

Training the Heads, Hands and Hearts of Tomorrow's Lawyers: A Problem Solving Approach

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I am honored to be speaking at this symposium on preparing law students to be practice ready. I am honored because of the University of Missouri Columbia School of Law's ("Missouri's") leadership in the field of Dispute Resolution. Your creative conflict resolution curriculum and distinguished Center for the Study of Dispute Resolution have served as an inspiration for many in legal education, including those of us who began the Appropriate Dispute Resolution program at University of Oregon in the 1990s. Additionally, the outstanding scholarship of your dispute resolution faculty members has illuminated our field. Combining their scholarly expertise with practical lessons, they have made innumerable contributions, improving a developing practice area and helping us teach our students lasting lessons about conflict management. Finally, I am honored to be with you today because of the genuine kindness of people here at Missouri, as epitomized by your former Dean Larry Dessem. When I was a "baby Dean" in the early 2000s, Dean Dessem welcomed me and many other new deans, gently and generously mentoring us. Soon, Larry became a great friend and role model for me, helping me through some of the challenging periods all deans encounter.

I hope this essay on preparing practice-ready graduates is a useful resource for those considering curricular reform or for those in legal education undertaking assessment and strategic planning processes. I begin with four goals:

- (a) To offer a brief synopsis of the two major critiques of legal education which have influenced deeply recent curricular reforms by many law schools and the challenges facing law schools today;
- (b) To summarize recently published data from the ABA Curriculum Committee on trends in law school curricula, showing some significant areas of reform in legal education over the past decade, and offering some thoughts on the intersection of this data with problem solving courses and skills;

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(c) To share a summary of the reforms implemented at the University of Dayton School of Law with our Lawyer as Problem Solver curriculum in the last decade; and

(d) To offer some suggestions about curricular reform initiatives today -- in an era of fewer law students, tighter University and law school budgets, and a challenging employment market for law school graduates.

At Dayton, when we began planning significant curricular reform in the early 2000s as part of our strategic planning process, we spoke of practice-readiness as enabling our graduates "to hit the ground running" in their first jobs.¹ We heard the phrase "hit the ground running" so often, in fact -- from employers of our graduates and alumni -- that we began to cringe at times when we heard that mantra. Yet, a decade later, as I prepare to work with my new colleagues at Santa Clara School of Law on strategic planning and consider the remarkable reforms undertaken at many law schools in the United States in recent years, I am convinced that we must continue to build bridges to the legal profession through our curricula and provide our students with more opportunities to gain knowledge about legal jobs and the initial skills needed to flourish in the modern workplace.

The difficult news is that the climate in legal education is markedly different than 10 years ago. I believe it is a more challenging time to consider major, creative changes. While the need for reform may be pronounced, the resources are fewer and many legal educators are on the defensive, worried about employment opportunities for graduates and the future of the profession. As the President of the American Association of Law Schools, Lauren Robel, recently noted: "It is an anxious time for U.S. legal education. We are in a period of intense scrutiny, both among ourselves and from our many constituencies."² Educators and consumers are highly concerned about the cost and value of a legal education in today's economy.³

The good news for those thinking about preparing practice-ready graduates is that many law schools have undertaken curricular reforms in the last decade, so

1. See Lisa A. Kloppenberg, *The Balancing Act: Leadership in Strategic Planning*, 36 U. TOL. L. REV. 103 (2004) (describing strategic planning process at Dayton Law which led to significant curricular reforms); *Lawyer as Problem Solver: Curricular Innovation at Dayton*, 38 U. TOL. L. REV. 547 (2007) (summarizing curricular changes implemented at Dayton Law in 2005); *Educating Problem Solving Lawyers for Our Profession and Communities*, 61 RUTGERS L. REV. 1099 (2009) (recounting Dayton curricular reforms from 2005-09); and *The Rise of Two-Year Programs?*, 38 SW. L. REV. 541 (2009). Sections I and III of this paper draw heavily on those prior publications, adding updates throughout.

2. Lauren K. Robel, *Presidents' Messages: Global Engagement in Uncertain Times*, THE ASSOCIATION OF AMERICAN LAW SCHOOLS (Aug. 2012) available at http://www.aals.org/services_newsletter_presAug12.php. Lauren Robel served as Dean of the Maurer School of Law at Indiana, Bloomington, and now serves as Provost and Executive Vice President. *Faculty Profile*, INDIANA UNIVERSITY SCH. OF LAW available at <http://info.law.indiana.edu/sb/page/normal/631.html>. As dean, she and faculty members were involved in many curricular reform discussions nationally. *Id.*

3. See generally BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* (2012) (discussing law schools' fundamental failure to prepare students for the pressure and characterizing legal education as in a crisis). The concern over the cost and value of higher education extends broadly today, to undergraduate as well as professional and graduate programs. See, e.g., MATTHEW B. CRAWFORD, *SHOP CLASS AS SOULCRAFT: AN INQUIRY INTO THE VALUE OF WORK* 9 (2009).

we have many experiments to evaluate and emulate. Thanks to the new American Bar Association ("ABA") Curriculum Committee data released in 2012, I can share some encouraging trends here. Many of those reforms were designed to enhance the practice-readiness of law students. Additionally, I consider Missouri's expertise in the Dispute Resolution field an asset for bringing problem solving skills to bear on the challenges confronting legal education. As curricular reforms are considered, dispute resolution experts on our faculties and in our profession can be called upon to help set up fair processes for deliberation (incorporating information from alumni, employers, students and others), to help others generate options, to listen actively and reframe issues, and to design processes to assess curricular experimentation in an ongoing manner.

I. CHALLENGES FACING LEGAL EDUCATION & INFLUENTIAL RECENT CRITIQUES

Some of the challenges facing legal educators are familiar. Educators are well aware of the difficulty of keeping students engaged after the first year of legal studies,⁴ the problem of student debt loads,⁵ and the grim job market.⁶ The bench and bar are calling for educators to do more to bridge the gap between the academy and the profession in new lawyer preparation and training.⁷ Prospective and current law students, legal educators, and lawyers widely share concerns about the many challenges facing legal education, including, but not limited to: the rising cost of legal education and its impact on career choices; the need for greater diversity in our schools and profession; the learning needs and styles of digital-age students; the stagnation in the growth of private law practice placements;⁸ pressures on lawyers to specialize early; the decrease in mentoring or an

4. See THE LAW SCH. SURVEY OF STUDENT ENGAGEMENT, STUDENT ENGAGEMENT IN LAW SCHOOL: PREPARING 21ST CENTURY LAWYERS 7, 9 (2008) available at http://issue.iub.edu/2008_Annual_Report/pdf/j4u5h7e9/LSSSE_2008_Annual_Report.pdf [hereinafter LSSSE, STUDENT ENGAGEMENT] (finding 25% of 3L's do not prepare for class and that less than one in three 3L's spend more than 11 hours per week on class work).

5. Daniel Thies, *ABA Moves to Help Relieve Law Students of Crushing Debt Loads*, ABA DIVISION FOR COMMUNICATIONS & MEDIA RELATIONS (Feb. 9, 2010), <http://www.abanow.org/2010/02/headline-aba-moves-to-help-relieve-law-students-of-crushing-student-loans/>. Thies, a member of the ABA Commission on the Impact of the Economic Crisis on the Profession and Legal Needs, cites the average student debt load from legal studies alone, excluding undergraduate debt, bar loans and other loans, at over \$59,000 for public law schools and over \$91,000 at private law schools. *Id.*

6. See, e.g., Joe Palazzo, *Law Grads Face Brutal Job Market*, WALL ST. J. (June 25, 2012), <http://online.wsj.com/article/SB10001424052702304458604577486623469958142.html>.

7. See Erwin Chemerinsky, *A Law School for the 21st Century* (Apr. 6, 2008), <http://madisonian.net/2008/04/06/a-law-school-for-the-21st-century/>. See, e.g., John O. Sonsterg, et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303 (2007) (discussing modern problems in legal education).

8. See Leigh Jones, *Just How Much Do Law Firm Layoffs Save?*, THE NAT'L L.J. (Feb. 9, 2009), http://www.law.com/jsp/article.jsp?id=1202428094047&Just_How_Much_Do_Law_Firm_Layoffs_Save (discussing the current economic climate and its effect on law firms). The National Association for Law Placement states that graduates face a "brutal entry-level job market" in 2011. Press Release, National Association for Law Placement, *Law School Grads Face Worst Job Market Yet — Less Than Half Find Jobs in Private Practice* (June 7, 2012), <http://www.nalp.org/2011selectedfindingsrelease> [hereinafter NALP Data].

“apprenticeship” period for some new lawyers; the influence of technology on law practice;⁹ the growth of alternatives to litigation and changes in court-connected processes;¹⁰ and the globalization of law and practice.¹¹

For example, when we designed our Lawyer as Problem Solver curriculum in 2005, several conditions in the legal profession influenced our work:

we were particularly concerned about the gap between the academy and the profession and sought to better prepare our students for practice without sacrificing a strong, broad foundation in analytical thinking and doctrinal coverage necessary for both practice and the bar examination. We read about the pressures on legal employers to control costs, which places pressure on associates to perform at an advanced level more quickly than had been expected traditionally. We heard from our alumni that associates could no longer sit in court, learn from the judges, and watch great trial lawyers. Many could not find the time for such informal training and many reported a greater emphasis on settlement prior to trial in many areas of the law. While some employers offer strong formal training programs, many new lawyers reported that they were not receiving effective mentoring.¹²

We surveyed various groups extensively in our planning and assessment processes, including legal employers, new lawyers, alumni, and others. This work continued throughout the latter part of the 2000s through initiatives led both by the School and faculty members.¹³ As we surveyed and spoke with alumni and employers, we heard about the need for enhanced writing skills, the growth of specialization, the need for maturity in dealing with clients and colleagues in a professional setting, and the need for familiarity with mediation, settlement negotiation, and motion practice, rather than trial and appellate work.¹⁴ Because we wanted to give our students an edge in a competitive job market, we decided to focus on the skills most needed in those initial jobs. Bill Henderson and others have documented the changes in the legal profession well,¹⁵ most legal educators

9. See, e.g., Richard Susskind, *The End of Lawyers* (2008).

10. Jay Folbert, et al., *Resolving Disputes: Theory, Practice, & Law* 7-10 (2nd ed. 2010).

11. See Kloppenberg, *Educating Problem Solving Lawyers for Our Profession and Communities*, *supra* note 1, at 1100. This Section and Section III draw heavily on my prior publications about Dayton's Lawyer as Problem Solver reforms.

12. Kloppenberg, *Lawyer as Problem Solver*, *supra* note 1, at 548.

13. See, e.g., Susan C. Wawrose, *Using Focus Groups to Learn What Employers Want and Refine the Legal Writing Curriculum*, __ OH. N. L. REV __ (forthcoming) (on file with author) (reporting findings of surveys of employers of recent law graduates conducted by three Dayton Law faculty members from 2009-2011).

14. *Id.* at 21. The most recent survey work demonstrates that employers expect professionalism, including a strong work ethic, willingness to take initiative, the ability to collaborate well with colleagues and clients, and the ability to adapt to supervisor demands as well as the fundamental practice skills of research, writing, analysis and communication. *Id.*

15. William D. Henderson, Professor of Law and Director of the Center on the Global Legal Profession at Indiana University, Bloomington, is frequently quoted on the challenges facing our profession and has authored numerous publications on the state of the legal market. See, e.g., Marc Galanter & William D. Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867 (2008); William D. Henderson & David Zaring, *Young Associates in Trouble*, 105 MICH. L. REV. 1087, 1088-89 (2007) (book review essay and empirical study); William D. Henderson,

are well aware of the shrinking pool of traditional legal jobs in the United States today and of the challenging climate for graduates upon graduation. In the early 2000s, fewer legal educators were well apprised of job market conditions and schools were less concerned about placement than they are today, so informing faculty and staff members about the challenges took more education.¹⁶

I will simply conclude this brief overview of some of the great challenges facing law schools by noting that, in the last several years, significantly fewer students are taking the LSAT and choosing to enter legal education in the United States.¹⁷ Meanwhile, new law schools continue to open and fledgling ones gain accreditation, increasing competition among law schools.¹⁸ The law schools admissions environment is more competitive than I have ever witnessed in 20 years of teaching.

In addressing some of the challenges of preparing practice-ready, complete practitioners, two reports have been highly influential for law school faculty members and deans: *Best Practices for Legal Education: A Vision and a Roadmap* ("Best Practices"),¹⁹ produced by the Clinical Legal Education Association in 2007, as well as *Educating Lawyers: Preparation for the Profession of Law* ("Educating Lawyers"),²⁰ produced by the Carnegie Foundation for the Advancement of Teaching that same year. The books, particularly *Educating Lawyers*, were read by many legal educators and were utilized by deans and faculties to guide strategic planning efforts and curriculum discussions.²¹ Media paid attention to the

Single-Tier versus Two-Tier Partnership Tracks at Am Law 200 Law Firms: Evidence and Theory, 84 N.C. L. REV. 1691 (2006).

16. In part, this focused was fueled for many schools by changes in the mid-2000s, after which placement measures counted for a larger share of a school's U.S. News & World Report ranking. Sam Flanigan & Robert Morse, *Methodology: Law School Rankings*, US NEWS & WORLD REPORT (March 12, 2012),

<http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2012/03/12/methodology-law-school-rankings>.

17. Tamanaha, *supra* note 4, at 181 ("In 2004, there were fifty-two thousand more applications than the number of people who enrolled. In 2011, the margin of applicants over enrollment had fallen to around thirty thousand."). The Law School Admissions Council, which administers the LSAT, has seen double digit drops in LSAT takers from 2010-11 and 2011-12. Law School Admission Council, *LSATs Administered*, <http://www.lsac.org/lisacresources/data/lisats-administered.asp> (last visited August 12, 2013).

18. AMERICAN BAR ASSOCIATION, *A SURVEY OF LAW SCHOOL CURRICULA: 2002-2010*, 14 (Catherine L. Carpenter, ed.) (2010) [hereinafter ABA Survey].

19. See generally ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007).

20. See generally WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

21. See ABA Survey, *supra* note 19, at 99; see, e.g., John E. Montgomery, *Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students*, 39 U. TOL. L. REV. 323, 339-340 (2008) (calling for the EDUCATING LAWYERS recommendation of "[i]ntegrated apprenticeships of knowledge, practice, and professional identity" as part of law school curriculum in order to "more effectively educate students for a competent professional approach to practice than the current analytically focused approach."); Mathew D. Staver, *Liberty University's Lawyering Skills Program: Integrating Legal Theory in a Practice-Oriented Curriculum*, U. TOL. L. REV. 323, 384 (2008) (discussing EDUCATING LAWYERS and BEST PRACTICES' conclusion that "skills training remains deficient in legal education," and suggestion "for more skills training, at least in the upper-level courses."); Karen H. Rothenberg, *Recalibrating the Moral Compass: Expanding "Thinking Like A Lawyer" into "Thinking Like A Leader,"* 40 U. TOL. L. REV. 411, 412 (2009) (discussing the impact of an assertion in EDUCATING LAWYERS, which provided that "law schools focus too heavily

publications and even sometimes reported on the responses of legal educators.²² I will offer only a brief summary here of these influential critiques because much has been written already about these fascinating studies and their impact on legal education,²³ and, fortunately, former dean and co-author of the Carnegie study, Judith Welch Wegner—a hero and mentor for many in the legal academy—has contributed an excellent essay for this volume.²⁴

Educating Lawyers categorizes the types of knowledge needed by budding lawyers into three apprenticeships: those of academic knowledge, lawyering skills, and professional identity.¹⁷ Some of us at Dayton began to refer to those three apprenticeships as that of the head, the hands, and the heart because at Dayton, as at many religiously affiliated universities, there is an emphasis on educating “the whole person.”¹⁸ In the late 2000s, Rod Smolla and I spoke together several times about reform in legal education. When I would mention the “3 Hs” (educating law students’ “heads, hands, and hearts”), he referenced the “4th H” (“health”), associated with the “4-H Clubs”. Washington & Lee enacted important curricular reforms during Dean Smolla’s tenure, with third year students participating full-time in practica taught by practitioners and law faculty members.²⁵ For a lawyer to be a complete professional, we must help our students develop in all these aspects and begin to see themselves as complete professionals.

on teaching skills for legal analysis while neglecting students’ training regarding the ‘social consequences or ethical aspects’ of that legal analysis.”); David S. Walker, *Teaching and Learning Professionalism in the First Year With Some Thoughts on the Role of the Dean*, 40 U. TOL. L. REV. 421, 425-27 (2009) (explaining the strategy behind legal professionalism curriculum at Drake Law School as reflective of the theories of apprenticeships of professional identity contained in EDUCATING LAWYERS and BEST PRACTICES); Earl Martin and Gerald Hess, *Developing a Skills and Professionalism Curriculum — Process and Product*, U. TOL. L. REV. 327, 328-32, 338 (2010) (emphasizing the recommendations contained in EDUCATING LAWYERS and BEST PRACTICES as a primary motivator for recent curriculum reform, particularly the impact at the Gonzaga University School of Law); Clinton W. Shinn, *Lessening Stress of the 1L Year: Implementing an Alternative to Traditional Grading*, 41 U. U. TOL. L. REV. 355, 355 (2010) (citing the proposition contained in EDUCATING LAWYERS and BEST PRACTICES that “the traditional approach to legal education may be harmful to the development of legal professionals,” as a partial basis for the Appalachian School of Law’s efforts to decrease the stress and depression commonly present during the 1L year).

22. See, e.g., Lincoln Caplan, *An Existential Crisis for Law Schools*, N.Y. TIMES, July 15, 2012; Ashby Jones, *The Boldest Move (To Date) in Legal Curricular Reform*, WALL ST. J., Sept. 9, 2009; Jonathan D. Glater, *Training Law Students for Real-Life Careers*, N.Y. TIMES, Oct. 31, 2007; Vesna Jaksic, *A Fresh Look at Legal Education*, NAT’L L. J., Oct. 29, 2007.

23. See, e.g., Jane H. Aiken, *The Clinical Mission of Justice Readiness*, 32 B.C.J.L. & SOC. JUST. 231 (2012); Phyllis Goldfarb, *Back to the Future of Clinical Legal Education*, 32 B.C.J.L. & SOC. JUST. 279 (2012); Stefan H. Krieger, *The Effect of Clinical Education on Law Student Reasoning: An Empirical Study*, 35 WM. MITCHELL L. REV. 359 (2008); Antoinette Sedillo-Lopez, *Leading Change in Legal Education — Educating Lawyers and Best Practices: Good News for Diversity*, 18 SEATTLE U. L. REV. 775 (2008); Judith Welch Wegner, *Reframing Legal Education’s “Wicked Problems,”* 61 RUTGERS L. REV. 867 (2009); Mark Yates, *The Carnegie Effect: Elevating Practical Training Over Liberal Education in Curricular Reform*, 17 LEGAL WRITING 233 (2011).

24. See Judith Welch Wegner, *Reframing Legal Education’s “Wicked Problems,”* 61 RUTGERS L. REV. 867 (2009).

25. *Leading The Way in Legal Education Reform*, Washington & Lee Univ. Sch. of Law, <http://law.wlu.edu/thirdyear/> (last visited Jan. 16, 2013) (describing components of third-year experiential curriculum along with faculty and student reaction; the third year focuses on strategic thinking, project management, writing, interpersonal skills, maturity and values).

We were concerned at Dayton Law about national studies showing that many students are less engaged with legal studies by the third year.²⁶ Students are highly engaged in law school for the first semester or first year, learning new material primarily in large class environments through quasi-Socratic dialogue. Legal education is quite successful at teaching analytical thinking and developing minds during its first few semesters. After the relatively firm class ranks are released at the end of the first year, with a significant impact on students' job opportunities, some disillusionment is common for students outside the top portion of the class at many law schools.²⁷ By the latter half of law school, the Law Student Survey of Student Engagement shows declining preparation for classes, declining attendance, and a general disengagement from the learning process.²⁸ By emphasizing problem solving and experiential learning along with traditional coursework, faculty members throughout legal education are attempting to foster deeper engagement with the substantive material and to integrate practical lawyering skills and ethical issues throughout students' legal education.²⁹

Educating Lawyers affirms that law schools excel at this first apprenticeship, instilling academic knowledge, through legal education's signature pedagogy, the modified Socratic method. The report suggests that this is the area where change is least needed in law school curricula.³⁰ We did not alter the first year of the standard curriculum much with our reforms at Dayton, and the recently released survey of national curricular reform in the 2000s shows the same appears to be true at most law schools.³¹ In part, the content of criminal law, property, torts, civil procedure, constitutional law, and those basic doctrinal topics remain core topics for all lawyers. Additionally, the skills of "thinking like a lawyer," in terms of reading and analytical thinking, are critical skills to instill early in a student's legal education.³²

The second apprenticeship in the Carnegie work, and much of Best Practices, focus on the apprenticeship of the "hands," or lawyering skills.³³ Hands-on, experiential learning fits in this category. This has long been one of our strengths at Dayton, from our exceptional Legal Research and Writing (LRW) program, to vibrant clinic and externship offerings.³⁴ So, this is one area where we deliberately expanded skills experiences within the new curriculum. The ABA data shows

26. See, e.g., LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT, 2005 Annual Survey Results 18, available at http://lssse.iub.edu/2005_Annual_Report/pdf/LSSSE_2005_Annual_Report.pdf. See also Mitu Gulati, Richard Sander & Robert Sockloskie, *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235 (2001).

27. See LSSSE, STUDENT ENGAGEMENT, *supra* note 5.

28. *Id.* at 12.

29. Doug Stowe, *On The Limitations of Class Teaching*, WISDOM OF HANDS BLOG (Nov. 5, 2011), <http://wisdomofhands.blogspot.com/2011/11/on-limitations-of-class-teaching.html>. Referring to other educational settings, Doug Stowe writes: "[i]n schools, we create artificial learning environments for our children that they know to be contrived and undeserving of their full attention and engagement Without the opportunity to learn through the hands, the world remains abstract, and distant, and the passions for learning will not be engaged." *Id.*

30. EDUCATING LAWYERS, *supra* note 21, at 21-24.

31. See *infra* Section II; see ABA Survey, *supra* note 19, at 15.

32. EDUCATING LAWYERS, *supra* note 21, at 13.

33. EDUCATING LAWYERS, *supra* note 21, at 28; Stuckey, *supra* note 20, Chapter 5.

34. See Press Release, UD School of Law, *New IP Clinic Set to Launch in Spring Semester* (Nov. 29, 2012), available at http://www.udayton.edu/news/articles/2012/11/intellectual_property_law_clinic_launched.php.

skills instruction is the greatest area of curricular growth and experimentation nationally in the last two decades, with legal writing courses at the forefront of these innovations.³⁵ Many of us at Dayton believed experiential learning would increase student engagement; we believe students would learn more effectively after the first year of law school if they had worked with lawyers outside of traditional classroom modes. That context informs how students learn and apply knowledge in subsequent classes.³⁶ For some students who have not excelled academically, it can offer encouragement and build motivation as they see a vision of themselves helping others or applying qualities beyond just their analytical and test-taking skills. Third-year students tell me, after externships or job experiences, things such as: "I recall now why I came to law school. . . . I may not be in the top ten percent of the class, but I have some skills that I can use in dealing with people . . ." ³⁷ Several students have told me that they learned a great deal about practice settings from their externships at Dayton Law, deciding that they preferred government to law firm practice or vice versa. From their externships, some of my students have developed a passion for helping children or helping veterans navigate health and social security issues.

Finally, the last apprenticeship identified by Educating Lawyers is that of the "heart"—aimed at enhancing ethics, values, and professionalism.³⁸ The reports confirm that law schools continue to struggle with teaching ethics effectively.³⁹ In addition to analytical skills, lawyers must employ other lawyering skills and use judgment in advising clients. In practica, be they capstone courses, externships, clinics or other types of experiential learning, students can develop expertise in an area of law in practice-like settings. Combined with reflection on ethical dilemmas or real-world conflict of interest matters, students can understand the importance of developing ethical judgment. The 2010 Survey shows that law schools took this criticism seriously and responded with many ways of promoting professionalism throughout the curriculum.

As I have argued previously, teaching ethics can be a difficult area for legal education—and for good reason. Few of us are trained ethicists.⁴⁰ There is some hesitancy on the part of law faculty members: how can we tell all of you what is right? What makes me, as a law school professor, the expert on ethics and values? We have Model Rules,⁴¹ of course, and require professional responsibility courses

35. See ABA Survey, *supra* note 19, at 15-16.

36. Lisa A. Kloppenberg, *The Balancing Act: Leadership in Strategic Planning*, 36 U. TOL. L. REV. 103 (2004).

37. See DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE* (2005). These examples of "emotional intelligence" resonate with some aspects of "professionalism" identified as important by employers. *Id.*; see also Wawrose, *supra* note 14, at 21-22.

38. EDUCATING LAWYERS, *supra* note 21, ch. 4.

39. See LSSSE, *STUDENT ENGAGEMENT*, *supra* note 5, at 8 (explaining that traditional courses are ineffective at teaching students how to resolve ethical dilemmas); Stuckey, *supra* note 20, at 24-27; Sullivan, *supra* note 21, Chapter 4.

40. See BANKS MCDOWELL, *ETHICS & EXCUSES: THE CRISIS IN PROFESSIONAL RESPONSIBILITY* 47-54 (2000) (explaining that lawyers are not trained ethicists because legal training instructs lawyers to obey the law, but obeying the law is not analogous to acting ethically). See also Sullivan, *supra* note 21, Chapter 4 (explaining some of the difficulties with establishing a robust focus on ethics, integrity, wisdom and professionalism in modern law schools).

41. See generally MODEL RULES OF PROF'L CONDUCT (2004).

in all law schools.⁴² Those classes can be incredibly frustrating, however, for both students and professors. The Rules provide an important baseline, but can be used as a type of "lowest common denominator" approach to professional ethics. They are not sufficient to help students form professional identity as they explore issues of ethics, value, justice, and the roles lawyers play in various contexts.

Thus, with the third type of knowledge, educators are trying to help students develop their professional identities by promoting lifelong learning about ethics, leadership, professionalism, and values, including social justice and access to justice concepts.⁴³ Professional identity issues concern rich, widely shared concepts. For example: What is the goal of the lawyer—in serving a client, doing justice, and promoting justice? This type of knowledge is difficult to instill in students, who are just beginning to grasp legal concepts, who are just entering the field, and who do not possess significant work or life experience. Some of this formation must include on-the-job training, but law schools are seeking effective ways to integrate this type of knowledge along with academic and lawyering skills knowledge, so that students are at least cognizant of the importance of developing this aspect of their professional lives. Law schools have launched some interesting experiments in teaching ethics and helping students develop professional identity in the last decade.⁴⁴ Leading legal ethics scholar Deborah Rhode recently authored a wonderful interdisciplinary resource on leadership, with actual ethical case studies for law, business, and public administration students; she has a similar textbook forthcoming, aimed at law students.⁴⁵

As the next Section indicates, law schools, led by their faculties, have taken the lessons of Best Practices and Educating Lawyers to heart as they attempt to meet the challenges facing legal education. The 2000's were a period of rich curricular experimentation aimed at training more complete legal professionals. The new ABA data gives us pilots to evaluate, methods to emulate, and shows national trends we should consider as law schools continue to assess their programs of legal education. Law schools will continue to assess their curricula, whether because of the sabbatical site inspections under the ABA Standards or because of the potential major changes pending for the Standards currently, discussed in Section IV below.⁴⁶ More importantly, schools assess curricula and experiment because we are working diligently to recruit strong students, engage them throughout their studies, and produce the practice-ready new lawyers prized in the job market.

42. See ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, § 302(a)(5), Interpretation 302-9 (2008-09) ("The substantial instruction . . . required by . . . 302(a)(5) includes instruction in . . . the Model Rules of Professional Conduct . . .") [hereinafter ABA STANDARDS], available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.authcheckdam.pdf.

43. EDUCATING LAWYERS, *supra* note 21, Chapter 4.

44. See generally ABA Survey, *supra* note 19.

45. DEBORAH L. RHODE & AMANDA K. PACKEL, LEADERSHIP: LAW, POLICY, AND MANAGEMENT (2011) (a text devoted to leadership and ethics in a broad sense, using actual case studies and hypotheticals).

46. See *infra* notes 178-94 and accompanying text.

II. HIGHLIGHTS OF THE ABA'S 2002-2010 CURRICULA SURVEY

In 2012, the ABA Curriculum Committee, sponsored by Section of Legal Education and Admissions to the Bar ("Section" or "Section on Legal Education"), produced A Survey of Law School Curricula: 2002-2010 ("Survey" or "2010 Survey").⁴⁷ This publication is an excellent resource for law schools as they plan and assess curricula or engage in strategic planning. The Survey relies on empirical and narrative data, including a Fall 2010 questionnaire, with responses from 167 of the 200 ABA-approved law schools in the United States, and responses to the official ABA Annual Questionnaire for 2010-2011.⁴⁸

The project builds upon earlier efforts, including a 2002 Survey undertaken by the Section of Legal Education, "inspired by the tenth anniversary of The McCrate Report ("McCrate")."⁴⁹ The Consultant on Legal Education observed that the 2002 Survey shows "law schools had just begun to retool many aspects of their programs with two commitments guiding them: an increased commitment to clinical legal education and an increased commitment to professionalism."⁵⁰ The 2010 Survey concludes that these goals have remained in place and that the 2000s were a robust period of significant curricular experimentation, with new courses and programs, "new and enhanced experiential learning, and greater emphasis on various kinds of writing across the curriculum."⁵¹ As the new Survey notes, between 2002-2010 "the climate for curricular reform . . . intensified." In 2007, as noted earlier, two seminal studies critiquing legal education drew significant attention: *Educating Lawyers and Best Practices*.⁵² The Survey reinforces the notion that these two reports drew serious attention within the legal academy when calling for curricular reforms designed to cultivate deeper student engagement and prepare students more effectively for practice.⁵³

47. ABA Survey, *supra* note 19, at 14. Members of the American Bar Association, Section of Legal Education and Admissions to the Bar, Curriculum Committee 2010-2012: Professor Catherine L. Carpenter, Southwestern Law School, Chair; Dean Emeritus and Professor James J. Alfini, South Texas College of Law; Professor and Law Library Director Barbara A. Bintliff, University of Texas School of Law; Professor and former dean Lisa A. Kloppenberg, University of Dayton School of Law; Professor Antoinette Sedillo Lopez, University of New Mexico School of Law; Associate Dean William B. Powers, the John Marshall Law School (Chicago); Professor Craig T. Smith, University of North Carolina School of Law; Professor Marshall E. Tracht, New York Law School. Section of Legal Education experts who provided invaluable support: Hulett (Bucky) H. Askew, Consultant on Legal Education; Camille deJorna, Associate Consultant on Legal Education; Kenneth Williams, Data Specialist; Mary McNulty, Senior Technology, Publishing, and Marketing Specialist. The Publications Committee of the Section of Legal Education and Admissions to the Bar (Bryant Garth, Chair) Richard Paszkiet, Director, ABA Entity Book Publishing.

48. *Id.* at 1, 18.

49. *Id.* at 13 (Executive Summary). The 2002 Survey also relied on "pioneering studies in 1975 by Donald Jackson and E. Gordon Gee," *Following the Leader? The Unexamined Consensus in Law School Curricula*, (Council on Legal Education for Professional Responsibility, 1975), *Bread and Butter?: Electives in American Legal Education*, (Council on Legal Education for Professional Responsibility, 1975, as well as a report by William B. Powers, *A Study of Contemporary Law School Curricula*, (Office of the Consultant on Legal Education, 1986).

50. ABA Survey, *supra* note 19, at 1.

51. *Id.*

52. See Susskind, *supra* note 10; Folbert, *supra* note 11.

53. ABA Survey, *supra* note 19, at 14.

Drawing on the very high response rate to the Fall 2010 curricular questionnaire, the Survey demonstrates "law school faculties are engaged in efforts to review and revise their curriculum to produce practice-ready professionals."⁵⁴ The 2010 Survey cites changes since the 2002 Survey, including "a changing legal job market amid an economic downturn and increased competition with the continued opening of new law schools."⁵⁵ In responding to the request for data, law schools frequently cited several factors as influencing significant curricular reform, including "the changing job market and the three publications" (McCrate, Best Practices and Educating Lawyers).⁵⁶ Additionally, the Survey mentions media scrutiny of legal education and curricular matters as a factor fueling "intense discussion and debate" in the legal academy over curricular-setting principles.⁵⁷ Schools also cited ABA Standard 203, requiring regular strategic planning, and revisions in other ABA standards as driving curricular change discussions.⁵⁸ Other significant factors cited by schools include: "External influences including university, alumni, donors; Faculty Initiatives; . . . [and] Regional Accreditation Requirements."⁵⁹ Schools reported faculty initiatives were most influential (91%), followed by the changing job market (76%), and the two publications, Educating Lawyers (64%), and Best Practices (61%).⁶⁰ All other factors fell well below these four items in terms of the level of influence on curricular reform, although congruence between faculty initiatives and other items on the list is likely.⁶¹

A. Major Findings of the 2010 Survey

This section will not summarize data regarding required hours or courses in the curriculum; the 2010 Survey does not reveal any significant trend to changes made in the first-year curriculum nor to the required course hours necessary for graduation.⁶² In terms of subject matter, upper-level electives expanded and the Survey indicates notable "additions in International Law, Alternative Dispute Resolution, Intellectual Property, Business Law, and Transactional Drafting" since 2002.⁶³

The Survey does find, however, that law schools "have increased all aspects of skills instruction, including clinical, simulation, and externships to meet recently adopted ABA Standard 302(a)(4)."⁶⁴ This "other professional skills" standard requires that "students receive substantial instruction in other professional skills generally regarded as necessary for the effective and responsible participation in the legal education."⁶⁵

54. *Id.* (emphasis added).

55. *Id.*

56. *Id.*

57. *Id.*

58. ABA Survey, *supra* note 19, at 100.

59. *Id.* at 99.

60. *Id.* (Figure 90).

61. *Id.*

62. *Id.* at 115. This Section of the paper also does not focus on the ability of law schools to offer accelerated graduation options, although Dayton's accelerated option is discussed in Section III below.

63. *Id.* at 16, 64-65.

64. *Id.* at 15.

65. ABA STANDARDS, *supra* note 43, § 302(a)(4).

The 2010 Survey indicates that the stature of the field of LRW is growing, with more schools increasing units offered and expanding coverage to include skills other than simply traditional advocacy.⁶⁶ "Once relegated exclusively to the first-year program with few allocated units," LRW offerings, both required and elective, have proliferated throughout the curriculum at many schools.⁶⁷ In upper-level courses, law schools as of 2010 "offered a wide range of professional skills opportunities, with half the respondents reporting ten or more types of professional skills courses."⁶⁸ The greatest growth areas included Transactional Drafting and other legal writing courses, although "[m]any law schools also added courses and course components on professionalism and professional identity."⁶⁹ The former category addresses the second Carnegie apprenticeship of lawyering skills and the latter reflects interest in the third apprenticeship identified by Educating Lawyers.⁷⁰ Thus, while first-year courses altered little, schools did restructure units allocated to expand legal writing units and add other doctrinal courses, including Legislation and Statutory Regulation.⁷¹

To fulfill the relatively new "other professional skills" requirement of ABA Standard 302(a)(4), most of the 2010 respondents required students to take at least two or three units.⁷² Most schools responding allowed students to select from a list of courses to fulfill this requirement and the courses most regularly offered to meet it include: Trial Advocacy (98%), Live-client Clinic (88%), Negotiation (83%), and Alternative Dispute Resolution ("ADR") (80%).⁷³ Seventy-five percent of respondents also designated the "Other" category in response to how students met the requirement.⁷⁴ From the narratives, it appears "Other" consists of "three broad categories: Advanced Skills Courses that were not specifically listed (by Survey designers), Drafting Courses, and Advanced Doctrinal Electives that had sufficient amount of skills instruction" to meet the Standard.⁷⁵ Thus, since 2005, ADR and Negotiation courses have become a popular way to meet the "other professional skills" requirement, although those offerings are still not quite as popular among schools as Trial Advocacy. In terms of preparing practice-ready professionals, this is rather anomalous give the well-documented decline of trials in the United States.⁷⁶

Schools requiring a specific course to meet the Standard most frequently utilized "Upper Division Legal Writing."⁷⁷ In addition to this upper-level requirement, first-year LRW courses now often introduce students to appellate advocacy, trial advocacy, interviewing, counseling, and negotiation.⁷⁸

66. ABA Survey, *supra* note 19, at 15.

67. *Id.* at 101.

68. *Id.* at 16.

69. *Id.*

70. See EDUCATING LAWYERS, *supra* note 21, at 14 (describing latter two Carnegie apprenticeships).

71. ABA Survey, *supra* note 19, at 102.

72. *Id.* at 40 (Figure 23).

73. *Id.* at 41.

74. *Id.* at 42.

75. *Id.*

76. Thomas Stipanowich, *ADR and the "Vanishing Trial": The Growth and Impact of "Alternative Dispute Resolution"*, 1 J. EMPIRICAL L. STUD. 843, 844 (2004).

77. ABA Survey, *supra* note 19, at 41.

78. *Id.* at 60.

Overall, law schools in 2010 offer a wide range of professional skills offerings. Many respondents offered (in order of popularity among schools): "Trial Advocacy-Basic, ADR, Appellate Advocacy, Mediation, Transactional Skills, Trial Advocacy-Advanced, Pre-trial Advocacy, Interviewing and Counseling, Negotiation-Settlement, Arbitration, Negotiation-Business, Substantive course coupled with practicum, Discovery Practice."⁷⁹

Clinical and externship opportunities exposing students to the legal profession flourished. Over 85% of respondents offered some in-house, live-client clinics, averaging three clinics per schools, and 30% offered off-site, live-client clinics.⁸⁰ "Nearly all respondents provided at least one externship opportunity, and without exception, placement opportunities have increased in each externship category since 2002."⁸¹ The 2010 Survey notes the abiding commitment to clinical legal education among respondents and emphasizes that, since 2002, schools say they have "added and diversified live-client clinical opportunities and externship placements, enhanced existing courses with professional skills instruction, and added separate labor-intensive professional skills offerings."⁸² More law schools said in the 2010 Survey responses that they "highly recommend" a clinical experience—up from 14% in 2002 to 25%.⁸³ The most frequent clinical opportunities offered included: General Civil; Criminal Prosecution/Defense; Family Law; Juvenile Law; Economic Development/Business; and a host of others offered by a fewer number of schools.⁸⁴

Externships are increasingly popular means for schools to help students graduate with practice exposure. "Without exception," the 2010 Survey says, "the number of placement opportunities . . . increased from 1992, and a high percentage of law schools offered placement opportunities in nearly all types of externships" listed on the questionnaire.⁸⁵ Government agency placements are quite frequent, as are opportunities in public defender and prosecutor offices.⁸⁶ Many schools offer placement with judges, too.⁸⁷ In these settings, students can be exposed to a wide variety of practice skills and substantive areas of law, including skills related to negotiation, mediation, and settlement efforts.⁸⁸

Finally, the Survey reveals "nearly all respondents" offered at least one voluntary academic support program, with 70% making such a program available to first-year students.⁸⁹ By 2010, "49% of respondents offered a bar preparation course for credit,"⁹⁰ reflecting revised ABA standards.⁹¹ Law schools invested greater resources in academic support and bar passage programs because of "ex-

79. *Id.* at 75 (Figure 61).

80. *Id.* at 16.

81. *Id.*

82. ABA Survey, *supra* note 19, at 101.

83. *Id.* at 68.

84. *Id.* at 76 (Figure 62).

85. *Id.* at 77.

86. *Id.*

87. ABA Survey, *supra* note 19, at 77 (Figure 63).

88. Conversations between the author and several students who have recently completed judicial externships at Dayton Law centered on students' exposure to ADR and settlement observations during their internships.

89. ABA Survey, *supra* note 19, at 16.

90. *Id.*

91. ABA STANDARDS, *supra* note 43, § 301, Interpretation 301-6.

ternal pressures associated with the cost of legal education and the changing job market".⁹² While law schools don't often require bar-related courses for graduation beyond the first year, many students may opt for the "informal bar curriculum."⁹³ Additionally, bar topics feature prominently among the "highly recommended" courses at many law schools.⁹⁴ In newly accredited law schools, the 2010 Survey does show a "correlation between the schools' required curriculum and state bar course coverage."⁹⁵

B. Law School Narratives about Curricular Change

I highlight below some significant themes seen in the Survey's Narrative Section describing the curricular creativity of the 2000s, including the correlation of changes with the job market and employer opinions about legal education. I also focus on problem solving and dispute resolution courses and skills because of my scholarly and teaching interests,⁹⁶ Missouri's leadership in Dispute Resolution, and the readership of the Journal of Dispute Resolution.

First and foremost, law schools say the "desire to produce practice-ready professionals" fueled the curricular reforms of the 2000s.⁹⁷ Law schools also were influenced by employers seeking graduates with practical skills.⁹⁸ Cognizant of the changing job market, law schools have added specializations or certificate programs over the last decade.⁹⁹ While the 2002 Survey showed specialization "as a burgeoning curricular tool," the 2010 Survey concludes the trend has continued and topics of specialization have broadened.¹⁰⁰ While only 10 more schools report offering certificate or specialization programs in 2010 compared with 2002, the Survey finds a "marked change in the number of certificate programs offered by individual law schools"—a 92% increase in the schools offering three or more such programs and a 106% increase in the schools offering five or more such programs since 2002.¹⁰¹ In terms of area, popular specialties include: International Law, Business Law, Intellectual Property Law, and Litigation.¹⁰² A few areas have also seen rapid growth since the 2002 Survey, including Business Law, Criminal Law & Procedure, and Litigation.¹⁰³ The next largest area of increase, with a 43% growth rate, is among schools offering specializations in Dispute Resolution.¹⁰⁴ Thus, although it is just outside of the top 5 growth areas for specialization, the competition among those offering ADR specialization has intensified. The Survey

92. ABA Survey, *supra* note 19, at 102.

93. *Id.* at 36 (citing Gee & Jackson, *supra* note 50, at 33-39).

94. *Id.* at 65. Such highly recommended courses at many law schools include, for example, Commercial Law, and Criminal Procedure. *Id.* Other core courses were also popular, including Wills/Trusts & Estates, Business Organizations, and Federal Taxation. *Id.*

95. *Id.* at 36.

96. See generally FOLBERG, GOLANN, STIPANOWICH & KLOPPENBERG, RESOLVING DISPUTES: THEORY, PRACTICE & LAW (Aspen 2d ed. 2010).

97. ABA Survey, *supra* note 19, at 101.

98. *Id.* at 101.

99. *Id.* at 102.

100. *Id.* at 102.

101. *Id.* at 69 (emphasis added).

102. ABA Survey, *supra* note 19, at 70 (Figure 57).

103. *Id.*

104. *Id.*

does not appear to reveal if there is a correlation between the litigation programs and teaching about ADR processes or skills, including topics of negotiation, mediation, and settlement, all of which are critical for being an effective advocate today.¹⁰⁵

Similarly, international initiatives, from study-abroad programs to student-faculty exchanges to comparative law courses, have grown in the past decade.¹⁰⁶ The international and comparative law reforms "were spurred on predominantly by faculty initiative but also to a lesser extent the changing job market."¹⁰⁷ In the upper division elective offerings, the most popular areas of increase were again International/Comparative Law, ADR, and Intellectual Property Law, just as they were in the 2002 survey.¹⁰⁸

Surprisingly, some schools report a significant decrease in a few subjects that appear to offer post-graduation employment opportunities, including Health Care and Employment Law/Employee Benefits.¹⁰⁹ Other topics showing some decrease or elimination since the 2002 Survey include: Products Liability/Advanced Torts, Tax, and Native American Law.¹¹⁰ It is unclear whether these changes are driven by faculty interest, the job market, or other forces. In any event, the decreases, while termed "significant," involve small overall numbers (e.g., 10 or fewer schools dropping a given course).¹¹¹

More law schools offered post-J.D. and non-J.D. degree programs in 2010 than in 2002.¹¹² The subject areas of LL.M. programs vary widely, with "General Study" (41 programs awarding 1,103 degrees), "Tax Law" (33 programs awarding 1,085 degrees), and "United States law for foreign-trained lawyers" (50 programs awarding 899 degrees) being the most common in 2010.¹¹³ In "Advocacy/Dispute Resolution," nine respondents awarded 90 LL.M. degrees.¹¹⁴ The most commonly offered non-J.D. Masters and Ph.D. programs in 2010 were "Health-related Law" (7 programs awarding 76 degrees), "Legal Studies" (7 programs awarding 28 degrees), and Intellectual Property (6 programs awarding 36 degrees).¹¹⁵ Other popular areas in terms of graduates from non-J.D. programs include "Environment/Natural Resources" (2 schools, but 82 degrees), "Other" (15 schools, 64 degrees), and Dispute Resolution (3 schools, 36 degrees).¹¹⁶

Finally, many law schools suggest curricular reform is also "designed to instill professionalism and professional identity into the curriculum,"¹¹⁷ in line with the third Carnegie apprenticeship. "Some respondents created professional development centers and/or lawyering electives that emphasized the various roles and

105. This would be an interesting topic for a survey sent to associate deans, and faculty, e.g., ADR, Civil Procedure, Appellate and Pre-Trial Advocacy and others.

106. ABA Survey, *supra* note 19, at 102.

107. *Id.*

108. *Id.* at 75.

109. *Id.* at 71. (Author's Note: Perhaps some of the topics are repackaged or listed under different names or available in clinical offerings.)

110. *Id.*

111. ABA Survey, *supra* note 19, at 71-72.

112. *Id.* at 16.

113. *Id.* at 88.

114. *Id.* at 89 (Figure 80).

115. *Id.* at 91 (Figure 84).

116. ABA Survey, *supra* note 19, at 91 (Figure 84).

117. *Id.* at 102.

obligations of attorneys.”¹¹⁸ Since 2002, the Survey reports pro bono service requirements have “increased incrementally,” with 18% of law school respondents in 2010 requiring an average of 35 hours of pro bono service to graduate, compared to 25 hours in 2002.¹¹⁹ At other schools, where pro bono service is encouraged but not mandated, growth also occurred in the 2000s.¹²⁰ Such activities help schools teach professionalism, discuss access to justice issues, and meet ABA Standard 302(b)(2), which requires each ABA-approved law school to offer substantial opportunities for pro bono activity to its students.¹²¹

The next Section summarizes the “Lawyer as Problem Solver” curriculum implemented at the University of Dayton School of Law in 2005 and modified through further faculty reform efforts in the latter 2000s. I offer this as one example, and readily acknowledge that these initiatives may not be right for all law schools. Given the consistency of Dayton Law’s directions, however, with the national trends featured in the 2010 Survey, the description should at least be a helpful illustration of a school offering increased experiential learning opportunities to prepare law graduates to “hit the ground running” in their initial jobs.

III. HIGHLIGHTS OF DAYTON’S “LAWYER AS PROBLEM SOLVER” CURRICULUM

The University of Dayton School of Law began to offer the “Lawyer as Problem Solver” curriculum in 2005. The experiential approach we chose at Dayton Law anticipated many of the criticisms offered by *Educating Lawyers and Best Practices*, both published in 2007.¹²² I will describe our comprehensive curricular revision—aimed at producing problem-solving graduates who are well prepared for practice and leadership in the legal profession and their communities—that was likewise with the University’s Catholic and Marianist mission of educating “the whole person.” I note proudly at the outset of this Section, however, that the faculty at Dayton continues to experiment, assess, and improve the curriculum. As Dean at Dayton from 2001-2011, one of my major tasks was to shepherd and support these faculty initiatives, both with the initial implementation of the reforms in 2005 and modifications in the late 2000s. To be meaningful, curricular innovation is always a “work-in-progress.” Returning now to full-time faculty status, I am cognizant that my description of Dayton’s curriculum may not fully capture the School’s emerging directions in preparing practice-ready graduates.

118. *Id.* See also *EDUCATING LAWYERS*, *supra* note 21, ch. 4 (discussing professional identity and purpose). For example, Mary Ann Glendon is quoted on “peacemaking problem-solving lawyers,” which she deems the “legal profession’s equivalent of doctor who practice preventive medicine. Their efforts are generally overshadowed by the heroics of surgeons and litigators. . .” *Id.* at 127.

119. ABA Survey, *supra* note 19, at 15.

120. See, e.g., Lisa A. Kloppenberg & Lori E. Shaw, *Pro Bono: Assessing Aims and Achievement*, 40 *U. TOL. L. REV.* 357 (2009) (discussing the Pro Bono Commitment to Community Program launched by the University of Dayton School of Law in the mid-2000s).

121. ABA STANDARDS, *supra* note 43, § 302(b)(2).

122. See *BEST PRACTICES*, *supra* note 20; *EDUCATING LAWYERS*, *supra* note 21.

A. Setting the Stage for Curricular Reform

The "Lawyer as Problem Solver" model builds on a history of experiential learning expertise and curricular innovation among the faculty. Dayton has long offered small sections in its outstanding and nationally recognized Legal Profession program, with a focus on research, critical thinking, and writing skills.¹²³ The courses also promote professional development through exercises simulating legal practice, which sometimes incorporate ethical issues, frequently require teamwork, and always culminate in individualized student assessment. In recent years, Dayton Law has offered more small sections in other first year courses, increased the use of midterms, and employed other methods to keep many students engaged throughout the semester in larger courses.

Prior to 2005, some faculty members had developed problem-based courses to keep upper-level students highly engaged (e.g., Family Law seminar, Health Care seminar, Advanced Commercial Real Estate Transactions, Business Planning). The School has long offered a Law Clinic and the Volunteer Income Tax Assistance Program, providing opportunities for students to learn while assisting live clients. Faculty members experimented with combined trial practice-evidence courses, sometimes linked to subject matter areas (e.g., Civil, Criminal, Intellectual Property sections). Other schools, including the University of Missouri,¹²⁴ also integrate problem-solving skills in first-year and upper-level courses¹²⁵— and an expanded amount of resources continue to emerge to guide implementation of these skills.¹²⁶

These developments certainly strengthened our offerings and helped to better prepare students for practice. Nevertheless, we were troubled because not all students were exposed to problem-based courses and there was no coherent sequencing of problem-solving skills. The "Lawyer as Problem Solver" model builds on the School's traditional strengths and recent pilots, attempting to engage students more comprehensively with problem-solving skills in a sequential manner and to better prepare them for their professional roles. Similarly, Harvard Law School recently addressed this gap in part by implementing a problem solving, simulation-based course for all first year students. Initially, it was offered as a short, intensive course,

123. *The 'Write' Stuff*, U. DAYTON NEWS (March 26, 2012), http://www.udayton.edu/news/articles/2012/03/school_of_law_us_news_legal_writing_ranking.php (citing *US News* ranking of University of Dayton School of Law's writing program as in the top 25 in the country).

124. See, e.g., *About CSDR*, U. MO. SCH. OF L. CENTER FOR DISP. RESOL., <http://law.missouri.edu/csdr/about.html> (last visited Jan. 20, 2013).

125. For a list of law schools that currently report that they integrate non-litigation dispute resolution skills into the required JD curriculum based on results of a survey conducted by the ABA Legal Education and Practical Problem Solving (LEAPS) Committee, see *NLDR Survey Follow-Up Interviews*, VT. L. SCH. DISP. RESOL. PROGRAM, http://www.vermontlaw.edu/Academics/Dispute_Resolution_Program/The_NLDR_Survey/NLDR_Survey_Follow-Up_Interviews.htm (last visited Jan. 20, 2013).

126. In 2010, the LEAPS Task Force was formed to provide guidance to faculty on how to integrate problem-solving skills into "instruction of a wide range of courses, including doctrinal, litigation, transactional, and ADR courses." *Welcome*, A.B.A. SEC. OF DISP. RESOL. L. SCH. COMMITTEE ON LEGAL EDUCATION, ADR, AND PRACTICAL PROBLEM-SOLVING (LEAPS), <http://leaps.uoregon.edu/> (last visited Jan. 20, 2013).

with full-time Harvard faculty members, faculty from other institutions, and practicing lawyers.¹²⁷

As Dayton Law refined its curriculum, it was important to highlight our fit with the University's mission and strengths. The University of Dayton places great emphasis on innovation, providing a transformative education for students and urging them to transform the world around them. In part this is due to Dayton's Marianist character, but it is also related to the University's strength in science, engineering, and technology.¹²⁸ Dayton boasts a strong research institute, working with Wright Patterson Air Force Base and the Air Force Institute of Technology. The law school began one of the earliest intellectual property programs in the country in 1989 and now has graduates of the Program in Law & Technology working around the world, with a growing team of scholars in the area, and the Program continues to draw strong students from around the nation.¹²⁹ An emphasis on innovation is quite fitting in Dayton, home to some of the great inventions in our country, including: the airplane, the electric auto ignition, various cinema equipment, the cash register, personal digital assistant technologies, space foods, and mood rings.¹³⁰ Dayton, home to many technology and engineering companies, places an emphasis on entrepreneurship.¹³¹

At Dayton Law, we operate in a very competitive environment, with strong public law schools in the region as well as other private institutions. We recruit broadly and place students in jobs in a broad market segment. To thrive amid Ohio's demographics, we must attract students from outside our region in the Midwest and at the same time draw strong students from within our region as well. As a relatively young law school without a large endowment, we have to build a strong reputation among employers and prospective students. Finding attractive niches to engage students and satisfy employers has thus been a focus of our strategic planning efforts, demonstrated by our innovative Program in Law & Technology, our beautiful facility, and by building on the faculty's experiential learning strengths and the Universi-

127. See Elaine McArdle, *An innovative new course teaches students to solve problems right from the start*, HARV. L. SCH. RECENT NEWS AND SPOTLIGHTS (Feb. 23, 2010), http://www.law.harvard.edu/news/spotlight/classroom/problem_solving.html. Instructors and contributors to the short courses at Harvard Law School include Todd Rakoff, Harvard Law School professor and co-creator of the program; Janet Kantz, Harvard Law School librarian; David Wilkins, Harvard Law School professor and director of the Program on the Legal Profession; John Palfrey, Harvard Law School professor; Joseph Singer, Harvard Law School professor; Howell Jackson, Harvard Law School professor; Gillian Hadfield, visiting professor from the University of Southern California; Harry T. Daniels, partner at WilmerHale; and William Lee, litigator and then co-managing partner of WilmerHale). *Id.*

128. See, e.g., Dean Tony Saliba, *Celebrating 100 Years of Engineering Education and Research*, U. DAYTON SCH. ENGINEERING (Sept. 30, 2011), <http://www.udayton.edu/engineering/#7>.

129. See www.udayton.edu/law/academics/pilt_students.php (last visited Aug. 24, 2013).

130. See, e.g., City of Dayton, *Dayton Inventions*, <http://www.cityofdayton.org/departments/pa/Pages/inventionlist.aspx> (last visited Jan. 16, 2013).

131. The University of Dayton School of Business Administration offers an entrepreneurship program ranked eighteenth in the country among undergraduate programs. Press Release, Univ. of Dayton, *Entrepreneurial Elite* (Sept. 24, 2012). See, e.g., GE Aviation announced on November 22, 2010 its intent to locate a new Electrical Power Integrated Systems Research and Development Center on the University of Dayton campus. The proposed site is located in the Ohio Aerospace Hub of Innovation, recognizing the unique strengths of various Ohio cities, according to then Ohio Governor Ted Strickland. The \$51 million center is due to open in 2013. Press Release, GE Aviation, *GE to locate new Research & Development Center in Ohio's Aerospace Hub* (Nov. 22, 2010), available at http://www.geaviation.com/press/other/other_20101122.html.

ty's mission. A focus on experiential learning fits quite well with this Catholic and Marianist mission; the University espouses "integrating learning and living in community" as a way to engage the "whole person"—the head, hands, and heart—in the educational enterprise.¹³²

B. Summary of Curricular Reforms

Building on the tradition and distinctiveness of Dayton Law, the Lawyer as Problem Solver model integrates skills more comprehensively across the curriculum, provides optional concentrations to help students gain depth, and offers an accelerated option allowing students to graduate in as little as two calendar years. The curricular package includes features to attract highly motivated students and provide them with a rigorous, engaging educational experience, including a required externship or clinic for each student and a required capstone experience for every student modeled on the realities of modern legal practice. Additionally, with modifications in the late 2000s, we developed more upper-level offerings in our highly regarded Legal Profession Program, or LRW program.¹³³ Each student also takes a basic ADR course with simulations prior to graduation. We offer short, intensive courses in a wide range of subjects to broaden upper-level offerings and optional concentrations. Finally, we encourage professional development across the curriculum through course components as well as extracurricular activities, including a robust Pro Bono Commitment to Community Program and symposia.

With the curriculum's emphasis on experiential learning and more comprehensive integration of lawyering skills, we attempt to better prepare students for practice, while recognizing that new lawyers will still have much to learn on the job. This allows us to bridge the gap between the academy and the profession by encouraging more collaborative efforts. Faculty and practitioners are bringing our students the best of both worlds by co-teaching capstone courses, expanding externship placements, and including practice simulations in many courses. After setting out the initial vision underlying the Lawyer as Problem Solver model, I will describe these innovations more fully, including my own fulfilling experience in teaching an advanced ADR capstone course this year with the federal magistrate judge responsible for designing the court-annexed mediation program for the United States District Court for the Southern District of Ohio.

132. The Mission and Identity Task Force, *Common Themes in the Mission and Identity of the University of Dayton* 14 (July 2012), http://udayton.edu/rector/_resources/files/common_themes.pdf (last visited Jan. 16, 2013). "The Marianist tradition of education includes the whole person — spirit, mind, and body — connecting liberal to professional education through integrating learning and living in community. These traditions form distinctive graduates who grow in their faith, pursue lifelong learning, and achieve professional success. Educated for adaptation and change, our graduates are particularly well prepared for leadership and service in the communities in which they live and work." *Id.*

133. See LSSSE, STUDENT ENGAGEMENT, *supra* note 5.

C. The "Lawyer as Problem Solver" Vision

The key elements of the "Lawyer as Problem Solver" vision of legal education follow:¹³⁴

The lawyer's fundamental role is to help clients solve complex problems and make appropriate choices. To fulfill this role, lawyers require an outstanding foundation in analytical reasoning, substantive legal doctrines, and professional skills. The best lawyers are not mere technicians; they act with sound judgment and common sense, always cognizant of their clients', and their own, ethical responsibilities.

Lawyers help clients and communities prevent and resolve conflict. They help clients prevent future disputes and help them manage current conflict by choosing effective dispute resolution processes to achieve durable solutions.

Lawyers serve the people and organizations they represent through a blend of practical and intellectual activities. Thus, they need to understand more than legal doctrines in books; they need to understand people and organizations.

Lawyers who excel become fulfilled leaders who serve their clients, the justice system, and their communities by making the world more just and fair.

The description below addresses the current curriculum, including the modifications adopted by the faculty and implemented in the late 2000s. As new faculty members played a more active role in curricular revision, and guided by assessment and experience with new courses and programmatic elements, we have been in a mode of continuous improvement for a good part of the last decade.

D. Principal Elements of the Dayton Curriculum

1. Foundational Breadth

Again, the "Lawyer as Problem Solver" model retains much of a traditional first-year curriculum with its emphasis on the case method and analytical thinking. The curriculum adds some required upper-level subjects included on most jurisdictions' bar examinations. Thus, it aims for a broad foundation in a variety of core or foundational legal subjects.

Our decision not to significantly alter the first year curriculum is consistent with the 2010 Survey results of many ABA-accredited schools engaging in curricular reform over the last decade.¹³⁵ As noted earlier, *Educating Lawyers* concludes that law schools do an excellent job of teaching the analytical material during the first year, acquainting students with legal reasoning and foundational doctrine.¹³⁶ For a school undertaking curricular reform, it is useful to know that prominent commentators see the least need for reform in the first year, and it was not the focus of most law school curricular reform during the 2000s.

134. Kloppenberg, *Educating Problem Solving Lawyers*, *supra* note 2, at 1109. This section draws heavily on the 2009 essay and provides updates.

135. ABA Survey, *supra* note 19, at 15.

136. EDUCATING LAWYERS, *supra* note 21, at 2.

2. Capstones: Examples of Depth and Progression

The Lawyer as Problem Solver model also requires each student to take a capstone course, helping them transition from a theoretical and core approach to legal subjects to a practical understanding of various practice areas, bringing together skills and theory and providing students with additional, intensive, upper-level writing experience. Capstone courses are three-or-four-unit courses providing a culminating experience in the progression of legal education. Capstones encourage students to take the knowledge gained in earlier courses and apply it to a complicated problem or series of issues, simulating practice more than possible in just another upper-level survey course. Dayton Law is not the only school using capstones and practica to expose students to practice-like settings and the more rigorous, in-depth simulations of attorneys' real-life work.¹³⁷ The Carnegie authors note the increasing use of practica in legal education.¹³⁸

Replacing the old seminars, in which students wrote lengthy Law Review papers, capstones often combine several legal subjects and all require significant written work.¹³⁹ For example, in my ADR Capstone, students will submit four different types of written work over the semester: a mediation statement, an accompanying strategy memorandum, a reflective essay, and a research paper of about 15 pages on an ADR topic of their choice. I encouraged students to select a topic related to their potential career paths or areas of geographic interest (e.g., family mediation issues in Indiana or Air Force DR processes). Many capstone courses adapt actual documents used in legal transactions and litigation.

Capstone offerings have included courses such as: Cybercrime, allowing students to draft jurisdiction-specific manuals for prosecutors and law enforcement officials; Commercial Real Estate Transactions, in which students negotiate and draft documents used in the development of an actual shopping mall; Civil Rights & Civil Liberties, involving students in interviewing of clients, depositions, and pre-trial civil work, including a mediation with an actual federal magistrate judge regularly involved in court-annexed mediation; and Business Planning for Small Businesses, involving work with accountants and transactional drafting. Additionally, students have had opportunities to take capstones in subjects such as patent prosecution; patent litigation; advanced trial practice; international human rights; complex civil litigation; tort litigation; estate and tax planning; domestic relations practice; and commercialization of intellectual property.

137. See, e.g., Washington & Lee, *supra* note 26; St. John's international law practicum (http://www.stjohns.edu/academics/graduate/law/academics/globalprograms/transnational_programs/practica); Stanford Law School (<http://slsnavigator.law.stanford.edu/node/899167/61>, citing a variety of practica offerings); and Vanderbilt Law School (<http://law.vanderbilt.edu/academics/curriculum/elective-courses/civil-litigation-capstone-seminar/index.aspx>, citing Civil Litigation Practicum). These offerings go by many names, as the Harvard Law School's description of its revised curriculum, notes: "The Law School encourages students to engage in their third year in a capstone learning experience: advanced seminars, clinical practice, and writing projects that call on students to use the full extent of their knowledge, skills, and methodological tools in a field to address the most interesting, complicated and intractable legal problems of today." Available at <http://www.law.harvard.edu/academics/degrees/jd/index.html>.

138. EDUCATING LAWYERS, *supra* note 21, at 10.

139. ABA STANDARDS, *supra* note 43, § 302(a)(3).

Many of the capstones are team-taught, so that full-time law professors can draw on the expertise of practitioners and the load can be shared. Law professors have also developed other forms of assistance, as busy practitioners cannot always commit to co-teaching three or four units per semester. Judges and lawyers, for example, participate voluntarily in capstones to hear oral arguments, hold mock summary judgment proceedings, or supervise negotiation and mediation exercises. In the capstone on Advanced Commercial Real Estate, students learn about zoning, environmental issues, financial issues, and property law. For several years, I taught a class session on negotiation in the business context, which was followed up by students engaging in a negotiation exercise. Similarly, at the University of Oregon, ADR faculty experimented in the 1990s by working with fellow faculty members who volunteered to shape ADR exercises, which were incorporated as elements in about 15 courses.

For the Fall 2012 semester, a busy federal judge was responsible for one unit of our four-unit ADR capstone, a course we are teaching together again this semester. She is supervising their work on mediation statements and accompanying strategy memoranda, while I am taking more responsibility for working with students on their research papers and reflective essays about the mediations they will observe in state and federal court. I am also responsible for most of the classroom component of the course, as well as administrative tasks (e.g., arranging for court observations).

The ADR capstone has been a joy for me. I admit this may be attributable in large part to the fact that I am engaged in full-time teaching again, with few administrative responsibilities after a 10-year deanship. Nevertheless, the experience is exhilarating for other reasons. The chance to work closely with a smart, dedicated judge who has her pulse on the current directions for court-annexed mediation in our region is a great learning experience for me as a scholar and teacher. She supplements my connections to potential guest speakers and has worked with lawyers to help our students gain confidential access to sample mediation statements and mediation experiences. The local federal and state courts have made a tremendous effort to allow our students—with the appropriate confidentiality guarantees—to observe mediations at the courts and to debrief with mediators and lawyers, where possible, about the actual cases they are observing. By exposing students to both federal and state court mediations, they can see a variety of mediation styles and types of disputes. Many of the state court cases involve foreclosure matters, which are significantly different from typical, federal court civil cases in terms of mediation issues and styles.¹⁴⁰

As a full-time professor, I can bring to bear some of the theory and cutting-edge work in our discipline to shape the course and supplement the expertise brought in by lawyers and judges. For example, the students will focus primarily on court-annexed mediation due to its practical importance, but they will also study aspects of Dispute Resolution Design and Public Civil Discourse—

¹⁴⁰. Students were assigned Andrea Schneider's helpful article, *There's No Place Like Home: Applying Dispute Systems Design Theory to Create a Foreclosure Mediation System*, 11 NEV. L.J. 268 (2011), and a state court magistrate, as well as state court personnel, spoke with our students about the foreclosure mediation system in Montgomery County.

emerging areas in ADR in which job opportunities may increase.¹⁴¹ The former President of the University of Dayton, a Marianist brother and a leading lawyer from the local Prosecutor's Office, shared with our students their experience in improving a county-wide system to deal with child abuse and neglect after the death of several children. This inclusive and effective process involved lawyers, law enforcement, social services officers, and other stakeholders.¹⁴² Sharing this experience of lawyers working with non-lawyers to address a major community problem should inspire our students with the potential to use mediation skills to impact the world, either as lawyers for their clients or in pro bono service for their communities.

Students who have taken a capstone course at Dayton Law have commented about the high expectations of professors in capstone courses. Recent alumni have reported they were well prepared to deal with law firm partner expectations because of their rigorous capstone experiences or that they received challenging assignments directly because of their experiences in a capstone course (e.g., deposing a medical expert or defending a civil rights case).¹⁴³ Others have writing samples to use for job interviews or practical experiences to talk about with prospective employers. One graduate noted with pride that his CALI award came from a practitioner who graded his final capstone exercise, finding this valuable in addition—or perhaps in contrast—to the CALIs he garnered from full-time law professors. In any event, it was the one he emphasized in future job cover letters.¹⁴⁴ Another student told me this semester that our ADR capstone was his best learning experience thus far in law school and he wished all courses could be so hands-on. I responded that he needs it all by third year: doctrine and analytical skills, initial lawyering skills, and the opportunity to begin to develop professional judgment and identity. I can't speak highly enough about my capstone experience thus far. They are required to take a capstone and we are asking them to work very hard, but I believe that many of our students have found capstones a useful and engaging mode of learning. (For example, I received the Fall ADR Capstone 2012 evaluations today & they show exceedingly high marks, which I can share with eds: 4.0 of 4.0 on 13 questions; 3.93 of 4.0 on two questions).

3. Clinics & Externships

The "Lawyer as Problem Solver" curriculum creates other meaningful opportunities for experiential learning. In addition to a capstone, each student must take a clinical offering or complete an externship after their fourth semester of law school (or after their third semester for our Summer Starters, described below). We offer criminal and civil in-house clinics with live clients, full-time professors, and a full-scale law office. The clinical experience earns rave reviews from students, but

141. See, e.g., Richard C. Reuben *Public Civil Discourse: A New Domain for Dispute Resolution*, 18 DISP. RESOL. MAG. 4 (Winter 2012).

142. Class lecture notes of talk to ADR Capstone by Brother Raymond Fitz (Spring 2013) (on file with author).

143. When I served as Dean, I heard from several students and saw communications between them and their capstone professors after they entered practice, thanking the professors for useful, practice-ready experiences enabling them to undertake opportunities early in their careers.

144. Cover Letter from Jonathan Osborne (Sept. 2012) (on file with author).

clinic “seats” are limited at Dayton, as at many law schools, because of the low student-to-faculty ratio required for supervising students in actual cases with live clients.¹⁴⁵

Many students fulfill this part of their experiential learning requirement by taking a four-unit externship course, affording a classroom component, hands-on experience, individualized feedback, and opportunities for reflection. We hired two full-time externship supervisors to run this course in the mid-2000s, with assistance from existing faculty members and field supervisors. The externship placements have proliferated at Dayton Law since 2005, as at many law schools, according to the 2010 Survey.¹⁴⁶ Placements have been quite varied, including placement with legal aid, county prosecutors, public defenders, the Cincinnati Reds, law firms, and the University’s General Counsel office. Usually, about 25% of the students are in judicial placements and about half are in private, for-profit placements.¹⁴⁷ Clearly, the externships have been helpful to our recent graduates in terms of securing jobs, making connections leading to subsequent employment, generating practical experiences to put on their resumes, producing writing samples (with appropriate confidentiality protections), and in helping the students to determine their own unique career interests.

Every student is required to participate in an unpaid externship during one of their two final semesters in law school. They work between 168-192 hours in their field placement, depending on whether they are required to attend a contemporaneous class or participate in an online class.¹⁴⁸ Most of the work hours must be earned on site at their placement or by attending related legal proceedings with their Field Supervisor or other attorneys in the placement office. The Field Supervisors are required to “provide meaningful and practical experiences” to the extern, including chances to “shadow” attorneys in a manner firms could ordinarily provide to new associates in less challenging economic times.¹⁴⁹ For example, such opportunities might include: observing legal proceedings, observing client contact, and observing other lawyering activities—in addition to typical research, writing, and other analytical work.¹⁵⁰ We hoped to ensure that students were not just used by employers as unpaid assistants researching in a library or off-site, separate from the context of the legal work environment.

Field Supervisors must be available to provide training, to meet regularly with the extern on-site to provide feedback, and to “answer the extern’s questions on professional responsibility and professionalism topics being discussed” in the externship class component.¹⁵¹ Some of us at Dayton examined what medical schools do to train students and incorporated these techniques into the externship

145. DAVID A. SANTACROCE & ROBERT R. KUEHN, CTR. FOR THE STUD. OF APPLIED LEGAL EDUC, THE 2010-11 SURVEY OF APPLIED LEGAL EDUCATION 18, 25 (2012), <http://www.csale.org/files/CSALE.Report.on.2010-11.Survey.5.16.12.Revised.pdf> (8:1 ratio, professor to students; makes education quite expensive compared to other types of skills offerings).

146. ABA Survey, *supra* note 19, at 77.

147. Memorandum from Denise Platfoot Lacey, Lecturer in Law, Externship Statistics (Oct. 2102) (on file with author).

148. *Id.* (“Summary of Dayton’ Law’s Externship Program and Field Supervisor Duties” attached to Platfoot Lacey memo).

149. *Id.*

150. Lacey, *supra* note 148.

151. *Id.*

experience. When students go through the medical trials and clinics, they receive a 360 degree review.¹⁵² With feedback from supervisors and patients, they get different perspectives on their work—so do our externship students. The faculty supervisor and the field supervisor evaluate the student's placement, and the students get opportunities for reflection and feedback. This can be preferable to making mistakes in a graduate's first job. Students can make some common initial mistakes, receive feedback, and talk to someone about this.

The reviews of externship experiences at Dayton Law have been overwhelmingly positive, from both the employers and the students. Not surprisingly, the class component is the least popular part of the experience. The overall experience is incredibly popular with students and has led to significant job connections and opportunities. As one graduate recently noted, "the most important thing I learned in my externship is that everything we learn in law school 'comes together' in the real world."¹⁵³ The program is currently being assessed and, as with all other major curricular changes, some adjustments are likely.

4. Other Experiential Learning Opportunities & Enhanced Skills Offerings

To enhance skills offerings and prepare students for the reality of modern law practice, each student takes a course in dispute resolution (e.g., ADR for the Litigator, Conflict Management & ADR, or Interviewing, Counseling and Negotiation). This requirement is designed to introduce students to a problem solving mindset. It provides an opportunity for students to learn about client interests, rather than focus on substantive doctrine through appellate case law as in first year courses. Students explore clients' interests through simulations, guest experts, and assigned reading. They learn about practical matters such as the high cost of litigation, attendant psychological burdens, the prevalence of settlement in the civil system, plea bargaining in the criminal system, and the pressures on courts' dockets and the resultant pressure on lawyers and clients to settle.

One of the reasons I was selected as Dean at Dayton in 2001, I believe, was because of my interest in ADR, including my work with the Honorable Dorothy Wright Nelson of the U.S. Court of Appeals for the Ninth Circuit—one of the early teachers of ADR who helped promote skills instruction in legal education and helped integrate mediation in the federal courts.¹⁵⁴ In my current work on Judge Nelson's official biography, I have come to realize the 2002 and 2010 Surveys show that the trend of promoting greater integration of doctrine, skills, and professionalism truly began with the pioneering clinical legal educators of the 1960s and 1970s.¹⁵⁵

152. Dennis Turner, *Why Can't Law Schools be More Like Med Schools?* 3 THE COMPLETE LAWYER (2007).

153. See Lacey, *supra* note 148 (quoting Robert Saunders, Class of 2009, in the 2012 Annual Externship Fair advertisement attached to the memo).

154. Lisa A. Kloppenberg, *A Mentor of Her Own*, 33 TOL. L. REV. 99 (2001); Lisa A. Kloppenberg, *CLEPR Anniversary Remarks Regarding Judge Dorothy Wright Nelson*, 16 CLIN. L. REV. 29, 30 (2009). Judge Nelson given the prestigious ABA Section of Dispute Resolution's D'Alemberte Award in 2001 in recognition of her work to promote ADR in the federal courts and court systems internationally. *CLEPR Anniversary*, 16 CLIN. L. REV. at 30.

155. Kloppenberg, *CLEPR Anniversary*, *supra* note 155, at 30.

During our curricular planning, I expressed frustration with the extent of problem-solving education in U.S. law schools. Even though schools increasingly began to offer ADR courses and launch ADR programs, most students' actual exposure to ADR was still quite limited.¹⁵⁶ At Dayton, we have less breadth than schools with large, established ADR programs. We do ensure currently, however, that every student be exposed to more ADR than most law students get in first-year Civil Procedure. Many of us believe this will be very helpful in preparing them for practice. Additionally, an emphasis on problem solving is a great fit with our Marianist mission of promoting justice, equity, and peace.¹⁵⁷

With the Lawyer as Problem Solver model, we now ensure students engage in writing during all three years, with progressive experiences: six required units of Legal Profession during the first two semesters; two required units in the middle of their studies to satisfy the ABA's rigorous upper-level writing requirement (students select from a new Transactional Drafting course or Appellate Practice & Procedure); and a Capstone in their final semesters. Early in the 2000s, we had moved our outstanding LRW faculty members from a one-year contract system to a long-term contract system. Thus, as we engaged in strategic planning—and heard the cry from employers about law graduates' need for more writing experience, including shorter and non-traditional kinds of assignments—we were able to draw on the strength of our Legal Profession Program, and the greater security for its long-time faculty members, to enhance our skills offerings generally. In 2009, we began to offer Transactional Drafting, an innovation popular at many law schools in the 2000s.¹⁵⁸ The LRW faculty members received voting rights and have played a large role in designing, implementing, and assessing our curricular reforms. They have also become more involved in the past decade in administering our Program of Legal Education, with Professors of Lawyering Skills now serving as Associate Dean for Academic Affairs, Assistant Dean of Students, and Director of Graduate Programs at Dayton Law.

Our well-respected LRW program has long been termed "The Legal Profession Program," in part to reflect an emphasis on professional development from the outset of a student's education at Dayton. Faculty members, in that Program and beyond, discuss the role of the lawyer in their courses. We want graduates to be skilled counselors who can help clients exercise good judgment and who at least think about the inherent ethical questions often involved with client representation. We cannot always give them the right answers, but we want them to be conscious of asking the ethical questions. In our ADR Capstone this semester, we included a session on mediation ethics and gave students a simulation based on an actual case, involving a difficult ethical dilemma for one counsel. After the students engaged in mock negotiations, they engaged in one of the best classroom discussions of ethics I have ever heard. Because of the judge's presence, and

156. See John Lande & Jean R. Sternlight, *The Potential Contribution of ADR to an Integrated Curriculum: Preparing Law Students for Real World Lawyering*, 25 OH. ST. J. DISP. RESOL. 247, 276-277 and accompanying footnotes (2010) (discussing the expansion of ADR course offerings and the barriers that nevertheless inhibit students from actually taking an ADR course).

157. For example, the University of Dayton established the first undergraduate human rights program in the nation. *Human Rights Studies*, UNIV. OF DAYTON, <http://www.udayton.edu/artssciences/humanrights/index.php> (last visited Aug. 16, 2013).

158. ABA Survey, *supra* note 19, at 16.

because students could imagine themselves in the scenario, they grappled with the issue and possible solutions fervently.

With law students, this engagement can happen through courses as well as in students' work experience outside the classroom as they integrate theory and practice. The experiences law students encounter in their externships, part-time jobs, and summer clerkships inform how they study, absorb, and apply material in courses. Students sometimes bring work problems, including ethical issues, into conversations with law faculty members. Through our new curriculum, we seek to formalize this type of dialogue, make it ongoing, and provide more opportunities for reflection with guidance from faculty members and lawyers. Students benefit not only from exposure to the "real world" of practice, but also from the opportunity to reflect upon these experiences, positive and negative, with classmates and faculty members. Those designing the externship experiences at Dayton specifically include ethical issues and ask students to seek feedback in their externship settings from lawyers.¹⁵⁹

When students work with real clients, actual lawyers, or even the actors we have used for some of our courses, another dimension of the lawyering role emerges beyond case analysis. Students encounter the human dimensions of practice, where communication is paramount and the clients' priorities, interests, and needs are critical. We also encourage them to go out and serve their clients well and to help by being officers of the court and leaders in their communities. In subsection III.7 below, I address more fully the professionalism and pro bono experiences developed alongside the Lawyer as Problem Solver.

5. *Curricular Concentrations*

The Lawyer as Problem Solver model offerings added some depth and opportunity for specialization in three broad areas in 2005: advocacy and dispute resolution (with a criminal and civil specialization as a student advances); personal and transactional law (with a focus on representing individuals and businesses in transactional work); and intellectual property, cyber law, and creativity (with advanced specialization in patent or a broader intellectual property sequence of courses). We selected these particular tracks because of the expertise of existing faculty members, the interests of many prospective students, the strengths of the School historically, and job placement opportunities in our region. For example, our widely renowned Program in Law & Technology offers intellectual property and cyber law experts, programming, and externships. We also thought it valuable to offer academic advising connected to career paths and sets of skills. For some students, this might amount to a specialization or certificate program—increasingly popular in the 2000s amongst law schools.¹⁶⁰

We found, however, that requiring students to select one track at the outset of their legal studies—rather than being a generalist—added substantial pressure for some and was a detractor amongst some prospective students. We also found staffing multiple, smaller sections of certain courses, so that they could be offered to students on a track-wide basis, was a drain on resources and a burden on some

159. Lacey, *supra* note 148.

160. ABA Survey, *supra* note 19, at 101-02.

faculty members teaching core courses. We have now moved to optional concentrations for students, rather than required tracks, providing students more flexibility and allowing the School to adjust to changes in career opportunities for our graduates. The faculty is developing these concentrations. Due to the Program in Law & Technology's history and prominence, establishing a concentration in that field is much easier than, for example, one in Human Rights & Social Justice. As we hone these concentrations, we will be mindful of resource allocations and the need for multiple offerings based on promises to current and prospective students, as well as the fit of each area with faculty expertise and interest, career opportunities, and student interest. Currently, if students want to pursue greater depth in Law & Technology, the School also offers an LL.M. and a Master's degree for non-lawyers in the field of intellectual property, cyber law, and creativity. In the future, I could envision new programs at Dayton Law linking us more closely to other units on campus and their expertise, in alignment with law student appeal, faculty teaching and scholarly interests, and job opportunities

6. One-Unit Courses: Examples of Broadened Horizons

Since 2005, Dayton has offered intensive, one-unit courses, providing students the opportunity to survey a wide array of topics, enhance their professional skills, explore cutting-edge issues, and encounter a variety of legal perspectives. The courses have afforded some faculty members the chance to develop short-term courses in an area of current scholarly interest. Offering some short-term courses also allows busy judges and practitioners to teach a course in their area of expertise without committing an entire semester of time. At first, we offered most of these one-unit courses during a special week mid-semester set aside for them, but professors are experimenting with a variety of timing options now. Some students and professors like the condensed, one-week intensive format; others prefer to take that week for job interviews, paper assignments, or other business. Now, students can participate in one-unit courses in different formats, including a course spread over a portion of the semester. To the extent a school uses adjuncts for one-unit courses, this can be a cost-effective way of broadening options in the upper-level curriculum and offering courses in emerging areas of legal practice.

The short courses have covered a wide variety of topics since 2005.¹⁶¹ The offerings serve a variety of purposes. They can help prepare students for specific bar exam topics in a short session (e.g., the students who need Oil and Gas Law for the Texas exam). They can also align with faculty scholarly interests and develop expertise on cutting-edge issues (e.g., Human Trafficking, Virtual Online Mediation, Video Game Law, and others). For example, I taught a short course about dispute resolution processes for complex cases, drawing on my work with

161. The courses include Mental Health Issues for Juveniles; Homelessness and the Law; Criminal Sanctions; Comparative Constitutional Law; Human Trafficking; White Collar Crime; Nuremberg Trials; Interstate Domestic Relations; Personal Property; Corporate Ethics; Federal Indian Law and Gambling; Discovery Techniques; Virtual Online Mediation; Selected Topics in Race, Racism and the Law; From Plessy to Grutter; Adoption Law and Practice; Oil and Gas Law; The Death Penalty; Digital Music Sampling and Copyright; Preventing Attorney Discipline; Nonprofit Organizations; Open Software; Trade Secrets; Religion and the Law; and others.

Ken Feinberg¹⁶² and incorporating guests by phone and in person to discuss emerging ways to set up processes to handle disasters and mass torts. I also taught a Comparative Constitutional Law/Human Rights class with a professor from political science. With one-unit offerings, faculty members get to explore some topics of interest, and the students get to experiment while still fitting in their core courses.

Many of our short, intensive courses address issues of professionalism, values, ethics, and social justice, linked to the third Carnegie apprenticeship. Some are opportunities for lawyering skills development. Others are designed to give students the opportunity for deeper theoretical reflection (e.g., Law and Religion, Racism and Law, Criminal Sanctions) and others still are designed to give students an opportunity to explore a potential employment field (e.g., some of the courses dealing with juvenile issues or the criminal arena).

7. Increased Pro Bono & Professional Development Opportunities

At Dayton Law, we are addressing issues connected to the third Carnegie apprenticeship in other ways, too. The 2010 ABA Survey likewise indicates many schools are experimenting with creative means to expose students to professionalism issues, involve practitioners in helping our students develop professional judgment, and taking seriously the Standards' mandate to offer substantial pro bono opportunities for students.¹⁶³

With the Lawyer as Problem Solver model, we offer a short, not-for-credit professionalism course at the outset of students' legal education. We have brought in practitioners to work with our new students on ethical dilemmas and exposed students to a variety of full-time faculty members through this course. One professor designed a series of ethical dilemmas with local lawyers and judges, after he surveyed lawyers and judges about common dilemmas early in a lawyer's career. For example, he developed one on how to tell a prospective client that he or she doesn't have a viable legal claim and other such situations, which are commonly difficult for new attorneys to approach. The professor also used the vehicle of a one-unit class to work with students on the series of hypothetical ethics issues.¹⁶⁴ Moreover, as noted above, our Legal Profession Program and other faculty members are concerned with students' professional development and incorporate ethical issues across the curriculum.¹⁶⁵

At Dayton Law, we also offer not-for-credit symposia and speakers regularly on topics of ethics and social justice. These offerings are supported by special funds to promote mission-related activities, including: the endowed Gilvary Series on Law, Religion, & Social Justice; the endowed Porter Wright Morris & Arthur Series on Law, Religion, & Ethic; and the Project for Law & Business Ethics. Professors participate frequently in these events and some request or suggest students attend particular sessions, though few professors require attendance.

162. Ken Feinberg is the Founder and Managing Partner of Feinberg Rozen, LLP. See firm website, available at <http://www.feinbergrozen.com/>.

163. ABA Survey, *supra* note, at 91.

164. Email from Prof. Dennis Turner to author (Oct. 2012) (on file with author).

165. Wawrose, *supra* note 14.

One of the most robust ways in which we expose our students to issues of professional development and access to justice is through our Pro Bono Commitment to Community Program. It is a voluntary pro bono service program and extracurricular, but a growing number of students are participating in these opportunities for professional development. If students agree to devote 50 hours during their legal studies to pro bono service (of which 40 have to be legal and 10 can be law-related), they get a special cord to wear at graduation and a transcript designation. Many of our alumni and judges have become involved, working side-by-side with our students or mentoring them. In the last three graduating classes alone, our inspired and inspiring students have logged about 30,000 hours under this program.¹⁶⁶

8. *A New Academic Calendar & Accelerated Option*

Dayton now offers students the opportunity to graduate in two calendar years and to begin the study of law in the summer.¹⁶⁷ These "Summer Starters" complete the same number of units and study the same curriculum, whether they graduate in two or three years. When we first implemented the accelerated option in 2005, we allowed students to complete their studies in five or six semesters, beginning in the fall or summer term. Concerned about the burden this placed on students and the scheduling issues it presented for the School, we revised the option so a student spreads the same units out over 5 semesters and six summer units. Typically, the summer starters complete their externship during one summer and take an additional course the summer after their third semester. If a student commenced her studies in summer 2010 and maintained the standing necessary to stay on the accelerated option, she would graduate in May 2012, compared to a person who started in fall 2010 and would graduate in May 2013. Southwestern Law School has long offered an accelerated program and Northwestern Law School began to offer an accelerated option a few years after Dayton Law began its accelerated option.¹⁶⁸

We thought an accelerated option might help keep some students engaged during the entire period of their studies because of its pace and rigor. We sought to attract highly motivated students, with an eye toward their performance both in law school and on the job, thereby improving our graduates' strong reputation with employers. In fact, as we started to assess the viability of an accelerated option, we spoke with the School's Advisory Council members and the leaders of major law firms. We learned many of the managing partners, general counsels, and highly successful lawyers had finished law school at a faster-than-normal pace (e.g., in two-and-a-half years). Some had returned to school after military service or other such work or life experience (e.g., starting a family). Some had chosen to finish law school quickly precisely because they had family obligations or financial concerns. Additionally, we wanted to draw in students with work and

166. Lisa A. Kloppenberg & Lori E. Shaw, *Pro Bono: Assessing Aims and Achievement*, 40 U. TOL. L. REV. 357 (2009).

167. ABA standard 304(c) permits accelerated graduation, but only 11% of respondents reported a policy providing for it. See ABA Survey, *supra* note 19, at 15, 30.

168. David E. VanZandt, *Foundational Competencies: Innovation in Legal Education*, 61 RUTGERS L. REV. 4 (2009).

life experience who were attractive to employers and indicative of maturity. The Summer Start classes have generally been small in size, but the accelerated option has attracted students with a variety of job experiences, including police officers, scientists, teachers, human resources officers, assistant city managers, banking executives, and technology experts. I taught a small ADR course to Summer Starters last semester and was impressed by their maturity and the diversity of life experiences they brought to their legal studies.

Moreover, the accelerated option can save living costs and get students back into the job market a year earlier. The option has been successful in helping us recruit highly motivated, non-traditional students, with extraordinarily diverse backgrounds. One student, for example, finished her undergraduate degree at The Ohio State University in three years and her J.D. with us in two years; another Summer Starter had finished school quickly at the University of Dayton, and was only 21 when he graduated with a J.D.¹⁶⁹ But those students are exceptions. Most Summer Starters have been, on average, two-to-four years older than our Fall Starters. For most of the period from 2005-2011, the Summer Start group has been a highly diverse group in terms of gender, race, academic background, and geography, too. Summer Starters hold a much higher percentage of graduate degrees¹⁷⁰ and most bring work experience to the classroom. A much higher percentage have children, too, or other family responsibilities, compared to our typical Fall Starters who are generally only one or two years beyond their undergraduate studies.

Attrition is low and very few students have to slow down due to academic issues, although a few have chosen to slow down for personal or career reasons.¹⁷¹ Students rarely transfer, in part because they have completed half of their legal studies within a year of matriculating and the end is in sight. Students appreciate the money they can save on this option and the additional money they can earn by getting back in the workforce sooner.¹⁷² One accelerated graduate needed a faster J.D. given his age when he applied to law school and the age ceiling of 35-years-of-age for Air Force JAG officers; he chose the accelerated option, secured an externship at Wright Patterson Air Force base, and is now Chief of Legal Assistance and Preventive Law in the JAG office.¹⁷³ Summer Starters also praise the small size of their cohort. The Summer students generally start with just 20-40 other students. They really get to know their professors¹⁷⁴ and feel like they own the building before fall classes start, when a new batch of 120 to 140 students join our community.

169. "The Two-Year Program is ideal for students who are motivated, willing to accept the tough workload and driven to finish a year early." Jessica L. Jacobson, Dayton Brochure (on file with author).

170. For example, in 2008, 21% of our summer starters held advanced degrees, compared with 2.3% of the fall cohort. Kloppenberg, *The Rise of Two-Year Programs?*, supra note 2, at 550.

171. *Id.* at 551.

172. For example, one accelerated student had been an engineer for 12 years prior to law school and didn't want to be without a salary for too long while he went to law school. The Program in Law & Technology also attracted him, as he prepared for work as a patent attorney. Brian Sullivan, Dayton Brochure (on file with author).

173. *Id.*

174. *Id.* As Lauria Lynch Germain says: "You have unfettered access to professors in your crucial first semester." *Id.*

Do the outcomes differ between the two-year and three-year J.D. students? The accelerated students mix in with everybody else at the end of their third semester for purposes of calculating credit hours and class rankings.¹⁷⁵ Their cumulative GPAs have been very similar to traditional students, as have bar passage and job placement rates. We've had at least one two-year J.D. finish first overall when rankings were combined. About the same percentage per cohort of accelerated students and traditional students earn academic and pro bono honors. Many of the accelerated students also get involved in the life of the community after their first summer; they have served on Law Review and its Board, held high governance position in our Student Bar Association, and been involved with numerous student organizations on topics from law & technology to social justice issues.

Though the applicant pool is much smaller than in the fall, the yield is very high for the summer program because people self-select.¹⁷⁶ With the economic downturn, which hit shortly after we started an accelerated option, we have enrolled smaller classes both for the summer and fall cohorts. One of the benefits of the Summer Start program is that it has allowed us to better plan for fall classes in terms of yield, discount rate, and other admissions issues—knowing a certain portion of class is already underway and fully aware of the smaller cohort's incoming credentials and composition.

E. Conclusion of "Lawyer as Problem Solver" Highlights

Our reforms at Dayton Law are constantly being assessed and improved, but this snapshot should give those interested in curricular reform an example of how one school anticipated some critiques of legal education and implemented many of the reforms that were popular nationally in the 2000s, according to the ABA 2010 Survey. Given the time and thought curricular design and implementation consumes, the sheer difficulty of change for some people, and the concern about offering something markedly different from other law schools in a highly competitive admissions environment, it may be worth noting some of the benefits and costs of our curricular reforms.

Faculty members were already busy with significant scholarship, teaching, and service responsibilities before they voted for curricular reform. Staff members were busy recruiting classes, serving our students, and placing them in jobs. As we moved to a year-round calendar of classes, many people within the Dayton Law community had to undertake new work and make adjustments to their schedules and responsibilities. Naturally, change will always be met with resistance by some, but I am grateful for the many faculty and staff members at Dayton Law who undertook the changes with dedication and for the good of our students.

While the work has been daunting at times, the broad scope of reform has engaged many members of the faculty, staff, and even some adjuncts and alumni. The 2000s were a period of renewed creativity in our community. For example, many faculty members have created highly effective capstone or other courses;

175. Univ. of Dayton, *Academic Standards & Policies*, in UNIVERSITY OF DAYTON SCHOOL OF LAW STUDENT HANDBOOK 2012-2013 (2012) (explaining policies on calculating credit hours and class ranks).

176. Kloppenberg, *The Rise of Two-Year Programs?*, *supra* note 2, at 550-51.

some have produced related teaching materials; and still others are writing and speaking across the country, reflecting on their pedagogy or curricular reform issues.¹⁷⁷ A trio of professors engaged in a bar outreach project, surveying students, new lawyers, and employers to ensure what we teach in the lawyering skills field matches well with what is needed most for graduates entering different areas of law practice. They have focused on the needs of recent graduates, again helping our community focus on entry-level skills and practice readiness.¹⁷⁸ Two Dayton Professors of Lawyering Skills have a book on assessment forthcoming, just as schools will have to grapple with revised ABA Standards concerning assessment.¹⁷⁹

Curricular assessment will be ongoing at Dayton Law and some revisions surely will be needed over time to keep the curriculum responsive to student interests, employer needs, changes in the legal services market, as well as faculty expertise and interest. Nevertheless, the Lawyer as Problem Solver model increased our national visibility. During the 2000s, Dayton Law's standing improved in rankings among lawyers and judges and we boasted very strong placement results for a relatively young, regional law school ranked outside the Top 100 in U.S. News.

When we undertook these reforms, we believed them critical for our students and profession, but we were not assured they would bring us national recognition or improve the School's reputation with critical constituents. Thus, when the Carnegie Foundation recognized Dayton Law in 2007 for being a "vanguard" of reform in legal education, including Dayton Law with a select group of schools poised to transform legal education (including, e.g., Harvard, Stanford, and Vanderbilt), it was extremely heartening.¹⁸⁰ Additionally, the International Institute for Conflict Prevention and Resolution presented the School with its Problem Solver Award in 2006.¹⁸¹ The judges emphasized that Dayton's "unprecedented focus on problem-solving throughout the entire curriculum should be honored for

177. For a select illustration of these efforts by University of Dayton School of Law faculty members, see, e.g., *New IP Clinic Set to Launch in Spring Semester*, UNIV. OF DAYTON NEWS (Nov. 29, 2012), http://www.udayton.edu/news/articles/2012/11/intellectual_property_law_clinic_launched.php; *Digital Lawyering*, UNIV. OF DAYTON NEWS (Aug. 23, 2012), http://www.udayton.edu/news/articles/2012/08/digital_lawyering_stephanie_kimbrow.php; *Collaboration Focuses on Distance Learning in Legal Education*, UNIV. OF DAYTON NEWS (June 12, 2012), http://www.udayton.edu/news/articles/2012/06/law_distance_working_group.php; *Innovative Leader*, UNIV. OF DAYTON NEWS (Nov. 30, 2010), http://www.udayton.edu/news/articles/2010/11/paul_mcgreal_law_school_dean.php; *Before-the-Job Training*, UNIV. OF DAYTON NEWS (Nov. 4, 2010), http://www.udayton.edu/news/articles/2010/11/school_of_law_externship_program.php; *Champion of Curricular Reform*, UNIV. OF DAYTON NEWS (Feb. 26, 2010), http://www.udayton.edu/news/articles/2010/02/university_of_dayton_law_dean_lisa_kloppenbergs_to_step_down.php; *Ahead of the Legal Education Curve*, UNIV. OF DAYTON NEWS (Jan. 23, 2007), http://www.udayton.edu/news/articles/2007/01/ahead_of_the_legal_education_curve.php.

178. See Wawrose, *supra* note 14.

179. LORI E. SHAW & VICTORIA V. VANZANDT, *STUDENT LEARNING OUTCOMES AND LAW SCHOOL ASSESSMENT: A PRACTICAL GUIDE TO MEASURING INSTITUTIONAL EFFECTIVENESS* (forthcoming 2013).

180. Letter from Carnegie Foundation to author (Dec. 2007) (inviting participation in further studies) (on file with author).

181. *Let's Talk About It*, UNIV. OF DAYTON NEWS (Jan. 19, 2006) (quoting Helena Erickson, Senior Vice President of Research, Development and Education for the Institute), available at http://www.udayton.edu/news/articles/2006/01/Lets_Talk_About_It.php.

its breadth.”¹⁸² Members of our community have been asked to speak about our reforms at numerous conferences, from the American Bar Association and American Association of Law School functions to symposia at law schools and the National Conference of Bar Examiners. This national attention and the comprehensive nature of the reform have helped rally support and resources from the University and donors.¹⁸³ Over time, this contributes to improving the School’s reputation among lawyers, judges, employers, prospective students, and hopefully some academics.

It is difficult to gauge how much of the positive attention is attributable to curricular reform and how much is attributable to our hiring of new faculty or other such initiatives. We are a private school in a competitive market, with a number of lower-cost public options in Ohio and the surrounding states.¹⁸⁴ We have not made the strides we hoped for since the mid-2000s in terms of attracting a class with significantly higher entering credentials. Of course, the last half of the decade was challenging for many law schools in terms of admissions, with the overall economic climate and shrinkage of traditional legal jobs, fewer people taking the LSAT nationally, and specific regional economic conditions plaguing the Midwest.¹⁸⁵

Certainly, there are significant costs to any comprehensive curricular reform and the impact on a school’s ranking or reputation is uncertain, depending on the effectiveness of the reforms, the school’s ability to market successfully its improvements, and performance on other measures. One of the major challenges for any school considering curricular change is communicating about the change and underlying reasons. This involves time, expense, and expertise to market the new curriculum to current and prospective students, to potential employers, and to keep communicating clearly with internal and external constituents about the changes and the reasons for them (e.g., to produce practice-ready graduates). In the end, we engage in serious curricular reform because it is the right thing to do for our students and their future clients. At Dayton, we aim to produce problem-solving lawyers to help those future clients and provide leadership for the communities in which our lawyers will serve. Many of us at Dayton Law feel as if we are working on something important for the School, for our students, for their employers and clients, and for legal education as a whole, even if we have yet to perfect it.

182. *Id.*

183. Kloppenberg, *Educating Problem Solving Lawyers*, *supra* note 2, at 1114.

184. See WORLD POPULATION REVIEW, <http://worldpopulationreview.com/population-of-ohio-2012/> (last visited Aug. 16, 2013). There are 9 ABA-accredited law schools in Ohio for a State with a population of about 11.5 million people. Competition with law schools in neighboring States is also important to Dayton Law as one of four private law schools in Ohio. For information on the number of ABA approved law schools in Ohio, visit <https://officialguide.lisac.org/Release/SchoolsABAData/SchoolsAndLocation.aspx?schoolinfo=schoolsandlocation&alphabeticalrange=all&geographicsearch=OH>.

185. Jim Glassman, *The State of the Midwest Economy* (June 30, 2012), <https://www.chase.com/online/commercial-bank/document/Midwest.pdf>.

IV. SUGGESTIONS FOR CURRICULAR REFORM: A PROBLEM-SOLVING APPROACH

This final section offers some considerations for law schools considering curricular reform or assessing their curricula. Several forces will shape schools' planning in the next decade, including recent and forthcoming changes to the standards governing ABA-approved law schools; the economic outlook, particularly the job opportunities for J.D.s; and the ability of schools to attract qualified, motivated students in a highly competitive admissions market.

A. Significant Changes in the ABA Standards

The ABA Standards underwent considerable change in the last decade regarding the Program of Legal Education offered by ABA-approved schools. The findings of the 2002 and 2010 Surveys demonstrate important features of the Standards and curricula reform efforts have been complementary. For example, the revised strategic planning requirement spurred curricular discussions among legal educators and law schools increased their "other professional skills" offerings after that requirement was added to the Standards.¹⁸⁶ Further proposed revisions affecting curricula are being reviewed by the Standards Review Committee now—with significant vetting and input from many constituencies—for eventual consideration by the Section's Council.¹⁸⁷ The following list of Proposed Standards that could spur future curricular reform is somewhat speculative; no one knows what changes will be finally proposed and implemented, and how law schools will react, but the following areas bear watching.¹⁸⁸

A new standard regarding "Learning Outcomes" has been proposed. Consistent with demands for greater transparency and consistent with the direction taken by many regional higher education accreditation organizations, law schools may have to identify Learning Outcomes for graduates and evaluate whether they are meeting those objectives.¹⁸⁹ This also resonates with the approach urged in Best Practices.¹⁹⁰ "The learning outcomes shall, at a minimum, include competency to represent clients as an entry-level practitioner in the following areas: . . . (on matters of substantive and procedural legal knowledge); [l]egal analysis and reasoning, legal research, problem solving, and written and oral communication in the legal context; professional and ethical responsibilities; other professional skills; and any learning outcomes deemed by the school as important or necessary

186. ABA Survey, *supra* note 19, at 101.

187. Mark Hansen, *The Long March*, 98 A.B.A. J. 58 (2012) (describing major, comprehensive review of accreditation standards being undertaken by the ABA Section on Legal Education and Admissions to the Bar).

188. *Id.* The Standards Review Committee has approved a revised Standard 509 expanding the consumer information schools must make available on their websites, including employment outcomes for graduates. *Id.* at 58.

189. ABA Section of Legal Education & Admissions to the Bar Standards Review Committee, *July 2012 Meeting Materials*, 14, 19 (July 2012), http://americanbar.org/groups/legal_education/committees/standards_review/meeting_drafts.html [hereinafter ABA Standards Review Committee Agenda]. Standards 302 & 308.

190. See generally BEST PRACTICES, *supra* note 20.

to meet the needs of its students and to accomplish its mission."¹⁹¹ The focus on entry-level skills is new and complements the call of the bench and bar, as well as other commentators, for greater student preparation for practice.¹⁹² An interpretation accompanying this proposed Standard includes more specificity. Law schools will still make important choices in determining which professional skills to emphasize under this proposal, but they appear to be given a specific set from which to choose, including interviewing, counseling, negotiation, fact development and analysis, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation."¹⁹³ Thus, it appears schools with strengths in dispute resolution could focus on one or more of the identified ADR skills in meeting proposed Standard 302.

Proposed Standard 307 also envisions considerable change: "A law school shall utilize a variety of formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students."¹⁹⁴ Assessment is linked to the proposed learning outcomes responsibilities and parallels developments among regional university accreditors.¹⁹⁵ The final part of the proposed learning outcomes Standards mandates that "[t]he dean and faculty . . . shall conduct ongoing evaluation of the law school's learning outcomes, program of legal education, and assessment methods."¹⁹⁶ That evaluation will be reported. Acceptable methods to measure student competency in the school's learning outcomes include "portfolios, student evaluation of the sufficiency of their education, student performance in capstone courses . . . bar exam passage rates, placements rates" and a host of other potential measures.¹⁹⁷ If passed without significant changes, new Standards along these lines will be another method of measuring law schools' effectiveness, perhaps even promoting types of rankings beyond the U.S. News rankings.

Another proposal before the Standards Review Committee focuses on experiential learning. In Standard 303 on the Curriculum requiring professional responsibility courses as well as first-year and upper-level, faculty-supervised writing requirements, a proposed section would require every student to satisfactorily

191. ABA Standards Review Committee Agenda, *supra* note 192, at 14. Standard 302.

192. See, e.g., John Sonsteng & David Camarotto, *Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction*, 26 WM. MITCHELL L. REV. 327 (2000); Mark Hansen, *US Law Schools Expanding Clinical, Professionalism Offerings, Survey Shows* (July 5, 2012), http://www.abajournal.com/news/article/us_law_schools_expanding_clinical_professionalism_offerings_survey_shows/; Mark Hansen, *Changing Course: Initiative Seeks to Emphasize Teaching Practice Skills* (Dec. 1, 2011),

http://www.abajournal.com/magazine/article/changing_course_initiative_seeks_to_emphasize_teaching_practice_skills/; Rachel M. Zahorsky, *ABA Urges Law Schools to Adopt More Practical Training for Students* (Aug. 9, 2011),

http://www.abajournal.com/news/article/aba_urges_law_schools_to_adopt_more_practical_training_for_students/.

193. ABA Standards Review Committee Agenda, *supra* note 192, at 14. Interpretation 302-1.

194. *Id.* at 18 (Standard 307).

195. EDUCATING LAWYERS, *supra* note 21, at 180-84. For an example of regional accreditation emphasizing assessment, see the Higher Learning Commission and its programs for evolving assessment standards.

<http://www.ncahlc.org/General/workshops.html?highlight=YToxOntpOjA7czoxMDoiYXNzZXNzbWVudCI7IQ.>

196. ABA Standards Review Committee Agenda, *supra* note 192, at 19 (Standard 308).

197. *Id.* (Interpretation 308-2).

complete "one or more experiential course(s) totaling at least three semester hours . . . after the first year that must integrate doctrine, theory, skills and legal ethics and engage students in performance of one or more professional skills identified" in the proposed Learning Outcomes Standard.¹⁹⁸ For some schools, this Standard 303(a)(3) would require significant work to establish courses for every student to satisfy this integrative coursework. This appears to be a different type of course than those currently required in Standard 303(b), which says schools must provide "substantial opportunities" for live-client clinics or externships, and pro bono service participation.¹⁹⁹

Another area that might affect curricular directions and teaching methods are those standards in Chapter 4 concerning faculty members. These involve difficult issues of security of position, academic freedom, and equity among various categories of full-time faculty.²⁰⁰ As law schools increase experiential learning (because of new Standards or other demands), faculty may bear very different course loads and student contact hours. This might affect the scholarly responsibilities of some types of faculty members and continue the categorization and differential staffing present in many law schools today.

Some law schools may have to offer fewer new elective courses at the upper-level if they must develop new courses to fulfill the "other professional skills" requirement and integrated experiential learning requirement for every student. Depending on who is teaching those skills courses, schools may need full-time faculty members to cover core doctrinal courses—leaving more upper-division, small elective courses to adjuncts. This may cut against the desires of some faculty members to teach small section courses in their areas of scholarly interests. Alternatively, through the use of capstones or other types of courses, some faculty members may be able to combine new experiential courses with their areas of interest and expand their knowledge, as I have found with the ADR capstone thus far.

There may be some changes to the standards involving bar passage, as we saw over the last decade, and one proposed standard requires broader academic support.²⁰¹ Changes in the standard governing distance education are also possible.²⁰²

B. Economic Climate and External Pressures

In addition to forces reflected in the Standards, universities, practicing lawyers and judges, donors, and the general economic climate will continue to put pressure for change on law schools. This section briefly highlights some possible external pressures and directions in the coming decade.

Universities request strategic planning efforts regularly of deans and law faculties. This might be in connection with a regional accreditation site visit or university-wide strategic planning efforts in advance of a fundraising campaign. Curricular reform in line with any new ABA Standards, and in light of reforms

198. *Id.* at 15 (Standard 303(a)(3)).

199. *Id.* (Standard 303(b)(1) & (2)).

200. Hansen, *supra* note 190, at 59.

201. ABA Standards Review Committee Agenda, *supra* note 192, at 16 (Standard 304(d)).

202. See ABA STANDARDS, *supra* note 43, at 25.

across legal education in the past decade, may be a meaningful way to address these university directives. Again, the push for "outcome measures" in the proposed Standards mirror what many regional accrediting agencies have examined in recent decades.²⁰³ Law school curricular change and assessment can thus help a university with their accreditation issues.

Another area in which some law schools may feel pressure is in university overhead increases, or in terms of required cuts in staffing due to university or statewide budget mandates, or in increased faculty course loads. Universities, faced with economic pressures, intensive scrutiny from their boards or politicians within a State, may seek to increase the course loads of faculty members across campuses. Of course, law schools can be targets here, since the relatively high salaries and low course loads of law faculty members are often not in line with that of professors in other units. Given the tight budgets at many universities and law schools these days, it will likely be harder to marshal financial reserves for curricular experimentation than it was 10 years ago. However, gifts for experiential learning opportunities are possible and sometimes donor interest can be high because those offerings allows schools to link better with the bar and bench. Schools will likely need to prune offerings or other non-curricular experiences while they grow and shape new offerings. Of course, resources affect the manner in which we offer learning experiences and experiential learning requires greater faculty supervision and assessment of student work. Thus, difficult staffing and resource allocation decisions need to be made as schools respond to these external forces.

I believe the largest factor shaping legal education will continue to be the job market and, in connection, the pool of prospective law students. Law schools will need to be responsive and creative in terms of helping students find various types of employment and in working with potential employers. As we considered reforms at Dayton in the early 2000s, we were guided by some Midwestern pragmatism. We recognize that we are a regional law school. Yes, we want to move up in national rankings and build a strong national reputation, but most of our graduates never started out at "Am Law 200" firms. We did make some progress placing our top academic achievers there in the mid-2000s, but that has proven more difficult since the economic downturn and workforce compression in those firms. Clearly, most of our students continue to start at small firms, prosecutor's offices, legal aid, public defenders, and a wide variety of other such jobs. These jobs are mostly in the surrounding region, although about half our students come from out of State and about half generally find jobs out of State. Thus, we rely on Dayton undergraduate and law alumni populations for connections and potential employment in Chicago, Florida, Washington, D.C., New York, and a few other markets.²⁰⁴

More schools will need to develop new and non-traditional placements. At Dayton, we have always attempted to help students secure non-traditional placements. WilmerHale, a prominent national law firm based in Boston and Washington, D.C., opened a business office in Dayton and has employed a number of our

203. See, e.g., Staci Provezis, *Student Learning Outcomes Assessment: All Signs Point To Accreditation* (Apr. 2012), <http://www.learningoutcomeassessment.org/documents/NILOA%20Presentation%20for%20RosEvaluation.pdf>.

204. Kloppenberg, *The Rise of Two-Year Programs?*, *supra* note 2, at 543.

graduates as discovery attorneys since the late 2000s. We continue to cultivating connections with those and other non-traditional employers, finding these positions to be a great fit for some of our graduates and knowing they can move from those positions into other positions as their careers progress. We have also had a number of graduates find work at universities recently, as compliance officers or in other work where a J.D. is preferred but not required. The higher education sector is one that is growing, even in these challenging times. One of our graduates, given her expertise and the needs of her young family, opened a virtual law office and has become a national expert on this topic.²⁰⁵ I believe legal educators will need to learn about such job opportunities and respond by shaping courses or experiences (externships, pro bono placements, etc.) to help students prepare for non-traditional careers.

If the economic pressures on the private bar continue to make hiring difficult in many areas of the country, we will continue to see great pressure exerted on law schools from employers. Many employers expect our new graduates to possess skills J.D.s did not have 10 or 20 years ago upon graduation.²⁰⁶ If less mentoring is available to some graduates, and if a large portion of the country's new graduates continue to go into small or solo practices, the need for mentoring and practice-related training will remain high. It remains to be seen how this burden will be shared by the bar and legal education in the coming years. Even if the economy rebounds markedly, I am skeptical clients and their risk managers or insurers will return to some older practices, including giving lawyers free reign over discovery choices and allowing work that could be outsourced to be done by full-time, highly compensated associates.

Finally, I will mention the challenges in admissions offices today, given the uncertain jobs outlook and the declining national pool of applicants over the last few years. Admissions are fiercely competitive among law schools; some schools appear to be offering scholarship packages that are unsustainable.²⁰⁷ It seems likely that the high debt loads of law graduates and the jobs outlook will influence many prospective applicants.²⁰⁸ For me, this renders the link between classroom education and career preparation more critical than ever. Many admitted students told me that Dayton's strength in job placement was very important to their choice of law school. In the late 2000s, we did not make huge strides in improving the entering credentials of our students despite the strong placement numbers, but we

205. BURTON LAW, LLC, <http://burton-law.com/lawyers/stephanie-kimbrow> (last visited Aug. 16, 2013). "Stephanie Kimbro is the recipient of the 2009 ABA Keane Award for Excellence in eLawyering and is the author of *Virtual Law Practice: How to Deliver Legal Services Online* (2010), *Limited Scope Legal Services: Unbundling and the Self-Help Client* (2012), and the forthcoming *Consumer Law Revolution: The Lawyers' Guide to Online Marketing Tools* (2013). She is also the co-founder of Virtual Law Office Technology, LLC (VLOTech), which was acquired by Total Attorneys in the fall of 2009. She is an adjunct professor at the University of Dayton School of Law and has developed the school's online Digital Lawyering Program." *Id.*

206. See Wawrose, *supra* note 14.

207. See, e.g., Andrew Wolfson, *Scholarship mistake costs law school \$2.4 million*, USA TODAY (July 18, 2012), <http://usatoday30.usatoday.com/news/education/story/2012-07-18/louisville-scholarship-mistake/56307942/1>; Elie Mystal, *UC Irvine School of Law: Now Offering 33% Scholarships to the Class of 2014*, Above the Law (Oct. 22, 2010, 7:12 PM), <http://abovethelaw.com/2010/10/uc-irvine-school-of-law-now-offering-33-scholarships-to-the-class-of-2014/>.

208. See NALP Data, *supra* note 9.

did not experience major declines either. The market for law school admissions will likely remain challenging for most law schools during the coming decade. In addition to pricing and discounting decisions, marketing is increasingly important. To make major gains from curricular reforms, I believe a school's admissions operation, job placement options, and curricular changes must go hand-in-hand. A school must be firing on all cylinders, which is never easy, and this may be more challenging in an era of tight budgets.

V. CONCLUSION

Although it may be difficult to marshal resources for curricular reform and to think creatively about educating complete professionals during these "anxious" times in legal education, it is more imperative than ever to attract motivated students, engage them effectively, and prepare them for a rewarding profession. Compared to other options open to many 22-year-old college graduates in the United States, the work of a lawyer can be challenging and fulfilling. In addition to the many roles lawyers have traditionally served, future J.D.s will also have options to serve at universities, help with public policy disputes, and use analytical and problem solving skills in business and other sectors.

For some law schools, the pressures of revised ABA Standards, the economic outlook, and greater scrutiny may provide an impetus for significant change. Recently, NYU Law announced major changes to the third-year offerings for students, including increased specialization and work experiences off campus to help students make connections between the classroom and the profession.²⁰⁹ Those of you connected with the Missouri community and others of you who bring a problem solving mindset to bear can relish this challenge. You have resources in your Dispute Resolution faculty members, alumni and supporters in terms of developing skills offerings. You also have a unique opportunity to shape legal education in a way that promotes problem solving and satisfies some of the needs of our students—and their future clients and employers—for engagement and practical wisdom. The noble enterprise of shaping the heads, hands, and hearts of our students is worth the work.

209. See NYU School of Law Board of Trustees Strategic Committee Report and Recommendation (Oct. 5, 2012), http://www.law.nyu.edu/sites/default/files/ECM_PRO_073917.pdf; Peter Latman, *Obama Says Law School Should Be Two, Not Three, Years*, NY TIMES (Aug. 23, 2013, 5:31 PM), http://dealbook.nytimes.com/2013/08/23/obama-says-law-school-should-be-two-years-not-three/?_r=0.