropriately characterized as specific outcomes. As conceived by the law faculty, competencies are express statements of common legal transactions that the faculty has identified as essential to entry-level practice in a rural state like Montana. Each competency embodies the four dimensions of lawyering previously mentioned. Thus, a student properly performing one of the identified transactions must demonstrate the knowledge, skill, traits and perspective that are the basis for the effective representation of a client in that transaction. In short, the competencies are practices that, when performed, will achieve the integration of theory and practice and prepare students for the actual representation of clients.

At this writing, the competencies at Montana exist in "sets" that are in various stages of evolution. The development of each set of competencies involves a four-step process: (1) conception, (2) drafting, (3) review, and (4) adoption. The faculty have adopted competencies in the Business and Property Track, the Dispute Resolution Track, the Family and Individual Track, and in the Public Law Track.

B. The Value of Stating Competencies

The process of defining competencies throughout the curriculum provides several valuable benefits to a school. First, identification of competencies requires the faculty to consider the nature of the
practice that students will encounter, the obligations of the law school to the bench and the bar, the mission and the special character and value of the school, and its pedagogy and resources. In short, faculty must evaluate the law school in a comprehensive manner. The best statements of mission, outcomes and competencies for a law school will be those developed by faculty consensus based on these considerations. The resulting statement will be an expression of the individuality of the school.36

Second, the necessary dialogue between and among faculty and practitioners regarding the mission of the law school, teaching methodology, and potential resources of the law school can invigorate the faculty, educate the bar and the public about the law school, and forge a bond between the law school and the profession.

Third, the express statement of competencies and the process for formulating competencies can provide a lasting and dynamic framework for ongoing curricular development, assuring the relevance of the curriculum and offsetting the stagnating influence of traditional legal education that has fossilized existing law school curricula.

Fourth, the competency framework assures continuity in the academic program. If the teaching of professional competency is not a specifically articulated goal of the faculty, its treatment in the curriculum may be profoundly impacted by temporary or permanent departures of faculty and the hiring of new or visiting faculty. By explicitly establishing a competency or outcome framework for the curriculum, a school may escape Shaffer's principle that "[i]nnovation in legal education comes hard, is limited in scope and permission, and generally dies young."37

Fifth, the statement of competencies can and should serve as a standard for assessment in determining whether the school is achieving its desired outcomes. A law school can design performance exercises around the competencies, state explicit criteria to be met in each performance, and measure the student's performance to assess the student and the program.

Sixth, class syllabi can be formed around those competencies related to particular subject areas, and may also include those competencies that are generic and, therefore, appropriate to sev-

36. One might even argue that a school should not adopt a model set of competencies because of the value to the institution of drafting its own. Nevertheless, faculty dynamics at some schools may make it more difficult to arrive at consensus, so that adoption of model competencies may be preferable.

eral classes. Specifically articulated competencies can assist the faculty in coordinating the integration of competencies into the various course syllabi.

Finally, after the essentials of a competency-based curriculum are stated, those subjects of traditional legal education that do not appear to fit the new curriculum can be analyzed and evaluated to determine whether they have any relevance in a curriculum designed to produce competent entry-level lawyers. Retention of subjects or methods on the sole ground that they were part of the traditional curriculum may result, in the words of Marshall McLuhan, in "pure rear-view mirrorism, seeing the old environment in the mirror of the new one while ignoring the new one."[38]

C. Issues Arising in the Process of Formulating Stated Competencies

What are the issues that face those who attempt, in Robert MacCrate's words, to "reach consensus on the skills and values that the entering lawyer should possess"? The Montana experience suggests that the issues are many. One of the first issues the Montana faculty addressed was the method of stating competencies. Should competencies be defined in terms of knowledge (e.g., "The graduate shall understand the law of search and seizure")? Or should they be defined in terms of performance or skill (e.g., "The graduate shall be able to draft, brief and argue a motion for suppression of evidence")? Might they be defined in terms of values (e.g., "The graduate shall be able to explain the vital role of Miranda warnings in protecting individual freedom in the United States")?

Those who attempt to formulate a statement of essential competencies will learn the individual limitations of knowledge, skill and values as definitional bases for stating competencies. Defining competencies in terms of knowledge can quickly become self-defeating, since the entire law school curriculum can be stated in terms of what the student should understand. Competencies that are defined in terms of skills might tend to promote a mechanical approach to the practice of law, potentially removing the professional emphasis and perspective, as well as the solid substantive base that ideally underlies professional law practice. Stating competencies in terms of values can be difficult because of lack of agreement on what constitutes the value and potential problems in

assessing the value. And even if the values can be defined, the dilemma of agreeing about which values the entry-level attorney should possess may be difficult. For example, would all faculty and practitioners agree with a value-based competency providing that “The graduate shall be able to engage in mediation and other methods of alternative dispute resolution to avoid civil trials”? Nevertheless, faculty would agree that professional values need to be considered and discussed in the law curriculum.

The University of Montana law faculty concluded that the solution was to focus on the actual practice of law, and to define competencies in terms of common legal transactions without attempting to state them expressly in terms of knowledge, skills or values. The benefit of focusing on practice in a statement of competencies is the ease of identifying and stating core transactions on the basis of information gained in surveys of the bench and bar. Each legal transaction identified in the competencies assumes skills, knowledge, personal characteristics, and perspectives that can remain implicit or be emphasized expressly. For example, a competency that the graduate “shall be able to negotiate a plea bargain for a client in a criminal case” implies knowledge of criminal law, skill in negotiating, perspective on the best interests of the client, the court and society, and personal characteristics, such as interpersonal skills, necessary to negotiate the plea bargain competently.

Orientation of stated competencies around legal transactions should not be taken to imply that a graduate's abilities are only as broad as the specific transactions involved. The faculty wants students to think critically, solve problems, and evaluate and assess throughout their lives. They also want students to be positioned to interview, counsel, negotiate, draft, and advocate in virtually any legal transaction. Hence, competencies may be general or specific, and some, those that address skills virtually universal in their application, we might call “higher order” competencies. Examples of higher order competencies might be abilities to solve problems, to think and analyze critically, and to assess oneself. The general competencies required, such as negotiating, counseling, and drafting, equip the student with tools with very broad applications. But even the most specific competencies have lateral applications, so that the student who has mastered the specific competency can extrapolate the generic skills involved in the specific competency and use the skills in other applications. For instance, a student who can make a closing argument in a jury trial can apply that same skill to persuade a county zoning board, a corporate board of directors, or
an arbitrator of union disputes.

The method of selectively teaching key matters from which students can acquire information and resources necessary to help themselves, instead of attempting "coverage" of a subject, is familiar to all those who teach in substantive areas in which there has been an explosion of law in the last twenty years. "Coverage" is no longer possible in most courses without turning the course into a superficial survey of the subject law. The statement of competencies is a means of identifying essential exercises that will provide the student the key to multiple lateral applications later.

Another core issue that arises is the level of specificity at which the competencies will be stated. While general outcomes are important, it is also important that there be specificity with regard to performances expected of students. Competencies can be highly specific, for example, "The graduate shall be able to draft an appellate brief," or general, for example, "The graduate shall be able to represent clients in criminal disputes." It is even plausible to reach a level of abstraction in which the competency has a philosophical orientation, for example, "The graduate shall be prepared to act as the conscience of the client and the legal system."^40 Montana's law faculty chose to be specific, recognizing that the more general the statement of competencies, the less value it will have in lending structure to courses, curriculum, and assessment efforts. Specificity makes the competencies a more precise educational instrument for faculty who must implement them as well as for students who must master them.

Topical framework must also be addressed. Organizing a statement of competencies around traditional law school subjects such as property, torts and secured transactions is doomed to continue a system that creates a gap between traditional legal education, in which each problem fits neatly into a single subject area, and the modern practice of law, in which problems and transactions traverse multiple subject areas. Yet the sheer breadth of a comprehensive set of competencies mandates some organization around topic areas. One might organize the stated competencies according to practice specialties. But the overlap between specialties and the fact that so many of the competencies are common to several specialties (for example, negotiating, client counseling and interviewing) will make categorizing the competencies by specialty most frustrating. Faculty at the University of Montana School of Law

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^40. This is the role advocated by Dean Sexton of the New York University School of Law in the Blankenbaker Lecture given at the University of Montana School of Law on April 1, 1990. See Sexton, supra note 22.
chose to design competencies around four broad subject areas of property/business, dispute resolution, public law and individual/family law. While other divisions certainly would be possible, the four categories embrace the areas basic to practice.

The question of the extent to which drafters of competencies should be concerned with implementation is also troublesome. The Montana law faculty considered whether to state as a competency a transaction or procedure that its students would not individually perform. For example, is a student competent to represent a client in a mediation, having seen a live demonstration of such a mediation in a class on alternative dispute resolution? Or should a statement of the competency constitute a representation that the student has individually, or perhaps in a group, performed the legal transaction?

The competencies at the University of Montana School of Law specifically note that students will not actually perform every transaction listed. The faculty assume that the demonstrated ability to perform certain transactions is transferable to other transactions, making it unnecessary to design specific exercises in the related transactions. For example, if students can draft an installment contract, it may not be necessary to design an exercise in drafting a contract for the exchange of properties. Rather, it will be sufficient that students have the knowledge base that will allow them to address in the contract the unique aspects of an exchange. Nevertheless, the faculty recognizes that the ability to perform one transaction does not necessarily indicate the ability to perform another, albeit related transaction, so that we envision addressing as many competencies as possible through specifically tailored exercises.

At any rate, competencies should be stated without regard to teaching method. The process of stating that which an entry-level practitioner should be capable of performing becomes confused if the drafters focus on how a competency will be taught, which is a different issue. Teaching method should be left to faculty either individually or in coordination with each other. Many competencies can be addressed without individual student exercise, as long as the curriculum provides the knowledge, skill, perspectives and personal characteristics necessary to student performance, and the student can reasonably be expected to perform on that basis.

While it is not possible to discuss all the issues and concerns that arise in the formulation process, those mentioned herein are some of the more compelling. The process of developing a set of stated competencies is invaluable insofar as it promotes the aca-
demic discussion of issues such as these.

IV. MAKING THE TRANSITION TO A COMPETENCY-BASED CURRICULUM

A. Problems that Arise in Transition

Having set forth a comprehensive set of general and specific competencies that reflect the knowledge, skills, and traits that should be possessed by the competent entry-level practitioner, a law faculty then faces the task of translating that effort into curriculum changes. At the point of attempting to incorporate the competency model into the curriculum, a number of problems may arise that can imperil the process.

First, models for teaching professional practice competence are few. Even the clinical models are inapposite, often being limited in scope and isolated from, rather than integrated into, the “substantive” curricula. Second, individual faculty members may be reluctant to shoulder responsibility for implementing the competency-based curriculum in their respective areas. This reluctance may be because they lack a foundation to teach some practice competencies, either because of lack of practice experience or from the narrow scope of their practice experience. Or the reluctance may stem from a failure to see how general competencies, such as negotiating or interviewing, are pertinent to the “substantive” subject areas they teach. Third, traditional courses taught by casebook method dominate the curriculum, claiming resources and time that would be necessary to any substantial integration of professional practice competencies. Fourth, there may exist a bias in favor of competencies that can be defined in terms of knowledge, over those competencies that are defined in terms of skills. Faculty may, for example, settle for a competency that the students “understand” the elemental theory of contract as opposed to ensuring that the students can also negotiate and draft contracts. Fifth, a competency-based curriculum requires individual performance of exercises designed to apply theory to specific transactions. These performances, by their nature, require time, space and intensive use of faculty and other personnel to a far greater extent than traditional legal teaching methods. Sixth, as Victor Rosenbloom noted, a major barrier to curricular reform is failure of law school administrators to reward reform efforts by faculty.41 A system that values and rewards only research and writing cannot motivate
faculty to expend the energy necessary for curricular reform.

In any law school, such problems as these can easily result in faculty discomfort with the transition to a competency-based curriculum. Faculty may refuse to cooperate with other faculty in creating or modifying courses, or may refuse to introduce materials or exercises that are necessary to the competency-based curriculum. This refusal to cooperate by some faculty can culminate in inertia and even retreat from the effort to institute the new curriculum. The single greatest factor in easing the transition is the development of clearly stated general and specific competencies. Faculty guided by such a document can readily identify what they can integrate into their teaching to accomplish the mission of the law school and advance the art of the profession.

B. Implementation of the Competency-Based Curriculum at Montana

The competencies are only a part of the changes made at the University of Montana School of Law under the Academic Planning Project. During 1981, a faculty committee evaluated the first-year curriculum and proposed options for its redesign. The committee identified many weaknesses in the first-year curriculum at the Law School and addressed these deficiencies by means of three principal programs: (1) the First-Year Introductory Program, (2) the Law Firms, and (2) the Jurisprudence Program.

The Law School fashioned the Introductory Program to serve two purposes: To provide a foundation to all first-year courses and to explain the various aspects of a lawyer's work and professional life. Hence, short courses called "blocs" were developed in legal history, the American legal system, and the dispute resolution process. In addition, a Legal Writing and Practice Bloc was designed to introduce the way lawyers work, and a Legal Reasoning Bloc

42. Memorandum from Professors Martin Burke and David Patterson to the Committee Designing the First Year Curriculum (Aug. 21, 1981)(available in the Dean's Office, University of Montana School of Law).

43. Students were thrust into the study of appellate cases with no understanding of the structure of government, the United States and Montana Constitutions, or courts; no understanding of court processes, jurisdiction or venue; and no appreciation for the human drama that has taken place before and during the litigation that culminated in the appellate decision they were studying. Students were merely passive observers as the teachers assumed the role of disseminators of information. Classes were compartmentalized, inflexibly scheduled, and lacked coordination to avoid duplication of effort. The primary evaluation technique was the written final examination. Id. at 5-7.

44. This bloc "encompasses the most diverse segments: legal research; ethical problems in legal practice; the roles of lawyers as planners, counselors, negotiators, litigants, and community leaders; and jurisprudence." INTERIM REPORT, supra note 34, at 9.
was designed to identify and describe the elements of the process of "thinking like a lawyer." Each of the blocs in the Introductory Program is generally taught by first-year faculty using lectures, exercises, panels and demonstrations. The Introductory Program, as designed, comprises the first three weeks of the semester for first-year students and serves also as their orientation to study in a professional school.

Creation of the "Law Firms" was an equally important change in the first-year curriculum. First-year students collaborate in "firms" supervised by faculty and directed by specially trained upperclass students called "junior partners." A principal benefit of the law firms is that they promote active and cooperative learning on the part of the associates and assumption of responsibility by the students for their own legal education. The firms meet on a regular basis for problem solving exercises, professional skills practice and academic support.

The Jurisprudence Program, involving lectures, research,

45. Students are exposed to general problem-solving and critical-thinking skills through a series of exercises. They learn "the legal context and pedagogical justification for the use of the case method and the skill of case analysis" from an introduction to concepts of "stare decisis, precedent, judicial decision making, reasoning by example, and the role of public policy in the common law process." Id.

46. As originally instituted, the Introductory Program spanned four weeks. The faculty eventually pared it to three weeks in balancing the need for adequate time in the first year courses.

47. As the Law School's Academic Bulletin explains it:

The innovative "law firm" program serves two purposes: (1) First-year students learn to cooperate and collaborate rather than compete as they begin to think and work as lawyers, and (2) students engage in problem solving activities complementing the traditional case method study of law. From the beginning of law school, entering students belong to "law firms," groups of six or seven students, called "associates," directed by a specially trained upper-class student, the "junior partner." The small size of the firms prompts associates to express their ideas and participate actively in group activities. Through the law firm program, the Law School attempts to foster academic, intellectual, and social interchange as a prelude to later collegial professional relationships.

In addition, in the law firms, students engage in problem solving exercises, raising legal issues and integrating material from first-year courses, and requiring students to work collaboratively to devise collective products or solutions to those problems. The problem solving process challenges students to think precisely and creatively; it forces them to make decisions rather than simply identify arguments on both sides of an issue. Law firm problem solving emphasizes the exercise of good judgment.


48. According to the Academic Bulletin,

The University of Montana School of Law is one of the very few in the nation to introduce first-year students to jurisprudence, the study of the philosophical, intellectual, and historical foundations of the law. Throughout the first year, students examine such questions as: When should the state use its coercive power to limit its citizens' liberty? and Do we live under an obligation to obey unjust laws?
and writing on jurisprudential topics, arose from the faculty’s desire to address the graduate’s need for perspective on the role of law and lawyers in society. The survey of practicing lawyers and judges administered in 1980 reflected the fact that lawyers practicing in Montana must assume community roles that require more than the routine delivery of legal services. As Dean Sexton says, “Lawyers are and must be the conscience of both the client and the legal system . . . .” First-year students’ experience with jurisprudence begins in the Introductory Program and culminates with the research and writing of a major paper during spring semester.

The first-year program aside, the Academic Planning Project that began in 1979 has resulted in major changes throughout the curriculum of the University of Montana School of Law. For example, the Law School’s extensive Legal Writing Program, which preexisted the Academic Planning Project, has, in the course of the Project, been expanded considerably.

All students are required to complete the Dispute Resolution Sequence at the Law School. The faculty has formalized a three-year process for learning all aspects of dispute resolution. The Dispute Resolution Bloc course sequence is designed to introduce the student to matters involved in resolution of both civil and criminal disputes by placing all courses related to dispute resolution in a single chronological and progressive sequence, exposing students to all aspects of dispute resolution from initial interview and fact gathering to negotiation, mediation, arbitration, trial and appeal.

In addition to the development of new courses, several individual faculty have designed their class syllabi and teaching meth-
ods to promote application of theory to specific common client problems. These courses typically integrate one or more exercises in which each student performs transactions identified in the school's competencies, and the use of legal problem solving methods that place the student in situations requiring analysis from the perspective of the lawyer representing the client. In these integrated classes, professors routinely require some legal drafting and, frequently, provide the students sample or model legal documents as patterns for competent practice. Though their mention is by no means exclusive, the Law School’s required classes in Business Organizations, Trusts and Estates, and Contracts are examples of courses with content designed to emphasize application of theory to practice.

Not surprisingly, several faculty have found it difficult, if not impossible, to find textbooks that adequately serve courses integrating theory and practice. As a result, faculty at the school have routinely developed their own course materials blending theory, statutory and case law, sample documents, and problems requiring application of theory in practical contexts. The materials are modified and further developed as the curriculum continues to evolve around its competency base.

One of the earliest steps toward a competency-based curriculum was the Law School's development of an extensive system of clinics, both in house and out, and the required participation by all students in two semesters of clinical practice and study. Students practicing in the clinics are supervised by adjuncts who are in turn monitored and supervised by the School's Clinical Director.

54. In part, Professor Steve Bahls' course in Business Organizations introduces students to the theory involved in various business entities, and then requires each student to interview live "client instructors," for the purpose of drafting and explaining a relatively complex professional partnership agreement.

55. Professor Ed Eck's third-year required course in Estate Planning requires that each student apply the theory learned in the course by drafting a will and probating the will. Assessment of student work is performed by selected tax attorneys throughout the State of Montana.

56. Professor Scott Burnham, author of Drafting Contracts (1987), teaches a one credit Drafting course that is appended to the first-year Contracts course. Application of contract theory through drafting is a major feature of the combined course.

57. While not exhaustive, the following is a list of faculty who have developed their own materials for use in required courses: Professor William "Duke" Crowley, Civil Procedure; Professor Steve Bahls, Business Organizations; Professor Rob Natelson, Property; Professor Scott Burnham, Contracts; Dean Martin Burke, Federal Taxation; and Professor Edwin Eck, Estate Planning.

58. This program includes the following clinics: Montana Defender Project, Montana Legal Services Association, ASUM Legal Services, Natural Resource Clinic, Indian Law Clinic, University of Montana Legal Counsel's Office, Child Support Enforcement Bureau, Forest Service Clinic, and Missoula County Attorney's Office.
and its Clinical Supervisor.

While all aspects of the competency-based curriculum at the University of Montana School of Law cannot be noted here, one must mention the role of practitioners at the Law School. Dean Sexton calls for “reintegrating practitioners into the educational system, for the benefit of law schools and practitioners alike,” while warning that they “should sit alongside faculty members in the classroom—they should not replace them.” The University of Montana School of Law uses a large number of excellent practitioners. Practicing lawyers participate on panels and in discussion groups on professionalism, lawyering, placement, and practice specialties. They appear at appropriate times in individual classes to lend practice perspectives or to demonstrate lawyering skills. The faculty selects from the ranks of the Montana Bar many adjuncts who coach students in a variety of skills areas and who assess students in estate planning, legal writing, trial practice, negotiations, and client counseling.

V. THE IMPETUS FOR A COMPETENCY-BASED LAW SCHOOL CURRICULUM

A. The Need to Address Lawyering Instead of Case Analysis

If law schools are to serve the public by producing lawyers competent in professional practice and possessed of an appropriate perspective on their role in society, they must reintegrate the neglected components of legal education. The tragedy of most modern law schools is the segregation, isolation, and exclusion of so much of what should be involved in legal education. Situational method, clinical method, problem-solving approaches, and interdisciplinary approaches have been largely absent from the law schools because of the emphasis given the Langdellian casebook method. Faculty who teach those parts of professional competence labeled as “skills” enter some schools under a system of apartheid, often relegated to nontenured positions without faculty voting rights or benefits. Subjects have been neatly and rigidly separated in a way divorced from the realities of practice. The learning experience has been restricted to fifty-minute hours regardless of pedagogical needs. The end result is legal education that pays little

59. Sexton, supra note 22, at 342.
more than lip service to professional competence.

The nemesis of those who seek to address the neglected aspects of lawyering is an omnipresent polarization that causes many interested in the system to assert that the introduction of one aspect of lawyering must be to the exclusion of another; that the nurturing of skills must be to the exclusion of substance; that law schools cannot serve theory and practice. It is this attitude that causes the shrill cry of "Trade school!" in response to any attempt to deal with professional practice competence in law schools.

It need not be this way. Theory and skills can serve a common master: the advancement of the art of the profession. The same integration that characterizes the profession's role in our society needs to be extended to the law school. In society, clients do not come to lawyers with neat statements of fact that lead like an opening statement into an appellate decision on contracts or torts. As Dean Sexton said, "[R]eal people do not find themselves in cases; they find themselves in situations." Lawyers deal with the facts of human emotional drama elicited from clients with problems. They hone analytical skills by developing dynamic evolving fact theories that they integrate into equally dynamic legal theories, all of which they modify as they gather additional facts through investigation and discovery. Their work is always interdisciplinary and always situational. Their legal analytical skills never consist of case analysis alone, but include multiple analyses based on cost-benefit, risk-benefit, comparative risk, predictive probabilistic judgment, ends-means, hypotheses testing, contingency planning, resource allocation, and client and court relations. They must accomplish these labyrinthine analyses while performing the skills of drafting, negotiation, interviewing, counseling, and advocacy. Often the analyses and skill performances are rendered under the peer review and judgment of a jurist and one or more competitive opposing counsel. Even that which is created in the quiet of the library (between interruptions for phone negotiations and counseling) will be subject to the keenest scrutiny and challenge by opposing counsel when filed or mailed.

61. Imwinkelried, The Educational Philosophy of the Trial Practice Course, 23 GA. L. Rev. 663 (1989), makes the point that judges' fact statements in their decisions are "opening statements," consisting of facts marshalled to lead to inferences that will justify the decision without argument. Id. at 677-78.
62. Sexton, supra note 22, at 337.
63. Imwinkelried, supra note 61, at 667.
It is this synthesis of theory, substance, skills, and perspective that makes the art of modern lawyering so complex as to defy adequate description. It is the complexity of the art that demands that law schools begin to address lawyering in all its dimensions. Preparing students to engage in the rigorous analysis and application of the law cannot be done in traditional law school curricula. As Jerome Frank aptly said, "Legal practice is an art, a fairly difficult one. Why make its teaching more indirect, more roundabout, more baffling and difficult than teaching golf?" Adopting the premise that the members of a graduating law school class will somehow find their way to mastery of these arts after a diet of case analysis is like expecting them to figure out how to fly a Boeing 747 after teaching them the principles of flight. We owe the graduates and the public more.

So, what aspects of lawyering are missing from the traditional law school education? Dean Mudd, in his work on performance-referenced legal education, distilled into succinct forms three models of lawyering by Frank R. Strong, Eric M. Holmes, and

65. Id.
66. Frank, supra note 1, at 1312.
67. Mudd, supra note 2, at 189.
68. Strong identified three categories of professional skills:
   (1) perceptional ability (cognitive skill): legal information, doctrine, analysis, synthesis, fact discrimination, and problem formulation and resolution; (2) instrumental (cognitive and affective): legal language, legal method, legal theory, legal process, legal philosophy, legal policy, and legal design (fashioning means to ends); (3) operational (integrates effective and cognitive learning in a real setting): fact ascertainment, law ascertainment, implementation (drafting, presentations, etc.), lay interviewing, client counseling, representation and legal mechanics (routine office and court procedures).

Id. at 198-99 (citing Strong, The Pedagogic Training of a Law Faculty, 25 J. LEGAL EDUC. 226, 230-31 (1973)).

Under this model for lawyering skills, it appears that those abilities covered above in (1) perceptional ability and (2) instrumental may, for the most part though arguably, be served by traditional law curricula, while the abilities in (3) operational, as a group have, for the most part, been excluded.

69. Holmes identified the following skills categories:
   (1) legal perspective: the functions of law, social and ethical responsibility, and legal reasoning; (2) legal information: doctrine, legal theory and the theory of related disciplines; (3) legal dialectic: fact sensitivity, legal reading, analysis and synthesis; (4) legal operations or functional skills: research, implementation (drafting and advocacy), interviewing, counseling and representation (negotiation, mediation, adjudication and legislation); (5) fact management: gathering, selecting and using facts.

Id. at 198 (citing Holmes, Educating for Competent Lawyering—Case Method in a Functional Context, 76 Colum. L. Rev. 535, 578-80 (1976)).

Again one might reasonably expect a consensus that skills represented in (1), (2) and (3), above, are, at least to some extent, reflected in the traditional curriculum, while those contained in (4) and (5) are not.
H. Russell Cort and Jack L. Sammons (the Antioch Model),\textsuperscript{70} as well as what we might call the Montana Model.\textsuperscript{71} Each model attempts a comprehensive statement of the general components and subcomponents of lawyering.

A review of these models will reveal that the important aspects of lawyering missing from the casebook method are those which advance the art of the profession as opposed to those which dwell on the science or theory of law. More specifically, the neglected parts of lawyering are those involving function, operation and implementation of the law. They include the general skills of negotiation, advocacy, drafting, interviewing, counseling, and problem solving. They might also include skills as business oriented as practice management and as academic as legal and technical research. The category of neglected skills is by no means well defined because some of these skills, such as legal problem solving, research, advocacy, and writing, will naturally encompass such traditional areas as legal analysis, theory, process and perspective. But the skills of negotiating, advocacy, drafting, interviewing, counseling, and problem solving are those parts of lawyering most clearly ignored by the traditional curriculum.

Not surprisingly, the list of the skills identified above as being slighted or ignored in traditional legal education reads very much like the American Bar Association's "Recommendation 3" addressed to law schools in 1979 in the Cramton Report:

Law Schools should provide instruction in those fundamental

\textsuperscript{70} The Antioch Model consists of six categories:
(1) oral competency: proper and effective use of language, skills of listening and persuading; (2) written competency with sub-abilities similar to oral competency; (3) legal analysis competency: analyzing facts, law and formulation of legal theory; (4) problem solving competency: problem diagnosis, selection and implementation of strategy; (5) professional responsibility competency: identification of conflicts with professional norms or other values and acting consistently with decisions; and (6) practice management competency: proper use of time, working effectively with others, selecting and following appropriate management procedures.

\textsuperscript{71} As Dean Mudd explained it,
The model consists of four parts, better called "dimensions," to reinforce the notion that they are not separate realities but aspects of a single reality—effective lawyer performance, which occurs only when all four dimensions are present. The dimensions are: knowledge, skill, perspective and character.

Under this model, which states the essence of lawyering in broad categories, it would be most difficult to claim that any of the categories are fulfilled in the traditional curriculum, while we might agree that knowledge is the best served of the four and skill the least.
skills critical to lawyer competence. In addition to being able to analyze legal problems and do legal research, a competent lawyer must be able effectively to write, communicate orally, gather facts, interview, counsel, and negotiate. Certain more specialized skills are also important for many law graduates.

Law schools should provide every student at least one rigorous legal writing experience in each year of law study. They should provide all students instruction in such fundamental skills as: oral communication, interviewing, counseling, and negotiation. Law schools should also offer instruction in litigation skills to all students desiring it.72

These neglected aspects of lawyering can best be addressed in law schools by transition to competency-based curricula.

B. The Increasing Presence of Practice-Referenced Courses in the Law Schools

A decade after the ABA made its recommendation to the American law schools, only about one percent require the lawyering or professional skills of “Recommendation 3,” although 13.1 percent require courses in trial and appellate advocacy.73 Judging by required curricula, one might conclude that there has been no change in the schools’ response to the needs of lawyering. But required courses do not reflect the very real change that has occurred. In the last decade, there has been a striking increase in professional skills training in law schools in elective courses, to the point that professional skills and training classes now comprise the largest category of elective courses offered by the 175 ABA accredited schools.74 The number of credit hours allocated to Applied Legal Education and to Professional Skills, Training and Functions, as categories, have increased by forty percent and sixty percent, respectively, so that they rank first and second among thirty-three elective categories in terms of semester credit hours.75 The Professional Skills, Training and Functions category generated more average credit hours than any other category.76 Perhaps most telling is the fact that, in the period from 1984 to 1986, more law students took professional skills training and functions courses than any

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72. Cramton Report, supra note 17, at 3-4.
74. Id. at table 8. In the study, elective courses offered by the ABA-approved law schools are broken down into thirty-three elective categories. Table 8 reflects a 36.4% increase in the number of professional skills and training electives listed by the schools in the last decade.
75. Id. at table 13.
76. Id. at table 19.
other elective category.\textsuperscript{77} Student registration in this category comprised almost ten percent of the total average category registrations for the thirty-three categories of electives.\textsuperscript{78}

One might conclude from the data that professional skills have become a substantial component of American law schools regardless of the fact that they are not required and, perhaps in some schools, not acknowledged as mainstream efforts. But it is not clear whether the courses are spread evenly among the law schools, as opposed to being absent in some and dominant in others. It is certain that there is a substantial increase in the courses, credits, hours, and students involved in professional skills training and functions in law schools as of 1986. Undoubtedly, student demand has provided some of the impetus for the increase, and even faculty who disdain skills training are quietly entertaining it in the arena of elective courses. At any rate, it is true, as Dean Gifford says, that “professional skills education is in the mainstream, not the periphery, of American legal education.”\textsuperscript{79}

Whether American law schools will acknowledge the evolution in the range of lawyering skills being offered and the need for a skills emphasis probably depends on peer pressure within the system. Traditional legal education has relied so heavily on case emphasis as the foundation for lawyering that acceptance of a new model for education of lawyers will undoubtedly be slow. Thus, for example, even in the face of the strong development of trial practice courses, we read apologies for the fact that such courses may focus on forensic technique and do not adequately serve the narrow band of analytical skills claimed by the “substantive” courses.\textsuperscript{80}

Perhaps this schizophrenia is best exemplified in Dean Sexton’s call, on the one hand, for use of the situational method and his assertion, on the other, that professional skills should be “deemphasized” in the process.\textsuperscript{81} Dean Sexton advocates the situational method as a means of placing the student in a concrete lawyering scenario either by simulation or actual clinical experience for the purpose of bridging the gap between understanding a doctrine and understanding the facets of a lawyer’s work.\textsuperscript{82} One

\textsuperscript{77} Id. at table 17.
\textsuperscript{78} Id.
\textsuperscript{80} Imwinkelried, \textit{supra} note 61, at 667.
\textsuperscript{81} Sexton, \textit{supra} note 22, at 338.
\textsuperscript{82} Id. at 339.
can readily agree that the situational method should not be devoted solely to skills training. As Professor Reiss has noted, we are not after a “skills program” but a program in “experience based thinking.” But while the situational method has broad and important applications to the teaching of perspective and the attorney’s role, the call for “deemphasis” of professional skills is a curious bid for the loosening of a bond that has never really existed in American law schools in the first place. Professional skills training, a natural complement to the situational method, has barely arrived in time to hear the call for its “deemphasis.” A healthy integration of professional skills, instead of deemphasis, is necessary to ensure that law curricula address the realities of law practice. As Jerome Frank noted, “[Law] schools have been devising the most complicated ways to avoid taking that step: instead of marching straight up to lawyerdom, they have walked all around it. They have been like a man who reaches with his right hand around behind his neck to scratch his left ear.”

V. Conclusion

How then can law schools instill entry-level professional competence in students who aspire to the profession? The traditional model for legal education implicitly places the responsibility with the practicing bar, either through the continuing education efforts of law firms or the organized bar. This model assumes too much. Neither law firms nor the bar have proven that they are prepared to undertake the task of systematically addressing practice competence. Indeed, the practicing bar is increasingly looking to the law schools to design programs to ensure lawyer competence. Yet, it is the bar and not the legal educational establishment that feels compelled to respond to pressure to ensure that graduates are basically competent to advance the art of the profession. As Robert

83. S. Reiss, supra note 64, at 33.
84. Frank, supra note 1, at 1313.
85. See generally GOALS AND MISSIONS, supra note 4.
86. Since 1963, the Joint Committee of the American Law Institute and the American Bar Association (ALI-ABA) has been developing and refining standards and a general curriculum for meeting the educational needs of the newly admitted lawyer or, more ironically, the educational needs of the law school graduate. See Wolkin, Foreword to AMERICAN LAW INSTITUTE-AMERICAN BAR ASSOCIATION, A MODEL CURRICULUM FOR BRIDGE-THE-GAP PROGRAMS (Discussion Draft 1988) and the Introduction to the work itself for a history of this effort. The culmination of this effort is a draft model “Bridge-The-Gap” program contemplating a minimum of 140 hours of post law school education in a broad range of practice skills, including trial skills, client interviewing, counseling, negotiation, advocacy, and drafting. AMERICAN LAW INSTITUTE-AMERICAN BAR ASSOCIATION, A MODEL CURRICULUM FOR BRIDGE-THE-GAP PROGRAMS (Discussion Draft 1988). It is paradoxical that the joint commit-
MacCrate, Chairman of the ABA Task Force on Lawyer Competency, notes, "Change is everywhere in the profession except among the gatekeepers."87

Dean Sexton accurately contends that law students today can master legal analysis and reasoning under the casebook method in two or "at most" three semesters.88 Hence, he proposes integration of the situational method and an interdisciplinary approach to the law school curriculum.89 It is not a lack of time, but the priorities and the values applied in allocating time and resources that have precluded the integration of methods other than casebook analysis. An itinerary that devotes three years to analytical skills arising from appellate case analysis cannot include even a "visit"90 to professional competence, much less achieve a level of competence appropriate to one undertaking the representation of clients.

If the schools were to accept the duty to educate for professional practice competence, a variety of models are available. For example, application of theory to client problems can be treated in one or more courses whose substance may be called "lawyering," "practice," "professional skills" or "office practice." New York University's first-year Lawyering Skills Course is an example, as is the program followed by Marshall Wythe School of Law at William and Mary. Skills in such courses are likely to be developed through transactions using a situational method. But these skills exercises are unlikely to be used to support that which is learned in substantive classes, since bridges between the classes will be few and far between, and the faculty teaching in the courses are apt to be more isolated than those in an integrated curriculum.

In a way, this curricular separation of "lawyering" or "professional skills" perpetuates the Langdellian model, artificially emphasizing a differentiation between the science or theory of law and its application. The risk in classifying part of lawyering as "professional skills" in a law school system dominated by the Langdellian method is a pedagogical apartheid in which "sub-

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88. Sexton, supra note 22, at 336.
89. Id.
90. See Frank, supra note 1.

stance” and “skills” are neatly maintained in different parts of the curriculum; the categorization itself suggests a natural inferiority of “skills” as a component of lawyering. Ironically, the end product of the Langdellian method is the professional “skill” of legal analysis. The question is indeed “not whether professional skills should be taught in the law school, but rather which professional skills should be taught in the law school?”

The better design is one that integrates. For example, the skills of drafting and negotiation might be combined with the contracts class. Legal research, writing, and appellate advocacy might be melded into a torts class with a heavy jurisprudential emphasis. Pretrial advocacy and civil procedure can be merged into a class that would well prepare a student for another merger of trial advocacy and evidence, which classes could address the bulk of a school’s stated competencies in dispute resolution.

Learning exercises can serve several pedagogical masters. An exercise in jury voir dire might start with an examination of the philosophy and foundation upon which the concept of jury voir dire rests, followed by examination of the role of lawyers and judges in voir dire in the state and federal systems. The demonstration itself could use the situational method, placing the students in a simulated situation that is also interdisciplinary, for example, a medical or safety engineering case. The voir dire questions themselves could be directed at current sources of bias that would lead to discussion of underlying ethical, social, and economic issues. In this exercise, the student would, of course, voir dire a jury. The student emerges with the perspective, knowledge, skill, and character to voir dire a jury at an entry level of competence.

Law schools cannot continue doing business as usual in any event. If for no other reason than student demand, courses in which students can make practice applications of theory will claim an increasingly larger portion of the hours, credits, faculty, and resources of even the most traditional schools. Bifurcation of the students’ professional education into theory and applications will in time seem more senseless and unjustified and can be expected to create the management problems that come with having two schools, two faculties, and two missions.

The goal at the University of Montana School of Law is a unified and integrated curriculum for the purpose of spanning the gap between the traditional law school curriculum and the profession.

The Law School's academic mission is the advancement of the art of the profession it serves, by broadening the knowledge, perspectives, skills, and personal characteristics of its graduating lawyers. As the only law school in the State of Montana, the school accepts its responsibility as one of the gatekeepers to the profession. Hence, the faculty continues to carve the arches, add the steeples, and stain the glass on the Academic Planning Project whose cornerstone was laid in 1979.92

92. On June 26, 1991, after this article was submitted for publication, the ABA Task Force on Law Schools and the Profession: Narrowing the Gap made public its Tentative Draft of a Statement of Fundamental Lawyering Skills and Professional Values. The 95-page draft identifies fundamental lawyering skills in the areas of problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute resolution procedures, organization and management of legal work, and recognizing and resolving ethical dilemmas. It also states fundamental values in the areas of competent representation, promotion of justice, fairness and morality, improvement of the profession and professional self-development. The introduction to the statement notes that "the statement seeks to define the lawyering skills and professional values with which every lawyer should be familiar prior to assuming the full responsibilities of a member of the legal profession . . . ," but also notes that "this statement does not attempt to resolve the questions of how these skills and values should be acquired, when they should be acquired (before or after graduation from law school; before or after a new attorney's admission to the bar), and whether (and, if so, how) the profession should insure that new lawyers have acquired the requisite knowledge."