WHAT'S YOUR PROBLEM?

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Monday morning a corporate client asks you to draft a press release announcing a recall of one of its toys that contained lead paint, alerting its customers, but cautiously avoiding any admissions of liability. The following day, a different client, who professes his innocence, asks whether he should accept a guilty plea with a reduced sentence or risk going to trial. The next day, a client asks you to review an offer to settle an allegation of copyright infringement for downloading a movie. Then, in another case, a supervisor asks you to argue a motion to dismiss a complaint, but there appears to be no legal or factual basis to support the motion. Finally, on Friday, a landlord seeks your help when one of his tenants accuses another tenant of sexual harassment. These are just some of the types of problems lawyers could face in just one week. Would law students know how to solve them? No matter what the legal issue or setting, understanding and applying a problem-solving methodology and focusing on the client in each case can help prepare students for practice. Students engaged in problem solving in law school benefit from experiencing the primary role of a lawyer—a problem solver enabling students to see the connection between legal knowledge, theory, and skills to help achieve a client's goals.

I. INTRODUCTION: IT'S ABOUT THE CLIENT

The best way to resolve any problem in the human world is for all sides to sit down and talk.[1]
                                        —Dalai Lama

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1. *Dalai Lama Welcomed by U.S. Congress, Makes History Delivering Opening Prayer*, INT'L CAMPAIGN FOR TIBET (Mar. 7, 2014), http://www.savetibet.org/dalai-lama-welcomed-by-u-s-congress-makes-history-delivering-opening-prayer/ (quoting the Dalai Lama).

A lost traveler asked a passerby whether the passerby could tell the traveler how to reach her destination.[2] "'Yes[,]' [she] replied, 'But I would not start from here[.']"[3] The traditional Langdellian case method taught in law school may sometimes be as helpful as the passerby's advice.[4] Instead of starting at the beginning, with a client's problem, where students are interested and motivated, in law school students get overwhelmed with caselaw, focusing on how a judge resolved the problem at the end.

Being an effective lawyer requires more than knowledge of the law or the theory behind it. Under the Langdellian case-method approach to legal education, law schools primarily train students to "think like a lawyer" by reading through and asking questions about appellate cases and utilizing the Socratic method.[5] Even if the Socratic method teaches students "how to think like a lawyer," it does not necessarily teach them "how to practice like one."[6] Legal education should focus on the client and how to use the law, theory, and skills to help a client solve his or her problem.[7] Furthermore, students often work alone in law school in a competitive and sometimes isolating environment, yet in practice, collaborative teamwork is essential.[8] Finally, although professionalism, professional identity, and high emotional intelligence are critical skills to develop strong client relationships and succeed in practice, law schools often do not discuss or develop these areas.[9]

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2. *Cf.* JAAP GERRITSMA ET AL., *Introduction*, PROBLEM BASED LEARNING IN LEPROSY AND TUBERCULOSIS (May 2001), *available at* http://pbl.gerritsma.net/pbl-learning (using the lost traveler example when discussing use of problem-based learning and problem solving in health care teaching programs).

3. *Id.*

4. *Id.*

5. Bobbi McAdoo et al., *It's Time to Get It Right: Problem-Solving in the First-Year Curriculum*, 39 WASH. U. J.L. & POL'Y 39, 44 (2012) (discussing standard methods used in teaching legal education).

6. *Id.* at 44 n.21 (quoting Stephanie Francis Ward, *A Push for Problem Solving*, 5 No. 21 ABA J. E REP. 4, 4 (2006)) (internal quotations omitted) (noting problems with the Socratic method).

7. *See id.* at 44 (noting that law students lack sufficient access to practical training in law school).

8. *See id.* at 60–62 (discussing a proposed course that would provide an opportunity for group work in law school).

9. *See infra* Part V(A) (discussing benefits of problem solving, including fostering professionalism, professional identity, and emotional intelligence); *see also infra* Part IV(D) (summarizing the LSAC study by Marjorie Shultz and Sheldon Zedeck highlighting factors that influence lawyer effectiveness).

Unlike the Langdellian case method, which focuses on appellate cases and introduces students to clients' problems at the end—instead of the beginning—of the case, the problem-solving method starts at the beginning of a case—before a student knows all the facts, learns the client's goals, narrows the issues, clarifies the identity of the client, and considers the options.[10] The case method only gives examples of how others, i.e., judges, resolved the client's problem;[11] instead of focusing on judge-centered thinking, problem solving focuses on exposing students to lawyers' thinking processes and roles.[12] A problem-solving approach also involves collaborative work and creative thinking.[13]

What will law school graduates do when they are sitting across the table from a client who is counting on them to help resolve what could be the most challenging problem of their client's life?[14] How will they effectively work with the client and

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10. Joseph William Singer, *How Law Professors Can Write a Problem Solving Case*, HARV. L. SCH.: CASE STUD. BLOG (Aug. 20, 2013), http://blogs.law.harvard.edu/hlscasestudies/2013/08/20/ (contrasting problem solving's start at the beginning with cases starting at the end).

11. Students in my problem-solving class began to see clients as real people with real problems. *See infra* note 107 and accompanying text (discussing how typical law school exams assess students using problems, but classes assess students differently using cases).

12. *See* McAdoo et al., *supra* note 5, at 65 (discussing student exposure to the range of roles played by lawyers). The problem-solving approach is more typical of business schools. Singer, *supra* note 10; *see also* Susan Daicoff, *Law as a Healing Profession: The "Comprehensive Law Movement,"* 6 PEPP. DISP. RESOL. L.J. 1, 5 (2006) (noting that traditional law school methods downplay the emotional consequences of outcomes and over-emphasize the rule of law).

13. *See* Linda Morton, *Teaching Creative Problem Solving: A Paradigmatic Approach*, 34 CAL. W. L. REV. 375, 379 (1998) (discussing the necessity for a different cognitive process when solving a problem); *see also* Samantha A. Moppett, *Lawyering Outside the Box: Confronting the Creativity Crisis*, 37 S. ILL. U. L.J. 253, 255 (2013) (encouraging legal educators and professionals to foster creativity in students).

14. *See* Steve J. Johansen, *Life Without Grades: Creating a Successful Pass/Fail Legal Writing Program*, 6 PERSPS.: TEACHING LEGAL RES. & WRITING 119 (1998) (discussing the advantages of a pass/fail legal writing course, such as learning and thinking, instead of focusing on grades). The problem-solving course I taught at Suffolk University Law School required students to work in these different legal settings, on a different type of task, in a new area of law, and with a new client every day. These problem-solving cases were created by the Harvard Law School Problem Solving Workshop and used with permission; however, I added several new dimensions to my course. *See Problem Solving Workshop*, HARV. L. SCH., (last modified Dec. 21, 2009) http://www.law.harvard.edu/academics/registrar/winter-term/problem-solving-workshop.html (describing the purpose of the problem-solving workshop); *see also infra* Part III (offering ideas on how to incorporate problem solving in legal education).

others to facilitate a solution?[15] Will they be prepared? Students learn doctrine, legal theory, and skills in law school, but how do they apply them to solve a client's problem?[16] Even if students achieve high grades in law school, will they be good lawyers who are professional and emotionally intelligent, with developed professional identities?

The legal academy has an ethical and legal responsibility to better prepare its students.[17] Although doctrine, theory, and skills are all taught in law schools, they are often taught in silos, making it difficult for students to see their connection and understand how to apply them to the practical realities in legal practice.[18] Students need to understand and implement the "lawyer-as-problem-solver role."[19] Upon graduation, students must transition from thinking like students to thinking like lawyers engaged with the problems of their clients.[20] Problem solving requires students

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15. *See* David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES (Nov. 19, 2011), http://www.nytimes.com/2011/11/20/business/after-law-school-associates -learn-to-be-lawyers.html?pagewanted=all (explaining that both lawyers and the public want law school graduates to be able to work with clients). Whether the client is a person, company, government, or nonprofit, lawyers serve as advocates and counselors. *Id.* "The fundamental issue is that law schools are producing people who are not capable of being counselors." *Id.* (quoting Jeffrey W. Carr, general counsel of FMC Technologies) (internal quotations omitted).

16. *See id.* (discussing how associates of law firms are often unequipped to answer basic questions and lack real-life practice skills).

17. *See generally* Adam Lamparello & Charles E. MacLean, *Legal Writing—What's Next? Real-World, Persuasion Pedagogy from Day One*, 48 NEW ENG. L. REV. (forthcoming 2014) (manuscript at 14), *available at* http://papers.ssrn.com/sol3/Papers.cfm?abstract_id =2363108 [hereinafter Lamparello & MacLean I] (concluding that the skills students acquire in law school are intended to serve others, including "the bench, bar, and broader community"); Susan Stuart & Ruth Vance, *Bringing a Knife to the Gunfight: The Academically Underprepared Law Student & Legal Education Reform*, 48 VAL. U. L. REV. 41 (2013) (discussing the tasks facing legal educators and the challenges they must overcome). The skills students need upon graduation serve not just themselves, but also their clients. *See* Lamparello & MacLean I, *supra*, at 4 (discussing the importance of developing each student's oral and written advocacy to promote real-world practice skills).

18. *See* Alice M. Noble-Allgire, *Desegregating the Law School Curriculum: How to Integrate More of the Skills and Values Identified by the* MacCrate Report *into a Doctrinal Course*, 3 NEV. L.J. 32, 32–37 (2002) (advocating for the integration of skill and doctrinal teaching).

19. McAdoo et al., *supra* note 5, at 49–50 (advocating teaching problem solving in the first year of law school to serve as a framework for the rest of a student's law school education).

20. *See id.* at 70–71 (noting the importance of students understanding how assignments relate to actual legal practice). The *Carnegie Report* emphasizes that the practice of teaching law students by dissecting appellate decisions conveys the message to students "'that lawyers are more like competitive scholars than attorneys engaged with the problems of clients.'" *Id.* at 70 n.142 (quoting WILLIAM M. SULLIVAN ET AL., EDUCATING

to engage in and grapple with the nuances and messiness of a client's problem and possess an open mind to consider solutions outside of the law.[21] Much of the educational-reform literature speaks of making students "practice[-]ready," but perhaps the term used should be "client-ready."[22]

While legal education may not be able to fully prepare students for the practice of law, instruction in problem solving can better prepare them and maximize their learning experience for success as law students and lawyers. Legal education can better prepare students to effectively solve clients' problems by incorporating problem solving into the curriculum so the students can engage in deeper understanding of the law and transfer what they learn to solve new problems in familiar or unfamiliar practice settings.[23] Problem-solving instruction in law schools can enhance students' development as legal professionals and better prepare students for the challenges of today's legal practice.[24] As proactive problem solvers, students may also become more marketable.[25]

LAWYERS: PREPARATION FOR THE PROFESSION OF LAW, SUMMARY (2007), *available at* http://www.suffolk.edu/documents/Law%20Documents/elibrary_pdf_632.pdf). *But see* Jeremy Paul, *Theory Makes Successful Lawyering Possible*, N.Y. L.J. (Apr. 21, 2014), *available at* http://www.northeastern.edu/law/pdfs/news/j.paul-nlj-4.21.14.pdf (discussing how teaching theory is necessary to law school teaching).

21. *See* McAdoo et al., *supra* note 5, at 51 (noting the rarity of a client who expects her attorney to strictly confine solutions to "the law").

22. *See* Ruth Anne Robbins, Op-Ed, *Law School Grads Should Be 'Client Ready'; The Phrase 'Practice Ready' Has Gained Traction, but the Client Part of It Seems to Have Fallen by the Wayside*, 35 NAT'L L.J. no. 24 , Feb. 18, 2013, at 31 (citing popularity of "practice ready" trend, but noting that focus on client has "fallen by the wayside").

23. *See* Lamparello & MacLean I, *supra* note 17, at 2 (For example, a new associate at a large law firm stated that "'law school and the practice of law are so different.'" (quoting Sherry Karabin, *Law Firms Prepare Their New Associates*, CHICAGO LAWYER, Sept. 2012, *available at* http://www.chicagolawyermagazine.com/Archives/2012/09/Working -With-Associates.aspx)); *see also infra* Part V(A)(1) (discussing deep learning).

24. *See* Lamparello & MacLean I, *supra* note 17, at 4–5 (noting that law schools are not preparing students to be "practice-ready" upon graduation); *see also infra* Part V(A) (discussing the benefits of problem-solving).

25. *See* Christopher R. Trudeau, *A Problem-Solving Approach to Law Practice Developed Through Legal Writing Courses, in* TEACHING LAW PRACTICE: PREPARING THE NEXT GENERATION OF LAWYERS 118, 118–19 (Charles Cercone, Nelson P. Miller & Christopher Trudeau eds., 2013) (explaining how looking for potential problems a client may face may help make lawyers marketable to clients).

The first part of this Article explains an effective problem-solving methodology developed by Joseph William Singer.[26] It reviews how the methodology is client-centered and applies the law to a client's problem in a practice context.[27] The Article explains how problem solving bridges the gap between theory and practice and illustrates ways that problem solving can deepen students' understanding of the law.

While the idea of using problems as a teaching method has been incorporated in medical and business schools, as well as some law school courses,[28] this Article offers new and creative ways of incorporating explicit problem-solving instruction in law school. This method of problem solving can better prepare law students when there is a need, now more than ever, during this crisis in legal education and practice.[29] Also, even though some law schools may already implicitly employ problem-based learning, incorporating explicit instruction in problem-solving methodology is distinguishable. Both problem-based learning and problem solving involve gathering information, hypothesizing, and self-directed and active learning. Understanding the problem, however, is not the same as solving it. Problem-based learning is focused on formulating issues, questions, and possible explanations to gain knowledge about a subject; problem solving focuses on applying knowledge, skills, theory, and insights to *solve* a real or simulated client's problem, focusing on the client's goals and pragmatic concerns, such as cost and efficiency.[30]

The second part of the Article offers different examples of ways to incorporate problem-solving instruction in a law school

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26. *See generally* Singer, *supra* note 10 (explaining Joseph William Singer's problem-solving methodology); *see also infra* Part II (describing problem-solving methodologies and important considerations for creating problem-solving examples).

27. Singer, *supra* note 10.

28. Morton, *supra* note 13, at 384–86. Clinical programs and legal practice skills courses use problems and focus on clients, as do some doctrinal faculty that use problem-based learning in their courses. *Id.* at 384–87.

29. *See* Erwin Chemerinsky & Carrie Menkel-Meadow, Op-Ed, *Don't Skimp on Legal Training*, N.Y. TIMES (Apr. 14, 2014), http://www.nytimes.com/2014/04/15/opinion/dont-skimp-on-legal-training.html?_r=0 (asserting that law schools should emulate business schools as they adapt to "new economic realities by emphasizing the teaching of leadership, corporate governance, new finance and negotiation skills").

30. *See* McAdoo et al., *supra* note 5, at 51 (discussing skilled lawyers as society's problem solvers (quoting Brest & Krieger, *supra* note 21, at 811)).

curriculum.[31] The suggestions range from stand-alone courses on problem solving to incremental incorporation of a problem-solving methodology into an existing class. In addition, the Article offers ways to create problem-solving assignments.

The third part of this Article explores why there is a need for explicit problem-solving instruction in law schools.[32] It will illustrate the gap between legal education and practice and summarize the leading education reports calling for legal education reform. In addition, it will highlight the ABA standards requiring substantial instruction in professional skills and experiential learning, such as problem solving.[33] The Article also discusses the recent pressures on law schools from various constituencies, including market pressures, the practicing bar, and the public forum, to increase practical training. In addition, the Article exam-examines the cognitive skills of entering law students, including their metacognitive skills, mindset, and the traits of Millennials, which may impact the sophistication of students' problem-solving skills.

The final part of the Article discusses the benefits and challenges of incorporating explicit instruction in problem solving in legal education.[34] The fundamental benefit that students gain is in their understanding of how the legal knowledge and theory connect with practical skills training in the context of law practice and the role of lawyers as problem solvers in legal practice.[35] The Article also explores three additional benefits that enhance students' development as legal professionals: professionalism, professional identity, and emotional intelligence. Challenges discussed include dealing with real change that is needed in law schools in order to prepare students for today's legal practice and develop their professional identity. The aim of this Article is to

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31. *See infra* Part III (providing examples and possibilities for incorporating problem solving into the law school curriculum).

32. *See infra* Part IV (discussing criticisms of legal education).

33. AM. BAR. ASS'N, REPORT AND RECOMMENDATIONS: AMERICAN BAR ASSOCIATION TASK FORCE ON THE FUTURE OF LEGAL EDUCATION (Jan. 23, 2014), *available at* http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf [hereinafter *Report and Recommendations on the Future of Legal Education*].

34. *See infra* Part V (discussing the benefits and challenges of problem solving).

35. *See* Lamparello & MacLean I, *supra* note 17, at 3 (discussing how a "pedagogical approach" in legal education "divorces the acquisition of legal knowledge—*and* practical skills training—from their functional roles in the real world" and how this separation limits a student's ability to put that knowledge to practical use).

inspire faculty and student dialogue about how to design a curriculum that has, at its foundation, students putting clients at the center and searching for the best way to solve their clients' problems consistent with the clients' goals.[36]

II. WHAT IS PROBLEM SOLVING?

A problem is a chance for you to do your best.[37]

—Duke Ellington

Problem solving may be a lawyer's most important skill.[38] "Problem[ ]solving is the single intellectual skill on which all law practice is based."[39] Yet, with the emphasis on appellate cases in law schools, students may not understand that a lawyer's primary job is to "help the client solve the client's problems."[40] Although "thinking like a lawyer" implicitly involves problem solving, instruction on problem solving makes it explicit.[41] While law schools may train students to think like a lawyer, this may not mean they know how to use their legal thinking in practice to solve a client's problem.[42]

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36. *See* McAdoo et al., *supra* note 5, at 90–91 (noting the need for legal education to respond to the demands of contemporary legal practice).

37. Jasmin K. Williams, *Duke Ellington—American Music Master*, N.Y. POST (Apr. 16, 2007, 9:00 AM), http://nypost.com/2007/04/16/duke-ellington-american-music-master/ (quoting Duke Ellington).

38. Trudeau, *supra* note 25, at 118–19 (noting that a job of a lawyer is to recognize, address, and help solve all types of client problems).

39. Tracy A. Thomas, *Teaching Remedies as Problem-Solving: Keeping It Real*, 57 ST. LOUIS U. L.J. 673, 675 (2013) (quoting Myron Moskovitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 J. LEGAL EDUC. 241, 245 (1992)) (internal quotations omitted); *see also* McAdoo et al., *supra* note 5, at 63 (explaining "that every lawyer must be able to problem solve"). One thing that can make the difference between success and failure is to use strong methods to solve problems. *See* Art Markman, *3 Reasons Why You Are Failing at Problem Solving*, ENTREPRENEUR (Sept. 4, 2013), http://www.entrepreneur.com/article/228096 (discussing how lack of explanatory depth results in casual knowledge).

40. McAdoo et al., *supra* note 5, at 41–42 (explaining that one of the teaching goals of integrating ADR into the curriculum at the University of Missouri-Columbia is to help students understand that advocacy is only one of the tools of the problem-solving lawyer (quoting Leonard L. Riskin, *Disseminating the Missouri Plan to Integrate Dispute Resolution into Standard Law School Courses: A Report on a Collaboration with Six Law Schools*, 50 FLA. L. REV. 589, 594 (1998)).

41. Stuart & Vance, *supra* note 17, at 7 (agreeing that problem solving is essential to "thinking like a lawyer").

42. McAdoo et al., *supra* note 5, at 53.

Problem solving has been defined in numerous ways.[43] Problem solving serves as an impetus for a paradigm shift that can lead to more effective and creative solutions, including dispute avoidance and non-legal solutions.[44] Creativity, flexibility, good judgment, common sense, reflective learning, relationship building, and practical wisdom—not just legal knowledge and lawyering skills—can lead to economic solutions and non-legal solutions to a client's problem.[45]

Numerous problem-solving methodologies exist. A common theme is that problem solving is a recursive process.[46] One effective problem-solving methodology that I have used was developed at Harvard[47] and involves a series of six questions to ask at the outset of considering a problem: (1) who is the client? (2) what are the facts? (3) what are the client's goals? (4) what are the legal

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43. *See* RICHARD K. NEUMANN, JR., TRANSACTIONAL LAWYERING SKILLS: CLIENT INTERVIEWING, COUNSELING, AND NEGOTIATION 17–18 (2013) (describing six steps to diagnose, predict, and strategize when dealing with problems). These steps include (1) recognizing and defining a problem; (2) preparing by "gathering and evaluating information and raw materials"; (3) generating options, hypotheses, and potential solutions; (4) evaluating those options or solutions; (5) deciding on an effective strategy; and (6) acting. *Id.* at 17–18; *see also* TERESA M. AMABILE, CREATIVITY IN CONTEXT: UPDATE TO *THE SOCIAL PSYCHOLOGY OF CREATIVITY* 119, 123–24 (1996) (discussing the roles of creativity in problem solving); McAdoo et al., *supra* note 5, at 51 (suggesting that there are many different definitions of problem solving). The *MacCrate Report* defines problem solving as "'the skills and concepts involved in: Identifying and Diagnosing the Problem; Generating Alternative Solutions and Strategies; Developing a Plan of Action; Implementing the Plan; Keeping the Planning Process Open to New Information and New Ideas.'" McAdoo et al., *supra* note 5, at 51 n.55 (quoting ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATION CONTINUUM 138 (July 1992)).

44. McAdoo et al., *supra* note 5, at 51 (suggesting that there are different definitions of problem solving). The varied definitions of problem solving also emphasize distinct and important concepts, such as self-assessment and the role of creativity in problem solving. *Id.* at 68 n.133; *see also* Rukmini Banerjee, *Two Sides of the Same Coin: The Employment Crisis and the Education Crisis*, FORBES (Mar. 4, 2014, 12:00 AM), http://www.forbes .com/sites/ashoka/2014/03/04/two-sides-of-the-same-coin-the-employment-crisis-and-the -education-crisis/.

45. McAdoo et al., *supra* note 5, at 52 n.57 (citing Brest & Krieger, *supra* note 21, at 811–12) (noting that while casebooks that include "problems" are helpful, these problems are often different from problem solving that might lead to non-legal solutions to a client problem); *see generally* Moppett, *supra* note 13 (discussing the importance of creativity in problem solving).

46. NEUMANN, JR., *supra* note 43, at 18.

47. *See* Singer, *supra* note 10 (describing the Problem Solving Workshop at Harvard Law School).

constraints and opportunities? (5) what are the ethical and moral constraints? and (6) how do you proceed?[48]

A. Who Is the Client?[49]

To solve a client's problem, students need to first identify their client. The client's identity may be more obvious in some cases than in others. For example, a client may be a landlord, and other interested parties may be tenants. Or a client may be a corporation. Or more than one client may be involved, such as a government agency, the state, the governor, or a supervisor. In some situations, it may be unclear whether an attorney–client relationship has formed. For example, if a friend or neighbor casually asks for advice about his or her problem, an initial consideration should be whether there is an attorney–client relationship before anything is done to help solve the problem.[50] The answer could affect confidentiality or conflicts-of-interest issues.[51]

Problem solving also involves thinking about the lawyer's relationship with the client and with others involved in the case (the supervising lawyer's boss, the opposing side, the judge, the agency, the prosecution/defense, etc.), not only for this case, but for future cases. It is important to learn about the client's education, background, experience, emotions, and risk tolerance.

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48. *Id.*; *see also* E. SCOTT FRUEHWALD, THINK LIKE A LAWYER: LEGAL REASONING FOR LAW STUDENTS AND BUSINESS PROFESSIONALS 210 (2013) (describing the following general model for problem solving: "(1) identify the problem, (2) define the problem, (3) form a strategy, (4) organize information, (5) solve the problem (including monitoring your progress), and (6) evaluate the solution"); McAdoo et al., *supra* note 5, at 82 (reporting that students commented on their new appreciation for identifying the client's goals because if a client wants a quick closure or an apology then a lawsuit may be futile).

49. *See* Singer, *supra* note 10 (noting that choosing and identifying the client is part of the problem-solving process).

50. *See id.* (discussing the types of questions students should ask when they receive a problem).

51. *See id.* (discussing how the client's relationship with third parties may impact the legal solution).

B. What Are the Facts?[52]

A client will often seek an attorney for help solving or avoiding a practical or legal problem. The facts of a client's problem are often incomplete and need to be further developed or investigated.[53] Problem solving involves thinking about what are the relevant known facts, what are the relevant unknown facts, and how they can be determined. Problem solving also requires understanding inconsistent or ambiguous facts. Students need to comfortably deal with ambiguity and realize that problem solving often does not result in one correct answer.[54]

Clients do not walk into a lawyer's office with a hypothetical, a multiple-choice question, or an identified specific legal issue, yet these are often the focus of assessing students in legal education.[55] Also, while law school exams may require students to move forward from a hypothetical client situation to a conclusion, during class students are required to move backwards, from the end of a problem, for example where a judge resolved the problem in a case opinion.[56]

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52. *See id.* (offering suggestions for professors regarding what facts to present to students in a problem-solving case). Interesting and common factual situations arise in any field of law. For example, in criminal law, the facts could relate to issues regarding whether the client should accept a plea bargain or whether a crime was committed. In contracts, the situation could involve whether there was an offer or acceptance, an alleged breach of a contract, or a dispute of terms. In professional responsibility, it could be reacting to a potentially unethical or illegal task assigned by a supervisor. In property, it could be a dispute between a landlord and tenant, neighbors, or a zoning board. In torts, it could be whether a tort was committed, whether there should be a legal response to a past accident, or whether measures should be taken to prevent future accidents or a products liability case. In civil procedure, the facts may involve steps to take in an ongoing litigation or deciding on an appropriate remedy to a problem. *See id.* (listing potential fact situations to consider).

53. FRUEHWALD, *supra* note 48, at 210 (noting that the first step of identifying a problem involves gathering facts).

54. *Id.* at 214 (suggesting that ambiguity in the law is important because it allows the law to change).

55. *See* Noble-Allgire, *supra* note 18, at 41–42 (discussing the difficulty in assessing a student's real-world problem-solving capabilities in an essay exam). For example, clients are not likely to come into a lawyer's office and claim they have a promissory estoppel question or issue. "Problems cannot be solved by thinking within the framework in which the problems were created." Morton, *supra* note 13, at 375 (quoting Albert Einstein); *see* McAdoo et al., *supra* note 5, at 44 (discussing the lack of practical training in legal education); *infra* Part III (discussing how the goals of a course should be aligned with learning objectives and learning objectives should be aligned with assessments).

56. *See* Moskovitz, *supra* note 39, at 260–61 (discussing the problem with "teaching by the case method and testing by the problem method").

Unlike in law school's neatly summarized multiple-choice questions, hypotheticals, and judicial opinions, a client's recitation of facts may not be pertinent, organized, or neat when the client comes to an attorney with a problem.[57] Clients tell a story and describe their problems, which often includes ambiguous, uncertain, and conflicting facts that require further fact investigation and exploration into the client's goals, legal opportunities and constraints, evaluation of options, and plans of how to proceed.[58] The client may be embarrassed, scared, confused, or unaware of what might be relevant.

Problem solving involves considering how the lawyer will gather, develop, and investigate the facts by talking to the client and other related parties or witnesses, conducting discovery, and determining the simplest, most efficient and cost-effective way to learn the facts without worsening the problem.[59] Law students and attorneys can develop facts in numerous ways: by reviewing documents, such as a contract or lease, emails, notes from a client meeting, or pictures; listening to the client or other parties in the case, including the lawyer's supervisor; or visiting the scene of the problem to collect or confirm facts.

C. What Are the Client's Goals?[60]

Problem solving involves helping a client identify his goals and prioritize them. A client may have more than one goal; the goals may be conflicting (short-term v. long-term goals), inchoate, or ambiguous. Problem solving also requires students to look at the problem from different perspectives—from the client's as well as his opponent's perspective.[61] It involves thinking about how best to serve a client and how his interests or goals may conflict with others. A lawyer needs to consider all types of goals: financial, emotional, personal, moral, religious, political, and psychological, as well as legal. A lawyer needs to determine what the

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57. *See* FRUEHWALD, *supra* note 48, at 210–11 (discussing the importance of researching relevant facts after an initial consultation with a client).

58. *See* Morton, *supra* note 13, at 379 (discussing how teaching problem solving helps students successfully transition into lawyers who will "identify, understand, and resolve problems").

59. FRUEHWALD, *supra* note 48, at 210.

60. *See* Singer, *supra* note 10 (noting that the client may have conflicting goals or the law may prevent using certain methods to achieve these goals).

61. FRUEHWALD, *supra* note 48, at 216.

client wants and what the client wants to avoid.[62] Determining how risk averse the client is may affect how to proceed as well as how the lawyer can help her client achieve goals within the bounds of the law. Problem solvers must be able to think beyond their own preconceived notions, bias, or aversion to risk.[63]

D. What Are the Legal Constraints and Opportunities?[64]

The facts and the law help frame the issues involved in a client's case. Thus, in addition to researching facts, researching the law will uncover legal opportunities and constraints. Research may involve statutes, regulations, cases, or other sources.[65] Unlike in law school classes where all the problems are typically limited to a particular area of the law (contracts, torts, property, etc.), real world problems often involve multiple legal issues and sources of the law (civil and criminal).[66] The situation may require distinguishing a precedent, broadly or narrowly construing a rule, applying a competing rule, or arguing for a proposed or established exception to the rule into which the client fits.[67] After reviewing the relevant law and ethical considerations, any constraints and opportunities must be considered. "Think of the rules not as the ending point that decides what happens but as rules of the game that create both constraints and opportunities."[68]

E. What Are the Ethical and Moral Constraints?[69]

Although students are required to take Professional Responsibility in law schools, focusing on the rules of professional con-

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62. *Id.* at 213; *see also* John Lande, *Good Pretrial Lawyering: Planning to Get to Yes Sooner, Cheaper, and Better*, 16 CARDOZO J. CONFLICT RESOL. 63, 74–75 (2014) (recommending that lawyers learn their clients' goals and interests about settlement, trial, and what clients are and are not willing to sacrifice).

63. FRUEHWALD, *supra* note 48, at 216.

64. *See* Singer, *supra* note 10 (suggesting that rules create constraints and opportunities of problem solving).

65. *Id.*

66. Unlike in law school, where students study one doctrinal subject/area of law in a class (i.e., torts), a client often has a problem to which numerous laws may apply (contracts, torts, criminal law, etc.).

67. When creating problem-solving cases or files, professors should start at the beginning rather than the end. The facts should "raise[ ] practical or legal problems that must be resolved." Singer, *supra* note 10.

68. *Id.*

69. *Id.*

duct, if a client or a supervisor asks a lawyer to do something to solve a problem that conflicts with ethical rules or her morals, does she solve a problem by proceeding to the full extent that the law permits, or does she consider the client's values, ethics, and morals?[70] Students understand ethical and moral constraints better when they are confronted with them when trying to solve a client's problem.[71] Legal education often focuses on "cardboard clients"—one-dimensional characters—that exist only within class discussions on professional responsibility and ethical obligations.[72] These cardboard clients, however, are ill-suited for problem solving, where students should understand the reality of actual clients as whole persons, with complex lives and relationships, to the "fullest dimension[ ]."[73] Because clients come with varied wants, values, and interests, lawyers and law students must consider the clients' current and developing values to determine how to best serve the clients' interests—not impose the lawyer's own morals and values "in the guise of legal advice."[74] When problem solving, students apply and deal with multi-dimensional—not cardboard—clients, whose interests, morals, and values may, at times, raise important ethical and moral issues that demand careful consideration of the students' own values and morals, as well as the rules and laws that bind them professionally.[75]

The fiduciary relationship between lawyer and client demands trust, confidence, and diligence on the part of the attor-

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70. *See* ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS 21, 23 (2013–2014), *available at* http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_standards_chapter3.authcheckdam.pdf (last visited Apr. 27, 2015) [hereinafter ABA Standards] (Standard 302 requires that law schools provide instruction in professional skills, problem solving, and "rules and responsibilities of the legal profession and its members").

71. *See* Katherine R. Kruse, *Beyond Cardboard Clients in Legal Ethics*, 23 GEO. J. LEGAL ETHICS 103, 127–28 (2010) (suggesting that a "client-centered approach" is imperative as a "duty of legal representation").

72. *Id.* at 104.

73. *Id.* at 127.

74. *Id.* at 137–38.

75. *See* Robert Granfield & Thomas Koenig, *"It's Hard to Be a Human Being and a Lawyer": Young Attorneys and the Confrontation with Ethical Ambiguity in Legal Practice*, 105 W. VA. L. REV. 495, 512–13 (2003) (noting ethical dilemmas in practice and general law school failure to fully incorporate practical professional conduct instruction).

ney.[76] Beyond understanding the letter of the law, lawyers must consider the "spirit" of the law, which may play a central role in how to interpret and apply ethical rules.[77] While the official comments to a rule may help define its scope and how best to apply its "spirit" correctly, lawyers ought to seek balance between the demands of the letter and spirit of the law to best serve a client within mandated ethical bounds.[78]

F. How Do You Proceed?[79]

Problem solving may require developing numerous alternatives and evaluating the different options regarding how the client should proceed to achieve the client's goals.[80] Thinking about all the available options, from the client's perspective, helps to solve or avoid the problem or achieve the client's goals. Using a decision tree can help determine the best option by considering the cost/benefit analysis and the likelihood of success of different options.[81]

Students must think of all available options, including non-legal solutions.[82] Students must consider what would be best financially, emotionally, personally, morally, religiously, politically, and psychologically. Sometimes the most satisfying solutions are those where there are no losers.[83] In evaluating and weighing options, considerations of cost and efficiency are important, as well as whether the goals of the client and others conflict. The

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76. Samuel J. Levine, *The Law and "Spirit of the Law" in Legal Ethics* 5 (Louis Stein Ctr. for Law & Ethics, Working Paper, 2013), *available at* http://law.fordham.edu/assets/ SteinCenter/Levine_Samuel.pdf.

77. *Id.* at 15.

78. *Id.* at 20.

79. *See* Singer, *supra* note 10 (providing the step by step process of how law school professors should proceed after establishing a problem-solving workshop).

80. FRUEHWALD, *supra* note 48, at 212.

81. *See* Kathleen A. Bryan, *The 'New Lawyer' and the Triumph of the Soft Skills,* NAT'L L. J., Nov. 24, 2008, *available at* http://www.cpradr.org/Portals/0/Resources/Articles/ The%20New%20Lawyer%20and%20Triumph%20of%20the%20Soft%20Skills%20(NLJ).pdf (explaining different tactics lawyers may use to solve client problems); David P. Hoffer, *Decision Analysis as a Mediator's Tool,* 1 HARV. NEGOT. L. REV. 113, 114 (1996) (noting the usefulness of decision trees as tools for lawyers in mediation and litigation).

82. Brest & Krieger, *supra* note 21, at 811–12 (noting that good lawyers "bring creativity, common sense, practical wisdom, and . . . good judgment" in solving client problems).

83. NEUMANN, JR., *supra* note 43, at 26; Brest & Krieger, *supra* note 21, at 811–12 (explaining that lawyers solve client problems "flexibly and economically" and should not be cramped into legal thinking).

short-term and long-term goals of the client should be reviewed as well. In addition, it is critical to examine whether an option would create new problems or make the problem worse. Would doing nothing be a reasonable option worth considering?[84] What is the simplest solution?[85] Problem solving also involves considering the best way to communicate the options and plan to the client.[86]

As part of deciding on a plan of how to proceed, problem solving requires clarifying the responsibility of the attorney and the client: who is doing what (the client or lawyer), by when (deadline), and how. In deciding whether the lawyer, as opposed to the client, should proceed with certain tasks, costs and efficiency, as well as other considerations discussed above, also apply.

Once the lawyer and client develop a plan of how to proceed, problem solving also involves reflection and recalculation if needed. Was the plan effective? Did it achieve the client's goals? Are redirection and adjustments needed? What could be done differently the next time? "Critical thinking has to include assessing one's own thinking."[87]

III. HOW TO INCORPORATE PROBLEM SOLVING INTO LEGAL EDUCATION

The secret of getting ahead is getting started.[88]
—American Proverb

Law schools need to better prepare their students for practice so that graduates can fulfill their main role as lawyers—serving clients.[89] The problem-solving approach helps bridge the gap between legal education and the legal profession and helps prepare students to be "client-ready."[90] Law schools ought to explore the many possibilities at their disposal in introducing problem solv-

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84. *See* NEUMANN, JR., *supra* note 43, at 20 (posing the question of whether it will solve the problem to do nothing).

85. For example, in copyright infringement cases, simply looking into whether the person or entity claiming copyright infringement had a registered copyright with the U.S. Copyright Office could quickly and easily solve the problem.

86. Brest & Krieger, *supra* note 21, at 827.

87. FRUEHWALD, *supra* note 48, at 231.

88. American Proverb.

89. FRUEHWALD, *supra* note 48, at 237.

90. Trudeau, *supra* note 25, at 118.

ing in the curriculum.[91] Legal education can incorporate problem solving in numerous ways, ranging from systemic ideas to a more singular approach. Legal education can implement problem solving in different legal settings, with different legal issues involving different clients.[92]

Depending on the way legal education implements the skill, problem-solving methodology can be covered in one class, an intersession week, or an entire semester.[93] The skill of problem solving could also be the focus of an inter- or intra-school student competition.[94] Doctrinal courses, skills courses, or seminars can explicitly incorporate problem solving.[95] The problem-solving course could be required or elective.[96] It could be in the first year or upper level.[97] Incorporating problem-solving exercises in all

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91. *See* Alison Donahue Kehner & Mary Ann Robinson, *Mission: Impossible, Mission: Accomplished or Mission: Underway? A Survey and Analysis of Current Trends in Professionalism Education in American Law Schools*, 38 U. DAYTON L. REV. 57, 110 (2012) (reviewing different applications of professionalism in law schools throughout the United States in skills-based learning, clinics, etc.).

92. Stephen Nathanson, *Developing Legal Problem-Solving Skills*, 44 J. LEGAL EDUC. 215, 223–26 (1994) (suggesting successful problem-solving instruction will provide multiple opportunities for practice with meaningful, meticulously written problems); *see* Chemerinsky & Menkel-Meadow, *supra* note 29 (suggesting "'problem-based' seminars in fields such as public health, homelessness, environmental habitat regulation, and world peace").

93. *Course Descriptions: Problem Solving*, SUFFOLK U. L. SCH., http://www.suffolk .edu/law/academics/degrees/jd/23600.php?CourseID=588 (last updated June 30, 2014) (describing problem-solving course at Suffolk Law School); *J.D. Program*, HARV. L. SCH., http://www.law.harvard.edu/academics/curriculum/academic-advising-at-hls/index.html (last visited Apr. 27, 2015) (listing problem-solving workshop as a first-year requirement); Elizabeth Moroney, *Suffolk Law Launches Problem Solving Workshop*, HARV. L. SCH.: THE CASE STUDIES BLOG (June 25, 2013), http://blogs.law.harvard.edu/hlscasestudies/2013/ 06/25/suffolk-law-launches-problem-solving-workshop/ (noting the launch of Suffolk University Law School's problem-solving course in one-week summer or intersession course).

94. *See Practical Learning for Aspiring and Practicing Lawyers*, LAW MEETS, http://www.lawmeets.com (last visited Apr. 27, 2015) (offering a forum for live competition on various legal topics). There are numerous traditional competitions, such as moot court competitions, client counseling competitions, and negotiation competitions. Why not problem solving?

95. Morton, *supra* note 13, at 375; Larry O. Natt Gantt, II, *The Pedagogy of Problem Solving: Applying Cognitive Science to Teaching Legal Problem Solving*, 45 CREIGHTON L. REV. 699, 761 (2012) (promoting the benefits of incorporating problem-solving instruction into a doctrinal course vs. in a stand-alone course); *see also Strategic Problem-Solving and the Law*, ITT CHICAGO-KENT C. OF L., https://www.kentlaw.iit.edu/courses/jd-courses/jd -elective-courses/strategic-problem-solving-and-the-law (last visited Apr. 27, 2015) (describing an offered problem-solving intersession course).

96. Suffolk's course is an elective; Harvard's course is required. *See supra* note 93 (describing problem-solving courses).

97. *J.D. Program, supra* note 93 (listing a problem-solving workshop as a first-year requirement).

courses will increase students' ability to transfer skills from one domain to another by practicing problem solving in various contexts, using problems that occur in legal practice.[98] If a law school offered a course or workshop in general problem solving, such a course would go beyond testing problem-solving skills with essay exams and would involve higher-level problem-solving skills.[99] The course could be pass/fail or graded.

A school could also offer problem-solving opportunities outside of class. For example, problem solving could be demonstrated in a "think-aloud" exercise recorded in a podcast outside of class by the expert professor or as an exercise that students perform.[100] In the think-aloud, the professor or student thinks aloud or records his or her thought process as he or she works through a client's problem, verbalizing each step in the problem-solving process.[101] A think-aloud is analogous to the way two lawyers might talk through a client's case.[102]

Whichever approach law schools choose, it should be both student and client centered. When constructing a curriculum around problem solving, professors should engage in backwards design.[103] First, focus on broad learning goals regarding knowledge, skills, and values (the desired results—i.e., upon successful completion of this course, students will know/under-

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98. FRUEHWALD, *supra* note 48, at 221; *see also infra* Part V(A)(1) (examining deep learning).

99. Elaine McArdle, *Beyond the Case Method: A First-of-Its-Kind Problem-Solving Workshop Prepares 1Ls for the Realities of Law Practice*, HARV. L. TODAY (Feb. 23, 2010), http://today.law.harvard.edu/an-innovative-new-course-teaches-students-to-solve-problems -right-from-the-start-video/?redirect=1 (explaining a workshop that puts students in same position as attorneys); *Course Descriptions: Problem Solving*, *supra* note 93 (describing a Suffolk Law problem-solving course); *Strategic Problem-Solving and the Law*, *supra* note 95 (describing an offered problem-solving intersession course); *see* Natt Gantt, II, *supra* note 95, at 702 (citing a survey of ABA schools that shows 56.5% of curricular offerings make explicit reference to problem solving in a course or program description online).

100. FRUEHWALD, *supra* note 48, at 223; *see* Leah M. Christensen, *Show Me, Don't Tell Me! Teaching Case Analysis by "Thinking Aloud,"* 15 PERSPS: TEACHING LEGAL RES. & WRITING 142, 142 (suggesting that the "think-aloud" methodology allows for a student to question, hypothesize, and interact with a case, affording the student a deeper understanding).

101. FRUEHWALD, *supra* note 48, at 223; *see* Christensen, *supra* note 100, at 144 (explaining how you would verbalize all of the problem-solving steps, i.e., What are the facts? What law applies? etc.).

102. FRUEHWALD, *supra* note 48, at 223; Christensen, *supra* note 100, at 144.

103. Although this document focuses on problem solving, any course may use the backwards design approach. *See* GRANT WIGGINS & JAY MCTIGHE, UNDERSTANDING BY DESIGN 8–9 (1998) (discussing backwards design approach to course design).

stand . . .) and work backwards.[104] For example, four problem-solving goals may be that, upon successful completion of the course, students will know/understand the following: a problem-solving methodology (the systematic approach and tasks associated with problem solving); how to effectively collaborate with others to solve a legal problem; how to work efficiently under time constraints; and the tenets of professionalism, professional identity, and emotional intelligence.

Once the learning goals have been identified and the specific learning objectives have been set, then the assessments can be designed.[105] The curriculum should be designed from the evidence of learning called for by the goals.[106] Course goals and assignments should align with learning objectives.[107] Due to the distinct expectations and experiences in a problem-solving course, it would be beneficial to guide students with a specific course description and an email or letter at the outset of the course.[108] This information increases transparency because students understand how the goals, objectives, and assessments connect the course to practice.[109]

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104. *See* WIGGINS & MCTIGHE, *supra* note 103, at 8–9 (discussing backwards design approach to course design). The importance of backwards design resonates with a "big rocks" example: if you pour water, gravel, and sand into a bucket, and then big rocks, the rocks will not fit; however, if you put the big rocks first (i.e., your course goals), then the water, sand, and gravel, the rocks will fit. Most professors use the first approach—choosing textbooks, designing a syllabus, then lecture notes, etc., instead of setting their course goals (big rocks) first.

105. *See Syllabus Design Resources: Tips for Writing Course Goals and Learning Objectives*, SUFFOLK U. CENTER FOR TEACHING & SCHOLARLY EXCELLENCE, http://www2 .suffolk.edu/files/CTE/tips_for_writing_goals_objectives.pdf [hereinafter *Syllabus Design Resources*] (last visited Apr. 27, 2015) (explaining and providing examples of learning goals and objectives for courses). A goal may be stated as follows: "Upon successful completion of this course, students will **understand** . . . ." *Id.* A learning objective may be: "Upon successful completion of this course," students will be able to distinguish, analyze, discern, etc. *Id.* Professors should identify their desired results, determine the acceptable evidence, and plan learning experiences and instruction based on what they hope to accomplish. *See* WIGGINS & MCTIGHE, *supra* note 103, at 8–9 (advocating for backwards design in syllabus creation).

106. *See Syllabus Design Resources*, *supra* note 105 (providing examples of learning goals and objectives for courses).

107. A typical law school exam uses problems, but classes are taught using the case method.

108. Note that any group-work component or professional dress (if required in a problem-solving class) may be especially important for students to know.

109. *See* Sophie M. Sparrow & Margaret Sova McCabe, *Team-Based Learning in Law*, 18 LEGAL WRITING 153, 172 (2012) (explaining that team-based learning is transparent learning, reinforcing a student's understanding).

Students should be able to use a problem-solving methodology and work on problems lawyers are asked to solve; students should face legal issues in different legal settings the way lawyers do—under pressure, working with others, and combining knowledge of the law, theory, and practical judgment—to help their clients achieve goals within the bounds of the law.[110] Students can receive problems in different ways: a voice mail from a senior partner, an email from a client or attorney, a memorandum from a supervisor, a video message, or a file from a predecessor with some notes or a transcript. One problem each day keeps it fast-paced and interesting and allows students to work with numerous types of problems.

Problem solving involves collaborative work where students are placed in teams.[111] This cooperative learning mimics practice where lawyers must work collaboratively with colleagues, clients, judges, and others.[112] Students can be placed in groups, teams, or firms at the outset of class.[113] If the course is one week long, students can stay in the same group; if the course is over a semester, groups can be changed so students have the chance to work with different people.[114] A professor may assign project managers that

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110. *See* FRUEHWALD, *supra* note 48, at 210–12 (describing the problem-solving methodology: "(1) identify the problem, (2) define the problem, (3) form a strategy, (4) organize information, (5) solve the problem (including monitoring your progress), and (6) evaluate the solution"); Singer, *supra* note 10 (explaining the problem-solving case method); *supra* Part II (defining problem solving). Numerous methodologies are used for problem solving, but they have similar themes. *See also* FRUEHWALD, *supra* note 48, at 210.

111. *See* Sparrow & McCabe, *supra* note 109, at 156 (providing an overview of team-based learning); *see also* Clifford S. Zimmerman, *"Thinking Beyond My Own Interpretation": Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 ARIZ. ST. L.J. 957, 995–98 (1999) (discussing collaborative work with a focus on group success).

112. Sparrow & McCabe, *supra* note 109, at 164; *see* Elizabeth L. Inglehart et al., *From Cooperative Learning to Collaborative Writing in the Legal Writing Classroom*, 9 LEGAL WRITING 185, 187–89 (2003) (asserting that cooperative and collaborative learning coincide with goals for teaching legal writing).

113. *See* Inglehart et al., *supra* note 112, at 200 (stating that students should be made comfortable with group work at the outset of class).

114. Groups tend to follow a typical developmental sequence of phases of teamwork: "forming, storming, norming, and performing." Bruce W. Tuckman, *Developmental Sequence in Small Groups*, 63 PSYCHOL. BULL. 384, 384 (1965), *reprinted in* 3 GROUP FACILITATION: A RES. & APPLICATIONS J. 66 (2001), *available at* http://openvce.net/ sites/default/files/Tuckman1965DevelopmentalSequence.pdf. When teams remain the same in order to become cohesive and maximize their potential by going through the normal stages of the group process of "forming, storming, norming, and performing." Clyde Freeman Herreid, *Using Case Studies in Science—And Still "Covering the Content" in*

rotate each day or problem, or not assign leaders but instead let them naturally emerge.[115]

Professors can design numerous ways to assess students' learning to help students prepare for their legal practice. For example, assignments can vary depending on their client's problem but may include interviewing a client; advising a client regarding a settlement or plea offer; giving an oral report to a supervisor; researching the law; or drafting a client letter, email, or press release. The problems/tasks may become increasingly complex and challenging. Professors may also assign students a problem or task with which they are familiar, ask students to transfer what they know to solve new, unfamiliar legal problems, or require students to complete tasks with which they have no experience completing. For each problem, tight time constraints— from one hour to one day or more—will help mimic legal practice.

Students in a problem-solving workshop can receive feedback on their individual and group performances. Student self-assessments help guide professional development and identity. For example, at the conclusion of each day or each problem, professors may ask students to complete a journal reflection assignment. Each day the questions can be a different type—questions about the client, the problem, the task, their team, or themselves.[116] The journals help students self-reflect and help the professor gauge the understanding and progress of the class, as well as anticipate any confusion or problems.[117]

START WITH A STORY: THE CASE STUDY METHOD OF TEACHING COLLEGE SCIENCE 195, 200 (2007).

115. I recommend asking each member of a team, group, or firm to take turns taking the role of project manager so everyone gets the experience. This prevents any one person from dominating the group. This rotation also allows groups to experience different leadership styles. *See* Banerjee, *supra* note 44 (highlighting that the ability to lead and take ownership of work are positive hiring attributes); Jeffrey J. Pokorak et al., *Stop Thinking and Start Doing: Three-Year Accelerator-to-Practice Program as a Market-Based Solution for Legal Education*, 43 WASH. U. J.L. & POL'Y 59, 78 (2013) (suggesting project management as a key competency required of, but often lacking in recent graduates).

116. For example, a journal reflection assignment can ask a question related to how the student approached solving that particular client's problem, the student's aversion to risk and whether that affected the advice she gave the client, or something the student has learned that makes him or her think differently about a lawyer's role when problem solving.

117. After reading the journal reflection questions each day, during the next class the professor can start by discussing common themes from the reflections or reading quotes or excerpts that were particularly insightful (without identifying any particular student). This feedback from the professor helps students understand the importance and role of the journals (that the professor is reading them and will take them into account for assessing

In addition to self-assessment, students should also be subject to the assessment of others. In working collaboratively, students' teammates, students on other teams, professors, and legal practitioners assess the student.[118] At the completion of the course, students should complete peer assessments of each person on their team in addition to their own self-assessments. Professors should give students a group-work-assessment rubric at the outset of the course so that they understand the expectations. A group-work assessment can assess different skills, such as team contributions, communication skills, cooperativeness/adaptability, time management and responsibility, initiative/leadership, and professionalism. Students get the benefit of learning how to give and receive constructive criticism. They also have the opportunity to see how others perceive them and understand others' perspectives. Group assessments can also help faculty assess each student's effort and performance in the course.

Finally, bringing in lawyers to give students feedback on their attempt to solve a client's problem has numerous benefits.[119] Students gain experience with receiving and incorporating constructive criticism and are often more receptive to hearing it from an outside expert rather than from their professor. Students and faculty benefit from learning about the lawyers' experience and expertise; the experience enables students to see and understand the connection between law school and legal practice.[120] Potential employers, alumni, and fellow faculty members also benefit from the lawyers' participation.

Law professors can incorporate a problem-solving approach in their courses by using files already created for lessons involving doctrinal, litigation, transactional, and ADR courses.[121] The

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student work) and could decrease any possible feelings of isolation or anxiety of students when they realize the common ground found in classmates' responses.

118. Kehner & Robinson, *supra* note 91, at 110; Sparrow & McCabe, *supra* note 109, at 161.

119. Lawyers may play the role of a client, a supervising attorney, or someone to whom the student or team has to present advice or a solution.

120. *See* Kehner & Robinson, *supra* note 91, at 107 (citing the importance of involvement from the bench and bar for developing professional behaviors).

121. *See* ABA Section of Dispute Resolution, *Welcome*, Legal Educ., ADR & Practical Problem-Solving (LEAPS) Project, http://leaps.uoregon.edu (last visited Apr. 27, 2015) (hosting a project of the ABA Section of Dispute Resolution's Law School Committee that develops problem-solving lessons); *Dispute Resolution Teaching Materials*, U. OF MO. SCH. OF L., http://law.missouri.edu/drle/teaching_materials.html#multistage (last visited Apr. 27, 2015) (providing lawyer as problem-solver exercises, simulations, and videos); *Practi-*

problem should be significant, relevant, and challenging—the type of problem a lawyer often faces in practice.[122] In addition to the existing resources, professors can create their own problem-solving files.[123]

IV. WHY PROBLEM-SOLVING INSTRUCTION IS NEEDED: THE GAP BETWEEN LEGAL EDUCATION AND PRACTICE

Problems cannot be solved by thinking within the framework in which the problems were created.[124]

—Albert Einstein

Criticism of law schools for failing to provide "practice-ready" graduates has focused on the disconnect between law school and practice, yet reform seems to occur at a glacial speed.[125] The skills gap here includes soft skills, such as emotional intelligence.[126] Several prominent reports and surveys that call for legal education reform to increase practice training in law schools have iden-

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cal Learning for Aspiring and Practicing Lawyers, supra note 94 (utilizing an online approach to students' problem-solving skills while providing peer and expert review of solutions); *The Case Studies*, HARV. L. SCH., http://casestudies.law.harvard.edu/ (last visited Apr. 27, 2015) (allowing faculty to purchase problems used in the Harvard Problem-Solving Workshop, a first-year required intersession course); *see also* Singer, *supra* note 10 (recommending that law school professors use the problem-solving case method). I have purchased and successfully used the following problems from the Harvard Problem-Solving Case Studies: Lead Toys, Federal Defender, Prisoner's Lawsuit, and the Landlord's Dilemma.

122. Sparrow & McCabe, *supra* note 109, at 160.

123. *See supra* note 121 (listing resources for professors to create problem-solving problems). By following guidelines, professors will be able to incorporate problem solving into their courses. *See supra* Part II (explaining problem solving). In my problem-solving course, students deal with advising clients, ethical responsibilities, making decisions in the face of uncertainty, risk analysis, client interviews, and complex legal issues with multiple sources of law. *See* Kathleen Elliot Vinson, Problem Solving Syllabus (Jan. 13–17, 2014) (unpublished course syllabus, Suffolk University) [hereinafter Problem Solving Syllabus] (on file with Author).

124. Morton, *supra* note 13, at 375 (quoting Albert Einstein).

125. *See* Adam Lamparello & Charles E. MacLean, *Requiring Three Years of Real-World Legal Writing Instruction: Law Students Need It; Prospective Employers Want It; The Future of the Legal Profession Demands It*, 4 HOUS. L. REV.: OFF THE REC. 95, 97 (2014), *available at* http://www.houstonlawreview.org/wp-content/uploads/2014/03/Lamparello-Three-Years-of-Real-World-Legal-Writing-FINAL.pdf [hereinafter Lamparello & MacLean II] (discussing a need for reform in legal education).

126. *See infra* Part V(A) (explaining the development of soft skills in law school curriculum); *see also* Banerjee, *supra* note 44 (explaining the growing importance of soft skills in employment).

tified problem solving as a critical skill to successful legal prac-
tice.[127] For example, the *MacCrate Report* urged legal education to
address concerns about lawyering skills and professionalism.[128]
The *Carnegie Report* and *Best Practices* followed and continued to
critique legal education and reflected the practicing bar's con-
cerns regarding the legal academy's output.[129] Despite criticism
and calls for reform, many law schools have not implemented
significant change in legal instruction, perhaps because they have
not had to until now.[130]

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127. *See generally* ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL
EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT
OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE
GAP 4 (1992), *available at* http://www.americanbar.org/content/dam/aba/publications/misc/
legal_education/2013_legal_education_and_professional_development_maccrate_report)
.authcheckdam.pdf [hereinafter MACCRATE REPORT]; MARJORIE M. SHULTZ & SHELDON
ZEDECK, FINAL REPORT: IDENTIFICATION, DEVELOPMENT, AND VALIDATION OF PREDICTORS
FOR SUCCESSFUL LAWYERING 26 (2008) *available at* http://www.law.berkeley.edu/files/
LSACREPORTfinal-12.pdf [hereinafter LSAC STUDY]; ROY STUCKEY ET AL., BEST
PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 11–13 (2007), *available at*
http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf [hereinafter BEST
PRACTICES]; WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE
PROFESSION OF LAW 199 (2007) [hereinafter CARNEGIE REPORT]; *see* McAdoo et al., *supra*
note 5, at 44 (noting that the "division of responsibility between law schools and the prac-
ticing bar continued for most of the nineteenth and twentieth centuries"). Law schools face
criticism for not teaching students how to actually practice law. *Id.* Because students were
not getting enough practical training in law school, student learning took place upon
employment *after* law school graduation. *Id.*; *see also* ABA SECTION OF LEGAL EDUC. &
ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS OF THE ABA TASK FORCE ON
LAWYER COMPETENCY: THE ROLE OF LAW SCHOOLS 3 (1979) [hereinafter CRAMPTON
REPORT] (recommending that students get rigorous training and experience in legal writ-
ing). "Problem[ ]solving is the single intellectual skill on which all law practice is based."
Moskovitz, *supra* note 39, at 245; *see* FRUEHWALD, *supra* note 48, at 218 (using example of
strict liability to prove negligence of a manufacturer in product liability law).
128. MACCRATE REPORT, *supra* note 127, at 330.
129. *See* BEST PRACTICES, *supra* note 127, at 2 (suggesting that certain defects of legal
education must be addressed); CARNEGIE REPORT, *supra* note 127, at 12 (indicating that
law schools give little attention to training students for professional practice); *see also*
Stuart & Vance, *supra* note 17, at 1–4 (suggesting that students are entering law school
with low problem-solving skills, and this results in law students who are ill-prepared for
law practice).
130. *But see Academic Requirements Overview*, U. OF DENVER: STURM C. OF L.,
http://www.law.du.edu/index.php/student-handbook/academic-requirements (last visited
Apr. 27, 2015) (incorporating Carnegie courses); *Second and Third Year Course Descrip-
tions*, WASH. & LEE U. SCH. OF L., *available at* http://law.wlu.edu/academics/page
.asp?pageid=1102 (last visited Apr. 27, 2015) (changing the third year of law school to
experiential learning including "Skills Immersion" I and II); Jennifer Chiovaro & Maggie
Vath, Instructors of Law, Ga. State. Univ. Coll. of Law, *Getting What You 'Wished For':
How the GSU Legal Writing Program Doubled Its Credit Hours, Reduced Faculty-Student
Ratios, and Revised Its Curriculum*, Southeast Regional Legal Writing Conference, Sa-
vannah, Georgia (Apr. 26–27, 2013) (discussing the redevelopment of the GSU legal writ-
ing curriculum in response to the *Carnegie Report*) (on file with Author).

Legal education is at a tipping point, and perhaps problem solving can balance the skills–doctrine "ship" in the stormy seas of legal education's "perfect storm" with the help of the beacon of the client-centered "lighthouse."[131] The recent, numerous pressures on law schools from several constituencies create a perfect storm that law schools must now face.[132] Law school applications have dropped, and the legal employment opportunities have decreased.[133] The common thread regarding the call for legal reform is the need to bridge the gap between the knowledge, theory, and skills learned in law school with serving clients to solve their problems.[134] By developing students' key lawyering skills, incorporating problem solving into law schools' curricula addresses the call for reform in legal education to better prepare law school graduates and strengthen the legal profession.[135]

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131. See McAdoo et al., *supra* note 5, at 54, 97 (discussing a first-year course—Practice, Problem Solving and Professionalism—as a case study in legal education curricular reform).

132. *See* John Lande, *Reforming Legal Education to Prepare Law Students Optimally for Real-World Practice*, 2013 J. DISP. RESOL. 1, 1 (2013) (discussing the different pressures on law schools to do more to prepare new lawyers for practice); Stuart & Vance, *supra* note 17, at 1 (noting how the legal academy has been hit with pot-shots from the practicing bar, students, media, and within).

133. In the last three years, the Law School Admissions Council (LSAC) reported law school applications dropped from 602,300 to 385,400, and that in the fall of 2013, law school applications dropped 17.9%. Lamparello & MacLean II, *supra* note 125, at 98; *see also* Aaron N. Taylor, *As Law Schools Struggle, Diversity Offers Opportunities*, CHRON. OF HIGHER EDUC. (Feb. 10, 2014), http://chronicle.com/article/As-Law-Schools-Struggle/144631 (noting a drop in law school applications); Jacob Gershman, *Number of LSAT Test Takers Is Down 45% Since 2009*, WALL ST. J. L. BLOG (Oct. 31, 2013, 11:32 AM EST), http://blogs.wsj.com/law/2013/10/31/number-of-lsat-test-takers-is-down-45-since-2009/ (noting that the October law school admissions tests administered dropped 11% in 2013); Debra Cassens Weiss, *Law School Applications Drop Nearly 18 Percent, Benefitting Students Seeking Financial Aid*, ABA J (Aug. 20, 2013, 1:05 PM CDT), http://www.abajournal.com/news/article/law_school_applications_drop_nearly_18_percent_benefiting_students_seeking_ (noting that law school applications dropped 17.9% in 2013).

134. Trudeau, *supra* note 25, at 118 (discussing problem-solving approach to law practice developed through legal writing courses); *see* Chemerinsky & Menkel-Meadow, *supra* note 29 ("Legal education must continue to educate those who seek to serve as legal 'problem solvers,' not only in the board room or courtroom, but in all areas of civil society—our legislatures, administrative agencies, schools, workplaces, and beyond."); Lamparello & MacLean II, *supra* note 125, at 97 (arguing that the problem is not that law school is too long, but law schools' pedagogical focus is not on mastering essential skills).

135. *See* BEST PRACTICES, *supra* note 127, at 12, 31 (suggesting that law practice involves more than mechanical skills and that law schools should require instruction in problem solving); CARNEGIE REPORT, *supra* note 127, at 12–14 (explaining that law schools should provide a comprehensive training approach to lawyering by engaging students with the problem solving of clients); MACCRATE REPORT, *supra* note 127, at 4, 35 (explaining that law schools should identify common lawyering skills, promote problem solving, and recognize opportunities to impart professional skills to future lawyers); *see also* Banerjee,

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A. The *MacCrate Report*

In 1992, in the *MacCrate Report*, the American Bar Association (ABA) emphasized the importance of legal education beginning the process of professional development.[136] MacCrate's Statement of Fundamental Lawyering Skills and Professional Values identified essential or very important skills of the legal practice "which new lawyers should seek to acquire."[137] It prioritized ten skills and four values; problem solving was one of the fundamental lawyering skills.[138] MacCrate states that

> [i]n order to develop and evaluate strategies for solving a problem or accomplishing an objective, a lawyer should be familiar with the skills and concepts involved in: [1] Identifying and Diagnosing the Problem; [2] Generating Alternative Solutions and Strategies; [3] Developing a Plan of Action; [4] Implementing the Plan; and [5] Keeping the Planning Process Open to New Information and New Ideas.[139]

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supra note 44 (suggesting that institutions should teach problem-solving skills); McAdoo et al., *supra* note 5, at 54, 97 (discussing a first-year course—Practice, Problem Solving and Professionalism—as a case study in legal education curricular reform).

136. *See* MACCRATE REPORT, *supra* note 127, at 332 (recommending that law schools teach their students to be effective problem solvers as an explicit instructional goal of the curriculum).

137. *See id.* at 121, 135–222 (discussing and analyzing fundamental lawyering skills and professional values); *see also* Brest & Krieger, *supra* note 21, at 811 (noting that only half of the lawyering skills identified by the ABA relate exclusively to law, with problem solving at the top of the list).

138. *See* MACCRATE REPORT, *supra* note 127, at 135–222 (explaining fundamental lawyering skills). The ten lawyering skills MacCrate identified as critical to legal practice include: (1) problem solving; (2) legal analysis and reasoning; (3) legal research; (4) factual investigation; (5) communication; (6) counseling; (7) negotiation; (8) litigation and alternative dispute resolution procedures; (9) organization and management of legal work; and (10) recognizing and resolving ethical dilemmas. *Id.* at 138–40. The four professional values identified were the following: providing competent representation; striving to promote justice, fairness, and morality; striving to improve the profession; and professional self-development. *Id.* at 140–41; *see also* McAdoo et al., *supra* note 5, at 42–43, 42 n.13, 50–51 (noting the prevalence of problem solving in the *MacCrate Report* but suggesting the complexity of *teaching* problem solving, making "it difficult to teach, measure, or master").

139. MACCRATE REPORT, *supra* note 127, at 138; *see* McAdoo et al., *supra* note 5, at 54, 97–98 (providing an example of a course syllabus for a Practice, Problem-Solving, and Professionalism course).

MacCrate also identified collaboration as essential to professional skills for lawyers.[140]

B. The *Carnegie Report*

After the *MacCrate Report* stressed the need to close the gap between law school and the legal profession, the *Carnegie Report* called for law schools to integrate theory and practice by incorporating lawyering, professionalism, and legal analysis from the outset of law school.[141] It also emphasized the need for students to have opportunities to reflect on the responsibilities of legal professionals.[142] It criticized legal education for its lack of understanding client problems and law schools' overreliance on case-dialogue classes.[143] It prescribed three apprenticeships: (1) intellectual and cognitive apprenticeship (theory); (2) practice skills apprenticeship (practical); and (3) professional identity and purpose (ethical).[144]

C. *Best Practices*

Best Practices for Legal Education challenged law schools to improve students' preparation for their first professional jobs,

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140. *See* MACCRATE REPORT, *supra* note 127, at 199–201 ("In order to organize and manage legal work effectively, a lawyer should be familiar with the skills, concepts, and processes required for efficient management, including . . . cooperation among co-workers . . . .").

141. *See* CARNEGIE REPORT, *supra* note 127, at 13–14 (discussing a three-part curriculum). Carnegie's three-part integrated curriculum includes "(1) the teaching of legal doctrine and analysis; (2) introduction to the several facets of practice included under the rubric of lawyering; and (3) exploration and assumption of the identity, values, and disposition consonant with the fundamental purposes of the legal profession." WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW, SUMMARY 8 (2007), *available at* http://www.suffolk.edu/documents/Law%20Documents/ elibrary_pdf_632.pdf. [hereinafter CARNEGIE SUMMARY]; *see* McAdoo et al., *supra* note 5, at 53 (referencing the three-part curriculum recommended in the *Carnegie Report*); *see also* Marcia S. Krieger, *A Twenty-First Century Ethos for the Legal Profession: Why Bother?* 86 DENV. U. L. REV. 865, 865–66 (2009) (stating that the *Carnegie Report* noted how law schools have strength in doctrinal instruction and weakness in providing practical experience and instilling a professional identity).

142. McAdoo et al., *supra* note 5, at 65 n.118. Some scholars have criticized the *Carnegie Report's* presumption of academic preparedness that may no longer be accurate for an increasing number of law students. *Id.*

143. *See* CARNEGIE REPORT, *supra* note 127, at 77, 100–03 (criticizing the limitations of a legal education that forgets to focus on the client and noting the decreasing engagement of upper-class students).

144. *Id.* at 27–28.

focusing on the knowledge, skills, and values needed for legal practice.[145] It suggested that law schools should integrate the teaching of theory, doctrine, and practice and emphasized the need to teach professionalism throughout each year of law school.[146] *Best Practices* defined experiential courses and student assessments as two of the best practice "categories."[147]

Best Practices advocated that by incorporating these "best practices" into the curriculum, law schools focus their efforts on improving legal education to better prepare students for practice.[148] *Best Practices* urged law schools to avoid focusing singularly on the Socratic dialogue and case method of teaching, suggesting that, instead, professors employ "context-based" instruction to teach legal theory, doctrine, analysis, and writing.[149] Students can learn these legal skills through experiential courses, such as problem solving.[150] By adhering to these suggested best practices, law schools will improve legal education as they demonstrate their commitment to their students and their ability to effectively and responsibly practice law.[151]

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145. *See* BEST PRACTICES, *supra* note 127, at 1 (noting how law school graduates lack minimum competencies necessary for effective legal service).

146. *See id.* at 1–4 (introducing and summarizing the best practices for law schools).

147. *See id.* at 5 (defining categories of best practices). *Best Practices* defines seven distinct best practice "categories" for which law schools should strive to define and effectively implement the best practices: (1) setting goals; (2) organizing instruction; (3) delivering instruction; (4) holding experiential courses; (5) using "non-experiential methods of instruction"; (6) assessing students' learning; and (7) evaluating the program's success. *Id.*

148. *See id.* at 8–11 (noting that the incorporation of "best practices" into the curriculum can also help schools evaluate the quality of their programs and better prepare students for the bar exam).

149. *See id.* at 28–30, 104–16 (asserting the value of context-based education to prepare students for practice). Professors should organize and deliver instruction, aiming to continuously improve their teaching skills, and maintain effective and healthy teaching environments. *Id.* at 78–80. Law schools begin implementing these best practices by committing to prepare students for practice and clearly articulating the educational goals and outcomes desired for students by their graduation. *Id.* at 28–30.

150. *See id.* at 121–52 (noting the best practices for experiential courses). *Best Practices* defines experiential courses as simulations, clinics, and externships. *Id.* at 121 n.537. It notes that modified use of the Socratic Method does not exclusively rely on one student's participation (and potentially humiliation), but instead involves discussion, lecture, and other methods that complement the Socratic dialogue. *Id.* at 153–67.

151. *See id.* at 175–97 (advising faculty in assessing student learning). *Best Practices* suggests that faculty clearly articulate the goals of their exams or assessments and ensure both the reliability and validity of the assessment. *Id.* Although exams are of particular importance in law school, *Best Practices* advises instructors to provide multiple assessments. *Id.* at 194.

D. Law School Admissions Council (LSAC)

In 2008, the LSAC *Successful Lawyering Study* by Marjorie Shultz and Sheldon Zedeck identified twenty-six factors[152] that influence lawyer effectiveness.[153] Although the Law School Admissions Test (LSAT) somewhat accurately predicts first-year grades, the standardized exam does not account for all of the factors that influence a student's grades or law school performance.[154] Critics of legal education disapprove not only of law schools' "perceived failure . . . to prepare students for professional practice," but also the admission practices that emphasize "academic and cognitive competencies" over valuable professional experience and professionalism.[155] The Study sought to determine the factors that *lawyers* held valuable for effective lawyering, broaden the criteria to measure those factors, evaluate professional effectiveness based on lawyers' perceptions, develop new testing to better predict competency as a lawyer, and identify measures that *can* predict "lawyering effectiveness."[156] The four key intellectual and cognitive skills identified were: (1) problem solving; (2) legal analysis and reasoning; (3) creativity and innovation; and (4) practical judgment.[157]

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152. *See id.* at 37 (listing factors, including problem solving). Law schools will improve legal education by following these best practices, articulating their educational goals, and continually evaluating their effectiveness.

153. *See* LSAC STUDY, *supra* note 127, at 26–27 (listing twenty-six factors categorized under "Umbrella Categories").

154. *See id.* at 13 (noting factors other than LSAT score influence first-year grades). Participants in the Study were asked to evaluate their performance on the twenty-six Effectiveness Factors (including the intellectual and cognitive skills listed above) from 1 (poor) to 5 (excellent) in .5 increments. *Id.* at 40. Those conducting the Study coupled these self-evaluations with peer and supervisor evaluations for the same individuals and compared those results with other predictive tests and information involved in admissions decisions, including LSAT scores, and undergraduate grade point average (UGPA). *Id.* at 53. The Study suggested that LSAT scores only correlate with six of the twenty-six Effectiveness Factors—analysis and reasoning, researching the law, writing, networking, integrity, and community service. *Id.* Because LSAT and UGPA scores are "not particularly useful for predicting lawyer performance on the large majority of the [twenty-six] Effectiveness Factors identified," law school admissions should explore other and additional predictors of performance. *Id.* at 55.

155. *Id.* at 13.

156. *Id.* at 15.

157. *Id.* at 26 (listing effectiveness factors under the "Intellectual & Cognitive" umbrella category). The eight categories identified as critical to successful lawyering were intellectual and cognitive skills, research and information gathering, communication, planning and organization, conflict resolution, client and business relations-entrepreneurship, working with others, and character. *Id.* at 26–27.

E. ABA

In 2012, the ABA created the ABA Task Force on the Future of Legal Education to make recommendations to the ABA on how law schools can take steps to address the economics of legal education and what legal education should provide.[158] The Task Force focused its attention on the need to improve legal education by focusing on practice-ready professional skills.[159] One of the Task Force's key conclusions called for a shift towards "developing the competencies and professionalism" of law students through skills training, experiential learning, and development of practice-related competency.[160]

In addition, the ABA comprehensively reviewed and proposed standards and then circulated them for notice and comment.[161] ABA Standard 302 recommends that law students "receive substantial instruction in . . . problem solving," as well as "other professional skills . . . necessary for effective and responsible participation in the legal profession," and requires law schools to offer "substantial opportunities for [students to engage in] live-client or other real-life practice experiences."[162] In addition to 302, the new ABA Standard 303 includes a six-credit requirement of experiential instruction in simulations, clinical experience, or a field placement.[163]

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158. Am. Bar Ass'n, *Task Force on the Future of Legal Education*, AMERICANBAR.ORG, http://www.americanbar.org/groups/professional_responsibility/ taskforceonthefuturelegaleducation.html (last visited Apr. 27, 2015); *see also* Paul Campos, *The Crisis of the American Law School*, 46 U. MICH. J.L. REFORM 177, 177 (2012) (acknowledging the crisis in legal education due to increased cost and lack of jobs).

159. *Report and Recommendations on the Future of Legal Education, supra* note 33.

160. *Id.*

161. *See* ABA Sec. of Legal Educ. & Admissions to the Bar, *ABA Standards and Rules of Procedure for Approval of Law Schools: Proposed Revisions*, AM. BAR ASS'N 1 (2013), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and _admissions_to_the_bar/council_reports_and_resolutions/20130906_notice_comment_chs _1_3_4_s203b_s603d.authcheckdam.pdf (2013) [hereinafter *ABA Proposed Standards*] (proposing new standards for law schools).

162. *Id.* at 27. Proposed revisions to ABA Standard 302 included recommendations that law schools establish learning outcomes for their students. *Id.* at 21. These outcomes include competency in the skill of problem solving. *Id.* at 27.

163. *Id.* at 28; *see also* Catherine Ho, *Group Pushes for Practical Training for Law Students*, WASH. POST (July 14, 2013), http://www.washingtonpost.com/business/ capitalbusiness/group-pushes-for-practical-training-for-law-students/2013/07/12/421f97a2 -e8ab-11e2-a301-ea5a8116d211_story.html (reporting on support for the requirement of experiential learning in law school). The ABA had received letters advocating for a higher number of credits for experiential learning. *Id.* In July 2013, the Clinical Legal Education

F. Other Pressures

Recent pressures on law schools from different constituencies further emphasize and stress the practical skills recommended by various educational reports and the ABA.[164] Numerous constituencies both inside and outside law schools criticize legal education, demanding that law schools do more to prepare new lawyers for practice.[165] Market pressures include an increased number of law schools and decreased law school applications and enrollment, causing the profession to "cannibalize" itself.[166] The public criticized legal education through negative publicity from students, the practicing bar, and Congress over the high cost of legal education, the value of a legal education, high student debt, decreased job prospects, and schools misrepresenting their students' employment statistics.[167]

Association (CLEA) sent a letter to the ABA advocating for a graduation requirement of fifteen credits of experiential learning. *Id.* Others have subsequently demonstrated their support for this initiative. Letter from Ass'n of Legal Writing Dirs. (ALWD) to the Hon. Solomon Oliver, Jr., Council Chairperson of ABA Sec. of Legal Educ. & Admissions to the Bar, & Barry A. Currier, Managing Dir. of Accreditation & Legal Educ., *Proposed ABA Standards 205 and 206*, 3 (Jan. 29, 2014), *available at* http://www.americanbar.org/content/dam/aba/administrative/legal_education_and _admissions_to_the_bar/council_reports_and_resolutions/comments/201401_comment_stds _205_206_303a3_ch_4_alwd.authcheckdam.pdf (expressing ALWD support for fifteen-credit requirement for experiential learning); Letter from Soc'y of Am. Law Teachers (SALT) to Prof. Jeffrey Lewis, Chair of Standards Review Comm. of ABA (Oct. 17, 2012), *SALT Outcome Measures Letter* 1 (Oct. 17, 2012), *available at* http://www.americanbar .org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review _documents/20121018_comment_outcome_measures_salt.authcheckdam.pdf (demonstrating support for experiential learning requirement). In August 2014, the ABA passed the new Standard 303, requiring six credits of experiential learning. ABA Sec. of Legal Educ. & Admissions to the Bar, *Standards and Rules of Procedure for Approval of Law Schools*, AM. BAR ASS'N 16 (2015), *available at* http://www.americanbar.org/content/ dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_chapter3 .authcheckdam.pdf.

164. *See* Lande, *supra* note 132, at 1 (noting a "growing consensus" that law schools need to better prepare students for legal practice).

165. *Id.* (criticizing law school emphasis on teaching students to think, but not act like lawyers); Pokorak et al., *supra* note 115, at 78 (lamenting lack of instruction in key areas of law: "business of law and law practice economics, legal technologies, project management, organizational behavior, business communication, professional identity and networks, and client-centered customer service").

166. Stuart & Vance, *supra* note 17, at 1.

167. *See* Lande, *supra* note 132, at 5–6 (listing law school pressures, such as the negative publicity of misleading consumer information, high tuition, and reduced job opportunities); Gerald Lebovits, *Legal Writing in Practice-Ready Law School*, 85 N.Y. ST. B. ASS'N J. 72, 72 (2013) (discussing the *Carnegie Report*, the *MacCrate Report*, *Best Practices*, and the importance of skill-based training); McAdoo et al., *supra* note 5, at 44 n.21 (citing numerous articles in the New York Times that discuss the theory/practice law school

Changing legal practice, including the unbundling of legal services, increasing competition from non-lawyers, the influence of technology on practice, and the globalization of law and legal practice adds to the pressure on law schools.[168] In addition, students are expected to be practice-ready when they graduate.[169] Clients do not want to pay to train associates.[170]

U.S. News rankings of law schools have increased pressure and often drive law school dean and faculty resource allocation.[171] Budget constraints have increased work expectations and time pressure on law faculty and administrators to do more with less.[172] Some law schools have reduced faculty and student size.[173]

The culmination of the recent pressures in the marketplace and systemic criticism of legal education in these prominent reports and other sources[174] should stimulate and encourage faculty

debate); Arthur Jacobson, Letter to the Editor, *Training Lawyers: Theory vs. Practice*, N.Y. TIMES, Nov. 21, 2011, at A28, available at http://www.nytimes.com/2011/11/22/opinion/training-lawyers-theory-vs-practice.html?_r=1& (reporting that law schools should focus more on practical training and less on theoretical training); Joe Palazzolo & Chelsea Phipps, *With Profession Under Stress, Law Schools Cut Admissions*, WALL ST. J. (June 11, 2012, 6:45 PM EST), http://online.wsj.com/news/articles/SB10001424052702303444204577458411514818378?KEYWORDS=with+profession+under+stress+law+schools&mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052702303444204577458411514818378.html%3FKEYWORDS%3Dwith%2Bprofession%2Bunder%2Bstress%2Blaw%2Bschools (citing law school graduates suing schools for misleading prospective students with employment figures); David Segal, *supra* note 15 (discussing the high cost of a legal education and the lack of practical training provided).

168. RICHARD SUSSKIND, THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES 1, 23–24, 45 (2010) (explaining that the legal profession faces challenging trends such as offshore outsourcing, challenging technologies, and the unbundling of legal services); BRIAN Z. TAMANAHA, FAILING LAW SCHOOLS 168–170 (2012) (discussing a changing legal market and the resulting pressures on lawyers); Lande, *supra* note 132, at 7–9.

169. Lande, *supra* note 132, at 4–6 (citing complaints of employers that new graduates demonstrate poor communication skills and inattention to client needs).

170. Lebovits, *supra* note 167, at 72 (noting that the law practice is changing due to economic reasons as law firms downsize and government and public-service opportunities decline).

171. *See* Lande, *supra* note 132, at 5–6; *see also* Michael Sauder & Wendy Espeland, *Fear of Falling: The Effects of U.S. News & World Report Rankings on U.S. Law Schools*, L. SCH. ADMISSIONS COUNCIL, Oct. 2009, at 10 (recognizing that the U.S. News & World Report Rankings put pressure on law schools to redistribute funds in order to increase their scores).

172. Lande, *supra* note 132, at 8.

173. *See* Staci Zaretsky, *Tenured Faculty Cuts Are Coming to a New York Law School— But Which One? And When?*, ABOVE THE LAW (Feb. 4, 2014, 11:49 AM), http://abovethelaw.com/2014/02/tenured-faculty-layoffs-could-be-coming-to-a-new-york-law-school-but-which-one-and-when/ (describing Albany Law School faculty layoffs and a negative response).

174. ABA SEC. OF LEGAL EDUC. & ADMISSIONS TO THE BAR, SOURCEBOOK ON LEGAL WRITING PROGRAMS 11–12 (Eric B. Easton et al. eds., 2d ed. 2006) (identifying the ability

to consider incorporating problem solving to be part of an innova-
tive "renaissance in American law schools[,]" focusing on practical
skills and assessments.[175] Problem-solving instruction in a law
school curriculum can encourage curricular reform and respond to
the demand for legal education reform over the last few dec-
ades.[176]

Teaching problem solving can help students think more ex-
plicitly about the skills they need to succeed in legal practice, the
role of lawyers in society, and the different contexts in which le-
gal problems arise.[177] The silver lining in the legal education cri-
sis may be a greater emphasis on practical training, including,
but not limited to problem-solving instruction.[178] While law
schools are cutting costs and are concerned with budgets, they
cannot afford to continue to graduate students who are not pre-

to apply knowledge and skills to solve legal problems as a desired outcome of an effective
legal writing program); *see also* Ethan Bronner, *A Call for Drastic Changes in Educating
New Lawyers*, N.Y. TIMES (Feb. 10, 2013), http://www.nytimes.com/2013/02/11/us/lawyers
-call-for-drastic-change-in-educating-new-lawyers.html?pagewanted=all&_r=0 (recogniz-
ing that proposals to change law school education are a result of rising pressures in the
market).

175. *See* Todd E. Pettys, *The Analytic Classroom*, 60 BUFF. L. REV. 1255, 1262–1301
(2012) (giving an example of how a flipped classroom allows newly available classroom
time for interactive problem-solving activities).

176. Lande, *supra* note 132, at 1.

177. *See* McAdoo et al., *supra* note 5, at 58–59 (listing schools that have added required
first-year courses designed to alert students to the skills they will need in practice). These
schools

> include Case Western Reserve University (CORE Lawyering Skills); University of
> Connecticut (Lawyering Process); Drexel University (Introduction to Interviewing,
> Negotiation and Counseling); Harvard University (Problem-solving Workshop); In-
> diana University (The Legal Profession); University of Minnesota (Practice and
> Professionalism); University of Missouri-Columbia (Lawyering: Problem[ ]solving
> and Dispute Resolution); NYU (Lawyering); Northeastern University (Legal Skills
> in Social Context); Northwestern University (Lawyer as Problem Solver); UCLA
> (Theory and Practice of Lawyering Skills); University of the Pacific McGeorge
> (Global Lawyering Skills); USC (Law, Language, and Ethics); Washington Univer-
> sity in St. Louis (Negotiation); and . . . Hamline University.

Id. at 55 n.75.

178. *See* Chemerinsky & Menkel-Meadow, *supra* note 29 (suggesting that law schools
should incorporate problem-solving seminars and more diverse subject matter geared
towards expertise in response to the legal education crisis); Kirsten A. Dauphinais, *Sea
Change: The Seismic Shift in the Legal Profession and How Legal Writing Professors Will
Keep Legal Education Afloat in its Wake*, 10 SEATTLE J. SOC. JUST. 49, 52–53 (2011) (sug-
gesting that reform in legal education is necessary and possible); Daniel Thies, *Rethinking
Legal Education in Hard Times: The Recession, Practical Legal Education, and the New
Job Market*, 59 J. LEGAL EDUC. 598, 599 (2010) (noting that legal employers will seek out
graduates who have more practical skills).

pared to practice, as lack of employment affects law school applications, which affects the survival of law schools.[179]

G. Cognitive Skills, Mindset, and Millennial Traits of Law Students

In addition to leading education reports, the ABA recommendations and requirements and other pressures, reviewing the cognitive skills, mindset, and millennial traits of law students, is helpful when examining the need for problem-solving instruction in law school.[180] How students think about their thinking, the way they perceive their ability to learn, and their typical behavior as Millennials should be considered, as these may affect students' ability to successfully problem solve.[181]

1. Cognitive Skills

Cognitive deficiencies of incoming law students could impact their ability to problem solve and further support the need to make problem solving an explicit instructional goal of legal education curriculum.[182] Research seems to indicate that incoming students are less prepared for law school than in the past, thus emphasizing the special importance of teaching problem solving.[183] As law school applications and enrollment decrease, schools are digging deeper into the application pool.[184]

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179. *See supra* Part IV(F) (discussing the pressures that law schools face).

180. *See supra* Part IV(A-D) (discussing other pressures and reports commenting on the need for problem solving).

181. *See infra* Part IV(G)(1)-(3) (explaining how cognition, mindset, and millennial traits affect a student's ability to learn).

182. *See* Stuart & Vance, *supra* note 17, at 5–6 (opining that law schools cannot presuppose that incoming law students have preexisting fundamental skills that allow them to be legal problem solvers, and legal education reform cannot happen until the cognitive deficiencies in incoming students are addressed). Stuart and Vance note that the problem-solving skills of entering law students today are significantly lower than students in the 1970s and 1980s. *Id.* at 1.

183. Elizabeth M. Bloom, *Teaching Law Students to Teach Themselves: Using Lessons from Educational Psychology to Shape Self-Regulated Learners*, 59 WAYNE L. REV. 311, 313 (2013); Anthony Niedwiecki, *Teaching for Lifelong Learning: Improving the Metacognitive Skills of Law Students Through More Effective Formative Assessment Techniques*, 20 CAP. U. L. REV. 149, 153 (2012); Stuart & Vance, *supra* note 17, at 1.

184. Ethan Bronner, *Law Schools' Applications Fall as Costs Rise and Jobs Are Cut*, N.Y. TIMES (Jan. 30, 2013), http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html?_r=0 ("Responding to the new [economic] environment, schools are planning cutbacks and accepting students they would not

Problem solving requires self-regulated learning, which involves three stages: "forethought, performance, [and] reflection."[185] Problem solving challenges prior learning and creates a cognitive conflict between understanding the law (e.g., the rules of evidence) and understanding how the law is a tool to solve a client's problem (e.g., using the rules of evidence as a tool). Students should be taught how the underlying principles of problem solving allow for deep learning because that skill transfers to different types of problems.[186] Problem solving requires students to engage in high levels of thinking.[187] Bloom's *Taxonomy of Educational Objectives* visually illustrates six different levels of sophisticated cognitive skills, from simple to complex, and from concrete to abstract.[188]

Problem solving requires sophisticated cognitive skills of practicing lawyers, such as identifying a client's problem; proposing and evaluating solutions; developing a plan of action; implementing the plan; and reflecting and adjusting to information, ideas, and results.[189] Problem-solving skills build on more basic cognitive skills (i.e., lower levels of the pyramid) and require students to deal with complex, ambiguous problems, and analyze, synthesize, and evaluate to create solutions.[190]

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have admitted before."); Palazzolo, *supra* note 167 (noting a recent decline in applications which could lead to weaker incoming students).

185. FRUEHWALD, *supra* note 48, at 210.

186. *Id.* at 220; *see also infra* Part V(A)(1) (addressing deep learning).

187. *See* BENJAMIN BLOOM, TAXONOMY OF EDUCATIONAL OBJECTIVES 19 (2d. ed. 1984) [hereinafter Bloom's Taxonomy] (noting that behaviors in the cognitive domain include a high level of consciousness or awareness); MICHAEL HUNTER SCHWARTZ ET AL., TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM 69 (2009) (discussing Bloom's Taxonomy in legal education).

188. *See* Bloom's Taxonomy, *supra* note 187, at 18 (identifying six levels of learning, from lowest to highest: knowledge, comprehension, application, analysis, synthesis, and evaluation); A TAXONOMY FOR LEARNING, TEACHING, AND ASSESSING: A REVISION OF BLOOM'S TAXONOMY OF EDUCATIONAL OBJECTIVES 263–67 (Lorin Anderson & David R. Krathwohl eds., abridged ed. 2001) [hereinafter Revised Taxonomy] (providing revisions to Bloom's original framework). The original six levels of Bloom's Taxonomy were knowledge, comprehension, application, analysis, synthesis, and evaluation. *See* Bloom's Taxonomy, *supra* note 187, at 18. The revised Taxonomy replaces a hierarchy with a synthesis of knowledge with cognitive processes: remembering, understanding, applying, analyzing, evaluating, and creating. *See* Revised Taxonomy, *supra*, at 66–68, 267.

189. Stuart & Vance, *supra* note 17, at 8 (quoting Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEGAL EDUC. 313, 328 (1995)).

190. *Id.* at 48–49.

Problem solving provides a conceptual framework that allows students to transfer their learning and apply what was learned in one context to another.[191] Adult learning theory suggests that students learn more, better retain information, and contextualize the material in active learning situations like simulations and exercises.[192] This learning occurs in four distinct stages where the learner (1) participates in concrete experiences by seeing, hearing, feeling, or reading; (2) reflects and makes observations on the experience; (3) "generalizes from the experience and stores ideas that will apply to future experiences"; and (4) applies and tests the validity of those ideas to new situations.[193]

Law students must engage in both deliberative and reflective practice in their studies.[194] Deliberative practice improves performance as students take advantage of constructive criticism, internalizing the feedback from others in order to improve performance through the continuous assessment of prior performances.[195] Reflective practice encourages students to learn from their experiences and engage in self-reflection to embark on a process of continual learning—one of the defining characteristics of professional practice.[196] While deliberative practice focuses on improvement as a student internalizes feedback from *others*, reflective practice is more self-driven and requires students to examine their own progress.

While law schools teach students how to "think like a lawyer," the schools often do not emphasize, discuss, or teach "think-

191. NAT'L RES. COUNCIL, HOW PEOPLE LEARN: BRIDGING RESEARCH AND PRACTICE 2 (M. Suzanne Donovan et al. eds., 2000) (discussing findings in learning and transfer); *see also* Laurel Curie Oates, *I Know That I Taught Them How to Do That*, 7 LEGAL WRITING 1 (2001) (discussing students' ability to transfer skills to similar tasks when learning in context).

192. Mary Dunnewold & Mary Trevor, *Escaping the Appellate Litigation Straitjacket: Incorporating an Alternative Dispute Resolution Simulation into a First-Year Legal Writing Class*, 18 LEGAL WRITING 209, 226–27 (2012); *see also* Oates, *supra* note 191, at 5 (discussing how learning in context relates to transference).

193. Dunnewold & Trevor, *supra* note 192, at 227.

194. William D. Henderson, *Indiana Law's 1L Legal Professions Course: Educating Tomorrow's Lawyers*, IND. U. MAUER SCH. OF L. (2012), *available at* http://educatingtomorrowslawyers.du.edu/images/wygwam/images_content/ETL_1L_Leg_Prof.pdf.

195. Gerald R. Williams et al., *New Technology Meets an Old Teaching Challenge: Using Digital Video Recordings, Annotation Software, and Deliberate Practice Techniques to Improve Student Negotiation Skills*, 24 NEGOT. J. 71, 74 (2008).

196. Sanna Hilden & Kati Tikkamäki, *Reflective Practice as a Fuel for Organizational Learning*, 3 ADMIN. SCI. 76, 77 (2013).

ing about thinking," i.e., metacognition.[197] Metacognition involves self-monitoring and self-regulated learning of one's own cognitive processes and requires awareness, control, and responsibility over one's learning.[198] Law schools need to explicitly and transparently teach metacognition; this can be done through problem-solving instruction.[199]

2. Mindset

Law student mindset affects how students will think like lawyers who effectively and responsibly problem solve.[200] Fixed mindset is the belief that an individual innately possesses a certain degree of intelligence that does not change much over the course of a lifetime.[201] Students with a fixed mindset may worry about how others perceive them, preferring tasks they can master over learning something new with a risk of looking dumb in the process.[202] In contrast, individuals with a growth mindset believe that they can develop basic abilities through dedication and hard work.[203] Encouraging self-regulation of motivation involves assist-

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197. *See* Bloom, *supra* note 183, at 316–17 (noting how law schools teach cognitive skills but not metacognitive skills) (quoting Niedwiecki, *supra* note 183, at 156); *see also* FRUEHWALD, *supra* note 48, at 13 (including an appendix with questions to help students develop metacognitive skills); Shailini Jandial George, *Teaching the Smartphone Generation: How Cognitive Science Can Improve Learning in Law School*, 66 ME. L. REV. 163, 182 (2013) (discussing the need to teach students about cognitive capacity and overload); Rosa Kim, *Lightening the Cognitive Load: Maximizing Learning in the Legal Writing Classroom*, 21 PERSPS.: TEACHING LEGAL RES. & WRITING 101, 101 (2013) (noting the "assumption that law students should have figured out how to learn by the time they get to law school").

198. *See* Bloom, *supra* note 183, at 316–17 (defining metacognition as "the awareness of the learners in their own academic strengths and weaknesses, cognitive resources that they can apply to meet the demands of tasks, and how to regulate the engagement of tasks") (quoting Carlo Magno, *Developing and Assessing Self-Regulated Learners*, in 1 THE ASSESSMENT HANDBOOK: CONTINUING EDUCATION PROGRAM 26, 28 (2009)).

199. *Id.* at 329.

200. *See* CAROL S. DWECK, MINDSET: THE NEW PSYCHOLOGY OF SUCCESS 7 (2006); Carrie Sperling & Susan Shapcott, *Fixing Students' Fixed Mindsets: Paving the Way for Meaningful Assessment*, 18 LEGAL WRITING 39, 83–84 (2012).

201. DWECK, *supra* note 200, at 5–6; Sperling & Shapcott, *supra* note 200, at 41, 45–46 (explaining the fixed mindset as an implicit belief that "intelligence is a fixed trait" that does not change much over one's lifetime).

202. Sperling & Shapcott, *supra* note 200, at 46.

203. DWECK, *supra* note 200, at 7.

ing law students to change their negative fixed mindsets about their inherent abilities.[204]

The way in which law students perceive their ability to learn tremendously impacts their actual abilities.[205] Some students who may not excel on a traditional law school exam, or in class when called on via the Socratic method, may excel in experiential courses such as problem solving, where they focus on the application of skills in a different way, or where different skills, beyond book knowledge, are critical to success.[206] Excelling in problem solving fosters a growth mindset, which can lead to future success.

3. Millennials

Consideration of typical millennial behaviors of law students emphasizes the need to include problem solving in the law school curriculum.[207] Law schools face the challenge of teaching students "raised on the Internet, schooled leaving no child behind, and socialized via texting."[208] When Millennials see how their school-related assignments and tasks connect to real-life, authentic situations, they are more inspired to learn.[209] Instead of reading

204. Bloom, *supra* note 183, at 32; *see also* DWECK, *supra* note 200, at 7 (promoting two concepts to students—expecting long-term success and embracing short-term failure—can help them).

205. Sperling & Shapcott, *supra* note 200, at 47; *see also* Angela Lee Duckworth, *The Key to Success? Grit*, TED TALKS (May 2013), http://www.ted.com/talks/angela_lee _duckworth_the_key_to_success_grit (citing "grit" as predictor of success); Carol Frohlinger & Milana Hogan, Power Point Presentation, *Grit, Mindset and Negotiation Skills: The Secret Ingredients Your Firm's Women Need to Successfully Develop Business*, PROF'L DEV. INST. Wash, D.C. (Dec. 12–13, 2013).

206. Sparrow & McCabe, *supra* note 109, at 166–67. Team-based learning integrates knowledge, skills, and values into one course, allowing students to practice their social and ethical behavior necessary to succeed in practice and leadership. *Id.* at 171–72.

207. *See* Kathleen Elliott Vinson, *Hovering Too Close: The Ramifications of Helicopter Parenting in Higher Education*, 29 GA. ST. U. L. REV. 423, 423 (2013) (discussing Millennials and helicopter parenting). Millennials were raised to believe they are exceptional, and are not accustomed to criticism. *Id.* at 435–36. They have been coddled by grade inflation and positive feedback and have not truly discovered their real talents and strengths. *Id.*

208. Sue Liemer, *Starting Strong in Legal Writing: Summer Prep*, 22 PERSPS.: TEACHING LEGAL RES. & WRITING 49 (2013) (citing Stuart & Vance, *supra* note 17, at 27–28); *see* Samantha A. Moppett, *Control-Alt-Incomplete? Using Technology to Assess "Digital Natives,"* 12 CHI.-KENT J. INTELL. PROP. 77, 79 (2013) (recognizing that today's law students grew up in the technology age and struggle to learn in a traditional law school format).

209. Vinson, *supra* note 207; *see* Lamparello & MacLean I, *supra* note 17, at 99 (discussing how law students should learn by working on tasks that matter in legal practice).

about a judge or jury's resolution of a legal issue in a casebook, problem solving requires that students think about the client's goals, facts, and options, as well as whether the students' proposed solutions achieve those goals, keeping in mind the solutions' practical costs, risks, and benefits. Problem solving also focuses on client relationships in different contexts with varied legal problems and recognizes that, in most legal situations, the same legal problem-solving methodology can effectively solve a client's problem.

Millennials often were raised by helicopter parents, which may negatively affect Millennials' problem-solving skills, increasing the need for explicit problem-solving instruction in law schools. Helicopter parents are "obsessed with their children's success and safety[,] . . . vigilantly hover[ing] over them, sheltering them from mistakes, disappointment, or risks; insulating them from the world around them."[210] It is not necessarily in a child's best interest to have helicopter parents "readily available to the children twenty four hours per day, seven days per week[,] . . . ready to swoop in at the slightest inkling of a problem. Children grow, in part, by problem solving."[211] Helicopter parenting has continued beyond childhood and onto higher education, including law school.[212]

As a result of helicopter parenting, Millennials find it difficult to deal with ambiguity, may lack creativity, and avoid risking failure.[213] In problem solving, students must embrace ambiguity, creativity, and risk.[214] Lawyers must possess critical analytical skills that allow them to problem solve in situations in which

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The meaning quotient (MQ) of a task gives a person a strong sense of meaning and is important to peak performance. Susie Cranston & Scott Keller, *Increasing the 'Meaning Quotient' of Work*, MCKINSEY Q. (Jan. 2013), http://www.mckinsey.com/insights/organization/increasing_the_meaning_quotient_of_work. If someone believes there is meaning in a task they are more likely to tolerate challenges. Frohlinger & Hogan, *supra* note 205.

210. Vinson, *supra* note 207, at 424.

211. Margaret M.C. v. William J.C., 972 N.Y.S.2d 396, 400 (N.Y. Sup. Ct. 2012) (noting that in a proceeding to determine custody of children, the best interest of the children should not be decided by which parent has the most time and is most available to be a helicopter parent); *see also* Gaia Bernstein & Zvi Triger, *Over-Parenting*, 44 U.C. DAVIS L. REV. 1221, 1236 (2011) (noting instances of parent interference in higher education concerning grades, papers, or class registration).

212. Vinson, *supra* note 207, at 426.

213. *See id.* (noting that helicopter parenting may hinder higher education).

214. *See* FRUEHWALD, *supra* note 48, at 213 (giving an example of embracing ambiguity as drafting a rule in favor of your client).

they do not have all the needed information.[215] They should inquire about facts that they know, do not know, or wish to know and how to investigate them. Students must confront uncertainties that arise when considering different outcomes for a client and a range of possible ways to achieve those outcomes.[216] Knowing the client's tolerance for risk and the student's own risk aversion may be important to helping the client solve the problem. In addition, solving a client's problem may involve creative thinking.[217] Creative solutions could involve looking beyond legal solutions or beyond obvious or established answers, for something infrequently used, or not yet thought of, to advance the law.[218]

V. BENEFITS AND CHALLENGES

All progress is precarious, and the solution of one problem brings us face to face with another problem.[219]

—Martin Luther King, Jr.

Engaging students in problem solving produces many benefits and challenges. Both students and faculty benefit from their investment, engagement, and satisfaction with problem solving. Becoming an effective problem solver can positively impact a student's success and the way the bench, bar, and clients view the student as well as the way the student views himself or herself.[220]

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215. Pettys, *supra* note 175, at 1261–62 (noting that college educators from across disciplines identify these skills as important); Melissa H. Weresh, *I'll Start Walking Your Way, You Start Walking Mine: Sociological Perspectives on Professional Identity Development and Influence of Generational Differences*, 61 S.C. L. REV. 337, 360–61 (2009) (discussing a millennial generation requiring immediate feedback on their contributions, unwilling to sacrifice other aspects of personal lives, and uninterested in paying dues).

216. Pettys, *supra* note 175, at 1262 (suggesting the need for developing students' analytical capabilities in law schools).

217. *See* FRUEHWALD, *supra* note 48, at 213 (emphasizing the need to think outside the box); Moppett, *supra* note 13, at 255 (discussing the need for creativity in solving legal problems); Morton, *supra* note 13, at 377 (suggesting that creative problem solving allows for broad analysis); Pettys, *supra* note 175, at 1317 (criticizing how the case-dialogue method has creativity-blunting effects); *see also* Sparrow & McCabe, *supra* note 109, at 154 (noting how teams solve problems creatively).

218. *See* Moppett, *supra* note 13, at 287 (discussing the tool of divergent thinking to problem solve creatively).

219. Douglas L. Weed, *Causation: An Epidemiologic Perspective (In Five Parts)*, 12 J.L. & POL'Y 43, 49 (2003) (quoting Martin Luther King).

220. *See* Andrea Lee Negroni, *What They Didn't Teach You in Law School*, WASHINGTON LAWYER, Dec. 2010, at 33, 34 (discussing common soft skills of successful lawyers); *see* Cheryl Conner, *Mentally Strong People: The 13 Things They Avoid*, FORBES

Problem solving, however, can be challenging for students and faculty and involves some risk and logistical issues. Although there are challenges in incorporating problem solving into the law school curriculum, the benefits outweigh the surmountable challenges.

A. Benefits—Deep Learning, Professionalism, Professional Identity, and Emotional Intelligence

Professors often complain that students cannot transfer skills they acquire in one course to another or from one semester or year in school to another, and employers complain that the students cannot transfer skills learned in law school to real-world tasks.[221] Problem solving helps close the gap between academia and practice through experiential learning. By connecting legal knowledge, theory, and skills to help clients, students develop deep learning that they can transfer to practice.[222]

In addition, numerous added benefits exist from incorporating problem solving into the legal education curriculum.[223] Beyond the deep learning that students develop, there are numerous soft skills that are ancillary benefits, such as professionalism, professional identity, and emotional intelligence.[224]

(Nov. 18, 2013, 5:07 PM), http://www.forbes.com/sites/cherylsnappconner/2013/11/18/mentally-strong-people-the-13-things-they-avoid/.

221. Oates, *supra* note 191, at 1, 3 (discussing students' ability to transfer skills to similar tasks and describing "the four steps involved in transfer: problem representation, search and retrieval, mapping, and application"); *see also infra* Part V(A)(1) (explaining deep learning).

222. *See* Weresh, *supra* note 215, at 346–49 (discussing a need for skills, knowledge, and professional socialization beyond formal education for high quality work in a professional setting).

223. If alumni or other guest attorneys are invited to participate in the class, another benefit is the potential for employment and mentoring for your students, promoting your school and its innovative experiential learning to the bench and bar, as well as possible development opportunities for your school.

224. *See* Trudeau, *supra* note 25, at 124 (suggesting that problem-solving courses help students to develop analytical skills and empower students to feel confident that they can solve clients' problems); Carrie Menkel-Meadow, *The Trouble with the Adversary System in a Post-Modern, Multi-Cultural World*, 1 J. INST. FOR STUDY LEGAL ETHICS 49, 49–51 (1996) (noting inadequacy of adversary system and asserting a need for modern lawyers to problem solve and deal with client issues differently); Banerjee, *supra* note 44 (noting that educational institutions still do not focus on soft skills); *see also* Sophie M. Sparrow, *Can They Work Well on a Team? Assessing Students' Collaboration Skills*, 38 WM. MITCHELL L. REV. 1162, 1169 (2012) (discussing deep learning); *infra* Part V(A)(4) (defining soft skills).

1. Deep Learning

Deep learning occurs when students extract meaning and understanding from course materials and experiences and are then able to transfer what they learned from one problem to another in a sustained way.[225] The primary benefit of incorporating problem solving into the law school curriculum is that it helps students understand the connection between doctrinal knowledge, theory, and practical skills necessary to serve their clients by helping them solve clients' problems.[226] Students who have undergone problem-solving training also realize the importance of problem-solving skills necessary to be successful in legal practice and that knowledge of the law is not enough. Reflection and self-regulated learning help students establish deeper learning experiences to guide future learning.[227] Students gain experience attempting to solve different client problems, employing a problem-solving methodology, and approaching tasks associated with problem solving systematically.[228] They realize that

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225. Sparrow, *supra* note 224, at 1169.

226. Students can transfer knowledge better with active learning. *See generally* Diane F. Halpern, *Teaching Critical Thinking for Transfer Across Domains: Dispositions, Skills, Structure Training, and Metacognitive Monitoring*, 53 AM. PSYCHOL. 449, 453 (1998); Gerald F. Hess, *Value of Variety: An Organizing Principle to Enhance Teaching and Learning*, 3 ELON L. REV. 65, 81–82 (2011). Problem solving allows students to remember, apply, and transfer their doctrinal knowledge in the context of a client's problem. *See* Shirley Lung, *The Problem Method: No Simple Solutions*, 45 WILLAMETTE L. REV. 743, 775 (2009) (recognizing that feedback is an important part of problem-solving activities that fortifies learning and allows students to apply what they learned to future problems); Scott Fruehwald, *Why Justice Scalia Is Wrong About Skills Training*, LEGAL SKILLS PROF BLOG (May 18, 2014), http://lawprofessors.typepad.com/legal_skills/2014/05/why-justice -scalia-is-wrong-about-skills-training.html (posting a critique of Justice Scalia's comments on skills training).

227. Bloom, *supra* note 183, at 316–18 (describing the three phases of the self-regulated learning cycle, or the "'sub-processes of metacognition,'" as "forethought, performance, and reflection") (quoting Ian Clark, *Formative Assessment: Assessment Is for Self-Regulated Learning*, 24 EDUC. PSYCHOL. REV. 205, 242 (2012)); *see supra* Part IV(G) (discussing reflection and self-regulated learning). In each day of my problem-solving course, for example, I ask students to reflect on the client's problem, their approach to the problem, or working with others.

228. *See* Singer, *supra* note 10 (providing guidelines for problem-solving methodology). An effective problem-solving question involves (1) a fact situation in a specific field of law; (2) a client; (3) specific goals for that client; (4) consideration of effective rules of law; (5) evaluation of options available to solve the problem; and (6) communicating possible solutions to the client. *See id.* (suggesting rules for a law professor to follow when implementing the problem-solving method). Students learn to see the big picture and understand the practical effect (cost, time, and efficiency) of possible solutions to a client's

even though the legal issues, clients, and settings differ in different problems they are exposed to, the problem-solving methodology is effective across the problems. Problem solving provides the context, connection, depth, breadth, and repetition needed to understand how to think like a lawyer and also realize the role of lawyers in helping clients.[229] Thus, students engaged in deep learning bridge the gap between academia and practice and understand how problem solving will be their primary role in practice.[230]

2. Professionalism

Professionalism is a recurring theme between different problems and different clients when problem solving.[231] Students experience how professionalism can be challenged when working on solving a client's problem. Problem solving simulates legal practice and mimics the way lawyers solve problems in practice, such as working under short deadlines, collaborating with others, and building a rapport and relationship with clients.[232] Students learn how to work efficiently, effectively, and cooperatively in a profes-

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problem that are consistent with the client's goal. *See id.* (constructing the problem-solving methodology of teaching around the interests of the client).

229. Lamparello & MacLean, *supra* note 125, at 100 (noting how context, breadth, and repetition are required elements for students to be practice-ready).

230. Sparrow & McCabe, *supra* note 109, at 162; *see supra* Part IV(G)(1) (discussing metacognition and deep learning).

231. The tenets of professionalism in a classroom setting include (1) thoroughly completing work by deadlines; (2) producing work product that is accurate and free of error; (3) attending class prepared; (4) taking initiative; (5) participating effectively in group work and class discussion; (6) engaging in a level of self-critique and reflective learning necessary to excel as a lawyer; (7) experiencing how professionalism may be challenged in legal settings; and (8) examining and developing professional identity and professional development. *See* Kehner & Robinson, *supra* note 91, at 63–64, 87–88, 91, 95 (citing common characteristics of effective professionalism instruction). Although problem-solving courses demand professionalism in ways that tailor to a legal education, a classroom experience fosters these benefits that translate clearly to students' future legal practice. *Id.* at 73, 91. Four common characteristics of effective professionalism include (1) institutional commitment to creating a culture of professionalism; (2) involvement of members of the bench and bar as a complement to faculty instruction; (3) intentional instruction in professionalism; and (4) incentives to students. *Id.* at 102–09; *see also supra* Part III (discussing how to incorporate problem solving into law school curriculum).

232. *See* Kehner & Robinson, *supra* note 91, 102, 105–09 (explaining that schools most successfully implement professionalism instruction when the institution commits to creating a professional culture through faculty modeling and encouraging traits and values essential to professionalism); Banerjee, *supra* note 44 (emphasizing that personal relationships and teamwork, as well as how one approaches work, are the backbone to work).

sional manner under tight time constraints. They also learn how to dress and communicate professionally, making them better equipped for legal practice.[233] In addition, students hone leadership skills in a professional setting.[234] Finally, working with others, receiving and giving feedback, and attempting to solve complex client problems aid in students' professional development.[235]

Learning to receive constructive feedback requires professionalism from students.[236] Students experience a unique connection to real-world practice and feedback on hard and soft skills when potential future employers, judges, alums, and faculty come into class as guest experts and critique students' solutions to clients' problems or students' methods of reaching a proposed solution. Students also collaborate with and provide feedback to other students in the class—those on their team as well as other teams.

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233. *See* Sparrow & McCabe, *supra* note 109, at 171. In my course, I emphasize professional attire. I require students to attend each class day in professional attire. Part of the reason for professional dress is that lawyers attend as guest experts to meet the student teams, listen to how they approached and solved the client's problem, and provide critiques. Also, in my problem-solving class, students must communicate, both orally and in writing, with various people—their client, their teammates, the expert guest lawyers, and the professor. The assignments include drafting a press release for a client, writing a memorandum on the law, advising a client, interviewing a client, writing a client letter, and drafting an email to a supervisor. Students must communicate their analysis, how they reached a consensus, and their approach to solving the client's problem. *See* Problem Solving Syllabus, *supra* note 123.

234. Effective communication includes active listening. *See* Margalit Fox, *Pauline Phillips; For Decades, America's Dear Confidante*, N.Y. TIMES (Jan. 18, 2013), http://www .bostonglobe.com/metro/obituaries/2013/01/18/pauline-phillips-for-decades-america-dear -confidante/dYgjSXEqJK2227iOZuzUQK/story.html ("I learned how to listen . . . Sometimes, when people come to you with a problem, the best thing you can do is listen." (quoting "Dear Abbey")).

   Problem solving involves listening to your client, your peers, senior attorneys, and judges. Problem solving also requires empathy with your client and the problem your client is facing. Leaders sometimes naturally emerge; however, in my problem-solving class, each day a different student on the team must take on the role of project manager that day. Duties of a project manager may be delegating, finding out the strengths of each member, staying on task, and conflict resolution. *See* Pokorak et al., *supra* note 115, at 78 (citing project management as key competency).

235. "[The] best way to settle is to prepare for trial." O'Connor & Associates, *Property Tax Appeals—It's Your Money!*, POCONNOR.COM, http://www.poconnor.com/tssa_property _tax_appeals.asp (last visited Apr. 27, 2015); *see* Sparrow & McCabe, *supra* note 109, at 154 (noting that when students work in teams, they do what lawyers do in practice by collaborating to solve problems).

236. *See* Kehner & Robinson, *supra* note 91, at 104–05 (suggesting that students reap value when members of the bar and bench get involved and complement faculty instruction). Real-world practitioners provide students with the necessary context to explore professionalism.

Students reflect on and assign a score to both their own work and their team members' work.[237] For example, students can assess their teammates and their own time management and responsibility, initiative and leadership skills, professionalism, general team contribution, communication skills, and adaptability or co-operativeness within the group.[238] Rating these skills for themselves and others enables students to monitor their progress in the course and hone professionalism that relates to real-world legal practice.[239] Students benefit from learning to give helpful feedback to peers in a professional environment.[240] Also, students strengthen their professionalism through their teammates' reliance on each other, illustrating the responsibility that lawyers demonstrate in practice.[241] In dealing with other students, guest experts, clients, or supervisors, or whatever role/task students take on for a particular problem, students learn and better understand the complexity of human relationships, challenges in the face of uncertainty, and shades of grey involved in solving a client's problem; experiences they cannot learn from reading a book.[242]

3. Professional Identity

Whereas professionalism relates to behaviors, professional identity relates to an individual's decisions and sense of duty *about* those behaviors.[243] Law schools have been criticized for not

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237. *See* Kathleen Elliott Vinson, Problem Solving Class Group Work Rubric (Jan. 13-17, 2014) (on file with Author).

238. *Id.*

239. Neil Hamilton & Verna Monson, *Legal Education's Ethical Challenge: Empirical Research on How Most Effectively to Foster Each Student's Professional Formation (Professionalism)*, 9 U. ST. THOMAS L. J. 325, 368, 370 (2011).

240. Anna P. Hemingway, *Accomplishing Your Scholarly Agenda While Maximizing Students' Learning (a.k.a., How to Teach Legal Methods and Have Time to Write Too)*, 50 DUQ. L. REV. 545, 579–82 (2012).

241. *See* Hamilton & Monson, *supra* note 239, at 365 (discussing cooperation versus competition theories); Inglehart et al., *supra* note 112, at 187–89 (asserting that cooperative and collaborative learning coincide with goals for teaching legal writing).

242. *See* Problem Solving Syllabus, *supra* note 123. In my problem-solving course, students deal with advising clients, ethical responsibilities, making decisions in the face of uncertainty, risk analysis, client interviews, and complex legal issues dealing with multiple sources of law.

243. David Thomson, *Professional Identity, Presentation at the ALWD Conference*, LAW SCH. 2.0 (June 27, 2013, 8:23 PM), http://www.lawschool2.org/ls2/professional-identity/ (noting the distinction between professionalism and formation of professional identity).

focusing on students' professional identities.[244] Law school shapes future lawyers' professional identities in part to the extent that the law school curriculum decides what is and is not appropriate in a legal education.[245] Professional identity includes the beliefs, values, and motives that define an individual's—here, a lawyer's or law student's—professional role.[246] Professional identity is not "taught," but rather developed when students actively take on the responsibilities inherent in the profession and confront the ethical and social dilemmas of the legal practice.[247] When students face ethical and other client-related dilemmas and are asked to reflect on their decisions, they form their professional identities as they choose their own paths and reflect on those decisions.[248]

Law students have already developed *personal* identities upon entering law school, but law schools can impact a student's long-term *professional* identity by encouraging empathy and resilience to promote healthy and flexible professional identities.[249] Incorporating problem solving into the law school curriculum gives students the opportunity to reflect on and further develop their professional identities. Problem solving allows professors to create client "situations" where students reflect on their decisions, receive guidance and feedback from faculty, and develop their own professional identities.[250]

Solving a client's problem often affects students or lawyers beyond that one problem or case. It can affect a lawyer's relationship with that client in the future or with future clients, as well as the relationship between the lawyer and the judge, the court, the opposing attorney, the agency involved, or the lawyer's supervisor. Finally, self-reflection can affect a lawyer's view of himself

244. Krieger, *supra* note 141, at 865–66 (discussing how the *Carnegie Report* noted how law schools are strong in doctrinal instruction but weak in providing practical experience and instilling a professional identity).

245. Kath Hall et al., *Developing a Professional Identity in Law School: A View from Australia*, 4 PHOENIX L. REV. 21, 37 (2010) (quoting ELIZABETH DVORKIN ET AL., BECOMING A LAWYER: A HUMANISTIC PERSPECTIVE ON LEGAL EDUCATION AND PROFESSIONALISM 1 (1981)).

246. *Id.* at 33.

247. *Carnegie Report, supra* note 127, at 8–9.

248. Thomson, *supra* note 243.

249. Hall et al., *supra* note 245, at 38–39, 44–50.

250. *See* Thomson, *supra* note 243 (suggesting that students should be confronted with ethical dilemmas to resolve).

or herself, as well as how others view him or her.[251] Overall, students gain confidence and develop their professional identities in handling clients' problems.[252]

4. Emotional Intelligence

Emotional intelligence (EI) is "the ability to perceive emotions, to access and generate emotions so as to assist thought, to understand emotions and emotional knowledge, and to reflectively regulate emotions so as to promote emotional and intellectual growth."[253] The five components of emotional intelligence are self-awareness, self-regulation, internal motivation, empathy, and social skills.[254] EI requires good judgment, deliberative practice,

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251. *See* Inglehart et al., *supra* note 112, at 187–89 (suggesting that collaborative work and assessment build better judgment, increased analytical ability, greater subject matter understanding, and sparks interest in topics of study while easing student worry and anxiety).

252. Students who may not excel on exams or who have not engaged in experiential learning may not feel confident in their abilities or in their professional identity; however, after practicing problem solving these students may be more confident they are client-ready. Conversely, sometimes students who excel on an exam struggle with the practical problem-solving tasks, such as interviewing a client.

253. Daniel Goleman, *Daniel Goleman's Five Components of Emotional Intelligence*, SONOMA.EDU (Feb. 1, 2009), http://www.sonoma.edu/users/s/swijtink/teaching/philosophy _101/paper1/goleman.htm (quoting Peter Salovey & John D. Mayer, *Emotional Intelligence*, *in* EMOTIONAL DEVELOPMENT AND EMOTIONAL INTELLIGENCE: EDUCATIONAL IMPLICATIONS 1, 5 (Peter Salovey & David Sluyter eds., 1997), *available at* http://www.unh .edu/emotional_intelligence/EI%20Assets/Reprints...EI%20Proper/EI1997MSWhatIsEI.pdf) [hereinafter Goleman, *Five Components*]; DANIEL GOLEMAN, EMOTIONAL INTELLIGENCE: WHY IT CAN MATTER MORE THAN IQ 42–43 (1997) [hereinafter GOLEMAN, EMOTIONAL INTELLIGENCE]. Emotional intelligence developed from the work of Howard Gardner, a Harvard School of Education psychologist, who developed the theory of multiple intelligences. *See* GOLEMAN, EMOTIONAL INTELLIGENCE, *supra*, at 37–39; Marjorie A. Silver, *Love, Hate and Other Emotional Interference in the Lawyer/Client Relationship*, 6 CLINICAL L. REV. 259, 269 n.5 (1999). Yale psychologist Peter Salovey later focused on how intelligence can bear on human emotion. *See* GOLEMAN, EMOTIONAL INTELLIGENCE, *supra* note 253, at 42; Silver, *supra* note 253.

254. Goleman, *Five Components*, *supra* note 253; *see also* GOLEMAN, EMOTIONAL INTELLIGENCE, *supra* note 253 (explaining development of the emotional intelligence concept). Self-awareness involves knowing one's emotions and recognizing a feeling as it happens. GOLEMAN, EMOTIONAL INTELLIGENCE, *supra* note 253, at 42–43. Self-regulation requires management of emotions and handling feelings in an appropriate manner. *Id.* Empathy requires recognition of emotion in others and aids in building emotional self-awareness and "people skills." *Id. See also* Duckworth, *supra* note 205 (explaining that a "growth mindset," or the belief that learning ability can change with effort, can lead to increased success in education); Frohlinger & Hogan, *supra* note 205 (explaining that a "growth mindset" can lead to overall achievement).

and reflection and incorporation of feedback into the next task.[255] Analytical reasoning is not more important than emotional intelligence.[256] A call for humanizing legal education, however, recognizes the critical role of interpersonal skills in legal practice; the profession requires that recent law school graduates interact with clients, colleagues, opposing counsel, and the court.[257] Students engage in deep learning when they have "the intrapersonal intelligence to grasp multiple perspectives."[258] Being able to see the problem from another perspective—the client's, the opponent's, the judge's, the boss', or the public's—critically helps to avoid exacerbating a problem.

Some consider emotional intelligence to be a soft skill.[259] Soft skills are just as important as doctrinal knowledge, yet are not explicitly taught in law school.[260] "Soft skills encompass personal,

255. Elizabeth Jaffee, Power Point Presentation, *Teaching Soft Skills to Law Students*, SOUTHEAST LEGAL WRITING CONFERENCE SAVANNAH L. SCH. (Apr. 27, 2013).

256. *See* NEUMANN, JR., *supra* note 43, at 19–20 (citing Goleman, *Five Components*, *supra* note 253); Sparrow, *supra* note 224, at 1162–63 (discussing criticisms of law schools, particularly that students graduate without effective emotional intelligence skills and cannot work well as a team, jeopardizing their jobs even if they do legal work well); David B. Wexler, *Two Decades of Therapeutic Jurisprudence*, 24 TOURO L. REV. 17, 20–24 (2008) (exploring the development of therapeutic jurisprudence, which recognizes the emotional impact arising from the legal process).

257. *See* Bloom, *supra* note 183, at 324 (discussing loss of human connections and helping students to view themselves as the lawyers they will become to humanize the entire legal profession); Wexler, *supra* note 256, at 20, 22–23 (suggesting that the law has an impact on emotional life and personal well-being and recognition of this fact makes for better lawyering); *see also* B.A. Glesner, *Fear and Loathing in the Law Schools*, 23 CONN. L. REV. 627, 627–30 (1991) (amplifying and articulating potential causes of harmful effects of legal education); Lawrence S. Krieger, *Human Nature as a New Guiding Philosophy for Legal Education and the Profession*, 47 WASHBURN L.J. 247, 263 (2008) (suggesting significantly higher levels of depression, anxiety, and substance abuse in law students, as compared with other graduate students); Michael Hunter Schwartz, *Humanizing Legal Education: An Introduction to a Symposium Whose Time Came*, 47 WASHBURN L.J. 235, 235 (citing early leaders in movement to humanize law schools after studying harmful effects of legal education); *see generally* AALS Section on Balance in Legal Educ., FLA. ST. U., http://www.law.fsu.edu/academic_programs/humanizing_lawschool/ (last visited Apr. 27, 2015).

258. Sarah Berger et al., *HEY! THERE'S LADIES HERE!!*, 73 N.Y.U. L. REV. 1022, 1062 (1998); *see also supra* Part V(A) (discussing deep learning).

259. *Cf.* PEGGY KLAUS, THE HARD TRUTH ABOUT SOFT SKILLS 2 (2007); *see* Silver, *supra* note 254, at 294 (discussing the importance of "the emotional nexus between lawyer and client" for effective lawyering).

260. *See* KLAUS, *supra* note 259, at 1 (describing soft skills as "the nontechnical traits and behaviors needed for successful career navigation"); MALCOLM GLADWELL, OUTLIERS: THE STORY OF SUCCESS 101 (2005) (explaining practical intelligence as "'knowing what to say to whom, knowing when to say it, and knowing how to say it for maximum effect"). Recent nontraditional and diverse law school graduates found law school alienating because they did not experience diversity of race, class, or sexual orientation; law schools

social, communication, and self-management behaviors"[261] involving varied and extensive abilities and traits.[262] Examples of soft skills include, but are not limited to the following varied abilities and traits: "self-aware[ness], trustworthiness, conscientiousness, adaptability, critical thinking, attitude, initiative, empathy, confidence, . . . awareness, likeability, influence, . . . [and] leadership."[263] Many of these soft skills encompass components of emotional intelligence.[264]

Lawyers need soft skills to obtain employment, keep it, and develop good relationships with clients and other lawyers.[265] Indeed, surviving and thriving in legal practice may depend on a lawyer's soft skills, now more than ever, because mentoring and training in legal employment are no longer commonplace.[266] Empirical evidence illustrates that the soft skills of legal practice distinguish the most successful lawyers from others.[267]

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have been criticized for being white, middle-class institutions, creating cultural barriers for learning that create difficulty when the legal system does not reflect the values and needs of a diverse society. Bloom, *supra* note 183, at 313–14; Carole J. Buckner, *Realizing* Grutter v. Bollinger's *"Compelling Educational Benefits of Diversity"—Transforming Aspirational Rhetoric into Experience*, 72 UMKC L. REV. 877, 878, 887, 912, 919 (2004) (noting the negative experiences of the Socratic method for minorities); Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League School*, 143 U. PA. L. REV. 1, 3 (1994) (noting women's negative experiences with the Socratic method); Taylor, *supra* note 133 (noting that there is a "changing demographic" of law schools but "nontraditional students" are still at a disadvantage). "[S]tudents of color are less likely to report positive relationships with classmates; female students ask questions in class less frequently; and diverse perspectives are not as commonly expressed as we tend to believe." Taylor, *supra* note 133.

261. KLAUS, *supra* note 259, at 2.

262. *See* Jaffee, *supra* note 255; *see also* Jennifer Romig, *For Law Students: Summer Evaluations and Listening*, LISTEN LIKE A LAW. (May 23, 2014), http://listenlikealawyer .com/2014/05/23/for-law-students-summer-evaluations-and-listening/ (commenting that soft skills include anything associated with personality traits, relationships with people, communication, and social graces).

263. *Cf.* KLAUS, *supra* note 259, at 2; *see* Silver, *supra* note 254, at 259–60 (discussing the importance of a lawyer's emotional side in client relationships).

264. *See* KLAUS, *supra* note 259, at 2 (noting that soft skills are essential for success in the workplace); Silver, *supra* note 254, at 259–60 (suggesting that lawyers need emotional intelligence to be successful lawyers).

265. *See* Jaffee, *supra* note 255; Sparrow, *supra* note 224, at 1162 (citing a comment by a supervising attorney regarding his experience of having to let lawyers go not because of their legal work but because they were difficult to work with).

266. *See* GUISEPPE GIUSTI, SOFT SKILLS FOR LAWYERS 2 (2008) (suggesting that law firms have recently become aware of the importance of soft skills); Jaffee, *supra* note 255 (discussing deficiencies in students' soft skills).

267. Weresh, *supra* note 215, at 376–77 (suggesting that components of emotional intelligence apply to professionalism in legal education); Jaffee, *supra* note 255.

Problem-solving instruction in law schools is an opportunity to teach soft skills.[268] Self-reflection is an important part of problem solving, requiring students to recognize patterns in how they approached or solved the client's problem. For example, did their own aversion to risk affect their advice to the client?[269] Problem solving encourages empathy towards the client and encourages students to think about the big picture beyond the law. Others may perceive a student's awareness towards her own problem-solving approach as valuable to the overall ability to problem solve; her role as a valued team member; her good relationships with the client, teammates, and her supervisor, (instilling trust, confidence, and integrity); and finally, her ability to give and receive constructive feedback. Learning how others perceive you leads to greater self-reflection and emotional intelligence.[270]

B. Challenges

Incorporating problem solving into legal education has challenges. These challenges, however, are not insurmountable and can be overcome. Challenges should be considered though, and they range from pedagogical to practical issues.

Incorporating problem solving into legal education may take some faculty and students out of their comfort zones.[271] It is not the traditional legal education that faculty received when they went to law school or may be accustomed to teaching.[272] The professor is not center stage; instead the professor guides and facilitates student collaboration on complex problems.[273]

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268. Jaffee, *supra* note 255 (recommending other opportunities to teach soft skills in writing curriculum).

269. For example, would you advise your client to take a plea offer if your client professes his innocence but could face a mandatory minimum of double the sentence offered by the plea, if he is found guilty after a trial?

270. *See* Sparrow & McCabe, *supra* note 109, at 171–72.

271. *See* Morton, *supra* note 13, at 384 (noting students are less comfortable with the process of creative thinking). *But see* Stuart & Vance, *supra* note 17, at 1 ("The academy is even taking pot-shots from within as we cannibalize ourselves over annually smaller pools of matriculants and hence smaller pools of tuition dollars.").

272. John Lande & Jean R. Sternlight, *The Potential Contribution of ADR to an Integrated Curriculum: Preparing Law Students for Real World Lawyering*, 25 OHIO ST. J. ON DISP. RES. 247, 273–74 (2010) (explaining that barriers to curricular reform include law professors' reluctance to change because they value traditional education in which they were successful).

273. *See* Sparrow & McCabe, *supra* note 109, at 157 (discussing the different role a professor plays in team-based learning).

Problem solving also involves spending significant time, money, and energy to design or redesign a course and to prepare and teach the class, while thinking differently about classroom teaching.[274] Problem solving is labor-intensive and fast-paced for both students and faculty.[275] It demands that both fully participate and engage in the class.

Furthermore, students, faculty, and administrators may not fully understand what a problem-solving course entails, as it differs from the other typical law school curriculum. They may be skeptical or concerned with maximizing coverage of doctrine to prepare students for the bar exam.[276] Faculty, administrators, and students may need further education at the outset.[277]

Problem solving also involves risks on the part of the faculty member teaching the course and the student taking the course.[278] For example, a professor may not fully anticipate all of the various ways students may suggest solving a problem. Also, if guest attorneys are brought into the class, professors or faculty cannot always predict the quality or tone of the feedback. Busy guests' schedules may result in last-minute cancellations. Group work is also always risky and may result in a group conflict if a member is not doing his or her share of the work.[279]

Finally, logistical challenges may occur. For example, group work may be a challenge in small classrooms depending on the size of the class; however, students could use study rooms or other places in the law school to collaboratively work on solving a client's problem. Also, it may be difficult to anticipate how long students will need to solve a problem, report on their solution, receive feedback, and reflect on the process. Despite the challenges, with proper planning and anticipation of challenges, incorpo-

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274. *See* Lande & Sternlight, *supra* note 272, at 273–74 (discussing the costs of problem-solving curriculum and faculty inertia in maintaining status quo as a challenge to curricular reform).

275. *Id.* at 274 (acknowledging that skills courses are more labor intensive, with smaller student–faculty ratio compared to a large doctrinal lecture format).

276. *Id.* at 273 (addressing faculty concern for breadth of coverage contributing to their reluctance to change existing curriculum).

277. *Id.* at 271 (noting that faculty buy-in on the need for change is critical for curriculum reform).

278. *Id.* at 272 (noting how law professors tend to be rewarded for their scholarship rather than "prowess in teaching").

279. *See* Inglehart et al., *supra* note 112, at 216–17 (discussing issues with group work, such as the "free rider" problem where partners would not do enough work). I try to diversify groups by age, gender, graduating class, diversity, etc.

rating problem solving to connect academia to real-world practice is worth the investment in time and energy.

VI. CONCLUSION

When fog prevents a small-boat sailor from seeing the buoy marking the course he wants, he turns his boat rapidly in small circles, knowing that the waves he makes will rock the buoy in the vicinity. Then he stops, listens and repeats the procedure until he hears the buoy clang. By making waves, he finds where his course lies . . . . Often the price of finding these guides is a willingness to take a few risks, to "make a few waves." A boat that stays in the harbor never encounters dangers—but it also never gets anywhere.[280]

—Richard Armstrong

Problem solving has been identified as a critical skill for success in practice.[281] Law faculty, students, and administrators should ask, then, "Where in legal education curriculum is this skill being explicitly taught, and how are students learning it?" Incorporating problem solving into the legal education curriculum is transformative and answers the cry for pedagogical innovation and curricular reform. Problem solving can help reform legal education and is therefore worthy of consideration to better prepare students to be client-ready for practice.

Instead of a professor lecturing center stage at the front of a classroom to passive students with their heads down, silently staring at laptop screens,[282] picture teams of students sitting across the table from a client, collaboratively working to solve the client's complex problem. Teaching students the methodology to employ to solve client problems motivates and empowers them. Also, as they engage in higher-level thinking, deeper learning occurs, they enhance their soft skills, and they become more marketable to prospective employers and clients.[283] "[L]awyers, at

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280. Bill Hempel, *I've Run Aground and I Can't Get Off*, 49 THE RIVER SKIPPER, Nov. 2012, at 6.

281. Morton, *supra* note 13, at 379–80.

282. *See* Sparrow & McCabe, *supra* note 109, at 165 (describing how team-based learning transforms typical doctrinal large classes).

283. Trudeau, *supra* note 25, at 124.

their core, are problem solvers."[284] Indeed, "[a]s a [law student] become[s] a professional—an effective problem-solver, with excellent judgment and integrity, who communicates precisely, produces high-quality work reliably and efficiently, and accomplishes client goals with a minimum of supervision—[the student is] becoming a different person."[285]

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284. *Id.*
285. NEUMANN, Jr., *supra* note 43, at 14.