



BEST PRACTICES FOR LEGAL EDUCATION

A Vision and A Road Map

ROY STUCKEY AND OTHERS

FOREWORD BY ROBERT MACCRATE, ESQ.

Best Practices for Legal Education

Roy Stuckey and Others

Copyright 2007 by Roy Stuckey

Published in the United States by the Clinical Legal Education Association.

Permission is granted to reproduce this document or portions of it for noncommercial purposes, so long as the copies are distributed at or below costs and identify the author, title, and date of publication.

An electronic version of this document is available on the website of the Clinical Legal Education Association, <http://cleaweb.org/>.

For information or additional copies, contact:
the Clinical Legal Education Association
(see contact information at <http://cleaweb.org/bestpractices>)
or
Roy Stuckey at Stuckeyroy@gmail.com or
University of South Carolina School of Law
Columbia, SC 29208.

Cover design by Bob Lowder, University Publications, University of South Carolina.

Cataloged at the Coleman Karesh Law Library at the University of South Carolina

Stuckey, Roy

Best Practices for Legal Education / by Roy Stuckey and Others
ISBN 0-9792955-0-5
ISBN 978-0-9792955-0-8

Stuckey, Roy

Law – Study and Training
I. Title
KF272.S88 2007

First Edition

This book is dedicated to
The Honorable Rosalie Wahl,
Supreme Court of Minnesota,

and

Robert MacCrate, Esq.,
Sullivan and Cromwell, New York,

for their love of the legal profession
and their efforts to improve legal education.

Table of Contents

Foreword	vii
CLEA’S Best Practices Project	ix
Steering Committee for CLEA’s Best Practices Project.....	x
Acknowledgments	xi
Introduction	1
Executive Summary and Key Recommendations.....	7
Chapter One: Reasons for Developing a Statement of Best Practices	11
Chapter Two: Best Practices for Setting Goals of the Program of Instruction	39
Chapter Three: Best Practices for Organizing the Program of Instruction	93
Chapter Four: Best Practices for Delivering Instruction, Generally	105
Chapter Five: Best Practices for Experiential Courses	165
Chapter Six: Best Practices for Non-experiential Teaching Methods.....	207
Chapter Seven: Best Practices for Assessing Student Learning.....	235
Chapter Eight: Best Practices for Assessing Institutional Effectiveness ...	265
Chapter Nine: Components of a “Model” Best Practices Curriculum	275
Conclusion: The Road Ahead.....	283



Introduction	1
Executive Summary and Key Recommendations.....	7
Chapter One: Reasons for Developing a Statement of Best Practices	11
A. A Statement of Best Practices Can Help Evaluate the Quality of a Law School’s Program of Instruction and Guide Efforts to Improve It	11
B. The Need to Improve Legal Education is Compelling	11

1. The Licensing Process is Not Protecting the Public	11
2. Law Schools Are Not Fully Committed to Preparing Students for Bar Examinations	15
3. Law Schools Are Not Fully Committed to Preparing Students for Practice	16
4. Law Students Can be Better Prepared for Practice	18
a. Law schools should expand their educational goals	19
b. Law schools should improve the competence and professionalism of their graduates	24
(1) Access to justice is lacking	24
(2) Graduates are not sufficiently competent	26
(3) Too many graduates conduct themselves unprofessionally	27
c. Law schools should attend to the well-being of their students	29
5. Principles of Accountability and Consumer Protection Require Change	36

Chapter Two: Best Practices for Setting Goals of the Program of

Instruction	39
A. Be Committed to Preparing Students for Practice	39
B. Clearly Articulate Educational Goals	40
C. Articulate Goals in Terms of Desired Outcomes	42
1. What “Outcomes” Means	42
2. The Global Movement Toward Outcomes-Focused Education	45
3. Principles for Developing Statements of Outcomes	49
4. Various Statements of Desirable Outcomes	50
5. Statement of Outcomes Chosen for This Document	53
D. Articulate Goals of Each Course in Terms of Desired Outcomes	55
E. Aim to Develop Competence – The Ability to Resolve Legal Problems Effectively and Responsibly	59
F. Help Students Acquire the Attributes of Effective, Responsible Lawyers	65
1. Self-Reflection and Lifelong Learning Skills	66
2. Intellectual and Analytical Skills	67
3. Core Knowledge of the Law	73
4. Core Understanding of the Law	73
5. Professional Skills	77
6. Professionalism	79
a. A commitment to justice	84
b. Respect for the rule of law	85
c. Honor, integrity, fair play, truthfulness, and candor	87
d. Sensitivity and effectiveness with diverse clients and colleagues	88
e. Nurturing quality of life	90

Chapter Three: Best Practices for Organizing the Program of

Instruction	93
A. Strive to Achieve Congruence	93
B. Progressively Develop Knowledge, Skills, and Values	94
C. Integrate the Teaching of Theory, Doctrine, and Practice	97
D. Teach Professionalism Pervasively Throughout All Three Years of Law School	100

Chapter Four: Best Practices for Delivering Instruction, Generally 105

A. Know Your Subjects Extremely Well	105
B. Continuously Strive to Improve Your Teaching Skills	105
C. Create and Maintain Effective and Healthy Teaching and Learning Environments	110
1. Do No Harm to Students	111
2. Support Student Autonomy	113
3. Foster Mutual Respect Among Students and Teachers	114
4. Have High Expectations	116
5. Foster a Supportive Environment	118
6. Encourage Collaboration	119

7.	Make Students Feel Welcome and Included	121
8.	Engage Students and Teachers	123
9.	Take Delight in Teaching.....	125
10.	Give Regular and Prompt Feedback.....	125
11.	Help Students Improve Their Self-Directed Learning Skills.....	127
12.	Model Professional Behavior	129
D.	Explain Goals and Methods to Students	130
E.	Choose Teaching Methods That Most Effectively and Efficiently Achieve Desired Outcomes	130
F.	Use Multiple Methods of Instruction and Reduce Reliance on the Socratic Dialogue and Case Method	132
G.	Employ Context-Based Education Throughout the Program of Instruction.....	141
1.	Use Context-Based Instruction to Teach Theory, Doctrine, and Analytical Skills (problem and case-based learning).....	146
2.	Use Context-Based Instruction to Teach How to Produce Law-Related Documents (legal writing and drafting).....	148
3.	Use Context-Based Instruction to Teach How to Resolve Human Problems and to Cultivate “Practical Wisdom” (role assumption and practice experience)	149
H.	Integrate Practicing Lawyers and Judges Into the Program of Instruction	157
I.	Enhance Learning With Technology	159
J.	Establish a Learning Center	161
Chapter Five: Best Practices for Experiential Courses		165
A.	Experiential Courses, Generally.....	165
1.	Introduction to Experiential Courses.....	165
2.	Best Practices for Experiential Courses, Generally	168
a.	Provide students with clear and explicit statements about learning objectives and assessment criteria	168
b.	Focus on educational objectives that can be achieved most effectively and efficiently through experiential education	168
(1)	Help students adjust to their roles as professionals	170
(2)	Help students become better legal problem- solvers.....	170
(3)	Help students develop interpersonal and professional skills	170
(4)	Help students learn how to learn from experience	172
c.	Meet the needs and interests of students	173
d.	Grant appropriate credit.....	174
e.	Record student performances feedback or self evaluation.....	174
f.	Train those who give feedback to employ best practices.....	174
g.	Train students to receive feedback.....	176
h.	Help students identify and plan how to achieve individually important learning goals	177
i.	Give students repeated opportunities to perform tasks, if achieving proficiency is an objective	178
j.	Enhance the effectiveness of faculty in experiential courses.....	178
B.	Simulation-Based Courses	179
1.	Introduction to Simulation-Based Courses.....	179
2.	Best Practices for Simulation-Based Courses.....	180
a.	Use simulation-based courses to achieve educational goals more effectively and efficiently than other methods of instruction could achieve	180
b.	Ensure that each simulation is appropriate for the participants and its purposes and instructions are clear	184
c.	Base simulations on articulated theories of practice	185
d.	Balance detail, complexity, and usefulness	186
e.	Debrief simulations with all students in the course	187
f.	Provide adequate facilities, equipment, and staffing	188
C.	In-House Clinical Courses.....	188
1.	Introduction to In-House Clinical Courses.....	188
2.	Best Practices for In-House Clinical Courses	189

a.	Use in-house clinical courses to achieve clearly articulated educational goals more effectively and efficiently than other methods of instruction could achieve	189
b.	Be a model of law office management	193
c.	Provide malpractice insurance	194
d.	Approve student work in advance and observe or record student performances	194
e.	Balance student autonomy with client protection	195
f.	Have a classroom component	196
g.	Provide adequate facilities, equipment, and staffing	197
h.	Respond to the legal needs of the community	197
D.	Externship Courses	198
1.	Introduction to Externship Courses	198
2.	Best Practices for Externship Courses	198
a.	Use externship courses to achieve clearly articulated educational goals more effectively and efficiently than other methods of instruction could achieve	198
b.	Involve faculty enough to ensure achievement of educational objectives	200
c.	Establish criteria for approval of sites and supervisors	201
d.	Establish standards to assure that work assigned to students will help achieve educational objectives	201
e.	Establish standards to assure that field supervision will help achieve educational objectives	202
f.	Consider students' needs and preferences when placing students	203
g.	Provide malpractice insurance	203
h.	Approve student work in advance and observe or record student performances	204
i.	Ensure that students are prepared to meet obligations	204
j.	Give students opportunities to interact with externship faculty and other students	205
k.	Ensure that adequate facilities, equipment, and staffing exist	205

Chapter Six: Best Practices for Non-experiential Teaching Methods.....207

A.	Socratic Dialogue and Case Method	207
1.	Introduction to the Socratic Dialogue and Case Method	207
a.	Socrates' methods (as described by Davis and Steinglass)	207
b.	Langdell's methods (as described by Davis and Steinglass)	209
2.	Best Practices for Using the Socratic Dialogue and Case Method	211
a.	Use the Socratic dialogue and case method for appropriate purposes	211
b.	Be skilled in using Socratic discourse	213
(1)	Begin by asking a student to "state the case"	213
(2)	Use closed hypotheticals to relate the case at hand to prior cases	214
(3)	Use open hypotheticals to demonstrate complexity and indeterminacy of legal analysis	214
(4)	Draw lessons about the nature and processes of lawyering and judging	216
c.	Do not intentionally humiliate or embarrass students	216
(1)	Explain why Socratic dialogue is used	218
(2)	Reassure flustered students and move to another student if a student is unprepared	219
(3)	Do not use successive questions and answers that leave students feeling passive, powerless, and unknowing	219
(4)	Use Socratic dialogue to illuminate lessons, not to expose students' lack of understanding	220
d.	Do not rely exclusively on Socratic dialogue	221
(1)	Allow students to exercise some control	221
(2)	Ask all students to jot down their thoughts while engaging one student in dialogue	222
(3)	Use variations on the Socratic dialogue and casebook method	222
(4)	Use other methods of instruction to complement Socratic dialogue	224

B.	Discussion	226
1.	Introduction to Discussion	226
2.	Best Practices for Discussion	227
a.	Use discussion for appropriate purposes	227
b.	Ask effective questions	228
c.	Encourage students to ask questions	228
d.	Maintain a somewhat democratic classroom	229
e.	Validate student participation	229
f.	Use caution in responding to students' errors	229
g.	Keep your views to yourself	229
h.	Do not talk too much or allow the discussion to go on too long	230
i.	Announce when the discussion is about to end	230
j.	Establish an environment conducive to discussion	230
k.	Give students time to reflect on the questions being discussed	230
C.	Lecture	231
1.	Introduction to Lecture	231
2.	Best Practices for Lecture	232
a.	Use lecture for appropriate purposes	232
b.	Limit the length of lectures	233
c.	Do not read the text	233
d.	Organize the lecture	233
e.	Employ effective delivery techniques	234
f.	Use other techniques in conjunction with lecture	234
g.	Have reasonable expectations	234
Chapter Seven: Best Practices for Assessing Student Learning		235
A.	The Importance and Purposes of Assessments	235
B.	The Shortcomings of Current Assessment Practices in the United States	236
C.	Best Practices for Assessing Student Learning	239
1.	Be Clear About Goals of Each Assessment	240
2.	Assess Whether Students Learn What is Taught (validity)	241
3.	Conduct Criteria-Referenced Assessments, Not Norm-Referenced (reliability)	243
4.	Use Assessments to Inform Students of Their Level of Professional Development	245
5.	Be Sure Assessment is Feasible	253
6.	Use Multiple Methods of Assessing Student Learning	253
7.	Distinguish Between Formative and Summative Assessments	255
8.	Conduct Formative Assessments Throughout the Term	255
9.	Conduct Multiple Summative Assessments Throughout the Term, When Possible	259
10.	Ensure That Summative Assessments Are Also Formative Assessments	260
11.	Require Students to Compile Educational Portfolios	261
Chapter Eight: Best Practices for Assessing Institutional Effectiveness ...		265
A.	Evaluate Effectiveness Regularly	265
B.	Use Various Methods to Gather Information	266
C.	Use Student Performance and Outcome Assessment Results	270
D.	Meet Recognized Standards for Conducting Assessments	271
E.	Solicit and Incorporate Opinions from Outside of the Academy	272
F.	Demonstrate How Data is Used to Improve Effectiveness	272
Chapter Nine: Components of a "Model" Best Practices Curriculum		275
A.	The First Year Program of Instruction	276
B.	The Second Year Program of Instruction	279
C.	The Third Year Program of Instruction	280
Conclusion: The Road Ahead		283

Foreword

Robert MacCrate, Esq.

Over the past 25 years, I have been privileged actively to participate in a rich dialogue, among law teachers, lawyers, and judges, regarding the education of lawyers. This report, *BEST PRACTICES FOR LEGAL EDUCATION*, is a fruit of that dialogue. It was authored by a group, aptly described by The Carnegie Foundation for the Advancement of Teaching as “a far-flung network of legal educators.” The Carnegie Foundation in its own contemporaneous report, *EDUCATING LAWYERS*, views this time as an “historic opportunity to advance legal education,” which it surely is following the dialogue we have had during the past 25 years.

Sparked by the Ford Foundation’s CLEPR Project (during the 1960s and 70s), the American Bar Association convened a 1984 conference “Legal Education and the Profession: Approaching the 21st Century” at the McGeorge School of Law, which started the continuous dialogue that bears fruit today in the two reports. In 1987, Justice Rosalie Wahl of the Minnesota Supreme Court and Chair of the ABA Section of Legal Education and Admissions to the Bar, convened a “National Conference on Professional Skills and Legal Education.” Professor Roy Stuckey, co-chair of that conference and leader of the Best Practices Project, stated the 1987 goal: “To develop through a dialogue a consensus understanding about the present state of professional skills instruction in American law schools.” At the conference Justice Wahl rhetorically asked:

Have we really tried in law school to determine what skills, what attitudes, what character traits, what quality of mind are required of lawyers? Are we adequately educating students through the content and methodology of our present law school curriculums to perform effectively as lawyers after graduation?

Justice Wahl went on to say that until the entire profession had a clearer vision of the answer to the questions, further progress in relating legal education to the needs of lawyers and judges and the advancement of the profession as a client-centered public calling would be thwarted.

To address the questions Justice Wahl had rhetorically raised, the Council of the Section of Legal Education in 1989 established the “Task Force on Law Schools and the Profession: Narrowing the Gap” comprised of law teachers, practicing lawyers, and sitting judges. Early in their deliberations the members of the Task Force concluded that the skills and values of competent and responsible lawyers are developed along a continuum that neither begins nor ends in law school, but starts before law school, reaches its most formative and intensive stage during the law school experience, and continues throughout the lawyer’s professional career. At a time when the professional idea seemed overwhelmed by change both within the profession and in society at large, the Task Force developed a conceptual statement of the skills and values that all lawyers should seek to acquire. Over a period of three years, the Task Force in plenary sessions, in subcommittees, and in public hearings, carried on and expanded the dialogue on the education of lawyers.

The Task Force Report published in July 1992 was entitled *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM*. During the decade following publication of the report, bar associations in many parts of the country, in cooperation with law schools and the judiciary, convened conclaves in more than 25 states to continue the dialogue in discussion of how the educational continuum could best be built in a state or in a region of states.

Against this background, the leaders of the Clinical Legal Education Association in 2001 decided to establish a committee of scholars to develop a “Statement of Best Practices for Legal Education” and asked Professor Stuckey to chair that committee. Over the ensuing five years the authors of *BEST PRACTICES* have distilled out of the continuing dialogue a consensus of understanding of an alternative vision of all the components of legal education, based on educational research and scholarship: an integrated combination of substantive law, skills, and market knowledge, and embracing the idea that legal education is to prepare law students for the practice of law as members of a client-centered public profession.

The central message in both *BEST PRACTICES* and in the contemporaneous Carnegie report is that law schools should:

- broaden the range of lessons they teach, reducing doctrinal instruction that uses the Socratic dialogue and the case method;
- integrate the teaching of knowledge, skills and values, and not treat them as separate subjects addressed in separate courses; and
- give much greater attention to instruction in professionalism.

At the same time, the reports recognize that the program of instruction should reflect each law school’s mission for developing competent and committed professionals.

With *BEST PRACTICES* and *EDUCATING LAWYERS* as guides, and now informed by the annual Law School Survey of Student Engagement (co-sponsored by the Association of American Law Schools and the Carnegie Foundation), there is indeed an “historic opportunity to advance legal education.”

CLEA'S Best Practices Project

With approval of the CLEA Board of Directors, the Best Practices Project was initiated in August, 2001, by the 2001 President of CLEA, Professor Carrie Kaas of the Quinnipiac University School of Law and the 2002 President of CLEA, Professor Peter Joy of the Washington University School of Law, St. Louis. They asked Professor Roy Stuckey of the University of South Carolina School of Law to chair the project and then appointed the Steering Committee. Their charge to the Committee was to “develop a statement of best practices,” leaving it up to the Committee to determine the scope and nature of that statement.

BEST PRACTICES FOR LEGAL EDUCATION was developed collaboratively over the course of almost six years, 2001-2007. Roy Stuckey is the principal author of the document, but many people contributed to the final product.

Each new draft was posted on the professionalism website at the University of South Carolina School of Law (<http://professionalism.law.sc.edu>), usually in late spring, August, and December. Notices of each posting were distributed via the internet to lists serving law professors (lawprof), clinical law teachers (lawclinic), externship teachers (lextern), and the Global Alliance for Justice Education (GAJE). Hard copies of each draft were mailed to leaders of the AALS, the ABA Section of Legal Education and Admissions to the Bar, and other leaders of the legal profession and legal academia. These drafts and intermittent requests for assistance on specific issues were also sent to the Steering Committee, an increasingly large number of people who expressed interest in the project, and people with expertise about specific topics. Ideas for improving the document were widely solicited, and many people made suggestions. As indicated in the document, a number of people drafted sections that were incorporated into the document.

As the document evolved, presentations about the project were made at a variety of meetings and conferences, and the Steering Committee held open meetings to discuss the project during AALS annual meetings and clinical teachers' conferences. The document was the subject of a national conference at Pace University School of Law in March, 2005, and several CLEA-sponsored workshops.

Steering Committee for CLEA's Best Practices Project

Professor Roy T. Stuckey, Chair
University of South Carolina School of
Law

Professor Margaret Barry
The Catholic University of America
School of Law

Professor Robert D. Dinerstein
American University, Washington
College of Law

Professor Jon C. Dubin (2001 - 2004)
Rutgers, The State University of New
Jersey, S.I. Newhouse Center for Law &
Justice

Professor Russell Engler
New England School of Law

Professor John S. Elson
Northwestern University School of Law

Professor Gail Hammer (since 2003)
Gonzaga University School of Law

Professor Randy Hertz
New York University School of Law

Professor Peter Joy
Washington University School of Law,
St. Louis

Professor Carolyn Kaas
Quinnipiac University School of Law

Professor Vanessa Merton
Pace University School of Law

Professor Greg Munro (since 2003)
University of Montana School of Law

Professor Sandy Ogilvy
The Catholic University of America
School of Law

Dean Suellyn Scarnecchia (2001-2002)
University of New Mexico School of Law

Professor Michael Hunter Schwartz
(since 2005)
Washburn University School of Law

Presidents of CLEA During the Project

2001 Professor Carolyn Kaas
Quinnipiac University School of Law

2002 Professor Peter Joy
Washington University School of Law,
St. Louis

2003 Professor Annette Appell
University of Nevada, Las Vegas School
of Law

2004 Professor Antoinette Sedillo
University of New Mexico School of Law

2005 Professor Alex Scherr
University of Georgia School of Law

2006 Professor Susan Kay
Vanderbilt University Law School

2007 Professor Paulette J. Williams
University of Tennessee College of Law

Acknowledgments

I thank Carrie Kaas and Peter Joy for asking me to chair the Steering Committee. I also thank Carrie, Peter, and the other officers and Board members of CLEA for their unwavering support and encouragement. I appreciate the Steering Committee's guidance and tolerance as the project made numerous twists and turns. The inspiration to move forward and finish the project was provided by the participants in the remarkable best practices conference that was organized and facilitated by Vanessa Merton at Pace University School of Law on March 11-13, 2005.

This document has the fingerprints of hundreds of people who provided suggestions, sources, and even some drafting. Many people can legitimately claim to be contributing authors. The contributing authors who made the most substantial contributions are Sandy Ogilvy, Catholic University of America, Columbus School of Law, and Michael Schwartz, Washburn University School of Law.

It would have been impossible to describe best practices for legal education without relying on the work of dozens of scholars who care about the quality of legal education, a number of whom shared works in progress with us. Judith Wegner, University of North Carolina School of Law, deserves special recognition for allowing us to use drafts of her findings and conclusions from her study of legal education for the Carnegie Foundation for the Advancement of Teaching. Her insights led to significant changes at a critical stage of the project's evolution. The document was also enhanced by the generosity of Bill Sullivan and the Carnegie Foundation for the Advancement of Teaching who allowed us to incorporate material from the July, 2005, draft of *EDUCATING LAWYERS* (March, 2007), a report on Carnegie's study of legal education in the United States.

In the final editing stages, Louis Sirico, Villanova University School of Law, and Ruth Anne Robbins of Rutgers, The State University of New Jersey School of Law, Camden, provided expert editorial and formatting assistance in preparing the document for publication. The book may never have made it to the printer without the help of Beth Prendergast Hendrix, Faculty and Staff Computer Trainer and Technology Coordinator at the University of South Carolina School of Law. In the process of getting the book "camera ready," she fought and defeated many dragons that had taken up residence in the file.

I was aided by some very talented law student research assistants. Heather Shirley was with me at the beginning when we did not know how to start or where to go. She was followed by William Hughes, Camey Everhart, and Jodi Ramsey.

Finally, I want to acknowledge the broad and diverse range of people within and beyond the legal profession who encouraged us to see this project through. I am convinced today that more people care about the quality of legal education than I thought when I began. I am confident that by working together, people who care can make a positive difference for our students, their future clients, and ourselves.

Roy Stuckey
University of South Carolina
School of Law
stuckeyroy@gmail.com

Introduction

This book provides a vision of what legal education might become if legal educators step back and consider how they can most effectively prepare students for practice. It has several potential uses. It could serve as a road map for a partial or complete review of a law school's program of instruction. It could also help individual teachers improve course design, delivery of instruction, and assessment of student learning. Most of all, however, we hope the document will facilitate dialogue about legal education among law teachers and between law teachers and other members of the legal profession. A serious, thoughtful reconsideration of legal education in the United States is long overdue.

The principles of best practices described in this document are based on long-recognized principles of sound educational practices as well as recent research and scholarship about teaching and learning. Our conclusions are based on the most up-to-date information available. Such resources include *EDUCATING LAWYERS*, the report of a study of legal education conducted by the Carnegie Foundation for the Advancement of Teaching, and the unpublished drafts of chapters for a book being written by Judith Wegner, which contain her personal observations and conclusions as the principal investigator for the Carnegie Foundation's study.

Another resource is information produced from on-going empirical studies by Ken Sheldon and Larry Krieger about the negative effects that current legal educational practices can have on the emotional well-being of our students. Our work was also informed by the progress of the Law Society of England and Wales as it continues developing a new training framework for solicitors, including a description of the knowledge, skills, and values that new solicitors should have on their first day in practice. Additionally, we tracked and incorporated developments in the professionalism movement, a successful experiment using standardized clients to evaluate lawyer performance in Scotland, evolving theories from cognitive scientists and educational theorists about teaching and learning, current trends in evaluating institutional success, new techniques for assessing student learning, including electronic and other types of portfolios, and many other new initiatives.

The principles of best practices described in this document are based on the following assumptions about legal education in the United States:

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.
3. The process for becoming a lawyer in the United States will not change significantly.¹

The Best Practices Project was motivated in large part by our concern about the potential harm to consumers of legal services when new lawyers are not adequately prepared for practice. We are also concerned about helping law school

¹ If there is any possibility that the third assumption is invalid, we would encourage the legal profession to reconsider the entire continuum of educating and training lawyers in the United States. This book examines how the law school years might be used more effectively, but even the most effective law school program cannot fully prepare new lawyers for practice. Post graduate education and training needs to become more rigorous and sophisticated.

graduates to succeed in law practice and to lead satisfied, healthy lives.

Since its inception, the United States' model of legal education has been criticized as serving only some of the educational needs of new lawyers.² Since the 1970's, numerous groups of leaders of the legal profession and groups of distinguished lawyers, judges, and academics have studied legal education and have universally concluded that most law school graduates lack the minimum competencies required to provide effective and responsible legal services.³ The depth and seriousness of defects in legal education in the United States were summarized by Greg Munro:

These critics did not focus on peripheral matters, but rather identified defects that go to the core and structure of legal education. They are the problems of ignoring the constituencies a law school serves, not knowing what lawyers do, what law students need to learn, how law students learn best, what teaching methods are most effective, how to determine whether students have learned, what responsibilities the law school has to the profession and society, and how the school knows it is discharging these responsibilities. They are the same core problems that have plagued American higher education and have prompted demands for reform.⁴

Former Secretary of Education William J. Bennett said "we are uncertain what we think our students should learn, how best to teach it to them, and how to be sure when they have learned it."⁵ Gary Bellow characterized the deficiencies in our system of legal education as "indefensible."

Al Sacks once said to me: 'Well, it seems to me that what you're saying is that law school is empirically irrelevant, theoretically flawed, pedagogically dysfunctional, and expensive.' And I am, of course, saying just that. When you add to these deficiencies, the incoherence of the second- and third-year course offerings, the amount of repetition in the curriculum, the degree to which unacknowledged ideology pervades the entire law school experience and the fact that no graduate of an American law school is able to practice when graduated, you have a system of education which, I

² See, e. g., William V. Rowe, *Legal Clinics and Better Trained Lawyers – A Necessity*, 11 ILL. L. REV. 591 (1917); SUSAN BOYD, *THE ABA'S FIRST SECTION: ASSURING A QUALIFIED BAR* (1993); ROBERT STEVENS, *LEGAL EDUCATION IN AMERICA: FROM THE 1850'S TO THE 1980'S* (1983).

³ A fairly comprehensive discussion of the state of legal education and criticisms of it up to 1980 can be found in various footnotes in H. Russell Cort & Jack L. Sammons, *The Search for "Good Lawyering:" A Concept and Model of Lawyering Competencies*, 29 CLEV. ST. L. REV. 397 (1980). More recent articles are noted in Mitu Gulati, Richard Sander & Robert Sockloskie, *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235, 238, n.4 (2001).

⁴ GREGORY S. MUNRO, *OUTCOMES ASSESSMENT FOR LAW SCHOOLS* 46, n.113 (2000). A more recent book is PHILIP C. KISSAM, *THE DISCIPLINE OF LAW SCHOOLS* (2003). Kissam describes the paradoxes in legal education in which intentions and practices seem to be at cross-purposes, and he depressingly holds out little hope for significant change.

⁵ William J. Bennett, *Foreword*, *ASSESSMENT IN AMERICAN HIGHER EDUCATION: ISSUES AND CONTEXTS*, at I (Clifford Adelman ed., 1986).

believe, is simply indefensible.⁶

In the history of legal education in the United States, there is no record of any concerted effort to consider what new lawyers should know or be able to do on their first day in practice or to design a program of instruction to achieve those goals. The Carnegie Foundation for the Advancement of Teaching conducted a study of legal education that ended in 2006. It “discovered that faculty attention to the overall purposes and effects of a school’s educational efforts is surprisingly rare.”⁷

The authors of the Carnegie Foundation’s report recognized that some changes have occurred in legal education but not the comprehensive, systemic changes that are needed.

And, indeed, over the past decade, important changes have been taking place. Compared to fifty years ago, law schools now provide students with more experience, more context, more student choice, and more connection with the larger university world and other disciplines. However, efforts to improve legal education have been more piecemeal than comprehensive. Few schools have made the overall practices and effects of their educational effort a subject for serious study. Too few have attempted to address these inadequacies on a systematic basis. This relative lack of responsiveness by the law schools, taken as a group, to the well-reasoned pleas of the national bar antedates our investigation.⁸

Legal educators generally ignore long-recognized basic principles of curriculum development, which involves four stages:

- Stage 1: Identifying educational objectives that the school or course should seek to attain.
- Stage 2: Selecting learning experiences that are likely to be useful in attaining those objectives.
- Stage 3: Organizing the selected learning experiences for effective instruction.
- Stage 4: Designing methods for evaluating the effectiveness of the selected learning experiences.⁹

The disinclination of law teachers to engage in critical thinking and debate about legal education is especially surprising when one considers that our model of legal education has not been in place very long. It was not until the 1960s that our structure of four years of college followed by three years of law school was firmly established.¹⁰

It 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.

⁶ Gary Bellow, *On Talking Tough to Each Other: Comments on Condlin*, 33 J. LEGAL EDUC. 619, 622-23 (1983).

⁷ WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS* 98 (Draft July, 2006).

⁸ *Id.* at 243.

⁹ *See, e.g.*, RALPH TYLER, *BASIC PRINCIPLES OF CURRICULUM AND INSTRUCTION* (1949).

¹⁰ STEVENS, *supra* note 2, at 209.

We agree with the authors of the Carnegie Foundation's report that the changes we need to make are substantial.

A more adequate and properly formative legal education requires a better balance among the cognitive, practical, and ethical-social apprenticeships. To achieve this balance, legal educators will have to do more than shuffle the existing pieces. It demands their careful rethinking of both the existing curriculum and the pedagogies law schools employ to produce a more coherent and integrated initiation into a life in the law.¹¹

It is no easy task to consider how to improve legal education even if all concerned agree there is a need for improvement. Generations of debate have not resolved the relative merits of a liberal, general education versus a technical, professional orientation for the practice of law. Nor will we ever be able to reach universal agreement about the specific knowledge, skills, and values that law schools should teach if for no other reason than the vastly diverse practice settings in which our graduates work. There are some fundamental things about which we should be able to agree, however, and we should not refrain from trying to improve legal education simply because the task is difficult. Other countries are reforming their systems of legal education; our attention to improving the preparation of lawyers for practice in the United States is long overdue.

We undertook a thoughtful and deliberate search for ways to improve legal education that are consistent with sound educational theories and practices. We hope our final product has achieved these goals, though some of our proposals call for significant changes in the content and organization of the law school curriculum and in the attitudes and practices of law teachers.

This is a large document, unavoidably so because preparing students for practice is a complex project. Despite its size, it provides only a broad overview of most of the topics it addresses. Entire books have been written about the concepts contained in almost every page. Thus, reference to many outside sources is required to acquire a complete understanding of the problems and possible solutions.

Many of our recommendations do not have any cost or time implications, and others have none beyond the initial effort involved in making the transition from current practices.¹² Certainly, schools that decide to offer the best possible learning experiences for their students may want to have smaller student-faculty ratios than today's typical law school. Moreover, they might expect their faculties to devote more time to educating students than current practice.

Graduate professional education should have lower student-faculty ratios than the current norm in law schools in the United States. As one scholar wrote, "Langdell's perhaps greatest coup was his persuasion of universities that legal

¹¹ SULLIVAN ET AL., *supra* note 7, at 180.

¹² In fact, the law schools in the United States that appear to be the most student-centered and committed to preparing students for practice have relatively modest budgets. We considered naming schools that have made an institutional commitment to preparing students for practice and have taken significant steps toward that objective. We decided not to do so, however, because we did not have valid selection criteria.

education was inexpensive.”¹³ Sandy D’Alemberte observed that “[l]aw schools have not had the teaching resources of our other graduate programs, and they do not have the resources of the professional school programs – even those which terminate with a community college degree. This should suggest something to us – nobody does things the way we do. We’re probably the group that’s out of step.”¹⁴ Even without improving student-faculty ratios, however, we believe significant improvements are possible. One of our basic tenets is that law schools should become more student-centered and should recognize and reward good teaching more than most do today.

The changes we recommend should have a positive impact on legal scholarship. If law teachers begin giving more thought to how students learn as well as what lawyers do and how they do it, new avenues of legal scholarship will be opened beyond the traditional scholarship about doctrine and judging.¹⁵ These new directions in scholarship are more likely to involve interdisciplinary work than traditional legal scholarship and strengthen law schools’ claims that they are worthy members of research universities.

We hope the completion of the drafting phase will mark the beginning of a process of discussion, debate, and implementation of the principles discussed in this document – or other principles that will promote improvements in legal education. We also hope, as Gary Bellow did, that “our discourse be real discourse – concerned with normative values, not the justification of the system that currently exists.”¹⁶

We acknowledge that any description of “best practices” will soon be eclipsed as we refine our understanding of the desirable goals of legal education and how to achieve them. That is how it should be.

¹³ Christoph G. Courchesne, “A Suggestion of a Fundamental Nature:” *Imagining a Legal Education of Solely Electives Taught as Discussions*, 29 RUTGERS L. REC. 21, 60 (2005) (citing STEVENS, *supra* note 2, at 268).

¹⁴ Talbot D’Alemberte, *Talbot D’Alemberte on Legal Education*, 76 ABA J. 52, 52 (Sep. 1990).

¹⁵ For suggestions of where such scholarship may lead, see Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEGAL EDUC. 313, 391-96 (1995); Carrie Menkel-Meadow, *The Legacy of Clinical Education: Theories About Lawyering*, 29 CLEV. ST. L. REV. 555 (1980).

¹⁶ Bellow, *supra* note 6, at 623.

Executive Summary and Key Recommendations

Developing a Statement of Best Practices (Introduction and Chapter One)

There is a compelling need to change legal education in the United States in significant ways. Law schools do some things well, but they do some things poorly or not at all. While law schools help students acquire some of the essential skills and knowledge required for law practice, most law schools are not committed to preparing students for practice. It is generally conceded that most law school graduates are not as prepared for law practice as they could be and should be. Law schools can do much better.

Our key recommendations for improving legal education are listed below. One can quickly grasp the full breadth of our recommendations by reviewing the table of contents.

We divide our discussion of best practices into seven categories: 1) setting goals, 2) organizing the program of instruction, 3) delivering instruction, generally, 4) conducting experiential courses, 5) employing non-experiential methods of instruction, 6) assessing student learning, and 7) evaluating the success of the program of instruction. We also include an example of a “model” best practices program of instruction.

We call on law schools to make a commitment to improve the preparation of their students for practice, clarify and expand their educational objectives, improve and diversify methods for delivering instruction, and give more attention to evaluating the success of their programs of instruction. The importance of accomplishing these goals was explained by Greg Munro:

A law school can best achieve excellence and have the most effective academic program when it possesses a clear mission, a plan to achieve that mission, and the capacity and willingness to measure its success or failure. Absent a defined mission and the identification of attendant student and institutional outcomes, a law school lacks focus and its curriculum becomes a collection of discrete activities without coherence. If a school does not assess its performance, it can easily be deluded about its success, the effectiveness of its pedagogical methods, the relevance of its curriculum, and the value of its services to its constituencies. A law school that fails to assess student performance or its performance as an institution, or that uses the wrong measures in doing so, has no real evidence that it is achieving any goals or objectives. A law school that lacks evidence of achievement invites demands for accountability.¹⁷

It may not be possible to prepare students fully for the practice of law in three years, but law schools can come much closer than they are doing today. It is

¹⁷ MUNRO, *supra* note 4, at 3-4.

especially important for law schools to make an institutional commitment to do the best they can to prepare their students for practice.

An important step is to articulate clear educational objectives for the program of instruction and, preferably, to describe those objectives in terms of desired outcomes. Outcomes-focused education is becoming the norm throughout higher education. In fact, regional accrediting agencies are requiring institutions of higher education, including some law schools, not only to state educational outcomes but also to prove that their students are attaining those outcomes.¹⁸ Legal education programs in the United Kingdom and other countries have outcomes-focused curriculums, and a few law schools in the United States are making progress toward becoming outcomes-focused. It is time for all law schools to make the transition.

Descriptions of desired outcomes of legal education should include statements of what graduates should know, what they should be able to do, and how they should do it. We describe some general outcomes that all law schools should seek to achieve as they try to develop basic competence.

The key recommendations in this document are set forth below.

Setting Goals (Chapter Two)

1. Law schools should demonstrate a commitment to preparing their students for bar examinations and for law practice. They should engage in a continuing dialogue with academics, practitioners, judges, licensing authorities, and the general public about how best to accomplish this goal.
2. Law schools should clearly articulate their educational goals and share them with their students.
3. Law schools should shift from content-focused programs of instruction to outcomes-focused programs of instruction that are concerned with what students will be able to do and how they will do it, as well as what they will know on their first day in law practice.
4. The primary goal of legal education should be to develop competence, that is, the ability to resolve legal problems effectively and responsibly.
5. Law schools should help students acquire the attributes of effective, responsible lawyers including self-reflection and lifelong learning skills, intellectual and analytical skills, core knowledge and understanding of law, professional skills, and professionalism.

Organizing the Program of Instruction (Chapter Three)

6. Law schools should organize their curriculums to develop knowledge, skills,

¹⁸ See, e.g., Standards 2 & 4, WESTERN ASSOCIATION OF SCHOOLS AND COLLEGES, ACCREDITING COMMISSION FOR SENIOR COLLEGES AND UNIVERSITIES, HANDBOOK OF ACCREDITATION (2001), available at http://wacsenior.org/wasc/Doc_Lib/2001%20Handbook.pdf (last visited September 19, 2006) [hereinafter WESTERN ASSOCIATION ACCREDITATION HANDBOOK].

and values progressively; integrate the teaching of theory, doctrine, and practice; and teach professionalism pervasively throughout all three years of law school.

Delivering Instruction (Chapters Four, Five, and Six)

7. Law schools should use teaching methods that most effectively and efficiently achieve desired educational objectives, employ context-based instruction throughout the program of instruction, and employ best practices when using any instructional methodology.
8. Law schools should create and maintain healthy teaching and learning environments.
9. Law schools should enhance the quality of their programs of instruction with technology and by making appropriate use of practicing lawyers and judges.
10. Law schools should have effective teacher development programs and establish learning centers.

Assessing Student Learning (Chapter Seven)

11. Law schools should use best practices for assessing student learning, including criteria-referenced assessments, multiple formative and summative assessments, and various methods of assessment.

Evaluating the Success of the Program of Instruction (Chapter Eight)

12. Law schools should regularly evaluate their effectiveness and use best practices for conducting such evaluations.

Many of our recommendations do not have cost or time implications, and others have none beyond the initial effort involved in making the transition from current practices. It will require hard work and, perhaps, additional or reallocated resources to implement some of our recommendations. We are convinced, however, that the major impediment to reforming legal education is a lack of vision and commitment, not a lack of resources. Hopefully, this document provides some of the needed vision and will inspire more people to become committed to implementing positive changes in legal education.

